

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

SAKS GLOBAL ENTERPRISES LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 26-90103 (ARP)

(Jointly Administered)

Ref. Docket No. 49

**DEBTORS' NOTICE OF FILING EXHIBITS A THROUGH C TO THE GLOBAL
DEBTORS' PROPOSED INTERIM ORDER (I) AUTHORIZING THE GLOBAL
DEBTORS TO OBTAIN POSTPETITION FINANCING, (II) GRANTING LIENS AND
PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (III)
AUTHORIZING THE USE OF CASH COLLATERAL, (IV) GRANTING ADEQUATE
PROTECTION TO THE PREPETITION SECURED PARTIES, (V) MODIFYING THE
AUTOMATIC STAY, (VI) SCHEDULING A FINAL HEARING, AND
(VII) GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE THAT on January 14, 2026, the Global Debtors filed the *Global Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Global Debtors to Obtain Postpetition Financing, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Authorizing the Use of Cash Collateral, (IV) Granting Adequate Protection to the Prepetition Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [Docket No.49] (the "Motion"), which attached the proposed *Interim Order (I) Authorizing the Global Debtors to Obtain Postpetition Financing, (II) Granting Liens and Providing Superpriority Administrative Expense*

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://cases.stretto.com/Saks>. The location of Debtor Saks Global Enterprises LLC's corporate headquarters and the Debtors' service address in these chapter 11 cases is 225 Liberty Street, 31st Floor, New York, NY 10281. Bradley Arant Boult Cummings LLP is proposed counsel for the following Debtors: Saks OFF 5TH Holdings LLC, Saks OFF 5TH LLC, Saks OFF 5TH Midco Partner Inc., and Luxury Outlets USA, LLC (collectively, the "SO5 Digital Debtors"). Haynes and Boone, LLP and Willkie Farr & Gallagher LLP are proposed counsel for the remaining Debtors (collectively, the "Global Debtors").

Claims, (III) Authorizing the Use of Cash Collateral, (IV) Granting Adequate Protection to the Prepetition Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief at Exhibit B to the Motion (the “Original Proposed Interim Order”).

PLEASE TAKE FURTHER NOTICE THAT the Original Proposed Interim Order included placeholders for (i) Exhibit A – ABL DIP Credit Agreement, (ii) Exhibit B – SGUS DIP Credit Agreement, (iii) Exhibit C – OpCo DIP Credit Agreement, and (iv) Exhibit D – DIP Syndication Materials (the “DIP Exhibits”).

PLEASE TAKE FURTHER NOTICE THAT copies of Exhibit A, B, and C are attached hereto.

PLEASE TAKE FURTHER NOTICE THAT a hearing on the Motion is scheduled for Wednesday, January 14, 2026 at 4:00 p.m. (prevailing Central Time).

PLEASE TAKE FURTHER NOTICE that copies of the foregoing pleadings may be obtained (i) at the website established by the Debtors’ proposed noticing agent, Stretto, Inc. at <https://cases.stretto.com/Saks/>, (ii) from the Court’s website at <http://www.txs.uscourts.gov> via ECF/Pacer, or (iii) upon request to the undersigned.

[Remainder of page intentionally left blank]

Houston, Texas

Dated: January 14, 2026

/s/ Kelli Stephenson Norfleet

HAYNES AND BOONE, LLP

Kelli Stephenson Norfleet (TX Bar No. 24070678)

Kenric D. Kattner (TX Bar No. 11108400)

Arsalan Muhammad (TX Bar No. 24074771)

Kourtney P. Lyda (TX Bar No. 24013330)

David Trausch (TX Bar No. 24113513)

1221 McKinney Street, Suite 4000

Houston, TX 77010

Telephone: (713) 547 2000

Facsimile: (713) 547 2600

Email: kelli.norfleet@haynesboone.com
kenric.kattner@haynesboone.com
arsalan.muhammad@haynesboone.com
kourtney.lyda@haynesboone.com
david.trausch@haynesboone.com

WILLKIE FARR & GALLAGHER LLP

Debra M. Sinclair (*pro hac vice* pending)

Robin Spigel (*pro hac vice* pending)

Allyson B. Smith (*pro hac vice* pending)

Betsy L. Feldman (*pro hac vice* pending)

Jessica D. Graber (*pro hac vice* pending)

787 Seventh Avenue

New York, NY 10019

Telephone: (212) 728-8000

Facsimile: (212) 728-8111

Email: dsinclair@willkie.com
rspigel@willkie.com
absmith@willkie.com
bfeldman@willkie.com
jgraber@willkie.com

-and-

Jennifer J. Hardy (TX Bar No. 24096068)

600 Travis Street

Houston, TX 77002

Telephone: (713) 510-1766

Facsimile: (713) 510-1799

Email: jhardy2@willkie.com

-and-

Ryan Blaine Bennett (*pro hac vice* pending)

300 North LaSalle Drive

Chicago, IL 60654

Telephone: (312) 728-9123

Facsimile: (312) 728-9199

Email: rbennett@willkie.com

*Proposed Co-Counsel to the Global Debtors
and Global Debtors in Possession*

*Proposed Co-Counsel to the Global Debtors
and Global Debtors in Possession*

Certificate of Service

I certify that on the date hereof, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas. Additionally, the foregoing document will be served as set forth in a forthcoming affidavit filed by the Debtors' claims agent.

/s/ Kelli Stephenson Norfleet
Kelli Stephenson Norfleet

Exhibit A

ABL DIP Credit Agreement

\$1,500,000,000

SENIOR SECURED, SUPER-PRIORITY
DEBTOR-IN-POSSESSION ABL CREDIT AGREEMENT,

dated as of January [____], 2026,

among

SAKS GLOBAL HOLDINGS LLC,
as Holdings, a Debtor and a Debtor-In-Possession Under Chapter 11 of the Bankruptcy Code,

SAKS GLOBAL ENTERPRISES LLC,
as Borrower, a Debtor and a Debtor-In-Possession Under Chapter 11 of the Bankruptcy Code,

THE CO-BORROWERS PARTY HERETO,
as Co-Borrowers, Debtors and Debtors-In-Possession Under Chapter 11 of the Bankruptcy Code,

THE GUARANTORS PARTY HERETO,
as Guarantors, Debtors and Debtors-In-Possession Under Chapter 11 of the Bankruptcy Code,

THE LENDERS PARTY HERETO,

BANK OF AMERICA, N.A.,
as Administrative Agent and Collateral Agent,

and

BOFA SECURITIES, INC.,
WELLS FARGO BANK, NATIONAL ASSOCIATION,
JPMORGAN CHASE BANK, N.A.,
CAPITAL ONE, NATIONAL ASSOCIATION,
RBC CAPITAL MARKETS¹,
CITIBANK, N.A.,
MUFG BANK, LTD.,
TD BANK, N.A.,
PNC BANK, NATIONAL ASSOCIATION, and
MORGAN STANLEY SENIOR FUNDING, INC.
as Joint Lead Arrangers and Bookrunners

¹ RBC Capital Markets is a brand name for the capital markets business of Royal Bank of Canada and its affiliates.

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I Definitions	7
SECTION 1.01 Defined Terms	7
SECTION 1.02 Terms Generally	60
SECTION 1.03 Accounting Terms; GAAP.....	61
SECTION 1.04 [Reserved].....	62
SECTION 1.05 Currencies	62
SECTION 1.06 Required Financial Statements	Error! Bookmark not defined.
SECTION 1.07 Divisions	62
SECTION 1.08 [Reserved].....	62
SECTION 1.09 Exchange Rates; Currency Equivalent.....	62
SECTION 1.10 [Reserved].....	63
ARTICLE II The Credits	63
SECTION 2.01 Commitments.....	63
SECTION 2.02 Revolving Loans and Borrowings	65
SECTION 2.03 Requests for Borrowings	66
SECTION 2.04 Swingline Loans	67
SECTION 2.05 Letters of Credit.....	68
SECTION 2.06 Funding of Borrowings.....	75
SECTION 2.07 Interest Elections	76
SECTION 2.08 Termination and Reduction of Commitments.....	77
SECTION 2.09 Promise to Pay; Evidence of Debt	77
SECTION 2.10 Optional Repayment of Loans	78
SECTION 2.11 Mandatory Repayment of Loans.....	78
SECTION 2.12 Fees.....	79
SECTION 2.13 Interest	80
SECTION 2.14 Alternate Rate of Interest.....	81
SECTION 2.15 Increased Costs	82
SECTION 2.16 Break Funding Payments.....	83
SECTION 2.17 Taxes.....	84
SECTION 2.18 Payments Generally; <i>Pro Rata</i> Treatment; Sharing of Set-offs.....	87
SECTION 2.19 Mitigation Obligations; Replacement of Lenders.....	90
SECTION 2.20 Illegality.....	91
SECTION 2.21 [Reserved].....	91
SECTION 2.22 [Reserved].....	91
SECTION 2.23 [Reserved].....	91
SECTION 2.24 Joint and Several Liability of Borrower Parties.....	91
SECTION 2.25 Appointment of Borrower as Agent for Borrower Parties.....	92
SECTION 2.26 Defaulting Lenders	93
ARTICLE III Representations and Warranties	95
SECTION 3.01 Organization; Powers.....	95
SECTION 3.02 Authorization	95
SECTION 3.03 Enforceability	96

SECTION 3.04	Governmental Approvals.....	96
SECTION 3.05	Borrowing Base Certificate	97
SECTION 3.06	Title to Properties; Possession Under Leases	97
SECTION 3.07	Subsidiaries.....	97
SECTION 3.08	Litigation; Compliance with Laws	98
SECTION 3.09	Federal Reserve Regulations	98
SECTION 3.10	Investment Company Act	99
SECTION 3.11	Use of Proceeds	99
SECTION 3.12	Tax Returns.....	99
SECTION 3.13	No Material Misstatements.....	99
SECTION 3.14	Environmental Matters	100
SECTION 3.15	Security Documents.....	100
SECTION 3.16	Location of Real Property and Leased Premises	100
SECTION 3.17	Initial Budget	Error! Bookmark not defined.
SECTION 3.18	No Material Adverse Effect.....	101
SECTION 3.19	Insurance.....	101
SECTION 3.20	Anti-Money Laundering; Anti-Corruption; Sanctions.....	101
SECTION 3.21	Intellectual Property; Licenses, Etc	102
SECTION 3.22	Employee Benefit Plans.....	102
SECTION 3.23	Saks Flagship Material Documents.	103
SECTION 3.24	Chapter 11 Cases.	103
SECTION 3.25	Orders..	Error! Bookmark not defined.
SECTION 3.26	Petition Date; Claims and Collateral..	Error! Bookmark not defined.
ARTICLE IV	Conditions of Lending	104
SECTION 4.01	All Credit Events	104
SECTION 4.02	Effective Date Conditions.....	105
ARTICLE V	Affirmative Covenants	108
SECTION 5.01	Existence; Businesses and Properties	108
SECTION 5.02	Insurance.....	109
SECTION 5.03	Taxes.....	109
SECTION 5.04	Financial Statements, Reports, etc	110
SECTION 5.05	Litigation and Other Notices.....	113
SECTION 5.06	Compliance with Laws	114
SECTION 5.07	Maintaining Records; Access to Properties and Inspections; Appraisals	114
SECTION 5.08	Use of Proceeds	115
SECTION 5.09	Compliance with Environmental Laws.....	115
SECTION 5.10	Further Assurances; Additional Security.....	115
SECTION 5.11	Cash Management Systems; Application of Proceeds of Accounts	118
SECTION 5.12	Creation and Release of Co-Borrowers	120
SECTION 5.13	Lender Calls.....	120
SECTION 5.14	Capital One Agreement and Permitted Replacement Credit Card Program.....	121
SECTION 5.15	DIP Term Loan Facility; Request for Loans Under DIP Term Loan Facility	121
SECTION 5.16	Required Milestones	121

SECTION 5.17	Saks Flagship Material Agreements.	121
SECTION 5.18	Financial Consultant; Company Advisors.	122
ARTICLE VI Negative Covenants		122
SECTION 6.01	Indebtedness	122
SECTION 6.02	Liens	125
SECTION 6.03	[Reserved].....	129
SECTION 6.04	Investments, Loans and Advances	129
SECTION 6.05	Mergers, Consolidations and Sales of Assets	131
SECTION 6.06	Restricted Payments.....	134
SECTION 6.07	Transactions with Affiliates.....	135
SECTION 6.08	Business	137
SECTION 6.09	Limitation on Payments and Modifications of Indebtedness; Modifications of Certificate of Incorporation, By Laws and Certain Other Agreements; etc	138
SECTION 6.10	Reclamation Claims.....	139
SECTION 6.11	Designated IPCo Subsidiaries.....	139
SECTION 6.12	Saks Flagship Material Agreements.	140
SECTION 6.13	Insolvency Proceeding Claims.....	141
SECTION 6.14	DIP UnSub Borrower and Pre-Petition UnSub Borrower Covenant Basket.	141
SECTION 6.15	Bankruptcy Actions..	142
ARTICLE VII [Reserved].....		142
ARTICLE VIII Events of Default.....		142
SECTION 8.01	Events of Default	142
SECTION 8.02	Remedies on Default.....	147
ARTICLE IX The Agents		149
SECTION 9.01	Appointment	149
SECTION 9.02	Delegation of Duties	151
SECTION 9.03	Exculpatory Provisions	151
SECTION 9.04	Reliance by Administrative Agent.....	152
SECTION 9.05	Notice of Default	153
SECTION 9.06	Non-Reliance on Agents and Other Lenders	153
SECTION 9.07	Indemnification.....	153
SECTION 9.08	Agent in Its Individual Capacity	154
SECTION 9.09	Successor Agent.....	154
SECTION 9.10	Arrangers	155
SECTION 9.11	Recovery of Erroneous Payments.....	155
SECTION 9.12	Credit Bidding	155
SECTION 9.13	Collateral and Guarantee Matters	156
SECTION 9.14	Cash Management Banks and Qualified Counterparties	157
SECTION 9.15	ERISA Representation.....	157
SECTION 9.16	Flood Insurance Laws.....	158
ARTICLE X Miscellaneous.....		158

SECTION 10.01	Notices; Communications.....	158
SECTION 10.02	Survival of Agreement.....	159
SECTION 10.03	Binding Effect.....	160
SECTION 10.04	Successors and Assigns	160
SECTION 10.05	Expenses; Indemnity.....	164
SECTION 10.06	Right of Set-off.....	166
SECTION 10.07	Applicable Law.....	166
SECTION 10.08	Waivers; Amendment	167
SECTION 10.09	Interest Rate Limitation	169
SECTION 10.10	Entire Agreement.....	169
SECTION 10.11	WAIVER OF JURY TRIAL.....	170
SECTION 10.12	Severability	170
SECTION 10.13	Counterparts.....	170
SECTION 10.14	Headings	170
SECTION 10.15	Jurisdiction; Consent to Service of Process.....	170
SECTION 10.16	Confidentiality	171
SECTION 10.17	Platform; Borrower Materials	172
SECTION 10.18	[Reserved].....	173
SECTION 10.19	USA PATRIOT Act Notice	173
SECTION 10.20	Order; Security Documents and Intercreditor Agreements.....	173
SECTION 10.21	No Liability of the Issuing Banks	173
SECTION 10.22	No Advisory or Fiduciary Responsibility	174
SECTION 10.23	Acknowledgement and Consent to Bail-In of Affected Financial Institutions	174
SECTION 10.24	Acknowledgment Regarding Any Supported QFCs.....	175
SECTION 10.25	Electronic Execution of Assignments and Certain Other Documents	176

Exhibits, Schedules and Annexes

Exhibit A	Form of Assignment and Acceptance
Exhibit B	Form of Borrowing Base Certificate
Exhibit C	Form of Initial Budget
Exhibit D-1	Form of Borrowing Request
Exhibit D-2	Form of Swingline Borrowing Request
Exhibit D-3	Form of Letter of Credit Request
Exhibit E	Form of Interest Election Request
Exhibit F	Form of Co-Borrower Joinder Agreement
Exhibit G	U.S. Tax Compliance Certificate
Exhibit H	Form of Interim Order
Exhibit I	Form of Variance Report

Schedule 1.01(1)	Commitments
Schedule 1.01(2)	Unrestricted Subsidiaries
Schedule 1.01(3)	Pre-Petition Letters of Credit
Schedule 1.01(4)	Saks Flagship Real Estate
Schedule 1.01(5)	Subsidiary Loan Parties
Schedule 1.01(6)	DIP UnSub Borrower Term Loan Agreement Loan Parties
Schedule 3.04	Governmental Approvals
Schedule 3.06(2)	Possession under Leases
Schedule 3.07(1)	Subsidiaries
Schedule 3.07(2)	Options, Warrants, etc.
Schedule 3.12	Taxes
Schedule 3.14	Environmental Matters
Schedule 3.16(1)	Owned Material Real Property
Schedule 3.16(2)	Leased Material Real Property
Schedule 3.19	Insurance
Schedule 3.21	Intellectual Property
Schedule 3.23	Collective Bargaining Agreements
Schedule 5.16	Milestones
Schedule 6.01	Indebtedness
Schedule 6.02	Liens
Schedule 6.07	Transactions with Affiliates
Schedule 10.01	Notice Information

THIS SENIOR SECURED, SUPER-PRIORITY DEBTOR-IN-POSSESSION ABL CREDIT AGREEMENT, dated as of [], 2026 (as amended, restated, amended and restated, supplemented, extended, renewed or otherwise modified from time to time, this “**Agreement**”), is by and among SAKS GLOBAL HOLDINGS LLC, a Delaware limited liability company (“**Holdings**”), SAKS GLOBAL ENTERPRISES LLC, a Delaware limited liability company (the “**Borrower**”), each of the other Borrower Parties party hereto from time to time, the Lenders and Issuing Banks party hereto from time to time, and BANK OF AMERICA, N.A. (“**Bank of America**”), as the Administrative Agent, the Collateral Agent and the Swingline Lender. All capitalized terms used herein and defined in Article I are used herein as therein defined.

RECITALS

WHEREAS, on January [], 2026 (the “**Petition Date**”), the Borrower, Holdings and the other Guarantors (collectively, the “**Debtors**”, and each, individually, a “**Debtor**”) filed voluntary petitions for relief with the Bankruptcy Court, initiating their respective cases that are pending under chapter 11 of the Bankruptcy Code (each case of Holdings, the Borrower and each other Debtor, a “**Chapter 11 Case**” and collectively, the “**Chapter 11 Cases**”) in the United States Bankruptcy Court for the Southern District of Texas (the “**Court**”). The Debtors continue to operate their businesses and manage their properties as debtors and debtors-in-possession pursuant to Section 1107(a) and 1108 of the Bankruptcy Code.

WHEREAS, prior to the Petition Date, the Lenders provided financing to the Borrower pursuant to that certain ABL Credit Agreement, dated as of December 23, 2024 (as amended by that certain Amendment No. 1 to ABL Credit Agreement and Amendment No. 1 to ABL Guarantee and Collateral Agreement, dated as of June 27, 2025, that certain Consent to ABL Credit Agreement, dated as of July 23, 2025, that certain Amendment No. 3 to ABL Credit Agreement, dated as of September 8, 2025, and as further amended, amended and restated, supplemented or otherwise modified from time to time through the Petition Date, the “**Pre-Petition Credit Agreement**”), among the Borrower, Holdings, the other Co-Borrowers and Guarantors party thereto from time to time, the lenders party thereto from time to time (collectively, the “**Pre-Petition Lenders**”) and Bank of America, N.A. as administrative agent and collateral agent.

WHEREAS, as of the close of business on January [], 2026, the Pre-Petition Lenders under the Pre-Petition Credit Agreement were owed approximately: (i) \$440,893,445.10 in outstanding principal balance of Pre-Petition Revolving Loans, and (ii) \$56,576,812.84 in Obligations in respect of Letters of Credit (each, as defined in the Pre-Petition Credit Agreement), plus interest, fees, costs and expenses and all other Pre-Petition Obligations under the Pre-Petition Credit Agreement.

WHEREAS, the Obligations under and as defined in the Pre-Petition Credit Agreement are secured by a security interest in substantially all of the existing and after-acquired assets of the Borrower and Guarantors as more fully set forth in the Pre-Petition Loan Documents, and such security interest is properly perfected, and, with certain exceptions, as described in the Pre-Petition Loan Documents, has priority over other security interests, subject to existing intercreditor agreements.

WHEREAS, the Borrower has requested, and, upon the terms set forth in this Agreement, the Lenders have agreed to make available to the Borrower, a senior secured super-priority asset-based credit facility up to the lesser of (i) \$1,500,000,000 and (ii) the amount provided therefor in the Order, available from time to time until the Maturity Date (as defined below), which facility is a refinancing of the Pre-Petition Credit Agreement.

WHEREAS, the Borrower and the Guarantors have agreed to secure all of the Obligations under the Loan Documents by granting to the Collateral Agent, for the benefit of the Administrative Agent,

Collateral Agent and the other Secured Parties, a security interest in and lien upon substantially all of their existing and after-acquired personal property, other than Excluded Assets.

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

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

WHEREAS, the Administrative Agent's, Collateral Agent's and the Lenders' willingness to extend financial accommodation to the Borrower, and to administer the Borrower's and Guarantors' collateral security therefor, on a combined basis as more fully set forth in this Agreement and the other Loan Documents, is done solely as an accommodation to the Borrower and the Guarantors and at the Borrower's and the Guarantors' request and in furtherance of the Borrower's and Guarantors' mutual and collective enterprise.

NOW THEREFORE, in consideration of the mutual conditions and agreements set forth in this Agreement, and for good and valuable consideration, the receipt of which is hereby acknowledged (these recitals being an integral part of this Agreement), the parties hereto hereby agree as follows:

ARTICLE I

Definitions

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

"ABG" means Authentic Brands Group LLC.

"ABL Pro Rata Share" means twenty (20%) percent.

"ABL Priority Collateral" means **"ABL Priority Collateral"** as defined in the Intercreditor Agreement.

"ABR" means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its "prime rate", and (c) Term SOFR determined in accordance with clause (b) of the definition thereof *plus* 1.00%. The "prime rate" is a rate set by Bank of America based upon various factors including Bank of America's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change. If ABR is being used as an alternate rate of interest, then ABR shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above. Notwithstanding anything to the contrary herein, in no event shall the ABR be less than 1.00%.

“ABR Borrowing” means a Borrowing comprised of ABR Loans.

“ABR Loan” means any Loan bearing interest at a rate determined by reference to the ABR. For the avoidance of doubt, all Swingline Loans will be ABR Loans, and all ABR Loans shall be denominated in U.S. Dollars.

“ABR Revolving Borrowing” means a Borrowing comprised of ABR Revolving Loans.

“ABR Revolving Loan” means any Revolving Loan bearing interest at a rate determined by reference to the ABR.

“Acceptable Appraiser” means any experienced and reputable appraiser reasonably acceptable to the Borrower and the Administrative Agent.

“Account” means, with respect to a Person, any of such Person’s now owned and hereafter acquired or arising accounts (as defined in the UCC), including, whether or not constituting “accounts” (as defined in the UCC), any rights to payment for the sale, lease, license, assignment or other disposition of goods or rendition of services, whether or not they have been earned by performance or arising out of the use of a credit or charge card or information contained on or used with such card (and whether same is an “Account” or “General Intangible” as defined in the UCC). For the avoidance of doubt, “Accounts” will include all Credit Card Receivables, Gift Card Receivables and other Trade Receivables.

“Account Debtor” has the meaning provided in the UCC and includes, without limitation, any Person who may become obligated to any Loan Party under, with respect to, or on account of, an Account.

“Accounting Change” has the meaning assigned to such term in Section 1.03.

“Adequate Protection Liens” has the meaning assigned to the term “Adequate Protection Liens” in the Interim Order (or the Final Order, when applicable).

“Administrative Agent” means Bank of America, in its capacity as administrative agent for itself and the Lenders hereunder, and any duly appointed successor in such capacity.

“Administrative Agent Fees” has the meaning assigned to such term in Section 2.12(3).

“Administrative Agent’s Office” means, with respect to any currency, the Administrative Agent’s address and, as appropriate, account specified in the Credit Agreement with respect to such currency, or such other address or account with respect to such currency as the Administrative Agent may from time to time notify the Borrower and the Lenders.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“Affected Financial Institution” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“Affiliate” means, when used with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified; *provided*, that for the avoidance of doubt, none of the Arrangers, the Agents or their respective lending affiliates shall be deemed to be an Affiliate of the Borrower or any Parent Entity or any of their respective Subsidiaries.

“Agent License Grant” means without limiting the grant by each Loan Party of the Liens in the Collateral to the Collateral Agent pursuant to the Collateral Agreement, a grant by each Loan Party or any other Person (to the extent it has the right to do so) to the Collateral Agent of an irrevocable, non-exclusive worldwide license (exercisable without payment of royalty, rent or other compensation to any Loan Party or such Person) to use, license or sublicense, during the continuance of an Event of Default, any and all assets of such Loan Party or, solely with respect to the intellectual property subject to a Permitted IP Transaction, of such Person (including, without limitation, all fixtures, equipment and intellectual property) now owned or hereafter acquired by such Loan Party or such Person, and to occupy any Real Property owned or leased by such Loan Party, in each case wherever the same may be located and whether or not constituting Collateral, subject to such Loan Party’s or Person’s right, title and interest in and to such assets, including without limitation such Loan Party’s or Person’s license rights, 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, solely for the purpose of enabling the Collateral Agent or any of its agents or representatives to exercise any rights and remedies under the Loan Documents, including the right to realize (either directly or indirectly and including realizations undertaken by the Loan Parties with the consent of the applicable Agent) upon the Collateral at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies.

“Agent’s Advisors” means each of M3 Advisory Partners, LP, Morgan, Lewis & Bockius LLP, Otterbourg P.C., Great American Group, LLC and any other financial advisor, auditor, attorney, accountant, appraiser, auditor, business valuation expert, environmental engineer or consultant, turnaround consultant, and other consultants, professionals and experts retained by the Administrative Agent and reasonably necessary for the administration of this Agreement (it being understood that the Administrative Agent will notify the Borrower of any new retentions after the Effective Date to the extent such advisor is entitled to reimbursement pursuant to Section 10.05).

“Agents” means the Administrative Agent and the Collateral Agent, in their respective capacities as such.

“Agreed Currency” means U.S. Dollars.

“Agreement” has the meaning assigned to such term in the introductory paragraph hereof.

“Annual Financial Statements” has the meaning assigned to such term in Section 5.04(1).

“Applicable Commitment Fee Percentage” means, a percentage per annum equal 0.375%.

“Applicable Margin” means (a) in the case of Term SOFR Loans, 2.75% per annum and (b) in the case of ABR Loans, 1.75%, per annum.

“Approved Budget” means the Initial Budget together with any Updated Budget approved by the DIP Term Loan Agent.

“Approved Fund” has the meaning assigned to such term in Section 10.04(2).

“Approved SO5 Transfers” means, with respect to any SO5 Loan Party, intercompany Investments (including intercompany Indebtedness), Restricted Payments or other transfers from any Loan Party, directly or indirectly, to such SO5 Loan Party; *provided* that any such transfer shall (x) comply with the Orders, (y) comply with the Approved Budget and (z) be approved in all respects (including as to the aggregate amount, form and purpose of such transfers) by the Required Lenders.

“Approved TopCo Transfer” means, with respect to any Parent Entity (other than Holdings), intercompany Investments (including intercompany Indebtedness), Restricted Payments or other transfers from any Loan Party, directly or indirectly, to such Parent Entity (other than Holdings); *provided* that any such transfer shall (x) comply with the Orders, (y) comply with the Approved Budget and (z) be approved in all respects (including as to the aggregate amount, form and purpose of such transfers) by the Required Lenders.

“Arranger” means each of BofA Securities, Inc., Wells Fargo Bank, National Association, JPMorgan Chase Bank, N.A., Capital One, National Association, RBC Capital Markets², Citibank, N.A., MUFG Bank, Ltd., TD Bank, N.A., PNC Bank, National Association and Morgan Stanley Senior Funding, Inc., each in their respective capacity as joint lead arranger and joint bookrunner.

“Asset Sale” has the meaning assigned to such term in Section 6.05.

“Assignee” has the meaning assigned to such term in Section 10.04(2).

“Assignment and Acceptance” means an assignment and acceptance entered into by a Lender and an Assignee, and accepted by the Administrative Agent and the Borrower (if required by Section 10.04), substantially in the form of Exhibit A or such other form (including electronic documentation generated by use of an electronic platform) that is approved by the Administrative Agent and reasonably satisfactory to the Borrower.

“Atlas” means Amazon.com NV Investment Holdings LLC, a Nevada limited liability company.

“Authentic JV” means Authentic Luxury Group, LLC, or other joint venture formed, established or created with ABG in connection with the investment of ABG or its Affiliates into Saks Global Investor L.P. in connection with the Transactions (under and as defined in the Pre-Petition Credit Agreement) or, in each case, any successor entity thereto.

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

“Availability Block” means (i) from the Effective Date until (x) DIP Term Loan Tranche 1 has been fully used by the Borrower and (y) the DIP Term Loan Tranche 2 Funding Date has occurred, \$325,000,000, (ii) from and after (x) the date DIP Term Loan Tranche 1 has been fully used by the Borrower and (y) the DIP Term Loan Tranche 2 Funding Date has occurred until (x) DIP Term Loan Tranche 2 has been fully used by the Borrower and (y) the DIP Term Loan Tranche 3 Funding Date has occurred, \$300,000,000 and (iii) from and after (x) DIP Term Loan Tranche 2 has been fully used by the Borrower and (y) the DIP Term Loan Tranche 3 Funding Date has occurred, \$250,000,000.

“Availability Period” means the period from and including the Effective Date to but excluding the earliest of (a) the Maturity Date, (b) the date of termination of the Revolving Commitments pursuant to Section 2.08 and (c) the date of termination of the commitment of each Revolving Lender to make Revolving Loans and of the obligation of each Issuing Bank to issue Letters of Credit pursuant to Section 8.01.

“Available Unused Commitment” means, with respect to a Lender at any time, an amount equal to the amount by which (1) the Revolving Commitment of such Lender at such time exceeds (2) the aggregate

² RBC Capital Markets is a brand name for the capital markets business of Royal Bank of Canada and its affiliates.

Total Revolving Credit Exposure (other than Total Revolving Credit Exposure attributable to Swingline Loans) of such Lender at such time.

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

“Bail-In Legislation” means (a) 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, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their Affiliates (other than through liquidation, administration or other insolvency proceedings).

“Bank of America” has the meaning assigned to such term in the introductory paragraph hereof.

“Bankruptcy Code” means Title 11 of the United States Code, as now constituted or hereafter amended.

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

“Beneficial Owner” has the meaning given to that term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular “person” (as that term is used in Section 13(d)(3) of the Exchange Act), such “person” will not be deemed to have beneficial ownership of any securities that such “person” has the right to acquire or vote only upon the happening of any future event or contingency (including the passage of time) that has not yet occurred. The terms **“Beneficial Ownership”**, **“Beneficially Owns”** and **“Beneficially Owned”** have a corresponding meaning.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership or control as required by the Beneficial Ownership Regulation.

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

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“BHC Act Affiliate” has the meaning assigned to such term in Section 10.24.

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

“Board of Directors” means, as to any Person, the board of directors, board of managers or other governing body of such Person, or if such Person is owned or managed by a single entity, the board of directors, board of managers or other governing body of such entity, and the term **“directors”** means members of the Board of Directors.

“Book Value” means book value as determined in accordance with U.S. GAAP.

“**Borrower**” has the meaning assigned to such term in the introductory paragraph hereof. As used herein, the term “Borrower” shall mean, as the context requires, “Borrower” or “Borrowers”.

“**Borrower Materials**” has the meaning assigned to such term in Section 10.17(1).

“**Borrower Parties**” means the Co-Borrowers and each Subsidiary Loan Party with assets included in the Borrowing Base.

“**Borrowing**” means a group of Loans of a single Type made on a single date (or resulting from a conversion or conversions on such date) and, in the case of Term SOFR Loans as to which a single Interest Period is in effect.

“**Borrowing Base**” means, at any time, the sum of:

- (1) 90% of the Book Value of Eligible Credit Card Receivables of the Borrower Parties; *plus*
- (2) 85% of the Book Value of Eligible Trade Receivables of the Borrower Parties; *plus*
- (3) 90% of the Net Orderly Liquidation Value multiplied by the Cost of Eligible Inventory of the Borrower Parties; *provided* that Eligible Inventory consisting of (a) In-Transit Inventory shall comprise no more than 20% of the Borrowing Base and (b) high jewelry shall comprise no more than the lesser of (x) 10% of the Borrowing Base and (y) \$100.0 million; *less*
- (4) Reserves; *less*
- (5) the Availability Block.

“**Borrowing Base Certificate**” means a certificate by a Responsible Officer of the Borrower, substantially in the form of Exhibit B (or another form acceptable to the Administrative Agent and the Borrower) setting forth the calculation of the Borrowing Base, including a calculation of each component thereof (including, to the extent the Borrower has received notice that any Reserve has been updated as permitted by the terms of this Agreement, any such Reserve), all in such detail as is reasonably satisfactory to the Administrative Agent. All calculations of the Borrowing Base in connection with the preparation of any Borrowing Base Certificate will be made by the Borrower and certified to the Administrative Agent.

“**Borrowing Request**” means a request by the Borrower in accordance with the terms of Section 2.03 and substantially in the form of Exhibit D-1.

“**Business Day**” means any day except Saturday, Sunday and any day which shall be in New York City or the state where the Administrative Agent’s Office is located a legal holiday or a day on which banking institutions are authorized or required by law or other government action to close in New York City.

“**Canadian Dollars**” and “**C\$**” means the lawful currency of Canada.

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

December 31, 2018, notwithstanding any modification or interpretative change thereto thereafter and excluding the effect to any treatment of leases under Accounting Standards Codification 842 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect)) and, for purposes hereof, the amount of such obligations at any time will be the capitalized amount thereof at such time determined in accordance with GAAP.

“**Capital One**” means Capital One, National Association, together with its Affiliates.

“**Capital One Agreements**” means the Second Amended and Restated Credit Card Program Agreement, dated as of July 15, 2013, among The Neiman Marcus Group, Inc., a Delaware corporation, Bergdorf Goodman LLC (f/k/a Bergdorf Goodman Inc.), a Delaware limited liability company, and Capital One, and all material agreements and instruments entered into in connection therewith, in each case, as amended prior to the date hereof and as may be further amended from time to time in accordance with the terms of this Agreement.

“**Capital One Arrangements**” means the private label credit card program among The Neiman Marcus Group, Inc., a Delaware corporation, Bergdorf Goodman LLC (f/k/a Bergdorf Goodman Inc.), a Delaware limited liability company, and Capital One pursuant to the terms of the Capital One Agreements.

“**Capital Stock**” means:

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

“**Carve-Out**” has the meaning assigned to the term “Carve-Out” in the Interim Order (or the Final Order, when applicable).

“**Cash Equivalents**” means:

- (1) U.S. Dollars, Canadian Dollars, Japanese yen, Sterling, Euros or the national currency of any participating member of the European Union or, in the case of any Foreign Subsidiary, any local currencies held by it from time to time in the ordinary course of business and not for speculation;
- (2) direct obligations of the United States of America or any member of the European Union or any agency thereof or obligations guaranteed by the United States of America or any member of the European Union or any agency thereof, in each case, with maturities not exceeding two years;
- (3) time deposits, eurodollar time deposits, certificates of deposit and money market deposits, in each case, with maturities not exceeding one year from the date of acquisition thereof, and overnight bank deposits, in each case, with any commercial bank having capital, surplus and undivided profits of not less than \$250.0 million;

(4) repurchase obligations for underlying securities of the types described in clauses (2) and (3) above and clause (6) below entered into with a bank meeting the qualifications described in clause (3) above;

(5) commercial paper or variable or fixed rate notes maturing not more than one year after the date of acquisition issued by a corporation rated at least “P-1” by Moody’s or “A-1” by S&P (or reasonably equivalent ratings of another internationally recognized rating agency);

(6) securities with maturities of two years or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof, having one of the two highest rating categories obtainable from either Moody’s or S&P (or reasonably equivalent ratings of another internationally recognized rating agency);

(7) Indebtedness issued by Persons with a rating of at least “A 2” by Moody’s or “A” by S&P (or reasonably equivalent ratings of another internationally recognized rating agency), in each case, with maturities not exceeding one year from the date of acquisition, and marketable short-term money market and similar securities having a rating of at least “P-2” or “A-2” from either Moody’s or S&P (or reasonably equivalent ratings of another internationally recognized rating agency);

(8) Investments in money market funds with average maturities of 12 months or less from the date of acquisition that are rated “Aaa3” by Moody’s and “AAA” by S&P (or reasonably equivalent ratings of another internationally recognized rating agency);

(9) instruments equivalent to those referred to in clauses (1) through (8) above denominated in any foreign currency comparable in credit quality and tenor to those referred to above customarily utilized in the countries where any such Subsidiary is located or in which such Investment is made; and

(10) shares of mutual funds whose investment guidelines restrict 95.0% of such funds’ investments to those satisfying the provisions of clauses (1) through (9) above; and

(11) investments of the type made pursuant to Borrowers’ investment policy in effect as of the Effective Date (a copy of which has been provided to the Administrative Agent), or as amended, modified, supplemented or updated from time to time with the Administrative Agent’s consent.

“Cash Management Bank” means any provider of Cash Management Services that, at the time such Cash Management Obligations were entered into or, if entered into prior to the Effective Date, on the Effective Date, was the Administrative Agent, a Revolving Lender or an Affiliate of the foregoing, whether or not such Person subsequently ceases to be the Administrative Agent, a Revolving Lender or an Affiliate of the foregoing.

“Cash Management Obligations” means obligations owed by any Loan Party or its Restricted Subsidiaries to any Cash Management Bank in respect of or in connection with Cash Management Services and designated by the Cash Management Bank and the Borrower in writing to the Administrative Agent as “Cash Management Obligations” under this Agreement; *provided that* all Cash Management Services provided by the Administrative Agent to any Loan Party shall be Cash Management Obligations hereunder without regard to such designation.

“Cash Management Order” means the one or more orders of the Court entered in the Chapter 11 Cases after the “first day” hearing, together with all extensions, modifications and amendments thereto, in form and substance satisfactory to the Administrative Agent in its Reasonable Credit Judgment (not to be unreasonably withheld or delayed), which among other matters authorizes the Debtors to maintain their existing cash management and treasury arrangements (as set forth in the Pre-Petition Credit Agreement) or such other arrangements as shall be reasonably acceptable to the Administrative Agent in all material respects.

“Cash Management Services” means any treasury, depository, pooling, netting, overdraft, stored value card, purchase card (including so called “procurement card” or “P-card”), debit card, credit card, cash management, supply chain financing and similar services and any automated clearing house transfer of funds.

“Cash Receipts Released Amounts” has the meaning set forth in Section 2.01(2)(a) hereof.

“CFC” means any Foreign Subsidiary that is a “controlled foreign corporation” (within the meaning of Section 957 of the Code) any shares of which are treated as owned directly or indirectly by a “United States Shareholder” (within the meaning of Section 951(b) of the Code) as measured for purposes of Section 958(a) of the Code.

“Change in Law” means:

- (1) the adoption of any law, rule or regulation after the Effective Date; or
- (2) any change in law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the Effective Date; or
- (3) compliance by any Lender (or, for purposes of Section 2.15(2), by any lending office of such Lender or by such Lender’s holding company, if any) with any written request, guideline or directive (whether or not having the force of law) of any Governmental Authority, made or issued after the Effective Date; *provided* that, notwithstanding anything herein to the contrary, (a) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives promulgated thereunder or issued in connection therewith and (b) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States of America or foreign regulatory authorities, in each case pursuant to Basel III, in each case will be deemed to be a “Change in Law,” regardless of the date enacted, adopted, promulgated or issued.

A **“Change of Control”** will be deemed to occur if:

- (1) at any time, Holdings ceases to Beneficially Own, directly or indirectly, 100.0% of the issued and outstanding Equity Interests of the Borrower; or
- (2) at any time, the Borrower ceases to Beneficially Own, directly or indirectly, 100.0% of the issued and outstanding Equity Interests of the Co-Borrowers and the other Subsidiary Loan Parties, other than pursuant to a transaction permitted hereunder; or
- (3) at any time, a “change of control” (or comparable event) occurs under the DIP Term Loan Documents, the Pre-Petition Secured Notes Documents or the documentation governing

any Permitted Refinancing Indebtedness in respect thereof, in each case, if any Indebtedness is outstanding under such agreement; or

(4) any combination of Permitted Holders shall fail to own beneficially (within the meaning of Rules 13d-3 and 13d-5 of the Exchange Act as in effect on the Effective Date), directly or indirectly, in the aggregate Equity Interests representing at least 50.1% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Holdings; or

(5) (i) Parent shall cease to own and control legally and beneficially, either directly or indirectly, equity securities in SFA Holdings representing 100% of the combined voting power of all of Equity Interests entitled to vote for members of the board of directors or equivalent governing body of SFA Holdings on a fully-diluted basis free and clear of all Liens (other than statutory Liens otherwise permitted hereunder) or (ii) (A) SFA Holdings shall cease to directly own and control legally and beneficially, equity securities in Saks Flagship Holdco representing 100% of the combined voting power of all of Equity Interests entitled to vote for members of the board of directors or equivalent governing body of Saks Flagship Holdco or (B) Saks Flagship Holdco shall cease to own and control legally and beneficially, either directly or indirectly, equity securities in the Saks Flagship Fee Owner representing 100% of the combined voting power of all of Equity Interests entitled to vote for members of the board of directors or equivalent governing body of the Saks Flagship Fee Owner on a fully-diluted basis free and clear of all Liens (other than non-consensual Liens having priority by operation of applicable Law over the Lien of the Collateral Agent or in the case of the Equity Interests of the Saks Flagship Fee Owner).

Notwithstanding the preceding or any provision of Section 13d-3 of the Exchange Act, (i) a Person or group shall not be deemed to beneficially own Voting Stock subject to a stock or asset purchase agreement, merger agreement, option agreement, warrant agreement or similar agreement (or voting or option or similar agreement related thereto) until the consummation of the acquisition of the Voting Stock in connection with the transactions contemplated by such agreement, (ii) [reserved], (iii) a Person or group will not be deemed to beneficially own the Voting Stock of another Person as a result of its ownership of Voting Stock or other securities of such other Person's parent entity (or related contractual rights) unless it owns 50% or more of the total voting power of the Voting Stock entitled to vote for the election of directors of such parent entity having a majority of the aggregate votes on the board of directors (or similar body) of such parent entity, and (iv) the right to acquire Voting Stock (so long as such Person does not have the right to direct the voting of the Voting Stock subject to such right) or any veto power in connection with the acquisition or disposition of Voting Stock will not cause a party to be a beneficial owner.

“Chapter 11 Cases” has the meaning specified in the Recitals.

“Charges” has the meaning assigned to such term in Section 10.09.

“Chief Restructuring Officer” means a chief restructuring officer engaged on terms satisfactory to the Administrative Agent in its Reasonable Credit Judgment it being acknowledged that Mark Weinsten is acceptable to the Administrative Agent.

“CMBS Lenders” means “Lender” as defined in the Incorporated Agreement, including any successors in interest.

“CME” means CME Group Benchmark Administration Limited.

“Co-Borrower” means the Borrower and each other Restricted Subsidiary of the Borrower that as of such date of determination has executed a Co-Borrower Joinder Agreement, except for any Restricted

Subsidiaries that as of such date of determination have ceased to be a Co-Borrower in accordance with the terms of this Agreement.

“Co-Borrower Joinder Agreement” means a Co-Borrower Joinder Agreement substantially in the form of Exhibit F, executed and delivered by a new Co-Borrower in accordance with the provisions of Section 5.12.

“Code” means the Internal Revenue Code of 1986, as amended.

“Collateral” means the **“Collateral”** as defined in the Collateral Agreement and also includes (i) the “DIP Collateral” as referred to in the Orders, it being understood that “Collateral” shall (x) include all such “DIP Collateral” irrespective of whether any such property was excluded pursuant to the Pre-Petition Loan Documents, and (y) exclude any “Excluded Assets” (as defined in the Collateral Agreement) and (ii) all other property that is subject to any Lien in favor of the Collateral Agent for the benefit of the Secured Parties pursuant to any Security Document.

“Collateral Agent” means Bank of America, in its capacity as Collateral Agent for itself and the other Secured Parties, and any duly appointed successor in that capacity.

“Collateral Agreement” means the Senior Secured, Super- Priority Priming Debtor-In-Possession ABL Guarantee and Collateral Agreement, dated as of the Effective Date, among the Loan Parties and the Collateral Agent, as amended, supplemented, restated and/or otherwise modified from time to time.

“Commitment” means (1) with respect to each Revolving Lender, such Lender’s Revolving Commitment, (2) with respect to the Swingline Lender, its Swingline Commitment, and (3) with respect to any Issuing Bank, its Letter of Credit Commitment.

“Commitment Fee” has the meaning assigned to such term in Section 2.12(1).

“Committee” means an official committee of unsecured creditors appointed in any of the Chapter 11 Cases by the U.S. Trustee.

“Commodity Account” means any “commodity account” as such term is defined in the UCC as in effect on the date hereof in the State of New York.

“Company Advisors” means, collectively, the Company Consultant, the Store Closing Consultant the Real Estate Consultant, the Chief Restructuring Officer and any other financial advisor, auditor, attorney, accountant, appraiser, business valuation expert, environmental engineer or consultant, turnaround consultant, and other consultants, professionals and experts retained by any Loan Party.

“Company Consultant” means a financial advisor acceptable to the Administrative Agent, it being acknowledged that Berkley Research Group, LLC is acceptable to the Administrative Agent.

“Compliance Certificate” has the meaning assigned to such term in Section 5.04(4).

“Conforming Changes” means, with respect to the use, administration of or any conventions associated with SOFR, or any proposed Successor Rate for an Agreed Currency, as applicable, any conforming changes to the definitions of “ABR”, “SOFR”, and “Interest Period”, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definitions of “Business Day” and “U.S. Government Securities Business Day”, timing of borrowing requests or prepayment, conversion or continuation notices

and length of lookback periods and the day basis for calculating interest for an Agreed Currency) as may be appropriate, in the discretion of the Administrative Agent, to reflect the adoption and implementation of such applicable rate(s) and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice for such Agreed Currency (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such rate for such Agreed Currency exists, in such other manner of administration as the Administrative Agent determines is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).

“Consolidated Total Assets” means, as of any date, the total assets of the Borrower and the Subsidiaries, determined on a consolidated basis in accordance with GAAP, determined based upon the most recent quarter-end financial statements delivered pursuant to Section 5.04 as of the date of determination, and calculated on a Pro Forma Basis.

“continuing” means, with respect to any Default or Event of Default, that such Default or Event of Default has not been cured or waived.

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

“Control Agreement” means any **“Control Agreement”** as defined in the Collateral Agreement.

“Controlled Account” has the meaning assigned to such term in Section 5.11.

“Cost” means the calculated cost of inventory purchases, based upon the Borrower’s accounting practices as reflected in the most recent Annual Financial Statements, which practices are consistent with the methodology used in the most recent inventory appraisal delivered in connection with this Agreement prior to the Effective Date.

“Court” has the meaning assigned to such term in the Recitals to this Agreement.

“Covered Entity” has the meaning assigned to such term in Section 10.24.

“Covered Party” has the meaning assigned to such term in Section 10.24.

“Credit Card Issuer” means any person (other than a Loan Party or any of its Affiliates) who issues or whose members issue credit or debit cards, including, MasterCard or VISA bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., Visa, U.S.A., Inc. or Visa International and American Express, Discover, Diners Club, Carte Blanche and other non-bank credit or debit cards, including, credit or debit cards issued by or through American Express Travel Related Services Company, Inc., Novus Services, Inc., and Capital One Bank (Canada branch) (with respect to private label credit cards), and other issuers approved by the Administrative Agent in its Reasonable Credit Judgment.

“Credit Card Notification” has the meaning assigned to such term in Section 5.11.

“Credit Card Processor” means any servicing or processing agent (including (x) PayPal and any other such servicing or processing agent used by any Borrower Party and approved by the Administrative Agent as of the Effective Date and (y) other processing agents approved by the Administrative Agent in its Reasonable Credit Judgment) or any factor or financial intermediary who facilitates, services, processes or manages the credit authorization, billing transfer and/or payment procedures with respect to any Borrower

Party's sales transactions involving credit card or debit card purchases by customers using credit cards or debit cards issued by any Credit Card Issuer.

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

“Credit Event” has the meaning assigned to such term in Article IV.

“Credit Support” means, with respect to any Person and any Indebtedness or other Indebtedness Obligations, (i) such Person's Guarantee of, or becoming a direct or indirect obligor with respect to, such Indebtedness or other Indebtedness Obligations, (ii) such Person's pledge or other hypothecation of its assets to directly or indirectly secure or provide recourse with respect to such Indebtedness or other Indebtedness Obligations, (iii) such Person becoming directly or indirectly liable for such Indebtedness or other Indebtedness Obligations or (iv) such Person providing any other form of direct or indirect credit support for such Indebtedness or other Indebtedness Obligations (including by means of a “keepwell” or other similar commitment).

“Customs Broker Agreement” means an agreement, in form reasonably satisfactory to the Collateral 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 Collateral Agent and agrees, upon notice from the Collateral Agent, to hold and dispose of such Inventory solely as directed by the Collateral Agent.

“Debt Representative” means, with respect to any Indebtedness that is secured by Liens on the Collateral permitted under Sections 6.02(2), 6.02(26) and 6.02(31), the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

“Debtors” has the meaning specified in the Recitals.

“Default” means any event or condition which, but for the giving of notice, lapse of time or both, would constitute an Event of Default.

“Default Right” has the meaning assigned to such term in Section 10.24.

“Defaulting Lender” means any Revolving Lender whose acts or failure to act, whether directly or indirectly, constitutes a Lender Default.

“Deposit Account” means any “deposit account” as such term is defined in the UCC as in effect on the date hereof in the State of New York.

“Deposit Account Control Agreement” has the meaning assigned to such term in Section 5.11.

“Designated IP Co Subsidiary” means each of NMG IP Holdings LLC, a Delaware limited liability company, Saks Global IP Holdings LLC, a Delaware limited liability company and ALG Aggregator, LLC, a Delaware limited liability company.

“DIP ABL Excess Funding Account” means a segregated Controlled Account into which proceeds of Revolving Loans are deposited in accordance with the provisions of Section 2.01(2) hereof.

“DIP Term Loan Agent” means U.S. Bank Trust Company, National Association in its capacity as administrative agent and collateral agent under the DIP Term Loan Agreement.

“DIP Term Loan Agreement” means that certain Debtor-In-Possession Term Loan Credit Agreement, dated as of the Effective Date, by and among the Borrower, the other Loan Parties party thereto from time to time, the DIP Term Loan Agent, and the banks and other financial institutions party thereto, as in effect on the Effective Date and as the same may be amended from time to time in accordance with the Intercreditor Agreement.

“DIP Term Loan Documents” means the “Loan Documents” as defined in the DIP Term Loan Agreement.

“DIP Term Loan Escrow Account” shall mean the “DIP Escrow Account” under and as defined in the DIP UnSub Borrower Term Loan Agreement (as in effect on the Effective Date).

“DIP Term Loan Facility” means the term loan facility provided by the DIP Term Loan Lenders under the DIP Term Loan Agreement in an aggregate principal amount of \$[2,277,000,000], with new money borrowings in the amount of \$400,000,000 made available to the Borrower on the Effective Date subject to the entry of the Interim Order, \$300,000,000 made available to the Borrower upon entry of the Final Order and \$300,000,000 made available to the Borrower subject to certain conditions set forth in the DIP Term Loan Facility.

“DIP Term Loan Funding Account” means a bank account maintained in the name of the Borrower or other Loan Party as identified to the Administrative Agent prior to the Effective Date solely holding proceeds of the DIP Term Loan Facility, and subject to a springing deposit account control agreement in favor of the DIP Term Loan Agent.

“DIP Term Loan Lenders” means the lenders under the DIP Term Loan Agreement.

“DIP Term Loans” means “Term Loans” as defined in the DIP Term Loan Agreement.

“DIP Term Loan Tranche 1 Funding” means the funding of the “DIP Interim Funding Loans” under and as defined in the DIP UnSub Borrower Term Loan Agreement (as in effect on the Effective Date) to the DIP Term Loan Funding Account in an amount not less than \$400,000,000 (the date of such funding, the **“DIP Term Loan Tranche 1 Funding Date”**).

“DIP Term Loan Tranche 2 Funding” means the funding of the “DIP Final Funding Loans” under and as defined in the DIP UnSub Borrower Term Loan Agreement (as in effect on the Effective Date) to the DIP Term Loan Escrow Account in an amount not less than \$300,000,000 (the date of such funding, the **“DIP Term Loan Tranche 2 Funding Date”**).

“DIP Term Loan Tranche 3 Funding” means the funding of the “DIP Subsequent Draw Loans” under and as defined in the DIP UnSub Borrower Term Loan Agreement (as in effect on the Effective Date) to the DIP Term Loan Escrow Account in an amount not less than \$300,000,000 (the date of such funding, the **“DIP Term Loan Tranche 3 Funding Date”**).

“DIP Term Loan Tranche 1 Funding Date” has the meaning provided in the definition of “DIP Term Loan Tranche 1 Funding”.

“DIP Term Loan Tranche 2 Funding Date” has the meaning provided in the definition of “DIP Term Loan Tranche 2 Funding”.

“DIP Term Loan Tranche 3 Funding Date” has the meaning provided in the definition of “DIP Term Loan Tranche 3 Funding”.

“DIP Term Loan Obligations” means the “Obligations” as defined in the DIP Term Loan Agreement.

“DIP UnSub Borrower” means SGUS LLC, a Delaware limited liability company in its capacity as “Borrower” under the DIP UnSub Borrower Term Loan Agreement.

“DIP UnSub Borrower Term Loan Agreement” means that certain Debtor-In-Possession Term Loan Credit Agreement, dated as of the Effective Date, by and among the DIP UnSub Borrower, the other Loan Parties party thereto from time to time, U.S. Bank Trust Company, National Association in its capacity as administrative agent and collateral agent under the DIP UnSub Borrower Term Loan Agreement, and the banks and other financial institutions party thereto, as in effect on the Effective Date.

“DIP UnSub Borrower Term Loan Agreement Loan Parties” means each of the DIP UnSub Borrower and each entity set forth on Schedule 1.01(6), and each other entity added after the Effective Date with the prior written consent of the Administrative Agent and the Required Lenders in their Reasonable Credit Judgment.

“DIP UnSub Borrower Term Loan Documents” means the “Loan Documents” as defined in the DIP UnSub Borrower Term Loan Agreement.

“Disinterested Director” means, with respect to any Person and transaction, a member of the Board of Directors of such Person who does not have any material direct or indirect financial interest in or with respect to such transaction.

“Disqualified Institution” means:

(1) any Person that is a competitor of the Parent, and any Person controlling or controlled by any such competitor, and identified by the Borrower in writing to the Administrative Agent on or prior to the Effective Date;

(2) certain banks, financial institutions, other institutional lenders and investors and other entities that are identified by the Borrower in writing to the Administrative Agent on or prior to the Effective Date; and

(3) any Affiliates of such competitors, controlling persons, controlled persons or institutions described in the foregoing clauses (1) and (2) that are clearly identifiable as such solely on the basis of their names (other than bona fide fixed income investors or debt funds that are Affiliates of competitors described in clause (1) above, but not of institutions described in clause (2) above) or identified by the Borrower in writing to the Administrative Agent on or prior to the Effective Date.

Notwithstanding the foregoing, each Loan Party and the Lenders acknowledge and agree that the Administrative Agent will not have any responsibility or obligation to determine whether any Lender or potential Lender is a Disqualified Institution and the Administrative Agent will have no liability with respect to any assignment made to a Disqualified Institution.

“Disqualified Stock” means, with respect to any Person, any Equity Interests of such Person that, by their terms (or by the terms of any security or other Equity Interests into which they are convertible or for which they are redeemable or exchangeable at the option of the holder thereof), or upon the happening of any event or condition:

(1) mature or are mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale are subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments);

(2) are redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part;

(3) provide for the scheduled payments of dividends in cash; or

(4) either mandatorily or at the option of the holders thereof, are or become convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Stock, in each case, prior to the date that is ninety-one (91) days after the earlier of:

(a) the Latest Maturity Date; and

(b) the date on which the Loans and all other Obligations (other than Obligations in respect of Secured Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted) are repaid in full and the Commitments are terminated and any outstanding Letters of Credit are expired, terminated or cash-collateralized on terms satisfactory to each Issuing Bank;

provided that only the portion of the Equity Interests that so mature or are mandatorily redeemable, are so convertible or exchangeable or are so redeemable at the option of the holder thereof prior to such date will be deemed to be Disqualified Stock; *provided, further*, that if such Equity Interests are issued to any employee or to any plan for the benefit of employees of any Parent Entity, the Borrower or its Subsidiaries or by any such plan to such employees, such Equity Interests will not constitute Disqualified Stock solely because they may be required to be repurchased by any Parent Entity, the Borrower or any of its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s termination, death or disability; and *provided, further*, that any class of Equity Interests of such Person that by its terms authorizes such Person to satisfy its obligations thereunder by delivery of Equity Interests that is not Disqualified Stock will not be deemed to be Disqualified Stock.

“Distressed Person” has the meaning assigned to such term in the definition of “Lender-Related Distress Event.”

“Dollars”, **“U.S. Dollars”** or **“\$”** means lawful money of the United States of America.

“Domestic Subsidiary” means any Subsidiary of the Borrower that is organized under the laws of the United States, any state thereof or the District of Columbia, and **“Domestic Subsidiaries”** means any two or more of them. Unless otherwise indicated in this Agreement, all references to Domestic Subsidiaries will mean Domestic Subsidiaries of the Borrower.

“Dominion Account” has the meaning assigned to such term in Section 5.11.

“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 and is subject to the supervision of an EEA Resolution Authority, 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 of an EEA Resolution Authority with its parent.

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

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

“Effective Date” means the first date all the conditions set forth in Section 4.02 have been satisfied or waived by the Lenders in accordance with this Agreement.

“Eligible Credit Card Receivables” means at the time of any determination thereof, each Credit Card Receivable that is not ineligible for inclusion in the calculation of the Borrowing Base pursuant to one or more of the criteria set forth below. Without limiting the foregoing, to qualify as an Eligible Credit Card Receivable, such Credit Card Receivable shall indicate no Person other than a Borrower Party as payee or remittance party. In determining the amount to be so included, the face amount of a Credit Card Receivable shall be reduced by, without duplication, to the extent not reflected in such face amount, (i) the amount of all accrued and actual fees and charges due to the Credit Card Issuer or Credit Card Processor, discounts, claims, credits or credits pending, promotional program allowances, price adjustments, finance charges or other allowances (including any amount that a Borrower Party may be obligated to rebate to a customer, a Credit Card Issuer or Credit Card Processor pursuant to the terms of any agreement or understanding) and (ii) the aggregate amount of all cash received in respect of such Credit Card Receivable but not yet applied by the Borrower Parties to reduce the amount of such Credit Card Receivable. Except as otherwise agreed by the Administrative Agent in its Reasonable Credit Judgment, any Credit Card Receivable included within any of the following categories shall not constitute an Eligible Credit Card Receivable:

(1) Credit Card Receivables which do not constitute a “payment intangible” (as defined in the UCC) or an Account;

(2) Credit Card Receivables that have been outstanding for more than five (5) Business Days from the date of sale;

(3) Credit Card Receivables (i) that are not subject to a perfected first-priority security interest in favor of the Collateral Agent (other than Permitted Liens having priority by operation of applicable Law over the Lien of the Collateral Agent), or (ii) with respect to which a Borrower Party does not have good and valid title thereto, free and clear of any Lien (other than Liens granted to the Collateral Agent pursuant to the Security Documents and any other Permitted Liens);

(4) Credit Card Receivables which are disputed, are with recourse, or with respect to which a claim, counterclaim, offset or chargeback has been asserted (only to the extent of such claim, counterclaim, offset or chargeback);

(5) Credit Card Receivables as to which a Credit Card Issuer or a Credit Card Processor has the right under certain circumstances to require a Borrower Party to repurchase the

Credit Card Receivables from such Credit Card Issuer or Credit Card Processor (but only to the extent of the repurchase right);

(6) Credit Card Receivables due from a Credit Card Issuer or a Credit Card Processor of the applicable credit card which is the subject of any bankruptcy or insolvency proceedings;

(7) Credit Card Receivables which are not a valid, legally enforceable obligation of the applicable Credit Card Issuer or a Credit Card Processor with respect thereto;

(8) any Credit Card Receivable as to which any of the representations or warranties in the Loan Documents pertaining to Credit Card Receivables are untrue in any material respect;

(9) Credit Card Receivables that are owed by a Credit Card Issuer or a Credit Card Processor not located in the United States;

(10) Credit Card Receivables that (i) do not arise from the sale of goods or the performance of services by such Borrower Party in the ordinary course of its business, (ii) do not represent the bona fide amounts due to a Borrower Party from a Credit Card Issuer or Credit Card Processor, and (iii) as to which such Borrower Party is not able to bring suit or otherwise enforce its remedies against the Credit Card Issuer or Credit Card Processor through judicial process;

(11) Credit Card Receivables upon which such Borrower Party's right to receive payment is contingent upon the fulfillment of any condition whatsoever unless such condition is satisfied;

(12) Credit Card Receivables that are payable in any currency other than U.S. Dollars;
or

(13) Credit Card Receivables which the Administrative Agent determines in its Reasonable Credit Judgment to be uncertain of collection.

Anything contained herein to the contrary notwithstanding, for purposes of determining the amount of Eligible Credit Card Receivables in the Borrowing Base, at any time, any Credit Card Receivable that otherwise meets the requirements for Eligible Credit Card Receivables may be included in such calculation even though the same does not constitute proceeds from the sale or disposition of Inventory; *provided* that such amount will be subject to adjustment as may be required by the Administrative Agent at any time and from time to time to reflect such fact, subject to the necessary approvals set forth in Section 10.08 in the case of adjustments or new criteria which have the effect of making more credit available than would have been available based upon the criteria in effect on the Effective Date.

If any Credit Card Receivable at any time ceases to be an Eligible Credit Card Receivable, then such Credit Card Receivable will promptly be excluded from the calculation of the Borrowing Base.

“Eligible Inventory” means, as of the date of determination thereof, without duplication, items of Inventory of a Borrower Party that are finished goods, merchantable and readily saleable to the public in the ordinary course of the Borrower Parties' business, in each case that, except as otherwise agreed by the Administrative Agent, is not excluded as ineligible by virtue of one or more of the criteria set forth below. Except as otherwise agreed by the Administrative Agent in its Reasonable Credit Judgment, no item of Inventory will be Eligible Inventory if such item:

(1) is not solely owned by a Borrower Party or a Borrower Party does not have good and valid title thereto free and clear of any Lien (other than Liens granted to the Collateral Agent pursuant to the Security Documents and any other Permitted Lien);

(2) is not subject to a perfected first-priority security interest in favor of the Collateral Agent (other than Permitted Liens having priority by operation of applicable law over the Lien of the Collateral Agent);

(3) is comprised of goods which (i) are damaged, defective, “seconds,” or otherwise unmerchantable, (ii) are to be returned to the vendor, (iii) are obsolete or slow moving, or custom items, work-in-process, raw materials, or that constitute samples, spare parts, promotional, marketing, displays, labels, bags and other packaging and shipping materials or supplies used or consumed in a Borrower Party’s business, (iv) not in compliance in all material respects with all standards imposed by any Governmental Authority having regulatory authority over such Inventory, its use or sale, or (v) are bill and hold goods;

(4) does not conform in all material respects to the representations and warranties pertaining to Inventory contained in this Agreement or the Collateral Agreement;

(5) is not finished goods or which constitutes work-in-process, raw materials, packaging and shipping material, supplies, samples, prototypes, displays or display items, bill-and-hold goods, goods that are returned or marked for return (but not held for resale) or repossessed, or which constitutes goods which are not of a type held for sale in the ordinary course of business;

(6) is not located in the United States (other than In-Transit Inventory);

(7) is located (a) in a distribution center or warehouse leased by a Borrower Party unless a Reserve for rent, charges, and other amounts due or to become due with respect to such location has been established pursuant to the Pre-Petition Credit Agreement or (b) at a retail store or clearance center leased by a Borrower Party and such location is in a Landlord Lien State, unless a Reserve for rent, charges and other amounts due or to become due with respect to such location has been established by the Administrative Agent;

(8) is located in any third-party warehouse or is in the possession of a bailee (other than a third-party processor) and is not evidenced by a Document (as defined in Article 9 of the UCC), unless (a) such Inventory is located in an Atlas warehouse or other location controlled by Atlas, or (b) an appropriate Reserve has been established pursuant to the Pre-Petition Credit Agreement; *provided* that Eligible Inventory located in any Atlas warehouse or other location otherwise controlled by Atlas shall comprise in the aggregate no more than the lesser of (x) 10% of the Borrowing Base and (y) \$100.0 million for all such locations;

(9) is leased by or is on consignment to a Borrower Party or which is consigned by a Borrower Party to a Person which is not a Borrower Party;

(10) is being processed offsite at a third party location or outside processor, or is in transit to or from said third party location or outside processor (in each case, other than in respect of any cross-dock Inventory);

(11) is reported in a Borrower’s books and records as part of the “Epicure” division of The Neiman Marcus Group, Inc. or, without duplication of the foregoing, is perishable to the extent (x) the book value of Inventory described in this clause (11) exceeds \$5.0 million or (y) it is expired;

(12) contains or bears any intellectual property rights licensed to any Borrower Party by any Person other than a Borrower Party unless the Collateral Agent is reasonably satisfied that it may sell or otherwise dispose of such Inventory without (i) infringing the rights of such licensor, (ii) violating any contract with such licensor, or (iii) incurring any liability with respect to payment of royalties other than royalties incurred pursuant to sale of such Inventory under the current licensing agreement relating thereto, and in each case the IP Licensing Conditions have been satisfied;

(13) is not reflected in a current retail stock ledger report of the respective Borrower Party (except as to (x) goods received but not recorded in the retail stock ledger and (y) goods constituting In-Transit Inventory that would otherwise not be deemed ineligible pursuant to clause (15) below);

(14) is acquired in connection with a permitted Investment, to the extent the Administrative Agent has not completed or received (A) an appraisal of such Inventory from appraisers reasonably satisfactory to the Administrative Agent and establishes Reserves (if applicable) therefor, and (B) such other due diligence as the Administrative Agent may reasonably require, all of the results of the foregoing to be reasonably satisfactory to the Administrative Agent;

(15) is In-Transit Inventory, except that In-Transit Inventory will not be deemed ineligible if:

(a) (i) it has been paid for in advance of shipment and title and risk of loss has passed to a Borrower Party, or (ii) legal ownership thereof has passed to the applicable Borrower Party (or is retained by the applicable Borrower Party) as evidenced by customary documents of title; and

(b) the Collateral Agent has control over the documents of title which evidence ownership of the subject Inventory (including, if requested by the Collateral Agent, by the delivery of a Customs Broker Agreement); and

(c) it is insured to the reasonable satisfaction of the Collateral Agent; and

(d) it has been shipped for receipt by a Borrower Party at a distribution center located in the United States owned or leased by a Borrower Party, but which has not yet been delivered to such Borrower Party, which In-Transit Inventory has been in transit for ninety (90) days or less from the date of shipment of such Inventory;

provided that the Administrative Agent may, in its Reasonable Credit Judgment, exclude any particular Inventory under this clause (15) in the event the Administrative Agent determines that such Inventory is subject to any Person's right or claim which is (or which could) adversely impact the value of such Inventory or the ability of the Collateral Agent to realize upon such Inventory;

(16) consists of Hazardous Materials or goods that can be transported or sold only with licenses that are not readily available;

(17) constitutes fine art;

(18) constitutes a piece of High Value Jewelry;

- (19) is used in connection with dine-in cafes and restaurants;
- (20) which is not of the type usually sold in the ordinary course of the Borrower Parties' business;
- (21) constitutes operating supplies, packaging or shipping materials, cartons, repair parts, labels or miscellaneous spare parts or other such materials not considered for sale in the ordinary course of business; and
- (22) Inventory that is not insured in compliance with the provisions of Section 3.19 hereof.

If any Inventory at any time ceases to be Eligible Inventory, such Inventory will promptly be excluded from the calculation of the Borrowing Base.

"Eligible Trade Receivables" means Accounts consisting of Gift Card Receivables or Accounts arising from the sale of the Borrower Parties' Inventory (other than those consisting of Credit Card Receivables) or rendition of services (collectively, **"Trade Receivables"**) that are not ineligible for inclusion in the calculation of the Borrowing Base pursuant to one or more of the criteria set forth below. Without limiting the foregoing, to qualify as an Eligible Trade Receivable, an Account shall indicate no Person other than a Borrower 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 or other allowances (including any amount that a Borrower Party may be obligated to rebate to a customer 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 Borrower Parties to reduce the amount of such Eligible Trade Receivable. Except as otherwise agreed by the Administrative Agent in its Reasonable Credit Judgment, any Account included within any of the following categories shall not constitute an Eligible Trade Receivable:

- (1) Accounts that are not evidenced by an invoice (until such time as an invoice is delivered to the applicable Account Debtor);
- (2) Accounts that have been outstanding for more than sixty (60) days from the due date or, if sooner, ninety (90) days following its original invoice date;
- (3) Accounts due from any Account Debtor fifty percent (50%) or more of whose Accounts are not eligible under any other clause of this definition;
- (4) Accounts owed by an Account Debtor and/or its Affiliates together exceed twenty percent (20%) (or any other percentage now or hereafter established by the Administrative Agent for any particular Account Debtor in its Reasonable Credit Judgment) of the amount of all Accounts at any one time (but the portion of the Accounts not in excess of the applicable percentage may be deemed Eligible Trade Receivables, in the Agent's Reasonable Credit Judgment);
- (5) Accounts (i) that are not subject to a perfected first-priority security interest in favor of the Collateral Agent (other than Permitted Liens which have priority by operation of applicable Laws), or (ii) with respect to which a Borrower Party does not have good and valid title thereto, free and clear of any Lien (other than Liens granted to the Collateral Agent pursuant to the Security Documents and other Permitted Liens);

(6) Accounts which are disputed or with respect to which a claim, counterclaim, offset or chargeback has been asserted, but only to the extent of such dispute, counterclaim, offset or chargeback;

(7) Accounts (i) that do not arise from the sale of goods or the performance of services by a Borrower Party in the ordinary course of its business, (ii) that do not represent the bona fide amounts due to a Borrower Party from an Account Debtor, or (iii) which arise out of any sale made on a basis other than upon credit terms usual to the business of the Borrower Parties;

(8) Accounts which are owed by any Affiliate or any employee of a Borrower Party;

(9) Accounts for which all consents, approvals or authorizations of, or registrations or declarations with any Governmental Authority required to be obtained, effected or given in connection with the performance of such Account by the Account Debtor or in connection with the enforcement of such Account by the Agent have not been duly obtained, effected or given and are not in full force and effect;

(10) Accounts due from an Account Debtor which is the subject of any bankruptcy or insolvency proceeding, has had a trustee, interim receiver, or receiver appointed for all or a substantial part of its property, has made an assignment for the benefit of creditors or has suspended its business;

(11) Accounts due from any Governmental Authority except to the extent that the subject Account Debtor is the federal government of the United States of America and the Borrower Parties have complied with the Federal Assignment of Claims Act of 1940 or any applicable provincial, territorial or municipal law of similar purpose and effect restricting the assignment thereof or the granting of a Lien thereon, as the case may be, have been complied with;

(12) Accounts (i) owing from any Person that is also a supplier to or creditor of a Borrower Party or any of its Subsidiaries unless such Person has waived any right of setoff in a manner reasonably acceptable to the Administrative Agent or (ii) representing any manufacturer's or supplier's credits, discounts, incentive plans or similar arrangements entitling a Borrower Party or any of its Subsidiaries to discounts on future purchase therefrom;

(13) Accounts arising out of sales on a bill-and-hold, guaranteed sale, sale-or-return, sale on approval or consignment basis or subject to any right of return;

(14) Other than with respect to jurisdictions agreed by the Borrower and the Administrative Agent and specified in writing as of the Effective Date, Accounts owing from any Person subject to Sanctions or from any Person located in a jurisdiction (other than the United States) which, in either case, a Lender notifies the Borrower in writing shall be ineligible;

(15) Accounts evidenced by a promissory note or other instrument;

(16) Accounts consisting of amounts due from vendors as rebates or allowances;

(17) Accounts which include extended payment terms (datings) beyond those generally furnished in the ordinary course of business;

(18) Accounts upon which such Borrower Party's right to receive payment is contingent upon the fulfillment of any condition whatsoever unless such condition is satisfied;

(19) Accounts that are payable in any currency other than U.S. Dollars;

(20) Accounts which exceed any credit limit established by the Administrative Agent, in its Reasonable Credit Judgment, following prior notice of such limit by the Administrative Agent to the Borrower; or

(21) [reserved].

If any Trade Receivable at any time ceases to be an Eligible Trade Receivable, then such Trade Receivable will promptly be excluded from the calculation of the Borrowing Base.

“Environment” means ambient air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata, and natural resources such as flora and fauna.

“Environmental Laws” means all applicable laws (including common law), statutes, rules, regulations, codes, ordinances, orders, legally binding agreements and final, legally binding decrees or judgments, in each case, promulgated or entered into by or with any Governmental Authority, relating to the Environment, preservation or reclamation of natural resources, the generation, management, Release or threatened Release of, or exposure to, any Hazardous Material or to occupational health and safety matters (to the extent relating to exposure to Hazardous Materials).

“Equity Interests” means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

“Equivalent Amount” means, at any time, (a) with respect to any amount denominated in U.S. Dollars, such amount, and (b) with respect to any amount denominated in any currency other than U.S. Dollars, the equivalent amount thereof in U.S. Dollars as determined by the Administrative Agent or the applicable Issuing Bank, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of U.S. Dollars with such currency as of the close of business on the immediately preceding Business Day.

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

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with any Loan Party, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302, 303 and 306(g) of ERISA and Section 412 and 430 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means:

(1) a Reportable Event, or the requirements of Section 4043(b) of ERISA apply, with respect to a Plan;

(2) a withdrawal by any Loan Party or, to the knowledge of the Borrower, any ERISA Affiliate from a Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations by any Loan Party or, to the knowledge of the Borrower, any ERISA Affiliate that is treated as a termination or withdrawal under Section 4062(e) of ERISA;

(3) a complete or partial withdrawal by any Loan Party or, to the knowledge of the Borrower, any ERISA Affiliate from a Multiemployer Plan, receipt of written notification by any Loan Party or, to the knowledge of the Borrower, any ERISA Affiliate concerning the imposition of Withdrawal Liability on it or written notification that a Multiemployer Plan is, or is expected to be, insolvent within the meaning of Title IV of ERISA or endangered or in critical status within the meaning of Section 305 of ERISA or Section 432 of the Code;

(4) (a) the provision by a Plan administrator or the PBGC to any Loan Party or, to the knowledge of the Borrower, any ERISA Affiliate of notice of intent to terminate a Plan or to appoint a trustee to administer a Plan, (b) the treatment of a Plan or Multiemployer Plan amendment as a termination under Sections 4041 or 4041A of ERISA or (c) the commencement of proceedings by the PBGC to terminate a Plan or Multiemployer Plan;

(5) the incurrence by any Loan Party or, to the knowledge of the Borrower, any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan or Multiemployer Plan, other than for the timely payment of plan contributions or PBGC premiums due but not delinquent under Section 4007 of ERISA;

(6) the application for a minimum funding waiver under Section 302(c) of ERISA or Section 412(c) of the Code with respect to a Plan;

(7) the imposition of a lien on the assets of any Loan Party under Section 303(k) of ERISA with respect to any Plan or Section 430(k) of the Code; and

(8) a determination that any Plan is in “at risk” status (within the meaning of Section 303 of ERISA or Section 430 of the Code).

“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.

“Euro” and **“€”** mean the single currency of the Participating Member States.

“Event of Default” has the meaning assigned to such term in Section 8.01.

“Excess Availability” means, at any time, (a) the Line Cap at such time *minus* (b) the Revolving Credit Exposure at such time.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Excluded Accounts” means any Deposit Account, Securities Account or Commodity Account of any Loan Party or Restricted Subsidiary (and all cash, Cash Equivalents and other securities or investments credited thereto or deposited therein):

(1) that does not have an individual daily balance for any fiscal month in excess of \$500,000, or in the aggregate with each other account of the Loan Parties described in this clause (1), in excess of \$5.0 million;

(2) the balance of which is swept at the end of each Business Day into a Deposit Account, Securities Account or Commodity Account that is (x) subject to a Control Agreement (so long as such Deposit Account, Securities Account or Commodity Account does not provide for

automatic payments to, or debits of amounts disbursed from, other Deposit Accounts, Securities Accounts or Commodity Accounts) or (y) an Excluded Account pursuant to clause (1) above;

(3) that is used solely to hold cash, Cash Equivalents or other assets comprised of (a) funds used for payroll and payroll taxes and other employee benefit payments to or for the benefit of such Loan Party's employees, (b) all taxes required to be collected, remitted or withheld (including Federal and state withholding taxes (including the employer's share thereof)); and (c) any other funds which the Borrower or any of the Subsidiaries holds in trust or as an escrow or fiduciary for, or otherwise exclusively for the benefit of, another Person which is not a Subsidiary;

(4) that is a segregated Deposit Account that the Borrower designates to the Administrative Agent from time to time in writing, into which only (a) funds from the sale of Inventory (i) held by the Borrower or any Subsidiary on a consignment basis or (ii) relating to a leased department within retail stores of the Borrower or any Subsidiary, in each case, which Inventory is not owned by a Loan Party (and would not be reflected on a consolidated balance sheet of the Borrower and its Subsidiaries prepared in accordance with GAAP); or (2) in-store payments in respect of private label credit cards subject to the Capital One Arrangements or any Permitted Replacement Credit Card Program are made;

(5) the DIP Term Loan Escrow Account to the extent such DIP Term Loan Escrow Account solely holds proceeds of the DIP Term Loan Facility;

(6) the DIP Term Loan Funding Account; or

(7) to the extent that it is cash collateral for letters of credit (other than Letters of Credit) to the extent permitted hereunder.

"Excluded Assets" means "Excluded Assets" as defined in the Collateral Agreement.

"Excluded Equity Interests" means "Excluded Equity Interests" as defined in the Collateral Agreement.

"Excluded Subsidiary" means any (i) Unrestricted Subsidiary, (ii) any Designated IPCo Subsidiary, (iii) Club Libby Lu Inc., (iv) Saks Global US Assurance LLC, (v) Foreign Subsidiaries existing on the Effective Date or (vi) the DIP UnSub Borrower Term Loan Agreement Loan Parties; *provided* that (i) the Guarantee (or its obligations as a Co-Borrower, as applicable) provided by a Subsidiary Loan Party and the security interest provided by such Person is full and unconditional and fully enforceable in the jurisdiction of organization of such Person, (ii) to the extent that a Subsidiary (other than any Saks Flagship Entity) of the Borrower provides Credit Support for the DIP Term Loan Agreement or any Refinancing thereof, such Subsidiary shall not be deemed an Excluded Subsidiary for the purposes of this Agreement and (iii) no Saks Flagship Entity that has granted a security interest in or pledge of any of its assets in favor of the Collateral Agent may be an Excluded Subsidiary (in each case, other than in connection with Liens granted pursuant to Section 6.12(c) or Indebtedness incurred pursuant to Section 6.12(d); *provided, further*, that in no event shall any Saks Flagship Entity be deemed an Excluded Subsidiary unless such Saks Flagship Entity is also an Excluded Subsidiary under the DIP Term Loan Agreement.

"Excluded Taxes" means, with respect to any Recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder:

(1) income Taxes imposed on or measured by its net income (however denominated) branch profits Taxes or franchise Taxes imposed in lieu of net income Taxes, in each case,

(a) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (b) that are Other Connection Taxes;

(2) in the case of a Lender, any U.S. federal withholding Taxes (including any backup withholding Tax) that is imposed on amounts hereunder to or for the account of such Lender under the law applicable at the time (i) such Lender becomes a party to this Agreement (other than pursuant to an assignment request by the Borrower under Section 2.19(2)) or (ii) such Lender changes its lending office, except to the extent that in each case, the Lender's assignor (if any), at the time of assignment (or such Lender immediately before it changed its lending office), was entitled to receive additional amounts from the Loan Party with respect to any withholding tax pursuant to Section 2.17(1) or Section 2.17(3);

(3) Taxes that are attributable to such Lender's or Administrative Agent's failure to comply with Section 2.17(5) or Section 2.17(6); and

(4) any U.S. federal withholding Taxes imposed under FATCA.

"Executive Order" has the meaning assigned to such term in Section 3.20(3)(a).

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code, and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code.

"FCPA" has the meaning assigned to such term in Section 3.20(2)

"Federal Funds Rate" means, for any day, the rate per annum calculated by the Federal Reserve Bank of New York based on such day's federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; *provided* that if the Federal Funds Rate as so determined would be less than 0.00%, such rate shall be deemed to be 0.00% for purposes of this Agreement.

"Fee Letter" means that certain Fee Letter, dated as of the Effective Date by and among the Borrower and the Administrative Agent, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"Fees" means the Commitment Fees, the L/C Participation Fees, the Issuing Bank Fees, Administrative Agent Fees and all other fees set forth in the Fee Letter and relating hereto.

"Final Order" means, collectively, the order of the Court entered in the Chapter 11 Cases after a final hearing under Bankruptcy Rule 4001(c)(2) or such other procedures as approved by the Court, which order shall be reasonably satisfactory in form and substance to the Administrative Agent and the Required Lenders in their Reasonable Credit Judgment, together with all extensions, modifications and amendments thereto, in form and substance reasonably satisfactory to the Administrative Agent and the Required Lenders in their Reasonable Credit Judgment, which, among other matters but not by way of limitation, authorizes the Loan Parties to obtain credit, incur (or guaranty) Indebtedness and grant Liens under this

Agreement and the other Loan Documents, as the case may be, and provides for the super-priority of the Administrative Agent's and the Lenders' claims on a final basis.

"Final Order Entry Date" means the date on which the Final DIP Order is entered by the Bankruptcy Court.

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

"Flood Insurance Laws" means, collectively, (a) the National Flood Insurance Reform Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood disaster Protection Act of 1973) as now or hereafter in effect or any successor statute thereto, (b) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (c) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto and any and all official rulings and interpretation thereunder or thereof.

"Flood Insurance Requirements" has the meaning assigned to such term in Section 5.02(2).

"Foreign Lender" means any Lender or Issuing Bank that is organized under the laws of a jurisdiction other than the United States of America. For purposes of this definition, the United States of America, each state thereof and the District of Columbia will be deemed to constitute a single jurisdiction.

"Foreign Subsidiary" means any Subsidiary that not a Domestic Subsidiary.

"Fronting Exposure" means, at any time there is a Defaulting Lender, (1) with respect to the Issuing Bank, such Defaulting Lender's Revolving Facility Percentage of the outstanding Revolving L/C Exposure, other than Revolving L/C Exposure as to which such Defaulting Lender's participation obligation has been reallocated to non-Defaulting Lenders or cash collateralized in accordance with the terms hereof, and (2) with respect to the Swingline Lender, such Defaulting Lender's Revolving Facility Percentage of Swingline Loans other than Swingline Loans as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders in accordance with the terms hereof.

"FSHCO" means any Domestic Subsidiary of the Borrower that has no material assets other than (i) the equity (or equity and debt) of one or more Foreign Subsidiaries of the Borrower that are CFCs or (ii) the equity (or equity and debt) of one or more Domestic Subsidiaries of the Borrower that hold no material assets other than the assets described in clause (i).

"GAAP" means generally accepted accounting principles in the United States of America as in effect from time to time, including those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession (but excluding the policies, rules and regulations of the SEC applicable only to public companies).

Notwithstanding anything to the contrary above or in the definition of "Capital Lease Obligations", in the event of a change under GAAP (or the application thereof) requiring any leases to be capitalized that are not required to be capitalized as of December 31, 2018, only those leases that would result or would have resulted in Capital Lease Obligations on December 31, 2018 (assuming for purposes hereof that they were in existence on the Effective Date) will be considered capital leases and all calculations under this Agreement will be made in accordance therewith.

“Gift Card Receivables” means Accounts arising from the sale of gift cards of the Borrower 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 federal, state, local or foreign court or governmental agency, authority, instrumentality or regulatory or legislative body.

“Ground Lessee Pledge Documentation” means that certain Amended and Restated Pledge Agreement by and between Saks Fifth Avenue Holdco II LLC, as pledgor, and the pledgee named therein, as pledgee, dated as of March 18, 2021, and any and all other documentation entered into in connection therewith or relating thereto, certified copies of which have been delivered to the Administrative Agent on or prior to the Effective Date, as the same may be modified, amended, supplemented or replaced from time to time in accordance with the terms thereof.

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

(1) any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect:

(a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep well, to purchase assets, goods, securities or services, to take or pay or otherwise) or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness or other obligations;

(b) to purchase or lease property (other than operating leases or leases of real property), securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof;

(c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation;

(d) entered into for the purpose of assuring in any other manner the holders of such Indebtedness or other obligation of the payment thereof or to protect such holders against loss in respect thereof (in whole or in part); or

(e) as an account party in respect of any letter of credit, bank guarantee or other letter of credit guaranty issued to support such Indebtedness or other obligation; or

(2) any Lien on any assets of the guarantor securing any Indebtedness (or any existing right, contingent or otherwise, of the holder of Indebtedness to be secured by such a Lien) of any other Person, whether or not such Indebtedness or other obligation is assumed by the guarantor;

provided, that the term “Guarantee” will not include endorsements of instruments for deposit or collection in the ordinary course of business or customary and reasonable indemnity obligations in effect on the Effective Date or entered into in connection with any acquisition or disposition of assets permitted by this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee will be deemed to be an amount equal to the stated or determinable amount of the Indebtedness in respect of

which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith. The term “**Guaranteed**” as used herein will have a corresponding meaning.

“**Guarantor**” means (1) Holdings, (2) each Subsidiary Loan Party that is not a Borrower Party and (3) each other Parent Entity or Subsidiary that the Borrower may elect in its sole discretion, from time to time, upon written notice to the Administrative Agent, to cause to Guarantee the Obligations until such date that the Borrower has informed the Administrative Agent that it elects not to have such Person Guarantee the Obligations; *provided* that, in the case of this clause (3), the Guarantee and the security interest provided by such Person is full and unconditional and fully enforceable in the jurisdiction of organization of such Person; *provided, further*, that, notwithstanding anything else herein or in any other Loan Document to the contrary, the Pre-Petition UnSub Borrower shall not constitute a “Guarantor”, “Subsidiary Loan Party” or “Loan Party” under this Agreement.

“**Hazardous Materials**” means all pollutants, contaminants, wastes, chemicals, materials, substances and constituents, including explosive or radioactive substances or petroleum or petroleum byproducts or distillates, friable asbestos or friable asbestos-containing materials, polychlorinated biphenyls or radon gas, in each case, that are regulated or would give rise to liability under any Environmental Law due to their dangerous or deleterious properties.

“**Hedge Agreement**” means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions, in each case, not entered into for speculative purposes; *provided* that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of Borrower or any of its Subsidiaries will be a Hedge Agreement.

“**High Value Jewelry**” means a piece of high jewelry with a value at Cost that is greater than \$2.0 million (and which jewelry is not eligible for inclusion in the Borrowing Base).

“**Holding Company**” means any Person so long as such Person directly or indirectly holds 100% of the total voting power of the Voting Stock of the Borrower, and at the time such Person acquired such voting power, no Person and no group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision), including any such group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) (other than any Permitted Holder), shall have beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision), directly or indirectly, of more than 50% of the total voting power of the Voting Stock of such Person.

“**Holdings**” has the meaning assigned to such term in the introductory paragraph hereof.

“**Immaterial Subsidiary**” means, as of any date, any Subsidiary that (i) did not, as of the last day of the fiscal quarter of the Borrower most recently ended for which financial statements have been (or were required to be) delivered as of the Effective Date or pursuant to Section 5.04(1) or 5.04(2), have assets with a value in excess of 1.00% of the Consolidated Total Assets as of such date or revenues representing in excess of 1.00% of total revenues of the Borrower and the Subsidiaries for the period of four (4) consecutive fiscal quarters ended as of such date, calculated on a consolidated basis in accordance with GAAP; and (ii) taken together with all Immaterial Subsidiaries as of the last day of the fiscal quarter of the Borrower most recently ended for which financial statements have been (or were required to be) delivered as of the

Effective Date or pursuant to Section 5.04(1) or 5.04(2), did not have assets with a value in excess of 2.00% of Consolidated Total Assets as of such date or revenues representing in excess of 2.00% of total revenues of the Borrower and the Subsidiaries on a consolidated basis for such four-quarter period ended as of such date; *provided* that, any assets owned by an Immaterial Subsidiary shall not be included in the Borrowing Base.

“Incorporated Agreement” means that certain Loan Agreement dated as of December 3, 2014, by and among Saks Flagship Fee Owner and the CMBS Lenders, as the same may be amended, restated, supplemented, waived, or otherwise modified and in effect from time to time in accordance with the terms thereof so long as, with respect to any amendment, restatement, supplement, waiver or modification which is, in whole or in part, adverse in any material respect to the Agent or the Lenders (as determined by Agent in its reasonable discretion), the Agent has consented in writing to such amendment, restatement, supplement, waiver or modification, and any Permitted Refinancing thereof.

“Indebtedness” means, with respect to any Person, without duplication:

- (1) all obligations of such Person for borrowed money;
- (2) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments;
- (3) all obligations of such Person under conditional sale or title retention agreements relating to property or assets purchased by such Person;
- (4) all obligations of such Person issued or assumed as the deferred purchase price of property or services, to the extent the same would be required to be shown as a long-term liability on a balance sheet prepared in accordance with GAAP;
- (5) all Capital Lease Obligations of such Person;
- (6) all net payments that such Person would have to make in the event of an early termination, on the date Indebtedness of such Person is being determined, in respect of outstanding Hedge Agreements;
- (7) the principal component of all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and bank guarantees;
- (8) the principal component of all obligations of such Person in respect of bankers’ acceptances;
- (9) all Guarantees by such Person of Indebtedness described in clauses (1) through (8) above; and
- (10) the amount of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock (excluding accrued dividends that have not increased the liquidation preference of such Disqualified Stock);

provided that Indebtedness will not include:

- (a) trade payables, accrued expenses and intercompany liabilities arising in the ordinary course of business;

(b) prepaid or deferred revenue arising in the ordinary course of business;

(c) purchase price holdbacks arising in the ordinary course of business in respect of a portion of the purchase prices of an asset to satisfy unperformed obligations of the seller of such asset; or

(d) in connection with the purchase by the Borrower or any Restricted Subsidiary of any business, any deferred or prepaid revenue, post-closing payment adjustments to which the seller may become entitled to the extent such payment is determined by a final closing balance sheet or such payment depends on the performance of such business after the closing; *provided, however*, that, at the time of closing, the amount of any such payment is not determinable and, to the extent such payment thereafter becomes fixed and determined, the amount is paid in a timely manner.

The Indebtedness of any Person will include the Indebtedness of any partnership in which such Person is a general partner, other than to the extent that the instrument or agreement evidencing such Indebtedness expressly limits the liability of such Person in respect thereof.

“Indebtedness Obligations” means any principal, interest (including any interest accruing subsequent to the filing of a petition in bankruptcy, reorganization or similar proceeding at the rate provided for in the documentation with respect thereto, whether or not such interest is an allowed claim under applicable state, federal or foreign law), premium, penalties, fees, indemnifications, reimbursements (including reimbursement obligations with respect to letters of credit and bankers’ acceptances), damages and other liabilities payable under the documentation governing any Indebtedness.

“Indemnified Taxes” means (1) all Taxes other than Excluded Taxes imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document; and (2) to the extent not otherwise described in clause (1), Other Taxes.

“Indemnitee” has the meaning assigned to such term in Section 10.05(2).

“Initial Budget” means that certain budget attached as Exhibit C hereto.

“Intellectual Property Rights” has the meaning assigned to such term in Section 3.21(1).

“Intercreditor Agreement” means, as applicable, (i) the Intercreditor Agreement, dated as of the Effective Date, by and among the Administrative Agent, the Collateral Agent, the DIP Term Loan Agent and any other parties party thereto from time to time, and acknowledged by the Loan Parties, as amended, restated, amended and restated, replaced, supplemented and/or otherwise modified from time to time in a manner satisfactory to the Administrative Agent in its Reasonable Credit Judgment and (ii) the Order; provided that in the event of a conflict between the Intercreditor Agreement and the Order, the Order shall control.

“Interest Election Request” means a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.07 substantially in the form of Exhibit E and signed by the Borrower.

“Interest Payment Date” means, the first day of each fiscal month in arrears.

“Interest Period” means as to each Term SOFR Loan, the period commencing on the date such Loan is disbursed or converted to or continued as a Term SOFR Loan, and ending on the date one or three months thereafter, as selected by the Borrower in its Borrowing Request; *provided* that:

(1) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(2) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(3) no Interest Period shall extend beyond the Maturity Date.

“Interim Order” means, the order of the Court entered in the Chapter 11 Cases approving the Debtors’ entry into, among other things, the Loan Documents after an interim hearing and attached hereto as Exhibit H.

“Investor Group” means (a) any or all of (i) the members of HBC GP LLC on the Effective Date, (ii) the respective limited partners in the Parent, and holding company thereof created in connection with the Transactions (as defined in the Pre-Petition Credit Agreement) and Saks Global Investor L.P. on the Effective Date and (iii) the holders of equity interests in Neiman immediately prior to the consummation of the Pre-Petition Credit Agreement, any holding company or similar entity established to act on their behalf, or any agent or representative acting on their behalf, and, in each case of clauses (i), (ii) and (iii), any of their respective successors, (b) the respective Affiliates of the Persons described in clause (a) (other than, in each case, the Borrower and its Subsidiaries or any portfolio company) and (c) any group members of a group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act as in effect on the Effective Date) of which the Persons described in clauses (a) and (b) are members; *provided* that the Persons described in clauses (a) and (b) beneficially own a majority of the Equity Interests beneficially owned by such group.

“In-Transit Inventory” means, as of any date of determination thereof, Inventory which has been shipped for receipt by the Borrower Parties, but which has not yet been delivered to the Borrower Parties.

“Inventory” means, with respect to a Person, all of such Person’s now owned and hereafter acquired inventory (as defined in the UCC), goods and merchandise, wherever located, in each case, to be furnished under any contract of service or held for sale or lease, all returned goods, raw materials, work-in-process, finished goods (including embedded software), other materials, and supplies of any kind, nature or description which are used or consumed in such Person’s business or used in connection with the packing, shipping, advertising, selling, or finishing of such goods, merchandise and other property, and all documents of title or other documents representing the foregoing.

“Investment” has the meaning assigned to such term in Section 6.04.

“Investment Grade Rating” means a rating equal to or higher than Baa3 (or the equivalent) by Moody’s and BBB- (or the equivalent) by S&P (or reasonably equivalent ratings of another internationally recognized rating agency).

“Investment Grade Securities” means:

(1) securities issued or directly and fully guaranteed or insured by the U.S. government or any agency or instrumentality thereof (other than Cash Equivalents);

(2) securities that have an Investment Grade Rating, but excluding any debt securities or instruments constituting loans or advances among the Borrower and its Subsidiaries;

(3) corresponding instruments in countries other than the United States customarily utilized for high quality investments and in each case with maturities not exceeding two years from the date of acquisition; and

(4) investments in any fund that invests at least 95.0% of its assets in investments of the type described in clauses (1) and (2) above which fund may also hold immaterial amounts of cash pending investment and/or distribution.

“IP License Conditions” means, with respect to any Loan Party’s license of or use of any intellectual property or Intellectual Property Rights not owned by such Loan Party with respect to intellectual property which is used or useful in the Loan Parties’ business (collectively, an **“IP License”**), that the Administrative Agent shall be satisfied in its Reasonable Credit Judgment that such IP License (i) is subject to an Agent License Grant, which shall be acknowledged by the counterparties to such IP License (which acknowledgment may be contained in the applicable license, sale or other agreement) and (ii) such IP License does not impair the rights of the Administrative Agent, the Collateral Agent, the Secured Parties or the Loan Parties with respect to the Collateral or the ability of the Administrative Agent, the Collateral Agent or the Loan Parties to realize the full value of the Collateral consistent with the appraisal methodology applicable thereto; *provided* that the Administrative Agent shall be deemed to be satisfied with such IP License if, as to the foregoing matters, such IP License is substantially consistent with one or more other IP Licenses with respect to which the Administrative Agent has confirmed that it is so satisfied.

“ISDA Definitions” means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

“Issuer Documents” means, with respect to any Letter of Credit, a letter of credit application, a letter of credit agreement, or any other document, agreement or instrument entered into (or to be entered into) by a Borrower in favor of an Issuing Bank and relating to such Letter of Credit.

“Issuing Bank” means Bank of America. An Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such Issuing Bank or any correspondent of an Issuing Bank, in each case of similar creditworthiness, including, without limitation, any fronting, corresponding or advising bank, in which case the term “Issuing Bank” will include any such Affiliate or correspondent bank with respect to Letters of Credit issued by such Affiliate or correspondent bank.

“Issuing Bank Fees” has the meaning assigned to such term in Section 2.12(2)(b).

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

“L/C Participation Fee” has the meaning assigned such term in Section 2.12(2)(a).

“Landlord Lien State” means any state in which a landlord’s claim for rent has priority by law over the Lien of the Collateral Agent in any of the Collateral.

“Land Records” has the meaning assigned to such term in Section 5.10(1)(b).

“Latest Maturity Date” means, as of any date of determination, the latest Maturity Date of the Revolving Commitments in effect on such date.

“Lender” means each financial institution listed on Schedules 1.01(1) (other than any such Person that has ceased to be a party hereto pursuant to an Assignment and Acceptance in accordance with Section 10.04), as well as any Person that becomes a Lender hereunder pursuant to Section 10.04, and, as the context requires, the Swingline Lender.

“Lender Consultant” has the meaning provided in Section 5.18.

“Lender Default” means:

(1) the refusal (which may be given verbally or in writing and has not been retracted) or failure of any Lender to make available its portion of any Borrowing or reimbursement obligations, which refusal or failure is not cured within two Business Days after the date of such refusal or failure, unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s good faith determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable Default, shall be specifically identified in such writing) has not been satisfied;

(2) the failure of any Lender to pay over to the Administrative Agent, the Issuing Bank or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due;

(3) the failure of any Lender within three Business Days after request by the Administrative Agent, to confirm that it will comply with its funding obligations under the Revolving Facility; *provided* that such Lender will cease to be a Defaulting Lender pursuant to this clause (3) upon receipt of such written confirmation by the Administrative Agent and the Borrower;

(4) any Lender has notified the Borrower or the Administrative Agent that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations under the Revolving Facility or under other similar agreements in which it commits to extend credit; or

(5) the admission by any Lender that it is insolvent or such Lender becoming subject to a Lender-Related Distress Event.

“Lender-Related Distress Event” means, with respect to any Lender or any Person that directly or indirectly controls a Lender (each, a **“Distressed Person”**), as the case may be, a voluntary or involuntary case with respect to such Distressed Person under any debt relief law, or a custodian, conservator, receiver or similar official is appointed for such Distressed Person or any substantial part of such Distressed Person’s assets, or such Distressed Person or any Person that directly or indirectly controls such Distressed Person is subject to a forced liquidation, or such Distressed Person makes a general assignment for the benefit of creditors or is otherwise adjudicated as, or determined by any Governmental Authority having regulatory authority over such Distressed Person or its assets to be, insolvent or bankrupt or such Distressed Person becomes the subject of a Bail-In Action; *provided* that a Lender-Related Distress Event will not be deemed to have occurred solely by virtue of the ownership or acquisition of any Equity Interests in any Lender or any Person that directly or indirectly controls such Lender by a Governmental Authority or an instrumentality thereof.

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

“Letter of Credit” has the meaning assigned to such term pursuant to Section 2.05(1).

“Letter of Credit Commitment” means (i) with respect to each Issuing Bank, the amount set forth opposite such Issuing Bank’s name on Schedule 1.01(1) and (ii) with respect to any other Lender that becomes an Issuing Bank pursuant to Section 2.05(10) or 2.05(12) hereof, such amount as agreed in writing by the Borrower and such Lender at the time such Lender is designated as an Issuing Bank hereunder, as each of the foregoing amounts may be decreased or increased from time to time with the written consent of the Borrower and the Issuing Banks; *provided* that any increase in an applicable Issuing Bank’s Letter of Credit Commitment with respect to any Issuing Bank shall only require the consent of the Borrower and such Issuing Bank (so long as such increase does not result in the Letter of Credit Commitments exceeding the Letter of Credit Sublimit).

“Letter of Credit Request” means a request by the Borrower substantially in the form of Exhibit D-3 (or such other form as may be agreed between the Borrower and the Administrative Agent).

“Letter of Credit Sublimit” means the aggregate Letter of Credit Commitments of the Issuing Banks, in an amount not to exceed \$150.0 million.

“Lien” means, with respect to any asset (1) any mortgage, deed of trust, lien, hypothecation, pledge, charge, security interest or similar encumbrance in or on such asset; or (2) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset; *provided* that in no event will an operating lease or an agreement to sell be deemed to constitute a Lien.

“Line Cap” means, at any time, the lesser of (1) the aggregate Revolving Commitments at such time and (2) the Borrowing Base then in effect.

“Liquidation” means the exercise by the Collateral Agent or the Administrative Agent of those rights and remedies accorded to the Collateral Agent or the Administrative 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 Collateral Agent or the Administrative Agent, of any public, private or “going out of business” sale or other disposition of the Collateral for the purpose of liquidating the Collateral. Derivations of the word **“Liquidation”** (such as **“Liquidate”**) are used with like meaning in this Agreement.

“Loan Accounts” means the loan accounts established on the books of the Administrative Agent.

“Loan Documents” means this Agreement, the Security Documents, the Intercreditor Agreement, any Note, any Extension Amendment, any Issuer Document, any other intercreditor agreement entered into pursuant to this Agreement, any other amendment or other agreement or document evidencing or governing the Obligations hereunder, and, solely for the purposes of Sections 3.01, 3.02, and 8.01(3) hereof, the Fee Letter.

“Loan Parties” means the Borrower, each Co-Borrower, Holdings and the Subsidiary Loan Parties.

“Loans” means the Revolving Loans, the Swingline Loans and any other loans and advances of any kind made by the Administrative Agent, any Lender or any Affiliate of the Administrative Agent or any Lender pursuant to this Agreement.

“Management Stockholders” means the members of management of the Borrower (or any Parent Entity) or its Subsidiaries who are holders of Equity Interests of the Borrower or of any Parent Entity on the Effective Date or will become holders of such Equity Interests pursuant to any equity incentive or compensation plan approved by the Board of Directors of the Borrower (or any Parent Entity) or its Subsidiaries within six months of the Effective Date.

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

“Material Adverse Effect” means, any event, fact, circumstance, action, suit, investigation, litigation or proceeding pending or threatened in any court or before any arbitrator or governmental authority that has or could be reasonably likely to have material adverse effect on:

- (1) the business, assets, financial condition or results of operations of the Loan Parties and their Restricted Subsidiaries (taken as a whole);
- (2) the ability of the Borrower Parties and the Guarantors (taken as a whole) to perform their payment obligations under the Loan Documents; or
- (3) the rights and remedies of the Administrative Agent and the Lenders (taken as a whole) under the Loan Documents;

provided, that none of (i) the effect of the filing of the Chapter 11 Cases, the events and conditions resulting from or leading up thereto and/or typically resulting from the filing of cases under chapter 11 of the Bankruptcy Code, (ii) the actions expressly required to be taken pursuant to this Agreement, the DIP Term Loan Agreement, the Interim Order or Final Order (as applicable), (iii) any matters publicly disclosed in any first day pleading or declarations, or any other pleadings or declarations of the Debtors, the Administrative Agent or the Lenders filed in the Chapter 11 Cases in connection with any proposed court order, in each case, shall constitute a “Material Adverse Effect” for any purpose.

“Material Indebtedness” means Indebtedness for borrowed money (other than the Obligations or any Indebtedness owed to the Borrower or a Restricted Subsidiary) of the Borrower or any Subsidiary Loan Party in an aggregate outstanding principal amount exceeding \$1.0 million.

“Material Intellectual Property” means intellectual property that is material to the business of the Borrower and its Restricted Subsidiaries, taken as a whole.

“Material Real Property” means, solely to the extent located within the United States, the Loan Parties’ fee-owned and/or ground-leased real properties with a fair market value (as determined by the Borrower in good faith) in excess of \$3.0 million. For the avoidance of doubt, no Non-Mortgageable Leases or other Excluded Assets or any operating lease will constitute Material Real Property.

“Maturity Date” means, the earliest of (i) []³, 2026, (ii) the latest stated maturity date of the DIP Term Loan Agreement or the DIP UnSub Borrower Term Loan Agreement, (iii) the effective date on

³ Note to Draft: to be 6 month anniversary of Effective Date.

which the Obligations become due and payable pursuant to this Agreement, whether by acceleration or otherwise, (iv) the effective date of a plan of reorganization for the Debtors, (v) the date of a sale of all or substantially all of the Debtors' assets (including, without limitation, under Section 363 and/or 365 of the Bankruptcy Code), or (vi) the date of acceleration of the Obligations or the termination of this Agreement in accordance with the terms hereof.

“Maximum Rate” has the meaning assigned to such term in Section 10.09.

“Milestones” has the meaning assigned to such term in Section 5.16.

“MNPI” means any material nonpublic information regarding Holdings and its Subsidiaries that has not been disclosed to the Lenders generally (other than Lenders who elect not to receive such information). For purposes of this definition “material nonpublic information” means nonpublic information that would reasonably be expected to be material to a decision by any Lender to assign or acquire any Commitments and/or Loans or to enter into any of the transactions contemplated thereby.

“Monthly Financial Statements” has the meaning assigned to such term in Section 5.04(3).

“Moody’s” means Moody’s Investors Service, Inc. or any successor to the rating agency business thereof.

“Mortgage” means a mortgage, debenture, deed of trust, deed to secure debt, or similar security instrument in form and substance reasonably satisfactory to the Collateral Agent, as the same may be amended, amended and restated, modified, supplemented, extended or renewed from time to time.

“Mortgaged Property” means any Material Real Property of the Loan Parties which is required to be encumbered by a Mortgage.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which any Loan Party or any ERISA Affiliate (other than one considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Code Section 414) is making or accruing an obligation to make contributions, or has within any of the preceding five (5) plan years made or accrued an obligation to make contributions.

“Neiman” means NMG Parent LLC, a Delaware limited liability company.

“Net Orderly Liquidation Value” means, with respect to Eligible Inventory, the net appraised liquidation value thereof (expressed as a percentage of the Cost of such Inventory as set forth in the inventory stock ledger of the Borrower Parties) as determined from time to time by an Acceptable Appraiser in accordance with Section 5.07. For the avoidance of doubt, (x) from the Effective Date until May 30, 2026, the Net Orderly Liquidation Value shall be as set forth in the appraisal delivered December 2025 and (y) thereafter shall be as set forth in the appraisal delivered in accordance with Section 5.07.

“New York Courts” has the meaning assigned to such term in Section 10.15.

“Non-Consenting Lender” has the meaning assigned to such term in Section 2.19(3).

“Non-Mortgageable Leases” means any leased Real Property that is subject to provisions restricting the mortgaging, assignment or other creation of a direct or indirect security interest in or of any such lease, agreement or other instrument governing such leasehold interest or in respect of which a mortgage, assignment or creation of a security interest therein or thereof could reasonably be expected (as determined in good faith by a Responsible Officer of the Borrower and the Collateral Agent) to be in conflict

with, result in a breach of, constitute (alone or with notice or lapse of time or both) a default under, or give rise to a right of or result in any cancellation, revocation or acceleration of any right or obligation (including any payment) or to a loss of a material benefit under, any such lease, agreement or other instrument governing such leasehold interest.

“**Note**” has the meaning assigned to such term in Section 2.09(2).

“**Obligations**” means:

(1) all amounts owing to any Agent, any Issuing Bank or any Lender, or any Affiliate of or Indemnitee with respect to any of the foregoing Persons, pursuant to the terms of this Agreement or any other Loan Document (including any contingent indemnification and reimbursement obligations, or other payments required under Section 10.05), including all interest and expenses accrued or accruing (or that would, absent the commencement of an insolvency or liquidation proceeding, accrue) after the commencement by or against any Loan Party of any proceeding under Title 11 of the United States Code, including the Chapter 11 Cases, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law naming such Loan Party as the debtor in such proceeding, in accordance with and at the rate specified in this Agreement, whether or not the claim for such interest or expense is allowed or allowable as a claim in such proceeding;

(2) all amounts owing to any Qualified Counterparty under any Secured Hedge Agreement; and

(3) any Cash Management Obligations.

“**OFAC**” has the meaning assigned to such term in Section 3.20(3)(e).

“**Operating Account**” means the account in the name of the Borrower ending in xx[] and maintained with the Administrative Agent.

“**Order**” means, as applicable, and as the context may require, the Interim Order or the Final Order, whichever is then applicable.

“**Other Connection Taxes**” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising solely from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“**Other Taxes**” means any and all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.19(2)).

“**Parent**” means HBC I L.P., a Delaware limited partnership.

“**Parent Entity**” means any direct or indirect parent of the Borrower, including, as applicable, Holdings and the Parent.

“Participant” has the meaning assigned to such term in Section 10.04(4).

“Participant Register” has the meaning assigned to such term in Section 10.04(4).

“Payment in Full” or **“Paid in Full”** means (x) the repayment in Dollars in full in cash or immediately available funds (or, in the case of contingent reimbursement obligations with respect to Letters of Credit and Hedge Agreements, providing cash collateralization) of all of the Obligations (including the payment of unreimbursed amounts and of any termination amount then applicable (or which would or could become applicable as a result of the repayment of the other Obligations) under any Hedge Agreement) other than (i) unasserted contingent indemnification Obligations, (ii) any Obligations relating to Hedge Agreements that, at such time, are allowed by the applicable Hedge Agreement provider to remain outstanding without being required to be repaid or cash collateralized, and (iii) any Obligations relating to Cash Management Services that, at such time, are allowed by the applicable provider of such Cash Management Services to remain outstanding without being required to be repaid, and (y) the termination of (1) the all Commitments, (2) each Issuing Bank’s obligation to issue Letters of Credit hereunder and (3) the Loan Documents (other than terms thereof which expressly survive termination).

“Payment Office” means with respect to any payment on account of the Obligations, the office of the Administrative Agent located at 100 Federal Street, Boston, MA 02110 or such other office as the Administrative Agent may designate to the Borrower and the Lenders from time to time.

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA, or any successor thereto.

“Perfection Certificate” means that certain Perfection Certificate, dated as of the Effective Date, executed and delivered by the Loan Parties, and each other Perfection Certificate (which shall be in form and substance consistent with the Perfection Certificate delivered on the Effective Date or otherwise reasonably acceptable to the Collateral Agent) delivered by the Loan Parties pursuant to Section 5.04(10), in each case, as the same may be amended, amended and restated, supplemented or otherwise modified from time to time in accordance with this Agreement.

“Permitted Debt” has the meaning assigned thereto in Section 6.01.

“Permitted Holders” means, collectively, (i) any member of the Investor Group and any Permitted Parent, (ii) the Management Stockholders (including any Management Stockholders holding Equity Interests through an equity-holding vehicle), (iii) any Person who is acting solely as an underwriter in connection with a public or private offering of Equity Interests of any Parent Entity or the Borrower, acting in such capacity, (iii) any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act or any successor provision) of which any of the foregoing, any Holding Company, Permitted Plan or any Person or group that becomes a Permitted Holder specified in the last sentence of this definition are members and any member of such group; *provided* that, in the case of such group and without giving effect to the existence of such group or any other group, Persons referred to in subclauses (i) through (iii), collectively, have beneficial ownership of more than 50% of the total voting power of the Voting Stock of the Borrower or any Parent Entity held by such group, (v) any Holding Company and (vi) any Permitted Plan.

“Permitted Investments” has the meaning assigned to such term in Section 6.04.

“Permitted IP Transaction” has the meaning assigned to such term in the Pre-Petition Credit Agreement.

“**Permitted Liens**” has the meaning assigned to such term in Section 6.02.

“**Permitted Parent**” means any Parent Entity that, at the time it became a Parent Entity, was a Permitted Holder pursuant to clause (i) of the definition thereof.

“**Permitted Plan**” means any employee benefits plan of the Borrower or any of its Affiliates and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan.

“**Permitted Refinancing Indebtedness**” means any Indebtedness issued in exchange for, or converted from, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund (collectively, “**Refinance**” or a “**Refinancing**”) the Indebtedness being Refinanced (or previous refinancings thereof constituting Permitted Refinancing Indebtedness); *provided that*:

(1) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so Refinanced (*plus* unpaid accrued interest and premium (including tender premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses);

(2) the final maturity of such Permitted Refinancing Indebtedness is no earlier than the maturity of the Indebtedness so refinanced and the Weighted Average Life to Maturity of such Permitted Refinancing Indebtedness is greater than the shorter of (a) the Weighted Average Life to Maturity of the Indebtedness being Refinanced and (b) the Weighted Average Life to Maturity that would result if all payments of principal on the Indebtedness being Refinanced that were due on or after the date that is one year following the Latest Maturity Date were instead due on the date that is one year following the Latest Maturity Date; *provided that* no Permitted Refinancing Indebtedness incurred in reliance on this subclause (b) will have any scheduled principal payments due prior to the Latest Maturity Date in excess of, or prior to, the scheduled principal payments due prior to such Latest Maturity Date for the Indebtedness being Refinanced;

(3) if the Indebtedness being Refinanced is subordinated in right of payment or, as to any assets, lien priority to the Obligations, such Permitted Refinancing Indebtedness is subordinated as to such assets, in right of payment or lien priority to the Obligations on terms at least as favorable to the applicable Lenders as those contained in the documentation governing the Indebtedness being Refinanced;

(4) no Permitted Refinancing Indebtedness will have different obligors, or greater (including higher ranking priority) Guarantees or security, than the Indebtedness being Refinanced; *provided that*, with respect to a Refinancing of the DIP Term Loan Facility, the Liens, if any, securing such Permitted Refinancing Indebtedness will be on terms not materially less favorable to the Lenders than those contained in the documentation governing the DIP Term Loan Facility, as determined in good faith by a Responsible Officer of the Borrower (and, for the avoidance of doubt, any Liens securing such Permitted Refinancing Indebtedness may not extend to additional assets or be higher in priority than the Liens securing the Indebtedness being Refinanced);

(5) in the case of a Refinancing of Indebtedness that is secured by Liens on the ABL Priority Collateral that are junior to the Liens securing the Revolving Facility Claims, a Debt Representative acting on behalf of the holders of such Indebtedness has become party to or is otherwise subject to the provisions of the Intercreditor Agreement or another intercreditor agreement that is substantially consistent with, and no less favorable to the Lenders in any material respect than, the Intercreditor Agreement as certified by a Responsible Officer of the Borrower; and

(6) in the case of a Refinancing of the DIP Term Loan Facility, the Liens, if any, securing such Permitted Refinancing Indebtedness are subject to the Intercreditor Agreement or another intercreditor agreement that is substantially consistent with, and no less favorable to the Lenders in any material respect than, the Intercreditor Agreement as certified by a Responsible Officer of the Borrower.

Permitted Refinancing Indebtedness may not be incurred to Refinance Indebtedness that is secured on a junior basis to the Revolving Loans with Indebtedness that is secured on a *pari passu* basis with the Revolving Loans.

Indebtedness constituting Permitted Refinancing Indebtedness will not cease to constitute Permitted Refinancing Indebtedness as a result of the subsequent extension of the Latest Maturity Date after the date of original incurrence thereof.

“Permitted Replacement Credit Card Program” means any private label credit card program or similar arrangement substantially similar in all material respects to the Capital One Arrangements, with such modifications as the Administrative Agent shall have consented to in writing prior to the effectiveness thereof (such consent not to be unreasonably withheld or delayed), which, after notice to the Administrative Agent in accordance with Section 5.14, is entered into by the Borrower or any of its Subsidiaries on commercially reasonable terms generally available at that time (as determined in good faith by a Responsible Officer of the Borrower), *provided* that if such program grants a security interest in any assets other than those certain Accounts, receivables, or transferor interest or other similar residual interests subject to such program or arrangement, including a security interest in any returned goods, and the grant of such security interest would reasonably be expected to be detrimental in any material respect to the rights and interests of the Lenders under the Loan Documents, as determined by the Administrative Agent in its reasonable discretion, such program will not be considered a Permitted Replacement Credit Card Program unless and until the Administrative Agent and the third party with whom such program is created have entered into an intercreditor agreement reasonably satisfactory to the Administrative Agent with respect to the priority and enforcement of such security interests.

“Person” means any natural person, corporation, business trust, joint venture, association, company, partnership, limited liability company, government, individual or family trust, Governmental Authority or other entity of whatever nature.

“Petition Date” has the meaning set forth in the Recitals.

“Plan” means any “employee pension benefit plan” as defined in Section 3(2) of ERISA (other than a Multiemployer Plan) that is (1) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA; and (2) either (a) sponsored or maintained (at the time of determination or at any time within the five (5) years prior thereto) by any Loan Party or any ERISA Affiliate or (b) in respect of which any Loan Party or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Plan of Reorganization” means a plan of reorganization confirmed in the Chapter 11 Cases by an order of the Court in form and substance reasonably satisfactory to the Administrative Agent (i) containing a provision for the Payment in Full of the Obligations (if any) on or before the effective date of such plan or such other treatment acceptable to the Administrative Agent and the Required Lenders in their sole discretion (it being understood that no Lender shall be required to participate in any “exit financing” without its consent) and (ii) containing a customary release in favor of the Administrative Agent, the Lenders and the Pre-Petition Agent and the Pre-Petition Lenders, and each of their respective affiliates.

“**Platform**” has the meaning assigned to such term in Section 10.17.

“**Pledged Collateral**” has the meaning assigned to such term in the Collateral Agreement.

“**Pre-Adjustment Successor Rate**” has the meaning assigned to such term in Section 2.14(2).

“**Pre-Petition Agent**” means Bank of America, N.A., in its capacity as administrative agent and collateral agent under any of the Pre-Petition Loan Documents.

“**Pre-Petition Credit Agreement**” has the meaning specified in the Recitals.

“**Pre-Petition Credit Extensions**” means Pre-Petition Obligations in respect of “Credit Events” as defined in the Pre-Petition Credit Agreement.

“**Pre-Petition L/C Obligations**” means Obligations (under and as defined in the Pre-Petition Credit Agreement) in respect of Pre-Petition Letters of Credit, and all interest, expenses, fees and other amounts payable in respect thereof under the Pre-Petition Credit Agreement.

“**Pre-Petition Letters of Credit**” means those Letters of Credit described on Schedule 1.01(3) hereto.

“**Pre-Petition Loan Documents**” means the “Loan Documents” as defined in the Pre-Petition Credit Agreement.

“**Pre-Petition Mortgages**” means the mortgages, debentures, deeds of trust, deeds to secure debt, or similar security instrument granting a Lien on Real Property between the Loan Party owning the Real Property encumbered thereby and the Collateral Agent under the Pre-Petition Credit Agreement for its own benefit and the benefit of the other Secured Parties (and for the benefit of the holders of the Pre-Petition UnSub FILO Onloan to the extent set forth in the Pre-Petition Loan Documents) under the Pre-Petition Loan Documents.

“**Pre-Petition Notes Trustee**” means Citibank, N.A., in its capacity as trustee under the Pre-Petition Secured Notes Documents, and any successor thereto.

“**Pre-Petition Obligations**” means “Obligations” as defined in the Pre-Petition Credit Agreement.

[“**Pre-Petition Revolving Loan Balance**” means the amount of Pre-Petition Revolving Loans outstanding as of the Petition Date.]

“**Pre-Petition Revolving Loans**” means “Revolving Loans” as defined in the Pre-Petition Credit Agreement.

“**Pre-Petition Secured Notes**” means, collectively, (i) the 11.000% Senior Secured Notes due 2029 issued under that certain Indenture dated December 16, 2024, (ii) any notes issued in exchange for the notes issued under clause (i) above, in an aggregate principal amount for clauses (i) and (ii) not to exceed \$2,200.0 million and (iii) any additional notes which are issued as a result of the capitalization of accrued and unpaid interest with respect to the notes issued under clause (ii) above.

“**Pre-Petition Secured Notes Documents**” means, the Secured Notes Indenture (as defined in the Pre-Petition Credit Agreement), the Pre-Petition Secured Notes, and each of the other agreements, documents and instruments providing for, evidencing or securing the Pre-Petition Secured Notes.

“Pre-Petition UnSub Borrower” means SGUS LLC, a Delaware limited liability company in its capacity as “Issuer” under the Pre-Petition UnSub Borrower Secured Notes Documents.

“Pre-Petition UnSub Borrower Secured Notes” means the 11.000% Senior Secured Asset Based Notes due 2029 issued under that certain Indenture, dated as of June 27, 2025.

“Pre-Petition UnSub Borrower Secured Notes Documents” means, collectively, the UnSub Borrower Secured Notes Indenture (as defined in the Pre-Petition Credit Agreement), and each of the agreements, documents and instruments providing for, evidencing or securing the Pre-Petition UnSub Borrower Secured Notes.

“Pre-Petition UnSub FILO Onloan Loan Agreement” means that certain Term Loan Credit Agreement, dated as of June 27, 2025 among the Borrower, as borrower and the UnSub Borrower as lender.

“Pre-Petition UnSub FILO Onloan Loan Documents” means the “Loan Documents” under and as such term is defined in the Pre-Petition UnSub FILO Onloan Loan Agreement.

“Pre-Petition UnSub NPC Onloan Loan Agreement” means that certain Term Loan Credit Agreement, dated as of August 8, 2025 among the Borrower, as borrower and the UnSub Borrower as lender.

“Pre-Petition UnSub NPC Onloan Loan Documents” means the “Loan Documents” under and as such term is defined in the Pre-Petition UnSub NPC Onloan Loan Agreement.

“Pro Forma Basis” or ***“Pro Forma”*** means, with respect to any calculation under any applicable provision of the Loan Documents, as of any date, that pro forma effect will be given to any Investment, any issuance, incurrence, assumption or permanent repayment of Indebtedness (including Indebtedness issued, incurred or assumed as a result of, or to finance, any relevant transaction and for which any such financial ratio or other calculation is being calculated) and all sales, transfers and other dispositions or discontinuance of any Subsidiary, line of business, division or store, in each case that have occurred during the Test Period of the Borrower being used to calculate such financial ratio, or subsequent to the end of such Test Period but prior to such date or prior to or simultaneously with the event for which a determination under this definition is made (including any such event occurring at a Person who became a Subsidiary after the commencement of such Test Period), as if each such event occurred on the first day of such Test Period.

“Projections” means all projections (including financial estimates, financial models, forecasts and other forward-looking information) furnished to the Lenders or the Administrative Agent by or on behalf of the Borrower or any of the Subsidiaries on or prior to the Effective Date.

“Protective Advances” has the meaning assigned to such term in Section 2.01(3).

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

“Public Lender” has the meaning assigned to such term in Section 10.17.

“QFC” has the meaning assigned to such term in Section 10.24.

“QFC Credit Support” has the meaning assigned to such term in Section 10.24.

“Qualified Counterparty” means any counterparty to any Secured Hedge Agreement that, at the time such Secured Hedge Agreement was entered into or on the Effective Date, was an Agent, an Arranger, a Revolving Lender or an Affiliate of the foregoing, whether or not such Person subsequently ceases to be an Agent, an Arranger, a Revolving Lender or an Affiliate of the foregoing.

“Qualified Equity Interests” means any Equity Interests other than Disqualified Stock.

“Quarterly Financial Statements” has the meaning assigned to such term in Section 5.04(2).

“Real Estate Consultant” means A&G Real Estate Partners.

“Real Estate Reserve” means a Reserve in the amount of \$40,000,000.

“Real Estate Subsidiary” means any Subsidiary of the Borrower (including Simon JVCo and its Subsidiaries) substantially all of the assets of which (other than cash and cash equivalents) consist of rights, title and interest in and to parcels of or interests in Real Property (or ownership of the Equity Interests of a Subsidiary owning solely such interests in Real Property or a Subsidiary that solely owns such a Subsidiary); *provided* that in no event shall any Loan Party or Saks Flagship Entity be a Real Estate Subsidiary.

“Real Estate Venture” means any investment of the Borrower or its Subsidiaries in the equity of another Person substantially all of the assets of which Person (other than cash and cash equivalents) consist of rights, title and interest in and to parcels of or interests in Real Property (or ownership of the Equity Interests of a Person owning solely such interests in Real Property or a Subsidiary that solely owns such a Person) and that has been designated to the Administrative Agent as a “Real Estate Venture” in a certificate of a Responsible Officer of the Borrower.

“Real Property” means, collectively, all right, title and interest (including any leasehold estate) in and to any and all parcels of or interests in real property owned in fee or leased by any Loan Party, together with, in each case, all easements, hereditaments and appurtenances relating thereto, and all improvements and appurtenant fixtures incidental to the ownership or lease thereof.

“Reasonable Credit Judgment” means reasonable credit judgment in accordance with customary business practices for comparable debtor-in-possession asset-based lending transactions.

“Recipient” means the Administrative Agent and any Lender, as applicable.

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

“Register” has the meaning assigned to such term in Section 10.04(2)(d).

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

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

“Related Adjustment” means, in determining any Term SOFR Successor Rate, the first relevant available alternative set forth in the order below that can be determined by the Administrative Agent applicable to such Term SOFR Successor Rate:

(1) the spread adjustment, or method for calculating or determining such spread adjustment (which may be a positive or negative value or zero), that has been selected or recommended by the Relevant Governmental Body for the relevant Pre-Adjustment Successor Rate (taking into account the interest period, interest payment date or payment period for interest calculated and/or tenor thereto) and which adjustment or method is published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion; or

(2) the spread adjustment that would apply (or has previously been applied) to the fallback rate for a derivative transaction referencing the ISDA Definitions (taking into account the interest period, interest payment date or payment period for interest calculated and/or tenor thereto).

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

“Related Persons” has the meaning assigned to such term in Section 6.06(2).

“Release” means any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the Environment.

“Relevant Governmental Body” means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York.

“Remedies Notice Period” has the meaning specified in the Interim Order (or Final Order, when applicable).

“Report” means reports prepared by the Administrative Agent, the Collateral Agent or another Person showing the results of appraisals, field examinations or audits pertaining to the Loan Parties’ assets from information furnished by or on behalf of the Loan Parties, after the Administrative Agent or Collateral Agent has exercised its rights of inspection pursuant to this Agreement, which Report shall be distributed to the Lenders by the Administrative Agent, subject to the provisions of Section 10.16.

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

“Required Financial Statements” has the meaning assigned to such term in Section 5.04(2).

“Required Lenders” means, at any time, Lenders having (1) Revolving Credit Exposure and (2) Available Unused Commitments that, taken together, represent more than 50.0% of the sum of (a) all Revolving Credit Exposure and (b) the total Available Unused Commitments at such time. The Revolving Credit Exposure and Available Unused Commitments of any Defaulting Lender will be disregarded in determining Required Lenders; *provided* that subject to the Borrower’s right to replace Defaulting Lenders as set forth herein, Defaulting Lenders will be included in determining Required Lenders with respect to:

(1) any amendment that would disproportionately affect the obligation of the Borrower Parties to make payment of the Revolving Loans or Revolving Commitments of such

Defaulting Lender as compared to other Lenders holding the same class of such Loans or Commitments;

(2) any amendment relating to:

(a) increases in the Revolving Commitment of such Defaulting Lender;

(b) reductions of principal, interest, fees or premium applicable to the Revolving Loans or Revolving Commitments of such Defaulting Lender;

(c) extensions of final maturity or the due date of any amortization, interest, fee or premium payment applicable to the Revolving Loans or Revolving Commitments of such Defaulting Lender; and

(3) matters requiring the approval of each Lender under Sections 10.08(2)(vi) and (vii).

“Rescindable Amount” has the meaning assigned to such term in Section 2.18(6).

“Reserves” means, (a) reserves in respect of the Carve-Out in an amount equal to the portion of the Carve-Out which has not yet been funded into the professional fee account in accordance with the Interim Order or Final Order, as applicable, (b) the Real Estate Reserve and (c) “Reserves” (under and as defined in the Pre-Petition Credit Agreement) immediately prior to the Effective Date as adjusted to reflect mathematical calculations of the amount of existing Reserves in accordance with the methodology of the calculation previously utilized; provided that the FILO Deficiency Reserve (as defined in the Pre-Petition Credit Agreement) shall not be a “Reserve”.

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Responsible Officer” means, with respect to any Loan Party, the chief executive officer, president, vice president, secretary, assistant secretary or any Financial Officer of such Loan Party or any other individual designated in writing to the Administrative Agent by an existing Responsible Officer of such Loan Party as an authorized signatory of any certificate or other document to be delivered hereunder. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party will be conclusively presumed to have been authorized by all necessary corporate, partnership or other action on the part of such Loan Party and such Responsible Officer will be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Debt” has the meaning assigned to such term in Section 6.09(2).

“Restricted Payments” has the meaning assigned to such term in Section 6.06.

“Restricted Subsidiary” means each Subsidiary of the Borrower other than any Unrestricted Subsidiary. The Co-Borrowers and the Subsidiary Loan Parties shall at all times constitute Restricted Subsidiaries.

“Revaluation Date” means with respect to any Letter of Credit, each date of an amendment of any such Letter of Credit having the effect of increasing the amount thereof.

“Revolving Borrowing” means a Borrowing comprised of Revolving Loans.

“Revolving Commitment” means, with respect to a Revolving Lender, the commitment of such Lender to make Revolving Loans pursuant to Section 2.01, expressed as an amount representing the maximum aggregate permitted amount of such Lender’s Revolving Credit Exposure hereunder, as such commitment may be (1) reduced from time to time pursuant to Section 2.08, or (2) reduced or increased from time to time pursuant to assignments by or to such Lender under Section 10.04. The initial amount of each Revolving Lender’s Revolving Commitment is set forth on Schedule 1.01(1) or in the Assignment and Acceptance pursuant to which such Lender has assumed its Revolving Commitment, as applicable. The initial aggregate amount of the Revolving Lenders’ Revolving Commitments as of the Effective Date is \$1,500.0 million.

“Revolving Credit Exposure” means, at any time, the sum of:

- (1) the aggregate principal amount of the Revolving Loans outstanding at such time;
- (2) the Swingline Exposure at such time; and
- (3) the Revolving L/C Exposure at such time. The Revolving Credit Exposure of any Revolving Lender at any time will be, subject to adjustment as expressly provided in Section 2.26, the product of (a) such Revolving Lender’s Revolving Facility Percentage and (b) the aggregate Revolving Credit Exposure of all Revolving Lenders, collectively, at such time.

“Revolving Facility” means the Revolving Commitments and the extensions of credit made hereunder by the Revolving Lenders.

“Revolving Facility Percentage” means, with respect to any Revolving Lender, the percentage of the total Revolving Commitments represented by such Lender’s Revolving Commitment. If the Revolving Commitments have terminated or expired, the Revolving Facility Percentages will be determined based upon the Revolving Commitments most recently in effect, giving effect to any assignments pursuant to Section 10.04.

“Revolving L/C Exposure” means at any time the sum of (1) the aggregate undrawn face amount of all Letters of Credit outstanding at such time and (2) the aggregate principal amount of all L/C Disbursements that have not yet been reimbursed at such time. The Revolving L/C Exposure of any Revolving Lender at any time will mean its Revolving Facility Percentage of the aggregate Revolving L/C Exposure at such time. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the International Standard Practices, International Chamber of Commerce No. 590, such Letter of Credit will be deemed to be “outstanding” in the amount so remaining available to be drawn. Unless otherwise specified herein, the amount of a Letter of Credit at any time will be deemed to be the stated amount of such Letter of Credit in effect at such time; *provided* that, with respect to any Letter of Credit that by its terms or the terms of any document related thereto provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit will be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time; *provided, further*, that for purposes of calculating Commitment Fees under Section 2.12(1), Revolving L/C Exposure shall be determined based on the actual stated amount of such Letter of Credit in effect at the time of such calculation, without giving effect to automatic increases which have not yet occurred.

“Revolving Lender” means each Lender with a Revolving Commitment or outstanding Revolving Credit Exposure.

“Revolving Loans” has the meaning assigned to such term in Section 2.01(1) and will include any Protective Advances.

“S&P” means Standard & Poor’s Ratings Services or any successor entity thereto.

“Saks Flagship Assets” means the Saks Flagship Real Estate, the Saks Flagship Lease and the Equity Interests in and assets of the Saks Flagship Entities.

“Saks Flagship CMBS Documents” means, collectively, (a) the Incorporated Agreement and any Permitted Refinancing Indebtedness thereof and (b) the “Loan Documents” under and as defined in the Incorporated Agreement and any Permitted Refinancing Indebtedness thereof.

“Saks Flagship Entities” means (i) the Saks Flagship Fee Owner, Saks Flagship GL Tenant, Saks Flagship Holdco II, Saks Flagship Holdco, and (ii) each Subsidiary of SFA Holdings and each other Person (other than any Loan Party which directly or indirectly owns 100% of the Equity Interest issued by any of the foregoing) in each case of this clause (ii), that owns directly or indirectly (beneficially or of record) any of the Equity Interests of the Saks Flagship Fee Owner. Each of the foregoing shall be a “Saks Flagship Entity”. In no event shall SFA Holdings or any entity that owns a direct or indirect interest in SFA Holdings be deemed a Saks Flagship Entity (provided that no such Person (other than SFA Holdings, as applicable) shall directly own the Equity Interests in the Saks Flagship Fee Owner, Saks Flagship Holdco II, or Saks Flagship Holdco).

“Saks Flagship Fee Owner” means Saks Flagship Real Property LLC, a Delaware limited liability company.

“Saks Flagship GL Tenant” means 12 East 49th Street LLC, a Delaware limited liability company.

“Saks Flagship Holdco” means Saks Fifth Avenue HoldCo LLC, a Delaware limited liability company or any successor thereto by merger, consolidation, acquisition, any other similar corporate transformation or otherwise.

“Saks Flagship Holdco II” means Saks Fifth Avenue HoldCo II LLC, a Delaware limited liability company.

“Saks Flagship Lease” means collectively (a) that certain Ground Lease dated as of December 3, 2014, between Saks Flagship Fee Owner, as landlord, and Saks Flagship GL Tenant, as tenant, with respect to Saks Flagship Real Estate, together with (i) any permitted amendments, modifications, or waivers thereto in accordance with the terms hereof or (ii) a replacement ground lease approved by the Administrative Agent in its reasonable discretion and (b) that certain Operating Lease dated as of December 3, 2014, between Saks Flagship GL Tenant, as landlord, and SFA, as tenant, with respect to Saks Flagship Real Estate, together with (i) any permitted amendments, modifications, or waivers thereto in accordance with the terms hereof or (ii) a replacement operating lease approved by the Administrative Agent in its reasonable discretion or otherwise permitted pursuant to the terms of the Saks Flagship CMBS Documents to the extent the same is not adverse in any material respect to the interests of the Loan Parties (provided that any such replacement that would otherwise require the consent of the CMBS Lenders shall also require the Administrative Agent’s consent hereunder).

“Saks Flagship Material Agreements” means the (a) the Saks Flagship CMBS Documents, (b) the Saks Flagship Lease, (c) the Ground Lessee Pledge Documentation, and (d) the organization documents of each of Saks Flagship GL Tenant, Saks Flagship Fee Owner, Saks Flagship Holdco and Saks Flagship Holdco II.

“Saks Flagship Real Estate” shall mean the property more particularly described in Schedule 1.01(4).

“Sale and Lease-Back Transaction” means any arrangement, directly or indirectly, with any Person whereby the Borrower or any of its Restricted Subsidiaries sells or transfers any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, to such Person, and thereafter rents or leases such property (or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred) from such Person.

“Sanctions” means any financial, economic, or trade sanctions law, regulations, rules, decisions, embargoes and/or restrictive measures imposed, administered or enforced by the United States government (including without limitation, OFAC), the United Nations Security Council, the European Union, His Majesty’s Treasury (“HMT”) or other relevant sanctions authority.

“Scheduled Unavailability Date” has the meaning assigned to such term in Section 2.14(2)(b).

“SEC” means the Securities and Exchange Commission or any successor thereto.

“Secured Hedge Agreement” means any Hedge Agreement entered into or assumed between or among the Borrower, any Co-Borrower or any other Subsidiary and any Qualified Counterparty and designated by the Qualified Counterparty and the Borrower in writing to the Administrative Agent as a “Secured Hedge Agreement” under this Agreement; *provided that* all Secured Hedge Agreements entered into between the Administrative Agent and any Loan Party shall be Secured Hedge Agreements hereunder without regard to such designation.

“Secured Parties” means the collective reference to the “Secured Parties” as defined in the Collateral Agreement.

“Securities Account” means any “securities account” as such term is defined in the UCC as in effect on the date hereof in the State of New York.

“Securities Act” means the Securities Act of 1933, as amended.

“Security Documents” means the Collateral Agreement, the Pre-Petition Mortgages, and each of the security agreements and other instruments and documents executed and delivered by any Loan Party pursuant thereto or pursuant to Section 5.10 or Section 5.15, including any and all Control Agreements.

“Settlement Date” has the meaning assigned to such term in Section 2.18(2).

“SFA” means Saks & Company LLC, a Delaware limited liability company.

“SFA Holdings” means SFA Holdings Inc., a Tennessee corporation.

“Signature Law” has the meaning assigned to such term in Section 10.13.

“Simon JVCo” means HBS Global Properties LLC, a Delaware limited liability company.

“SO5 Loan Parties” means Saks OFF 5TH Holdings LLC, Saks OFF 5TH LLC, Saks OFF 5TH Midco Partner Inc., and Luxury Outlets USA, LLC.

“SOFR” means the Secured Overnight Financing Rate as administered by the Federal Reserve Bank of New York (or a successor administrator).

“SOFR Adjustment” means, with respect to Term SOFR and with respect to any applicable Interest Period, a percentage equal to 0.10% (10 basis points) per annum.

“SOFR-Based Rate” means SOFR or Term SOFR.

“Specified Closures” means store closures with arrangements with respect to Inventory mutually agreed with the Store Closing Consultant.

“Specified Hedge Agreement” means any Secured Hedge Agreement with respect to which the Borrower and the applicable Qualified Counterparty have notified the Administrative Agent of the intent to include such Secured Hedge Agreements as a “Specified Hedge Agreement” hereunder and with respect to which a Reserve has subsequently been established in the maximum amount thereof; *provided* that, for the avoidance of doubt, references in this Agreement or the other Loan Documents to Secured Hedge Agreements shall include any Specified Hedge Agreements unless indicated otherwise; and *provided further* that all Secured Hedge Agreements entered into between the Administrative Agent and any Loan Party shall be Specified Hedge Agreements hereunder without regard to such designation.

“Specified Indebtedness” means all Indebtedness under the DIP Term Loan Documents, the Pre-Petition Secured Notes Documents, the Pre-Petition UnSub Borrower Secured Notes Documents, the Pre-Petition FILO Onloan Loan Documents and the Pre-Petition UnSub NPC Onloan Loan Documents.

“Spot Rate” means the exchange rate, as reasonably determined by the Administrative Agent, that is applicable to conversion of one currency into another currency, which is (a) the exchange rate reported by Bloomberg (or other commercially available source reasonably designated by the Administrative Agent) as of the end of the preceding Business Day in the financial market for the first currency; or (b) if such report is unavailable for any reason, the spot rate for the purchase of the first currency with the second currency as in effect during the preceding Business Day in the Administrative Agent’s principal foreign exchange trading office for the first currency.

“Standby Letter of Credit” has the meaning assigned to such term in Section 2.05(1).

“Sterling” and **“£”** mean the lawful currency of the United Kingdom.

“Store Closing Consultant” shall mean a consultant engaged on terms and conditions satisfactory to the Administrative Agent in its Reasonable Credit Judgment to assist the Loan Parties with respect to the Specified Closures and any similar store closings permitted hereunder or in the Orders, it being understood that Great American Group, LLC is an acceptable Store Closing Consultant.

“Subagent” has the meaning assigned to such term in Section 9.02.

“Subsidiary” means, with respect to any Person, any corporation, partnership, limited liability company or other entity of which (1) Equity Interests having ordinary voting power (other than Equity Interests having such power only by reason of the happening of a contingency) to elect a majority of the Board of Directors of such corporation, partnership, limited liability company or other entity are at the time owned by such Person; or (2) more than 50.0% of the Equity Interests are at the time owned by such Person. Unless otherwise indicated in this Agreement, all references to Subsidiaries will mean Subsidiaries of the Borrower. For the avoidance of doubt, as of the Effective Date, TNMG LLC is a Subsidiary of the Borrower for all purposes hereunder.

“Subsidiary Loan Parties” means: (1) each Wholly Owned Domestic Subsidiary of the Borrower on the Effective Date (other than any Excluded Subsidiary) as set forth on Schedule 1.01(5); and (2) each

Wholly Owned Domestic Subsidiary (other than any Excluded Subsidiary) of the Borrower that becomes, or is required to become, a party to the Collateral Agreement after the Effective Date. For the avoidance of doubt, “Subsidiary Loan Parties” includes all Co-Borrowers.

“**Successor Cases**” means, with respect to the Chapter 11 Cases, any subsequent proceedings under Chapter 7 of the Bankruptcy Code.

“**Supermajority Lenders**” has the meaning assigned to such term in clause (v) of the proviso to Section 10.08(2).

“**Superpriority Claims**” means all of the allowed superpriority administrative expense claims of the Administrative Agent and the other Secured Parties on account of the Obligations, which claims shall be entitled to the benefits of section 364(c)(1) and 364(e) of the Bankruptcy Code, having priority over any and all administrative expenses of the kind that are specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 364(c)(1), 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 1113, 1114 or any other provisions of the Bankruptcy Code and any other claims against the Loan Parties. Superpriority Claims shall, at all times be (x) junior only to the Carve-Out, (y) subject to the Order, senior to any and all other administrative expense claims or other claims against the Loan Parties or their estates, in the Chapter 11 Cases and any Successor Cases, and (z) subject to the Intercreditor Agreement.

“**Supported QFC**” has the meaning assigned to such term in Section 10.24(1).

“**Swingline Borrowing**” means a Borrowing comprised of Swingline Loans.

“**Swingline Borrowing Request**” means a request by the Borrower substantially in the form of Exhibit D-2.

“**Swingline Commitment**” means, with respect to any Swingline Lender, the commitment of such Swingline Lender to make Swingline Loans pursuant to Section 2.04. The aggregate amount of the Swingline Commitments on the Effective Date is \$150.0 million.

“**Swingline Exposure**” means, at any time, the aggregate principal amount of all outstanding Swingline Borrowings at such time. The Swingline Exposure of any Revolving Lender at any time will mean its Revolving Facility Percentage of the aggregate Swingline Exposure at such time.

“**Swingline Lender**” means Bank of America, in its capacity as a lender of Swingline Loans to the Borrower Parties.

“**Swingline Loans**” means the swingline loans made to the Borrower or any Co-Borrower pursuant to Section 2.04.

“**Taxes**” means any and all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or similar charges imposed by any Governmental Authority and any and all interest and penalties related thereto.

“**Term Loan Priority Collateral**” means “Term Loan Priority Collateral” as defined in the Intercreditor Agreement.

“**Term SOFR**” means:

(a) for any Interest Period with respect to a Term SOFR Loan, the rate per annum equal to the Term SOFR Screen Rate two U.S. Government Securities Business Days prior to the commencement of such Interest Period with a term equivalent to such Interest Period; *provided* that if the rate is not published prior to 11:00 a.m. on such determination date then Term SOFR means the Term SOFR Screen Rate on the first U.S. Government Securities Business Day immediately prior thereto, in each case, plus the SOFR Adjustment for such Interest Period; and

(b) for any interest calculation with respect to an ABR Loan on any date, the rate per annum equal to the Term SOFR Screen Rate two U.S. Government Securities Business Days prior to such date with a term of one month commencing that day; *provided* that if the rate is not published prior to 11:00 a.m. on such determination date then Term SOFR means the Term SOFR Screen Rate on the first U.S. Government Securities Business Day immediately prior thereto, in each case, plus the SOFR Adjustment for such term;

provided, that if Term SOFR determined in accordance with either of the foregoing provisions (a) or (b) of this definition would otherwise be less than 0.00%, Term SOFR shall be deemed 0.00% for purposes of this Agreement.

“Term SOFR Borrowing” means a Borrowing comprised of Term SOFR Revolving Loans.

“Term SOFR Loan” means a Loan that bears interest at a rate based on clause (a) of the definition of Term SOFR.

“Term SOFR Replacement Rate” has the meaning assigned to such term in Section 2.14(2).

“Term SOFR Revolving Loan” means any Revolving Loan bearing interest at a rate determined by reference to Term SOFR.

“Term SOFR Screen Rate” means the forward-looking SOFR term rate administered by CME (or any successor administrator satisfactory to the Administrative Agent) and published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time).

“Term SOFR Successor Rate” has the meaning assigned to such term in Section 2.14(2).

“Title Company” has the meaning assigned to such term in Section 5.10(1)(b).

“Title Policy” has the meaning assigned to such term in Section 5.10(1)(b).

“TopCo Guarantee Agreement” means a guarantee agreement, between one or more TopCo Guarantors, as guarantors, and the Administrative Agent, in form and substance reasonably acceptable to the Required Lenders, as amended, supplemented, restated and/or otherwise modified from time to time; *provided* that such TopCo Guarantee Agreement shall provide, with respect to any TopCo Guarantor party thereto, that the aggregate amount of Obligations guaranteed by such TopCo Guarantor and secured, pursuant to the Orders, by a Lien on the assets of such TopCo Guarantor shall be capped at the aggregate amount of Approved TopCo Transfers made to such TopCo Guarantor.

“TopCo Guarantor” means (a) any direct or indirect parent of Holdings that the Borrower may elect, in its sole discretion, from time to time, upon written notice to the Administrative Agent, to cause to Guarantee the Obligations and that execute a TopCo Guarantee Agreement and (b) any Parent Entity (other than Holdings) who receives an Approved TopCo Transfer.

“Total Revolving Credit Exposure” means, as of the date of any determination, the sum of Pre-Petition Revolving Loans *plus* Revolving Credit Exposure.

“TNMG LLC” means The Neiman Marcus Group LLC, a Delaware limited liability company and a Wholly Owned Subsidiary of the Borrower.

“Trade Announcement” has the meaning assigned to such term in Section 10.16.

“Trade Letter of Credit” has the meaning assigned to such term in Section 2.05(1).

“Trade Receivables” has the meaning assigned to such term in the definition of “Eligible Trade Receivables.”

“Treasury Regulations” means the regulations promulgated under the Code, as such regulations may be amended from time to time.

“Type” means the type of Loan determined with regard to the interest option applicable thereto, i.e., whether an ABR Loan or Term SOFR Loan.

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any Person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain Affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“Uniform Commercial Code” or **“UCC”** means the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

“Unrestricted Subsidiary” means:

(1) as of the Effective Date, (a) SGUS LLC, (b) each of HBS Global Properties LLC, Saks Fifth Avenue HoldCo LLC, HBC Convene F&F Holdings LLC, Saks Global Investments Inc., each SO5 Loan Party and (c) each other Subsidiary of the Borrower identified on Schedule 1.01(2); and

(2) any Subsidiary of an Unrestricted Subsidiary.

“Updated Borrowing Base Condition” has the meaning assigned to such term in Section 5.04(13).

“Updated Budget” has the meaning specified in Section 5.04(9).

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

“U.S. Government Securities Business Day” means any Business Day, except any Business Day on which any of the Securities Industry and Financial Markets Association, the New York Stock Exchange

or the Federal Reserve Bank of New York is not open for business because such day is a legal holiday under the federal laws of the United States or the laws of the State of New York, as applicable.

“U.S. Special Resolution Regimes” has the meaning assigned to such term in Section 10.24.

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

“Variance Report” shall mean a “Budget Variance Report” (under and as defined in the DIP Term Loan Agreement as in effect on the Effective Date) in substantially the form of Exhibit I attached hereto.

“Voting Stock” means, as of any date, the Capital Stock of any Person that is at the time entitled to vote (without regard to the occurrence of any contingency) in the election of the Board of Directors of such Person.

“Weighted Average Life to Maturity” means, when applied to any Indebtedness as of any date, the number of years obtained by dividing (1) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payment of principal (excluding nominal amortization), including payment at final maturity, in respect thereof by (b) the number of years (calculated to the nearest 1/12) that will elapse between such date and the making of such payment; by (2) the then outstanding principal amount of such Indebtedness.

“Wholly Owned Domestic Subsidiary” means, with respect to any Person, a Domestic Subsidiary of such Person that is a Wholly Owned Subsidiary. Unless otherwise indicated in this Agreement, all references to Wholly Owned Domestic Subsidiaries will mean Wholly Owned Domestic Subsidiaries of the Borrower.

“Wholly Owned Subsidiary” means, with respect to any Person, a Subsidiary of such Person, all of the Equity Interests of which (other than directors’ qualifying shares or other similar shares required pursuant to applicable law) are owned by such Person or another Wholly Owned Subsidiary of such Person. Unless otherwise indicated in this Agreement, all references to Wholly Owned Subsidiaries will mean Wholly Owned Subsidiaries of the Borrower.

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

“Write-Down and Conversion Powers” means (a) 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, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, transfer or dilute shares issued by a UK Financial Institution, to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that Person or any other Person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

SECTION 1.02 Terms Generally. The definitions set forth or referred to in Section 1.01 will apply equally to both the singular and plural forms of the terms defined. Whenever the context may require,

any pronoun will include the corresponding masculine, feminine and neuter forms. Unless the context requires otherwise:

- (1) the words “include,” “includes” and “including” will be deemed to be followed by the phrase “without limitation;”
- (2) in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding” and the word “through” means “to and including;”
- (3) the word “will” will be construed to have the same meaning and effect as the word “shall;”
- (4) the word “incur” will be construed to mean incur, create, issue, assume, become liable in respect of or suffer to exist (and the words “incurred” and “incurrence” will have correlative meanings);
- (5) the word “or” will be construed to mean “and/or;”
- (6) 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;
- (7) any reference to any Person will be construed to include such Person’s legal successors and permitted assigns; and
- (8) the words “asset” and “property” will be construed to have the same meaning and effect.

All references herein to Articles, Sections, Exhibits and Schedules will be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Agreement unless the context otherwise requires. Except as otherwise expressly provided herein, any reference in this Agreement to any Loan Document or organizational document of the Loan Parties means such document as amended, restated, supplemented or otherwise modified from time to time (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document). Any reference to any law will include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation means unless otherwise specified, such law or regulation as amended, modified or supplemented from time to time. Whenever this Agreement refers to the “knowledge” of the Borrower Parties or any Loan Party, such reference will be construed to mean the knowledge of the chief executive officer, president, chief financial officer, treasurer or controller of such Person.

SECTION 1.03 Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature will be construed in accordance with GAAP, as in effect from time to time; *provided* that, notwithstanding anything to the contrary herein, all accounting or financial terms used herein will be construed, and all financial computations pursuant hereto will be made, without giving effect to any election under Statement of Financial Accounting Standards Board Accounting Standards Codification 825-10 (or any other Statement of Financial Accounting Standards Board Accounting Standards Codification having a similar effect) to value any Indebtedness or other liabilities of the Borrower or any Subsidiary at “fair value,” as defined therein. In the event that any Accounting Change (as defined below) occurs and such change results in a change in the method of calculation of financial covenants, standards or terms in this Agreement, then upon the written request of the Borrower or the Administrative Agent, the Borrower and the Administrative Agent will enter into good faith negotiations in order to amend such provisions of this Agreement so as to equitably reflect such Accounting Change

with the desired result that the criteria for evaluating the Borrower's financial condition will be the same after such Accounting Change as if such Accounting Change had not occurred; *provided* that provisions of this Agreement as in effect on the date of such Accounting Change will remain in effect until the effective date of such amendment. "***Accounting Change***" means (1) any change in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or (2) any change in the application of GAAP by the Borrower.

SECTION 1.04 [Reserved].

SECTION 1.05 Currencies. Unless otherwise specifically set forth in this Agreement, monetary amounts are in U.S. Dollars. Notwithstanding anything to the contrary herein, no Default or Event of Default will arise as a result of any limitation or threshold set forth in U.S. Dollars being exceeded solely as a result of changes in currency exchange rates.

SECTION 1.06 [Reserved].

SECTION 1.07 Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its equity interests at such time.

SECTION 1.08 [Reserved].

SECTION 1.09 Exchange Rates; Currency Equivalent. All references in the Loan Documents to Loans, Letters of Credit, Obligations, Borrowing Base components and other amounts shall be denominated in U.S. Dollars, unless expressly provided otherwise. The Equivalent Amount of any amounts denominated or reported under a Loan Document in a currency other than U.S. Dollars shall be determined by the Administrative Agent and shall become effective as of such Revaluation Date and shall be the Equivalent Amount of such amounts until the next Revaluation Date to occur. The Borrower shall report value and other Borrowing Base components to the Administrative Agent in the currency invoiced by the Borrower or shown in the Borrower's financial records, and unless expressly provided otherwise, shall deliver financial statements and calculate financial covenants in U.S. Dollars. Notwithstanding anything herein to the contrary, if any Obligation is funded and expressly denominated in a currency other than U.S. Dollars, the Borrowers shall repay such Obligation in such other currency.

Notwithstanding anything to the contrary in this Agreement, (i) any representation or warranty that would be untrue or inaccurate, (ii) any undertaking that would be breached, (iii) any basket that is exceeded or (iv) any event that would constitute a Default or an Event of Default, in each case, solely as a result of fluctuations in applicable currency exchange rates, shall not be deemed to be untrue, inaccurate, breached or so constituted, as applicable, solely as a result of such fluctuations in currency exchange rates.

The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to any reference rate referred to herein or with respect to any rate (including, for the avoidance of doubt, the selection of such rate and any related spread or other adjustment) that is an alternative or replacement for or successor to any such rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing) or the effect of any of the foregoing, or of any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions or other activities that affect any

reference rate referred to herein, or any alternative, successor or replacement rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing) or any related spread or other adjustments thereto, in each case, in a manner adverse to any Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any reference rate referred to herein or any alternative, successor or replacement rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing), in each case pursuant to the terms of this Agreement, and shall have no liability to any Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or other action or omission related to or affecting the selection, determination, or calculation of any rate (or component thereof) provided by any such information source or service.

SECTION 1.10 [Reserved].

ARTICLE II

The Credits

SECTION 2.01 Commitments. Subject to the terms and conditions set forth herein:

(1) Revolving Loans. Each Revolving Lender agrees to make loans (“***Revolving Loans***”) to the Borrower Parties in U.S. Dollars from time to time during the Availability Period in amounts not to exceed (except for the Swingline Lender with respect to Swingline Loans) such Lender’s Revolving Facility Percentage of the Borrowing Base, and in an aggregate principal amount that will not result in (i) such Lender’s Total Revolving Credit Exposure exceeding such Lender’s Revolving Commitment or (ii) the Total Revolving Credit Exposure exceeding the Line Cap; *provided*, that, for the avoidance of doubt, the foregoing clause (ii) shall not apply to Protective Advances.

(2) Certain Funding Mechanics. Without limiting the foregoing provisions of Section 2.01(1) above, all Revolving Loans made from and following the Effective Date and until and excluding the date on which \$1,000,000,000 of DIP Term Loans have been disbursed from the DIP Term Loan Funding Account shall be made to the Borrower Parties in accordance with the following Funding Mechanics. For the avoidance of doubt, from and following the date on which \$1,000,000,000 of DIP Term Loans has been disbursed from the DIP Term Loan Funding Account, all Revolving Loans shall be made subject to Section 2.01(1) and the terms of this Section 2.01(2) shall not apply to such Revolving Loans.

(a) Upon application of amounts received in the Dominion Account by the Administrative Agent to the Obligations pursuant to Sections 2.11(4) and 5.11(3)(b) hereof, such amounts (the “***Cash Receipts Released Amounts***”) shall be available to be reborrowed as Revolving Loans by the Borrower Parties in accordance with the provisions of this Agreement, including the limitations set forth in Section 2.01(1) above and the conditions precedent set forth in Section 4.01.

(b) Following the DIP Term Loan Tranche 1 Funding Date and the disbursement of the first \$15,000,000 by the DIP Term Loan Lenders to the Borrower Parties from the DIP Term Loan Funding Account, but prior to the DIP Term Loan Tranche 2 Funding Date, the Revolving Lenders shall, subject to the limitations set forth in Section 2.01(1) above and the conditions precedent set forth in Section 4.01, make Revolving Loans to the Borrower Parties in excess of the Cash Receipts Released Amounts concurrently with a request by the Borrower Parties for DIP Term

Loans from the DIP Term Loan Funding Account, in an amount not to exceed the ABL Pro Rata Share of the aggregate amount of DIP Term Loans and Revolving Loans so requested with respect to such borrowing; provided, that to the extent the amount of Revolving Loans set forth in a Borrowing Request would result in the Total Revolving Credit Exposure exceeding the Line Cap, the amount of the Revolving Loans made available in the subsequent two-week period shall be increased by an amount equal to the portion of the Revolving Loans not funded under the Borrowing Request, subject in all cases to the limitations set forth in Section 2.01. The proceeds of such Revolving Loans shall be placed in the DIP ABL Excess Funding Account for use by the Borrower Parties in accordance with the terms hereof.

(c) From and after the DIP Term Loan Tranche 2 Funding Date, on a bi-weekly basis contemporaneously with any release of DIP Term Loans from the DIP Term Loan Escrow Account, the Revolving Lenders shall, subject to the limitations set forth in Section 2.01(1) above and the conditions precedent set forth in Section 4.01, make Revolving Loans in an amount equal to twenty-five (25%) percent of the amount of DIP Term Loans released from the DIP Term Loan Escrow Account by the DIP Term Loan Lenders to the DIP Term Loan Funding Account. The proceeds of such Revolving Loans shall be placed in the DIP ABL Excess Funding Account. Any Revolving Loans requested by the Borrower Parties in excess of the Cash Receipts Released Amounts shall be made concurrently with a request by the Borrower Parties for DIP Term Loans from the DIP Term Loan Funding Account, and shall not exceed the ABL Pro Rata Share of the aggregate amount of DIP Term Loans and Revolving Loans so requested; provided, that to the extent the amount of Revolving Loans set forth in a Borrowing Request would result in the Total Revolving Credit Exposure exceeding the Line Cap, the amount of the Revolving Loans made available in the subsequent two-week period shall be increased by an amount equal to the portion of the Revolving Loans not funded under the Borrowing Request, subject in all cases to the limitations set forth in Section 2.01. All such Revolving Loans made in excess of the Cash Receipts Released Amounts shall be made from the proceeds of Revolving Loans contained in the DIP ABL Excess Funding Account, and shall be subject to and made in accordance with the provisions of this Agreement, including the limitations set forth in Section 2.01(1) above and the conditions precedent set forth in Section 4.01.

(d) Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower Parties may borrow, prepay and reborrow Revolving Loans.

(3) Protective Advances. The Administrative Agent, in its sole, reasonable discretion, may make Revolving Loans to the Borrower Parties on behalf of the Revolving Lenders, so long as the aggregate amount of such Revolving Loans will not exceed 5.0% of the Borrowing Base, if the Administrative Agent, in its Reasonable Credit Judgment, deems that such Revolving Loans are necessary or desirable to:

- (a) protect all or any portion of the Collateral;
- (b) enhance the likelihood or maximize the amount of repayment of the Loans and the other Obligations; or
- (c) pay any other amount chargeable to the Borrower Parties pursuant to this Agreement (such Revolving Loans, “*Protective Advances*”);

provided that, unless a Liquidation is occurring, no Protective Advance shall remain outstanding for more than ninety (90) consecutive Business Days after the date of incurrence, unless the Required Lenders otherwise consent; *provided further* that (i) after giving effect to the making of any Protective Advance, in no event will the Total Revolving Credit Exposure exceed the aggregate

Revolving Commitments, and (ii) the Required Lenders under the Revolving Facility may at any time revoke the Administrative Agent's authorization to make future Protective Advances; *provided, further*, that any such revocation must be in writing and will become effective prospectively upon the Administrative Agent's receipt thereof and existing Protective Advances will not be subject thereto.

Each applicable Revolving Lender will be obligated to advance to the Borrower Parties its Revolving Facility Percentage of each Protective Advance made in accordance with this Section 2.01(3); *provided* that, in no event shall any Revolving Lender be obligated to fund any Protective Advance if the same shall cause such Revolving Lender's share of the Total Revolving Credit Exposure to exceed such Lender's Revolving Commitment. If Protective Advances are made in accordance with the preceding sentence, then all Revolving Lenders will be bound to make, or permit to remain outstanding, such Protective Advances based upon their Revolving Facility Percentages in accordance with the terms of this Agreement. All Protective Advances will be repaid by the Borrower Parties on demand, will be secured by the Collateral and will bear interest as provided in this Agreement for Revolving Loans generally.

SECTION 2.02 Revolving Loans and Borrowings.

(1) Each Revolving Loan will be made as part of a Borrowing consisting of Revolving Loans of the same Type made by the Revolving Lenders ratably in accordance with their respective Commitments (or, in the case of Swingline Loans, in accordance with their respective Swingline Commitments). The failure of any Lender to make any Loan required to be made by it will not relieve any other Lender of its obligations hereunder; *provided* that the Commitments of the Lenders are several and no Lender will be responsible for any other Lender's failure to make Loans as required.

(2) Subject to Section 2.14, each Borrowing (other than a Swingline Borrowing) will be comprised entirely of ABR Loans or Term SOFR Loans, as the Borrower may request in accordance herewith. Each Swingline Borrowing will be an ABR Borrowing. Each Revolving Lender at its option may make any ABR Loan or Term SOFR Loan, by causing any domestic or foreign branch or Affiliate of such Revolving Lender to make such Revolving Loan; *provided* that any exercise of such option will not affect the obligation of the Borrower Parties to repay such Revolving Loan in accordance with the terms of this Agreement.

(3) [Reserved].

(4) Notwithstanding any other provision of this Agreement, no Borrower Party will be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the applicable Maturity Date.

(5) Notwithstanding anything to the contrary contained herein or in any other Loan Document, (i) the outstanding amount of all Pre-Petition Obligations, other than Pre-Petition Revolving Loans as of the Effective Date, shall be refinanced on a cashless basis as Obligations hereunder, and (ii) upon the entry of the Final Order, the total outstanding amount of the Pre-Petition Obligations shall constitute Obligations hereunder, with the outstanding amount of all Pre-Petition Revolving Loans, if any, as of the date of the entry of the Final Order being refinanced as Revolving Loans hereunder immediately upon the entry of the Final Order and all unpaid interest and fees thereon accrued through the entry of the Final Order to be paid on the next scheduled date for payment of interest and fees under this Agreement. The Pre-Petition Revolving Loans shall be subject to a dollar for dollar "creeping roll-up" pursuant to Section 5.11(3)(b), as more fully set forth in the Order. For the avoidance of doubt, the only Pre-Petition Obligations which shall be subject to the creeping roll-up shall be the Pre-Petition Revolving Loans.

SECTION 2.03 Requests for Borrowings.

(1) To request a Borrowing, (a) with respect to any initial ABR Borrowing on the Effective Date, the Borrower will deliver via email to the Administrative Agent a Borrowing Request not later than 1:00 p.m., New York City time, one Business Day before the anticipated Effective Date, requesting that the applicable Lenders make the Loans on the Effective Date; *provided* that such Borrowing Request may be conditioned upon occurrence of the Effective Date, (b) with respect to any initial Term SOFR Borrowing on the Effective Date, the Borrower will deliver via email to the Administrative Agent a Borrowing Request not later than 1:00 p.m., New York City time, one Business Day before the anticipated Effective Date, requesting that the applicable Lenders make the Loans on the Effective Date; *provided* that such Borrowing Request may be conditioned upon occurrence of the Effective Date, and (c) with respect to any other Borrowing, the Borrower will notify the Administrative Agent of such request by telephone or by e-mail to the Administrative Agent of a written Borrowing Request (i)(x) in the case of a Borrowing of Term SOFR Loans having an Interest Period in one or three months in duration, (y) in the case of a Term SOFR Borrowing having an Interest Period other than in one or three months in duration, not later than 11:00 a.m., New York City time, four Business Days before the date of proposed Borrowing, where upon the Administrative Agent shall give prompt notice to the applicable Lenders of such request and determine whether the requested Interest Period is acceptable to all of them, and the Administrative Agent shall notify the Borrower (which notice may be by telephone) not later than 11:00 a.m., New York City time, three Business Days before the date of proposed Borrowing whether or not the requested Interest Period has been consented to by all the Lenders and the Administrative Agent, and (iii) in the case of an ABR Borrowing, not later than 11:00 a.m., New York City time, on the date of the proposed Borrowing; *provided* that any such notice of an ABR Borrowing to finance the reimbursement of an L/C Disbursement as contemplated by Section 2.05(5) may be given not later than 1:00 p.m., New York City time, on the date of the proposed Borrowing. Each such telephonic Borrowing Request will be irrevocable and will be confirmed promptly by e-mail to the Administrative Agent of a written Borrowing Request.

(2) Each such telephonic and written Borrowing Request will specify the following information in compliance with Section 2.02:

- (a) the name of the Borrower Party requesting such Borrowing;
- (b) the aggregate amount of the requested Borrowing, which amount will not exceed, in the case of a Revolving Borrowing, Excess Availability;
- (c) the date of such Borrowing, which will be a Business Day;
- (d) the currency of the Borrowing;
- (e) whether such Borrowing is to be a Borrowing of ABR Loans or Term SOFR Loans;
- (f) in the case of a Borrowing of Term SOFR Loans, the initial Interest Period to be applicable thereto, and
- (g) the location and number of the applicable Borrower Party's account to which funds are to be disbursed.

(3) Disbursement. Each Borrower Party hereby irrevocably authorizes the Administrative Agent to disburse the proceeds of each Loan requested pursuant to this Section 2.03. Subject to the funding mechanics set forth in Section 2.01(2) above, the proceeds of each Loan requested under this Section 2.03

will be disbursed by the Administrative Agent in immediately available funds and in the same form as received from the Lenders, in the case of each Borrowing after the Effective Date, by wire transfer to such bank account as may be agreed upon by the Borrower and the Administrative Agent, from time to time or elsewhere if pursuant to a written direction from the Borrower. If at any time any Loan is funded in excess of the amount requested by the Borrower, the Borrower Parties agree, jointly and severally, to repay the excess to the Administrative Agent immediately upon notice thereof to the Borrower from the Administrative Agent or any Lender.

(4) If no election as to the Type of Borrowing is specified, then the requested Borrowing will be a Borrowing of ABR Loans. If no Interest Period is specified with respect to any requested Borrowing of Term SOFR Loans, then the Borrower will be deemed to have selected an Interest Period of one month's duration. If no currency is specified, then the requested Borrowing shall be made in U.S. Dollars. Promptly following receipt of a Borrowing Request in accordance with this Section 2.03, the Administrative Agent will advise the applicable Lenders of the details thereof and of the amount of each such Lender's Loan to be made as part of the requested Borrowing.

SECTION 2.04 Swingline Loans.

(1) Subject to the terms and conditions set forth herein, the Swingline Lender agrees to make Swingline Loans in U.S. Dollars to the Borrower Parties from time to time during the Availability Period in an aggregate principal amount at any time outstanding that will not result in (a) the aggregate principal amount of outstanding Swingline Loans exceeding the Swingline Commitment; (b) the Total Revolving Credit Exposure exceeding the total Revolving Commitments; or (c) the Total Revolving Credit Exposure exceeding the Borrowing Base; *provided*, that the Swingline Lender will not be required to make a Swingline Loan to refinance an outstanding Swingline Borrowing. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower Parties may borrow, prepay and reborrow Swingline Loans.

(2) To request a Swingline Borrowing, the Borrower will notify the Administrative Agent and the Swingline Lender of such request by telephone (confirmed by a Swingline Borrowing Request by email or facsimile), not later than 2:00 p.m., New York City time, on the day of a proposed Swingline Borrowing. Each such notice and Swingline Borrowing Request will be irrevocable and will specify the requested (a) date (which will be a Business Day) and (b) amount of the Swingline Borrowing. The Swingline Lender will consult with the Administrative Agent as to whether the making of the Swingline Loan is in accordance with the terms of this Agreement prior to the Swingline Lender funding such Swingline Loan. The Swingline Lender will make each Swingline Loan in accordance with Section 2.02(2) and subject to the funding mechanics set forth in Section 2.01(2) on the proposed date thereof by wire transfer of immediately available funds by 5:00 p.m., New York City time, to the account of the Borrower Parties (or, in the case of a Swingline Borrowing made to finance the reimbursement of an L/C Disbursement as provided in Section 2.05(5), by remittance to the applicable Issuing Bank); *provided* that the Swingline Lender will not be obligated to make any Swingline Loan at any time when any Revolving Lender is at such time a Defaulting Lender, unless the Swingline Lender (i) is satisfied in its reasonable discretion that the related exposure will be 100% covered by the Revolving Commitments of the non-Defaulting Lenders pursuant to clause (3) below or (ii) has otherwise entered into satisfactory arrangements with the Borrower Parties or such Lender to eliminate the Swingline Lender's risk with respect to such Lender.

(3) (a) The Swingline Lender may by written notice given to the Administrative Agent not later than 10:00 a.m., New York City time, on any Business Day require the Revolving Lenders to acquire participations on such Business Day in all or a portion of the outstanding Swingline Loans made by it. Such notice will specify the aggregate amount of such Swingline Loans in which the Revolving Lenders will participate. Promptly upon receipt of such notice, the Administrative Agent will give notice

thereof to each such Lender, specifying in such notice such Revolving Lender's Revolving Facility Percentage of such Swingline Loan or Loans. Each Revolving Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent for the account of the Swingline Lender, such Revolving Lender's Revolving Facility Percentage of such Swingline Loan or Loans. Each Revolving Lender acknowledges and agrees that its respective obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and will not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or an Event of Default or reduction or termination of the Commitments, and that each such payment will be made without any offset, abatement, withholding or reduction whatsoever. Each Revolving Lender will comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.06 with respect to Loans made by such Revolving Lender (and Section 2.06 will apply, mutatis mutandis, to the payment obligations of the Lenders), and the Administrative Agent will promptly pay to the Swingline Lender the amounts so received by it from the Revolving Lenders.

(b) The Administrative Agent will notify the Borrower of any participations in any Swingline Loan acquired pursuant to paragraph (3)(a), and thereafter payments in respect of such Swingline Loan will be made to the Administrative Agent and not to the Swingline Lender. Any amounts received by the Swingline Lender from any Borrower Party (or other party on behalf of any Borrower Party) in respect of a Swingline Loan after receipt by the Swingline Lender of the proceeds of a sale of participations therein will be promptly remitted to the Administrative Agent and any such amounts received by the Administrative Agent will be promptly remitted by the Administrative Agent to the Revolving Lenders that made their payments pursuant to this paragraph and to the Swingline Lender, as their interests may appear; *provided* that any such payment so remitted will be repaid to the Swingline Lender or to the Administrative Agent, as applicable, if and to the extent such payment is required to be refunded to any Borrower Party for any reason. The purchase of participations in a Swingline Loan pursuant to paragraph (3)(a) will not relieve any Borrower Party of any default in the payment thereof.

SECTION 2.05 Letters of Credit.

(1) General. Subject to the terms and conditions set forth herein, the Borrower, on behalf of itself, may request the issuance of (a) trade letters of credit in support of trade obligations of the Borrower or any Restricted Subsidiary incurred in the ordinary course of business (such letters of credit issued for such purposes, "**Trade Letters of Credit**") and (b) standby letters of credit issued for any other lawful purposes of the Borrower or any Restricted Subsidiary (such letters of credit issued for such purposes, "**Standby Letters of Credit**"), in each case for its own account or for the account of any Restricted Subsidiary in a form reasonably acceptable to the applicable Issuing Bank, at any time and from time to time during the Availability Period and prior to the date that is five Business Days prior to the Maturity Date. Each request for the issuance of a Letter of Credit pursuant to this Section 2.05(1) will be irrevocable. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, an Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement will control. "**Letters of Credit**" will include Trade Letters of Credit and Standby Letters of Credit and the Pre-Petition Letters of Credit. Each Pre-Petition Letter of Credit will be deemed to have been issued under this Section 2.05(1) on the Effective Date. Each Letter of Credit may be issued in U.S. Dollars. Notwithstanding anything to the contrary contained herein or in any other Loan Document, all Pre-Petition L/C Obligations on the Effective Date shall be refinanced and constitute Obligations hereunder on the Effective Date (including all Pre-Petition Letters of Credit being deemed issued under this Agreement on the Effective Date). It is hereby acknowledged and agreed that each of the Pre-Petition Letters of Credit shall constitute a "Letter of Credit" for all purposes of this Agreement and shall be deemed

issued under this Agreement on the Effective Date and all Pre-Petition L/C Obligations shall constitute “Obligations” for all purposes of this Agreement.

(2) Notice of Issuance, Amendment, Renewal, Extension.

(a) To request the issuance of a Letter of Credit (or the amendment, renewal (other than an automatic extension in accordance with paragraph (3) of this Section 2.05) or extension of an outstanding Letter of Credit), the Borrower will deliver by hand or facsimile (or transmit by e-mail, if arrangements for doing so have been approved by the applicable Issuing Bank) to the applicable Issuing Bank and the Administrative Agent, with respect to a request for the issuance of, or amendment to, a Letter of Credit, three (3) Business Days in advance of the requested date of issuance or amendment (or such shorter period as the Administrative Agent and the Issuing Bank in their sole discretion may agree), and, with respect to a request for an extension of a Letter of Credit, five (5) Business Days in advance of the requested date of the extension (or such shorter period as the Administrative Agent and the Issuing Bank in their sole discretion may agree), a Letter of Credit Request requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended or extended, and specifying the date of issuance, amendment or extension (which will be a Business Day), the date on which such Letter of Credit is to expire (which will comply with paragraph (3) of this Section 2.05), the amount of such Letter of Credit, the name and address of the beneficiary thereof, whether such Letter of Credit constitutes a Standby Letter of Credit or a Trade Letter of Credit, and such other information as is necessary to issue, amend or extend such Letter of Credit. If requested by the applicable Issuing Bank, the Borrower will also submit a letter of credit application on such Issuing Bank’s standard form in connection with any request for a Letter of Credit. A Letter of Credit will be issued, amended or extended only if (and upon issuance, amendment or extension of each Letter of Credit the Borrower Parties will be deemed to represent and warrant that), after giving effect to such issuance, amendment or extension:

(i) the Revolving L/C Exposure will not exceed the Letter of Credit Sublimit;
and

(ii) the Total Revolving Credit Exposure will not exceed the Line Cap.

(b) Notwithstanding anything to the contrary contained herein, the Issuing Bank will not issue (or be obligated to issue) any Letter of Credit if:

(i) any order, judgment or decree of any Governmental Authority or arbitrator by its terms purports to enjoin or restrain the Issuing Bank from issuing such Letter of Credit;

(ii) any applicable law or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Bank prohibits the issuance of letters of credit generally;

(iii) such Letter of Credit imposes upon the Issuing Bank any restriction, reserve or capital requirement (for which the Issuing Bank is not otherwise compensated hereunder) not in effect on the Effective Date;

(iv) such Letter of Credit imposes upon the Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Effective Date and which the Issuing Bank in good faith deems material to it;

(v) any Revolving Lender is at such time a Defaulting Lender, unless the Issuing Bank (A) is satisfied in its reasonable discretion that the related exposure will be 100% covered by the Revolving Commitments of the non-Defaulting Lenders pursuant to Section 2.26(1) or (B) has otherwise entered into satisfactory arrangements with the Borrower Parties or such Revolving Lender to eliminate the Issuing Bank's risk with respect to such Lender; or

(vi) the issuance of such Letter of Credit would cause the aggregate face amount of all Letters of Credit issued and outstanding by the Issuing Bank to exceed such Issuing Bank's Letter of Credit Commitment.

(3) Expiration Date.

(a) Each Standby Letter of Credit will expire at or prior to the close of business on the earlier of (i) the date one year (unless otherwise agreed upon by the Administrative Agent and the Issuing Bank in their sole discretion) after the date of issuance of such Standby Letter of Credit (or, in the case of any extension thereof, one year (unless otherwise agreed upon by the Administrative Agent and the Issuing Bank in their sole discretion) after such renewal or extension) and (ii) the date that is five Business Days prior to the Maturity Date; *provided* that any Standby Letter of Credit with a one-year tenor may provide for the automatic extension thereof for additional one-year periods (which will in no event extend beyond the date referred to in the preceding clause (ii)) so long as such Standby Letter of Credit permits the Issuing Bank to prevent any such extension at least once in each 12-month period (commencing with the date of issuance of such Standby Letter of Credit) by giving prior notice to the beneficiary thereof within a time period during such 12-month period to be agreed upon at the time such Standby Letter of Credit is issued; *provided, further*, that if the Issuing Bank and the Administrative Agent each consent in their sole discretion, the expiration date of any Standby Letter of Credit may extend beyond the date referred to in clause (ii) above; and, *provided, further*, that (A) if any such Standby Letter of Credit is outstanding or is issued after the date that is 30 days prior to the Maturity Date, the Borrower Parties will provide cash collateral pursuant to documentation reasonably satisfactory to the Administrative Agent and the relevant Issuing Bank in an amount equal to 103% of the face amount of each such Standby Letter of Credit on or prior to the date that is 30 days prior to the Maturity Date or, if later, such date of issuance, and (B) each Revolving Lender's participation in any undrawn Letter of Credit that is outstanding on the Maturity Date will terminate on the Maturity Date.

(b) Each Trade Letter of Credit will expire on the earlier of (A) 180 days after such Trade Letter of Credit's date of issuance or (B) the date that is five Business Days prior to the Maturity Date.

(4) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the applicable Issuing Bank or the Revolving Lenders, such Issuing Bank hereby grants to each Revolving Lender, and each Revolving Lender hereby acquires from such Issuing Bank, a participation in such Letter of Credit equal to such Revolving Lender's Revolving Facility Percentage of the aggregate amount available to be drawn under such Letter of Credit. Each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent in U.S. Dollars, for the account of the Issuing Bank, its Revolving Facility Percentage of each L/C Disbursement made by such Issuing Bank (expressed in U.S. Dollars in the Equivalent Amount thereof) and not reimbursed by the Borrower Parties on the date due as provided in paragraph (5) of this Section 2.05, or of any reimbursement payment required to be refunded to the Borrower Parties for any reason. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and will not be

affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or Event of Default or reduction or termination of the Commitments, and that each such payment will be made without any offset, abatement, withholding or reduction whatsoever.

(5) Reimbursement.

(a) If the applicable Issuing Bank makes any L/C Disbursement in respect of a Letter of Credit, the Borrower Parties will reimburse such L/C Disbursement by paying to the Administrative Agent an amount equal to such L/C Disbursement not later than 2:00 p.m., New York City time, on the first Business Day after the Borrower receives notice under paragraph (8) of this Section 2.05 of such L/C Disbursement (or the second Business Day, if such notice is received after 12:00 noon, New York City time) in the currency in which such L/C Disbursement was made (or, if requested by such Issuing Bank, in the Equivalent Amount in U.S. Dollars of such L/C Disbursement), together with accrued interest thereon from the date of such L/C Disbursement at the rate applicable to ABR Loans; *provided* that the Borrower Parties may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 or 2.04 that such payment be financed with an ABR Revolving Borrowing or a Swingline Borrowing, as applicable, in the Equivalent Amount of such L/C Disbursement and, to the extent so financed, the Borrower Parties' obligations to make such payment will be discharged and replaced by the resulting ABR Revolving Borrowing or Swingline Borrowing. If such Letter of Credit is denominated in a currency other than U.S. Dollars, all reimbursements by the Borrower Parties of the honoring of any drawing under such Letter of Credit will be paid in the currency in which such Letter of Credit was denominated.

(b) If the Borrower Parties fail to reimburse any L/C Disbursement when due, then the Administrative Agent will promptly notify the applicable Issuing Bank and each other Revolving Lender of the Equivalent Amount of the applicable L/C Disbursement, the payment then due from the Borrower Parties in respect thereof and, in the case of a Revolving Lender, such Lender's Revolving Facility Percentage thereof. Promptly following receipt of such notice, each Revolving Lender will pay to the Administrative Agent its Revolving Facility Percentage of the payment then due from the Borrower Parties in the same manner as provided in Section 2.06 with respect to Loans made by such Lender (and Section 2.06 will apply, *mutatis mutandis*, to the payment obligations of the Revolving Lenders), and the Administrative Agent will promptly pay to the applicable Issuing Bank the amounts so received by it from the Revolving Lenders. Any payment made by a Revolving Lender pursuant to this paragraph (5) to reimburse an Issuing Bank for any L/C Disbursement (other than the funding of an ABR Revolving Loan or a Swingline Borrowing as contemplated above) will not constitute a Loan and will not relieve the Borrower Parties of their obligations to reimburse such L/C Disbursement.

(c) Promptly following receipt by the Administrative Agent of any payment from the Borrower Parties pursuant to paragraph (5)(a), the Administrative Agent will distribute such payment to the applicable Issuing Bank or, to the extent that Revolving Lenders have made payments pursuant to paragraph (5)(b) to reimburse such Issuing Bank, then to such Lenders and such Issuing Bank as their interests may appear.

(6) Obligations Absolute. The obligations of the Borrower Parties to reimburse L/C Disbursements as provided in paragraph (5) of this Section 2.05 will be absolute, unconditional and irrevocable, and will be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of:

(a) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein;

(b) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect;

(c) payment by the applicable Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit; or

(d) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.05, constitute a legal or equitable discharge of, or provide a right of setoff against, any Borrower Party's obligations hereunder.

(7) Limited Liability. None of the Administrative Agent, the Lenders, any Issuing Bank, or any of their Related Parties, will have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of such Issuing Bank, or any of the circumstances referred to in clauses (a), (b) or (c) of Section 2.05(6); *provided* that the foregoing will not be construed to excuse the applicable Issuing Bank from liability to the Borrower Parties to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower Parties to the extent permitted by applicable law) suffered by any Borrower Party that are determined by a final and binding decision of a court of competent jurisdiction to have been caused by such Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the applicable Issuing Bank, such Issuing Bank will be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the applicable Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(8) Disbursement Procedures. The applicable Issuing Bank will, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. Such Issuing Bank will promptly notify the Administrative Agent and the Borrower by telephone (confirmed by facsimile or e-mail) of any such demand for payment under a Letter of Credit and whether such Issuing Bank has made or will make an L/C Disbursement thereunder; *provided* that any failure to give or delay in giving such notice will not relieve the Borrower Parties of their obligations to reimburse such Issuing Bank and/or the Revolving Lenders with respect to any such L/C Disbursement.

(9) Interim Interest. If an Issuing Bank makes any L/C Disbursement, then, unless the Borrower Parties reimburse such L/C Disbursement in full on the date such L/C Disbursement is made, the unpaid amount thereof will bear interest, for each day from and including the date such L/C Disbursement is made to but excluding the date that the Borrower Parties reimburse such L/C Disbursement, at the rate per annum then applicable to ABR Revolving Loans; *provided* that, if such L/C Disbursement is not

reimbursed by the Borrower Parties when due pursuant to paragraph (5) of this Section 2.05, then Section 2.13(4) will apply. Interest accrued pursuant to this paragraph will be for the account of the applicable Issuing Bank, except that interest accrued on and after the date of payment by any Revolving Lender pursuant to paragraph (5) of this Section 2.05 to reimburse such Issuing Bank will be for the account of such Revolving Lender to the extent of such payment.

(10) Replacement of an Issuing Bank. An Issuing Bank may be replaced at any time by written agreement between the Borrower, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent will notify the Revolving Lenders of any such replacement of an Issuing Bank. At the time any such replacement becomes effective, the Borrower Parties will pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.12. From and after the effective date of any such replacement, (a) the successor Issuing Bank will have all the rights and obligations of the replaced Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (b) references herein to the term "Issuing Bank" will be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context will require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank will remain a party hereto and will continue to have all the rights and obligations of such Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement but will not be required to issue additional Letters of Credit.

(11) Cash Collateralization. If any Event of Default occurs and is continuing, (a) in the case of an Event of Default described in Section 8.01(8) or (9), on the Business Day, or (b) in the case of any other Event of Default, on the third Business Day, in each case, following the date on which the Borrower receives notice from the Administrative Agent demanding the deposit of cash collateral pursuant to this paragraph (11), the Borrower Parties will deposit in an account with or at the direction of the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Revolving Lenders, an amount in cash equal to the Revolving L/C Exposure as of such date *plus* any accrued and unpaid interest thereon; *provided* that upon the occurrence of any Event of Default with respect to the Borrower described in Section 8.01(8) or (9), the obligation to deposit such cash collateral will become effective immediately, and such deposit will become immediately due and payable, without demand or other notice of any kind. Each such deposit pursuant to this paragraph will be held by the Collateral Agent as collateral for the payment and performance of the obligations of the Borrower Parties under this Agreement. The Administrative Agent will have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments will be made at the option and sole discretion of (i) for so long as an Event of Default is continuing, the Administrative Agent and (ii) at any other time, the Borrower, in each case, in Cash Equivalents and at the risk and expense of the Borrower, such deposits will not bear interest. Interest or profits, if any, on such investments will accumulate in such account. Moneys in such account will be applied by the Administrative Agent to reimburse each Issuing Bank for L/C Disbursements for which such Issuing Bank has not been reimbursed and, to the extent not so applied, will be held for the satisfaction of the reimbursement obligations of the Borrower Parties for the Revolving L/C Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of the Required Lenders, be applied to satisfy other obligations of the Borrower Parties under this Agreement. If the Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) will be returned to the Borrower within three Business Days after all Events of Default have been cured or waived.

(12) Additional Issuing Banks. From time to time, the Borrower may, by notice to the Administrative Agent, designate any Lender to act as an Issuing Bank; *provided* that such Lender agrees in its sole discretion to act as such and such Lender is reasonably satisfactory to the Administrative Agent as an Issuing Bank. Each such additional Issuing Bank will execute a counterpart of this Agreement upon the

approval of the Administrative Agent (which approval will not be unreasonably withheld) and will thereafter be an Issuing Bank hereunder for all purposes. The Borrower may, in its sole discretion, request a Letter of Credit issuance from any Issuing Bank.

(13) Reporting. Unless otherwise requested by the Administrative Agent, each Issuing Bank will (a) provide to the Administrative Agent copies of any notice received from the Borrower or any Co-Borrower pursuant to Section 2.05(2) no later than the next Business Day after receipt thereof and (b) report in writing to the Administrative Agent as follows:

(i) on or prior to each Business Day on which such Issuing Bank expects to issue, amend or extend any Letter of Credit, the date of such issuance, amendment or extension, and the aggregate face amount of the Letters of Credit to be issued, amended or extended by it and outstanding after giving effect to such issuance, amendment or extension occurred (and whether the amount thereof changed), and the Issuing Bank will be permitted to issue, amend or extend such Letter of Credit if the Administrative Agent will not have advised the Issuing Bank that such issuance, amendment or extension would not be in conformity with the requirements of this Agreement;

(ii) on each Business Day on which such Issuing Bank makes any L/C Disbursement, the date of such L/C Disbursement and the amount of such L/C Disbursement; and

(iii) on any other Business Day, such other information with respect to the outstanding Letters of Credit issued by such Issuing Bank as the Administrative Agent reasonably requests, including but not limited to prompt verification of such information as may be requested by the Administrative Agent.

The failure of any Issuing Bank (other than the Administrative Agent or any affiliate thereof acting as an Issuing Bank) to comply with the provisions of this clause (13) with respect to any letter of credit will result in such letter of credit not being deemed a "Letter of Credit" hereunder and under the other Loan Documents.

(14) Reallocation. If the Maturity Date in respect of any tranche of Revolving Commitments occurs prior to the expiration of any Letter of Credit, then (i) if one or more other tranches of Revolving Commitments in respect of which the Maturity Date shall not have occurred are then in effect, such Letters of Credit shall automatically be deemed to have been issued (including for purposes of the obligations of the Revolving Lenders to purchase participations therein and to make Revolving Loans and payments in respect thereof pursuant to Section 2.05(5)) under (and ratably participated in by Revolving Lenders pursuant to) the Revolving Commitments in respect of such non-terminating tranches up to an aggregate amount not to exceed the aggregate principal amount of the unutilized Revolving Commitments thereunder at such time (it being understood that no partial face amount of any Letter of Credit may be reallocated); *provided*, in no event shall such reallocation cause a Revolving Lender's share of the Revolving Commitment to exceed such Lender's Commitment, and (ii) to the extent not reallocated pursuant to the immediately preceding clause (i), the Borrower shall cash collateralize any such Letter of Credit in accordance with Section 2.05(11). If, for any reason, such cash collateral is not provided or reallocation does not occur, the Revolving Lenders under the maturing tranche shall continue to be responsible for their participating interests in the Letters of Credit. Except to the extent of reallocations of participations pursuant to clause (i) of the second preceding sentence, the occurrence of a Maturity Date with respect to a given tranche of Revolving Commitments shall have no effect upon (and shall not diminish) the percentage participations of the Revolving Lenders in any Letter of Credit issued before such Maturity Date.

Commencing with the Maturity Date of any tranche of Revolving Commitments, the sublimit for Letters of Credit shall be agreed with the Revolving Lenders under the extended tranches.

(15) Applicant. The Borrower may request a Letter of Credit on behalf of any Restricted Subsidiary; *provided*, that the Borrower acknowledges and agrees that, notwithstanding anything to the contrary in any Letter of Credit application or any Letter of Credit requested pursuant to or issued under this Agreement which may state or indicate that the “Account Party”, “Applicant”, “Requesting Party” or any similar designation with respect to such Letter of Credit is a Person other than the Borrower, the Borrower is and shall at all times remain the “Applicant” (as defined in Section 5-102(a) of the UCC) with respect to each Letter of Credit issued by any Issuing Bank under this Agreement.

SECTION 2.06 Funding of Borrowings.

(1) Each Lender will make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 10:00 a.m., New York City time, to the account of the Administrative Agent most recently designated by it for such purpose for the applicable currency by notice to the Lenders; *provided* that same-day ABR Loans will be made by each Lender on the proposed date thereof by wire transfer of immediately available funds by 2:00 p.m., New York City time; *provided, further* that Swingline Loans will be made as provided in Section 2.04. The Administrative Agent will make such Loans available to the Borrower Parties by promptly crediting the amounts so received, in like funds, to an account of the applicable Borrower Party as specified in the applicable Borrowing Request; *provided* that ABR Revolving Loans and Swingline Borrowings made to finance the reimbursement of an L/C Disbursement and reimbursements as provided in Section 2.05(5) will be remitted by the Administrative Agent to the applicable Issuing Bank.

(2) Unless the Administrative Agent has received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender’s share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (1) of this Section 2.06 and may, in reliance upon such assumption, make available to the Borrower Parties a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower Parties severally agree to pay to the Administrative Agent forthwith on demand (without duplication) such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower Parties to but excluding the date of payment to the Administrative Agent at (a) in the case of such Lender, the greater of (i) the Federal Funds Rate and (ii) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (b) in the case of the Borrower Parties, the interest rate applicable to ABR Loans at such time. If such Lender pays such amount to the Administrative Agent then such amount will constitute such Lender’s Loan included in such Borrowing.

(3) The foregoing notwithstanding, the Administrative Agent, in its sole discretion, may from its own funds make a Revolving Loan on behalf of any such Revolving Lender (including by means of Swingline Loans to the Borrower Parties). In such event, the Revolving Lender, on behalf of whom Administrative Agent made the Revolving Loan, will reimburse the Administrative Agent for all or any portion of such Revolving Loan made on its behalf upon written notice given to such Revolving Lender not later than 12:00 noon, New York City time, on the Business Day such reimbursement is requested. On each such settlement date, the Administrative Agent will pay to each Revolving Lender the net amount owing to such Revolving Lender in connection with such settlement, including amounts relating to Revolving Loans, fees, interest and other amounts payable hereunder. The entire amount of interest attributable to such Revolving Loan for the period from and including the date on which such Revolving Loan is made on such Revolving Lender’s behalf, to but excluding the date the Administrative Agent is

reimbursed in respect of such Revolving Loan by such Revolving Lender, will be paid to the Administrative Agent for its own account.

SECTION 2.07 Interest Elections.

(1) Each Borrowing initially will be of the Type specified in the applicable Borrowing Request and, in the case of a Borrowing of Term SOFR Loans, will have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Borrowing of Term SOFR Loans, may elect Interest Periods therefor, all as provided in this Section 2.07. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion will be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion will be considered a separate Borrowing. This Section 2.07 will not apply to Swingline Borrowings, which may not be converted or continued.

(2) To make an election pursuant to this Section 2.07 following the Effective Date, the Borrower will notify the Administrative Agent of such election by telephone or by e-mail to the Administrative Agent of a written Interest Election Request by the time that a Borrowing Request would be required under Section 2.03 if the Borrower was requesting a Revolving Borrowing of the Type resulting from such election to be made on the effective date of such election. Any such telephonic Interest Election Request will be confirmed promptly by e-mail to the Administrative Agent of a written Interest Election Request.

(3) (a) Each telephonic and written Interest Election Request will be irrevocable and will specify the following information:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below will be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which will be a Business Day;

(iii) whether the resulting Borrowing is to be a Borrowing of ABR Loans or Term SOFR Loans;

(iv) the currency of the resulting Borrowing; and

(v) if the resulting Borrowing is a Borrowing of Term SOFR Loans, the Interest Period to be applicable thereto after giving effect to such election, which will be a period contemplated by the definition of "Interest Period."

(b) If any such Interest Election Request requests a Borrowing of Term SOFR Loans but does not specify an Interest Period, then the Borrower will be deemed to have selected a Borrowing of Term SOFR Loans, having an Interest Period of one month's duration.

(4) Promptly following receipt of an Interest Election Request, the Administrative Agent will advise each applicable Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(5) If the Borrower Parties fail to deliver a timely Interest Election Request with respect to a Borrowing of Term SOFR Loans two Business Days prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid, as provided herein, at the end of such Interest Period, such Borrowing will be automatically continued as a Borrowing of Term SOFR Loans, having an Interest Period of one month's duration.

(6) Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the written request (including a request through electronic means) of the Required Lenders so notifies the Borrower Parties, then, so long as an Event of Default is continuing, (a) no outstanding Borrowing may be converted to or continued as a Term SOFR Borrowing, and (b) unless repaid, each Term SOFR Borrowing will be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

SECTION 2.08 Termination and Reduction of Commitments.

(1) Unless previously terminated, the Commitments will terminate on the applicable Maturity Date therefor.

(2) The Borrower may at any time terminate, or from time to time reduce, the Revolving Commitments; *provided* that (i) each reduction of the Revolving Commitments will be in an amount that is an integral multiple of \$1.0 million and not less than \$5.0 million (or, if less, the remaining amount of the applicable Revolving Commitments) and (ii) the Borrower will not terminate or reduce the Revolving Commitments if, after giving effect to any concurrent prepayment of the Revolving Loans in accordance with Section 2.11, the Total Revolving Credit Exposure would exceed the Line Cap.

(3) The Borrower will notify the Administrative Agent of any election to terminate or reduce the Revolving Commitments under paragraph (2) of this Section 2.08 at least three Business Days prior to the date of such termination or reduction, specifying such election and the date thereof. Promptly following receipt of any notice, the Administrative Agent will advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section 2.08 will be irrevocable; *provided* that a notice of termination of the Revolving Commitments delivered by the Borrower may state that such notice is revocable or conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked or extended by the Borrower (by notice to the Administrative Agent on or prior to the specified Effective Date). Any termination or reduction of the Revolving Commitments will be permanent. Each reduction of the Revolving Commitments will be made ratably among the Revolving Lenders in accordance with their respective Revolving Commitments.

SECTION 2.09 Promise to Pay; Evidence of Debt.

(1) Each of the Borrower Parties, jointly and severally, hereby unconditionally promises to pay (a) to the Administrative Agent for the account of each Revolving Lender the then unpaid principal amount of each Revolving Loan and Protective Advance to such Borrower Party on the Maturity Date, (b) all "Obligations" (as defined in the Pre-Petition Credit Agreement) to the extent not fully refinanced as Obligations in accordance with the terms hereof and (c) to the Swingline Lender the then unpaid principal amount of each Swingline Loan on the Maturity Date.

(2) Any Lender may request that Loans made by it be evidenced by a promissory note (a "*Note*"). In such event, the Borrower Parties will prepare, execute and deliver to such Lender a Note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent and reasonably acceptable to the Borrower. Thereafter, the Loans evidenced by such Note and interest thereon at all times (including after assignment pursuant to

Section 10.04) will be represented by one or more Notes in such form payable to the payee named therein (or, if requested by such payee, to such payee and its registered assigns).

(3) The Administrative Agent will maintain accounts in which it will record (a) the amount and currency of each Loan to any of the Borrower Parties made hereunder, and with respect to the Revolving Loans, the Type thereof and the Interest Period (if any) applicable thereto, (b) the amount of any principal or interest due and payable or to become due and payable from the Borrower Parties to each Lender hereunder and (c) any amount received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof. The entries made in the accounts maintained pursuant to this paragraph (3) will be *prima facie* evidence of the existence and amounts of the obligations recorded therein; *provided* that the failure of the Administrative Agent to maintain such accounts or any error therein will not in any manner affect the obligations of the Borrower Parties to repay the Obligations in accordance with the terms of this Agreement.

SECTION 2.10 Optional Repayment of Loans.

(1) The Borrower Parties will have the right at any time and from time to time to repay any Loan in whole or in part, without premium or penalty (but subject to Section 2.16), in an aggregate principal amount, (a) in the case of Term SOFR Loans, that is an integral multiple of the Equivalent Amount of \$500,000 and not less than the Equivalent Amount of \$2.5 million, and (b) in the case of ABR Loans, that is an integral multiple of \$100,000 and not less than \$1.0 million, or, in each case, if less, the amount outstanding.

(2) [reserved].

(3) Prior to any repayment of any Loans, as applicable, the Borrower will select the Borrowing or Borrowings to be repaid and will notify the Administrative Agent by telephone (confirmed by e-mail) or by e-mail of such selection not later than 2:00 p.m., New York City time, (a) in the case of an ABR Borrowing, one Business Day before the anticipated date of such repayment and (b) in the case of a Borrowing of Term SOFR Loans, three Business Days before the anticipated date of such repayment. Each repayment of a Borrowing will be applied to the Loans included in the repaid Borrowing such that each Lender receives its ratable share of such repayment (based upon the respective Total Revolving Credit Exposures or outstanding Loans, as applicable, of the applicable Lenders at the time of such repayment). Notwithstanding anything to the contrary in the immediately preceding sentence, prior to any repayment of a Swingline Loan hereunder, the Borrower will select the Borrowing or Borrowings to be repaid and will notify the Administrative Agent by telephone (confirmed by e-mail) or by e-mail of such selection not later than 2:00 p.m., New York City time, on the scheduled date of such repayment. Repayments of Borrowings of Term SOFR Loans will be accompanied by accrued interest on the amount repaid, together with any amounts due under Section 2.16.

SECTION 2.11 Mandatory Repayment of Loans.

(1) In the event the aggregate amount of the Total Revolving Credit Exposure exceeds the Line Cap at such time (other than on account of any Protective Advance permitted to remain outstanding pursuant to Sections 2.01(2) or (3)), then the Borrower will within one Business Day repay outstanding Revolving Loans and Swingline Loans (or, Pre-Petition Revolving Loans as required by Section 2.18(3)), and, if there remains an excess after paying all Revolving Loans and Swingline Loans, cash collateralize Letters of Credit (in accordance with Section 2.05(11)) in an aggregate amount equal to such excess.

(2) [reserved].

(3) In the event and on such occasion as the Revolving L/C Exposure exceeds the Letter of Credit Sublimit, the Borrower will deposit cash collateral (in accordance with Section 2.05(11)) in an amount equal to such excess.

(4) All amounts in the Dominion Account shall be applied by the Administrative Agent pursuant to Section 5.11(3)(b).

(5) The Borrower will prepay Revolving Loans (with no reduction in commitments) or cash collateralize Letters of Credit with 100% of all net cash proceeds from non-ordinary course sales of Collateral included in the Borrowing Base to the extent such net cash proceeds are required to be applied to repay Revolving Loans in order to remain in compliance with the Borrowing Base. Any amounts prepaid pursuant to this clause (5) will be applied pursuant to the waterfall set forth in Section 2.18(3), *provided* that amounts applied pursuant to subclauses (iv) and (v) thereof will be applied:

- (a) *first*, to ABR Loans;
- (b) *second*, to Term SOFR Loans; and
- (c) *third*, to the cash collateralization of Letters of Credit.

SECTION 2.12 Fees.

(1) The Borrower Parties agree, jointly and severally, to pay to each Revolving Lender (other than any Defaulting Lender), through the Administrative Agent, on the first day of each fiscal month of the Borrower, commencing with the fiscal month of the Borrower ending after the Effective Date, and on the Maturity Date and any date on which the Commitments of all the Revolving Lenders are terminated as provided herein, a commitment fee (a “**Commitment Fee**”) in U.S. Dollars on the daily amount of the Available Unused Commitment of such Revolving Lender during the preceding fiscal month (or other period commencing with the Effective Date or ending with the date on which the last of the Commitments of such Revolving Lender will be terminated, as applicable) at a rate equal to the Applicable Commitment Fee Percentage. All Commitment Fees will be computed on the basis of the actual number of days elapsed in a year of 360 days. For the purpose of calculating any Revolving Lender’s Commitment Fee, the outstanding Swingline Loans during the period for which such Lender’s Commitment Fee is calculated will be deemed to be zero. The Commitment Fee due to each Revolving Lender will commence to accrue on the Effective Date and will cease to accrue on the date on which the last of the Commitments of such Revolving Lender will be terminated as provided herein.

(2) The Borrower Parties agree, jointly and severally, to pay to:

- (a) the Administrative Agent for the account of each Revolving Lender (other than any Defaulting Lender, it being understood that at any time the Issuing Bank has Fronting Exposure to such Defaulting Lender, the L/C Participation Fee with respect to such Fronting Exposure will be payable to the Issuing Bank for its own account), on the first day of each fiscal month of the Borrower in each year, commencing with the fiscal month of the Borrower ending after the Effective Date, and on the Maturity Date and any date on which the Commitments of all the Revolving Lenders are terminated as provided herein, a fee (an “**L/C Participation Fee**”) in U.S. Dollars on such Revolving Lender’s Revolving Facility Percentage of the daily aggregate Revolving L/C Exposure (excluding the portion thereof attributable to unreimbursed L/C Disbursements), during the preceding fiscal month (or other period commencing with the Effective Date or ending with the Maturity Date or the date on which the Revolving Commitments are

terminated, as applicable) at the rate per annum equal to the Applicable Margin for Term SOFR Revolving Borrowings effective for each day in such period; and

(b) each Issuing Bank, for its own account (i) on the first day of each fiscal month of the Borrower, commencing with the fiscal month of the Borrower ending after the Effective Date, and on the Maturity Date and any date on which the Commitments of all the Revolving Lenders are terminated as provided herein, a fronting fee in U.S. Dollars in respect of each Letter of Credit issued by, or the term of which is extended by, such Issuing Bank for the period from and including the date of issuance or extension of such Letter of Credit to and including the termination of such Letter of Credit, computed at a rate equal to 0.125% per annum of the daily stated amount of such Letter of Credit *plus* (ii) such Issuing Bank's customary issuance fees and customary documentary and processing fees and charges (collectively, "***Issuing Bank Fees***"). All L/C Participation Fees and Issuing Bank Fees that are payable in U.S. Dollars on a per annum basis will be computed on the basis of the actual number of days elapsed in a year of 360 days.

(3) The Borrower Parties agree, jointly and severally, to pay to the Administrative Agent, for its own account, the agency fees set forth in the Fee Letter at the times specified therein or in such other amounts and at such other times as may be separately agreed in writing by the Administrative Agent and the Borrower from time to time (the "***Administrative Agent Fees***").

(4) All Fees will be paid on the dates due, in immediately available funds, to either the Administrative Agent at the applicable Payment Office for distribution, if and as appropriate, among the Revolving Lenders, except Issuing Bank Fees will be paid directly to the applicable Issuing Banks. Once paid, none of the Fees will be refundable under any circumstances.

SECTION 2.13 Interest.

(1) The Loans comprising each ABR Borrowing (including each Swingline Loan) will bear interest at the ABR *plus* the Applicable Margin.

(2) The Loans comprising each Term SOFR Borrowing will bear interest at Term SOFR for the Interest Period in effect for such Borrowing *plus* the Applicable Margin.

(3) Following the occurrence and during the continuation of an Event of Default, the Borrower Parties will pay interest on overdue amounts (including amounts overdue as a result of non-payment upon acceleration) hereunder at a rate per annum equal to (a) in the case of overdue principal of any Loan, 2.0% per annum plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section 2.13 or (b) in the case of overdue interest or any other overdue amount, 2.0% per annum plus the rate applicable to ABR Loans as provided in clause (1) of this Section 2.13. The Borrower Parties hereby agree that the outstanding amount of the Pre-Petition Revolving Loans shall accrue at a rate per annum equal to 2.0% per annum plus the rate otherwise applicable to such Pre-Petition Revolving Loans from the Effective Date until the date of the Final Order.

(4) Accrued interest on each Loan will be payable by the Borrower Parties, jointly and severally, in arrears (a) on each Interest Payment Date for such Loan; (b) on the applicable Maturity Date; and (c) upon termination of the Revolving Commitments; *provided* that:

(i) interest accrued pursuant to paragraph (4) of this Section 2.13 will be payable on demand;

(ii) in the event of any repayment of any Loan (other than a repayment of an ABR Revolving Loan, Swingline Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid will be payable on the date of such repayment; and

(iii) in the event of any conversion of any Term SOFR Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan will be payable on the effective date of such conversion.

All interest shall be payable in cash.

(5) All interest hereunder will be computed on the basis of a year of 360 days, except that interest computed by reference to the ABR (at times when the ABR is based on the prime rate) will be computed on the basis of a year of 365 days (or 366 days in a leap year), and, in each case, will be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable ABR, Term SOFR will be determined by the Administrative Agent, and such determination will be conclusive absent manifest error.

SECTION 2.14 Alternate Rate of Interest.

(1) [Reserved].

(2) Replacement of Term SOFR or Term SOFR Successor Rate. Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Administrative Agent determines in good faith and in its reasonable discretion (which determination shall be conclusive absent manifest error), or the Borrower or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Borrower) that the Borrower or Required Lenders (as applicable) have determined, that:

(a) adequate and reasonable means do not exist for ascertaining Term SOFR for any Interest Period hereunder or any other tenors of Term SOFR, including, without limitation, because Term SOFR is not available or published on a current basis and such circumstances are unlikely to be temporary;

(b) the administrator of Term SOFR or a Governmental Authority having jurisdiction over the Administrative Agent or such administrator has made a public statement identifying a specific date after which SOFR shall or will no longer be representative or made available, or permitted to be used for determining the interest rate of syndicated loans denominated in Dollars, or shall or will otherwise cease, provided that, in each case, at the time of such statement, there is no successor administrator that is satisfactory to the Administrative Agent that will continue to provide SOFR on a representative basis (the date on which SOFR is no longer representative or available permanently or indefinitely, the “***SOFR Scheduled Unavailability Date***”);

or if the events or circumstances of the type described in Section 2.14(2)(a) or (b) have occurred with respect to the SOFR Successor Rate then in effect, then, the Administrative Agent and the Borrower may amend this Agreement solely for the purpose of replacing SOFR for Dollars or any then current SOFR Successor Rate for Dollars in accordance with this Section 2.14 with an alternative benchmark rate giving due consideration to any evolving or then existing convention for similar credit facilities syndicated and agented in the U.S. and denominated in Dollars for such alternative benchmarks, and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar credit facilities syndicated and agented in the U.S. and

denominated in Dollars for such benchmarks (and any such proposed rate, including for the avoidance of doubt, any adjustment thereto, a “***SOFR Successor Rate***”), and any such amendment shall become effective at 5:00 p.m. on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Company unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders object to such amendment.

(3) [Reserved].

(4) Successor Rate. The Administrative Agent will promptly (in one or more notices) notify the Borrower and each Lender of the implementation of any Successor Rate.

Any Successor Rate shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for the Administrative Agent, such Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

Notwithstanding anything else herein, if at any time any Successor Rate as so determined would otherwise be less than 0.00%, the Successor Rate will be deemed to be 0.00% for the purposes of this Agreement and the other Loan Documents.

In connection with the implementation of a Successor Rate the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Conforming Changes to the Borrower and the Lenders reasonably promptly after such amendment becomes effective.

SECTION 2.15 Increased Costs.

(1) If any Change in Law:

(a) imposes, modifies or deems applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in Term SOFR) or Issuing Bank;

(b) imposes on any Lender or Issuing Bank or the London interbank market any other condition (other than Taxes) affecting this Agreement or Term SOFR Loans made by such Lender or any Letter of Credit or participation therein; or

(c) subjects any Recipient to any Taxes (other than (i) Indemnified Taxes and (ii) Excluded Taxes) on its loans, loan principal, letters of credit, commitments or other obligations, or deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing is to increase the cost to such Lender of making or maintaining any Term SOFR Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or Issuing Bank of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender or Issuing Bank hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender or Issuing Bank, as applicable, such additional amount or amounts as will compensate such Lender or Issuing Bank, as applicable, for such additional costs incurred or reduction suffered.

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

(3) A certificate of a Lender or an Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or Issuing Bank or its holding company, as applicable, as specified in paragraph (1) or (2) of this Section 2.15 will be delivered to the Borrower and will be conclusive absent manifest error. The Borrower will pay such Lender or Issuing Bank, as applicable, the amount shown as due on any such certificate within ten days after receipt thereof.

(4) Promptly after any Lender or any Issuing Bank has determined that it will make a request for increased compensation pursuant to this Section 2.15, such Lender or Issuing Bank will notify the Borrower thereof. Failure or delay on the part of any Lender or Issuing Bank to demand compensation pursuant to this Section 2.15 will not constitute a waiver of such Lender's or Issuing Bank's right to demand such compensation; *provided* that the Borrower will not be required to compensate a Lender or an Issuing Bank pursuant to this Section 2.15 for any increased costs or reductions incurred more than 180 days prior to the date that such Lender or Issuing Bank, as applicable, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or Issuing Bank's intention to claim compensation therefor; *provided, further*, that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above will be extended to include the period of retroactive effect thereof.

SECTION 2.16 Break Funding Payments. Except as otherwise set forth herein, the Borrower will compensate each Lender for the actual out-of-pocket loss, cost and expense (excluding loss of anticipated profits) attributable to the following events:

(1) the payment of any principal of any Term SOFR Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default);

(2) the conversion of any Term SOFR Loan other than on the last day of the Interest Period applicable thereto;

(3) the failure by the Borrower (other than a default by such Lender or the Administrative Agent) to borrow, convert, continue or prepay any Term SOFR Loan on the date specified in any notice delivered pursuant hereto; or

(4) the assignment of any Term SOFR Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.19.

Such loss, cost or expense to any Lender will be deemed to be the amount determined by such Lender to be the excess, if any, of (a) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at Term SOFR that would have been applicable to such Loan (but not including the Applicable Margin applicable thereto), for the period from the date of such

event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue a Term SOFR Loan, for the period that would have been the Interest Period for such Loan), *over* (b) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for deposits in the applicable currency of a comparable amount and period from other banks in the Term SOFR market or applicable offshore interbank market for such currency.

A certificate of any Lender setting forth in reasonable detail any amount or amounts that such Lender is entitled to receive pursuant to this Section will be delivered to the Borrower and will be conclusive absent manifest error. The Borrower will pay such Lender the amount shown as due on any such certificate within ten days after receipt thereof.

SECTION 2.17 Taxes.

(1) Any and all payments by or on account of any obligation of any Loan Party hereunder will be made free and clear of and without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable withholding agent) requires the deduction or withholding of any Tax from any such payment by a Loan Party, then the applicable withholding agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Taxes are Indemnified Taxes or Other Taxes from such payments, then the sum payable hereunder will be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.17) the Administrative Agent or any Lender, as applicable, receives an amount equal to the amount it would have received had no such deductions been made.

(2) In addition, the Loan Parties will timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent, timely reimburse it for the payment of, any Other Taxes.

(3) Each Loan Party will, jointly and severally, indemnify the Administrative Agent and each Lender, within ten days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agent or such Lender, on or with respect to any payment by or on account of any obligation of such Loan Party hereunder (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.17) and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to such Loan Party by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, will be conclusive absent manifest error.

(4) As soon as practicable after any payment of Taxes by a Loan Party to a Governmental Authority pursuant to this Section 2.17, such Loan Party will deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(5)

(a) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document will deliver to the Borrower and the

Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, will deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 2.17(5)(b), 2.17(5)(c) and 2.17(6) below) will not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(b) Without limiting the effect of Section 2.17(5)(a) above, each Foreign Lender will deliver to the Borrower and the Administrative Agent on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), two copies of whichever of the following is applicable:

(i) duly completed copies of Internal Revenue Service Form W-8BEN or Form W-8BEN-E (or any subsequent versions thereof or successors thereto), claiming eligibility for benefits of an income tax treaty to which the United States is a party;

(ii) duly completed copies of Internal Revenue Service Form W-8ECI (or any subsequent versions thereof or successors thereto);

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) or 881(c) of the Code, (A) a certificate substantially in the form of the applicable Exhibit G to the effect that such Foreign Lender is not (1) a "bank" within the meaning of Section 881(c)(3)(A) of the Code; (2) a "10 percent shareholder" of the Borrower within the meaning of Section 871(h)(3) or Section 881(c)(3)(B) of the Code; or (3) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code and (B) duly completed copies of Internal Revenue Service Form W-8BEN or Form W-8BEN-E (or any subsequent versions thereof or successors thereto);

(iv) duly completed copies of Internal Revenue Service Form W-8IMY, together with forms and certificates described in clauses (i) through (iii) above (and additional Internal Revenue Service Form W-8IMYs) or Internal Revenue Service Form W-9 as may be required; or

(v) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made.

In addition, in each of the foregoing circumstances, each Foreign Lender will deliver such forms, if legally entitled to deliver such forms, promptly upon the obsolescence, expiration or invalidity of any form previously delivered by such Foreign Lender. Each Foreign

Lender will promptly notify the Borrower at any time it determines that it is no longer in a position to provide any previously delivered certificate to the Borrower (or any other form of certification adopted by the United States of America or other taxing authorities for such purpose). Notwithstanding any other provision of this paragraph, a Lender will not be required to deliver any form pursuant to this Section 2.17 that such Lender is not legally able to deliver;

(c) In addition, each Lender that is not a Foreign Lender will deliver to the Borrower and the Administrative Agent two copies of Internal Revenue Service Form W-9 (or any subsequent versions thereof or successors thereto) on or before the date such Lender becomes a party and upon the expiration of any form previously delivered by such Lender.

(6) If a payment made to a Recipient under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Recipient were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Recipient will deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Recipient has complied with such Recipient's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 2.17(6), "FATCA" will include any amendments made to FATCA after the date of this Agreement.

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

(7) If any party determines, in its sole discretion, exercised in good faith, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified (including by the payment of additional amounts pursuant to this Section 2.17), it will pay over reasonably promptly to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such indemnifying party under this Section 2.17 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses (including any Taxes imposed with respect to such refund) as is determined by the indemnified party in good faith, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay as soon as reasonably practicable to such indemnified party the amount paid over pursuant to this Section 2.17(7) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 2.17(7), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 2.17(7) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 2.17(7) will not be construed to require the Administrative Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes which it deems, in good faith, to be confidential) to the Loan Parties or any other Person.

(8) Each Lender shall severally indemnify the Administrative Agent, within ten days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Loan Parties have not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.04(4)(a) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this Section 2.17(8).

(9) Each party's obligations under this Section 2.17 will survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and this repayment, satisfaction or discharge of all obligations under any Loan Document.

(10) For purposes of this Section 2.17, the term "applicable law" includes FATCA and the term "Lender" includes any Issuing Bank.

SECTION 2.18 Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

(1) Unless otherwise specified, the Borrower Parties will make each payment required to be made by them hereunder (whether of principal, interest, fees, reimbursement of L/C Disbursements or otherwise) prior to 2:00 p.m., New York City time, at the applicable Payment Office of the Administrative Agent (except payments to be made directly to the applicable Issuing Bank or the Swingline Lender as expressly provided herein and except that payments pursuant to Sections 2.15, 2.16, 2.17 and 10.05 will be made directly to the Persons entitled thereto) on the date when due, in immediately available funds, without condition or deduction for any defense, recoupment, set-off or counterclaim. Without limiting the generality of the foregoing, the Administrative Agent may require that any payments due under this Agreement be made in the United States. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. The Administrative Agent will distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof and will make settlements with the applicable Lenders with respect to other payments at the times and in the manner provided in this Agreement. Except as otherwise provided herein, if any payment hereunder is due on a day that is not a Business Day, the date for payment will be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon will be payable for the period of such extension. Any payment required to be made by the Administrative Agent hereunder will be deemed to have been made by the time required if such Agent, at or before such time, has taken the necessary steps to make such payment in accordance with the regulations or operating procedures of the clearing or settlement system used by such Agent to make such payment.

(2) The amount of each Revolving Lender's Revolving Facility Percentage of outstanding Revolving Loans (including outstanding Swingline Loans) will be computed weekly (or more frequently in the Administrative Agent's discretion) and will be adjusted upward or downward based on all Revolving Loans (including Swingline Loans) and repayments of Revolving Loans (including Swingline Loans) received by the Administrative Agent as of 4:00 p.m. on the first Business Day (such date, the "***Settlement***

Date”) following the end of the period specified by the Administrative Agent. The Administrative Agent will deliver to each of the Revolving Lenders promptly after a Settlement Date a summary statement of the amount of outstanding Revolving Loans for the period and the amount of repayments received for the period. As reflected on the summary statement, (a) the Administrative Agent will transfer to each Revolving Lender its Revolving Facility Percentage of repayments and (b) each Revolving Lender will transfer to the Administrative Agent (as provided below) or the Administrative Agent will transfer to each Revolving Lender such amounts as are necessary to insure that, after giving effect to all such transfers, the amount of Revolving Loans made by each Revolving Lender will be equal to such Revolving Lender’s Revolving Facility Percentage of all Revolving Loans outstanding as of such Settlement Date. If the summary statement requires transfers to be made to the Administrative Agent by the Revolving Lenders and is received prior to 2:00 p.m. on a Business Day, such transfers will be made in immediately available funds no later than 5:00 p.m. that day and, if received after 2:00 p.m., then no later than 4:00 p.m. on the next Business Day. The obligation of each Revolving Lender to transfer such funds is irrevocable, unconditional and without recourse to or warranty by the Administrative Agent. If and to the extent any Revolving Lender has not so made its transfer to the Administrative Agent, such Revolving Lender agrees to pay to the Administrative Agent, forthwith on demand such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Administrative Agent, equal to the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation *plus* any administrative, processing, or similar fees customarily charged by the Administrative Agent in connection with the foregoing.

(3) Except as otherwise provided in this Agreement, if (a) at any time insufficient funds are received by and available to the Administrative Agent from the Borrower Parties to pay fully all amounts of principal, unreimbursed L/C Disbursements, interest and fees and other Obligations then due from the Borrower or any Co-Borrower hereunder or (b) an Event of Default shall have occurred and be continuing and the Administrative Agent or the Collateral Agent receives proceeds or payments of any kind (including proceeds of Collateral) hereunder or under any other Loan Document, such funds will be applied:

(i) *first*, to permanently reduce the Pre-Petition Obligations (if any) in accordance with the Pre-Petition Credit Agreement until paid in full;

(ii) *second*, toward payment of any expenses, fees and indemnities due to the Agents hereunder;

(iii) *third*, toward payment of any expenses, fees and indemnities due to the Lenders hereunder, ratably among the parties entitled thereto in accordance with the amounts of expenses, fees and indemnities then due to such parties;

(iv) *fourth*, toward payment of interest and fees of Swingline Loans, unreimbursed L/C Disbursements and Protective Advances then due from the Borrower Parties hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees, unreimbursed L/C Disbursements and Protective Advances then due to such parties;

(v) *fifth*, toward payment of principal of Swingline Loans, unreimbursed L/C Disbursements and Protective Advances then due from the Borrower Parties hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal, unreimbursed L/C Disbursements and Protective Advances then due to such parties;

(vi) *sixth*, toward payment of interest and fees then due from the Borrower Parties hereunder with respect to any Revolving Credit Exposure, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties;

(vii) *seventh*, toward payment of other principal then due from the Borrower Parties hereunder with respect to any Revolving Credit Exposure, ratably among the parties entitled thereto in accordance with the amounts of such principal then due to such parties;

(viii) *eighth*, if an Event of Default has occurred and is continuing, to cash collateralize Letters of Credit issued for the account of the Borrower, any Co-Borrower or any other Subsidiary in accordance with Section 2.05(11);

(ix) *ninth*, to pay all Obligations on account of Specified Hedge Agreements and/or Cash Management Obligations, ratably among the parties thereto in accordance with the amounts of such Obligations then due to such parties;

(x) *tenth*, to payment of all other Obligations (including any Secured Hedge Agreements not paid pursuant to the foregoing clause (vi)) of the Borrower Parties then due and payable, ratably among the parties entitled thereto in accordance with the amounts of such Obligations then due to such parties.

(4) Subject to express priorities set forth in Section 2.18(3) above, if any Revolving Lender, by exercising any right of set-off or counterclaim or otherwise, obtains payment in respect of any principal of or interest on any of its Revolving Loans or participations in L/C Disbursements or Swingline Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Revolving Loans and participations in L/C Disbursements and Swingline Loans and accrued interest thereon than the proportion received by any other Revolving Lender, then the Revolving Lender receiving such greater proportion will purchase (for cash at face value) participations in the Revolving Loans and participations in L/C Disbursements and Swingline Loans of other Lenders to the extent necessary so that the benefit of all such payments will be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Revolving Loans and participations in L/C Disbursements and Swingline Loans; *provided* that (a) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations will be rescinded and the purchase price restored to the extent of such recovery, without interest, and (b) the provisions of this paragraph (4) will not be construed to apply to any payment made by the Borrower Parties pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Revolving Lender as consideration for the assignment of or sale of a participation in any of its Revolving Loans or participations in L/C Disbursements to any assignee or participant, other than to the Borrower Parties or any other Subsidiary or Affiliate thereof (as to which the provisions of this paragraph (4) apply). The Borrower Parties consent to the foregoing and agree, to the extent it may effectively do so under applicable law, that any Revolving Lender acquiring a participation pursuant to the foregoing arrangements may exercise against any Borrower Party rights of set-off and counterclaim with respect to such participation as fully as if such Revolving Lender were a direct creditor of such Borrower Party in the amount of such participation.

(5) [reserved].

(6) Unless the Administrative Agent has received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the applicable Issuing Bank hereunder that the Borrower Parties will not make such payment, the Administrative Agent may assume that the Borrower Parties have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the applicable Issuing Bank, as

applicable, the amount due with respect to any payment that the Administrative Agent makes for the account of the Lenders or any Issuing Bank hereunder as to which the Administrative Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies (such payment referred to as the “**Rescindable Amount**”): (1) the Borrower Parties have not in fact made such payment; (2) the Administrative Agent has made a payment in excess of the amount so paid by the Borrower (whether or not then owed); or (3) the Administrative agent has for any reason otherwise erroneously made such payment; then each of the Lenders or the applicable Issuing Bank, as applicable, severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount so distributed to such Lender or Issuing Bank, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this clause (b) shall be conclusive, absent manifest error.

(7) If any Revolving Lender fails to make any payment required to be made by it pursuant to Section 2.04(3), 2.05(4) or (5), 2.06(2) or 2.18(6), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Revolving Lender to satisfy such Revolving Lender’s obligations under such Sections until all such unsatisfied obligations are fully paid.

SECTION 2.19 Mitigation Obligations; Replacement of Lenders.

(1) If any Lender requests compensation under Section 2.15, or if the Borrower Parties are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, then such Lender will (at the request of the Borrower) use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or assign its rights and obligations hereunder to another of its offices, branches or Affiliates if, in the reasonable judgment of such Lender, such designation or assignment (a) would eliminate or reduce amounts payable pursuant to Section 2.15 or 2.17, as applicable, in the future and (b) would not subject such Lender to any material unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material respect. The Borrower Parties hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(2) If any Lender requests compensation under Section 2.15 or is a Defaulting Lender, or if the Borrower Parties are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, then the Borrower Parties may, at their sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 10.04), all its interests, rights and obligations under this Agreement to an assignee that assumes such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided* that (a) the Borrower Parties shall have received the prior written consent of the Administrative Agent, the Swingline Lender and the Issuing Bank, which consent shall not unreasonably be withheld, (b) such Lender has received payment of an amount equal to the outstanding principal of its Loans and funded participations in L/C Disbursements and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower Parties (in the case of all other amounts) and (c) in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17, such assignment will result in a reduction in such compensation or payments. Nothing in this Section 2.19 will be deemed to prejudice any rights that the Borrower Parties may have against any Revolving Lender that is a Defaulting Lender.

(3) If any Revolving Lender (each such Revolving Lender, a “***Non-Consenting Lender***”) has failed to consent to a proposed amendment, waiver, discharge or termination which, pursuant to the terms of Section 10.08, requires the consent of such Lender with respect to which the Required Lenders have granted their consent, then the Borrower Parties will have the right (unless such Non-Consenting Lender grants such consent) at their sole expense, to replace such Non-Consenting Lender by deeming such Non-Consenting Lender to have assigned its Revolving Loans and its Revolving Commitments, as applicable, hereunder to one or more assignees reasonably acceptable to the Administrative Agent, the Swingline Lender and the Issuing Bank to the extent the consent of such Person would be required under Section 10.04; *provided* that (a) all Obligations of the Borrower Parties owing to such Non-Consenting Lender (including accrued Fees and any amounts due under Section 2.15, 2.16 or 2.17) being removed or replaced will be paid in full to such Non-Consenting Lender concurrently with such assignment and (b) the replacement Revolving Lender will purchase the foregoing by paying to such Non-Consenting Lender a price equal to the principal amount thereof *plus* accrued and unpaid interest thereon. No action by or consent of the Non-Consenting Lender will be necessary in connection with such removal or assignment, which will be immediately and automatically effective upon payment of such purchase price. In connection with any such assignment, the Borrower Parties, the Administrative Agent, such Non-Consenting Lender and the replacement Revolving Lender will otherwise comply with Section 10.04; *provided* that if such Non-Consenting Lender does not comply with Section 10.04 within three Business Days after the Borrower’s request therefor, compliance with Section 10.04 will not be required to effect such assignment.

(4) [Reserved].

SECTION 2.20 Illegality. If any Lender reasonably determines that any change in law has made it unlawful, or if any Governmental Authority has asserted after the Effective Date that it is unlawful, for any Lender or its applicable lending office to make or maintain any Term SOFR Loans in any affected currency or currencies, then, upon notice thereof by such Lender to the Borrower through the Administrative Agent, any obligations of such Lender to make or continue Term SOFR Loans in the affected currency or currencies or to convert ABR Borrowings to Term SOFR Borrowings will be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower will upon demand from such Lender (with a copy to the Administrative Agent), with respect to Term SOFR Borrowings, either convert all Term SOFR Borrowings of such Lender to ABR Borrowings, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Term SOFR Borrowings to such day, or immediately, if such Lender may not lawfully continue to maintain such Loans. Upon any such prepayment or conversion, the Borrower will also pay accrued interest on the amount so prepaid or converted.

SECTION 2.21 [Reserved].

SECTION 2.22 [Reserved].

SECTION 2.23 [Reserved].

SECTION 2.24 Joint and Several Liability of Borrower Parties.

(1) Each of the Borrower Parties hereby accepts joint and several, primary liability for all Obligations hereunder in consideration of the financial accommodations provided by the Lenders under this Agreement, for the mutual benefit, directly and indirectly, of each of the Borrower Parties and in consideration of the undertakings of each of the Borrower Parties to accept joint and several liability for the Obligations of each of them under the Loan Documents.

(2) Each of the Borrower Parties, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Borrower Parties with respect to the payment and performance of all of the Obligations, it being the intention of the parties hereto that all of the Obligations are the joint and several obligations of each of the Borrower Parties without preferences or distinction among them.

(3) If and to the extent that any of the Borrower Parties fails to make any payment with respect to any of the Obligations hereunder as and when due or to perform any of such Obligations in accordance with the terms thereof, then in each such event, the other Borrower Parties will make such payment with respect to, or perform, such Obligation.

(4) The obligations of each Borrower Party under the provisions of this Section 2.24 constitute full recourse obligations of such Borrower Party, enforceable against it to the full extent of its properties and assets.

(5) Notwithstanding any provision to the contrary contained herein or in any other Loan Document, the obligations of each Co-Borrower hereunder will be limited to an aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance under Section 548 of Title 11 of the United States Code, as now constituted or hereafter amended or any comparable provisions of any applicable state law.

(6) To the fullest extent permitted by applicable law, the obligations of each Loan Party hereunder shall not be affected by (i) the failure of any Secured Party to assert any claim or demand or to enforce or exercise any right or remedies against any other Loan Party under the provisions of this Agreement, any other Loan Document or otherwise or (ii) the failure to perfect any security interest in, or the release of, any of the Collateral held by or on behalf of the Collateral Agent or any other Secured Party for the applicable Obligations.

(7) To the fullest extent permitted by applicable law, each Loan Party waives any defense based on or arising out of any defense of any other Loan Party or the unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any other Loan Party, other than payment in full of the Obligations (other than Obligations in respect of Secured Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations that are not yet due and payable and for which no Claim has been asserted). The Administrative Agent and the other Secured Parties may in accordance with the terms of the Loan Documents, at their election, foreclose on any security held by one or more of them by one or more judicial or nonjudicial sales, accept an assignment of any such security in lieu of foreclosure, compromise or adjust any part of the Obligations, make any other accommodation with any other Loan Party, or exercise any other right or remedy available to them against any other Loan Party, without affecting or impairing in any way the liability of any Loan Party hereunder except to the extent that payment in full of the Obligations (other than Obligations in respect of Secured Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations that are not yet due and payable and for which no Claim has been asserted) has occurred. Pursuant to applicable law, each Loan Party 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 Loan Party against any other Loan Party, as the case may be, or any security.

SECTION 2.25 Appointment of Borrower as Agent for Borrower Parties.

Each Co-Borrower hereby appoints the Borrower to act as its exclusive agent for all purposes under this Agreement and the other Loan Documents (including with respect to all matters related to the borrowing

and repayment of Loans as described in Article II hereof). Each Co-Borrower (in such capacity) acknowledges and agrees that (1) the Borrower may execute such documents on behalf of all the Borrower Parties as the Borrower deems appropriate in its sole discretion and each Borrower Party (in such capacity) will be bound by and obligated by all of the terms of any such document executed by the Borrower on its behalf, (2) any notice or other communication delivered by the Administrative Agent or any Lender hereunder to the Borrower will be deemed to have been delivered to each Borrower Party and (3) the Administrative Agent and each of the Lenders will accept (and will be permitted to rely on) any document or agreement executed by the Borrower on behalf of the Borrower Parties (or any of them).

SECTION 2.26 Defaulting Lenders.

(1) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Revolving Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(a) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement is restricted as set forth in Section 10.08.

(b) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise), will be applied at such time or times as may be determined by the Administrative Agent as follows:

(i) *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder;

(ii) *second*, to the payment on a *pro rata* basis of any amounts owing by such Defaulting Lender to the Issuing Bank or Swingline Lender hereunder;

(iii) *third*, if so determined by the Administrative Agent or requested by the Issuing Bank or Swingline Lender, to be held as cash collateral for future funding obligations of such Defaulting Lender of any participation in any Swingline Loan or Letter of Credit;

(iv) *fourth*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Revolving Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent;

(v) *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of such Defaulting Lender to fund Revolving Loans under this Agreement;

(vi) *sixth*, to the payment of any amounts owing to the Revolving Lenders, the Issuing Bank or Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Revolving Lender, the Issuing Bank or Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement;

(vii) *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower Parties as a result of any judgment of a court of competent jurisdiction obtained by the Borrower Parties against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and

(viii) *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction;

provided that if such payment is a payment of the principal amount of any Loans or L/C Disbursements in respect of which such Defaulting Lender has not fully funded its appropriate share, such payment will be applied solely to pay the Loans of, and L/C Disbursements owed to, all non-Defaulting Lenders on a *pro rata* basis prior to being applied to the payment of any Loans of, or L/C Disbursements owed to, such Defaulting Lender. Any payments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post cash collateral pursuant to this Section 2.26(1)(b) will be deemed paid to and redirected by such Defaulting Lender, and each Revolving Lender irrevocably consents hereto.

(c) Certain Fees. Such Defaulting Lender (i) will not be entitled to receive any Commitment Fee pursuant to Section 2.12(1) for any period during which that Revolving Lender is a Defaulting Lender (and the Borrower Parties will be required to pay any such fee that otherwise would have been required to have been paid to such Defaulting Lender) and (ii) will not be entitled to receive any L/C Participation Fee pursuant to Section 2.12(2) for any period during which that Revolving Lender is a Defaulting Lender (although the Borrower Parties will be required to pay any such L/C Participation Fee that otherwise would have been required to have been paid to such Defaulting Lender to the non-Defaulting Lenders or Issuing Bank, in accordance with any reallocation of Fronting Exposure to non-Defaulting Lenders or as may be retained by the Issuing Bank, as the case may be).

(d) Reallocation of Applicable Percentages to Reduce Fronting Exposure. During any period in which there is a Defaulting Lender, for purposes of computing the amount of the obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit or Swingline Loans pursuant to Sections 2.04 and 2.05, the "*Revolving Facility Percentage*" of each non-Defaulting Lender will be computed without giving effect to the Commitment of such Defaulting Lender; *provided*, that, each such reallocation will be given effect only to the extent such that the aggregate obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit and Swingline Loans will not exceed the positive difference, if any, of (i) the Revolving Commitment of such non-Defaulting Lender *minus* (ii) the aggregate outstanding amount of the Revolving Credit Exposure of such non-Defaulting Lender.

(e) Elimination of Remaining Fronting Exposure. At any time that there exists a Defaulting Lender, (i) immediately upon the request of the Administrative Agent or the Issuing Bank, the Borrower Parties will deliver to the Administrative Agent cash collateral in an amount sufficient to cover all Fronting Exposure of the Revolving Facility L/C Exposure (after giving effect to Section 2.26(1)(d)) which will be held as security for the reimbursement obligations of the Borrower with respect to the Revolving Facility L/C Exposure and (ii) immediately upon request of the Administrative Agent or the Swingline Lender, the Borrower Parties will repay an amount of Swingline Loans sufficient to eliminate the Fronting Exposure of the Swingline Lender.

(2) Defaulting Lender Cure. If the Borrower, the Administrative Agent, the Swingline Lender and the Issuing Bank agree in writing in their sole discretion that a Defaulting Lender should no longer be

deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any cash collateral), such Revolving Lender will, to the extent applicable, purchase that portion of outstanding Revolving Loans of the other Revolving Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Revolving Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held on a *pro rata* basis by the Revolving Lenders in accordance with their Revolving Facility Percentages (without giving effect to Section 2.26(1)(d)), whereupon such Revolving Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while such Revolving Lender was a Defaulting Lender; and *provided, further*, that, except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Revolving Lender will constitute a waiver or release of any claim of any party hereunder arising from such Revolving Lender's having been a Defaulting Lender.

ARTICLE III

Representations and Warranties

The Borrower, with respect to itself, each Co-Borrower and each of the Restricted Subsidiaries (and, solely with respect to Sections 3.01, 3.02, 3.03, 3.04, 3.08, 3.09, 3.10, 3.13, 3.15, 3.18 and 3.20 and solely with respect to itself, Holdings) represents and warrants to each Agent and to each of the Lenders on the dates required by Section 4.01(2) or Section 4.02(16), as applicable, that:

SECTION 3.01 Organization; Powers. Holdings, the Borrower, each Co-Borrower and each Restricted Subsidiary:

- (1) is a Debtor in the Chapter 11 Cases;
- (2) is a partnership, limited liability company, corporation, or trust duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization (to the extent such status or an analogous concept applies to such an organization);
- (3) subject to the entry of the Interim Order (and the Final Order, where applicable), has all requisite power and authority to own its property and assets and to carry on its business as now conducted;
- (4) is qualified to do business in each jurisdiction where such qualification is required, except where the failure to so qualify would not reasonably be expected to have a Material Adverse Effect; and
- (5) subject to the entry of the Interim Order (and the Final Order, where applicable), has the power and authority to execute, deliver and perform its obligations under each of the Loan Documents and each other agreement or instrument contemplated thereby to which it is a party and, in the case of the Borrower Parties, to borrow and otherwise obtain credit hereunder.

SECTION 3.02 Authorization. The execution, delivery and performance by each of the Loan Parties of each of the Loan Documents to which it is a party and the Borrowings hereunder and the transactions contemplated hereby:

- (1) subject to the approval of the Court pursuant to the Orders, have been duly authorized by all corporate, stockholder, partnership, limited liability company or other applicable action required to be taken by the Loan Parties; and

- (2) upon the entry of the Orders, as applicable, will not:
 - (a) violate (except where such violation is excused due to the filing of the Chapter 11 Cases):
 - (i) any provision of (1) law, statute, rule or regulation, or of (2) the certificate or articles of incorporation or other constitutive documents (including any partnership, limited liability company or operating agreement or by-laws) of any Loan Party;
 - (ii) any applicable order of any court or any rule, regulation or order of any Governmental Authority; or
 - (iii) any provision of any indenture, certificate of designation for preferred stock, agreement or other instrument to which any Loan Party is a party or by which any of them or any of their property is or may be bound;
 - (b) be in conflict with, result in a breach of, constitute (alone or with notice or lapse of time or both) a default under, or give rise to a right of or result in any cancellation or acceleration of any right or obligation (including any payment) or to a loss of a material benefit under, any such indenture, certificate of designation for preferred stock, agreement or other instrument, or in each case, such default is stayed by the filing of the Chapter 11 Cases; or
 - (c) result in the creation or imposition of any Lien upon any property or assets of any Loan Party, other than the Liens created by the Loan Documents, Permitted Liens and Liens permitted by the Orders or any restrictions arising on account of such Loan Party's status as a "debtor" under the Bankruptcy Code;

except with respect to clauses (a) (other than subclause (a)(i)(2) thereof) and (b) of this Section 3.02(2) as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 3.03 Enforceability. Subject to the approval of the Court pursuant to the Orders, this Agreement has been duly executed and delivered by Holdings and each of the Borrower Parties and constitutes, and each other Loan Document when executed and delivered by each Loan Party that is party thereto will constitute, a legal, valid and binding obligation of such Loan Party enforceable against each such Loan Party in accordance with its terms, subject to:

- (1) the effects of bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or other similar laws affecting creditors' rights generally;
- (2) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law);
- (3) implied covenants of good faith and fair dealing; and
- (4) any foreign laws, rules and regulations as they relate to pledges of Equity Interests in Foreign Subsidiaries.

SECTION 3.04 Governmental Approvals. Subject to the approval of the Court pursuant to the Orders, no action, consent or approval of, registration or filing with or any other action by any Governmental Authority or third party is or will be required in connection with the perfection or maintenance of the Liens created under the Security Documents or the exercise by the Administrative Agent

or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral, except for:

- (1) the filing of Uniform Commercial Code financing statements and equivalent filings in foreign jurisdictions;
- (2) filings with the United States Patent and Trademark Office and the United States Copyright Office and comparable offices in foreign jurisdictions and equivalent filings in foreign jurisdictions;
- (3) filings of deeds of trusts or mortgages with the applicable filing offices;
- (4) filings which may be required under Environmental Laws;
- (5) filings as may be required under the Exchange Act and applicable stock exchange rules in connection therewith;
- (6) such as have been made or obtained and are in full force and effect;
- (7) such actions, consents and approvals the failure of which to be obtained or made would not reasonably be expected to have a Material Adverse Effect; or
- (8) filings or other actions listed on Schedule 3.04.

SECTION 3.05 Borrowing Base Certificate. At the time of delivery of each Borrowing Base Certificate, assuming that any eligibility criteria that requires the approval or satisfaction of the Administrative Agent has been approved by or is satisfactory to the Administrative Agent, each material Account consisting of Credit Card Receivables reflected therein as eligible for inclusion in the Borrowing Base is an Eligible Credit Card Receivable, each material Account consisting of Trade Receivables reflected therein as eligible for inclusion in the Borrowing Base is an Eligible Trade Receivable and the material Inventory reflected therein as eligible for inclusion in the Borrowing Base constitutes Eligible Inventory.

SECTION 3.06 Title to Properties; Possession Under Leases.

(1) Each of the Borrower Parties and the Subsidiary Loan Parties has valid fee simple title to, or valid leasehold interests in, or easements or other limited property interests in, all of its Real Properties and valid title to its personal property and assets, in each case, except for Permitted Liens or defects in title that do not materially interfere with its ability to conduct its business as currently conducted or to utilize such properties and assets for their intended purposes, in each case, except where the failure to have such title interest, easement or right would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. All such properties and assets are free and clear of Liens, other than Permitted Liens.

(2) Each of the Borrower Parties' and the Restricted Subsidiaries' leases is in full force and effect, except leases in respect of which the failure to be in full force and effect would not reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 3.06(2), on the Effective Date the Borrower Parties and each of the Restricted Subsidiaries enjoys peaceful and undisturbed possession under all such leases, other than leases in respect of which the failure to enjoy peaceful and undisturbed possession would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 3.07 Subsidiaries; Saks Flagship Entities.

(1) Schedule 3.07(1) sets forth as of the Effective Date the name and jurisdiction of incorporation, formation or organization of the Borrower and each Restricted Subsidiary and, as to each such Restricted Subsidiary, the percentage of each class of Equity Interests owned by the Borrower or by any other Restricted Subsidiary of the Borrower.

(2) As of the Effective Date, other than as set forth in Schedule 3.07(2), there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments of any nature relating to any Equity Interests owned or held by the Borrower or any Restricted Subsidiary.

(3) As of the Effective Date, (i) SFA Holdings is the direct owner, beneficially and of record of 100% of the Equity Interest issued by Saks Flagship Holdco, (ii) Saks Flagship Holdco is the direct owner, beneficially and of record of 100% of the Equity Interest issued by Saks Flagship Holdco II, (iii) Saks Flagship Holdco II is the direct owner, beneficially and of record of 100% of the Equity Interest issued by Saks Flagship Fee Owner and Saks Flagship GL Tenant, (iv) Saks Flagship Fee Owner has good, marketable and insurable fee simple title to the Saks Flagship Real Estate, free and clear of all Liens, other than Liens in existence on the Effective Date permitted under the Pre-Petition Credit Agreement, (v) Saks Flagship GL Tenant has a valid leasehold interest in the Saks Flagship Real Estate pursuant to the lease described in clause (a) of the definition of Saks Flagship Lease, (vi) SFA has a valid leasehold interest in the Saks Flagship Real Estate pursuant to the lease described in clause (b) of the definition of Saks Flagship Lease, (vii) each Saks Flagship Lease is in full force and effect, and (viii) neither Saks Flagship GL Tenant or SFA are in material default of the terms of the Saks Flagship Lease in any manner which could reasonably be expected to be adverse in any respect to the Secured Parties (other than in connection with the Chapter 11 Cases).

SECTION 3.08 Litigation; Compliance with Laws.

(1) Other than in connection with the Chapter 11 Cases, as disclosed in writing to the Agent's Advisors (or such subset of Agent's Advisors as the Administrative Agent agrees) or publicly disclosed in any first day pleadings or declarations, or any other pleadings or declarations of the Debtors, the Administrative Agent or the Lenders in connection with any proposed court order consented to by the Administrative Agent, that, in each case, are filed in the Chapter 11 Cases, there are no actions, suits or proceedings at law or in equity or by or on behalf of any Governmental Authority or in arbitration now pending, or, to the knowledge of the Borrower, threatened in writing against or affecting Holdings, the Borrower Parties or any Restricted Subsidiary or any business, property or rights of any such Person (but excluding any actions, suits or proceedings arising under or relating to any Environmental Laws, which are subject to Section 3.14), in each case, which would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(2) To the knowledge of the Borrower, none of Holdings, the Borrower Parties, the Restricted Subsidiaries or their respective properties or assets is in violation of (nor will the continued operation of their material properties and assets as currently conducted violate) any law, rule or regulation (including any zoning, building, ordinance, code or approval, or any building permit, but excluding any Environmental Laws, which are subject to Section 3.14) or any restriction of record or agreement affecting any property, or is in default with respect to any judgment, writ, injunction or decree of any Governmental Authority, where such violation or default would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 3.09 Federal Reserve Regulations.

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

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

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

SECTION 3.11 Use of Proceeds. The Borrower Parties shall use the proceeds of the Revolving Loans, Swingline Loans, and may request the issuance of Letters of Credit, after the Closing Date solely to fund the Chapter 11 Cases in accordance with the Approved Budget on an aggregate basis (but for the avoidance of doubt, shall not be tested against the Approved Budget hereunder) and for the financing of the Borrower’s and its Subsidiaries’ ordinary working capital and letters of credit, (ii) payment of costs of administering the Chapter 11 Cases, (iii) payment of Court-approved prepetition obligations of the Loan Parties as set forth in the Approved Budget or Updated Budget, and in each case, otherwise approved by the Administrative Agent, and (iv) other lawful purposes of the Loan Parties permitted by the Approved Budget or Updated Budget and the terms of the Loan Documents.

SECTION 3.12 Tax Returns. Except as set forth on Schedule 3.12:

(1) Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, or is excused as a result of the Chapter 11 Cases, each of the Borrower and the Restricted Subsidiaries has filed or caused to be filed all federal, state, local and non-U.S. Tax returns required to have been filed by it; and

(2) Each of the Borrower and the Restricted Subsidiaries, subject to the approval of the Court, has timely paid or caused to be timely paid (a) all Taxes shown to be due and payable by it on the returns referred to in clause (1) of this Section 3.12 and (b) all other Taxes or assessments (or made adequate provision (in accordance with GAAP) for the payment of all Taxes due) with respect to all periods or portions thereof ending on or before the Effective Date, which Taxes, if not paid or adequately provided for, would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, in each case except (i) Taxes or assessments that are being contested in good faith by appropriate proceedings and for which the Borrower or any Restricted Subsidiary (as the case may be) has set aside on its books adequate reserves in accordance with GAAP and (ii) Taxes or assessments the non-payment of which is permitted or required by the Bankruptcy Code or order of the Court.

SECTION 3.13 No Material Misstatements.

(1) All written factual information and written factual data (other than the Projections, any other projections, estimates and information of a general economic or industry specific nature) concerning Holdings, the Borrower or any Restricted Subsidiary that has been made available to the Administrative Agent or the Lenders, directly or indirectly, by or on behalf of Holdings, the Borrower or any Restricted Subsidiary, when taken as a whole and after giving effect to all supplements and updates provided thereto, is correct in all material respects and does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading

in light of the circumstances under which such statements are made. As of the Effective Date, to the best knowledge of Holdings, the Borrower and each Co-Borrower, the information included in the Beneficial Ownership Certification provided on or prior to the Effective Date to any Lender in connection with this Agreement is true and correct in all material respects.

(2) The Projections that have been made available to the Administrative Agent or the Lenders by or on behalf of Holdings and the Borrower, when taken as a whole, have been prepared in good faith based upon assumptions that are believed by Holdings and the Borrower to be reasonable at the time made and at the time delivered to the Administrative Agent or the Lenders, it being understood by the Administrative Agent and the Lenders that:

- (a) the Projections are merely a prediction as to future events and are not to be viewed as facts;
- (b) the Projections are subject to significant uncertainties and contingencies, many of which are beyond the control of Holdings and the Borrower;
- (c) no assurance can be given that any particular Projections will be realized; and
- (d) actual results may differ and such differences may be material.

SECTION 3.14 Environmental Matters. Except as set forth on Schedule 3.14 or as to matters that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

(1) each of the Borrower Parties and the Restricted Subsidiaries is in compliance with all Environmental Laws (including having obtained and complied with all permits, licenses and other approvals required under any Environmental Law for the operation of its business);

(2) none of the Borrower Parties or any Restricted Subsidiary has received notice of or is subject to any pending, or to the Borrower's knowledge, threatened action, suit or proceeding alleging a violation of, or liability under, any Environmental Law that remains outstanding or unresolved;

(3) to the Borrower's knowledge, no Hazardous Material is located at, on or under any property currently or formerly owned, operated or leased by any Borrower Party or any Restricted Subsidiary and no Hazardous Material has been generated, owned, treated, stored, handled or controlled by any Borrower Party or any Restricted Subsidiary and transported to or released at any location which, in each case, described in this clause (3), would reasonably be expected to result in liability to any Borrower Party or any Restricted Subsidiary; and

(4) there are no agreements in which any Borrower Party or any Restricted Subsidiary has expressly assumed or undertaken responsibility for any known or reasonably anticipated liability or obligation of any other Person arising under or relating to Environmental Laws or Hazardous Materials.

SECTION 3.15 Security Documents. Upon entry of the Interim Order (and, if entered, the Final Order), the Liens granted thereunder by the Debtors that are Loan Parties to or for the benefit of the Collateral Agent on any Collateral shall be valid and automatically perfected with the priority set forth herein and in the Orders, and no filing or other action will be necessary to perfect or protect such Liens and security interests with respect to such Debtors' Obligations under the Loan Documents and the Orders.

SECTION 3.16 Location of Real Property and Leased Premises.

(1) Schedule 3.16(1) correctly identifies, in all material respects, as of the Effective Date, all Material Real Property owned in fee by the Loan Parties. As of the Effective Date, the Loan Parties own in fee all the Real Property set forth as being owned by them on Schedule 3.16(1).

(2) Schedule 3.16(2) lists correctly in all material respects, as of the Effective Date, all Material Real Property leased by any Loan Party and the best known addresses thereof. As of the Effective Date, the Loan Parties have in all material respects valid leases in all Material Real Property set forth as being leased by them on Schedule 3.16(2).

SECTION 3.17 [Reserved].

SECTION 3.18 No Material Adverse Effect. Since the Petition Date, there has been no event that has had, or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

SECTION 3.19 Insurance. Schedule 3.19 sets forth a true, complete and correct description of all material insurance maintained by or on behalf of any Borrower Party or any Restricted Subsidiary as of the Effective Date. As of such date, such insurance is in full force and effect.

SECTION 3.20 Anti-Money Laundering; Anti-Corruption; Sanctions.

(1) To the extent applicable, each of Holdings, the Borrower Parties and the Subsidiaries is in compliance and maintains in effect policies and procedures designed to ensure compliance, in all material respects, with the USA PATRIOT Act, and any other similar applicable anti-money laundering laws, Sanctions and regulations.

(2) No part of the proceeds of the Loans or Letters of Credit will be used by a Borrower Party or any of their respective Subsidiaries, directly or (to the knowledge of the Borrower) indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended from time to time ("*FCPA*").

(3) None of Holdings, the Borrower or any Subsidiary, nor to the knowledge of Holdings, the Borrower, any director, officer, employee or agent thereof, is any of the following:

(a) a Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224 on Terrorist Financing effective September 24, 2001 (the "*Executive Order*") or any other blocking Sanctions;

(b) a Person owned fifty percent or more by any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order or any other blocking Sanctions;

(c) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any applicable laws with respect to terrorism or money laundering;

(d) a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; or

(e) a Person that is named on the most current List of Specially Designated Nationals and Blocked Persons as published by the U.S. Department of the Treasury's Office of Foreign

Assets Control (“*OFAC*”) at its official website or any replacement website or other replacement official publication of such list, HMT’s Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority and none of the proceeds of the Loans or Letters of Credit will be, directly or (to the knowledge of the Borrower) indirectly, offered, lent, contributed or otherwise made available to any Subsidiary, joint venture partner or other Person for the purpose of financing the activities of any Person currently the subject of sanctions administered by OFAC or another relevant sanctions authority.

SECTION 3.21 Intellectual Property; Licenses, Etc. Except as set forth on Schedule 3.21:

(1) except as would not reasonably be expected to have a Material Adverse Effect, each Borrower Party and Restricted Subsidiary owns, or possesses the right to use, all of the patents, patent rights, trademarks, service marks, trade names, copyrights or mask works, domain names, trade secrets and other intellectual property rights (collectively, “*Intellectual Property Rights*”) that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person;

(2) except as would not reasonably be expected to have a Material Adverse Effect, no Borrower Party or Restricted Subsidiary nor any Intellectual Property Rights, product, process, method, substance, part or other material now employed, sold or offered by any Borrower Party or Restricted Subsidiary is infringing upon, misappropriating or otherwise violating Intellectual Property Rights of any Person; and

(3) no material claim or litigation regarding any of the foregoing is pending or, to the knowledge of the Borrower, threatened;

SECTION 3.22 Employee Benefit Plans; Labor Matters.

(1) Other than the Chapter 11 Cases and except as would not reasonably be expected to have a Material Adverse Effect, with respect to Plans the Borrower Parties and each of their respective ERISA Affiliates are in compliance with the applicable provisions of ERISA and the Code and the regulations and published interpretations thereunder. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events, would reasonably be expected to have a Material Adverse Effect. Except as would not reasonably be expected to have a Material Adverse Effect, the present value of all accumulated benefit obligations under all Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87, as updated, amended or superseded) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plans, in the aggregate.

(2) Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect (i) there are no strikes, lockouts, slowdowns or other material labor disputes against any Loan Party or any Restricted Subsidiary thereof pending or, to the knowledge of any Loan Party, threatened, (ii) the hours worked by and payments made to employees of the Loan Parties comply with the Fair Labor Standards Act and any other applicable federal, state, local or foreign Law dealing with such matters, (iii) no Loan Party or any of its Restricted Subsidiaries has incurred any liability or obligation under the Worker Adjustment and Retraining Act or similar state Law, (iv) all payments due from any Loan Party and its Restricted Subsidiaries, or for which any claim may be made against any Loan Party or any of its Restricted Subsidiaries, 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, (v) except as set forth on Schedule 3.23, as of the Effective Date, no Loan Party or any Restricted Subsidiary is a party to or bound by any collective bargaining agreement, any management,

consulting or employment agreement providing for annual compensation of greater than \$5.0 million, including any bonus, restricted stock, stock option, or stock appreciation plan or agreement or any similar plan, agreement or arrangement (excluding any phantom share plan), (vi) there are no representation proceedings pending or, to any Loan Party's knowledge, threatened to be filed with the National Labor Relations Board, and no labor organization or group of employees of any Loan Party or any Restricted Subsidiary has made a pending demand for recognition, (vii) 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 Restricted Subsidiary pending or, to the knowledge of any Loan Party, 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 Restricted Subsidiaries, or (viii) 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 Restricted Subsidiaries is bound.

SECTION 3.23 Saks Flagship Material Documents.

(1) The representations and warranties of Saks Flagship Fee Owner contained in Article IV of the Incorporated Agreement continue to be true and correct in all material respects except in the case of any representation and warranty qualified by materiality, which shall be true and correct in all respects (as of each date the representations and warranties set forth herein are made or deemed made, except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties will be true and correct in all material respects (except in the case of any representation and warranty qualified by materiality, which shall be true and correct in all respects) as of such earlier date and except to the extent such representations and warranties are not true and correct as a result of the Chapter 11 Cases or the DIP UnSub Borrower Term Loan Agreement).

(2) The execution and delivery of this Agreement does not constitute a (i) "Default" or an "Event of Default" (as such terms are defined in the Incorporated Agreement) and would not, but for the giving of notice or passage of time, or both, constitute a "Default" or an "Event of Default" (as such terms are defined in the Incorporated Agreement) or (ii) default or event of default and would not, but for the giving of notice or passage of time, or both, constitute a default or event of default under any other Saks Flagship Material Agreement, in each case other than as a result of the Chapter 11 Cases.

(3) Except for the Saks Flagship Material Agreements and the other agreements (if any) copies of which have been delivered to the Administrative Agent (including pursuant to the Pre-Petition Credit Agreement), there are no other agreements which are material to the Saks Flagship Entities, the transactions contemplated by the Saks Flagship CMBS Documents or the Ground Lessee Pledge Documentation, or any other material contractual arrangements relating to the Saks Flagship Real Estate. The Loan Parties have provided the Administrative Agent with a true, correct and complete copy of each of the Saks Flagship Material Agreements as of the Effective Date (including any amendments, or modifications thereto and any supplemental agreements material thereto). Each of the Saks Flagship Material Agreements is valid and binding upon the parties thereto.

SECTION 3.24 Chapter 11 Cases.

(1) The Chapter 11 Cases were commenced on the Petition Date, duly authorized in accordance with applicable Requirements of Law, and proper notice thereof has been or will be given, as will proper notice of (i) the DIP Motion (as defined in the [Milestones]), (ii) the entry of Interim Order and the Final Order and (iii) the hearings for the entry of the Interim Order and the Final Order. The Loan Parties that are Debtors shall give, on a timely basis as specified in the Interim Order or the Final Order, as

applicable, all notices required to be given to all parties specified in the Interim Order or Final Order, as applicable.

(2) The Loan Parties that are Debtors are in compliance in all material respects with the terms and conditions of the Orders. Each of the Interim Order (with respect to the period prior to the entry of the Final Order) and the Final Order (from and after the Final Order Entry Date) is in full force and effect and has not been vacated or reversed, is not subject to a stay and has not been modified or amended other than with the consent of the Required Lenders (acting in their sole discretion).

(3) From and after the entry of the Interim Order, pursuant to and to the extent permitted in the Interim Order, the Obligations (i) will constitute allowed joint and several Superpriority Claims and (ii) will be secured by a valid, binding, continuing, enforceable, fully perfected Liens on all of the Collateral pursuant to Sections 364(c)(2), (c)(3) and (d) of the Bankruptcy Code, as applicable, subject only to the Carve-Out.

(4) The entry of the Interim Order (and, when applicable, the Final Order) is effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, the Superpriority Claims and Liens without the necessity of the execution (or recordation or filing) of mortgages, security agreements, pledge agreements, financing statements or other agreements or documents.

(5) Each Variance Report delivered pursuant to Section 5.04(9) is true, complete and correct in all material respects for the period covered thereby as of the date such Variance Report is delivered.

(6) Notwithstanding the provisions of section 362 of the Bankruptcy Code, and subject to the applicable provisions of the Interim Order or the Final Order, as the case may be, including but not limited to any applicable notice periods therein, upon the Maturity Date, the Administrative Agent and the Lenders shall be entitled to immediately be Paid in Full and to enforce the remedies provided for hereunder or under applicable Requirements of Law, without further notice, motion or application to, hearing before, or order from, the Court.

ARTICLE IV

Conditions of Lending

The obligations of (a) the Lenders (including the Swingline Lender) to make Loans and (b) any Issuing Bank to issue Letters of Credit or amend, extend or renew Letters of Credit hereunder (each, a “*Credit Event*”) are subject to the satisfaction of the following conditions:

SECTION 4.01 All Credit Events. On the date of each Credit Event:

(1) The Administrative Agent shall have received, in the case of a Borrowing, a Borrowing Request as required by Section 2.03 (or a Borrowing Request shall have been deemed given in accordance with Section 2.03) or, in the case of the issuance of a Letter of Credit, the applicable Issuing Bank and the Administrative Agent shall have received a notice requesting the issuance of such Letter of Credit (and if requested by such Issuing Bank, a letter of credit application) as required by Section 2.05(2).

(2) The representations and warranties set forth in the Loan Documents will be true and correct in all material respects (or, in the case of any representations and warranties qualified by materiality or Material Adverse Effect, in all respects) as of such date, as applicable, with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties will be true and correct in all material respects (or,

in the case of any representations and warranties qualified by materiality or Material Adverse Effect, in all respects) as of such earlier date).

(3) At the time of and immediately after any Borrowing or issuance, amendment, extension or renewal of a Letter of Credit (other than an amendment, extension not beyond the applicable Maturity Date, or renewal of a Letter of Credit without any increase in the stated amount thereof), as applicable, no Default or Event of Default shall have occurred and be continuing or would result therefrom.

(4) At the time after giving effect to such Borrowing or issuance, amendment, extension or renewal of a Letter of Credit, as applicable, the Total Revolving Credit Exposure does not exceed the Line Cap; *provided*, that, for the avoidance of doubt, this clause (4) shall not apply to Protective Advances.

Each such Credit Event will be deemed to constitute a representation and warranty by the Borrower on the date of such Credit Event as to the matters specified in paragraphs (2), (3) and (4) of this Section 4.01.

SECTION 4.02 Effective Date Conditions. The effectiveness of this Agreement and the other Loan Documents on the Effective Date is subject solely to the satisfaction or waiver by the Lenders of the following conditions precedent:

(1) Loan Documents. On the Effective Date, Holdings, the Borrower Parties and each of the Lenders shall have executed and delivered to the Administrative Agent a counterpart of this Agreement.

(2) DIP Term Loan Agreement. On the Effective Date, the Debtors shall enter into the DIP Term Loan Agreement.

(3) Fees. All fees required to be paid by the Borrowers on the Effective Date pursuant to the Fee Letter and, to the extent invoiced at least three Business Days prior to the Effective Date, all reasonable and documented out-of-pocket expenses required to be reimbursed by the Borrower shall have been paid, or substantially simultaneously with the initial funding of the amounts borrowed under this Agreement shall be paid, in each case to the extent due (which amount may be offset against the proceeds from the Loans made on the Effective Date under this Agreement).

(4) [Reserved].

(5) Corporate Documents, etc. The Agents shall have received a certificate of a Responsible Officer of the Borrower dated the Effective Date and certifying:

(a) that attached thereto is a true and complete copy of the charter or other similar organizational document of each Loan Party, and each amendment thereto, certified as being a true and correct copy thereof by the Secretary of State or other applicable Governmental Authority of the jurisdiction in which such Loan Party, as applicable, is organized;

(b) that attached thereto is a true and complete copy of a good standing certificate (or equivalent evidence) of the Secretary of State or other applicable Governmental Authority of the jurisdiction in which each Loan Party, as applicable, is organized;

(c) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors of each Loan Party, as applicable, authorizing the execution, delivery and performance of the Loan Documents to which it is a party or any other document delivered in connection herewith on the Effective Date and certifying that such resolutions have not been modified, rescinded or amended and are in full force and effect; and

(d) as to the incumbency and specimen signature of each Responsible Officer executing this Agreement (together with a certificate of another officer as to the incumbency and specimen signature of the Responsible Officer executing the certificate pursuant to this Section 4.02(6)).

(6) [Reserved].

(7) Agent License Grant. The Administrative Agent shall have received an acknowledgment to each Agent License Grant in effect prior to the Effective Date in form and substance reasonably satisfactory to the Administrative Agent in its Reasonable Credit Judgment.

(8) [Reserved].

(9) Intercreditor Agreement. On the Effective Date, the Administrative Agent and the DIP Term Loan Agent shall have entered into the Intercreditor Agreement and each Loan Party shall have executed and delivered the Intercreditor Agreement.

(10) Security Documents. On the Effective Date, each Loan Party shall have executed and delivered to the Collateral Agent the Collateral Agreement covering all of such Loan Party's present and future Collateral referred to therein, and shall have delivered to the Collateral Agent:

(a) proper financing statements (Form UCC-1 or the equivalent) authorized for filing under the UCC and filings with the United States Patent and Trademark Office and United States Copyright Office, if applicable, or other appropriate filing offices of each U.S national or state jurisdiction as may be required to perfect the security interests purported to be created by the Security Documents (except to the extent expressly not required by the Collateral Agreement);

(b) to the DIP Term Loan Agent, as bailee for the Collateral Agent pursuant to the Intercreditor Agreement, all of the Pledged Collateral (as defined in the Collateral Agreement), if any, referred to in the Security Documents and then owned by any Loan Party together with executed and undated endorsements for transfer in the case of Pledged Collateral constituting certificated securities and all other documents and instruments required to perfect the security interest of the Collateral Agent (except to the extent expressly not required by the Security Documents); and

(c) the Collateral Agent, for the benefit of the Secured Parties, shall have a legal, valid, binding, enforceable fully perfected first priority Lien on, and perfected security interest in, all right, title and interest of the Loan Parties in the Collateral, subject only to (i) Liens expressly permitted hereby, (ii) the Carve-Out and (iii) the Intercreditor Agreement, and free and clear of all other Liens, other than Liens expressly permitted hereby and by the Interim Order; provided, that the Interim Order (and the Final Order, when applicable) shall be effective to create in favor of the Collateral Agent a legal, valid, perfected and enforceable security interest and Lien upon the Collateral, with the priority set forth in the Orders and the terms thereof.

(11) Budget. The Administrative Agent shall have received the initial Approved Budget.

(12) [Reserved].

(13) Know Your Customer and Other Required Information. The Loan Parties shall have provided or caused to be provided the documentation and other information to the Lenders that are reasonably required by United States regulatory authorities under applicable "know your customer" and

anti-money-laundering rules and regulations, including, without limitation, the Patriot Act, in each case, at least three Business Days prior to the Effective Date; *provided* that, with respect to any direct or indirect equity-holder of any Loan Party which is not identified to the Lenders as an existing or potential direct or indirect equity-holder of such Loan Party on or prior to the Effective Date, the Lenders shall be reasonably satisfied (with respect to compliance with such laws, rules and regulations) with the identity of each such person and (b) if any Borrower Party qualifies as a “legal entity customer” under 31 C.F.R. § 1010.230, the Administrative Agent and each Lender that requests a Beneficial Owner Certification will have received, at least three (3) Business Days prior to the Effective Date, a Beneficial Ownership Certification, consistent with the LSTA form beneficial ownership certification, in relation to each such Borrower Party, in each case of clauses (a) and (b) to the extent that the Lenders have reasonably requested in writing delivered to the Loan Parties at least 10 Business Days prior to the Effective Date.

(14) [reserved].

(15) Borrowing Request. Prior to the making of any Revolving Loan on the Effective Date, the Administrative Agent shall have received a Borrowing Request meeting the requirements of Section 2.03 (provided that no such Borrowing Request shall include any representation or statement as to the absence (or existence) of any Default or Event of Default).

(16) Representations and Warranties. The representations and warranties contained in Article III shall be true and correct in all material respects as of the Effective Date (*provided* that the foregoing materiality qualifiers shall not be applicable to any representations qualified or modified by materiality).

(17) Officer’s Certificate. On the Effective Date, the Borrower shall have delivered to the Administrative Agent a certificate of a Responsible Officer of the Borrower certifying as to the satisfaction of the conditions in Section 4.02(16).

(18) Initial Borrowing Base Certificate. The Borrower shall have delivered to the Administrative Agent a Borrowing Base Certificate in form and substance reasonably satisfactory to the Administrative Agent.

(19) Bankruptcy Matters.

(a) Entry of Interim Order. The Interim Order shall have been entered by no later than [two (2) Business Days] after the Petition Date and shall be in full force and effect, and such Interim Order shall not have been reversed, modified, amended (other than non-material modifications or amendments that do not adversely affect the Administrative Agent or the Lenders), stayed or vacated absent prior written consent of the Administrative Agent.

(b) Cash Management. The Loan Parties shall have established or shall maintain the cash management systems described in Section 5.11, and the Loan Parties shall have taken all steps necessary to comply with the Cash Management Order.

(c) First Day Pleadings. The Administrative Agent shall have received drafts of the “first day” pleadings for the Chapter 11 Cases, in each case, in form and substance reasonably satisfactory to the Administrative Agent.

(d) First Day Orders. All motions, orders (including the “first day orders”) and other documents to be filed with and submitted to the Court on the Petition Date shall be in form and substance reasonably satisfactory to the Administrative Agent, and the Court shall have approved all “first day” orders, including, without limitation, the Cash Management Order.

(e) DIP Term Loan Facility. The Administrative Agent and the Lenders shall have received evidence, in form and substance satisfactory to the Administrative Agent, that, prior to or concurrently with the effectiveness of this Agreement, (i) the DIP Term Loan Facility shall be in full force and effect, (ii) gross proceeds from the Term Loans (as defined in the DIP Term Loan Agreement) shall be deposited into the DIP Term Loan Escrow Account in an amount of not less than \$400,000,000 (net of fees and closing costs) and (iii) the DIP Term Loan Facility shall provide for a commitment by the Lenders (as defined in the DIP Term Loan Agreement) to fund not less than \$600,000,000 DIP Final Funding Loans and DIP Subsequent Draw Loans (each as defined in the DIP Term Loan Agreement).

Each Borrowing Request after the Effective Date shall constitute a representation by the Borrowers that the foregoing conditions are satisfied on and as of the date of the applicable Borrowing (other than such conditions which are subject to the discretion of the Agents or the Lenders). Without limiting the generality of the provisions of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.02, each Lender and/or Agent that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender and/or Agent unless, in the case of any such Lender, the Administrative Agent shall have received notice from such Lender prior to the proposed Effective Date specifying its objection thereto.

ARTICLE V

Affirmative Covenants

The Borrower covenants and agrees with the Agents and each Lender that so long as this Agreement is in effect and until the Commitments have been terminated, the Pre-Petition Obligations and Obligations (other than Obligations in respect of Letters of Credit (except for any Obligations relating to Letters of Credit which are then due and payable), Secured Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted) have been paid in full and all Letters of Credit have expired, terminated or been cash-collateralized or backstopped on terms satisfactory to the Issuing Bank, the Borrower will, and will cause each Co-Borrower and each Restricted Subsidiary, to (other than in the case of Section 5.04), or solely with respect to Sections 5.01, 5.03, 5.06, 5.07(1) and 5.10 below, Holdings will:

SECTION 5.01 Existence; Businesses and Properties.

(1) Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence, except:

(a) in the case of a Restricted Subsidiary (other than a Co-Borrower), where the failure to do so would not reasonably be expected to have a Material Adverse Effect; or

(b) in connection with a transaction permitted under Section 6.05.

(2) (a) Do or cause to be done all things necessary to lawfully obtain, preserve, renew, extend and keep in full force and effect the permits, franchises, authorizations, Intellectual Property Rights, licenses and rights with respect thereto necessary to the normal conduct of its business and (b) at all times maintain and preserve all property necessary to the normal conduct of its business and keep such property in good repair, working order and condition (ordinary wear and tear excepted) and from time to time make, or cause to be made, all needful and proper repairs, renewals, additions, improvements and replacements

thereto necessary in order that the business carried on in connection therewith, if any, may be properly conducted at all times, in each case, except:

- (i) as expressly permitted by this Agreement;
- (ii) such as may expire, be abandoned or lapse in the ordinary course of business; or
- (iii) where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

SECTION 5.02 Insurance.

(1) Maintain, with insurance companies reasonably believed to be financially sound and reputable, insurance in such amounts and against such risks as are customarily maintained by similarly situated companies engaged in the same or similar businesses operating in the same or similar locations, and cause the Collateral Agent to be listed as a co-loss payee on property and casualty policies and as an additional insured on liability policies. The Borrower will furnish to the Administrative Agent or Collateral Agent, upon request, information in reasonable detail as to the insurance so maintained.

(2) If any portion of any Mortgaged Property is at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the Flood Insurance Laws, then:

(a) maintain, or cause the applicable Loan Party to maintain, flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws; and

(b) deliver to the Collateral Agent evidence of such flood insurance reasonably satisfactory to the Collateral Agent as mortgagee and loss payee (the requirements of clauses (a) and (b) being the “**Flood Insurance Requirements**”), it being understood and agreed that with respect to Mortgaged Property under the Pre-Petition Credit Agreement, such evidence may be provided after the Effective Date.

(3) Use commercially reasonable efforts to: (a) if insurance is procured from insurance companies, obtain certificates and endorsements reasonably acceptable to the Administrative Agent with respect to liability, property and casualty insurance; (b) if agreed by the insurance company (which agreement the Borrower shall use commercially reasonable efforts to obtain), cause each insurance policy referred to in this Section 5.02 and procured from an insurance company to provide that it shall not be cancelled, modified or not renewed (x) by reason of nonpayment of premium except upon not less than ten (10) days’ prior written notice thereof by the insurer to the Administrative Agent (giving the Administrative Agent the right to cure defaults in the payment of premiums) or (y) for any other reason except upon not less than thirty (30) days’ prior written notice thereof by the insurer to the Administrative Agent; and (c) deliver to the Administrative Agent, prior to the cancellation, modification or non-renewal of any such policy of insurance, a copy of a renewal or replacement policy (or other evidence of renewal of a policy previously delivered to the Administrative Agent, including an insurance binder) together with evidence reasonably satisfactory to the Administrative Agent of payment of the premium therefor.

SECTION 5.03 Taxes.

(1) As set forth in the Approved Budget and subject to the approval of the Court, pay and discharge promptly when due all federal and material state and local Taxes imposed upon it or its income or profits or in respect of its property, before the same becomes delinquent or in default; *provided* that such payment and discharge will not be required with respect to any Tax if (1) the validity or amount thereof is being contested in good faith by appropriate proceedings, (2) the Borrower or any affected Restricted Subsidiary, as applicable, has set aside on its books reserves in accordance with GAAP with respect thereto and (3) the non-payment thereof is permitted or required under the Bankruptcy Code or order of the Court.

SECTION 5.04 Financial Statements, Reports, etc. Furnish to the Administrative Agent (which will promptly furnish such information to the Lenders) and, subject to customary confidentiality undertakings, make available to potential Lenders/assignees:

(1) within ninety (90) days following the end of each fiscal year, (a) a consolidated balance sheet and related statements of operations, cash flows and owners' equity showing the financial position of the Borrower and the Subsidiaries as of the close of such fiscal year and the consolidated results of its operations during such fiscal year and, in each case, setting forth in comparative form the corresponding figures for the prior fiscal year, (b) a consolidating balance sheet and related statements of operations, cash flows and owners' equity showing the financial position of the Borrower and its Restricted Subsidiaries as of the close of such fiscal year and the consolidating results of its operations during such fiscal year (all such consolidating statements to be presented by the Borrower and its Restricted Subsidiaries on a consolidated basis) and, in each case, setting forth in comparative form the corresponding figures from the prior fiscal year, which consolidated balance sheet and related statements of operations, cash flows and owners' equity will be audited by independent public accountants of recognized national standing, or such other accountants as are reasonably acceptable to the Administrative Agent, and accompanied by an opinion of such accountants to the effect that such consolidated financial statements fairly present, in all material respects, the financial position and results of operations of the Borrower and the Subsidiaries on a consolidated basis in accordance with GAAP; and such consolidating statements to be certified by a Responsible Officer of the Borrower to the effect that such statements are fairly stated in all material respects when considered in relation to the consolidated financial statements of the Borrower and its Restricted Subsidiaries (the applicable financial statements delivered pursuant to this clause (1) being the "***Annual Financial Statements***") and (c) management's discussion and analysis of the important operational and financial developments during such fiscal year;

(2) within forty-five (45) days following the end of each fiscal quarter of each fiscal year, (a) a consolidated balance sheet and related statements of operations and cash flows showing the financial position of the Borrower and the Subsidiaries as of the close of such fiscal quarter and the consolidated results of its operations during such fiscal quarter and, in each case, the then-elapsed portion of the fiscal year and setting forth in comparative form the corresponding figures for the corresponding periods of the prior fiscal year, (b) a consolidating balance sheet and related statements of operations and cash flows showing the financial position of the Borrower and its Restricted Subsidiaries as of the close of such fiscal quarter and the consolidating results of its operations during such fiscal quarter (all such consolidating statements to be presented by the Borrower and its Restricted Subsidiaries on a consolidated basis) and, in each case, the then-elapsed portion of the fiscal year and setting forth in comparative form the corresponding figures for the corresponding periods of the prior fiscal year, which consolidated balance sheet and related statements of operations and cash flows will be certified by a Responsible Officer of the Borrower on behalf of the Borrower as fairly presenting, in all material respects, the financial position and results of operations of the Borrower and the Subsidiaries on a consolidated basis in accordance with GAAP, subject to normal year-end audit adjustments and the absence of footnotes; and such consolidating statements to be certified by a Responsible Officer of the Borrower to the effect that such statements are fairly stated in all material respects when considered in relation to the consolidated financial statements of the Borrower and its Restricted Subsidiaries (the applicable financial statements delivered pursuant to this

clause (2) being the “**Quarterly Financial Statements**”) and (c) management’s discussion and analysis of the important operational and financial developments during such quarterly accounting period (including customary KPIs to the extent required to be disclosed under any documents governing Specified Indebtedness);

(3) within thirty (30) days following the end of each fiscal month, management reporting that is prepared on a monthly basis, including an income statement, balance sheet and related statements of operations and cash flows for the fiscal month then ended and the then-elapsed portion of the fiscal year and accompanied by a comparison of profit and loss to (i) the Approved Budget required to be delivered pursuant to Section 5.04(9) and (ii) the corresponding figures for the corresponding periods of the prior fiscal year, in each case including supporting schedules reflecting the gross revenue and merchandise margin broken out by banner, wholesale including consignment and concession (in each case, to the extent available) and an Excess Availability schedule (the applicable reports delivered pursuant to this clause (3) being the “Monthly Financial Statements” and, together with the Annual Financial Statements and Quarterly Financial Statements, the “**Required Financial Statements**”).

(4) concurrently with any delivery of Required Financial Statements, a certificate of a Financial Officer of the Borrower (such certificate the “**Compliance Certificate**”), (w) certifying that no Default or Event of Default has occurred and is continuing or, if a Default or Event of Default has occurred and is continuing, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto, (x) [reserved], and (y) to the extent not previously delivered to the Administrative Agent, attaching copies of each amendment, modification or supplement (or waiver) entered into in connection with any Saks Flagship Material Agreement;

(5) [reserved];

(6) concurrently with the delivery of the Monthly Financial Statements, a summary of accounts payable aging consistent with the form delivered to the Administrative Agent under the Pre-Petition Credit Agreement as of the end of such month to which such Monthly Financial Statements related;

(7) promptly after any Responsible Officer of the Loan Parties has actual knowledge thereof:

(a) notice delivered by any Person party to any Saks Flagship Material Agreement regarding any default, breach or other violation thereof or any other event that could materially impair the value of the interests or the rights of any Loan Party in the Saks Flagship Entities or the Saks Flagship Real Estate;

(8) promptly after the same become publicly available, copies of all periodic and other publicly available reports, proxy statements and, to the extent requested by the Administrative Agent, other materials publicly filed by Holdings, the Borrower or any Subsidiary with the SEC or, after an initial public offering, distributed to its stockholders generally, as applicable;

(9) on or before 5:00 p.m. New York City time on every fourth Friday occurring after the Petition Date (each, an “**Updated Budget Delivery Date**”) commencing with the Friday of the fourth full calendar week occurring after the Petition Date (i.e., [], 2026), a supplement to the Initial Budget (or the previously supplemented Approved Budget, as the case may be), for the rolling 13-week period commencing on the Saturday immediately preceding the applicable Updated Budget Delivery Date (which may reforecast periods in any prior Approved Budget), consistent with the form and level of detail set forth in the Initial Budget (each such supplemental budget, an “**Updated Budget**”). Three (3) calendar days following (and subject to) the approval of any such Updated Budget by the DIP Term Loan Agent pursuant to the DIP Term Loan Facility, such Updated Budget shall constitute the then-approved “Approved

Budget”; provided, that unless and until the DIP Term Loan Agent approves such supplemental budget, the then-current Approved Budget shall remain in effect. The Loan Parties shall provide immediate notice to the Administrative Agent of any update to the Approved Budget, whether as an Updated Budget or otherwise;

(10) concurrently with the delivery of the Annual Financial Statements, an updated Perfection Certificate reflecting all changes since the date of the information most recently received pursuant to this paragraph (10) or Section 5.10;

(11) promptly, from time to time, such other information regarding the operations, business affairs and financial condition of the Borrower or any Subsidiary, in each case, as the Administrative Agent may reasonably request (for itself or on behalf of any applicable Lender) or as may be reasonably requested by the Required Lenders;

(12) promptly upon request by the Administrative Agent (so long as the following are obtainable using commercially reasonable measures), copies of any documents described in Section 101(k)(1) of ERISA that the Borrower may request with respect to any Multiemployer Plan; *provided* that if the Borrower has not requested such documents from the administrator or sponsor of the applicable Multiemployer Plan, the Borrower shall promptly make a request for such documents or notices from such administrator or sponsor and shall provide copies of such documents and notices promptly after receipt thereof; and

(13) (a) not later than 2:00 p.m., New York City time, on Wednesday of each week (or, if Wednesday is not a Business Day, on the next succeeding Business Day), the Borrower shall deliver to the Administrative Agent a Borrowing Base Certificate, with such supporting materials as the Administrative Agent may reasonably request calculated as of the close of business on Saturday of the immediately preceding calendar week, and (b) at least three (3) Business Days (or such later date as may be agreed to by the Administrative Agent, in its sole discretion) prior to the consummation of any direct or indirect Asset Sale, Restricted Payment or Investment of any ABL Priority Collateral (pursuant to a single transaction or series of related transactions) that, individually or together with all such transactions since the most recent delivery of a Borrowing Base Certificate, has an aggregate Book Value in excess of 5% of the then existing Borrowing Base, or upon the release of a Loan Party that is or becomes an Excluded Subsidiary (pursuant to a single transaction or series of related transactions) that, immediately prior to such release, individually or together with all such released Loan Parties since the most recent delivery of a Borrowing Base Certificate, owned ABL Priority Collateral having an aggregate Book Value in excess of 5% of the then existing Borrowing Base, an updated Borrowing Base Certificate, prepared after giving pro forma effect to such Asset Sale, Restricted Payment, Investment or Loan Party release and demonstrating that the Total Revolving Credit Exposure will not exceed the Line Cap, which updated Borrowing Base Certificate (demonstrating such compliance) shall be a condition to the permissibility of the consummation of such transaction or release, notwithstanding any provision of this Agreement or any other Loan Document to the contrary (the requirements of this clause (c), the “***Updated Borrowing Base Condition***”);

(14) concurrently with each delivery to the DIP Term Loan Agent of a Variance Report, such Variance Report together with a statement from the Borrower’s chief financial officer certifying the information contained in the report is correct;

(15) promptly after any Responsible Officer of the Loan Parties has actual knowledge thereof, notice of any action or threatened action by any third party (including creditors and vendors) regarding any default, breach or other violation thereof or any other event that could materially impair the value of the Collateral or otherwise result in a Material Adverse Effect;

(16) [reserved];

(17) use commercially reasonable efforts to provide advance copies of material pleadings, motions, applications, orders and/or filings in the Chapter 11 Cases to be filed by the Debtors (including without limitation, the Orders, any plan of reorganization or liquidation and any disclosure statements related to such plan) as promptly as practicable and, to the extent exigencies allow, three (3) Business Days prior to the filing thereof; provided, that the deliverables described in this clause (17) shall be delivered to the Agent's Advisors (or such subset of Agent's Advisors as the Administrative Agent agrees) at the same time as such deliverables are delivered to the Administrative Agent;

(18) promptly, to the extent not delivered hereunder, any notices, certificates or other written information delivered to the DIP Term Loan Agent;

(19) on or before 11:59 pm of each day, the Loan Parties shall use commercially reasonable efforts to cooperate with the Store Closing Consultant to provide a report, as of the day just ending of, updates on Specified Closures from the Store Closing Consultant, including with respect to sales, cash receipts, Inventory and such other matters with respect to the Specified Closures as the Administrative Agent or the Agent's Advisors may reasonably request, it being understood such information provided under this Section 5.04(19) may be shared with the Lenders; *provided* that such information shall be on an anonymized basis to the Lenders;

(20) on or before 11:59 pm Eastern time on Wednesday of each fiscal week, a report, as of the previous Saturday, certified by a Responsible Officer of the Borrower (a) detailing the actual total aggregate cost value of Inventory receipts in the prior six (6) days and (b) using commercially reasonable efforts to detail cost value of Inventory receipts, and to the extent available broken down by vendor and banner;

(21) on or before 11:59 pm Eastern time on Wednesday of each week, a weekly Inventory and Sales Report showing, as of the previous Saturday, the total aggregate cost value of owned Inventory and weekly gross merchandise value, in each case, to the extent available, by banner and setting forth in comparative form the corresponding figures for the prior fiscal year and outstanding purchase orders by vendor, to the extent not otherwise reflected in the Borrowing Base Certificate(s) delivered pursuant to Section 5.04(13);

(22) on or before 12:00 pm Eastern time of each day, use reasonable best efforts to provide a report, as of the day just ending of (x) cash balances in the DIP Term Loan Funding Account, the DIP ABL Excess Funding Account and the Operating Account and (y) total cash receipts and disbursements

(23) on or before 5:00 pm (ET) on Friday of each week a certificate executed by a Responsible Officer of the Borrower certifying as to compliance with Section 5.11(3) of this Agreement.

Documents required to be delivered pursuant to this Section 5.04 may be delivered electronically in accordance with Section 10.01(5).

SECTION 5.05 Litigation and Other Notices. Furnish to the Administrative Agent (which will promptly thereafter furnish to the Lenders) written notice of the following promptly after any Responsible Officer of the Borrower obtains actual knowledge thereof:

(1) any Default or Event of Default, specifying the nature and extent thereof and the corrective action (if any) proposed to be taken with respect thereto;

(2) the filing or commencement of any action, suit or proceeding, whether at law or in equity or by or before any Governmental Authority (other than the Chapter 11 Cases) or in arbitration, against Holdings, the Borrower or any of the Subsidiaries as to which an adverse determination is reasonably probable and which, if adversely determined, would reasonably be expected to have a Material Adverse Effect; and

(3) the occurrence of any ERISA Event that, together with all other ERISA Events that have occurred, would reasonably be expected to result in a material liability to a Loan Party;

(4) any material change in accounting policies or financial reporting practices by any Loan Party with respect to the Borrower's Accounts and Inventory or which otherwise could reasonably be expected to affect the calculation of the Borrowing Base or the Reserve; and

(5) to the extent feasible, in no less than one (1) day (other than in exigent circumstances in which case as soon as practicable) in advance of filing with the Court or delivering to the Committee appointed in the Chapter 11 Cases, if any, or to the U.S. Trustee, as the case may be, the Final Order, all other material proposed orders and pleadings related to the Pre-Petition Credit Agreement, this Agreement and the credit facilities contemplated thereby, the Pre-Petition Secured Notes Documents, the Pre-Petition UnSub Borrower Secured Notes Documents, the Pre-Petition UnSub FILO Onloan Loan Documents, the Pre-Petition UnSub NPC Onloan Loan Documents, the DIP Term Loan Facility and any Plan of Reorganization and/or any disclosure statement related thereto;

SECTION 5.06 Compliance with Laws. Comply with (i) all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property (including ERISA, Anti-Corruption Laws, OFAC and the PATRIOT Act), except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect or where such compliance is stayed by the Chapter 11 Cases and (ii) the Bankruptcy Code, the Bankruptcy Rules, the Orders and any other order of the Court in all material respects; *provided* that this Section 5.06 will not apply to Environmental Laws, which are the subject of Section 5.09, or laws related to Taxes, which are the subject of Section 5.03.

SECTION 5.07 Maintaining Records; Access to Properties and Inspections; Appraisals.

(1) Permit any Persons designated by the Administrative Agent, to visit and inspect the financial records and the properties of the Borrower or any Restricted Subsidiary at reasonable times, upon reasonable prior notice to and reasonable coordination with the Borrower, and as often as reasonably requested during normal business hours, to make extracts from and copies of such financial records, and permit any Persons designated by the Administrative Agent, upon reasonable prior notice to the Borrower, to discuss the affairs, finances and condition the Borrower or any Restricted Subsidiary with the officers thereof and independent accountants therefor (subject to such accountant's policies and procedures) (it being understood that a representative of the Borrower shall be permitted to be present in any discussions with officers, employees, agent, advisors and independent accountants).

(2) The Loan Parties will, at their expense and upon the Administrative Agent's request, permit any Persons designated by the Administrative Agent to conduct an inventory appraisal for the purpose of obtaining the Net Orderly Liquidation Values for periods after May 30, 2026 with respect to any Collateral comprising the Borrowing Base at reasonable business times and upon reasonable prior notice to the Borrower; *provided* that in no event shall such Net Orderly Liquidation Values be implemented prior to June 1, 2026.

(3) Provide the Administrative Agent and any Person designated by the Administrative Agent (including without limitation, the Agent's Advisors (or such subset of Agent's Advisors as the

Administrative Agent agrees)) with information and access rights consistent with those provided to the DIP Term Loan Agent and its advisors under the DIP Term Loan Facility (or, with respect to the Loan Parties, provided to the DIP UnSub Borrower Agent and its advisors) with respect to the Loan Parties, their operations and business, and the Collateral.

(4) The Borrower Parties will conduct physical counts of the Inventory in a manner consistent with past practices, and after the occurrence and during the continuance of an Event of Default, at such other times as requested by the Administrative Agent. The Borrower Parties, at their own expense, shall deliver to the Administrative Agent the results of each physical verification that the Borrower Parties have made, or have cause any other Person to make on their behalf, of all or any portion of their Inventory. The Borrower Parties will maintain a retail stock ledger inventory reporting system at all times.

(5) Notwithstanding anything to the contrary in this Agreement (including Sections 5.04(11), 5.05, 5.07(1) through (4), 5.07(6) and 5.12) or any other Loan Document, none of the Loan Parties or any of the Subsidiaries will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter with any competitor to Holdings, the Borrower or any of its Subsidiaries or that (1) constitutes non-financial trade secrets or non-financial proprietary information; (2) in respect of which disclosure is prohibited by law or any binding agreement; or (3) is subject to attorney-client or similar privilege or constitutes attorney work product.

SECTION 5.08 Use of Proceeds. Use the proceeds of the Revolving Loans, Swingline Loans, and Letters of Credit in accordance with Section 3.11; *provided* that the Borrower Parties shall not use the proceeds of the Loans in violation of any Sanctions.

SECTION 5.09 Compliance with Environmental Laws. Comply, and make commercially reasonable efforts to cause all lessees and other Persons occupying its fee-owned Real Properties to comply, with all Environmental Laws applicable to its operations and properties, and obtain and renew all material authorizations and permits required pursuant to Environmental Law for its operations and properties, in each case in accordance with Environmental Laws, except, in each case, to the extent the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.10 Further Assurances; Additional Security.

(1) (a) If a Restricted Subsidiary (other than an Excluded Subsidiary) of the Borrower is formed or acquired or ceases to be an Excluded Subsidiary after the Effective Date (including any such Subsidiary deemed to be newly formed or organized by operation of Section 1.07) then the Borrower shall, within sixty (60) days after the date such Restricted Subsidiary is formed or acquired or ceases to be an Excluded Subsidiary (or such longer period as the Collateral Agent agrees in its discretion), Borrower will or will cause such Subsidiary to:

(i) to the extent such Restricted Subsidiary is a Wholly Owned Domestic Subsidiary, deliver a joinder to the Collateral Agreement, substantially in the form specified therein, duly executed on behalf of such Wholly Owned Domestic Subsidiary;

(ii) to the extent required by and subject to the exceptions set forth in the Collateral Agreement, pledge the outstanding Equity Interests (other than Excluded Equity Interests) owned by such Restricted Subsidiary, and cause each Loan Party owning any Equity Interests issued by such Restricted Subsidiary to pledge such outstanding Equity Interests (other than Excluded Equity Interests), and deliver all certificates (if any) representing such Equity Interests, together with stock powers or other instruments of

transfer with respect thereto endorsed in blank, to the Collateral Agent (or a designated bailee thereof);

(iii) to the extent such Restricted Subsidiary is a Wholly Owned Domestic Subsidiary and to the extent required by and subject to the exceptions set forth in this Section 5.10 or the Security Documents, deliver to the Collateral Agent (or a designated bailee thereof) Uniform Commercial Code financing statements with respect to such Restricted Subsidiary and such other documents reasonably requested by the Collateral Agent to create the Liens intended to be created under the Security Documents and perfect such Liens to the extent required by the Security Documents;

(iv) except as otherwise contemplated by this Section 5.10 or any Security Document, obtain all consents and approvals required to be obtained by it in connection with (A) the execution and delivery of all Security Documents (or supplements thereto) to which it is a party and the granting by it of the Liens thereunder and (B) the performance of its obligations thereunder; and

(v) deliver all documentation and other information about such Restricted Subsidiary that is required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act.

(b) [reserved].

(2) Furnish to the Collateral Agent, within 15 days after such change (or such longer period as reasonable agreed to by the Collateral Agent), written notice of any change in any Loan Party’s or Saks Flagship Entity’s:

(a) corporate or organization name;

(b) organizational structure;

(c) location (determined as provided in UCC Section 9-307); or

(d) solely if required for perfecting a security interest in the applicable jurisdiction, organizational identification number (or equivalent) or Federal Taxpayer Identification Number.

(3) Execute any and all other documents, financing statements, agreements and instruments, and take all such other actions (including the filing and recording of financing statements and other documents), not described in the preceding clauses (1) and (2) and that may be required under any applicable law, or that the Collateral Agent may reasonably request, to satisfy the requirements set forth in this Section 5.10 and in the Security Documents with respect to the creation and perfection of the Liens on the Collateral in favor of the Collateral Agent, for the benefit of the Secured Parties, contemplated herein and in the Security Documents and to cause such requirement to be and remain satisfied, all at the expense of the Borrower, and provide to the Collateral Agent, from time to time upon reasonable request, evidence as to the perfection and priority of the Liens created by the Security Documents.

(4) Notwithstanding anything herein to the contrary,

(a) the other provisions of this Section 5.10 need not be satisfied with respect to any Excluded Assets or Excluded Equity Interests or any exclusions and carve-outs from the perfection requirements set forth in the Collateral Agreement;

(b) neither the Borrower nor the other Loan Parties will be required to grant a security interest in any asset or perfect a security interest in any Collateral to the extent the cost, burden, difficulty or consequence of obtaining or perfecting a security interest therein outweighs the benefit of the security afforded thereby as reasonably determined by a Responsible Officer of the Borrower and the Administrative Agent; and

(c) no actions will be required outside of the United States in order to create or perfect any security interest in any assets located outside of the United States and no foreign law security or pledge agreements, foreign law mortgages or deeds or foreign intellectual property filings or searches will be required, in each case other than with respect to Foreign Subsidiaries that are or become Subsidiary Loan Parties; *provided, however*, that (i) in the event a Responsible Officer of the Borrower (reasonably and in good faith) and the Collateral Agent mutually determine that the burden or cost of obtaining foreign-law governed Security Documents or creating or taking perfection steps in any such foreign jurisdictions outweighs the benefit afforded thereby to the Secured Parties or obtaining foreign-law governed Security Documents or creating or taking such perfection steps in any such foreign jurisdictions is impracticable, impossible or ineffective or would give rise to or result in any violation of applicable law, then no such foreign-law governed Security Documents nor creation or the taking of perfection steps in any such foreign jurisdictions shall be required to be provided with respect to such Subsidiary Loan Party and (ii) notwithstanding anything to the contrary contained herein or in any other Loan Document, in the event that any foreign-law governed Security Documents or the creation or taking of perfection steps in any such foreign jurisdictions are being obtained in accordance with this clause (c), the Borrower and the Collateral Agent shall mutually agree on customary "Agreed Security Principles" and a reasonable and customary timeline to complete such Security Documents and/or filings or perfection actions or steps (which may be longer than the timelines otherwise agreed to in this Section 5.10).

(5) If any Parent Entity (other than Holdings) receives an Approved TopCo Transfer, then the Borrower shall, within ten (10) days after the date such person or entity receives such Approved TopCo Transfer (or such longer period as the Administrative Agent agrees), cause such Parent Entity to:

(a) deliver a TopCo Guarantee Agreement, duly executed on behalf of such Parent Entity, and;

(b) to the extent required by and subject to the exceptions set forth in the Collateral Agreement, pledge the outstanding Equity Interests (other than Excluded Equity Interests) owned by such person or entity, and cause each Loan Party owning any Equity Interests issued by such person or entity to pledge such outstanding Equity Interests (other than Excluded Equity Interests), and deliver all certificates (if any) representing such Equity Interests, together with stock powers or other instruments of transfer with respect thereto endorsed in blank, to the Collateral Agent (or a designated bailee thereof);

(c) to the extent such person or entity and to the extent required by and subject to the exceptions set forth in this Section 5.10 or the Security Documents, deliver to the Collateral Agent (or a designated bailee thereof) Uniform Commercial Code financing statements with respect to such Subsidiary and such other documents reasonably requested by the Collateral Agent to create the Liens intended to be created under the Security Documents and perfect such Liens to the extent required by the Security Documents;

(d) except as otherwise contemplated by this Section 5.10 or any Security Document, obtain all consents and approvals required to be obtained by it in connection with (A) the execution and delivery of all Security Documents (or supplements thereto) to which it is a party and the granting by it of the Liens thereunder and (B) the performance of its obligations thereunder; and

(e) deliver all documentation and other information about such Subsidiary that is required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act.

SECTION 5.11 Cash Management Systems; Application of Proceeds of Accounts.

(1) On or prior to the Effective Date or, if opened following the Effective Date, prior to the opening of such Deposit Account or Securities Account or the date any Person that owns such Deposit Account or Securities Account becomes a Loan Party hereunder (*provided* that the items set forth below previously delivered under the Pre-Petition Credit Agreement shall be deemed to satisfy the requirements set forth in this clause (1)):

(a) (i) with respect to each Loan Party’s Deposit Accounts (other than Excluded Accounts), Securities Accounts and Dominion Accounts that in each case are located in the United States, each Loan Party shall enter into Deposit Account control agreements (each, a “***Deposit Account Control Agreement***”), in form reasonably satisfactory to the Administrative Agent, with the Collateral Agent and any bank or other depository institution with which any Borrower Party or any Subsidiary Loan Party maintains any Deposit Account or Securities Account (other than an Excluded Account) (a “***Controlled Account***”) covering each such Controlled Account or Securities Account maintained with such bank; and

(b) ensure that all cash, checks, proceeds of collections of Accounts and other amounts received by or on behalf of any Borrower Party or any Subsidiary Loan Party are deposited promptly upon receipt in accordance with historical practices into a Controlled Account maintained in the name of such Borrower Party or such Subsidiary Loan Party.

(2) On or prior to the Effective Date, deliver to the Administrative Agent notifications in form reasonably satisfactory to the Administrative Agent executed on behalf of each applicable Borrower Party and addressed to such Borrower Party’s Credit Card Processors (each, a “***Credit Card Notification***”) (*provided* that the items set forth in this clause (2) previously delivered under the Pre-Petition Credit Agreement shall be deemed to satisfy the requirements set forth in this clause (2)).

(3) With respect to Section 5.11(1) and (2):

(a) Each Deposit Account Control Agreement and Credit Card Notification will require the ACH or wire transfer no less frequently than once per Business Day of all available cash balances and cash receipts, including the then contents or then entire ledger balance of each Controlled Account net of such minimum balance (not to exceed \$100,000 per account), if any, required by the bank or other depository institution at which such Controlled Account is maintained to an account established with, and subject to the control of, the Administrative Agent (the “***Dominion Account***”); *provided that* amounts contained in the DIP ABL Excess Funding Account shall only be required to transfer to the Dominion Account upon notice from the Administrative Agent to the bank at which the DIP ABL Excess Funding Account is contained at any time when an Event of Default has occurred and is continuing.

(b) All collected amounts received in the Dominion Account shall (subject to Section 2.18(3)(b)) be distributed and applied on a daily basis: (i) first to permanently reduce the Pre-Petition Obligations (if any) until paid in full, (ii) second to pay any expenses, fees and indemnities due to the Agents hereunder; (iii) third to pay interest due and payable in respect of any Revolving Loans (including Swingline Loans), any Protective Advances that may be outstanding, pro rata; (iv) fourth to prepay the principal of any Protective Advances that may be outstanding, pro rata; (v) fifth to prepay in full the principal of the Revolving Loans (including Swingline Loans and any unreimbursed L/C Disbursements and to cash collateralize 100.0% of the aggregate undrawn face amount of all Letters of Credit outstanding at such time) and any outstanding Obligations and to any Secured Party in respect of Specified Hedge Agreements or Cash Management Obligations; (vi) sixth, to prepay any outstanding Obligations and to any Secured Party in respect of any other Secured Hedge Agreements; and (vii) seventh, as the Borrower may direct.

provided that the foregoing will not apply to cash or Cash Equivalents constituting Term Loan Priority Collateral required to be deposited in a Controlled Account in favor of the DIP Term Loan Agent in accordance with the Intercreditor Agreement; *provided, further*, that the foregoing will not apply to cash or Cash Equivalents deposited, held or invested in any of the following:

(i) any Excluded Account; or

(ii) de minimus cash or cash equivalents from time to time inadvertently misapplied by the Borrower or any Subsidiary.

(c) The Loan Parties may close Deposit Accounts, Securities Accounts or Controlled Accounts and/or open new Deposit Accounts, Securities Accounts or Controlled Accounts, subject to the contemporaneous execution and delivery to the Administrative Agent of a Deposit Account Control Agreement to the extent required by the provisions of this Section 5.11; *provided*, that the Loan Parties may close Deposit Accounts, Securities Accounts or open new Deposit Accounts or Securities Accounts that are Excluded Accounts without executing or delivering any such Deposit Account Control Agreement. Unless consented to in writing by the Administrative Agent, the Loan Parties will not enter into any agreements with Credit Card Processors unless within one (1) Business Day of entering into any such agreement, a Credit Card Notification is executed by a Loan Party or Subsidiary and a copy thereof is delivered to the Administrative Agent.

(d) The Loan Parties will use commercially reasonable efforts to report no less frequently than once per Business Day the account balances contained in each of the DIP Term Loan Funding Account and the DIP ABL Excess Funding Account. On or before 5 p.m. on Friday of each week, the Loan Parties shall use reasonable best efforts to ensure that such balances reflect the ABL Pro Rata Share of funding requests made from each of the DIP Term Loan Funding Account and the DIP ABL Excess Funding Account for the prior week period or such proportionate share funded pursuant to Section 2.01.

(e) The Dominion Account will at all times be under the sole dominion and control of the Collateral Agent.

(f) The Borrower shall not permit the balance in the Operating Account, as of the opening of any Business Day, and netting amounts expected to be disbursed from such account within the next 48 hours in respect of taxes, check clearing and auto-debit arrangements (including amounts held in such account for disbursements expected to be made as of a date, the payment of which is delayed), to exceed \$3,000,000, and any such excess amount shall be promptly deposited into the Dominion Account. By Friday of each week, the Borrower shall provide the Agent's

Advisors with reasonable estimates of such amounts expected to be disbursed from such account pursuant to taxes, check clearing and auto-debit arrangements for the following week.

SECTION 5.12 Creation and Release of Co-Borrowers.

(1) Provide to the Administrative Agent, to the extent the Borrower intends to qualify any Restricted Subsidiary that is a Wholly Owned Domestic Subsidiary of the Borrower as a Co-Borrower, (a) a written request to designate such Restricted Subsidiary as a Co-Borrower, (b) no later than five Business Days prior to the date on which such Restricted Subsidiary will become a Co-Borrower, all documentation and other information about such Restricted Subsidiary that is required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act and the Beneficial Ownership Regulation and (c) a Co-Borrower Joinder Agreement executed by each Borrower Party and such Restricted Subsidiary pursuant to which such Restricted Subsidiary agrees that it is jointly and severally liable for all Obligations.

(2) Provide to the Administrative Agent, to the extent the Borrower intends to cause the release of any Co-Borrower from its qualification as a Co-Borrower hereunder and so long as no Default or Event of Default shall have occurred and be continuing immediately prior to, or would result immediately after, giving effect to such release, (a) a written request for the release of the applicable Co-Borrower stating that such Co-Borrower is concurrently being released from all of its obligations as a Co-Borrower in accordance with the terms of the Loan Documents and (b) an updated Borrowing Base Certificate demonstrating that, after giving effect to the exclusion of such Co-Borrower’s assets from the Borrowing Base, the Total Revolving Credit Exposure will not exceed the Line Cap (or that Loans are being repaid or Letters of Credit cash collateralized in connection with such requested release to the extent necessary to eliminate such excess);

provided that any such request for release will be effective upon the release of such Co-Borrower from the Collateral Agreement and the receipt of the materials referred to in the preceding clauses (a) and (b) of this Section 5.12(2); *provided, further*, that:

(i) the Administrative Agent and/or the Lenders will, upon the release of any Co-Borrower hereunder, return to the Borrower any Notes executed by such Co-Borrower; and

(ii) the Administrative Agent will, at the request of the Borrower, provide evidence of the release of any Co-Borrower in a form reasonably acceptable to the Borrower to the extent such release is permitted pursuant to this Section 5.12(2).

SECTION 5.13 Lender Calls. The Borrower shall, within 30 days after each date that the Required Financial Statements have been delivered (or, if later, were required to be delivered), hold a conference call (at a time selected by the Borrower and reasonably acceptable to the Administrative Agent) with the Lenders, to review the financial results of the previous fiscal month, quarter or fiscal year, as the case may be, of the Borrower (it being understood that any such call may be combined with any similar call held for any of the other lenders or security holders of the Borrower, its Restricted Subsidiaries and/or any Parent Entity).

(b) The Borrower and the Company Advisors shall participate in a conference call with the Administrative Agent and the Agent’s Advisors (or such subset of Agent’s Advisors as the Administrative Agent agrees) no less frequently than weekly to provide updates with respect to ongoing monetization efforts, insurance proceeds, the Approved Budget and variance report, and such other matters reasonably requested by the Administrative Agent and the Agent’s Advisors.

(c) Management of the Borrower shall participate in a conference call with the Administrative Agent and the Lenders each fiscal month at a time selected by the Borrower and reasonably acceptable to the Administrative Agent; *provided* that this clause (c) shall be deemed to be satisfied if management of the Borrower participates in calls pursuant to clause (a) of this Section 5.13.

SECTION 5.14 Capital One Agreement and Permitted Replacement Credit Card Program. At least fifteen (15) days prior to the execution by any Borrower or any Subsidiary of documents evidencing the proposed adoption of any Permitted Replacement Credit Card Program, the Borrower shall deliver or cause to be delivered notice to the Administrative Agent of such adoption, which notice shall include a copy, in the then-existing form, of any documents to be executed in connection with such Permitted Replacement Credit Card Program. The Borrower shall deliver or cause to be delivered to the Administrative Agent a copies of all such documents delivered in connection with such Permitted Replacement Credit Card Program within a reasonable period of time after the execution of such documents, and shall deliver any Credit Card Notification in connection therewith required under Section 5.11 in accordance with the terms of Section 5.11.

SECTION 5.15 DIP Term Loan Facility; Request for Loans Under DIP Term Loan Facility.

- (1) The DIP Term Loan Tranche 1 Funding Date shall occur on the Effective Date.
- (2) The DIP Term Loan Tranche 2 Funding Date shall occur on or before [45] days after the Effective Date.
- (3) The DIP Term Loan Tranche 3 Funding Date shall occur on or before [] days after the Effective Date.
- (4) The Loan Parties shall keep and maintain the DIP Term Loan Facility in full force and effect and use the proceeds of advances thereunder solely for purposes and accordance on an aggregate basis with the Approved Budget and as permitted by the DIP Term Loan Agreement, DIP Term Loan Documents and the Orders.

SECTION 5.16 Required Milestones. The Loan Parties shall comply with all milestones set forth in Schedule 5.16 attached hereto (the “*Milestones*”).

SECTION 5.17 Saks Flagship Material Agreements.

- (1) (i) Maintain each such Saks Flagship Material Agreement in full force and effect; (ii) use commercially reasonable efforts to enforce all of its rights that are material to the Loan Parties, the Saks Flagship Entities or the Administrative Agent under each such Saks Flagship Material Agreement in accordance with its terms; (iii) take such actions as may be from time to time reasonably requested by the Administrative Agent with respect to the enforcement or administration of the Saks Flagship Material Agreements; and (iv) provide the Administrative Agent and the Lenders with such information and reports with regard to the Saks Flagship Material Agreements as either shall reasonably request from time to time.
- (2) deliver (or cause to be delivered) to Administrative Agent, promptly following the delivery of such documents to the CMBS Lenders, each of the financial statements, certificates or other documents required to be delivered to the CMBS Lenders under Section 5.11 of the Incorporated Agreement, in each case including detailed calculations of the applicable financial covenants to the extent required under the Incorporated Agreement in connection with such financial statements, certificates or other document. The Administrative Agent hereby agrees that the Loan Parties shall be permitted to deliver (or cause to be

delivered) each such financial statement, certificate or other document in the manner specified in the Incorporated Agreement.

(3) Cause (i) Saks Flagship GL Tenant at all times to be the tenant under the Saks Flagship Lease described in clause (a) of the definition thereof and (ii) SFA at all times to be the tenant under the Saks Flagship Lease described in clause (b) of the definition thereof, except with the written consent of the Administrative Agent in its Reasonable Credit Judgment.

SECTION 5.18 Financial Consultant; Company Advisors.

(1) The Loan Parties shall retain (and with respect to the Store Closing Consultant, within five (5) days of the Effective Date), and shall continue to retain at all times until such time as the Administrative Agent shall reasonably consent, in each case, at the sole cost of the Loan Parties, each Company Advisor. The Company Advisors shall assist management of the Loan Parties in all aspects of the management of the businesses and properties of the Loan Parties (and with respect to the Store Closing Consultant, shall advise and monitor the Loan Parties with respect to the Specified Closures) and shall, among other things, assist Loan Parties in the preparation of and compliance with, on an ongoing basis, the Approved Budget and compliance with the terms and conditions set forth in this Agreement and the other Loan Documents.

(2) Each of the Loan Parties irrevocably authorizes and directs the Company Advisors to consult with the Administrative Agent, the Agent's Advisors and the Lenders and to share with the Administrative Agent, the Agent's Advisors (or such subset of Agent's Advisors as the Administrative Agent agrees) and the Lenders the Approved Budget and all other budgets, records, projections, financial information, reports and other information, without redaction, prepared by or in the possession of the Company Advisors relating to any Loan Party, including without limitation, the assets and financial condition of the Loan Parties as well as the operations of the businesses of the Loan Parties. Each Loan Party agrees to provide each of the Company Advisors and Agent's Advisors (or such subset of Agent's Advisors as the Administrative Agent agrees) with complete access to all of the books and records of such Loan Party, all of the premises of such Loan Party and to all management and employees of such Loan Party as may be reasonably requested as and when deemed reasonably necessary by the Company Advisors or the Agent's Advisors, as applicable.

ARTICLE VI

Negative Covenants

The Borrower (and, solely with respect to Section 6.08(2), Holdings) covenants and agrees with each Lender that, so long as this Agreement is in effect and until the Commitments have been terminated and the Pre-Petition Obligations and Obligations (other than Obligations in respect of Letters of Credit (except for any Obligations relating to Letters of Credit which are then due and payable), Secured Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted) have been paid in full and Letters of Credit have expired, terminated or been cash-collateralized or backstopped on terms satisfactory to the Issuing Bank, it will not and will not permit any Co-Borrower or any Restricted Subsidiary to:

SECTION 6.01 Indebtedness. Issue, incur, assume or be or become liable for any Indebtedness, except the following (collectively, "*Permitted Debt*"):

(1) Indebtedness created under the Pre-Petition Loan Documents, Loan Documents and any Guarantees thereof, in each case incurred by one or more Loan Parties;

(2) Indebtedness of a Loan Party incurred pursuant to the Pre-Petition Secured Notes, Pre-Petition UnSub FILO Onloan Loan Agreement and Pre-Petition UnSub NPC Onloan Loan Agreement, in each case, outstanding as of the Effective Date; provided that such Indebtedness is subject to an Intercreditor Agreement;

(3) Indebtedness under the DIP Term Loan Agreement; provided that such Indebtedness is subject to the Intercreditor Agreement;

(4) Indebtedness existing on the Effective Date and set forth on Schedule 6.01 (or to the extent not set forth on such Schedule 6.01, where the outstanding principal amount of such Indebtedness is in each case less than \$500,000) and any Permitted Refinancing Indebtedness in respect thereof;

(5) Capital Lease Obligations, Indebtedness with respect to mortgage financings and purchase money Indebtedness to finance all or any part of the purchase, lease, construction, installation, repair or improvement of property (real or personal), plant or equipment or other fixed or capital assets in each case, of a Loan Party or a Restricted Subsidiary and Indebtedness arising from the conversion of the obligations of the Borrower or any Restricted Subsidiary under or pursuant to any “synthetic lease” transactions to on-balance sheet Indebtedness of the Borrower or such Restricted Subsidiary, in an aggregate outstanding principal amount, including all Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant to this clause (5) (and any successive Permitted Refinancing Indebtedness), not to exceed \$10.0 million; *provided* that such Indebtedness is incurred within 270 days after the purchase, lease, construction, installation, repair or improvement of the property that is the subject of such Indebtedness;

(6) Indebtedness owed to (including obligations in respect of letters of credit or bank Guarantees or similar instruments for the benefit of) any Person providing workers’ compensation, health, disability or other employee benefits (whether to current or former employees) or property, casualty or liability insurance or self-insurance in respect of such items, or other Indebtedness with respect to reimbursement-type obligations regarding workers’ compensation claims, health, disability or other employee benefits (whether current or former) or property, casualty or liability insurance; *provided* that upon the incurrence of any Indebtedness with respect to reimbursement obligations regarding workers’ compensation claims, such obligations are reimbursed not later than forty-five (45) days following such incurrence;

(7) [Reserved];

(8) intercompany Indebtedness between or among the Borrower and the Restricted Subsidiaries; *provided* that the aggregate outstanding principal amount of such Indebtedness that is owing by any Restricted Subsidiary that is not a Loan Party to a Loan Party may not exceed the amount, as of the date such Indebtedness is incurred, permitted pursuant to Section 6.04;

(9) Indebtedness pursuant to Hedge Agreements;

(10) Indebtedness of a Loan Party or a Restricted Subsidiary in respect of letters of credit, bank guarantees, bankers’ acceptances, performance, bid, appeal and surety bonds and performance and completion guarantees or similar instruments or obligations issued or created in the ordinary course of business in an aggregate principal amount not to exceed \$15.0 million at any time outstanding;

(11) Guarantees of Indebtedness of the Borrower or any Restricted Subsidiary permitted to be incurred under this Agreement to the extent such Guarantees are permitted by the provisions of Section 6.04 (other than Section 6.04(19));

(12) [reserved];

(13) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, so long as such Indebtedness (other than credit or purchase cards) is extinguished within ten (10) Business Days after notification received by the Borrower of its incurrence;

(14) Indebtedness of a Loan Party or a Restricted Subsidiary supported by a Letter of Credit, in a principal amount not in excess of the stated amount of such Letter of Credit;

(15) Indebtedness arising out of Sale and Lease-Back Transactions effected prior to the Effective Date;

(16) Indebtedness consisting of the financing of insurance premiums in the ordinary course of business or (b) take or pay obligations contained in supply arrangements in the ordinary course of business;

(17) [reserved];

(18) Cash Management Obligations and other Indebtedness in respect of Cash Management Services entered into in the ordinary course of business;

(19) [reserved];

(20) [reserved];

(21) [reserved];

(22) unsecured Indebtedness in respect of short-term obligations to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services so long as such obligations are incurred in the ordinary course of business and not in connection with the borrowing of money;

(23) Indebtedness representing deferred compensation or other similar arrangements incurred by the Borrower or any Restricted Subsidiary (a) in the ordinary course of business or (b) in connection with any Permitted Investment;

(24) [reserved];

(25) customer deposits and advance payments received in the ordinary course of business from customers for goods purchased in the ordinary course of business;

(26) Indebtedness incurred by the Borrower or any Restricted Subsidiary in connection with bankers' acceptances, discounted bills of exchange, warehouse receipts or similar facilities or the discounting or factoring of receivables for credit management purposes, in each case incurred or undertaken in the ordinary course of business;

(27) [reserved];

(28) [reserved];

(29) [reserved];

(30) [reserved];

(31) additional Indebtedness of a Loan Party or a Restricted Subsidiary (other than any Saks Flagship Entity) in an aggregate outstanding principal amount not to exceed \$10.0 million;

(32) [reserved];

(33) [reserved]; and

(34) (i) Guarantees in respect of any real estate financing by Subsidiaries in respect of customary “bad boy” obligations and similar recourse provisions which Guarantees, in the good faith judgment of the Borrower, are not reasonably expected to result in the lenders under such financing actually having recourse to the Borrower or any Subsidiary Loan Party with respect to the monetary obligation owing under such financing incurred by such Subsidiary and (ii) Guarantees in effect as of the Effective Date and provided pursuant to the Ground Lessee Pledge Documentation.

Accrual of interest, the accretion of accreted value, amortization of original issue discount, the payment of interest or dividends in the form of additional Indebtedness with the same terms, and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies, will not be deemed to be an incurrence of Indebtedness for purposes of this Section 6.01. Guarantees of, or obligations in respect of letters of credit relating to Indebtedness that is otherwise included in the determination of a particular amount of Indebtedness will not be included in the determination of such amount of Indebtedness; *provided* that the incurrence of the Indebtedness represented by such Guarantee or letter of credit, as the case may be, was in compliance with this Section 6.01.

For purposes of determining compliance with any U.S. Dollar-denominated restriction on the incurrence of Indebtedness, the U.S. Dollar equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed or first incurred (whichever yields the lower U.S. Dollar equivalent), in the case of revolving credit debt; *provided* that if such Indebtedness is incurred to Refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable U.S. Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. Dollar-denominated restriction will be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced (*plus* unpaid accrued interest and premium (including tender premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses in connection therewith).

SECTION 6.02 Liens. Create, incur, assume or permit to exist any Lien that secures obligations under any Indebtedness on any property or assets at the time owned by it, except the following (collectively, “*Permitted Liens*”):

- (1) Liens securing the Indebtedness incurred in accordance with clause (1) of the definition of “Permitted Debt” and Obligations related thereto;
- (2) Liens on the Collateral securing Indebtedness incurred in accordance with clause (3) of the definition of “Permitted Debt”; *provided*, that the Liens incurred pursuant to this clause (2) shall have the priority set forth in the Intercreditor Agreement and the Orders;
- (3) Liens securing Indebtedness existing on the Effective Date and set forth on Schedule 6.02 (or to the extent not set forth on such Schedule 6.02, where the outstanding principal amount of

Indebtedness secured by such Lien is less than \$500,000); *provided* that (x) any such Liens on ABL Priority Collateral shall be junior to the Lien of the Administrative Agent securing the Obligations, the Pre-Petition Obligations and any Adequate Protection Lien in respect of the Pre-Petition Obligations and (y) such Liens only secure the obligations that they secure on the Effective Date (and any Permitted Refinancing Indebtedness in respect of such obligations permitted by Section 6.01) and do not apply to any other property or assets of the Borrower or any Restricted Subsidiary other than replacements, additions, accessions and improvements thereto;

- (4) Liens securing Indebtedness incurred in accordance with Section 6.01(5); *provided* that such Liens only extend to the assets financed with such Indebtedness (and any replacements, additions, accessions and improvements thereto);
- (5) Liens securing Indebtedness incurred in accordance with clause (2) of the definition of “Permitted Debt”; provided, that the Liens incurred pursuant to this clause (5) shall have the priorities set forth in the applicable Intercreditor Agreement and the Orders;
- (6) Liens securing Indebtedness incurred pursuant to Section 6.01(34);
- (7) [reserved];
- (8) Liens for Taxes, assessments or other governmental charges or levies not yet delinquent or that are being contested in compliance with Section 5.03;
- (9) Liens disclosed by the title insurance commitments or policies delivered on or subsequent to the Effective Date and any replacement, extension or renewal of any such Liens (so long as the Indebtedness and other obligations secured by such replacement, extension or renewal Liens are permitted by this Agreement); *provided* that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal;
- (10) [reserved];
- (11) Liens imposed by law, carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s, construction or other like Liens arising in the ordinary course of business to the extent that the creation or perfection of such Liens do not violate the Bankruptcy Code;
- (12) (a) pledges and deposits and other Liens made in the ordinary course of business in compliance with the Federal Employers Liability Act or any other workers’ compensation, unemployment insurance and other similar laws or regulations and deposits securing liability to insurance carriers under insurance or self-insurance arrangements in respect of such obligations and (b) pledges and deposits and other Liens securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the Borrower or any Restricted Subsidiary;
- (13) deposits to secure the performance of bids, trade contracts (other than for Indebtedness), leases (other than Capital Lease Obligations), the delivery of merchandise or services with factors (to company suppliers), vendors, shippers, brand partners, credit insurers and other service providers (but not to secure Indebtedness or receivables or Capital Lease Obligations), statutory obligations, surety 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 (including

letters of credit in lieu of any such bonds or to support the issuance thereof) incurred by the Borrower or any Restricted Subsidiary, in each case, in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business;

- (14) survey exceptions and such matters as an accurate survey would disclose, easements, trackage rights, leases (other than Capital Lease Obligations), licenses, special assessments, rights of way covenants, conditions, restrictions and declarations on or with respect to the use, ownership or operation of Real Property, servicing agreements, development agreements, site plan agreements and other similar encumbrances incurred in the ordinary course of business and title defects or irregularities that are of a minor nature and that, in the aggregate, do not interfere in any material respect with the ordinary conduct of the business of the Borrower or any Restricted Subsidiary;
- (15) any interest or title of a lessor or sublessor under any leases or subleases entered into by the Borrower or any Restricted Subsidiary in the ordinary course of business;
- (16) Liens that are contractual rights of set-off (a) relating to pooled deposit or sweep accounts of the Borrower or any Restricted Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any Restricted Subsidiary or (b) relating to purchase orders and other agreements entered into with customers of the Borrower or any Restricted Subsidiary in the ordinary course of business;
- (17) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights;
- (18) non-exclusive leases or subleases, licenses or sublicenses (including with respect to intellectual property and software) granted to others in the ordinary course of business that do not interfere in any material respect with the business of the Borrower and the Restricted Subsidiaries, taken as a whole;
- (19) Liens solely on any cash earnest money deposits made by the Borrower or any Restricted Subsidiary in connection with any letter of intent or other agreement in respect of any Permitted Investment and in each case approved by the Court;
- (20) the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business;
- (21) Liens arising from precautionary Uniform Commercial Code financing statements;
- (22) Liens on Equity Interests of any joint venture, to the extent such Equity Interests are Excluded Equity Interests, (a) securing obligations of such joint venture or (b) pursuant to the relevant joint venture agreement or arrangement;
- (23) 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;
- (24) Liens on securities that are the subject of repurchase agreements constituting Cash Equivalents under clause (4) of the definition thereof;
- (25) Liens securing insurance premium financing arrangements with regards to the policies and proceeds thereof so long as approved by the Court;

- (26) [reserved];
- (27) Liens on property or assets used to defease or to satisfy and discharge Indebtedness; *provided* that such defeasance or satisfaction and discharge is not prohibited by this Agreement;
- (28) Liens:
 - (a) of a collection bank arising under Section 4-210 of the Uniform Commercial Code, or any comparable or successor provision, on items in the course of collection;
 - (b) attaching to pooling, commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business; or
 - (c) in favor of banking or other financial institutions or entities, or electronic payment service providers, arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking or finance industry;
- (29) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit entered into in the ordinary course of business issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;
- (30) additional Liens securing obligations in an aggregate outstanding amount not to exceed \$10.0 million; *provided* that, to the extent such Liens are on ABL Priority Collateral, such Liens shall rank junior to the Liens thereon securing the Obligations, and shall be subject to the provisions of the Intercreditor Agreement or an intercreditor agreement in form and substance reasonably satisfactory to the Administrative Agent;
- (31) [reserved];
- (32) to the extent constituting a Lien, rights of setoff, reserves and holdbacks against credit balances of a Loan Party or any of its Restricted Subsidiaries with credit card issuers or credit card processors to such Loan Party or any such Restricted Subsidiaries arising in the ordinary course of business;
- (33) Liens securing amounts owing to any Qualified Counterparty under any Secured Hedge Agreement and Cash Management Obligations, which amounts are secured under the Loan Documents;
- (34) Liens which secure Indebtedness incurred in accordance with Section 6.01(10) (provided that such Liens shall attach only to the cash to secure or support such letters of credit or similar instruments);
- (35) Liens on property subject to Sale and Lease-Back Transactions effected prior to the Effective Date;
- (36) to the extent constituting a Lien, changes in title with respect to Real Property occurring solely as a result of, or in furtherance of, any redevelopment or repurposing of such Real Property, so long as any such changes in title do not materially and adversely affect the security interest of the Administrative Agent or Collateral Agent in such Real Property (if applicable);
- (37) [reserved]; and
- (38) the Adequate Protection Liens and Adequate Protection Superpriority Claims.

Notwithstanding anything else in this Agreement to the contrary, no Loan Party shall grant or shall permit any Subsidiary to grant, (x) a license with respect to any intellectual property in favor of any Person (other than a Loan Party, the Collateral Agent and the DIP Term Loan Agent), in each case, unless such license or Lien, as applicable, satisfies the IP License Condition or (y) a Lien with respect to any intellectual property in favor of any Person (other than the Collateral Agent and the DIP Term Loan Agent or otherwise pursuant to Section 6.02(18) above to the extent such license or sublicense would otherwise be permitted under this Agreement) (and in each case, other than in the case of a license or Lien granted by an Unrestricted Subsidiary with respect to intellectual property that does not relate to assets in the Borrowing Base).

Notwithstanding anything herein or any other Loan Document to the contrary, no Co-Borrower nor any of their Restricted Subsidiaries shall directly or indirectly, create, incur, assume or suffer to exist any Lien securing Indebtedness for borrowed money on any Excluded Assets constituting Real Property pursuant to clause (3) of the definition of Excluded Assets contained in the Collateral Agreement.

SECTION 6.03 [Reserved].

SECTION 6.04 Investments, Loans and Advances. Purchase, hold or acquire (including pursuant to any merger, consolidation or amalgamation with a Person that is not a Wholly Owned Subsidiary immediately prior to such merger, consolidation or amalgamation) any Equity Interests, evidences of Indebtedness or other securities of, make or permit to exist any loans or advances to or Guarantees of the obligations of, or make or permit to exist any investment or any other interest in any other Person, or purchase, lease or otherwise acquire (in one transaction or a series of transactions) all or any substantial part of the assets of any other Person or any division, unit or business of any other Person (each, an “*Investment*” and with all such Investments being valued at their original fair market value and without taking into account subsequent increases or decreases in value), except the following (collectively, “*Permitted Investments*”):

(1) Investments existing on the Effective Date which were permitted under the Pre-Petition Credit Agreement immediately prior to the Effective Date and any replacements, refinancings, refunds, extensions, renewals or reinvestments thereof, so long as the amount of any Investment pursuant to this clause (11) is not increased at any time above the amount of such Investment existing on the Effective Date;

(2) [reserved];

(3) [Reserved];

(4) intercompany Investments (including intercompany Indebtedness) among the Loan Parties (other than Holdings);

(5) [reserved];

(6) Cash Equivalents and, to the extent not made for speculative purposes, Investment Grade Securities or Investments that were Cash Equivalents or Investment Grade Securities when made;

(7) Investments arising out of the receipt by the Borrower or any of the Restricted Subsidiaries of non-cash consideration in connection with any sale of assets permitted under Section 6.05;

(8) accounts receivable, security deposits and prepayments and other credits granted or made in the ordinary course of business and any Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and others, including in connection with the bankruptcy or

reorganization of, or settlement of delinquent accounts and disputes with or judgments against, such account debtors and others, in each case in the ordinary course of business;

(9) Investments acquired as a result of a foreclosure by the Borrower or any Restricted Subsidiary with respect to any secured Investments or other transfer of title with respect to any secured Investment in default;

(10) Hedge Agreements;

(11) Investments held by the Borrower or any Restricted Subsidiary in the Equity Interests of any Subsidiary to the extent that such Investment was permitted under this Section 6.04 when initially made (other than pursuant to this clause (11));

(12) Investments resulting from pledges and deposits that are Permitted Liens;

(13) Approved TopCo Transfers and Approved SO5 Transfers;

(14) acquisitions of obligations of one or more officers or other employees of any Parent Entity, Borrower or any Restricted Subsidiary of Borrower in connection with such officer's or employee's acquisition of Equity Interests of any Parent Entity, so long as no cash is actually advanced by the Borrower or any Restricted Subsidiary to such officers or employees in connection with the acquisition of any such obligations;

(15) Guarantees of operating leases (for the avoidance of doubt, excluding Capital Lease Obligations) or of other obligations that do not constitute Indebtedness, in each case, entered into by the Borrower or any Restricted Subsidiary in the ordinary course of business;

(16) Investments to the extent that payment for such Investments is made with Equity Interests of any Parent Entity;

(17) [reserved];

(18) Investments in the ordinary course of business consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Uniform Commercial Code Article 4 customary trade arrangements with customers consistent with past practices;

(19) Guarantees permitted under Section 6.01;

(20) 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 Borrower or any Restricted Subsidiary;

(21) [reserved];

(22) [reserved];

(23) purchases or acquisitions of inventory, supplies, materials and equipment or purchases or acquisitions of contract rights or intellectual property in each case in the ordinary course of business;

(24) [reserved];

(25) [reserved];

(26) intercompany current liabilities owed to joint ventures incurred in the ordinary course of business in connection with the cash management operations of the Borrower and its Subsidiaries;

(27) [reserved];

(28) [reserved];

(29) [Reserved];

(30) to the extent constituting an Investment, any transaction permitted by Section 6.05 (other than clause (5) thereof);

(31) Investments arising as a result of any Sale and Lease-Back Transaction effected prior to the Effective Date; provided such Investment shall be limited to the amount outstanding prior to the Effective Date;

(32) [reserved];

(33) [reserved];

(34) [reserved];

(35) [reserved];

(36) [reserved];

(37) [reserved];

(38) [reserved]; and

(39) [reserved].

Notwithstanding anything else in this Agreement to the contrary,

(I) Investments by Loan Parties in non-Loan Parties consisting of Material Intellectual Property or intellectual property used or useful in the operation of the business of the Loan Parties (whether owned by the Borrower or any of its Subsidiaries) shall be prohibited unless such Investment satisfies the IP License Conditions; and

(II) any Investment that is subject to the Updated Borrowing Base Condition shall be subject to the condition precedent that (A) other than with respect to Investments among Loan Parties, no Default or Event of Default shall then exist or would result therefrom and (B) prior to the making of any such Investment, the Borrower shall have complied with the Updated Borrowing Base Condition;

SECTION 6.05 Mergers, Consolidations and Sales of Assets. (x) Merge into, or consolidate or amalgamate with, any other Person, or permit any other Person to merge into or consolidate or amalgamate with it, or (y) sell, transfer or otherwise dispose of (in one transaction or in a series of transactions) all or any part of its assets (including the issuance, sale, transfer or other disposition of any Equity Interests of any Subsidiary) (this clause (y), an “*Asset Sale*”), except that this Section 6.05 will not prohibit:

(1) if at the time thereof and immediately after giving effect thereto no Event of Default has occurred and is continuing or would result therefrom:

(a) the merger, consolidation or amalgamation of any Subsidiary into (or with) the Borrower in a transaction in which the Borrower is the survivor;

(b) the merger, consolidation or amalgamation of any Subsidiary into or with any Subsidiary Loan Party in a transaction in which the surviving or resulting entity is a Subsidiary Loan Party; and, in the case of each of the foregoing clause (a) and this clause (b), no Person other than the Borrower or a Subsidiary Loan Party receives any consideration;

(c) the merger, consolidation or amalgamation of any Subsidiary that is not a Loan Party into or with any other Subsidiary that is not a Loan Party;

(d) the liquidation or dissolution or change in form of entity of any Subsidiary of the Borrower if a Responsible Officer of the Borrower determines in good faith that such liquidation, dissolution or change in form is in the best interests of the Borrower and is not materially disadvantageous to the Lenders; provided that, the assets of any such liquidated or dissolved Subsidiary that is a Loan Party shall be contributed to another Loan Party;

(e) the merger, consolidation or amalgamation of any Subsidiary with or into any other Person in order to effect a Permitted Investment so long as the continuing or surviving Person will be a Subsidiary Loan Party if the merging, consolidating or amalgamating Subsidiary was a Subsidiary Loan Party and which, together with each of its Subsidiaries, shall have complied with the requirements of Section 5.10; or

(f) the liquidation or dissolution of any Immaterial Subsidiary;

(2) any Asset Sale solely comprised of Term Loan Priority Collateral if such Asset Sale is made for fair market value (as determined by a Responsible Officer of the Borrower in good faith) and:

(i) no Event of Default exists at such time or would result therefrom;

(ii) at least 95.0% of the consideration therefor is in the form of cash and Cash Equivalents; and

(iii) on a Pro Forma Basis after giving effect to any such Asset Sale, the Total Revolving Credit Exposure will not exceed the Line Cap as recalculated to give effect to such Asset Sale (or that Revolving Loans are being repaid or Letters of Credit cash collateralized in connection with such Asset Sale to the extent necessary to eliminate such excess) and, prior to the effectiveness of such Asset Sale, the Borrower shall have delivered to the Administrative Agent an updated Borrowing Base Certificate demonstrating compliance with this clause (iii); *provided* that no such updated Borrowing Base certificate shall be required to be delivered if the fair market value (as determined in good faith by the Borrower) of the assets subject to such Asset Sale or series of related Asset Sales pursuant to this clause (2) is less than \$10.0 million;

(3) (a) the purchase and sale of inventory in the ordinary course of business; (b) the acquisition or lease (pursuant to an operating lease) of any other asset in the ordinary course of business; (c) the sale of surplus, obsolete, damaged or worn out equipment or other property in the ordinary course of business;

or (d) the disposition of Cash Equivalents (or Investments that were Cash Equivalents when made), other than an Investment or Restricted Payment not permitted hereunder;

(4) [reserved];

(5) Investments permitted by Section 6.04 (other than clause (30) thereof), Permitted Liens, and Restricted Payments permitted by Section 6.06;

(6) the sale of defaulted receivables in the ordinary course of business and not as part of an accounts receivables financing transaction;

(7) [reserved];

(8) leases, licenses, or subleases or sublicenses of any real or personal property in the ordinary course of business;

(9) sales, licenses, transfers, abandonments, allowances to lapse or other dispositions of Intellectual Property (as defined in the Collateral Agreement) that are immaterial or no longer used, useful or necessary in the operation of the business of the Borrower or such Restricted Subsidiary, as determined by a Responsible Officer of the Borrower reasonably and in good faith;

(10) [reserved];

(11) any Asset Sale of Real Property to the extent consistent with the Approved Budget and such Asset Sale is made for fair market value (as determined by a Responsible Officer of the Borrower in good faith);

(12) to the extent allowable under Section 1031 of the Code (or comparable or successor provision), any exchange of like property (excluding any boot thereon permitted by such provision) for use in any business conducted by the Borrower or any Restricted Subsidiary that is not in contravention of Section 6.08;

(13) the Specified Closures, provided that such Specified Closures are conducted in accordance with Section 5.18;

(14) [reserved];

(15) [reserved];

(16) [reserved];

(17) Approved TopCo Transfers and Approved SO5 Transfers;

(18) to the extent constituting an Asset Sale, changes in title with respect to Real Property occurring solely as a result of, or in furtherance of, any redevelopment or repurposing of such Real Property, so long as any such changes in title do not materially and adversely affect the security interest of the Administrative Agent or Collateral Agent in such Real Property (if applicable);

(19) [reserved]; and

(20) the conversion of Equity Interests of the Authentic JV, which may be exercised by ABG pursuant to the ABG Investment Agreement (as defined in the Pre-Petition Credit Agreement) as in effect on the Effective Date.

Notwithstanding anything else in this Agreement to the contrary, (i) dispositions by Loan Parties to non-Loan Parties consisting of Material Intellectual Property or intellectual property used or useful in the operation of the business of the Loan Parties (whether owned by the Borrower or any of its Subsidiaries) shall be prohibited and (ii) no Loan Party shall dispose of, or shall permit any Subsidiary to dispose of, any intellectual property to any Person.

To the extent any Collateral identified to the Administrative Agent is disposed of in a transaction expressly permitted by this Section 6.05 to any Person other than a Borrower Party or any Guarantor, such Collateral will be free and clear of the Liens created by the Loan Documents, and the Administrative Agent will take, and each Lender hereby authorizes the Administrative Agent to take, any actions reasonably requested by the Borrower in order to evidence the foregoing, in each case, in accordance with Section 10.18.

SECTION 6.06 Restricted Payments. Declare or pay any dividend or make any other distribution (by reduction of capital or otherwise), directly or indirectly, whether in cash, property, securities or a combination thereof, with respect to any of its Equity Interests (other than dividends and distributions on Equity Interests payable solely by the issuance of additional Equity Interests (other than Disqualified Stock) of the Person paying such dividends or distributions) or directly or indirectly redeem, purchase, retire or otherwise acquire for value any of its Equity Interests or set aside any amount for any such purpose (other than through the issuance of additional Equity Interests (other than Disqualified Stock) of the Person redeeming, purchasing, retiring or acquiring such shares) (the foregoing, “**Restricted Payments**”) other than:

- (1) [reserved];
- (2) [reserved];
- (3) [reserved];
- (4) [reserved];

(5) Restricted Payments consisting of means, (I) cash distributions by the Borrower and/or any Restricted Subsidiary for purposes of paying any franchise and similar taxes (and other fees and expenses) required to be paid by the (direct or indirect) owners or equityholders of the Borrower to maintain their existence to the extent such taxes (and other fees and expenses) are attributable to the operations of the Borrower and its subsidiaries; (II) for any taxable period (or portion thereof) for which the Borrower or any of its Restricted Subsidiaries are members of a consolidated, combined, unitary or similar tax group (or, where the Borrower is disregarded as an entity separate from its owner where that owner is a member of such group for U.S. federal or applicable income tax purposes) for U.S. federal or applicable state, local or foreign income or similar tax purposes (a “**Tax Group**”), cash distributions by the Borrower and/or any Restricted Subsidiary to permit any (direct or indirect) parent or other applicable taxpayer or other applicable taxpayer to pay the portion of any U.S. federal, state, local and/or foreign income and similar taxes (including any alternative minimum taxes) of such Tax Group for such taxable period that are attributable to the taxable income or activities of the Borrower and/or the applicable Restricted Subsidiaries (and, to the extent permitted below, the applicable Unrestricted Subsidiaries), as determined under Treas. Reg. § 1.1552-1(a)(1) or using principles analogous thereto; provided that for each such taxable period, (1) the amount of such payments made in respect of such taxable period in the aggregate will not exceed the

amount that such Borrower and the applicable Restricted Subsidiaries (and, to the extent permitted below, the applicable Unrestricted Subsidiaries) would have been required to pay in respect of such taxable income as stand-alone taxpayers or a stand-alone Tax Group (calculated assuming such Borrower is classified for U.S. federal income tax purposes in the same manner as the applicable parent company and reduced by any such taxes paid directly by the Borrower or any Restricted Subsidiary to the relevant taxing authority for such tax year), and (2) the amount of such payments made in respect of an Unrestricted Subsidiary will be permitted only to the extent that cash distributions were made by an Unrestricted Subsidiary to such Borrower or any Restricted Subsidiary for such purpose; and (III) cash distributions by the Borrower and/or any Restricted Subsidiary to allow HBSFA Holdings Ltd. to pay any Canadian income taxes attributable to income, operations or activities of the Borrower and/or its subsidiaries; provided, Restricted Payments made pursuant to this clause (5) shall be made in accordance with the Approved Budget;

(6) Approved TopCo Transfers and Approved SO5 Transfers;

(7) non-cash repurchases of Equity Interests deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants;

(8) [reserved]; and

(9) Restricted Payments to the Borrower or any Subsidiary (or, in the case of non-Wholly Owned Subsidiaries, to the Borrower and to each other owner of Equity Interests of such Subsidiary on a *pro rata* basis (or more favorable basis from the perspective of the Borrower or such Subsidiary) based on their relative ownership interests so long as any repurchase of its Equity Interests from a Person that is not the Borrower or a Subsidiary is permitted under Section 6.04).

SECTION 6.07 Transactions with Affiliates. Sell or transfer any property or assets to, or purchase or acquire any property or assets from, or otherwise engage in any other transaction with, any of its Affiliates in a transaction involving aggregate consideration in excess of \$10.0 million, unless such transaction is deemed in good faith by a majority of the Disinterested Directors of the Borrower or any Parent Entity (or any disinterested members of any appropriate committee thereof) to be on terms no less favorable to the Borrower and its Restricted Subsidiaries, as applicable, than would be obtained in a comparable arm's length transaction with a Person that is not an Affiliate, except that this Section 6.07 will not prohibit:

(1) transactions between or among (a)(i) Holdings, the Borrower Parties and the Subsidiary Loan Parties or (ii) Holdings, the Borrower Parties and any Person that becomes a Subsidiary Loan Party as a result of such transaction (including by way of a merger, consolidation or amalgamation in which a Loan Party is the surviving entity) and (b) Holdings, the Borrower Parties and any Subsidiary that is not a Subsidiary Loan Party as of the date of the consummation, so long as (i) such transaction is on an arm's length basis or (ii) involves the sharing of operating, overhead, legal, accounting and other professional fees and expenses (including directors' fees and expenses and administrative, legal, accounting, filings and similar expenses) in the ordinary course of business;

(2) payment of fees required to be paid pursuant to the "Fee Letter" (as defined in the DIP UnSub Borrower Term Loan Agreement) as in effect on the Effective Date;

(3) [reserved];

(4) [reserved];

(5) the payment of fees, reasonable out-of-pocket costs and indemnities to directors, officers, consultants and employees of any Parent Entity, the Borrower or any of the Restricted Subsidiaries in the ordinary course of business (limited, in the case of any Parent Entity, to the portion of such fees and expenses that are allocable to the Borrower and the Restricted Subsidiaries and subject to reasonable pro-ration of joint services, indemnities, costs, fees and expenses), to the extent permitted by the Approved Budget;

(6) the transactions, agreements and arrangements in existence on the Effective Date and set forth on Schedule 6.07 or any amendment thereto on arm's-length terms;

(7) (a) any employment agreements entered into by Holdings, the Borrower or any of the Restricted Subsidiaries in the ordinary course of business, (b) any subscription agreement or similar agreement pertaining to the repurchase of Equity Interests pursuant to put/call rights or similar rights with employees, officers or directors and (c) any employee compensation, benefit plan or arrangement, any health, disability or similar insurance plan which covers employees, and any reasonable employment contract and transactions pursuant thereto;

(8) Restricted Payments permitted under Section 6.06, including payments to any Parent Entity;

(9) [reserved];

(10) [reserved];

(11) transactions with Subsidiaries for the purchase or sale of goods, products, parts and services entered into in the ordinary course of business and on arm's length terms;

(12) any transaction in respect of which the Borrower delivers to the Administrative Agent (for delivery to the Lenders) a letter addressed to the Board of Directors of the Borrower or any Parent Entity from an accounting, appraisal or investment banking firm, in each case, of nationally recognized standing that is (a) in the good faith determination of the Borrower qualified to render such letter and (b) reasonably satisfactory to the Administrative Agent, which letter states that such transaction is on terms that are no less favorable to the Borrower or the Restricted Subsidiaries, as applicable, than would be obtained in a comparable arm's length transaction with a Person that is not an Affiliate;

(13) transactions with joint ventures for the purchase or sale of goods, equipment and services entered into in the ordinary course of business;

(14) [reserved];

(15) [reserved];

(16) [reserved];

(17) payments or loans (or cancellation of loans) to employees or consultants that are:

(a) approved by a majority of the Disinterested Directors of the Borrower in good faith;

(b) made in compliance with applicable law;

- (c) otherwise permitted under this Agreement;
- (d) made in accordance with the Order; and
- (e) permitted by the Approved Budget.

(18) transactions with customers, clients, suppliers, or purchasers or sellers of goods or services, in each case, in the ordinary course of business and otherwise in compliance with the terms of this Agreement, that are fair to the Borrower and the Restricted Subsidiaries;

(19) [reserved];

(20) [reserved]; and

(21) the existence of, or the performance by any Loan Party of its obligations under the terms of, any customary registration rights agreement to which a Loan Party or any Parent Entity is a party or becomes a party in the future.

SECTION 6.08 Business.

(1) Notwithstanding any other provisions hereof, engage at any time in any business or business activity other than any business or business activity conducted by the Borrower and the Restricted Subsidiaries on the Effective Date and any similar, corollary, related, ancillary, incidental or complementary business or business activities or a reasonable extension, development or expansion thereof or ancillary thereto.

(2) Holdings will not engage in any business other than its ownership of the capital stock of, and the management of, the Borrower and, indirectly, its Subsidiaries and activities incidental thereto; *provided* that Holdings may engage in those activities that are incidental to (1) the maintenance of its existence in compliance with applicable law, (2) legal, tax and accounting matters in connection with any of the foregoing or following activities, (3) the entering into, and performing its obligations under, this Agreement, the other Loan Documents to which it is a party, the DIP Term Loan Documents and the other definitive documentation entered into in connection with any of the foregoing, (4) the issuance, sale or repurchase of its Equity Interests and the receipt of capital contributions, (5) the making of dividends or distributions on its Equity Interests, (6) the filing of registration statements, and compliance with applicable reporting and other obligations, under federal, state or other securities laws, (7) the listing of its equity securities and compliance with applicable reporting and other obligations in connection therewith, (8) the retention of (and the entry into, and exercise of rights and performance of obligations in respect of, contracts and agreements with) transfer agents, private placement agents, underwriters, counsel, accountants and other advisors and consultants, (9) the performance of obligations under and compliance with its certificate of incorporation and by-laws, or any applicable law, ordinance, regulation, rule, order, judgment, decree or permit, including, without limitation, as a result of or in connection with the activities of its Subsidiaries, (10) the incurrence and payment of its operating and business expenses and any taxes for which it may be liable (including reimbursement to Affiliates for such expenses paid on its behalf), (11) [reserved], (12) the making of loans to or other Investments in, or incurrence of Indebtedness from, the Borrowers or, in the case of incurrence of Indebtedness, from any Wholly-Owned Domestic Subsidiary which is a Loan Party, as and to the extent not prohibited by this Agreement, (13) [reserved] and (14) any other activity expressly contemplated by this Agreement to be engaged in by Holdings, including, without limitation, repurchases of Indebtedness of the Borrowers not prohibited under this Agreement and entry into and performance of guarantees of permitted Indebtedness of the Borrower and its Restricted Subsidiaries.

SECTION 6.09 Limitation on Payments and Modifications of Indebtedness; Modifications of Certificate of Incorporation, By Laws and Certain Other Agreements; etc.

(1) amend or modify in any manner materially adverse to the Lenders the articles or certificate of incorporation (or similar document), by-laws, limited liability company operating agreement, partnership agreement or other organizational documents of the Borrower or any Restricted Subsidiary;

(2) make any cash payment or other distribution in cash in respect of any Specified Indebtedness except for payments required under the Order with respect to any Specified Indebtedness.

(3) amend or modify, or permit the amendment or modification of, any provision governing Material Indebtedness without the consent of the Required Lenders;

(4) permit any Restricted Subsidiary to enter into any agreement or instrument that by its terms restricts (a) with respect to any such Restricted Subsidiary that is not a Guarantor or Co-Borrower, Restricted Payments from such Restricted Subsidiary to the Borrower or any other Loan Party that is a direct or indirect parent of such Restricted Subsidiary or (b) with respect to any such Restricted Subsidiary that is a Guarantor or Co-Borrower, the granting of Liens by such Restricted Subsidiary pursuant to the Security Documents, except in the case of this clause (4);

(a) restrictions imposed by applicable law;

(b) contractual encumbrances or restrictions:

(i) under the DIP Term Loan Agreement; or

(ii) under any other agreement relating to Indebtedness incurred pursuant to Section 6.01(1), (2), (4), (5) or (31) or any Permitted Refinancing Indebtedness in respect thereof, that does not materially expand the scope of any such encumbrance or restriction;

(c) any restriction on a Restricted Subsidiary imposed pursuant to an agreement entered into for the sale or disposition of the Equity Interests or assets of a Restricted Subsidiary pending the closing of such sale or disposition;

(d) customary provisions in joint venture agreements and other similar agreements entered into in the ordinary course of business;

(e) any restrictions imposed by any agreement relating to secured Indebtedness permitted by this Agreement to the extent that such restrictions apply only to the property or assets securing such Indebtedness;

(f) customary provisions contained in leases or licenses of intellectual property and other similar agreements entered into in the ordinary course of business;

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

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

(i) customary restrictions and conditions contained in any agreement relating to the sale, transfer or other disposition of any asset permitted under Section 6.05 pending the consummation of such sale, transfer or other disposition;

(j) customary restrictions and conditions contained in the document relating to any Lien, so long as (i) such Lien is a Permitted Lien and such restrictions or conditions relate only to the specific asset subject to such Lien and (ii) such restrictions and conditions are not created for the purpose of avoiding the restrictions imposed by this Section 6.09;

(k) customary net worth provisions contained in Real Property leases entered into by Restricted Subsidiaries, so long as a Responsible Officer of the Borrower has determined in good faith that such net worth provisions would not reasonably be expected to impair the ability of the Borrower and the other Restricted Subsidiaries to meet their ongoing obligations;

(l) any agreement in effect at the time any Person becomes a Restricted Subsidiary, so long as such agreement was not entered into in contemplation of such Person becoming a Restricted Subsidiary;

(m) restrictions in agreements representing Indebtedness permitted under Section 6.01 of a Restricted Subsidiary that is not a Subsidiary Loan Party;

(n) customary restrictions on leases, subleases, licenses or Equity Interests or asset sale agreements otherwise permitted hereby as long as such restrictions relate to the Equity Interests and assets subject thereto;

(o) restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business; or

(p) any encumbrances or restrictions imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (a) through (o) above, so long as such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Borrower, not materially more restrictive with respect to such Lien, dividend and other payment restrictions, taken as a whole, than those contained in the Lien, dividend or other payment restrictions prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

SECTION 6.10 Reclamation Claims. No Loan Party shall enter into any agreement to return any of its Inventory to any of its creditors for application against any pre-petition Indebtedness, pre-petition trade payables or other pre-petition claims under Section 546(c) of the Bankruptcy Code or, except as contemplated by or permitted pursuant to a “first day” motion or order, allow any creditor to take any setoff or recoupment against any of its pre-petition Indebtedness, pre-petition trade payables or other pre-petition claims based upon any such return pursuant to Section 553(b)(1) of the Bankruptcy Code or otherwise if, after giving effect to any such agreement, setoff or recoupment, the aggregate amount applied to pre-petition Indebtedness, pre-petition trade payables and other pre-petition claims subject to all such agreements, setoffs and recoupments since the Petition Date would exceed \$1,000,000.

SECTION 6.11 Designated IPCo Subsidiaries. Notwithstanding anything else in this Agreement to the contrary, the Borrower and its Restricted Subsidiaries shall not permit any of the following:

(1) any Agent License Grant in favor of the Collateral Agent no longer being in full force and effect.

(2) (i) any Equity Interest of any Designated IPCo Subsidiary is no longer held directly by either another Designated IPCo Subsidiary or by the Borrower or a Subsidiary Loan Party, (ii) any Equity Interest in a Designated IPCo Subsidiary is no longer being held by the Borrower or a Subsidiary Loan Party, or is no longer subject to the Liens granted to the Collateral Agent pursuant to the Security Documents.

(3) the incurrence by any Designated IPCo Subsidiary of any Indebtedness for borrowed money or granting any Liens (other than involuntary Liens or Liens arising by operation of law).

(4) any Designated IPCo Subsidiary assigns, invests, contributes, sells, transfers or otherwise disposes of any of its assets, except to the Borrower, a Guarantor or another Designated IPCo Subsidiary.

(5) any Designated IPCo Subsidiary sells, transfers or otherwise disposes of any intellectual property other than (i) to a Loan Party, (ii) with respect to a sale, license, transfer, abandonment, allowance to lapse or other disposition of intellectual property that is immaterial or no longer used, useful or necessary in the operation of the business of the Borrower or any Restricted Subsidiary, as determined by such Designated IPCo Subsidiary reasonably and in good faith, or (iii) a license of such intellectual property to a non-Loan Party, which such license (x) does not impair the rights and ongoing use of the Loan Parties (and is subject to the ongoing use by Loan Parties of intellectual property not subject to the license) or the ongoing license and liquidation rights of the Administrative Agent and Collateral Agent (including pursuant to the Agent License Grant) (and is subject to such license and liquidation rights of the Collateral Agent) and does not impair the rights of the Collateral Agent or the Loan Parties with respect to the Collateral or the ability of the Collateral Agent or the Loan Parties to realize the full value of the Collateral consistent with the appraisal methodology applicable thereto, and (y) the licensee thereof has acknowledged in writing the foregoing clause (iii)(x) (which such acknowledgment may be contained in the applicable license agreement with such licensee).

(6) any Designated IPCo Subsidiary permits any owned intellectual property or such Designated IPCo Subsidiary to be subject to any claims, encumbrances or other rights, in each case granted by such Designated IPCo Subsidiary, which could adversely impact the rights and ongoing use of the Loan Parties or the ongoing license and liquidation rights of the Collateral Agent (including pursuant to the Agent License Grant).

(7) any Designated IPCo Subsidiary amends, supplements, modifies or waives any Agent License Grant or any other license granted in favor of any Loan Party.

(8) any Designated IPCo Subsidiary permits to lapse or become abandoned any Material Intellectual Property owned by such Designated IPCo Subsidiary or licensed to the Loan Parties or the Collateral Agent pursuant to an Agent License Grant.

SECTION 6.12 Saks Flagship Material Agreements.

(1) Notwithstanding anything to the contrary contained in any Saks Flagship Material Agreement, permit any Saks Flagship Entity to:

(a) Assign or otherwise transfer any of its rights and obligations under any of the Saks Flagship Material Agreements to which it is a party, except with respect to the Saks Flagship Fee Owner pursuant to Section 2.7 of the Incorporated Agreement;

(b) Add any Loan Party or any other Restricted Subsidiary as an obligor under any Saks Flagship Material Agreement to the extent such Person is not a party to such Saks Flagship Material Agreement as of the Effective Date;

(c) Create, incur, assume or suffer to exist any voluntary Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired or sign or file or suffer to exist under the UCC or any similar Law or statute of any jurisdiction a financing statement or registration that names any Saks Flagship Entity as debtor; sign or suffer to exist any security agreement authorizing any Person thereunder to file such financing statement or registration; or collaterally assign or otherwise transfer as collateral security any accounts or other rights to receive income, other than, as to all of the above, Liens (i) in respect of the Indebtedness permitted pursuant to Section 6.12(d) below limited, in the case of clauses (x) and (y) thereof, to the aggregate principal amount of such Indebtedness outstanding on the Effective Date and (ii) Liens in respect of the DIP UnSub Borrower Term Loan Agreement;

(d) Create, incur, assume, guarantee, suffer to exist or otherwise become or remain liable with respect to, any Indebtedness, except Indebtedness of (x) the Saks Flagship Fee Owner under the Incorporated Agreement provided that the aggregate principal amount outstanding at any time shall not exceed \$1,250.0 million *less* the aggregate amount of principal repayments made in respect thereof after the Effective Date, (y) Saks Flagship Holdco II under the Ground Lessee Pledge Documentation in an aggregate amount of liabilities thereunder not to exceed \$107.0 million and (z) in the form of Guarantees by one or more of the Saks Flagship Entities of the Obligations, the Pre-Petition Secured Notes, any Indebtedness incurred pursuant to Section 6.01(17), the DIP UnSub Borrower Term Loan Agreement, or the Pre-Petition UnSub Borrower Secured Notes;

(e) Enter into any "Loan Bifurcation" or "New Mezzanine Loan" in each case, as defined in the Incorporated Agreement; or

(f) Increase or incur any additional obligations, or extend the obligations, in each case, under the Ground Lessee Pledge Documentation.

SECTION 6.13 Insolvency Proceeding Claims. No Loan Party shall incur, create, assume, suffer to exist or permit any other superpriority administrative claim which is *pari passu* with or senior to the claim of the Administrative Agent or the Lenders against the Debtors, except as set forth in the applicable Order.

SECTION 6.14 DIP UnSub Borrower and Pre-Petition UnSub Borrower Covenant Basket.

(1) Notwithstanding any term or provision in this Agreement no Loan Party shall be permitted to make (i) Investments in the Pre-Petition UnSub Borrower, (ii) intercompany loans and advances to the Pre-Petition UnSub Borrower, (iii) Guarantees of any Permitted Indebtedness incurred by the Pre-Petition UnSub Borrower, (iv) sales, transfers, conveyances, assignments or other dispositions of the properties or assets of any Loan Party to the Pre-Petition UnSub Borrower, or (v) Restricted Payments to Pre-Petition UnSub Borrower.

(2) Notwithstanding any term or provision in this Agreement no Loan Party shall be permitted to make, (i) Investments in the DIP UnSub Borrower, (ii) intercompany loans and advances made to the DIP UnSub Borrower, (iii) Guarantees of any Permitted Indebtedness incurred by the DIP UnSub Borrower, (iv) sales, transfers, conveyances, assignments or other dispositions of the properties or assets of any Loan Party to the DIP UnSub Borrower, and (v) Restricted Payments to DIP UnSub Borrower.

(3) Notwithstanding any term or provision in this Agreement no Loan Party shall be permitted to make (i) Investments in any non-Loan Party party to the DIP UnSub Borrower Term Loan Agreement, (ii) intercompany loans and advances in any non-Loan Party party to the DIP UnSub Borrower Term Loan Agreement, (iii) Guarantees of any Permitted Indebtedness incurred by any non-Loan Party party to the DIP UnSub Borrower Term Loan Agreement, (iv) sales, transfers, conveyances, assignments or other dispositions of the properties or assets of any Loan Party to in any non-Loan Party party to the DIP UnSub Borrower Term Loan Agreement, or (v) Restricted Payments to any non-Loan Party party to the DIP UnSub Borrower Term Loan Agreement, in each case of the foregoing clauses (i) through (v), other than the DIP UnSub Borrower as set forth in clause (2) above; *provided*, however, that nothing in the foregoing shall prohibit payments made in the ordinary course of business to maintain, renew or obtain licenses, permits, approvals or registrations with any Governmental Authority or other ordinary course de minimis expenses..

SECTION 6.15 Bankruptcy Actions. No Loan Party shall seek, consent to, or permit to exist, without the prior written consent of the Administrative Agent, any order granting authority to take any action that is prohibited by the terms of this Agreement, the Order or the other Loan Documents or refrain from taking any action that is required to be taken by the terms of this Agreement, the Order or any of the other Loan Documents.

ARTICLE VII

[Reserved]

ARTICLE VIII

Events of Default

SECTION 8.01 Events of Default. In case of the happening of any of the following events (each, an “*Event of Default*”):

(1) any representation or warranty made by or on behalf of the Borrower, any other Loan Party or any Saks Flagship Entity herein or in any other Loan Document or any certificate or document required to be delivered pursuant hereto or thereto proves to have been false or misleading in any material respect when so made or deemed made;

(2) default is made in the payment of any principal of any Loan when and as the same becomes due and payable, whether at the due date thereof, at a date fixed for prepayment thereof, by acceleration thereof or otherwise (other than Swingline Loans that become Revolving Loans in accordance with Article II);

(3) default is made in the payment of any interest on any Loan or the reimbursement of any L/C Disbursement or in the payment of any Fee or any other amount due under any Loan Document (other than an amount referred to in clause (2) of this Section 8.01), when and as the same becomes due and payable, and such default continues unremedied for a period of three (3) Business Days;

(4) default is made in the due observance or performance by Holdings, the Borrower or any Subsidiary Loan Party of any covenant, condition or agreement contained in (a) Section 5.01(1), 5.05(1), 5.07, 5.08, 5.11, or in Article VI or Article VII of this Agreement or (b) Section 5.04(13) and such default shall continue unremedied for a period of three (3) Business Days following the notice thereof from the Administrative Agent to the Borrower;

(5) default is made in the due observance or performance by Holdings, the Borrower or any Subsidiary Loan Party of any covenant, condition or agreement contained in any Loan Document (other than those specified in clauses (2), (3) and (4) of this Section 8.01), and such default continues unremedied for a period of five (5) Business Days after notice thereof from the Administrative Agent to the Borrower;

(6) (a) any event or condition occurs that (i) results in any Material Indebtedness becoming due prior to its scheduled maturity or (ii) enables or permits (with all applicable grace periods having expired) the holder or holders of any Material Indebtedness or, in any case, any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; *provided* that this clause (6)(a) will not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness, (b) Holdings, the Borrower or any Restricted Subsidiary shall fail to make any payment when due (with all applicable grace periods having expired) in respect of the DIP Term Loan Agreement, or (c) Holdings, the Borrower or any Restricted Subsidiary fail to pay the principal of any other Material Indebtedness, at the stated final maturity thereof; *provided*, that such event or condition is unremedied and is not waived or cured by the holders of such Indebtedness prior to any acceleration of the Loans and termination of the Commitments pursuant to the final paragraph of this Section 8.01;

(7) a Change of Control occurs;

(8) failure of (w) the DIP Term Loan Tranche 1 Funding Date to occur on the Effective Date, (x) the DIP Term Loan Tranche 2 Funding Date to occur within [45] days of the Effective Date, (y) the DIP Term Loan Tranche 3 Funding Date to occur within [] days of the Effective Date or (z) a borrowing request by the Borrower to be honored under the DIP Term Loan Credit Agreement;

(9) any amount contained in the “DIP Escrow Account” (under and as defined in the DIP UnSub Borrower Term Loan Agreement as in effect on the Effective Date), being released, contributed or otherwise transferred to a non-Loan Party;

(10) Holdings, the Borrower or any of the Restricted Subsidiaries (other than any Immaterial Subsidiary) fails to pay one or more final judgments aggregating in excess of \$5.0 million (to the extent not covered by insurance), which judgments are not discharged or effectively waived or stayed for a period of 45 consecutive days, or any action is legally taken by a judgment creditor to levy upon assets or properties of any Borrower Party or any other Subsidiary to enforce any such judgment;

(11) (a)(i) a trustee is appointed by a United States district court to administer any Plan or (ii) an ERISA Event or ERISA Events occurs with respect to any Plan or Multiemployer Plan, and, in each case, with respect to clauses (i) and (ii) above, such event or condition, together with all other such events or conditions, if any, is reasonably expected to have a Material Adverse Effect or (b) the imposition of a Lien under Section 412 or 430(k) of the Code or Section 303 or 4068 of ERISA on any assets of any Loan Party; or

(12) (a) any material provision of any Loan Document ceases to be, or is asserted in writing by the Borrower or any other Loan Party not to be, for any reason, a legal, valid and binding obligation of any party thereto, (b) any security interest purported to be created by any Security Document on any material portion of the Collateral ceases to be, or is asserted in writing by the Borrower or any other Loan Party not to be, a valid and perfected security interest in the securities, assets or properties covered thereby, except to the extent that any such loss of validity, perfection or priority results from the limitations of foreign laws, rules and regulations as they apply to pledges of Equity Interests in Foreign Subsidiaries or the application thereof, or from the failure of the Collateral Agent to maintain possession of certificates actually delivered

to it representing securities pledged under a Security Document or to file Uniform Commercial Code continuation statements or take any other action and except to the extent that such loss is covered by a lender's title insurance policy and the Collateral Agent is reasonably satisfied with the credit of such insurer or (c) the Guarantees pursuant to the Security Documents by any Loan Party of any of the Obligations cease to be in full force and effect (other than in accordance with the terms thereof) or are asserted in writing by the Borrower or any other Loan Party not to be in effect or not to be legal, valid and binding obligations, except in the cases of clauses (a) and (b), in connection with an Asset Sale permitted by this Agreement;

(13) the Interim Order and the Final Order, as applicable, together with the Loan Documents shall cease to create a valid and perfected Lien with such priority required by this Agreement and the Order;

(14) the provisions of any Intercreditor Agreement shall for any reason be revoked or invalidated, in whole or in part, or otherwise cease to be in full force and effect, or any Loan Party, the Pre-Petition Notes Trustee, the DIP Term Loan Agent, any lender under the DIP Term Loan Facility or any Affiliate of any of the foregoing shall have commenced a suit or an action, including any motion or adversary proceeding in the Chapter 11 Cases, contesting in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder, or the Obligations, for any reason shall not have the priority contemplated by this Agreement, the Pre-Petition Credit Agreement, the Intercreditor Agreement; or

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

(a) without the consent of the Administrative Agent, the bringing of a motion, taking of any action or the filing of any plan of reorganization or disclosure statement attendant thereto by any of the Loan Parties or any Subsidiary (other than a SO5 Loan Party), in the Chapter 11 Cases: (A) to obtain additional financing under Section 364(c) or Section 364(d) of the Bankruptcy Code not otherwise permitted pursuant to this Agreement; (B) to grant any Lien other than Permitted Liens upon or affecting any Collateral; (C) except as provided in the Interim Order or Final Order, as the case may be, to use cash collateral of the Administrative Agent and the other Secured Parties or the Pre-Petition Agent and Pre-Petition Lenders under Section 363(c) of the Bankruptcy Code without the prior written consent of the Administrative Agent; or (D) any other action or actions adverse to (x) the Administrative Agent and Lenders or Pre-Petition Agent and Pre-Petition Lenders or their rights and remedies hereunder, under any other Loan Documents, or their interest in the Collateral or (y) Pre-Petition Agent and Pre-Petition Lenders or their rights under the Pre-Petition Credit Agreement or the other Pre-Petition Loan Documents or their interest in the Collateral (as defined in the Pre-Petition Credit Agreement);

(b) (A) the filing by a Loan Party of any plan of reorganization that is not a Plan of Reorganization or disclosure statement attendant thereto, or any direct or indirect amendment to such plan that causes it to no longer be a Plan of Reorganization is not a Plan of Reorganization, (B) the entry of any order terminating any Loan Party's exclusive right to file a plan of reorganization, unless such order was consented to by the Administrative Agent in its sole discretion, or (C) the expiration of any Loan Party's exclusive right to file a plan of reorganization;

(c) the entry of an order in any of the Chapter 11 Cases confirming a plan of reorganization other than a Plan of Reorganization;

(d) (A) the entry of an order amending, supplementing, staying, vacating or otherwise modifying the Loan Documents or the Interim Order, the Final Order or the Cash Management Order without the written consent of the Administrative Agent or the Interim Order, the Final Order

or the Cash Management Order shall otherwise not be in full force and effect or (B) any Loan Party or any Subsidiary shall fail to comply with the Order in any material respect;

(e) the payment of, or application for authority to pay, any pre-petition claim without Administrative Agent's consent unless in accordance with the Approved Budget or as provided under a "first day" order or otherwise ordered by the Court;

(f) the allowance of any claim or claims under Section 506(c) of the Bankruptcy Code or otherwise against the Administrative Agent, any Lender or any of the Collateral or against the Pre-Petition Agent, any Pre-Petition Lender or any Collateral (as defined in the Pre-Petition Credit Agreement);

(g) (A) the appointment of an interim or permanent trustee in the Chapter 11 Cases or the appointment of a trustee receiver or an examiner in the Chapter 11 Cases with expanded powers to operate or manage the financial affairs, the business, or reorganization of the Loan Parties; or (B) the sale without the Administrative Agent's consent, of all or substantially all of the Debtors' assets either through a sale under Section 363 of the Bankruptcy Code, through a confirmed plan of reorganization in the Chapter 11 Cases or otherwise that does not result in payment in full in cash of all of the Obligations under this Agreement and all Pre-Petition Obligations at the closing of such sale or initial payment of the purchase price or effectiveness of such plan, as applicable; *provided* that nothing herein shall prohibit a Lender from Objecting to such plan of reorganization;

(h) other than a Chapter 11 Case with respect to an Immaterial Subsidiary or Unrestricted Subsidiary, the dismissal of any Chapter 11 Case, or the conversion of any Chapter 11 Case from one under chapter 11 to one under chapter 7 of the Bankruptcy Code or any Loan Party shall file a motion or other pleading seeking the dismissal of the Chapter 11 Cases under Section 1112 of the Bankruptcy Code or otherwise or the conversion of the Chapter 11 Cases to chapter 7 of the Bankruptcy Code;

(i) except as provided in or contemplated by the Orders, any Loan Party shall file a motion seeking, or the Court shall enter an order granting, relief from or modifying the Automatic Stay (A) to allow any creditor (other than the Administrative Agent and the DIP Term Loan Agent) to execute upon or enforce a Lien on any Collateral, (B) approving any settlement or other stipulation not approved by the Administrative Agent with any secured creditor of any Loan Party providing for payments as adequate protection or otherwise to such secured creditor, (C) with respect to any Lien on or the granting of any Lien on any Collateral to any federal, state or local environmental or regulatory agency or authority, which in either case involves a claim of \$[1,000,000] or more or (D) permit other actions that would have a Material Adverse Effect on the Debtors or their estates (taken as a whole);

(j) the entry of an order in the Chapter 11 Cases avoiding or permitting recovery of any portion of the payments made on account of the Obligations owing under this Agreement or the other Loan Documents or the Pre-Petition Obligations owing under the Pre-Petition Loan Documents;

(k) the failure of any Loan Party to perform any of its obligations under the Interim Order, the Final Order, the Cash Management Order, or any order of the Court approving the Plan of Reorganization in all material respects;

(l) the entry of any order of the Court authorizing any claims or charges, other than in respect of this Agreement and the other Loan Documents, the DIP Term Loan Agreement, or as

otherwise permitted under the applicable Loan Documents or permitted under the Orders, (A) entitled to superpriority administrative expense claim status in any Chapter 11 Case pursuant to Section 364(c)(1) of the Bankruptcy Code *pari passu* with or senior to the claims of the Administrative Agent and the Secured Parties under this Agreement and the other Loan Documents or (B) granting any Lien on the Collateral having a priority senior to or *pari passu* with the Liens and security interests granted herein or in the Orders then in effect;

(m) the Order shall cease to create a valid and perfected Lien on the Collateral or to be in full force and effect;

(n) [reserved];

(o) any Loan Party shall seek or support any Person seeking an order in the Chapter 11 Cases (A) charging any of the Collateral under Section 506(c) of the Bankruptcy Code against the Administrative Agent and the Secured Parties or (B) limiting the extension under Section 552(b) of the Bankruptcy Code of the Liens of the Pre-Petition Agent on the Collateral to any proceeds, products, offspring, or profits of the Collateral acquired by any Loan Party after the Petition Date;

(p) if the Final Order does not include a waiver, in form and substance satisfactory to the Administrative Agent, of (A) the right to surcharge the Collateral under Section 506(c) of the Bankruptcy Code and (B) any ability to limit the extension under Section 552(b) of the Bankruptcy Code of the Liens of the Pre-Petition Agent on the Collateral to any proceeds, products, offspring, or profits of the Collateral acquired by any Loan Party after the Petition Date; provided that in no event shall a violation of this clause (p) constitute an Event of Default prior to the entry of the Final Order;

(q) an order of the Court shall be entered denying or terminating use of cash collateral by the Loan Parties, unless such order was consented to by the Administrative Agent in its sole discretion;

(r) any Loan Party shall challenge, support or encourage a challenge of any payments made to the Administrative Agent or any Lender with respect to the Obligations or the Pre-Petition Agent or the Pre-Petition Lenders with respect to the Pre-Petition Obligations, or without the consent of the Administrative Agent, the filing of any motion by the Loan Parties seeking approval of (or the entry of an order by the Court approving) adequate protection to any Pre-Petition Agent or the Pre-Petition Lenders that is inconsistent with the Order;

(s) without the Administrative Agent's consent, the entry of any order by the Court granting, or the filing by any Loan Party or any of its Subsidiaries (other than a SO5 Loan Party) of any motion or other request with the Court (in each case, other than the Orders and motions seeking entry thereof or permitted amendments or modifications thereto) seeking, authority to use any cash proceeds of any of the Collateral without the Administrative Agent's consent or to obtain any financing under Section 364 of the Bankruptcy Code other than the Loan Documents and the DIP Term Loan Agreement; or

(t) any Loan Party shall file any motion seeking authority to consummate a sale of assets of the Loan Parties or the Collateral to the extent having a value in excess of \$[1,000,000] outside the ordinary course of business and not otherwise permitted hereunder; or

(u) without the Administrative Agent's consent, any Loan Party or any Subsidiary (other than a SO5 Loan Party) thereof shall file any motion or other request with the Court seeking

(A) to grant or impose, under Section 364 of the Bankruptcy Code or otherwise, liens or security interests in any DIP Collateral (as defined in the Orders), whether senior or equal to the Agents' or the DIP Term Loan Lenders' liens and security interests, except as otherwise provided in the Loan Documents or the Orders; or (B) to modify or affect any of the rights of the Administrative Agent, the Lenders or the DIP Term Loan Lenders under the Orders, the Loan Documents, or the DIP Term Loan Agreement and related documents by any subsequent order entered in the Chapter 11 Cases; or

(v) any Loan Party or any Subsidiary (other than a SO5 Loan Party) thereof shall take any action in support of any matter set forth in this Section 8.01(15) or any other Person shall do so and such application is not contested in good faith by the Loan Parties and the relief requested is granted in an order that is not stayed pending appeal.

SECTION 8.02 Remedies on Default. In case any one or more of the Events of Default shall have occurred and be continuing, and whether or not the maturity of the Obligations shall have been accelerated pursuant hereto, the Administrative Agent (at the direction of the Required Lenders), subject to the Remedies Notice Period, shall proceed to protect and enforce their rights and remedies under this Agreement or any of the other Loan Documents by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Agreement and the other Loan Documents or any instrument pursuant to which the Obligations are evidenced, and, if such amount shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of the Secured Parties. No remedy herein is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or any other provision of law.

At any hearing during the Remedies Notice Period to contest the enforcement of remedies, any party in opposition thereto may raise, in fact, an Event of Default has occurred; provided, that the Loan Parties hereby waive (i) their right to and shall not be entitled to seek relief, under Section 105 of the Bankruptcy Code, to the extent that such relief would in any way impair or restrict the rights and remedies of the Administrative Agent or the Secured Parties, as set forth in this Agreement, the applicable Order or other Loan Documents and (ii) their rights to obtain authority for the non-consensual use of cash collateral.

As set forth in and subject to the Order, the Automatic Stay shall be modified and vacated to permit the Administrative Agent and the Lenders to exercise all rights and remedies under this Agreement, the other Loan Documents or applicable law, without further notice, motion or application to, hearing before, or order from, the Court.

No remedy herein is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or any other provision of law.

(a) Subject to the Remedies Notice Period, the Collateral Agent may exercise any other appropriate right or remedy the Court may fashion, including:

- (i) foreclosure, sale or disposition of the Collateral;
- (ii) collection of accounts receivable;
- (iii) seek the appointment of a receiver or keeper to take possession of any Collateral and to enforce any of the Collateral Agent's remedies (for the benefit of the Secured Parties); and

(iv) taking any other actions or exercise any other rights or remedies permitted under the Orders, the Loan Documents or applicable Law or equity.

(b) Each Loan Party further agrees, that, during the continuance of any Event of Default, subject to the Remedies Notice Period, (i) at the Collateral Agent's request, it shall assemble the Collateral and make it available to the Collateral Agent at places that the Collateral Agent shall reasonably select, whether at such Secured Party's premises or elsewhere, (ii) without limiting the foregoing, the Collateral Agent also has the right to require that each Loan Party store and keep any Collateral pending further action by the Collateral Agent and, while any such Collateral is so stored or kept, provide such guards and maintenance services as shall be necessary to protect the same and to preserve and maintain such Collateral in good condition, and (iii) until the Collateral Agent is able to sell any Collateral, the Collateral Agent shall have the right to hold or use such Collateral to the extent that it deems appropriate for the purpose of preserving the Collateral or its value. The Agents shall not have any obligation to any Loan Party to maintain or preserve the rights of any Loan Party as against third parties with respect to any Collateral while such Collateral is in the possession of any Agent.

(c) All of the rights and remedies of the Agents and any other Secured Party under any Loan Document shall be cumulative, may be exercised individually or concurrently and not exclusive of any other rights or remedies provided by any applicable Law. To the extent it may lawfully do so, each Loan Party absolutely and irrevocably waives and relinquishes the benefit and advantage of, and covenants not to assert against the Agents or any Lender, any valuation, stay, appraisal, extension, redemption or similar laws and any and all rights or defenses it may have as a surety, now or hereafter existing, arising out of the exercise by them of any rights hereunder. If any notice of a proposed sale or other disposition of any Collateral shall be required by law, such notice shall be deemed reasonable and proper if given at least 10 days before such sale or other disposition.

(d) To the extent that applicable law imposes duties on the Collateral Agent to exercise remedies in a commercially reasonable manner, each Loan Party acknowledges and agrees that it is not commercially unreasonable for the Collateral Agent to do any of the following:

(i) fail to incur significant costs, expenses or other liabilities reasonably deemed as such by the Collateral Agent to prepare any Collateral for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for disposition;

(ii) fail to obtain Permits, or other consents, for access to any Collateral to sell or for the collection or sale of any Collateral, or, if not required by applicable Law, fail to obtain Permits or other consents for the collection or disposition of any Collateral;

(iii) fail to exercise remedies against account debtors or other Persons obligated on any Collateral or to remove Liens on any Collateral or to remove any adverse claims against any Collateral;

(iv) advertise dispositions of any Collateral through publications or media of general circulation, whether or not such Collateral is of a specialized nature or to contact other Persons, whether or not in the same business as any Loan Party, for expressions of interest in acquiring any such Collateral;

(v) exercise collection remedies against account debtors and other Persons obligated on any Collateral, directly or through the use of collection agencies or other collection specialists, hire one or more professional auctioneers to assist in the disposition of any Collateral, whether or not such

Collateral is of a specialized nature or, to the extent deemed appropriate by the Collateral Agent, obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Collateral Agent in the collection or disposition of any Collateral, or utilize internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets to dispose of any Collateral;

- (vi) dispose of assets in wholesale rather than retail markets;
- (vii) disclaim disposition warranties, such as title, possession or quiet enjoyment; or
- (viii) purchase insurance or credit enhancements to insure the Collateral Agent against risks of loss, collection or disposition of any Collateral or to provide to the Collateral Agent a guaranteed return from the collection or disposition of any Collateral.

Subject to the terms of the Orders, notwithstanding anything contained herein or in any other Loan Document to the contrary, the Loan Parties hereby waive any right to seek relief under the Bankruptcy Code, including under section 105 thereof, to the extent such relief would restrict or impair the rights and remedies of the Agents and the Lenders set forth in the Orders and in the Loan Documents.

ARTICLE IX

The Agents

SECTION 9.01 Appointment.

(1) Each Lender and each Issuing Bank hereby irrevocably designates and appoints the Administrative Agent as agent of such Lender under this Agreement and the other Loan Documents, as applicable, including as the Collateral Agent for such Lender and the other applicable Secured Parties under the applicable Security Documents, and each such Lender irrevocably authorizes the Administrative Agent, in such capacities, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. In addition, to the extent required under the laws of any jurisdiction other than the United States, each of the Lenders and the Issuing Banks hereby grants to the Administrative Agent any required powers of attorney to execute any Security Document governed by the laws of such jurisdiction on such Lender's or Issuing Bank's behalf. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent. To the extent required by any applicable law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any other Governmental Authority asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender because the appropriate form was not delivered or was not properly executed or because such Lender failed to notify the Administrative Agent of a change in circumstance which rendered the exemption from, or reduction of, withholding Tax ineffective or for any other reason, such Lender shall indemnify the Administrative Agent fully for all amounts paid, directly or indirectly, by the Administrative Agent as Tax or otherwise, including any penalties or interest and together with all expenses (including legal expenses, allocated internal costs and out-of-pocket expenses) incurred. For the avoidance of doubt, (i) no Borrower shall have liability for the actions of the Administrative Agent

pursuant to the immediately preceding sentence and (ii) the provisions of this Article IX apply to the Collateral Agent on the same basis as they apply to the Administrative Agent as if each reference to “Administrative Agent” were a reference to the “Collateral Agent”. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Agents is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(2) In furtherance of the foregoing, each Lender and each Issuing Bank hereby appoints and authorizes the Administrative Agent to act as the agent of such Lender for purposes of acquiring, holding and enforcing any and all Liens on the Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In connection therewith, the Administrative Agent (and any Subagents appointed by the Administrative Agent pursuant to Section 9.02 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights or remedies thereunder at the direction of the Administrative Agent) shall be entitled to the benefits of this Article IX (including Section 9.07) as though the Administrative Agent (and any such Subagents) were an “Administrative Agent” or “Collateral Agent” under the Loan Documents, as if set forth in full herein with respect thereto.

(3) In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, (a) the Administrative Agent (irrespective of whether the principal of any Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise (i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of any or all of the Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Banks and the Agents and any Subagents allowed in such judicial proceeding and (ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same, and (b) any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and Issuing Bank to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders and the Issuing Banks, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under the Loan Documents. Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or Issuing Bank any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or Issuing Bank or to authorize the Administrative Agent to vote in respect of the claim of any Lender or Issuing Bank in any such proceeding.

(4) The Lenders and each other holder of an Obligation under a Loan Document shall act collectively through the Administrative Agent with respect to the Obligations and the Loan Documents. Without limiting the delegation of authority to the Administrative Agent set forth herein, the Required Lenders shall direct the Administrative Agent with respect to the exercise of rights and remedies hereunder and under other Loan Documents (including with respect to alleging the existence or occurrence of, and exercising rights and remedies as a result of, any Default or Event of Default), the exercise of rights and remedies with respect to (i) [reserved], (ii) the Loans and any securities, notes, or other interests issued pursuant to this Agreement and (iii) any Collateral with respect to the Obligations. Any such rights and remedies shall not be exercised other than through the Administrative Agent. None of the foregoing shall preclude any Lender from exercising any right of set-off in accordance with the provisions of Section 10.06

or from exercising rights and remedies (other than the enforcement of Collateral) with respect to any payment default after the occurrence of the applicable Maturity Date with respect to any Loans made by it.

(5) Without limiting the generality of the foregoing, each Lender hereby authorizes the Administrative Agent to consent, on behalf of each Lender, to the Interim Order and the Final Order, each to be negotiated between the Loan Parties, the Administrative Agent, certain other parties and the statutory committees appointed pursuant to Section 1102 of the Bankruptcy Code; *provided*, nothing herein shall prohibit a Lender from objecting to such Interim Order or Final Order, as applicable.

SECTION 9.02 Delegation of Duties. The Administrative Agent may execute any of its duties under this Agreement and the other Loan Documents (including for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof)) by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of the agents or attorneys-in-fact selected by it with reasonable care. The Administrative Agent may also from time to time, when the Administrative Agent deems it to be necessary or desirable, appoint one or more trustees, co-trustees, collateral co-agents, collateral subagents or attorneys-in-fact (each, a “*Subagent*”) with respect to all or any part of the Collateral; *provided* that no such Subagent shall be authorized to take any action with respect to any Collateral unless and except to the extent expressly authorized in writing by the Administrative Agent. Should any instrument in writing from the Borrower or any other Loan Party be required by any Subagent so appointed by the Administrative Agent to more fully or certainly vest in and confirm to such Subagent such rights, powers, privileges and duties, the Borrower shall, or shall cause such Loan Party to, execute, acknowledge and deliver any and all such instruments promptly upon request by the Administrative Agent. If any Subagent, or successor thereto, shall die, become incapable of acting, resign or be removed, all rights, powers, privileges and duties of such Subagent, to the extent permitted by law, shall automatically vest in and be exercised by the Administrative Agent until the appointment of a new Subagent. The Administrative Agent shall not be responsible for the negligence or misconduct of any agent, attorney-in-fact or Subagent that it selects in accordance with the foregoing provisions of this Section 9.02 in the absence of the Administrative Agent’s gross negligence or willful misconduct.

SECTION 9.03 Exculpatory Provisions. None of the Administrative Agent, its respective Affiliates or any of its respective Affiliates’ respective officers, directors, employees, agents or attorneys-in-fact shall be (1) 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 non-appealable decision of a court of competent jurisdiction to have resulted from its or such Person’s own gross negligence or willful misconduct) or (2) 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 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. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing, and (b) the Administrative Agent shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information including, but not limited to, any information concerning the business, prospects, operations, property,

financial and other condition or creditworthiness relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Administrative Agent or its Affiliates in any capacity. The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into:

- (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document;
- (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith;
- (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default;
- (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Security Documents;
- (v) the value or the sufficiency of any Collateral; or
- (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

SECTION 9.04 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) or conversation believed in good faith by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed in good faith by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to any Credit Event, that by its terms must be fulfilled to the satisfaction of a Lender or any Issuing Bank, the Administrative Agent may presume that such condition is satisfactory to such Lender or Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or the Issuing Bank prior to such Borrowing. The Administrative Agent may consult with legal counsel (including counsel to the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. The Administrative 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 Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders (or, if so specified by this Agreement, all or other 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 Administrative 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, all or other Lenders), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Loans.

SECTION 9.05 Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Administrative Agent has received written 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 Administrative Agent receives such a notice, the Administrative Agent shall give notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Agreement, all or other Lenders); *provided* that unless and until the Administrative Agent shall have received such directions, the Administrative 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 9.06 Non-Reliance on Agents and Other Lenders. Each Lender and each Issuing Bank expressly acknowledges that none of the Agents nor the Arrangers has, nor any of their respective officers, directors, employees, agents, attorneys-in-fact or affiliates have, made any representation or warranty to it, and that no act by the Agents or the Arrangers hereafter taken, including any consent to, and acceptance of any assignment or review of the affairs of any Loan Party of any Affiliate thereof, shall be deemed to constitute any representation or warranty by the Agents or the Arrangers to any Lender or the Issuing Banks as to any matter, including whether the Agents or the Arrangers have disclosed material information in their possession. Each Lender and each Issuing Bank represents to the Agents and the Arrangers that it has, independently and without reliance upon the Agents, the Arrangers, any other Lender or any of their related parties and based on such documents and information as it has deemed appropriate, made its own credit analysis of, appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrower hereunder. Each Lender and each Issuing Bank also acknowledges that it will, independently and without reliance upon the Agents, the Arrangers, any other Lender or any of their related parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties. Each Lender and each Issuing Bank represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility and (ii) it is engaged in making, acquiring or holding commercial loans in the ordinary course and is entering into this Agreement as a Lender or Issuing Bank for the purpose of making, acquiring or holding commercial loans and providing other facilities set forth herein as may be applicable to such Lender or Issuing Bank, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument, and each Lender and each Issuing Bank agrees not to assert a claim in contravention of the foregoing. Each Lender and each Issuing Bank represents and warrants that it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender or such Issuing Bank, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities. The Agents shall not have any duty or responsibility to provide any Lender or Issuing Bank with any other credit or other information concerning the affairs, financial condition or business of any Loan Party that may come into the possession of the Agents or any of their respective officers, directors, employees, agents, attorneys-in-fact or affiliates.

SECTION 9.07 Indemnification. The Lenders agree to indemnify the Administrative Agent and each Issuing Bank, in each case in its capacity as such (to the extent not reimbursed by the Borrower Parties and without limiting the obligation of the Borrower Parties to do so), in the amount of its *pro rata*

share (based on its aggregate Revolving Credit Exposure and unused Commitments, hereunder; *provided* that the aggregate principal amount of Swingline Loans owing to the Swingline Lender and of L/C Disbursements owing to any Issuing Bank shall be considered to be owed to the Revolving Lenders ratably in accordance with their respective Revolving Credit Exposure) (determined at the time such indemnity is sought), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against the Administrative Agent or such Issuing Bank in any way relating to or arising out of the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by the Administrative Agent or such Issuing Bank 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 non-appealable decision of a court of competent jurisdiction to have resulted from the Administrative Agent's or such Issuing Bank's gross negligence or willful misconduct. The failure of any Lender to reimburse the Administrative Agent or any Issuing Bank, as the case may be, promptly upon demand for its ratable share of any amount required to be paid by the Lenders to the Administrative Agent or such Issuing Bank, as the case may be, as provided herein shall not relieve any other Lender of its obligation hereunder to reimburse the Administrative Agent or such Issuing Bank, as the case may be, for its ratable share of such amount, but no Lender shall be responsible for the failure of any other Lender to reimburse the Administrative Agent or such Issuing Bank, as the case may be, for such other Lender's ratable share of such amount. The agreements in this Section 9.07 shall survive the payment of the Loans and all other amounts payable hereunder.

SECTION 9.08 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 Loans made or renewed by it and with respect to any Letter of Credit issued, or Letter of Credit or Swingline Loan 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 the Administrative Agent and the terms "Lender" and "Lenders" shall include each Agent in its individual capacity.

SECTION 9.09 Successor Agent. The Administrative Agent may resign as Administrative Agent upon ten (10) days' notice to the Lenders and the Borrower. Any such resignation by the Administrative Agent hereunder shall also constitute its resignation as an Issuing Bank and the Swingline Lender, in which case the resigning Administrative Agent (x) shall not be required to issue any further Letters of Credit or make any additional Swingline Loans hereunder and (y) shall maintain all of its rights as Issuing Bank or Swingline Lender, as the case may be, with respect to any Letters of Credit issued by it, or Swingline Loans made by it, prior to the date of such resignation. If the Administrative Agent resigns as the Administrative 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 a Event of Default shall have occurred and be continuing) be subject to approval by the Borrower (which approval shall not be unreasonably withheld, conditioned or delayed), whereupon such successor agent shall succeed to the rights, powers and duties of the Administrative Agent, and the reference to the resigning Administrative Agent means such successor agent effective upon such appointment and approval, and the former Administrative Agent's rights, powers and duties as Administrative Agent shall be terminated, without any other or further act or deed on the part of such former Administrative Agent or any of the parties to this Agreement or any holders of the Loans. If no successor agent has accepted appointment as Administrative Agent by the date that is ten (10) days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective, and the retiring Administrative Agent hereunder shall, on behalf of the Lenders and the Issuing Bank appoint a successor agent which shall (unless a Event of Default shall have occurred and be

continuing) be subject to approval by the Borrower (which approval shall not be unreasonably withheld, conditioned or delayed). After any retiring Administrative Agent's resignation as Administrative Agent, the provisions of this Section 9.09 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement and the other Loan Documents.

SECTION 9.10 Arrangers. None of the Arrangers will have any duties, responsibilities or liabilities hereunder in their respective capacities as such.

SECTION 9.11 Recovery of Erroneous Payments. Without limitation of any other provision in this Agreement, if at any time the Administrative Agent makes a payment hereunder in error to any Lender or any Issuing Bank (the "**Credit Party**"), whether or not in respect of an Obligation due and owing by the Borrower at such time, where such payment is a Rescindable Amount, then in any such event, each Credit Party receiving a Rescindable Amount severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount received by such Credit Party in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. Each Credit Party irrevocably waives any and all defenses, including any "discharge for value" (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. The Administrative Agent shall inform each Credit Party promptly upon determining that any payment made to such Credit Party comprised, in whole or in part, a Rescindable Amount. For the avoidance of doubt, no payment made to a Loan Party shall be deemed to be a Rescindable Amount.

SECTION 9.12 Credit Bidding. The Secured Parties, hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (i) at any sale thereof conducted under the provisions of the Bankruptcy Code, including under Sections 363, 1123 or 1129 of the Bankruptcy Code, or (ii) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (A) the Administrative Agent shall be authorized to form one or more acquisition vehicles in which all of the Lenders are able to own any such Equity Interests and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Obligations to be credit bid, to make a bid, (B) to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof) shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in Section 10.08 of this Agreement, (C) the Administrative Agent shall be authorized to assign the relevant Obligations to any such acquisition vehicle pro rata by the Lenders, as a result of which each of the Lenders shall be deemed to have received a pro rata portion of any Equity Interests and/or debt instruments issued by such an acquisition vehicle on account

of the assignment of the Obligations to be credit bid, all without the need for any Loan Party or acquisition vehicle to take any further action and (D) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

SECTION 9.13 Collateral and Guarantee Matters. Each Lender and each Issuing Bank irrevocably authorizes the Administrative Agent and the Collateral Agent, as applicable (and subject to the provisions of the Intercreditor Agreement):

(1) to release any Lien on any property granted to or held by the Administrative Agent or Collateral Agent under any Loan Document:

(a) upon termination of the Commitments, the payment in full of all Pre-Petition Obligations and Obligations (other than Obligations in respect of Specified Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted) and the expiration, termination, cash-collateralization or backstopping (to the satisfaction of the respective Issuing Bank) of all Letters of Credit;

(b) that is sold or to be sold or otherwise disposed of or transferred as part of or in connection with any sale, Investment, Restricted Payment or other transaction permitted hereunder or under any other Loan Document;

(c) if approved, authorized or ratified in writing in accordance with Section 10.08 hereof;

(d) that constitutes Excluded Assets; or

(e) if the property subject to such Lien is owned by a Subsidiary Loan Party, upon release of such Subsidiary Loan Party from its obligations under this Agreement and the other Loan Documents pursuant to clause (2) below;

(2) subject to the Updated Borrowing Base Condition (if applicable thereto), to release any Subsidiary Loan Party from its obligations under the Loan Documents if such Person ceases to be a Restricted Subsidiary as a result of a transaction permitted hereunder; and

(3) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 6.02(3) (and to the extent required by the terms thereof as of the Effective Date).

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, to provide that its interests in particular types or items of property are equal to the interests of any other Person, or to release any Loan Party from its obligations under the Loan Documents. In each case specified in this Section 9.13, the Administrative Agent and Collateral Agent shall promptly (and each Lender and Issuing Bank irrevocably authorizes the Administrative Agent and Collateral Agent to), at the Borrowers' expense, execute and deliver to the applicable Loan Party such documents, including (without

limitation) termination or partial release statements, as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item or to provide that its interests are equal to the interests of any other Person, or to release such Subsidiary Loan Party from its obligations under the Loan Documents, in each case in accordance with the terms of the Loan Documents and this Section 9.13.

Notwithstanding anything to the contrary contained in this Agreement, no release involving ABL Priority Collateral that is subject to the Updated Borrowing Base Condition shall be effective unless (A) no Default or Event of Default shall then exist or would result therefrom and (B) prior to such release, the Borrower shall have complied with the Updated Borrowing Base Condition.

SECTION 9.14 Cash Management Banks and Qualified Counterparties. Each Cash Management Bank and Qualified Counterparty, in each case in its capacity as such, agrees to be bound by this Article IX to the same extent as a Lender hereunder. Each such Cash Management Bank and Qualified Counterparty shall indemnify and hold harmless the Administrative Agent and the Collateral Agent, to the extent not reimbursed by the Loan Parties, against all claims that may be incurred by or asserted against the Administrative Agent and the Collateral Agent in connection with such provider's Cash Management Obligations and Secured Hedge Agreements, as applicable. No Cash Management Bank or Qualified Counterparty, in its capacity as such, that obtains the benefits of any Guarantee or any Collateral by virtue of the provisions hereof or of any Guarantee or any Security Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as an Agent or a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Section 9.14 to the contrary, the Administrative Agent and Collateral Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Cash Management Obligations or Secured Hedge Agreements unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Qualified Counterparty.

SECTION 9.15 ERISA Representation.

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

(a) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement,

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

entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

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

(d) such other representation, warranty and covenant as may be agreed in writing between the Agents, in their sole discretion, and such Lender.

In addition, either (1) subclause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in subclause (iv) in the immediately preceding clause (a), or (2) Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Agents and the Arrangers and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that none of the Agents or the Arrangers or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender involved in such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by any Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

SECTION 9.16 Flood Insurance Laws.

The Administrative Agent has adopted internal policies and procedures that address requirements placed on federally regulated lenders under Flood Insurance Laws. The Administrative Agent, in its capacity as Administrative Agent and Collateral Agent, will post on the applicable electronic platform (or otherwise distribute to each lender in the syndicate of Lenders herein) documents that it receives in connection with the Flood Insurance Laws. Each Lender and participant herein hereby acknowledges that each federally regulated Lender (whether acting as a Lender or participant herein) is responsible for assuring its own compliance with the Flood Insurance Laws, and each Lender further acknowledges and agrees that in no event shall the Administrative Agent be responsible for such Lender or participant’s compliance with the Flood Insurance Laws.

ARTICLE X

Miscellaneous

SECTION 10.01 Notices; Communications.

(1) Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 10.01(2)), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile or e-mail, and all notices and other communications expressly permitted

hereunder to be given by telephone shall be made to the applicable telephone number, in each case, as follows:

(a) if to any Loan Party, the Administrative Agent, the Collateral Agent, any Issuing Bank as of the Effective Date or the Swingline Lender, to the address, facsimile number, e-mail address or telephone number specified for such Person on Schedule 10.01; and

(b) if to any other Lender or Issuing Bank, to the address, facsimile number, e-mail address or telephone number specified in its Administrative Questionnaire.

(2) Notices and other communications to the Lenders and any Issuing Bank hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; *provided* that the foregoing shall not apply to notices to any Lender or any Issuing Bank pursuant to Article II if such Lender or any Issuing Bank, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent, the Collateral Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; *provided* that approval of such procedures may be limited to particular notices or communications.

(3) Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received. Notices sent by facsimile shall be deemed to have been given when sent and confirmation of transmission received (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in Section 10.01(2) shall be effective as provided in such Section 10.01(2).

(4) Any party hereto may change its address, facsimile number or e-mail address for notices and other communications hereunder by notice to the other parties hereto.

(5) Documents required to be delivered pursuant to Section 5.04 (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically (including as set forth in Section 10.17) and if so delivered, shall be deemed to have been delivered on the date (a) on which the Borrower posts such documents or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 10.01 or (b) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided* that the Borrower shall notify the Administrative Agent (by facsimile or e-mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents; *provided, further*, that, upon reasonable request by the Administrative Agent, the Borrower shall also provide a hard copy to the Administrative Agent, as applicable, of any such document; *provided, further*, that any documents posted for which a link is provided after normal business hours for the recipient shall be deemed to have been given at the opening of business on the next Business Day for such recipient. The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Loan Parties with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

SECTION 10.02 Survival of Agreement. All covenants, agreements, representations and warranties made by the Loan Parties herein, in the other Loan Documents and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan

Document shall be considered to have been relied upon by the Lenders and each Issuing Bank and shall survive the making by the Lenders of the Loans, the execution and delivery of the Loan Documents and the issuance of the Letters of Credit, regardless of any investigation made by such Persons or on their behalf, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or L/C Disbursement or any Fee or any other amount payable under this Agreement or any other Loan Document is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not been terminated. Without prejudice to the survival of any other agreements contained herein, indemnification and reimbursement obligations contained herein (including pursuant to Sections 2.15, 2.17 and 10.05) shall survive the payment in full of the principal and interest hereunder, the expiration of the Letters of Credit and the termination of the Commitments or this Agreement.

SECTION 10.03 Binding Effect. This Agreement shall become effective when it has been executed by the Borrower Parties and the Administrative Agent and when the Administrative Agent has received copies hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the Borrower Parties, the Subsidiary Loan Parties, the Administrative Agent, the Collateral Agent, each Issuing Bank, each Lender and their respective permitted successors and assigns.

SECTION 10.04 Successors and Assigns.

(1) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any affiliate of the Issuing Bank that issues any Letter of Credit), except that (a) no Borrower Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by a Borrower Party without such consent shall be null and void) and (b) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 10.04. Nothing in this Agreement, expressed or implied, will be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in paragraph (3) of this Section 10.04) and, to the extent expressly contemplated hereby, the Related Parties of each of the Agents, any Issuing Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement or the other Loan Documents.

(2) Subject to the conditions set forth in paragraph (2)(b) of this Section 10.04, any Lender may assign to one or more assignees (other than a natural person or a Defaulting Lender) (each, an “*Assignee*”) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld, delayed or conditioned) of:

(i) [reserved];

(ii) the Administrative Agent and, in the case of Revolving Commitments and Revolving Credit Exposure, each Issuing Bank and the Swingline Lender; *provided* that no consent of the Administrative Agent will be required for an assignment of all or any portion of Loan to a Lender, an Affiliate of a Lender, Approved Fund; and

(iii) [reserved]; and

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

(i) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitments or Loans, the amount of the Commitments or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$5.0 million, unless each of the Borrower and the Administrative Agent otherwise consent; *provided* that (1) no such consent of the Borrower shall be required if an Event of Default has occurred and is continuing and (2) such amounts shall be aggregated in respect of each Lender and its Affiliates or Approved Funds (with simultaneous assignments to or by two or more Approved Funds being treated as one assignment for purposes of meeting the minimum assignment amount requirement), if any;

(ii) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance via an electronic settlement system acceptable to the Administrative Agent (or, if previously agreed with the Administrative Agent, manually), and, except in the case of an assignment to an Approved Fund, shall pay to the Administrative Agent a processing and recordation fee of \$3,500 (which fee may be waived or reduced in the sole discretion of the Administrative Agent);

(iii) the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and any tax forms required to be delivered pursuant to Section 2.17;

(iv) the Assignee will not be the Borrower, any of the Borrower's Affiliates or Subsidiaries, the DIP UnSub Borrower or the Pre-Petition UnSub Borrower or any holder of Specified Indebtedness; and

(v) the assignor shall deliver to the Administrative Agent any Note issued to it with respect to the assigned Loan.

For the purposes of this Section 10.04, "***Approved Fund***" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

(c) Subject to acceptance and recording thereof pursuant to paragraph (2)(e) of this Section 10.04, from and after the effective date specified in each Assignment and Acceptance, the Assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such Assignment and Acceptance). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 10.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such

rights and obligations in accordance with paragraph (4) of this Section 10.04 to the extent such participation would be permitted by such Section 10.04(4).

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

(e) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an Assignee, the Assignee’s completed Administrative Questionnaire (unless the Assignee shall already be a Lender hereunder), all applicable tax forms, any Note outstanding with respect to the assigned Loan, the processing and recordation fee referred to in paragraph (2)(b)(ii) of this Section 10.04 and any written consent to such assignment required by paragraph (2) of this Section 10.04, the Administrative Agent promptly shall accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment, whether or not evidenced by a promissory note, shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph (2)(e).

(3) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the Assignee thereunder shall be deemed to confirm to and agree with each other and the other parties hereto as follows: (a) such assigning Lender warrants that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim and that its Revolving Commitment, and the outstanding balances of its Revolving Loans, in each case, without giving effect to assignments thereof which have not become effective, are as set forth in such Assignment and Acceptance; (b) except as set forth in clause (a) above, 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 execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto, or the financial condition of the Borrower or any Subsidiary or the performance or observance by the Borrower or any Subsidiary of any of its obligations under this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto; (c) the Assignee represents and warrants that it is legally authorized to enter into such Assignment and Acceptance; (d) the Assignee confirms that it has received a copy of this Agreement, together with copies of the most recent Required Financial Statements delivered pursuant to Section 5.04, 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; (e) the Assignee will independently and without reliance upon the Administrative 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; (f) the Assignee appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers under this Agreement as are delegated to the Administrative Agent by the terms of this Agreement, together with such powers as are reasonably incidental thereto; (g) the Assignee agrees that it will perform in accordance with their terms all the obligations which by the terms of this Agreement are required to be performed by it as a Lender; and (h) the Assignee agrees to be bound by the provisions of Section 10.25.

(4) Any Lender may, without the consent of the Administrative Agent or, subject to Section 10.04(8), the Borrower, sell participations to one or more banks or other entities (a “**Participant**”) in all or a portion of such Lender’s rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans owing to it); *provided* that

- (i) such Lender’s obligations under this Agreement shall remain unchanged;
- (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations; and
- (iii) the Borrower, the Administrative Agent, the Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement.

Any agreement pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents, to approve any amendment, modification or waiver of any provision of this Agreement and the other Loan Documents and to exercise any right or remedy with respect to the Loans and any securities or interests issued pursuant to this Agreement and any Collateral; *provided* that (A) such agreement may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that (1) requires the consent of each Lender directly affected thereby pursuant to Section 10.04(1)(a) or clauses (i), (ii), (iii), (iv), (v) or (vi) of the first proviso to Section 10.08(2) and (2) directly affects such Participant and (B) no other agreement with respect to amendment, modification or waiver may exist between such Lender and such Participant. Subject to clause (4)(b) of this Section 10.04, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 (subject to the requirements and limitations therein, including the requirements under Section 2.17(5)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (2) of this Section 10.04. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.06 as though it were a Lender; *provided* that such Participant shall be subject to Section 2.18(4) as though it were a Lender. Any Participant that seeks to receive the foregoing benefits under Sections 2.15, 2.16, 2.17 or 10.06 must act through the Lender that sold the participation to the Participant, and such Lender must comply with all other requirements for seeking such benefits, including complying with Section 9.01(5) of this Agreement. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant’s interest in the Loans or other obligations under the Loan Documents (the “**Participant Register**”); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant’s interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations and Proposed Treasury Regulations Section 1.163-5(b) (or any amended or successor version). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(b) A Participant shall not be entitled to receive any greater payment under Section 2.15, 2.16 or 2.17 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent.

(5) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank and in the case of any Lender that is an Approved Fund, any pledge or assignment to any holders of obligations owed, or securities issued, by such Lender, including to any trustee for, or any other representative of, such holders, and this Section 10.04 shall not apply to any such pledge or assignment of a security interest; *provided* that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or Assignee for such Lender as a party hereto.

(6) The Borrower, upon receipt of written notice from the relevant Lender, agrees to issue Notes to any Lender requiring Notes to facilitate transactions of the type described in paragraph (5) of this Section 10.04.

(7) [reserved].

(8) Notwithstanding the foregoing, no assignment may be made or participation sold to an Disqualified Institution without the prior written consent of the Borrower; *provided* that, in connection with a participation, the Lenders shall have received a list of the Disqualified Institutions prior to the executions of such participation rights.

SECTION 10.05 Expenses; Indemnity.

(1) The Borrower Parties, jointly and severally, agree to pay all reasonable, documented and invoiced out-of-pocket expenses incurred by the Administrative Agent in connection with the preparation of this Agreement and the other Loan Documents (including as to post-closing matters), or by the Administrative Agent (and in the case of enforcement of this Agreement, each Lender) in connection with the preparation, execution and delivery, amendment, modification, waiver or enforcement of this Agreement (including expenses incurred in connection with due diligence and initial and ongoing Collateral examination to the extent provided for in this Agreement) or in connection with the administration of this Agreement, the Orders and any amendments, modifications or waivers of the provisions hereof or thereof, and any refinancing of the Obligations hereunder requested by the Borrower, including any "exit financing" requested by the Loan Parties in connection with the Chapter 11 Cases (whether or not the transactions contemplated hereby or thereby shall be consummated), including the reasonable, documented and invoiced fees, charges and disbursements of counsel for the Administrative Agent (which shall be Morgan, Lewis & Bockius LLP and Otterbourg P.C.), one firm of local counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions), including without limitation, Norton Rose Fulbright US LLP, and, in the case of any actual or perceived conflict of interest, one additional firm of counsel for the Administrative Agent, the Arrangers and, in the case of enforcement of this Agreement, the Lenders.

(2) The Borrower Parties, jointly and severally, agree to indemnify the Administrative Agent, each Arranger, each Lender, each Issuing Bank, each of their respective Affiliates and each of their respective directors, officers, employees, agents, advisors, controlling Persons, equityholders, partners, members and other representatives and each of their respective successors and permitted assigns and their Affiliates (each such Person being called an "**Indemnatee**") against, and to hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and reasonable, documented and invoiced out-of-

pocket fees and expenses (limited to reasonable and documented legal fees of a single firm of counsel for all Indemnitees, taken as a whole, and, if necessary, one firm of counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions) for all Indemnitees taken as a whole (and, in the case of an actual or perceived conflict of interest, where the Indemnatee affected by such conflict informs the Borrower of such conflict and thereafter retains its own counsel, of an additional counsel for group of affected Indemnitees similarly situated taken as a whole)), incurred by or asserted against any Indemnatee arising out of, in any way connected with, or as a result of:

(a) the execution or delivery of this Agreement or any other Loan Document, the performance by the parties hereto and thereto of their respective obligations thereunder or the consummation of the transactions contemplated hereby and thereby;

(b) the use of the proceeds of the Loans and the Letters of Credit;

(c) the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents; or

(d) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnatee is a party thereto and regardless of whether such matter is initiated by a third party or by the Borrower or any of their Subsidiaries or Affiliates or creditors; *provided* that no Indemnatee will be indemnified for any loss, claim, damage, liability, cost or expense to the extent it: (i) has been determined by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from (A) the gross negligence, bad faith or willful misconduct of such Indemnatee or any of its Related Parties or (B) a material breach of the obligations of such Indemnatee under the Loan Documents or (ii) relates to any proceeding between or among Indemnitees other than (A) claims against the Administrative Agent, or the Arrangers or their respective Affiliates, in each case, in their capacity or in fulfilling their role as the agent or arranger or any other similar role under the Loan Documents (excluding their role as a Lender) to the extent such Persons are otherwise entitled to receive indemnification under this Section 10.05(2) or (B) claims arising out of any act or omission on the part of the Borrower or their Subsidiaries.

(3) Subject to and without limiting the generality of the foregoing sentence, the Borrower Parties, jointly and severally, agree to indemnify each Indemnatee against, and hold each Indemnatee harmless from, any and all losses claims, damages, liabilities and related expenses, including reasonable, documented and invoiced fees, charges and disbursements of one firm of counsel for all Indemnitees, taken as a whole, and, if necessary, one firm of counsel in each appropriate jurisdiction (which may include a single special counsel in multiple jurisdictions) for all Indemnitees taken as a whole (and, in the case of an actual or perceived conflict of interest, an additional counsel for each group of Indemnitees similarly situated) and reasonable, documented and invoiced consultant fees, in each case, incurred by or asserted against any Indemnatee arising out of, in any way connected with, or as a result any Claim arising under Environmental Laws against the Borrower or any of the Subsidiaries, or any actual or alleged presence, Release or threatened Release of Hazardous Materials at, under, on or from any property for which the Borrower or any Subsidiaries would reasonably be expected to be held liable under Environmental Laws; *provided* that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnatee or any of its Related Parties.

(4) Any indemnification or payments required by the Loan Parties under this Section 10.05 shall not apply with respect to Taxes other than (x) any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim and (y) expenses related to the enforcement of Section 2.17.

(5) To the fullest extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Commitment, any Letter of Credit, any Loan or the use of the proceeds thereof, the transactions contemplated hereby and thereby. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it 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.

(6) For the avoidance of doubt, the Loan Parties shall reimburse, subject to the limitations on fees of counsel set forth in Section 10.05(1), Administrative Agent and the Issuing Bank and their respective Affiliates for all reasonable and documented out-of-pocket legal, accounting, appraisal, consulting, financial advisors, business valuation experts, environmental engineer or consultant and other fees, costs and expenses incurred in connection with the negotiation, preparation and administration of the Loan Documents, the Interim Order and the Final Order.

(7) The agreements in this Section 10.05 shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all the other Obligations and the termination of this Agreement. All amounts due under this Section 10.05 shall be payable on written demand therefor and within the time period set forth in the Order accompanied by reasonable documentation with respect to any reimbursement, indemnification or other amount requested. For the avoidance of doubt, the Collateral Agent shall benefit from the provisions of this Section 10.05 on the same basis as the Administrative Agent as if each reference to "Administrative Agent" were also a reference to the "Collateral Agent".

SECTION 10.06 Right of Set-off.

(1) If an Event of Default shall have occurred and be continuing, each Revolving Lender and each Issuing Bank 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 Revolving Lender or such Issuing Bank to or for the credit or the account of any Borrower Party or any Subsidiary Loan Party against any and all of the Obligations of any Borrower Party or any Subsidiary Loan Party now or hereafter existing under this Agreement or any other Loan Document held by such Revolving Lender or such Issuing Bank, irrespective of whether or not such Revolving Lender or such Issuing Bank shall have made any demand under this Agreement or such other Loan Document and although such Obligations may be unmatured. The rights of each Revolving Lender and each Issuing Bank under this Section 10.06(1) are in addition to other rights and remedies (including other rights of set-off) that such Revolving Lender or such Issuing Bank may have, but may be exercised only at the direction of the Administrative Agent or the Required Lenders.

SECTION 10.07 Applicable Law. EXCEPT TO THE EXTENT SUPERSEDED BY THE BANKRUPTCY CODE, THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN THE OTHER LOAN DOCUMENTS) AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK (EXCEPT FOR CONFLICTS OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION).

SECTION 10.08 Waivers; Amendment.

(1) No failure or delay of the Administrative Agent, any Issuing Bank or any Lender in exercising any right or power hereunder or under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of each Agent, each Issuing Bank and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by the Borrower or any other Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (2) of this Section 10.08, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on the Borrower or any other Loan Party in any case shall entitle such Person to any other or further notice or demand in similar or other circumstances.

(2) Neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except:

(a) as provided in Section 10.20;

(b) in the case of this Agreement, pursuant to an agreement or agreements in writing (including via e-mail) entered into by the Borrower, the Administrative Agent and the Required Lenders; and

(c) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by each party thereto and the Administrative Agent and consented to by the Required Lenders;

provided, however, that, except as provided in Section 10.20, no such agreement will:

(i) decrease, forgive, waive or excuse the principal amount of, or any interest on, or extend the final maturity of, or decrease the rate of interest on, any Loan or any L/C Disbursement, or extend the stated expiration of any Letter of Credit beyond the Maturity Date, without the prior written consent of each Lender adversely directly affected thereby, except as provided in Section 2.05(3) with respect to the expiration of Letters of Credit;

(ii) increase or extend the Commitment of any Lender or decrease, waive or excuse the Commitment Fees or L/C Participation Fees or other fees of any Lender, Agent or Issuing Bank without the prior written consent of such Lender, Agent or Issuing Bank (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or Events of Default or of a mandatory reduction in the aggregate Commitments shall not constitute an increase of the Commitments of any Lender);

(iii) extend any date on which payment of principal or interest on any Loan or any L/C Disbursement or any Fee or other payment is due, without the prior written consent of each Lender adversely affected thereby;

(iv) amend the provisions of Sections 2.08, 2.18 and 5.11(3)(b) of this Agreement, Section 5.2 of the Collateral Agreement or any analogous provision of any other Loan Document, in a manner that would by its terms alter the pro rata sharing of payments required thereby or the relative priorities of such payments or commitment

terminations permitted, without the prior written consent of each Lender adversely affected thereby;

(v) change the definition of the term “Borrowing Base” or any component definition thereof if as a result thereof the amounts available to be borrowed by the Borrower Parties would be increased, or increase any of the percentages set forth in the definition of “Borrowing Base”, without the prior written consent of Lenders which would constitute the Required Lenders if the percentage “50.0%” contained in the definition thereof were changed to “66-2/3%” (such Lenders, the “**Supermajority Lenders**”); *provided* that the foregoing shall not limit the ability of the Administrative Agent to implement, change or eliminate any Reserves in its Reasonable Credit Judgment as permitted hereunder without the prior written consent of any Lenders;

(vi) amend or modify the provisions of this Section 10.08 or the definition of the term “Supermajority Lenders”, or “Required Lenders”, as the case may be, or any other provision hereof specifying the number or percentage of Lenders, Supermajority Lenders or Required Lenders, as the case may be, required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the prior written consent of each applicable Lender;

(vii) except in connection with an Asset Sale permitted under this Agreement or otherwise in accordance with the Loan Documents (in each case, as in effect on the Effective Date), release all or substantially all of the Collateral under all the Security Documents, or release all or substantially all of the value of the Guarantees by the Guarantors, or release the Borrower from its Obligations hereunder, in each case without the prior written consent of each Lender;

(viii) except as expressly permitted herein or in any other Loan Document, subordinate the Obligations and/or Liens hereunder or under the other Loan Documents, to any other Indebtedness without the prior written consent of each Lender;

(ix) [reserved]; or

(x) [reserved];

provided that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or an Issuing Bank hereunder without the prior written consent of the Administrative Agent or such Issuing Bank acting as such at the effective date of such agreement, as applicable.

Each Lender shall be bound by any waiver, amendment or modification authorized by this Section 10.08 and any consent by any Lender pursuant to this Section 10.08 shall bind any assignee of such Lender.

(3) Without the consent of the Administrative Agent or any Lender or Issuing Bank, the Loan Parties and the Administrative Agent may (in their respective sole discretion, or shall, to the extent required by any Loan Document) enter into any amendment, modification or waiver of any Loan Document, or enter into any new agreement or instrument, to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Secured Parties, or as required by local law to give effect to, or protect any security interest

for the benefit of the Secured Parties, in any property or so that the security interests therein comply with applicable law.

(4) [reserved].

(5) [reserved].

(6) Notwithstanding the foregoing, no consent of any Defaulting Lender will be required other than with respect to any amendment or waiver set forth in clauses (a) through (c) of Section 10.08(2) that directly and adversely affects such Lender.

(7) Notwithstanding the foregoing, the Administrative Agent, with the consent of the Borrower, may amend, modify or supplement any Loan Document without the consent of any Lender or the Required Lenders in order to correct, amend or cure any ambiguity, inconsistency or defect or correct any typographical error, any error or omission of a technical nature or other manifest error in any Loan Document, and such amendment, modification or supplement shall become effective without any further action or consent of any other party to any Loan Document if the same is not objected to in writing by the Required Lenders within five Business Days following receipt of notice thereof.

(8) Notwithstanding the foregoing, solely in connection with the incurrence of any additional Indebtedness by the Borrower or its Restricted Subsidiaries that would otherwise be permitted under this Agreement, any amendment is proposed by the Borrower to add one or more provisions to this Agreement that is (A) necessary in the judgment of the Borrower to satisfy the requirements or conditions of such additional Indebtedness in order for it to be permitted hereunder, (B) consistent with the applicable provisions in the definitive documentation relating to such additional Indebtedness and (C) in the reasonable judgment of the Administrative Agent, more favorable to the Lenders (or to the applicable subset thereof) than the existing Agreement, then the Administrative Agent and the Borrower shall be permitted to amend such provisions without any further action or consent of any other party if the same is not objected to in writing by the Required Lenders to the Administrative Agent within five Business Days following receipt of notice thereof.

(9) Notwithstanding the foregoing, the Borrower and any Issuing Bank may amend or modify such Issuing Bank's Letter of Credit Commitment without the consent of the Required Lenders.

SECTION 10.09 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the applicable interest rate, together with all fees and charges that are treated as interest under applicable law (collectively, the "***Charges***"), as provided for herein or in any other document executed in connection herewith, or otherwise contracted for, charged, received, taken or reserved by any Lender, shall exceed the maximum lawful rate (the "***Maximum Rate***") that may be contracted for, charged, taken, received or reserved by such Lender in accordance with applicable law, the rate of interest payable hereunder, together with all Charges payable to such Lender, shall be limited to the Maximum Rate; *provided* that such excess amount shall be paid to such Lender on subsequent payment dates to the extent not exceeding the legal limitation. In no event will the total interest received by any Lender exceed the amount which it could lawfully have received and any such excess amount received by any Lender will be applied to reduce the principal balance of the Loans or to other amounts (other than interest) payable hereunder to such Lender, and if no such principal or other amounts are then outstanding, such excess or part thereof remaining will be paid to the Borrower.

SECTION 10.10 Entire Agreement. This Agreement, the other Loan Documents and the agreements regarding certain Fees referred to herein constitute the entire contract between the parties relative to the subject matter hereof. Any previous agreement among or representations from the parties or

their Affiliates with respect to the subject matter hereof is superseded by this Agreement and the other Loan Documents. Notwithstanding the foregoing, each of the Fee Letter shall survive the execution and delivery of this Agreement and remain in full force and effect. Nothing in this Agreement or in the other Loan Documents, expressed or implied, is intended to confer upon any party other than the parties hereto and thereto any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.

SECTION 10.11 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.11.

SECTION 10.12 Severability. In the event any one or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 10.13 Counterparts. This Agreement may be executed in one or more counterparts, including by means of facsimile or other electronic transmission, each of which shall be an original and all of which shall together constitute one and the same document. This Agreement shall be valid, binding and enforceable against a party when executed and delivered by an authorized individual on behalf of the party by means of (i) an original manual signature; (ii) a faxed, scanned or photocopied manual signature or (iii) any other electronic signature permitted by the federal Electronic Signatures in Global and National Commerce Act, state enactments of the Uniform Electronic Transactions act, and/or any other relevant electronic signatures law, including any relevant provisions of the UCC (collectively, “**Signature Law**”), in each case to the extent applicable. Each faxed, scanned, or photocopied manual signature, or other electronic signature, shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Each party hereto shall be entitled to conclusively rely upon, and shall have no liability with respect to, any faxed, scanned, or photocopied manual signature, or other electronic signature, of any other party and shall have no duty to investigate, confirm or otherwise verify the validity or authenticity thereof. For the avoidance of doubt, original manual signatures shall be used for execution or indorsement of writings when required under the UCC or other Signature Law due to the character or intended character of the writings.

SECTION 10.14 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 10.15 Jurisdiction; Consent to Service of Process.

(1) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Court, in any action or proceeding arising out of or relating to

this Agreement or the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding shall be heard and determined in such Court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(2) Each of the parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in the Court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

SECTION 10.16 Confidentiality. Each of the Lenders, each Issuing Bank and each of the Agents agrees (and agrees to cause each of its respective Affiliates) to use all information provided to it by or on behalf of the Borrower or its Subsidiaries under the Loan Documents or otherwise solely for the purposes of the transactions contemplated by this Agreement and the other Loan Documents and shall not publish, disclose or otherwise divulge such information (other than information that (1) has become generally available to the public other than as a result of a disclosure by such party; (2) has been independently developed by such Lender, such Issuing Bank, or the Administrative Agent without violating this Section 10.16; or (3) was available to such Lender, such Issuing Bank, or the Administrative Agent from a third party having, to such Person's knowledge, no obligations of confidentiality to the Borrower or any other Loan Party) and shall not reveal the same other than to its and its Affiliates' directors, trustees, officers, employees and advisors with a need to know, agents, other parties to this Agreement or to any Person that approves or administers the Revolving Facility on behalf of such Lender or any numbering, administration or settlement service providers (so long as each such Person shall have been instructed to keep the same confidential in accordance with this Section 10.16) or otherwise with the prior written consent of the Borrower, except:

(a) to the extent necessary to comply with law or any legal process or the requirements of any Governmental Authority, the National Association of Insurance Commissioners or of any securities exchange on which securities of the disclosing party or any Affiliate of the disclosing party are listed or traded, in which case such Person agrees, to the extent practicable and not prohibited by applicable law, to inform you promptly thereof prior to disclosure;

(b) as part of normal reporting or review procedures to, or examinations by, Governmental Authorities or any bank accountants or bank regulatory authority exercising examination or regulatory authority, in which case (except with respect to any audit or examination conducted by any such bank accountant or bank regulatory authority) such Person agrees, to the extent practicable and not prohibited by applicable law, to inform you promptly thereof prior to disclosure;

(c) to its parent companies, Affiliates, limited partner, investors, prospective investors auditors or current or prospective limited partners (so long as each such Person shall have been instructed to keep the same confidential in accordance with this Section 10.16);

(d) in order to enforce its rights under any Loan Document in a legal proceeding;

(e) to any pledgee or assignee under Section 10.04(5) or any other prospective assignee of, or prospective Participant in, any of its rights under this Agreement (so long as such

Person shall have been instructed to keep the same confidential in accordance with this Section 10.16);

(f) to any direct or indirect contractual counterparty in Hedge Agreements or such contractual counterparty's professional advisor (so long as such contractual counterparty or professional advisor to such contractual counterparty agrees to be bound by the provisions of this Section 10.16); and

(g) to its financing sources (so long as any such financing source shall have been instructed to keep the same confidential in accordance with this Section 10.16).

Notwithstanding the foregoing, (i) no such information shall be disclosed to a Disqualified Institution that constitutes a Disqualified Institution at the time of such disclosure without the Borrower's prior written consent and (ii) any Agent or Lender may, at its own expense and in the ordinary course issue customary news releases and publish "tombstone" advertisements and other announcements relating to this transaction in newspapers, trade journals and other appropriate media (which may include use of logos of one or more of the Loan Parties) (collectively, "**Trade Announcements**"), subject to the Borrower's prior written consent. Such Agent or such Lender shall provide a draft reasonably in advance of any Trade Announcement to the Borrower for review and comment prior to the publication thereof.

For the avoidance of doubt, nothing herein prohibits any individual from communicating or disclosing information regarding suspected violations of laws, rules, or regulations to a governmental, regulatory, or self-regulatory authority without any notification to any person.

SECTION 10.17 Platform; Borrower Materials. The Borrower hereby acknowledges that (1) the Administrative Agent or the Arrangers will make available to the Lenders and the Issuing Bank materials or information provided by or on behalf of the Borrower hereunder (collectively, "**Borrower Materials**") by posting the Borrower Materials on Syndtrack or another similar electronic system (the "**Platform**") and (2) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Borrower or its securities) (each, a "**Public Lender**"). The Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that:

(a) all the Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, means that the word "PUBLIC" shall appear prominently on the first page thereof;

(b) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Arrangers, the Issuing Bank and the Lenders to treat the Borrower Materials as either publicly available information or not material information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States Federal and state securities laws;

(c) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor;" and

(d) the Administrative Agent and the Arrangers shall be entitled to treat the Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor."

Notwithstanding the foregoing, the following Borrower Materials shall be deemed to be marked "PUBLIC" unless the Borrower notifies the Administrative Agent that any such document contains MNPI: (1) the Loan Documents, (2) [reserved], (3) any notification of the identity of Disqualified Institutions and (4) all information delivered pursuant to clauses (1), (2) and (3) of Section 5.04.

SECTION 10.18 [Reserved].

SECTION 10.19 USA PATRIOT Act Notice. Each Lender that is subject to the USA PATRIOT Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the USA PATRIOT Act. The Borrower and each other Co-Borrower shall provide any information or documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act and the Beneficial Ownership Regulation.

SECTION 10.20 Order; Security Documents and Intercreditor Agreements.

(1) The parties hereto authorize the Administrative Agent to enter into (x) the Intercreditor Agreement in such form as may be satisfactory to the Administrative Agent and (y) any other intercreditor agreement as may be contemplated herein or determined by the Administrative Agent to be consistent herewith, in such form as may be satisfactory to the Administrative Agent. The Administrative Agent may from time to time enter into a modification of the Intercreditor Agreement or any other intercreditor agreement, as the case may be, for the purpose of causing new or additional Indebtedness Obligations to become subject thereto or as otherwise consistent with the terms of this Agreement.

(2) Each Lender hereunder:

(a) agrees to the terms of the Intercreditor Agreement; and

(b) agrees that it will be bound by and will take no actions contrary to the provisions of the Intercreditor Agreement.

(3) Each Lender hereunder (a) consents to the subordination of Liens provided for in the Intercreditor Agreement, (b) agrees that it will be bound by and will take no actions contrary to the provisions of the Intercreditor Agreement and (c) authorizes and instructs the Administrative Agent and the Collateral Agent (each as defined herein) to enter into the Intercreditor Agreement as an ABL Agent (as defined therein), as applicable, and on behalf of such Lender.

(4) In the event of any conflict between the terms of the Order and the terms of this Agreement or any other Loan Document, the terms of the Order shall govern and control. Notwithstanding anything herein to the contrary, the Liens and security interests granted to the Collateral Agent pursuant to the Security Documents, Lien priority and the exercise of any right or remedy by the Collateral Agent hereunder or thereunder, are subject to the provisions of the Intercreditor Agreement.

SECTION 10.21 No Liability of the Issuing Banks. The Borrower assumes all risks of the acts or omissions of any beneficiary or transferee of any Letter of Credit with respect to its use of such Letter of Credit. Neither any Issuing Bank nor any of its officers or directors shall be liable or responsible for: (a) the use that may be made of any Letter of Credit or any acts or omissions of any beneficiary or transferee

in connection therewith; (b) the validity, sufficiency or genuineness of documents, or of any endorsement thereon, even if such documents should prove to be in any or all respects invalid, insufficient, fraudulent or forged; (c) payment by such Issuing Bank against presentation of documents that do not comply with the terms of a Letter of Credit, including failure of any documents to bear any reference or adequate reference to the Letter of Credit; or (d) any other circumstances whatsoever in making or failing to make payment under any Letter of Credit, except that the Borrower shall have a claim against such Issuing Bank, and such Issuing Bank shall be liable to the Borrower, to the extent of any direct, but not consequential, damages suffered by the Borrower that the Borrower prove were caused by (i) such Issuing Bank's willful misconduct or gross negligence as determined in a final, non-appealable judgment by a court of competent jurisdiction in determining whether documents presented under any Letter of Credit comply with the terms of the Letter of Credit or (ii) such Issuing Bank's willful failure to make lawful payment under a Letter of Credit after the presentation to it of a draft and certificates strictly complying with the terms and conditions of the Letter of Credit. In furtherance and not in limitation of the foregoing, such Issuing Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary.

SECTION 10.22 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each of the Borrower Parties acknowledges and agrees that: (1) (a) the arranging and other services regarding this Agreement provided by the Agents and the Arrangers are arm's-length commercial transactions between the Borrower Parties, on the one hand, and the Agents and the Arrangers, on the other hand, (b) the Borrower Parties have consulted their own legal, accounting, regulatory and tax advisors to the extent they deemed appropriate, and (c) the Borrower Parties are capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (2) (a) each Agent and each Arranger each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for any Borrower Party or any other Person and (b) neither any Agent nor any Arranger has any obligation to any Borrower Party or any of their Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (3) the Agents, the Arrangers and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower Parties and their respective Affiliates, and neither any Agent nor Arranger any has any obligation to disclose any of such interests to the Borrower Parties or any of their respective Affiliates. To the fullest extent permitted by law, each Borrower Party hereby waives and releases any claims that it may have against the Agents and the Arrangers with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

SECTION 10.23 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an Affected 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 the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(1) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an Affected Financial Institution; and

(2) the effects of any Bail-In Action on any such liability, including, if applicable:

(a) a reduction in full or in part or cancellation of any such liability;

(b) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected 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

(c) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

SECTION 10.24 Acknowledgment Regarding Any Supported QFCs. (1) To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Hedge Agreements or any other agreement or instrument that is a QFC (such support, “**QFC Credit Support**” and each such QFC, a “**Supported QFC**”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “**U.S. Special Resolution Regimes**”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States).

(2) In the event a Covered Entity that is party to a Supported QFC (each, a “**Covered Party**”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(3) As used in this Section 10.24, the following terms have the following meanings:

(a) “**BHC Act Affiliate**” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

(b) “**Covered Entity**” means any of the following:

(i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

(c) “**Default Right**” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

(d) “**QFC**” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

SECTION 10.25 Electronic Execution of Assignments and Certain Other Documents. The words “execution,” “signed,” “signature,” and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without any limitation Assignment and Acceptance, amendments or other Borrowing Requests, Swingline Borrowing Requests, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; *provided*, that notwithstanding anything contained herein to the contrary the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it, it being understood that the authorization under this paragraph includes use or acceptance by the Administrative Agent of a manually signed paper communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed communication converted into another format, for transmission, delivery and/or retention.

[Signature pages follow.]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date set forth above.

SAKS GLOBAL HOLDINGS LLC, as Holdings

By: _____
Name:
Title:

SAKS GLOBAL ENTERPRISES LLC, as the
Borrower

By: _____
Name:
Title:

**NMG PARENT LLC
NMG INTERMEDIATE LLC
NMG HOLDING COMPANY, INC.
THE NEIMAN MARCUS GROUP LLC
NMG NOTES PROPCO LLC
NMG TERM LOAN PROPCO LLC
SFA HOLDINGS INC.
SAKS & COMPANY LLC
SAKS FIFTH AVENUE LLC
MERCHANDISE CREDIT, LLC
SAKS DIRECT, LLC
NM BERMUDA, LLC
NEMA BEVERAGE PARENT CORPORATION
NEMA BEVERAGE HOLDING CORPORATION
NEMA BEVERAGE CORPORATION
NMG SALON HOLDINGS LLC
NMG SALONS LLC
NMG CALIFORNIA SALON LLC
NMG FLORIDA SALON LLC
NMG TEXAS SALON LLC
BERGDORF GOODMAN LLC
BERGDORF GRAPHICS, INC.
NMG INTERCO LLC
NM FINANCIAL SERVICES, INC.
NMG GLOBAL MOBILITY, INC.
NMGP, LLC
SAKS.COM HOLDINGS LLC
SAKS.COM MIDCO PARTNER INC.
SAKS.COM LLC
SAKS CLOUD SERVICES LLC**

By: _____
Name:
Title:

HBC STEELE LLC

By: Saks Fifth Avenue Real Property, LLC, its
Managing Member

By: _____
Name:
Title:

**SAKS FIFTH AVENUE HOLDINGS INC.
SCCA STORE HOLDINGS REAL PROPERTY
LLC
SAKS & COMPANY REAL PROPERTY LLC
SAKS FIFTH AVENUE REAL PROPERTY LLC
SAKS COLUMBUS REAL PROPERTY LLC
SAKS RICHMOND REAL PROPERTY LLC
LT PARENT PROPCO LLC
LT PROPCO LLC
HBC DIGITAL LLC
HBC DIGITAL HOLDINGS INC.
SAKS PARTNER INC.**

By: _____
Name:
Title:

**HBC US PROPCO HOLDINGS LLC
HBS LEASEHOLD LLC
HBC WOODBRIDGE LLC
HBC GAITHERSBURG LLC
HBC VICTOR LLC
HBC STERLING LLC**

By: LT Propco LLC, its Managing Member

By: _____
Name:
Title:

**SAKS MANHATTAN (BLOCKER) HOLDINGS
L.P.**

By: HBC Digital LLC, its General Partner

By: _____
Name:
Title:

**SAKS (EU) MANHATTAN BLOCKER INC.
SAKS (CAYMAN) MANHATTAN BLOCKER INC.**

By: _____
Name:
Title:

HBC WILKES-BARRE LLC

By: _____
Name:
Title:

BANK OF AMERICA, N.A., as Administrative Agent,
Collateral Agent, a Lender, the Swingline Lender and an
Issuing Bank

By: _____
Name:
Title:

[_____] , as a Lender

By: _____

Name:

Title:

Exhibit B

SGUS DIP Credit Agreement

\$[•]

DEBTOR-IN-POSSESSION TERM LOAN CREDIT AGREEMENT,¹

dated as of [•], 2026,

among

SGUS LLC,

as Borrower and a Debtor and Debtor-In-Possession under Chapter 11 of the Bankruptcy Code

THE LENDERS PARTY HERETO

and

U.S. Bank Trust Company, National Association
as Administrative Agent and Collateral Agent

¹ NTD: Appropriate conforming changes from DIP Onloan Credit Agreement to be incorporated.

Agreement is subject to ongoing negotiation and finalization among the Global Debtors and the DIP Lenders, and their respective rights are reserved.

TABLE OF CONTENTS²

	<u>Page</u>
ARTICLE I Definitions	1
SECTION 1.01 Defined Terms	1
SECTION 1.02 Terms Generally	41
SECTION 1.03 Accounting Terms; GAAP	42
SECTION 1.04 [Reserved].....	43
SECTION 1.05 Currencies.....	43
SECTION 1.06 [Reserved].....	43
SECTION 1.07 Divisions.....	43
SECTION 1.08 [Reserved].....	43
SECTION 1.09 Exchange Rates; Currency Equivalent	43
SECTION 1.10 [Reserved].....	43
SECTION 1.11 Rates	43
ARTICLE II The Credits	44
SECTION 2.01 Commitments	44
SECTION 2.02 Loans and Borrowings.....	45
SECTION 2.03 Requests for Borrowing.....	45
SECTION 2.04 [Reserved].....	46
SECTION 2.05 [Reserved].....	46
SECTION 2.06 Funding of Borrowings.....	46
SECTION 2.07 Interest Elections	46
SECTION 2.08 Termination of Commitments	47
SECTION 2.09 Promise to Pay; Evidence of Debt.....	47
SECTION 2.10 Optional and Mandatory Repayment of Loans.....	48
SECTION 2.11 [Reserved].....	48
SECTION 2.12 Fees and Premiums	49
SECTION 2.13 Interest	49
SECTION 2.14 Alternative Rate of Interest.....	50
SECTION 2.15 Increased Costs	51
SECTION 2.16 [Reserved].....	51
SECTION 2.17 Taxes.....	51
SECTION 2.18 Payments Generally; <i>Pro Rata</i> Treatment; Sharing of Set-offs	55
SECTION 2.19 Mitigation Obligations; Replacement of Lenders.....	58
SECTION 2.20 Illegality.....	59
SECTION 2.21 Defaulting Lenders	60
SECTION 2.22 Benchmark Replacement Setting.....	61
ARTICLE III Representations and Warranties	62
SECTION 3.01 Organization; Powers	62
SECTION 3.02 Authorization	63
SECTION 3.03 Enforceability	64
SECTION 3.04 Governmental Approvals.....	64
SECTION 3.05 [Reserved].....	64
SECTION 3.06 Title to Properties; Possession Under Leases	65

² NTD: To be updated.

SECTION 3.07	Subsidiaries; Saks Flagship Entities	65
SECTION 3.08	Litigation; Compliance with Laws	65
SECTION 3.09	Federal Reserve Regulations	66
SECTION 3.10	Investment Company Act	66
SECTION 3.11	Use of Proceeds	66
SECTION 3.12	Taxes.....	66
SECTION 3.13	No Material Misstatements.....	66
SECTION 3.14	Environmental Matters	67
SECTION 3.15	Security Documents.....	67
SECTION 3.16	Onloan Credit Agreement.....	67
SECTION 3.17	[Reserved].....	67
SECTION 3.18	No Material Adverse Effect.....	67
SECTION 3.19	Insurance.....	67
SECTION 3.20	Anti-Money Laundering; Anti-Corruption; Sanctions	68
SECTION 3.21	Intellectual Property; Licenses, Etc.	68
SECTION 3.22	Employee Benefit Plans; Labor Matters.....	69
SECTION 3.23	Saks Flagship Material Documents	69
SECTION 3.24	Chapter 11 Cases	70
ARTICLE IV Conditions of Lending [NTD: Relevant portions to be conformed to Onloan DIP CA].....		71
SECTION 4.01	[Reserved].....	71
SECTION 4.02	Conditions to Closing Date and DIP Interim Funding Loans.....	71
SECTION 4.03	Conditions to Borrowing of the DIP Final Funding Loans	74
SECTION 4.04	Conditions to Borrowing of the DIP Subsequent Draw Loans. The obligations of the Lenders (or the Fronting Lender on their behalf) to fund the DIP Subsequent Draw Loans after entry of the Final DIP Order shall not become effective until the date on which each of the following conditions shall be satisfied (or waived by the Required Lenders in their sole discretion) after giving effect to such borrowing:.....	75
ARTICLE V Affirmative Covenants		76
SECTION 5.01	Existence; Businesses and Properties	76
SECTION 5.02	Insurance.....	76
SECTION 5.03	Taxes.....	76
SECTION 5.04	Financial Statements, Reports, etc.....	77
SECTION 5.05	Litigation and Other Notices	78
SECTION 5.06	Compliance with Laws	78
SECTION 5.07	Maintaining Records; Access to Properties and Inspections; Appraisals	79
SECTION 5.08	Use of Proceeds	79
SECTION 5.09	Compliance with Environmental Laws	79
SECTION 5.10	Further Assurances; Additional Security.....	79
SECTION 5.11	Cash Management Systems	81
SECTION 5.12	Certain Milestones.....	82
SECTION 5.13	Lender Calls.....	82
SECTION 5.14	Post-Closing Matters	82
SECTION 5.15	Operations in the Ordinary Course of Business	82
SECTION 5.16	Axonic Adversary Proceedings	82
SECTION 5.17	Saks Flagship Material Agreements	82
SECTION 5.18	Certain Bankruptcy Matters	83

SECTION 5.19	Priority of Liens; No Discharge.....	83
SECTION 5.20	Ratings	84
SECTION 5.21	Enforcement of Rights and Remedies	84
SECTION 5.22	[Press Releases	84
SECTION 5.23	The Borrower and each Loan Party further covenants and agrees with the Agents and each Lender that so long as this Agreement is in effect and until the Commitments have been terminated and the Obligations (other than contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted) have been Paid in Full, the DIP Onloan Borrower will, and will cause each of its Restricted Subsidiaries (as defined in the DIP Onloan Credit Agreement, as in effect on the Closing Date) to comply with each of the covenants set forth in Article V of the DIP Onloan Credit Agreement, as in effect on the Closing Date (it being understood that non-compliance by the DIP Onloan Borrower or any of its Subsidiaries shall constitute a breach regardless of whether the Borrower or the Loan Parties control any such Person), regardless of whether the DIP Onloan Credit Agreement remains in effect.....	84
ARTICLE VI	Negative Covenants	85
SECTION 6.01	Indebtedness	85
SECTION 6.02	Liens	85
SECTION 6.03	Subsidiaries.....	86
SECTION 6.04	Investments, Loans and Advances.....	86
SECTION 6.05	Mergers, Consolidations and Sales of Assets	86
SECTION 6.06	Restricted Payments	87
SECTION 6.07	Transactions with Affiliates.....	87
SECTION 6.08	Limitation on Payments and Modifications of Indebtedness; Modifications of Certificate of Incorporation, By Laws and Certain Other Agreements; etc.....	87
SECTION 6.09	Financial Covenant	88
SECTION 6.10	Saks Flagship Material Agreements	88
SECTION 6.11	Additional Bankruptcy Matters	89
SECTION 6.12	Material Agreements	90
SECTION 6.13	[Critical Vendor Payments	90
SECTION 6.14	[Executory Contracts; Unexpired Leases. The Debtors shall not assume or reject executory contracts or unexpired leases pursuant to Section 365 of the Bankruptcy Code without the prior written consent of the Required Lenders.]	90
SECTION 6.15	DIP Onloan Loan Party Organizational Documents. The DIP Onloan Borrower and each other DIP Onloan Loan Party shall not amend, restate, supplement, revoke or otherwise modify their Organizational Documents in any manner without the prior written consent of the Required Lenders.....	90
SECTION 6.16	Onloan Negative Covenants	90
ARTICLE VII	[Reserved].....	91
ARTICLE VIII	Events of Default.....	91
SECTION 8.01	Events of Default.....	91

ARTICLE IX The Agents	97
SECTION 9.01 Appointment	97
SECTION 9.02 Delegation of Duties	99
SECTION 9.03 Exculpatory Provisions	99
SECTION 9.04 Reliance by Agent	101
SECTION 9.05 Notice of Default	102
SECTION 9.06 Non-Reliance on Agents and Other Lenders	102
SECTION 9.07 Indemnification	102
SECTION 9.08 Agent in Its Individual Capacity	103
SECTION 9.09 Successor Agent	103
SECTION 9.10 [Reserved]	103
SECTION 9.11 Recovery of Erroneous Payments	104
SECTION 9.12 Credit Bidding	106
SECTION 9.13 Collateral and Guarantee Matters	106
SECTION 9.14 [Reserved]	107
SECTION 9.15 ERISA Representation	107
SECTION 9.16 Filings and Flood Insurance Laws	108
ARTICLE X Miscellaneous [Relevant portions to be conformed to Onloan DIP CA.]	109
SECTION 10.01 Notices; Communications	109
SECTION 10.02 Survival of Agreement	110
SECTION 10.03 Binding Effect	110
SECTION 10.04 Successors and Assigns	110
SECTION 10.05 Expenses; Indemnity	114
SECTION 10.06 Right of Set-off	116
SECTION 10.07 Applicable Law	116
SECTION 10.08 Waivers; Amendment	116
SECTION 10.09 Interest Rate Limitation	119
SECTION 10.10 Entire Agreement	119
SECTION 10.11 WAIVER OF JURY TRIAL	119
SECTION 10.12 Severability	120
SECTION 10.13 Counterparts	120
SECTION 10.14 Headings	120
SECTION 10.15 Jurisdiction; Consent to Service of Process	120
SECTION 10.16 Confidentiality	121
SECTION 10.17 Platform; Borrower Materials	122
SECTION 10.18 [Reserved]	123
SECTION 10.19 USA PATRIOT Act Notice	123
SECTION 10.20 [Reserved]	124
SECTION 10.21 No Advisory or Fiduciary Responsibility	124
SECTION 10.22 [Reserved]	124
SECTION 10.23 DIP Orders Control	124
SECTION 10.24 Electronic Execution of Assignments and Certain Other Documents	124

Exhibits and Schedules

Exhibit A	Form of Assignment and Acceptance
Exhibit B	Form of Borrowing Request
Exhibit C	Form of Interest Election Request
Exhibit D	Form of U.S. Tax Compliance Certificate
Exhibit E	Form of Interim DIP Order

Schedule 1.01(1)	Commitments
Schedule 1.01(4)	Saks Flagship Real Estate
Schedule 3.04	Governmental Approvals
Schedule 3.06(2)	Possession under Leases
Schedule 3.07(1)	Subsidiaries
Schedule 3.12	Taxes
Schedule 3.14	Environmental Matters
Schedule 3.19	Insurance
Schedule 3.21	Intellectual Property
Schedule 5.15	Post-Closing Matters
Schedule 10.01	Notice Information

THIS DEBTOR-IN-POSSESSION TERM LOAN CREDIT AGREEMENT, dated as of [•], 2026 (as amended, restated, amended and restated, supplemented, extended, renewed or otherwise modified from time to time, this “*Agreement*”), is by and among SGUS LLC, a Delaware limited liability company (the “*Borrower*”), the Lenders party hereto from time to time and U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association organized under the laws of the United States of America (“*U.S. Bank*”), as the Administrative Agent and as the Collateral Agent. All capitalized terms used herein and defined in Article I are used herein as therein defined.

RECITALS

WHEREAS, on the Petition Date (as defined below), the Borrower and certain of the Borrower’s Affiliates filed voluntary petitions for relief with the Bankruptcy Court, initiating their respective cases that are pending under chapter 11 of the Bankruptcy Code (each case of the Borrower and each other Debtor, a “*Chapter 11 Case*” and collectively, the “*Chapter 11 Cases*”). The Debtors continue to operate their businesses and manage their properties as debtors and debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

WHEREAS, the Borrower has requested that the Lenders provide a debtor-in-possession credit facility consisting of: (a) up to \$400,000,000, in the form of DIP Interim Funding Loans under the DIP Interim Funding Commitments, which shall be made available upon entry of the Interim DIP Order, (b) up to \$300,000,000, in the form of DIP Final Funding Loans under the DIP Final Funding Commitments, which shall be made available upon entry of the Final DIP Order, (c) up to \$300,000,000, in the form of DIP Subsequent Draw Loans under the DIP Subsequent Draw Commitments, which shall be made available after the entry of the Final DIP Order and pursuant to the conditions precedent to each such drawing, (d) up to \$808,128,755.07, in the form of Second Out DIP Roll-Up Loans, and (e) up to \$751,000,000 in Third Out Term Loans issued as consideration for the purchase of participations in the 11.000% Senior Secured Second Out Notes due 2029 in accordance with the Prepetition Notes Participation Agreement and the Interim Order, in each case, on the terms and subject to the conditions set forth in this Agreement and in each case excluding fees, premiums, interest and other amounts paid in kind;

WHEREAS, the priority of the DIP Facility with respect to the Collateral granted as security for the payment and performance of the Obligations shall be as set forth in the Interim DIP Order and the Final DIP Order, as applicable, in each case, upon entry thereof by the Bankruptcy Court and in the Security Documents;

AGREEMENT

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

ARTICLE I

Definitions

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

“*ABR*” means, for any day, a fluctuating rate per annum equal to the highest of (a) the Federal Funds Effective Rate in effect for such day plus 0.50%, (b) the Prime Rate in effect on such day and (c) Term SOFR for a one-month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1.00%. Any change in such rate due to a change in the Prime

Rate, the Federal Funds Effective Rate or Term SOFR shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or Term SOFR, as the case may be. Notwithstanding anything to the contrary, ABR shall not be less than 1.00%.

“ABR Borrowing” means a Borrowing comprised of ABR Loans.

“ABR Loan” means any Term Loan bearing interest at a rate determined by reference to the ABR in accordance with the provisions of Article II.

“ABR Term SOFR Determination Day” has the meaning assigned to such term in the definition of the term “Term SOFR”.

“Acceptable Confirmation Order” means an order of the Bankruptcy Court confirming an Acceptable Plan, as the same may be amended, supplemented, or modified from time to time after entry thereof, in each case, (a) in form and substance satisfactory to the Required Lenders and (b) solely with respect to those provisions thereof that affect the rights, duties, liabilities or treatment of the Agents, in form and substance reasonably satisfactory to the Agents.

“Acceptable Plan” means a Chapter 11 Plan (including all exhibits, schedules and supplements thereto) for any of the Debtors or their estates that either (1)(a) provides for the termination of all Commitments, and (b) provides for all Obligations to be Paid in Full on or prior to the effective date thereof, or (2) complies with the provisions of the Restructuring Support Agreement (including any restructuring term sheet) in all respects and is otherwise in form and substance satisfactory to the Required Lenders and solely with respect to those provisions thereof that affect the rights, duties, liabilities or treatment of the Agents, is in form and substance reasonably satisfactory to the Agents.

“Account” means, with respect to a Person, any of such Person’s now owned and hereafter acquired or arising accounts (as defined in the UCC), including, whether or not constituting “accounts” (as defined in the UCC), any rights to payment for the sale, lease, license, assignment or other disposition of goods or rendition of services, whether or not they have been earned by performance or arising out of the use of a credit or charge card or information contained on or used with such card (and whether same is an “Account” or “General Intangible” as defined in the UCC).

“Account Bank” means [U.S. Bank National Association] or any other financial institution that (a) is reasonably acceptable to the Required Lenders and (b) replaces the Account Bank pursuant to arrangements and documentation which, in each case, are reasonably acceptable to the Required Lenders.

“Account Debtor” has the meaning provided in the UCC and includes, without limitation, any Person who may become obligated to any Loan Party under, with respect to, or on account of, an Account.

“Accounting Change” has the meaning assigned to such term in Section 1.03.

“Ad Hoc Group” means those holders of Prepetition Indebtedness represented by the Specified Ad Hoc Group Advisors.

“Administrative Agent” means U.S. Bank, in its capacity as administrative agent for itself and the Lenders hereunder, and any duly appointed successor in such capacity.

“Administrative Agent’s Office” means the Administrative Agent’s address and, as appropriate, account specified in this Agreement, or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

“**Administrative Questionnaire**” means an Administrative Questionnaire in a form supplied or otherwise approved by the Administrative Agent, if applicable.

“**Affiliate**” means, when used with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“**Agents**” means the Administrative Agent and the Collateral Agent, in their respective capacities as such or any one of them as the context requires.

“**Agreement**” has the meaning assigned to such term in the introductory paragraph hereof.

“**Applicable Percentage**” means, with respect to any Lender, such Lender’s share of the aggregate Term Loans outstanding at that time; provided that, in accordance with Section 2.21, so long as any Lender shall be a Defaulting Lender, such Defaulting Lender’s Term Loans, as applicable, shall be disregarded in the calculation of Applicable Percentage.

“**Applicable Rate**” means a percentage per annum equal to, with respect to (I) (a) First Out Term Loans that are SOFR Loans, 11.00% *per annum* and (b) First Out Term Loans that are ABR Loans, 10.00% *per annum*, (II) (a) Second Out Term Loans that are SOFR Loans, 12.50% *per annum* and (b) Second Out Term Loans that are ABR Loans, 11.50% *per annum* and (c) (a) Third Out Term Loans that are SOFR Loans, 10.00% *per annum* and (b) Third Out Term Loans that are ABR Loans, 9.00% *per annum*.

“**Approved Court Order**” means:

(a) each of the DIP Orders, as such order is modified, altered, amended or otherwise changed or supplemented and in effect from time to time in accordance with this Agreement and acceptable to the Required Lenders;

(b) any other order entered by the Bankruptcy Court regarding or relating to (i) any rights or remedies of any Secured Party, (ii) the Loan Documents (including the Loan Parties’ obligations thereunder), (iii) the Collateral, any DIP Liens thereon, any DIP Superpriority Claims or any Onloan DIP Superpriority Claims (including any sale or other disposition of Collateral or the priority of any such DIP Liens, DIP Superpriority Claims or Onloan DIP Superpriority Claims), (iv) the use of cash collateral in the Chapter 11 Cases, (v) any debtor-in-possession financing of the Debtors, (vi) adequate protection or otherwise expressly relating to any Prepetition Indebtedness or (vii) any Chapter 11 Plan, in the case of each of the foregoing clauses (i) through (vii), (A) subject to any consent rights of the Required Lenders (acting in their sole discretion, but not to be unreasonably withheld or delayed), (B) solely with respect to those provisions thereof that affect the rights, duties, liabilities or treatment of the Agents, in form and substance reasonably satisfactory to the Agents, (C) that has not been vacated, reversed or stayed and (D) that has not been amended or modified in a manner adverse to the rights of the Lenders except with (1) the consent of the Required Lenders (acting in their sole discretion, but not to be unreasonably withheld or delayed) and (2) solely with respect to those provisions thereof that affect the rights, duties, liabilities or treatment of the Agents, the consent of the Agents (not to be unreasonably withheld or delayed); and

(c) any other order entered by the Bankruptcy Court (i) subject to any consent rights of the Required Lenders (not to be unreasonably withheld or delayed), (ii) solely with respect to those provisions thereof that affect the rights, duties, liabilities or treatment of the Agents, in form and substance reasonably satisfactory to the Agents, and (iii) that has not been amended or modified in a manner adverse to the rights of the Lenders except with (A) the consent of the Required Lenders (not to be unreasonably withheld or

delayed) and (B) solely with respect to those provisions thereof that affect the rights, duties, liabilities or treatment of the Agents, the consent of the Agents (not to be unreasonably withheld or delayed).

“Approved Budget” means, initially, the Initial Approved Budget, and if an Updated Budget has been approved (including, for the avoidance of doubt, if an Updated Budget has been deemed approved) by the Required Lenders in accordance with the DIP Orders, such Updated Budget.

“Approved Fund” has the meaning assigned to such term in Section 10.04(2).

“Asset Sale” has the meaning assigned to such term in Section 6.05.

“Assignee” has the meaning assigned to such term in Section 10.04(2).

“Assignment and Acceptance” means an assignment and acceptance entered into by a Lender and an Assignee, and accepted by the Administrative Agent and (if required by Section 10.04(10) with respect to a Disqualified Institution) the Borrower, substantially in the form of Exhibit A or such other form (including electronic documentation generated by use of an electronic platform) that is approved by the Administrative Agent (with the consent of the Required Lenders).

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

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to this Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 2.22(d).

“Backstop Commitment Letter” means that certain Senior Secured Super-Priority Debtor in Possession Facility Backstop Commitment Letter, dated as of [the Closing Date], by and among Saks Global Enterprises LLC, the Borrower, and the “Backstop Parties” party thereto.

“Backstop Party” has the meaning assigned to such term in the Backstop Commitment Letter.

“Bankruptcy Code” means Title 11 of the United States Code (11 USC § 101 et seq.), as now constituted or hereafter amended from time to time.

“Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of Texas, Houston Division or any other court having jurisdiction over the Chapter 11 Cases from time to time.

“Bankruptcy Law” shall mean each of (a) the Bankruptcy Code, (b) any other domestic or foreign law relating to liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, administration, insolvency, reorganization, debt adjustment, receivership or similar debtor relief laws from time to time in effect and affecting the rights of creditors generally (including without limitation any plan of arrangement provisions of applicable corporation statutes), and (iv) any order made by a court of competent jurisdiction in respect of any of the foregoing.

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

“Benchmark” means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.22.

“Benchmark Replacement” means, with respect to any Benchmark Transition Event, the first alternative set forth in the order below that can be determined by the Administrative Agent (acting at the direction of the Required Lenders) for the applicable Benchmark Replacement Date (provided that any Benchmark Replacement shall be administratively feasible for the Administrative Agent):

(a) Daily Simple SOFR; or

(b) the sum of: (i) the alternate benchmark rate that has been selected by the Administrative Agent (acting at the direction of the Required Lenders) and the Borrower giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (ii) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to clause (a) or (b) above would be less than 1.00%, the Benchmark Replacement will be deemed to be 1.00% for the purposes of this Agreement and the other Loan Documents. Notwithstanding anything herein or in any other Loan Document to the contrary, in determining the Benchmark Replacement, the Required Lenders will consider in good faith any proposal reasonably requested by the Borrower and not adverse to the Lenders that is intended to prevent the use of the Benchmark Replacement from resulting in a deemed exchange of any Indebtedness hereunder under Section 1001 of the Code.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent (acting at the direction of the Required Lenders) and the Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities at such time.

“Benchmark Replacement Date” means the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Transition Event**” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Unavailability Period**” means, the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.22 and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.22.

“Beneficial Owner” has the meaning given to that term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular “person” (as that term is used in Section 13(d)(3) of the Exchange Act), such “person” will not be deemed to have beneficial ownership of any securities that such “person” has the right to acquire or vote only upon the happening of any future event or contingency (including the passage of time) that has not yet occurred. The terms **“Beneficial Ownership”**, **“Beneficially Owns”** and **“Beneficially Owned”** have a corresponding meaning.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership or control as required by the Beneficial Ownership Regulation.

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

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“Bidding Procedures” has the meaning assigned to such term in Section 5.12.

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

“Board of Directors” means, as to any Person, the board of directors, board of managers or other governing body of such Person, or if such Person is owned or managed by a single entity, the board of directors, board of managers or other governing body of such entity, and the term **“directors”** means members of the Board of Directors.

“Borrower” has the meaning assigned to such term in the introductory paragraph hereof.

“Borrower Materials” has the meaning assigned to such term in Section 10.17(1).

“Borrowing” means a borrowing of the Term Loans made on a single date and, in the case of Term SOFR Loans, as to which a single Interest Period is in effect.

“Budget Variance Report” shall mean the variance report described in Paragraph [3(f)(iii)] of the Interim DIP Order (and, once entered, the comparable provisions of the Final DIP Order).

“Business Day” means any day except Saturday, Sunday and any day which shall be in New York City or the state where the Administrative Agent’s Office is located a legal holiday or a day on which banking institutions are authorized or required by law or other government action to close in New York City, provided, however, that when used in connection with a Term SOFR Loan, the term “Business Day” shall also exclude any day that is not a U.S. Government Securities Business Day.

“Capital Lease Obligations” means, with respect to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other similar arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases or financing leases on a balance sheet of such Person under GAAP (as in effect on December 31, 2018, notwithstanding any modification or interpretative change thereto thereafter and excluding the effect to any treatment of leases under Accounting Standards Codification 842 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect))

and, for purposes hereof, the amount of such obligations at any time will be the capitalized amount thereof at such time determined in accordance with GAAP.

“Capital Stock” means:

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

“Carve Out” has the meaning given to such term in the Interim DIP Order or the Final DIP Order, as applicable.

“Cash Collateral” has the meaning specified in the Interim DIP Order and, when applicable, the Final DIP Order.

“Cash Equivalents” means:

- (1) U.S. Dollars, Canadian Dollars, Japanese yen, Sterling, Euros or the national currency of any participating member of the European Union or, in the case of any Foreign Subsidiary, any local currencies held by it from time to time in the ordinary course of business and not for speculation;
- (2) direct obligations of the United States of America or any member of the European Union or any agency thereof or obligations guaranteed by the United States of America or any member of the European Union or any agency thereof, in each case, with maturities not exceeding two years;
- (3) time deposits, eurodollar time deposits, certificates of deposit and money market deposits, in each case, with maturities not exceeding one year from the date of acquisition thereof, and overnight bank deposits, in each case, with any commercial bank having capital, surplus and undivided profits of not less than \$250.0 million;
- (4) repurchase obligations for underlying securities of the types described in clauses (2) and (3) above and clause (6) below entered into with a bank meeting the qualifications described in clause (3) above;
- (5) commercial paper or variable or fixed rate notes maturing not more than one year after the date of acquisition issued by a corporation rated at least “P-1” by Moody’s or “A-1” by S&P (or reasonably equivalent ratings of another internationally recognized rating agency);
- (6) securities with maturities of two years or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof, having one of the two highest rating categories

obtainable from either Moody's or S&P (or reasonably equivalent ratings of another internationally recognized rating agency);

(7) Indebtedness issued by Persons with a rating of at least "A 2" by Moody's or "A" by S&P (or reasonably equivalent ratings of another internationally recognized rating agency), in each case, with maturities not exceeding one year from the date of acquisition, and marketable short-term money market and similar securities having a rating of at least "P-2" or "A-2" from either Moody's or S&P (or reasonably equivalent ratings of another internationally recognized rating agency);

(8) Investments in money market funds with average maturities of 12 months or less from the date of acquisition that are rated "Aaa3" by Moody's and "AAA" by S&P (or reasonably equivalent ratings of another internationally recognized rating agency);

(9) instruments equivalent to those referred to in clauses (1) through (8) above denominated in any foreign currency comparable in credit quality and tenor to those referred to above customarily utilized in the countries where any such Subsidiary is located or in which such Investment is made; and

(10) shares of mutual funds whose investment guidelines restrict 95.0% of such funds' investments to those satisfying the provisions of clauses (1) through (9) above.

"Cash Management Motion" means (a) that certain Global Debtors' Motion for Interim and Final Orders (I) Authorizing Debtors to (A) Continue to Maintain Their Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, and (C) Continue to Perform Intercompany Transactions; and (II) Granting Related Relief filed in the Chapter 11 Cases on January [], 2026 [Docket No. []] and (b) any other motion of the Debtors seeking interim or final approval of the Debtors' maintenance of their cash management system and treasury arrangements.

"Cash Management Order" shall mean (a) any interim or final orders approving the Cash Management Motion and (b) any other order of the Bankruptcy Court entered in the Chapter 11 Cases that authorizes the Debtors to maintain their existing cash management and treasury arrangements, in each case subject to the consent rights of the Required Lenders in their sole discretion (not to be unreasonably withheld or delayed), as the same may be amended, supplemented, or modified from time to time after entry thereof subject to the consent rights of the Required Lenders in their sole discretion.[NTD: To be conformed to Onloan DIP CA]

"Change in Law" means:

- (1) the adoption of any law, rule or regulation after the Closing Date; or
- (2) any change in law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the Closing Date; or
- (3) compliance by any Lender (or, for purposes of Section 2.15(2), by any lending office of such Lender or by such Lender's holding company, if any) with any written request, guideline or directive (whether or not having the force of law) of any Governmental Authority, made or issued after the Closing Date; *provided* that, notwithstanding anything herein to the contrary, (a) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives promulgated thereunder or issued in connection therewith and (b) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the

Basel Committee on Banking Supervision (or any successor or similar authority) or the United States of America or foreign regulatory authorities, in each case pursuant to Basel III, in each case will be deemed to be a “Change in Law,” regardless of the date enacted, adopted, promulgated or issued.

A “***Change of Control***” will be deemed to occur if:

(1) at any time, Holdings ceases to Beneficially Own, directly or indirectly, 100.0% of the issued and outstanding Equity Interests of the Borrower; or

(2) at any time, Holdings ceases to Beneficially Own, directly or indirectly, 100.0% of the issued and outstanding Equity Interests of each Debtor and the other Guarantors; or

(3) at any time, a “change of control” (or comparable event) occurs under any indenture, credit agreement or similar debt agreement in respect of Prepetition Indebtedness, the DIP ABL Credit Agreement or the DIP Onloan Credit Agreement; or

(4) any combination of Permitted Holders shall fail to own beneficially (within the meaning of Rules 13d-3 and 13d-5 of the Exchange Act as in effect on the Closing Date), directly or indirectly, in the aggregate Equity Interests representing at least a majority³ of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Holdings; or

(5) a “Change of Control” (as defined under the Prepetition SPV Secured Notes Indenture as in effect on the Closing Date) occurs; or

(6) [(i) Parent shall cease to own and control legally and beneficially, either directly or indirectly, equity securities in SFA Holdings representing 100% of the combined voting power of all of Equity Interests entitled to vote for members of the board of directors or equivalent governing body of SFA Holdings on a fully-diluted basis free and clear of all Liens (other than statutory Liens otherwise permitted hereunder) or (ii) (A) SFA Holdings shall cease to directly own and control legally and beneficially, equity securities in Saks Flagship Holdco representing 100% of the combined voting power of all of Equity Interests entitled to vote for members of the board of directors or equivalent governing body of Saks Flagship Holdco or (B) Saks Flagship Holdco shall cease to own and control legally and beneficially, either directly or indirectly, equity securities in each of the Saks Flagship Fee Owner or Saks Flagship GL Tenant, in each case, representing 100% of the combined voting power of all of Equity Interests entitled to vote for members of the board of directors or equivalent governing body of the Saks Flagship Fee Owner and Saks Flagship GL Tenant on a fully-diluted basis free and clear of all Liens (other than non-consensual Liens having priority by operation of applicable Law over the Lien of the Collateral Agent in the case of the Equity Interests of the Saks Flagship GL Tenant or Liens granted pursuant to the DIP Orders).]

Notwithstanding the preceding or any provision of Section 13d-3 of the Exchange Act, (i) a Person or group shall not be deemed to beneficially own Voting Stock subject to a stock or asset purchase agreement, merger agreement, option agreement, warrant agreement or similar agreement (or voting or option or similar agreement related thereto) until the consummation of the acquisition of the Voting Stock in connection with the transactions contemplated by such agreement, (ii) [reserved], (iii) a Person or group will not be deemed to beneficially own the Voting Stock of another Person as a result of its ownership of Voting Stock or other securities of such other Person’s parent entity (or related contractual rights) unless it owns 50% or more of the total voting power of the Voting Stock entitled to vote for the election of directors

³ NTD: conform to onloan.

of such parent entity having a majority of the aggregate votes on the board of directors (or similar body) of such parent entity, and (iv) the right to acquire Voting Stock (so long as such Person does not have the right to direct the voting of the Voting Stock subject to such right) or any veto power in connection with the acquisition or disposition of Voting Stock will not cause a party to be a beneficial owner.

“**Chapter 11 Cases**” has the meaning assigned to such term in the recitals of this Agreement.

“**Chapter 11 Plan**” means a plan of reorganization or liquidation in any or all of the Chapter 11 Cases with respect to the Debtors that are Loan Parties.

“**Charges**” has the meaning assigned to such term in Section 10.09.

“**Class**” means, when used with respect to: (a) any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are First Out Term Loans, Second Out Term Loans or Third Out Term Loans; and (b) any lender, refers to whether such lender has a Term Loan of a particular Class.

“**Closing Date**” means the date on which the conditions set forth in Section 4.02 of this Agreement are satisfied or waived by the Required Lenders (acting at the direction of the Required Lenders).

“**CMBS Lenders**” means “Lender” as defined in the Incorporated Agreement, including any successors in interest.

“**Code**” means the Internal Revenue Code of 1986, as amended.

[“**Collateral**” means (a) “SGUS DIP Collateral” (as defined in the Interim DIP Order and, when applicable, the Final DIP Order) and (b) “Collateral” as defined in the Collateral Agreement, and in each case and words of similar intent, and shall include all present and after acquired assets and property, whether real, personal, tangible, intangible or mixed of the Loan Parties, wherever located, on which Liens are or are purported to be granted pursuant to the DIP Orders to secure the payment and performance of the Obligations.]

“**Collateral Agent**” means U.S. Bank, in its capacity as Collateral Agent for itself and the other Secured Parties, and any duly appointed successor in that capacity.

“**Collateral Agreement**” means the Collateral Agreement, dated as of the date hereof, by and among the Borrower, the other Loan Parties and the Collateral Agent, as may be amended, restated, supplemented or otherwise modified from time to time.

“**Commitment**” means any DIP Interim Funding Commitment, DIP Final Funding Commitment or DIP Subsequent Draw Commitment.

“**Commitment Fee**” has the meaning assigned to such term in Section 2.12(2).

“**Compliance Certificate**” has the meaning assigned to such term in Section 5.04(4).

“**Conforming Changes**” means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “ABR,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or

prepayment, conversion or continuation notices, the applicability and length of lookback periods, administrative or operational matters) that the Required Lenders determine may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or if the Required Lenders determine that no market practice for the administration of any such rate exists, in such other manner of administration as the Required Lenders determine is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents); provided, that such changes shall be administratively feasible for the Administrative Agent.

“continuing” means, with respect to any Default or Event of Default, that such Default or Event of Default has not been cured or waived.

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

“Control Agreement” means any **“Control Agreement”** as defined in the Collateral Agreement.

“Credit Support” means, with respect to any Person and any Indebtedness or other Indebtedness Obligations, (i) such Person’s Guarantee of, or becoming a direct or indirect obligor with respect to, such Indebtedness or other Indebtedness Obligations, (ii) such Person’s pledge or other hypothecation of its assets to directly or indirectly secure or provide recourse with respect to such Indebtedness or other Indebtedness Obligations, (iii) such Person becoming directly or indirectly liable for such Indebtedness or other Indebtedness Obligations or (iv) such Person providing any other form of direct or indirect credit support for such Indebtedness or other Indebtedness Obligations (including by means of a “keepwell” or other similar commitment).

“Daily Simple SOFR” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for syndicated business loans; *provided* that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent (acting at the direction of the Required Lenders, in their reasonable discretion) may establish another convention.

“Debtor” or **“Debtors”** means Holdings, the DIP Onloan Borrower and certain of the DIP Onloan Borrower’s Subsidiaries (including Borrower), each as debtors and debtors-in-possession; *provided* that, for the purposes hereof, the Saks Off 5th Debtors should not be deemed a “Debtor” hereunder.

“December 2024 Transactions” has the meaning assigned to the term **“Transactions”** in the Prepetition ABL Credit Agreement.

“Default” means any event or condition which, but for the giving of notice, lapse of time or both, would constitute an Event of Default.

“Defaulting Lender” means any Lender whose acts or failure to act, whether directly or indirectly, constitutes a Lender Default. The Administrative Agent shall not be deemed to have knowledge or notice of designation of any Lender as a “Defaulting Lender” hereunder unless the Administrative Agent has received written notice thereof from the Borrower, which the Administrative Agent may conclusively rely

upon without incurring liability therefor, and absent receipt of such notice, the Administrative Agent may conclusively assume that no Lender under this Agreement has been designated as a “Defaulting Lender.”

“**Deposit Account**” means any “deposit account” as such term is defined in the UCC as in effect on the date hereof in the State of New York.

“**Deposit Account Control Agreement**” has the meaning assigned to such term in Section 5.11.

“**DIP ABL Credit Agreement**” means that certain [Senior Secured Super-Priority Debtor-In-Possession ABL Credit Agreement], dated on or about the date hereof, by and among Holdings, the DIP Onloan Borrower, the Lenders thereto from time to time and Bank of America, N.A. as administrative agent.

“**DIP Claims**” means the administrative expense claims of the Lenders, Administrative Agent and Collateral Agent granted by the Bankruptcy Court pursuant to the DIP Orders against the Loan Parties, subject to the terms set forth in the Interim DIP Order and, when entered, the Final DIP Order, and junior only to the Carve Out to the extent set forth in the Interim DIP Order.

“**DIP Escrow Account**” means that certain escrow account of the Borrower (a) identified in the DIP Escrow Account Agreement, and (b) maintained with the Account Bank with account number ending in [●].

“**DIP Escrow Account Agreement**” means that certain Escrow Agreement, dated as of January [●], 2026, by and among the Administrative Agent, the Borrower and the OpCo DIP Agent, which agreement shall be in form and substance acceptable to the Required Lenders.

“**DIP Facilities**” shall mean the First Out DIP Facility, the Second Out DIP Facility and the Third Out DIP Facility.

“**DIP Final Funding Commitments**” means the First Out DIP Final Funding Commitments.

“**DIP Final Funding Date**” means the initial funding date following the satisfaction of the conditions set forth in Section 4.03 (or waiver thereof in accordance with Section 10.08).

“**DIP Final Funding Loans**” means the First Out DIP Final Funding Loans.

“**DIP Interim Funding Commitments**” means the First Out DIP Interim Funding Commitments.

“**DIP Interim Funding Date**” means the date on which the conditions set forth in Section 4.02 are satisfied (or waived in accordance with Section 10.08).

“**DIP Interim Funding Loans**” means the First Out DIP Interim Funding Loans.

“**DIP Lien**” has the meaning assigned to [“SGUS DIP Liens”] in the DIP Orders.

“**DIP Motion**” has the meaning assigned to such term in the DIP Opco Credit Agreement.

“**DIP Orders**” means the Interim DIP Order and the Final DIP Order.

“**DIP Onloan Administrative Agent**” means U.S. Bank Trust Company, National Association, in its capacity as administrative agent under the DIP Onloan Credit Agreement.

“DIP Onloan Agents” means, collectively, the DIP Onloan Administrative Agent and the DIP Onloan Collateral Agent.

“DIP Onloan Borrower” means Saks Global Enterprises LLC, a Delaware limited liability company.

“DIP Onloan Collateral Agent” means U.S. Bank Trust Company, National Association, in its capacity as collateral agent under the DIP Onloan Credit Agreement.

“DIP Onloan Credit Agreement” means (i) that certain Debtor-in-Possession Term Loan Credit Agreement, dated as of [], 2026, as the same may be amended, amended and restated, modified, supplemented, extended or renewed from time to time in accordance with the terms thereof, among the DIP Onloan Borrower, as borrower, the guarantors party thereto, the lenders party thereto from time to time, the DIP Onloan Administrative Agent and the DIP Onloan Collateral Agent.

“DIP Onloan Documents” means, collectively, the DIP Onloan Credit Agreement, the DIP Onloan Term Loans and each of the other agreements, documents and instruments providing for, evidencing or securing any DIP Onloan Obligations.

“DIP Onloan Lenders” means the “Lenders” as defined in the DIP Onloan Credit Agreement.

“DIP Onloan Loan Parties” means “Loan Parties”, as defined in the DIP Onloan Credit Agreement.

“DIP Onloan Obligations” means “Obligations”, as defined in the DIP Onloan Credit Agreement.

“DIP Onloan Term Loans” means the term loans under the DIP Onloan Credit Agreement.

“DIP Onloan Term Loan Facility” means that certain debtor-in-possession, senior secured credit facility pursuant to the DIP Onloan Credit Agreement.

“DIP Proceeds Account” has the meaning assigned to such term in the DIP Onloan Credit Agreement, as in effect on the Closing Date.

“DIP Proceeds Account Control Agreement” has the meaning assigned to such term in the DIP Onloan Credit Agreement, as in effect on the Closing Date.

“DIP Subsequent Draw Commitments” means the First Out DIP Subsequent Draw Commitments.

“DIP Subsequent Draw Date” means any funding date, other than the initial funding date, following which the conditions set forth in Section 4.04 are satisfied (or waived in accordance with Section 10.08).

“DIP Subsequent Draw Loans” means the First Out DIP Subsequent Draw Loans.

“DIP Superpriority Claims” means the superpriority expense claims of the Lenders, Administrative Agent and Collateral Agent granted by the Bankruptcy Court pursuant to the DIP Orders against each Debtor that is a Loan Party, subject to the terms set forth in the Interim DIP Order and, when entered, the Final DIP Order, and junior only to the Carve Out to the extent set forth in the Interim DIP Order.

“DIP Syndication Procedures” means the procedures which govern the syndication of the DIP Facility and are attached as Exhibit B to the Backstop Commitment Letter.

“Disinterested Director” means, with respect to any Person and transaction, a member of the Board of Directors of such Person who does not have any material direct or indirect financial interest in or with respect to such transaction.

“Disqualified Institution” means:

(1) any Person that is a competitor of the Parent, and any Person controlling or controlled by any such competitor, and identified by the Borrower in writing to the Administrative Agent on or prior to the Closing Date;

(2) certain banks, financial institutions, other institutional lenders and investors and other entities that are identified by the Borrower in writing to the Administrative Agent on or prior to the Closing Date; and

(3) any Affiliates of such competitors, controlling persons, controlled persons or institutions described in the foregoing clauses (1) and (2) that are clearly identifiable as such solely on the basis of their names (other than bona fide fixed income investors or debt funds that are Affiliates of competitors described in clause (1) above, but not of institutions described in clause (2) above) or identified by the Borrower in writing to the Administrative Agent on or prior to the Closing Date.

Notwithstanding the foregoing, each Loan Party and the Lenders acknowledge and agree that the Administrative Agent will not have any responsibility or obligation to determine whether any Lender, Participant or potential Lender or Participant is a Disqualified Institution and no duty to monitor the schedule of Disqualified Institutions and shall have no liability in connection therewith (including, without limitation, with respect to or arising out of any assignment or participation of Loans or Commitments, or disclosure of confidential information to a Disqualified Institution).

“Disqualified Stock” means, with respect to any Person, any Equity Interests of such Person that, by their terms (or by the terms of any security or other Equity Interests into which they are convertible or for which they are redeemable or exchangeable at the option of the holder thereof), or upon the happening of any event or condition:

(1) mature or are mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale are subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments);

(2) are redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part;

(3) provide for the scheduled payments of dividends in cash; or

(4) either mandatorily or at the option of the holders thereof, are or become convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Stock, in each case, prior to the date that is ninety-one (91) days after the earlier of:

(a) the Maturity Date; and

(b) the date on which the Loans and all other Obligations (other than contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted) are repaid in full and the Commitments are terminated;

provided that only the portion of the Equity Interests that so mature or are mandatorily redeemable, are so convertible or exchangeable or are so redeemable at the option of the holder thereof prior to such date will be deemed to be Disqualified Stock; *provided, further*, that if such Equity Interests are issued to any employee or to any plan for the benefit of employees of any Parent Entity, the Borrower or its Subsidiaries or by any such plan to such employees, such Equity Interests will not constitute Disqualified Stock solely because they may be required to be repurchased by any Parent Entity, the Borrower or any of its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, death or disability; and *provided, further*, that any class of Equity Interests of such Person that by its terms authorizes such Person to satisfy its obligations thereunder by delivery of Equity Interests that is not Disqualified Stock will not be deemed to be Disqualified Stock.

"Dollars", **"U.S. Dollars"** or **"\$"** means lawful money of the United States of America.

"Domestic Subsidiary" means any Subsidiary of the Borrower that is organized under the laws of the United States, any state thereof or the District of Columbia, and **"Domestic Subsidiaries"** means any two or more of them. Unless otherwise indicated in this Agreement, all references to Domestic Subsidiaries will mean Domestic Subsidiaries of the Borrower.

"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 and is subject to the supervision of an EEA Resolution Authority, 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 of an EEA Resolution Authority 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 delegatee) having responsibility for the resolution of any EEA Financial Institution.

"Environment" means ambient air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata, and natural resources such as flora and fauna.

"Environmental Laws" means all applicable laws (including common law), statutes, rules, regulations, codes, ordinances, orders, legally binding agreements and final, legally binding decrees or judgments, in each case, promulgated or entered into by or with any Governmental Authority, relating to the Environment, preservation or reclamation of natural resources, the generation, management, Release or threatened Release of, or exposure to, any Hazardous Material or to occupational health and safety matters (to the extent relating to exposure to Hazardous Materials).

“Equity Interests” means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

“Equivalent Amount” means, at any time, (a) with respect to any amount denominated in U.S. Dollars, such amount, and (b) with respect to any amount denominated in any currency other than U.S. Dollars, the equivalent amount thereof in U.S. Dollars as determined by the Borrower at such time on the basis of the Spot Rate for the purchase of U.S. Dollars with such currency as of the close of business on the immediately preceding Business Day.

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

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with any Loan Party, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302, 303 and 306(g) of ERISA and Section 412 and 430 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means:

- (1) a Reportable Event, or the requirements of Section 4043(b) of ERISA apply, with respect to an ERISA Plan;
- (2) a withdrawal by any Loan Party or, to the knowledge of the Borrower, any ERISA Affiliate from an ERISA Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations by any Loan Party or, to the knowledge of the Borrower, any ERISA Affiliate that is treated as a termination or withdrawal under Section 4062(e) of ERISA;
- (3) a complete or partial withdrawal by any Loan Party or, to the knowledge of the Borrower, any ERISA Affiliate from a Multiemployer Plan, receipt of written notification by any Loan Party or, to the knowledge of the Borrower, any ERISA Affiliate concerning the imposition of Withdrawal Liability on it or written notification that a Multiemployer Plan is, or is expected to be, insolvent within the meaning of Title IV of ERISA or endangered or in critical status within the meaning of Section 305 of ERISA or Section 432 of the Code;
- (4) (a) the provision by an ERISA Plan administrator or the PBGC to any Loan Party or, to the knowledge of the Borrower, any ERISA Affiliate of notice of intent to terminate an ERISA Plan or to appoint a trustee to administer an ERISA Plan, (b) the treatment of an ERISA Plan or Multiemployer Plan amendment as a termination under Sections 4041 or 4041A of ERISA or (c) the commencement of proceedings by the PBGC to terminate an ERISA Plan or Multiemployer Plan;
- (5) the incurrence by any Loan Party or, to the knowledge of the Borrower, any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any ERISA Plan or Multiemployer Plan, other than for the timely payment of plan contributions or PBGC premiums due but not delinquent under Section 4007 of ERISA;
- (6) the application for a minimum funding waiver under Section 302(c) of ERISA or Section 412(c) of the Code with respect to an ERISA Plan;

(7) the imposition of a lien on the assets of any Loan Party under Section 303(k) of ERISA with respect to any ERISA Plan or Section 430(k) of the Code; and

(8) a determination that any ERISA Plan is in “at risk” status (within the meaning of Section 303 of ERISA or Section 430 of the Code).

“**ERISA Plan**” means any “employee pension benefit plan” as defined in Section 3(2) of ERISA (other than a Multiemployer Plan) that is (1) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA; and (2) either (a) sponsored or maintained (at the time of determination or at any time within the five (5) years prior thereto) by any Loan Party or any ERISA Affiliate or (b) in respect of which any Loan Party or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“**Euro**” and “**€**” mean the single currency of the Participating Member States.

“**Event of Default**” has the meaning assigned to such term in Section 8.01.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

“**Excluded Assets**” means “Excluded Assets” as defined in the Collateral Agreement.

“**Excluded Equity Interests**” means “Excluded Equity Interests” as defined in the Collateral Agreement.

“**Excluded Taxes**” means, with respect to any Recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder:

(1) income Taxes imposed on or measured by its net income (however denominated) branch profits Taxes or franchise Taxes imposed in lieu of net income Taxes, in each case, (a) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (b) that are Other Connection Taxes;

(2) in the case of a Lender, any U.S. federal withholding Taxes (including any backup withholding Tax) that is imposed on amounts hereunder to or for the account of such Lender under the law applicable at the time (i) such Lender becomes a party to this Agreement (other than pursuant to an assignment request by the Borrower under Section 2.19(2)) or (ii) such Lender changes its lending office, except to the extent that in each case, the Lender’s assignor (if any), at the time of assignment (or such Lender immediately before it changed its lending office), was entitled to receive additional amounts from the Loan Party with respect to any withholding tax pursuant to Section 2.17(1) or Section 2.17(3);

(3) Taxes that are attributable to such Lender’s or Administrative Agent’s failure to comply with Section 2.17(5) or Section 2.17(6);

(4) any U.S. federal withholding Taxes imposed under FATCA.

“**Executive Order**” has the meaning assigned to such term in Section 3.20(3)(a).

“**FATCA**” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations thereunder or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code (or any amended or successor version described above), and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code.

“**Federal Funds Effective Rate**” means, for any day, the rate per annum calculated by the Federal Reserve Bank of New York based on such day’s federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; *provided* that if the Federal Funds Effective Rate as so determined would be less than 0.00%, such rate shall be deemed to be 0.00% for purposes of this Agreement.

“**Fee Letter**” means the Fee Schedule for Services as DIP Administrative Agent and Collateral Agent, dated as of [the Closing Date] between U.S. Bank and the Borrower.

“**Fees**” means, all fees set forth in the Fee Letter and all other fees relating hereto.

“**Final DIP Order**” means a final order of the Bankruptcy Court entered in the Chapter 11 Cases after a final hearing under Bankruptcy Rule 4001(c)(2) or such other procedures as approved by the Bankruptcy Court, authorizing and approving on a final basis, among other things, the DIP Facility and approval of the [Prepetition OpCo Second Out Notes Participation] (as defined therein), which order shall be in form and substance satisfactory to the Required Lenders.

“**Final DIP Order Entry Date**” means mean the date on which the Final DIP Order is entered by the Bankruptcy Court.

“**First Day Motions**” has the meaning assigned to such term in Section 4.02(12).

“**First Day Orders**” has the meaning assigned to such term in Section 4.02(12).

“**First Out DIP Commitments**” means any First Out Interim Funding Commitment, First Out DIP Final Funding Commitment or First Out Subsequent Draw Commitment.

“**First Out DIP Final Funding Commitment**” means the Fronting Lender’s obligation to make or otherwise fund First Out DIP Final Funding Loans on the DIP Final Funding Date, pursuant to Section 2.01(2), in the aggregate amount of \$300,000,000.

“**First Out DIP Final Funding Loans**” means any borrowing hereunder of “first out” term loans in respect of the First Out DIP Final Funding Commitments.

“**First Out DIP Interim Funding Commitment**” means the Fronting Lender’s obligation to make or otherwise fund First Out DIP Interim Funding Loans on the DIP Interim Funding Date, pursuant to Section 2.01(1), in the aggregate amount of \$400,000,000.

“**First Out DIP Interim Funding Loans**” means any borrowing hereunder of “first out” term loans in respect of the First Out DIP Interim Funding Commitments.

“**First Out DIP PIK Loans**” means any Loans issued as payment in kind in respect of Fees payable pursuant to Sections 2.12(2) and (3).

“First Out DIP Subsequent Draw Commitment” means the Fronting Lender’s obligation to make or otherwise fund DIP Subsequent Draw Loans on any DIP Subsequent Draw Date, pursuant to Section 2.01(3), in an aggregate amount not to exceed \$300,000,000.

“First Out DIP Subsequent Draw Loans” means any borrowing hereunder of “first out” term loans in respect of the First Out DIP Subsequent Draw Commitments.

“First Out DIP Facility” shall mean the First Out DIP Commitments and the First Out Term Loans made hereunder.

“First Out Obligations” means any Obligations in respect of the First Out DIP Facility.

“First Out Term Loan” means, individually or collectively, as the context may require, the First Out DIP Interim Funding Loans, First Out DIP Final Funding Loans, the First Out DIP Subsequent Draw Loans and First Out DIP PIK Loans.

“First Out Termination Date” means the date on which all First Out DIP Commitments shall have expired or been terminated, the principal of and interest on each First Out Term Loans and all fees, expenses and other amounts (other than contingent amounts not yet due) constituting Obligations in respect of the First Out DIP Commitments and First Out Term Loans payable under each Loan Document shall have been paid in full.

“Financial Officer” means, with respect to any Person, the chief financial officer, principal accounting officer, director of financial services, treasurer, assistant treasurer or controller of such Person.

“Flagship Guarantor” means: (i) Saks Flagship GL Tenant, (ii) Saks Flagship Holdco II and (iii) each Subsidiary of a Saks Flagship Entity that becomes, or is required to become, a party to the Collateral Agreement after the Closing Date pursuant to Section 5.10.

“Flood Insurance Laws” means, collectively, (a) the National Flood Insurance Reform Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood disaster Protection Act of 1973) as now or hereafter in effect or any successor statute thereto, (b) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (c) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto and any and all official rulings and interpretation thereunder or thereof.

“Foreign Lender” means any Lender that is organized under the laws of a jurisdiction other than the United States of America. For purposes of this definition, the United States of America, each state thereof and the District of Columbia will be deemed to constitute a single jurisdiction.

“Foreign Subsidiary” means any Subsidiary that not a Domestic Subsidiary.

“Fronting Arrangement” means the funding and subsequent assignments of the DIP Interim Funding Loans, DIP Final Funding Loans and, if requested by the Backstop Parties, the DIP Subsequent Draw Loans by the Fronting Lender to the other Lenders that elect to purchase (or cause any of their respective Affiliates or Approved Funds to become a Lender hereunder and to purchase) such Term Loans on terms set forth in the Backstop Commitment Letter, DIP Syndication Procedures, or as otherwise agreed between the Fronting Lender and the applicable other Lender.

“Fronting Lender” shall mean Barclay Bank PLC, in its capacity as fronting lender.

“GAAP” means generally accepted accounting principles in the United States of America as in effect from time to time, including those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession (but excluding the policies, rules and regulations of the SEC applicable only to public companies).

Notwithstanding anything to the contrary above or in the definition of “Capital Lease Obligations”, in the event of a change under GAAP (or the application thereof) requiring any leases to be capitalized that are not required to be capitalized as of December 31, 2018, only those leases that would result or would have resulted in Capital Lease Obligations on December 31, 2018 (assuming for purposes hereof that they were in existence on the Closing Date) will be considered capital leases and all calculations under this Agreement will be made in accordance therewith.

“Governmental Authority” means any federal, state, local or (to the extent applicable and legally binding) foreign court or governmental agency, authority, instrumentality or regulatory or legislative body.

“Ground Lessee Pledge Documentation” means that certain Amended and Restated Pledge Agreement by and between Saks Fifth Avenue Holdco II LLC, as pledgor, and the pledgee named therein, as pledgee, dated as of March 18, 2021, and any and all other documentation entered into in connection therewith or relating thereto, certified copies of which have been delivered to the Administrative Agent on or prior to the Closing Date, as the same may be modified, amended, supplemented or replaced from time to time in accordance with the terms thereof.

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

(1) any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect:

(a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep well, to purchase assets, goods, securities or services, to take or pay or otherwise) or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness or other obligations;

(b) to purchase or lease property (other than operating leases or leases of real property), securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof;

(c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation;

(d) entered into for the purpose of assuring in any other manner the holders of such Indebtedness or other obligation of the payment thereof or to protect such holders against loss in respect thereof (in whole or in part); or

(e) as an account party in respect of any letter of credit, bank guarantee or other letter of credit guaranty issued to support such Indebtedness or other obligation; or

(2) any Lien on any assets of the guarantor securing any Indebtedness (or any existing right, contingent or otherwise, of the holder of Indebtedness to be secured by such a Lien) of any other Person, whether or not such Indebtedness or other obligation is assumed by the guarantor;

provided, that the term “Guarantee” will not include endorsements of instruments for deposit or collection in the ordinary course of business or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted by this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee will be deemed to be an amount equal to the stated or determinable amount of the Indebtedness in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith. The term “**Guaranteed**” as used herein will have a corresponding meaning.

“**Guarantor**” means (1) each Subsidiary Loan Party, (2) each Flagship Guarantor, (3) each New Affiliated Guarantor and (4) each other Parent Entity or Subsidiary or the DIP Onloan Borrower that the Borrower may elect in its sole discretion, from time to time, upon written notice to the Administrative Agent, to cause to Guarantee the Obligations (including the parties to the Guarantee Agreement as of the Closing Date) until such date that the Borrower has informed the Administrative Agent that it elects not to have such Person Guarantee the Obligations; *provided* that, in the case of this clause (4), the Guarantee and the security interest provided by such Person is full and unconditional and fully enforceable in the jurisdiction of organization of such Person; *provided further*, in the case of this clause (4), any such Person that the Borrower has elected to guaranty any other Indebtedness (other than the DIP Onloan Facility and the Indebtedness under the DIP ABL Credit Agreement, and other than an Unrestricted Subsidiary) shall be required to be so elected by the Borrower to act as a Guarantor hereunder.

“**Guarantee Agreement**” means the Guarantee Agreement, dated as of the Closing Date, among the Loan Parties and the Administrative Agent, as amended, supplemented, restated and/or otherwise modified from time to time.

“**Hazardous Materials**” means all pollutants, contaminants, wastes, chemicals, materials, substances and constituents, including explosive or radioactive substances or petroleum or petroleum byproducts or distillates, friable asbestos or friable asbestos-containing materials, polychlorinated biphenyls or radon gas, in each case, that are regulated or would give rise to liability under any Environmental Law due to their dangerous or deleterious properties.

“**Holding Company**” means any Person so long as such Person directly or indirectly holds 100% of the total voting power of the Voting Stock of the Borrower, and at the time such Person acquired such voting power, no Person and no group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision), including any such group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) (other than any Permitted Holder), shall have beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision), directly or indirectly, of more than 50% of the total voting power of the Voting Stock of such Person.

“**Holdings**” means Saks Global Holdings LLC, a Delaware limited liability company.

“**Incorporated Agreement**” means that certain Loan Agreement dated as of December 3, 2014, by and among Saks Flagship Fee Owner and the CMBS Lenders, as the same may be amended, restated, supplemented, waived, or otherwise modified and in effect from time to time in accordance with the terms thereof so long as, with respect to any amendment, restatement, supplement, waiver or modification which is, in whole or in part, adverse in any material respect to the Secured Parties (as determined by the Required

Lenders in their reasonable discretion), the Agents (acting at the direction of the Required Lenders) have consented in writing to such amendment, restatement, supplement, waiver or modification.

“Indebtedness” means, with respect to any Person, without duplication:

- (1) all obligations of such Person for borrowed money;
- (2) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments;
- (3) all obligations of such Person under conditional sale or title retention agreements relating to property or assets purchased by such Person;
- (4) all obligations of such Person issued or assumed as the deferred purchase price of property or services, to the extent the same would be required to be shown as a long-term liability on a balance sheet prepared in accordance with GAAP;
- (5) all Capital Lease Obligations of such Person;
- (6) [reserved];
- (7) the principal component of all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and bank guarantees;
- (8) the principal component of all obligations of such Person in respect of bankers’ acceptances;
- (9) all Guarantees by such Person of Indebtedness described in clauses (1) through (8) above; and
- (10) the amount of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock (excluding accrued dividends that have not increased the liquidation preference of such Disqualified Stock);

provided that Indebtedness will not include:

- (a) trade payables, accrued expenses and intercompany liabilities arising in the ordinary course of business;
- (b) prepaid or deferred revenue arising in the ordinary course of business;
- (c) purchase price holdbacks arising in the ordinary course of business in respect of a portion of the purchase prices of an asset to satisfy unperformed obligations of the seller of such asset; or
- (d) in connection with the purchase by the Borrower or any Subsidiary of any business, any deferred or prepaid revenue, post-closing payment adjustments to which the seller may become entitled to the extent such payment is determined by a final closing balance sheet or such payment depends on the performance of such business after the closing; *provided, however*, that, at the time of closing, the amount of any such payment is not determinable and, to the extent such payment thereafter becomes fixed and determined, the amount is paid in a timely manner.

The Indebtedness of any Person will include the Indebtedness of any partnership in which such Person is a general partner, other than to the extent that the instrument or agreement evidencing such Indebtedness expressly limits the liability of such Person in respect thereof.

“Indebtedness Obligations” means any principal, interest (including any interest accruing subsequent to the filing of a petition in bankruptcy, reorganization or similar proceeding at the rate provided for in the documentation with respect thereto, whether or not such interest is an allowed claim under applicable state, federal or foreign law), premium, penalties, fees, indemnifications, reimbursements (including reimbursement obligations with respect to letters of credit and bankers’ acceptances), damages and other liabilities payable under the documentation governing any Indebtedness.

“Indemnified Taxes” means (1) all Taxes other than Excluded Taxes imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document; and (2) to the extent not otherwise described in clause (1), Other Taxes.

“Indemnitee” has the meaning assigned to such term in Section 10.05(2).

“Initial Approved Budget” means the “Initial Budget” as defined in and attached to the Interim DIP Order.

“Intellectual Property Rights” has the meaning assigned to such term in Section 3.21(1).

“Interest Election Request” shall mean a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.07 and substantially in the form of Exhibit C or another form approved by the Administrative Agent.

“Interest Payment Date” shall mean, (a) with respect to any Term SOFR Loan, (i) the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and (ii) in addition, the date of any refinancing or conversion of such Borrowing with or to a Borrowing of a different Type on a day that is not the last day of an Interest Period under clause (a)(i) of this definition and (b) with respect to any ABR Loan, the last Business Day of each calendar quarter.

“Interest Period” shall mean, as to any Term SOFR Borrowing, the period commencing on the date of such Borrowing or on the last day of the immediately preceding Interest Period applicable to such Borrowing, as applicable, and ending on the numerically corresponding day (or, if there is no numerically corresponding day, on the last day) in the calendar month that is one (1) month thereafter; provided, that if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day. Interest shall accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period. Any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the next calendar month of such Interest Period. No Interest Period shall extend beyond the Maturity Date. No tenor that has been removed from this definition pursuant to Section 2.22(d) shall be available for specification in such Borrowing Request or Interest Election Request.

“Interim DIP Order” means an interim order of the Bankruptcy Court approving the Loan Documents and related matters in the form set forth as Exhibit E, as the same may be amended, supplemented, or modified from time to time after entry thereof in form and substance satisfactory to the Required Lenders in their sole discretion.

“Interim DIP Order Entry Date” shall mean the date on which the Interim DIP Order is entered by the Bankruptcy Court.

“Investor Group” means (a) any or all of (i) the members of HBC GP LLC on the Prepetition ABL Initial Effective Date, (ii) the respective limited partners in the Parent, any holding company thereof created in connection with the December 2024 Transactions, and Saks Global Investor L.P. on the Prepetition ABL Initial Effective Date and (iii) the holders of equity interests in NMG Parent LLC, a Delaware limited liability company, immediately prior to the consummation of the Merger (as defined in the Prepetition ABL Credit Agreement), any holding company or similar entity established to act on their behalf, or any agent or representative acting on their behalf, and, in each case of clauses (i), (ii) and (iii), any of their respective successors, (b) the respective Affiliates of the Persons described in clause (a) (other than, in each case, the Borrower and its Subsidiaries or any portfolio company) and (c) any group members of a group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act as in effect on the Closing Date) of which the Persons described in clauses (a) and (b) are members; *provided* that the Persons described in clauses (a) and (b) beneficially own a majority of the Equity Interests beneficially owned by such group.

“Investment” has the meaning assigned to such term in Section 6.04.

“Investment Grade Rating” means a rating equal to or higher than Baa3 (or the equivalent) by Moody’s and BBB- (or the equivalent) by S&P (or reasonably equivalent ratings of another internationally recognized rating agency).

“Investment Grade Securities” means:

- (1) securities issued or directly and fully guaranteed or insured by the U.S. government or any agency or instrumentality thereof (other than Cash Equivalents);
- (2) securities that have an Investment Grade Rating, but excluding any debt securities or instruments constituting loans or advances among the Borrower and its Subsidiaries;
- (3) corresponding instruments in countries other than the United States customarily utilized for high quality investments and in each case with maturities not exceeding two years from the date of acquisition; and
- (4) investments in any fund that invests at least 95.0% of its assets in investments of the type described in clauses (1) and (2) above which fund may also hold immaterial amounts of cash pending investment and/or distribution.

“Junior Financing” has the meaning assigned to such term in Section 6.09(2).

“Lender” means the Fronting Lender (for so long as the Fronting Lender holds a Term Loan or a Commitment), each other financial institution (including without limitation the Term Loan Lenders) listed on Schedules 1.01(1) (other than any such Person that has ceased to be a party hereto pursuant to an Assignment and Acceptance in accordance with Section 10.04), as well as any Person that becomes a Lender hereunder pursuant to Section 10.04.

“Lender Default” means:

- (1) the refusal (which may be given verbally or in writing and has not been retracted) or failure of any Lender to make available its portion of any Borrowing or reimbursement obligations, which refusal or failure is not cured within two Business Days after the date of such

refusal or failure, unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's good faith determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable Default, shall be specifically identified in such writing) has not been satisfied;

(2) the failure of any Lender to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due;

(3) the failure of any Lender within three Business Days after request by the Administrative Agent or the Borrower to confirm that it will comply with its funding obligations with respect to the Term Loans; *provided* that such Lender will cease to be a Defaulting Lender pursuant to this clause (3) upon receipt of such written confirmation by the Administrative Agent and the Borrower; or

(4) any Lender has notified the Borrower and the Administrative Agent that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations with respect to the Term Loans or under other similar agreements in which it commits to extend credit.

"Lending Office" means, as to any Lender, the applicable branch, office or Affiliate of such Lender designated by such Lender to make Loans.

"Lien" means, with respect to any asset (1) any mortgage, deed of trust, lien, hypothecation, pledge, charge, security interest or similar encumbrance in or on such asset; or (2) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset; *provided* that in no event will an operating lease or an agreement to sell be deemed to constitute a Lien.

"Liquidity" means, at any time, an amount equal to the sum of, without duplication, (a) the amount of total Unrestricted Cash and Cash Equivalents held by Holdings and its Subsidiaries, including all Loan Parties, and DIP Onloan Loan Parties, and (b) *"Excess Availability"* under and as defined in the DIP ABL Credit Agreement.⁴[NTD: To be conformed to Onloan DIP CA]

"Loan Accounts" means the loan accounts established on the books of the Administrative Agent.

"Loan Documents" means this Agreement, the Security Documents, the Guarantee Agreement, any Note, any other intercreditor agreement entered into pursuant to this Agreement, and any other amendment or other agreement or document evidencing or governing the Obligations hereunder, and, solely for the purposes of Sections 3.01, 3.02, and 8.01(3) hereof, the Fee Letter; *provided* that, for the avoidance of doubt, the Loan Documents shall not include any DIP Onloan Documents.

"Loan Parties" means the Borrower and the Guarantors.

"Loans" means the Term Loans and any other loans and advances of any kind made by any Lender or any Affiliate of any Lender pursuant to this Agreement.

"Management Stockholders" means the members of management of the Borrower (or any Parent Entity) or its Subsidiaries who are holders of Equity Interests of the Borrower or of any Parent Entity on

⁴ NTD: Subject to Company review.

the Prepetition ABL Initial Effective Date or became holders of such Equity Interests in connection with the December 2024 Transactions or pursuant to any equity incentive or compensation plan approved by the Board of Directors of the Borrower (or any Parent Entity) or its Subsidiaries within six months of the Prepetition ABL Initial Effective Date.

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

[“**Material Adverse Effect**” means a material adverse effect on:

- (1) the business, assets, financial condition or results of operations of the Loan Parties and their Restricted Subsidiaries (taken as a whole);
- (2) the ability of the Borrower and the Guarantors (taken as a whole) to perform their payment obligations under the Loan Documents; or
- (3) the rights and remedies of the Administrative Agent, the Collateral Agent and the Lenders (taken as a whole) under the Loan Documents;

provided that Material Adverse Effect shall expressly exclude the effect of (a) the filing of the Chapter 11 Cases, the events and conditions resulting from or leading up thereto and/or typically resulting from the filing of cases under the chapter 11 of the Bankruptcy Code, (b) any action required to be taken under the Loan Documents, the DIP Orders or any Approved Court Order, and (c) any matters (including, for the avoidance of doubt, any litigation) (i) disclosed in the Schedules hereto, and/or (ii) publicly disclosed in any first day pleadings or declarations, or any other pleadings or declarations of the Debtors, the Agents or the Lenders in connection with any proposed Approved Court Order, that, in each case, are filed in the Chapter 11 Cases or related materials filed.]

[“**Material Indebtedness**” means Indebtedness for borrowed money (other than the Obligations or any Indebtedness owed to the Borrower or a Subsidiary of the Borrower) of the Borrower or any other Debtor in an aggregate outstanding principal amount exceeding \$10,000,000; *provided* that Material Indebtedness shall at all times include the DIP ABL Facility.]

“**Maturity Date**” means the earliest to occur of (a) the Scheduled Maturity Date, (b) the “effective date” of any Chapter 11 Plan, (c) the consummation of a sale or other disposition of all or substantially all assets of the Debtors, taken as a whole, under section 363 of the Bankruptcy Code, (d) the date of acceleration of the Obligations or the termination of the DIP Facility in accordance with the terms hereof and (e) the “Maturity Date” as defined in the DIP Onloan Credit Agreement.

“**Maturity Extension**” has the meaning assigned to such term in the definition of “Scheduled Maturity Date”.

“**Maximum Rate**” has the meaning assigned to such term in Section 10.09.

“**Milestones**” shall have the meaning given to such term in Section 5.12.

“**MNPI**” means any material nonpublic information regarding the Borrower and its Subsidiaries or Holdings, the DIP Onloan Borrower and its Subsidiaries that has not been disclosed to the Lenders generally (other than Lenders who elect not to receive such information). For purposes of this definition “material nonpublic information” means nonpublic information that would reasonably be expected to be material to a decision by any Lender to assign or acquire any Commitments and/or Loans or to enter into any of the transactions contemplated thereby.

“**Moody’s**” means Moody’s Investors Service, Inc. or any successor to the rating agency business thereof.

“**Multiemployer Plan**” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which any Loan Party or any ERISA Affiliate (other than one considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Code Section 414) is making or accruing an obligation to make contributions, or has within any of the preceding five (5) plan years made or accrued an obligation to make contributions.

“**New Affiliated Guarantor**” means each new Subsidiary of the DIP Onloan Borrower formed or acquired following the Closing Date that is required to become a Guarantor under Section 5.10.

[“**New CEO**” has the meaning assigned to such term in Section 5.16.]

“**New York Courts**” has the meaning assigned to such term in Section 10.15.

“**Non-Consenting Lender**” has the meaning assigned to such term in Section 2.19(3).

“**Note**” has the meaning assigned to such term in Section 2.09(2).

“**Obligations**” means all amounts owing to any Agent or any Lender pursuant to the terms of this Agreement or any other Loan Document (including any contingent indemnification and reimbursement obligations, or other payments required under Section 10.05), including all interest and expenses accrued or accruing (or that would, absent the commencement of an insolvency or liquidation proceeding, accrue) (including all reasonable and documented fees, charges and disbursements of the Specified Ad Hoc Group Advisors and counsel to the Agents, in each case, required to be paid by the Borrower pursuant to Section 10.05, including all indemnity claims of the Ad Hoc Group and the Agents pursuant to Section 10.05) after the commencement by or against any Loan Party of any proceeding under the Bankruptcy Code or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law naming such Loan Party as the debtor in such proceeding, in accordance with and at the rate specified in this Agreement, whether or not the claim for such interest or expense is allowed or allowable as a claim in such proceeding.

“**OFAC**” has the meaning assigned to such term in Section 3.20(3)(e).

“**Onloan DIP Claims**” means the administrative expense claims of the DIP Onloan Lenders, the DIP Onloan Administrative Agent and the DIP Onloan Collateral Agent granted by the Bankruptcy Court pursuant to the DIP Orders against each other Debtor that is not a Loan Party, subject to the terms set forth in the Interim DIP Order and, when entered, the Final DIP Order, and junior only to the Carve Out to the extent set forth in the Interim DIP Order.

“**Onloan DIP Superpriority Claims**” means the superpriority expense claims of the DIP Onloan Lenders, the DIP Onloan Administrative Agent and the DIP Onloan Collateral Agent granted by the Bankruptcy Court pursuant to the DIP Orders against each other Debtor that is not a Loan Party, subject to the terms set forth in the Interim DIP Order and, when entered, the Final DIP Order, and junior only to the Carve Out to the extent set forth in the Interim DIP Order.

“**Organizational Documents**” shall mean, (a) with respect to any corporation or company, the certificate or articles of incorporation, the memorandum and articles of association, any certificates of incorporation or change of name and/or the bylaws (or equivalent or comparable constitutive documents), (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement or limited liability company agreement (or equivalent or comparable constitutive documents), (c) with respect to any partnership, joint venture, trust or other form of business entity, the

partnership, joint venture or other applicable agreement of formation or organization and any agreement, declaration, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of limited partnership or of formation or organization of such entity, and (d) in any other case, the functional equivalent of the foregoing.

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising solely from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Taxes” means any and all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.19(2)).

“Paid in Full” has the meaning assigned to such term in the DIP Orders, and the term **“Payment in Full”** will have the correlative meaning.

“Parent” means HBC I L.P., a Delaware limited partnership.

“Parent Entity” means any direct or indirect parent of the Borrower, including, as applicable, Holdings and the Parent.

“Participant” has the meaning assigned to such term in Section 10.04(4).

“Participant Register” has the meaning assigned to such term in Section 10.04(4).

“Payment Office” means, the office of the Administrative Agent located at such office as the Administrative Agent may designate to the Borrower and the Lenders from time to time.

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA, or any successor thereto.

“Periodic Term SOFR Determination Day” has the meaning specified in the definition of “Term SOFR”.

“Permitted Holders” means, collectively, (i) any member of the Investor Group and any Permitted Parent, (ii) the Management Stockholders (including any Management Stockholders holding Equity Interests through an equity-holding vehicle), (iii) any Person who is acting solely as an underwriter in connection with a public or private offering of Equity Interests of any Parent Entity or the Borrower, acting in such capacity, (iii) any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act or any successor provision) of which any of the foregoing, any Holding Company, Permitted Plan or any Person or group that becomes a Permitted Holder specified in the last sentence of this definition are members and any member of such group; *provided* that, in the case of such group and without giving effect to the existence of such group or any other group, Persons referred to in subclauses (i) through (iii), collectively, have beneficial ownership of more than 50% of the total voting power of the Voting Stock of

the Borrower or any Parent Entity held by such group, (v) any Holding Company and (vi) any Permitted Plan.

“Permitted Indebtedness” has the meaning assigned to such term in Section 6.01.

“Permitted Investments” has the meaning assigned to such term in Section 6.04.

“Permitted Variances” has the meaning assigned to such term in the DIP Orders.

“Permitted Liens” has the meaning assigned to such term in Section 6.02.

“Permitted Parent” means any Parent Entity that, at the time it became a Parent Entity, was a Permitted Holder pursuant to clause (i) of the definition thereof.

“Permitted Plan” means any employee benefits plan of the Borrower or any of its Affiliates and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan.

“Person” means any natural person, corporation, business trust, joint venture, association, company, partnership, limited liability company, government, individual or family trust, Governmental Authority or other entity of whatever nature.

“Petition Date” means the date on which the Debtors file chapter 11 petitions with the Bankruptcy Court.

“Plan Effective Date” means the date of the substantial consummation (as defined in section 1101(2) of the Bankruptcy Code, which for purposes hereof shall be no later than the effective date) of an Acceptable Plan.

“Platform” has the meaning assigned to such term in Section 10.17.

“Pledged Collateral” has the meaning assigned to such term in the Collateral Agreement.

“Post-Petition” shall mean the time period commencing immediately upon filing of the Chapter 11 Cases.

“Prepetition ABL Credit Agreement” means that certain ABL Credit Agreement, dated as of December 23, 2024, among Holdings, Saks Global Enterprises LLC, the co-borrowers party thereto, the ABL Credit Agreement Agent and the lenders party thereto from time to time, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“Prepetition ABL Credit Agreement Agent” means Bank of America, N.A. (and permitted successors thereto) in its capacity as administrative agent and collateral agent under the Prepetition ABL Credit Agreement.

“Prepetition ABL Initial Effective Date” means December 23, 2024.

“Prepetition ABL Obligations” means the “Obligations” as defined in the Prepetition ABL Credit Agreement.

“Prepetition Administrative Agent” means SGUS LLC, in its capacity as Administrative Agent under the Prepetition FILO Credit Agreement or the Prepetition NPC Credit Agreement, as applicable.

“Prepetition Collateral” means (a) the “Collateral” (or any similar term) as defined in the Prepetition Security Documents and (b) all other assets and property that secure the Prepetition Secured Obligations.

“Prepetition Existing Secured Notes” has the meaning assigned to such term in the definition of Prepetition Secured Notes.

“Prepetition Existing Secured Notes Indenture” has the meaning assigned to such term in the definition of Prepetition Secured Notes Indenture.

“Prepetition FILO Collateral Agent” means Bank of America, N.A., in its capacity as Collateral Agent for itself and the other secured parties, under the Prepetition FILO Credit Agreement and the Prepetition Security Documents.

“Prepetition FILO Credit Agreement” means the Term Loan Credit Agreement, dated as of June 27, 2025, as may be amended, restated, amended and restated, supplemented, waived or otherwise modified from time to time, by and among Saks Global Enterprises LLC, as the borrower, the Prepetition Administrative Agent, and the Prepetition Lenders.

“Prepetition FILO Obligations” means “Obligations” as defined in the Prepetition FILO Credit Agreement.

“Prepetition Indebtedness” means any Indebtedness incurred pursuant to the Prepetition Onloan Credit Agreements, the Prepetition ABL Credit Agreement, the Prepetition OpCo Notes Indenture, the Prepetition Secured Notes Indenture or the Prepetition SPV Secured Notes Indenture.

“Prepetition Liens” means each of the Liens on the Prepetition Collateral granted by the Grantors (or any similar term) as defined in the Prepetition Security Documents to secure any Prepetition Secured Obligations.

[**“Prepetition Notes Participation Agreement”** means a participation agreement, between each Backstop Party and certain other holders of Prepetition Secured Notes, if any, as participation seller, and the Borrower, as participation buyer, pursuant to which (i) the Borrower shall purchase [100]% participation interests in such Backstop Parties’ holdings of 11.000% Senior Secured Second Out Notes due 2029 issued by the DIP Onloan Borrower (the **“Participated Prepetition Second Out Notes”**) for a purchase price equal to the total outstanding principal amount of the Participated Prepetition Second Out Notes, plus accrued and unpaid interest thereon as of the Petition Date, payable in the form of Third Out Term Loans issued hereunder, (ii) upon the earliest of (x) the Maturity Date (whether by acceleration or otherwise), (y) the date any Agent, DIP Onloan Administrative Agent or DIP Onloan Collateral DIP Agent delivers a Default Notice (under and as defined in the DIP Orders) or (z) the date the Restructuring Support Agreement (if any) is terminated in accordance with its terms, the Backstop Parties holding a majority of the Participated Prepetition Second Out Notes may elect by written notice to elevate the participation interests to assignments of the Participated Prepetition Second Out Notes for no additional consideration, (iii) prior to the valid exercise of an elevation election, each Backstop Party shall have full rights to control and direct the voting of the Participated Prepetition Second Out Notes, and (iv) prior to consummation of the elevation, neither the Borrower nor any Backstop Party may transfer (including, among other things, by assignment, participation, subparticipation, hypothecation, granting a Lien or pledge, or any other transfer) the Participated Prepetition Second Out Notes or any of their interests therein, without the prior written consent of the other party.]

“Prepetition NPC Collateral Agent” means Citibank, N.A. in its capacity as Collateral Agent, for itself and the other secured parties, under the Prepetition NPC Credit Agreement.

“Prepetition NPC Credit Agreement” means the Term Loan Credit Agreement, dated as of August 8, 2025, as may be amended, restated, amended and restated, supplemented, waived or otherwise modified from time to time, by and among Saks Global Enterprises LLC, as the borrower, the Prepetition Administrative Agent, and the Prepetition Lenders.

“Prepetition NPC Obligations” means “Obligations” as defined in the Prepetition NPC Credit Agreement.

“Prepetition Onloan Credit Agreements” means, collectively, the Prepetition FILO Credit Agreement and the Prepetition NPC Credit Agreement.

“Prepetition Onloan Documents” means (a) the Prepetition Onloan Credit Agreements, (b) the Prepetition Security Documents, and (c) each of the other “Loan Documents” (as defined in the Prepetition Onloan Credit Agreements).

“Prepetition OpCo Notes Indenture” means that certain Indenture, dated as of August 8, 2025, by and among Saks Global Enterprises LLC, as issuer, the guarantors party thereto and Citibank, N.A. as trustee and as collateral agent, relating to the issuance of those certain 11.000% Senior Secured Second Out Notes due 2029 and 11.000% Senior Secured Third Out Notes due 2029.

“Prepetition Secured Notes” means, collectively, (i) the 11.000% Senior Secured Notes due 2029 issued under the Prepetition Secured Notes Indenture (the ***“Prepetition Existing Secured Notes”***), and (ii) the 11.000% Senior Secured Second Out Notes due 2029 and 11.000% Senior Secured Third Out Notes due 2029 issued under the Prepetition OpCo Notes Indenture, together with any additional notes which are issued as a result of the capitalization of accrued and unpaid interest thereon.

“Prepetition Secured Notes Collateral” has the meaning assigned to the term “Collateral” in the Prepetition Secured Notes Indenture or any corresponding term in any Prepetition Secured Notes Indenture in effect from time to time.

“Prepetition Secured Notes Documents” means, collectively, the Prepetition Secured Notes Indenture, the Prepetition Secured Notes and each of the other agreements, documents and instruments providing for, evidencing or securing any Prepetition Secured Notes Obligations.

“Prepetition Secured Notes Indenture” means (i) that certain Indenture, dated as of December 16, 2024 and as the same may be amended, amended and restated, modified, supplemented, extended or renewed from time to time in accordance with the terms hereof and thereof, among Holdings, the Borrower, as issuer, the other guarantors party thereto and the Prepetition Secured Notes Trustee, pursuant to which \$2,200.0 million aggregate principal amount of Prepetition Existing Secured Notes were issued (the ***“Prepetition Existing Secured Notes Indenture”***), and (ii) the Prepetition OpCo Notes Indenture.

“Prepetition Secured Notes Obligations” means (a) any “Notes Obligations”, as defined in the Prepetition Secured Notes Indenture, or (b) any “Notes Obligations”, as defined in the Prepetition OpCo Notes Indenture.

“Prepetition Secured Notes Trustee” means Citibank, N.A., in its capacities as trustee and as notes collateral agent under the Prepetition Existing Secured Notes Indenture and the Prepetition OpCo Notes Indenture.

“Prepetition Secured Onloan Obligations” means the “Secured Obligations” as defined in the Prepetition Onloan Credit Agreements.

“Prepetition Security Documents” means, collectively (a) the Security Documents as defined in the Prepetition FILO Credit Agreement, (b) the Security Documents as defined in the Prepetition NPC Credit Agreement) and (c) any other security documents, mortgages, and ancillary agreements pursuant to which the Prepetition FILO Collateral Agent or Prepetition NPC Collateral Agent have been granted a Lien on the Prepetition Collateral.

“Prepetition SPV Secured Notes Indenture” means that certain Indenture, dated June 27, 2025, by and among SGUS LLC, a Delaware limited liability company, as issuer, the guarantors party thereto and Citibank, N.A. as trustee and as collateral agent, relating to the issuance of those certain 11.000% Senior Secured Asset Based Notes due 2029 (the ***“Prepetition SPV Notes”***).

“Prepetition SPV Noteholders” means the holders of Prepetition SPV Notes from time to time.

“Prepetition SPV Notes” has the meaning assigned to such term in the definition of Prepetition SPV Secured Notes Indenture.

“Prime Rate” shall mean the rate of interest per annum last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Required Lenders) or any similar release by the Federal Reserve Board (as determined by the Required Lenders). Any change in the Prime Rate shall take effect at the opening of business on the day such change is publicly announced or quoted as being effective.

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

“Public Lender” has the meaning assigned to such term in Section 10.17.

“Qualified Equity Interests” means any Equity Interests other than Disqualified Stock.

“Quarterly Financial Statements” has the meaning assigned to such term in Section 5.04(2).

“Rate” shall have the meaning assigned to such term in the definition of the term “Type.”

“Real Property” means, collectively, all right, title and interest (including any leasehold estate) in and to any and all parcels of or interests in real property owned in fee or leased by any Loan Party, together with, in each case, all easements, hereditaments and appurtenances relating thereto, and all improvements and appurtenant fixtures incidental to the ownership or lease thereof.

“Recipient” means the Administrative Agent and any Lender, as applicable.

“Refinance” means Indebtedness issued in exchange for, or converted from, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund the Indebtedness being Refinanced and the terms ***“Refinanced”*** and ***“Refinancing”*** will have correlative meanings.

“Register” has the meaning assigned to such term in Section 10.04(3)(g).

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

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

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

“Release” means any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the Environment.

“Relevant Governmental Body” means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York.

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

“Required Financial Statements” has the meaning assigned to such term in Section 5.04(3).

“Required Lenders” means, at any time, Lenders having Loans outstanding that, taken together, represent more than 50.0% of the sum of all Loans and Commitments outstanding at such time, voting as a single class; provided that any Loans and Commitments of the Fronting Lender subject to a Fronting Arrangement shall be deemed to be Loans and Commitments of the applicable other Lenders party to such Fronting Arrangement for purposes of this definition so long as the applicable action or vote to be taken does not affect the Fronting Arrangement, the DIP Syndication Procedures or to the timing or amount of any payment due to the Fronting Lender or any indemnification or reimbursements obligations due to the Fronting Lender. Any Defaulting Lender will be disregarded in determining Required Lenders; *provided* that subject to the Borrower’s right to replace Defaulting Lenders as set forth herein, Defaulting Lenders will be included in determining Required Lenders with respect to:

(1) any amendment that would disproportionately affect the obligation of the Borrower to make payment of the Loans or Commitments of such Defaulting Lender as compared to other Lenders holding the same class of such Loans or Commitments;

(2) any amendment relating to:

(a) increases in the Commitment of such Defaulting Lender;

(b) reductions of principal, interest, fees or premium applicable to the Loans or Commitments of such Defaulting Lender;

(c) extensions of final maturity or the due date of any amortization, interest, fee or premium payment applicable to the Loans or Commitments of such Defaulting Lender; and

(3) matters requiring the approval of each Lender under Sections 10.08(2)(c)(vi) and (vii).

“Requirement of Law” means, as to any Person, the charter and 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.

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Responsible Officer” means, with respect to any Loan Party, the chief executive officer, president, vice president, secretary, assistant secretary or any Financial Officer of such Loan Party or any other individual designated in writing to the Administrative Agent by an existing Responsible Officer of such Loan Party as an authorized signatory of any certificate or other document to be delivered hereunder. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party will be conclusively presumed to have been authorized by all necessary corporate, partnership or other action on the part of such Loan Party and such Responsible Officer will be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Payments” has the meaning assigned to such term in Section 6.06.

“Restricted Subsidiary” means each Subsidiary of the DIP Onloan Borrower other than any Unrestricted Subsidiary.

“Restructuring Support Agreement” has the meaning assigned to such term in the DIP Opco Credit Agreement.

“S&P” means Standard & Poor’s Ratings Services or any successor entity thereto.

“Saks Flagship CMBS Documents” means, collectively, (a) the Incorporated Agreement and (b) the “Loan Documents” under and as defined in the Incorporated Agreement.

“Saks Flagship Entities” means (i) the Saks Flagship Fee Owner, Saks Flagship GL Tenant, Saks Flagship Holdco II, Saks Flagship Holdco, and (ii) each Subsidiary of SFA Holdings and each other Person (other than any Loan Party which directly or indirectly owns 100% of the Equity Interest issued by any of the foregoing) in each case of this clause (ii), that owns directly or indirectly (beneficially or of record) any of the Equity Interests of the Saks Flagship Fee Owner or Saks Flagship GL Tenant. Each of the foregoing shall be a “Saks Flagship Entity”. In no event shall SFA Holdings or any entity that owns a direct or indirect interest in SFA Holdings be deemed a Saks Flagship Entity (provided that no such Person (other than SFA Holdings, as applicable) shall directly own the Equity Interests in the Saks Flagship Fee Owner, Saks Flagship GL Tenant, Saks Flagship Holdco II, or Saks Flagship Holdco).

“Saks Flagship Fee Owner” means Saks Flagship Real Property LLC, a Delaware limited liability company.

“Saks Flagship GL Tenant” means 12 East 49th Street LLC, a Delaware limited liability company.

“Saks Flagship Holdco” means Saks Fifth Avenue HoldCo LLC, a Delaware limited liability company or any successor thereto by merger, consolidation, acquisition, any other similar corporate transformation or otherwise.

“Saks Flagship Holdco II” means Saks Fifth Avenue HoldCo II LLC, a Delaware limited liability company.

“Saks Flagship Lease” means collectively (a) that certain Ground Lease dated as of December 3, 2014, between Saks Flagship Fee Owner, as landlord, and Saks Flagship GL Tenant, as tenant, with respect to Saks Flagship Real Estate, together with (i) any amendments, modifications, or waivers thereto or (ii) a replacement ground lease approved by the Administrative Agent in its reasonable discretion and (b) that certain Operating Lease dated as of December 3, 2014, between Saks Flagship GL Tenant, as landlord, and SFA, as tenant, with respect to Saks Flagship Real Estate, together with (i) any amendments, modifications, or waivers thereto or (ii) a replacement operating lease approved by the Administrative Agent in its reasonable discretion or otherwise permitted pursuant to the terms of the Saks Flagship CMBS Documents to the extent the same is not adverse in any material respect to the interests of the Loan Parties (provided that any such replacement that would otherwise require the consent of the CMBS Lenders shall also require the Administrative Agent’s consent (acting at the direction of the Required Lenders) hereunder).

“Saks Flagship Material Agreements” means the (a) the Saks Flagship CMBS Documents, (b) the Saks Flagship Lease, (c) the Ground Lessee Pledge Documentation, and (d) the organization documents of each of Saks Flagship GL Tenant, Saks Flagship Fee Owner, Saks Flagship Holdco and Saks Flagship Holdco II.

“Saks Flagship Real Estate” shall mean the property more particularly described in Schedule 1.01(4).

“Sanctions” means any financial, economic, or trade sanctions law, regulations, rules, decisions, embargoes and/or restrictive measures imposed, administered or enforced by the United States government (including without limitation, OFAC), the United Nations Security Council, the European Union, His Majesty’s Treasury (“HMT”) or other relevant sanctions authority.

“Scheduled Maturity Date” means [], 2026⁵ (the **“Initial Scheduled Maturity Date”**); *provided* that the Borrower may, with the written consent of the Required Lenders, extend the Scheduled Maturity Date to the date that is no more than three (3) months after the Initial Scheduled Maturity Date (the **“Maturity Extension”**); *provided, further*, that the Scheduled Maturity Date shall be no later than the “Scheduled Maturity Date as defined in the DIP Onloan Credit Agreement.

“SEC” means the Securities and Exchange Commission or any successor thereto.

“Second Day Motions” has the meaning assigned to such term in Section [4.03(3)].

“Second Day Orders” has the meaning assigned to such term in Section [4.03(3)].

“Second Out DIP Roll-Up Loans” means the “second out” term loans of the Borrower, issued on account of all of the obligations under the Prepetition SPV Secured Notes Indenture held by the Ad Hoc Group, which are rolled up dollar for dollar into the Second Out DIP Facility on a cashless basis, pursuant to the DIP Orders.

“Second Out DIP Facility” shall mean the Second Out DIP Roll-Up Loans made hereunder.

“Second Out Obligations” means any Obligations in respect of the Second Out DIP Facility.

⁵ NTD: To be 180 days after the Closing Date.

“Second Out Term Loan” means, individually or collectively, the Second Out DIP Roll-Up Loans.

“Second Out Termination Date” means the date on which the principal of and interest on each Second Out Term Loans and all fees, expenses and other amounts (other than contingent amounts not yet due) constituting Obligations in respect of the Second Out Term Loans payable under each Loan Document shall have been paid in full.

“Secured Parties” means the collective reference to the “Secured Parties” as defined in the Collateral Agreement.

“Securities Account” means any “securities account” as such term is defined in the UCC as in effect on the date hereof in the State of New York.

“Securities Act” means the Securities Act of 1933, as amended.

“Security Documents” means collectively, the DIP Orders, the Collateral Agreement, the Guarantee Agreement, the DIP Proceeds Account Control Agreement, any grant of Intellectual Property, and each of the security agreements and other instruments and documents executed and delivered by any Loan Party pursuant thereto or pursuant to Section 5.10 or Section 5.15, including any and all Control Agreements.

“Settlement Date” has the meaning assigned to such term in Section 2.18(2).

“SFA” means Saks & Company LLC, a Delaware limited liability company.

“SFA Holdings” means SFA Holdings Inc., a Tennessee corporation.

“Signature Law” has the meaning assigned to such term in Section 10.13.

“Simon JVCo” means HBS Global Properties LLC, a Delaware limited liability company.

“SOFR” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“SOFR Administrator” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“SOFR Borrowing” means, as to any Borrowing, the Term SOFR Loans comprising such Borrowing.

“Specified Ad Hoc Group Advisors” shall mean Paul, Weiss Rifkind, Wharton & Garrison LLP, Lazard Frères & Co and FTI Consulting Ltd.

“Specified Ad Hoc Group Legal Advisor” means Paul, Weiss Rifkind, Wharton & Garrison LLP.

“Specified Backstop Party” has the meaning assigned to such term in the Backstop Commitment Letter.

“Specified Event of Default” means any Event of Default under Section 8.01(2), 8.01(3), 8.01(8) or 8.01(9).

“Spot Rate” means the exchange rate, as reasonably determined by the Required Lenders, that is applicable to conversion of one currency into another currency, which is (a) the exchange rate reported by Bloomberg (or other commercially available source reasonably designated by the Required Lenders) as of the end of the preceding Business Day in the financial market for the first currency; or (b) if such report is unavailable for any reason, the spot rate for the purchase of the first currency with the second currency as in effect during the preceding Business Day in the Required Lender’s principal foreign exchange trading office for the first currency.

“SPV Expenses” means:

(a) fees, costs and expenses (including all legal, accounting and other professional fees, costs and expenses) incurred or paid by the Borrower in connection with reporting obligations (including obtaining and maintaining one or more credit ratings with respect to the Loans) under or otherwise incurred or paid in connection with compliance with applicable laws, rules or regulations of any governmental, regulatory or self-regulatory body, this Agreement or any other Loan Document or any other Indebtedness of the Borrower or any of its Subsidiaries that is permitted by this Agreement;

(b) customary salary, bonus, severance, indemnity, insurance (including premiums therefor) and other benefits payable to any director or officer, consultant or advisor of the Borrower or other Persons under the Borrower’s or any of its Subsidiary’s organizational documents or pursuant to written agreements with any such Person to the extent relating to the Borrower and its Subsidiaries;

(c) (x) general corporate operating and overhead fees, costs and expenses, (including all legal, accounting and other professional fees, costs and expenses, and director and officer insurance (including premiums therefor)) and (y) other operational expenses of the Borrower incurred as a result of (i) maintaining the corporate existence of the Borrower, (ii) performing its obligations under this Agreement, the other Loan Documents, the DIP Onloan Documents, the Prepetition SPV Secured Notes Indenture and other Note Documents (as defined in the Prepetition SPV Secured Notes Indenture) and the Prepetition Onloan Documents, and (iii) outside financial and legal advisor fees in connection with the Chapter 11 Cases; and

(d) compensation, fees and indemnification of the Administrative Agent and the Collateral Agent.

“Sterling” and **“£”** mean the lawful currency of the United Kingdom.

“Subagent” has the meaning assigned to such term in Section 9.02.

“Subordinated Indebtedness” means any Indebtedness that is expressly subordinated in right of payment to the Obligations, which subordination terms shall be reasonably satisfactory to the Required Lenders.

“Subsidiary” means, with respect to any Person, any corporation, partnership, limited liability company or other entity of which (1) Equity Interests having ordinary voting power (other than Equity Interests having such power only by reason of the happening of a contingency) to elect a majority of the Board of Directors of such corporation, partnership, limited liability company or other entity are at the time owned by such Person; or (2) more than 50.0% of the Equity Interests are at the time owned by such Person. Unless otherwise indicated in this Agreement or the context requires, all references to Subsidiaries will mean Subsidiaries of the DIP Onloan Borrower.

“Subsidiary Loan Parties” means: (1) each Subsidiary of the Borrower on the Closing Date; and (2) each Subsidiary of the Borrower that becomes, or is required to become, a party to the Collateral Agreement after the Closing Date.

“Supermajority Holders” means, at any time, Lenders having Loans and Commitments outstanding that, taken together, represent 66-2/3% or more of the sum of all Loans and Commitments outstanding at such time, provided that any Loans and Commitments of the Fronting Lender subject to a Fronting Arrangement shall be deemed to be Loans and Commitments of the applicable other Lenders party to such Fronting Arrangement for purposes of this definition. Any Defaulting Lender will be disregarded in determining Supermajority Holders.

“Taxes” means any and all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or similar charges imposed by any Governmental Authority and any and all interest and penalties related thereto.

“Term Loan” means, individually or collectively, as the context may require, the First Out Term Loans, the Second Out Term Loans and the Third Out Term Loans.

“Term SOFR” means,

(a) for any calculation with respect to a Term SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the **“Periodic Term SOFR Determination Day”**) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, and

(b) for any calculation with respect to an ABR Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the **“ABR Term SOFR Determination Day”**) that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any ABR Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such ABR SOFR Determination Day.

“Term SOFR Administrator” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Required Lenders in their reasonable discretion).

“Term SOFR Borrowing” shall mean a Borrowing comprised of Term SOFR Loans.

“Term SOFR Loan” means a Term Loan that bears interest at a rate based on Term SOFR.

“Term SOFR Reference Rate” means the forward-looking term rate based on SOFR.

“Third Out DIP Facility” shall mean the Third Out Term Loans made hereunder.

“Third Out DIP Facility” shall mean the Third Out Term Loans made hereunder.

“Third Out Obligations” means any Obligations in respect of the Third Out DIP Facility.

“Third Out Term Loans” means the “third out” term loans of the Borrower, issued on account of the purchase of participation interests in the DIP Onloan Borrower’s 11.000% Senior Secured Second Out Notes due 2029 pursuant to the Prepetition Notes Participation Agreement.

“Trade Announcement” has the meaning assigned to such term in Section 10.16.

“Transactions” means, collectively, (a) the execution, delivery and performance of the Loan Documents, the creation of the Liens pursuant to the Security Documents and the borrowings hereunder, and (b) the payment of all fees and expenses to be paid and owing in connection with the foregoing.

“Treasury Regulations” means the regulations promulgated under the Code, as such regulations may be amended from time to time.

“Type” shall mean, when used in respect of any Term Loan, the Rate by reference to which interest on such Term Loan is determined. For purposes hereof, the term **“Rate”** shall include Term SOFR and the ABR.

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any Person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain Affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“Uniform Commercial Code” or **“UCC”** means the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

[**“Unrestricted Cash”** means, as of any date, the sum of the amount of cash of Holdings and its Subsidiaries (including, for the avoidance of doubt, the Loan Parties and the DIP Onloan Loan Parties), as set forth on the balance sheet of Holdings and its Subsidiaries, including the cash proceeds of any funded Loans or other funded Indebtedness, it being understood that such amount shall exclude in any event (i) cash held in the DIP Escrow Account, (ii) any cash or investment identified on such balance sheet as “restricted” and cash or investments restricted in favor of the Secured Parties or the “Secured Parties” under and as defined in the DIP Onloan Credit Agreement and (iii) any amount to the extent any use thereof for application to the payment for Indebtedness under the Loan Documents is restricted or prohibited by Law

or contract. For the avoidance of doubt, funds in the DIP Proceeds Account or the DIP Escrow Account shall be deemed not to be Unrestricted Cash automatically and immediately prior to the occurrence of any Event of Default.]

“Unrestricted Subsidiary” means each of Saks Flagship Real Property LLC, Saks Global IP Holdings LLC, NMG IP Holdings LLC, ALG Aggregator LLC, Saks OFF 5th Holdings LLC, HBS Global Properties LLC, HBC-Simon, LLC, and all Subsidiaries of each of the foregoing.

“Updated Budget” has the meaning assigned to such term in the DIP Orders.

“Updated Budget Delivery Date” has the meaning assigned to such term in the DIP Orders.

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

“U.S. Bank” has the meaning assigned to such term in the introductory paragraph hereof.

“U.S. Government Securities Business Day” means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“Voting Stock” means, as of any date, the Capital Stock of any Person that is at the time entitled to vote (without regard to the occurrence of any contingency) in the election of the Board of Directors of such Person.

“Wholly Owned Domestic Subsidiary” means, with respect to any Person, a Domestic Subsidiary of such Person that is a Wholly Owned Subsidiary. Unless otherwise indicated in this Agreement, all references to Wholly Owned Domestic Subsidiaries will mean Wholly Owned Domestic Subsidiaries of the Borrower.

“Wholly Owned Subsidiary” means, with respect to any Person, a Subsidiary of such Person, all of the Equity Interests of which (other than directors’ qualifying shares or other similar shares required pursuant to applicable law) are owned by such Person or another Wholly Owned Subsidiary of such Person. Unless otherwise indicated in this Agreement, all references to Wholly Owned Subsidiaries will mean Wholly Owned Subsidiaries of the Borrower.

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

SECTION 1.02 Terms Generally. The definitions set forth or referred to in Section 1.01 will apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun will include the corresponding masculine, feminine and neuter forms. Unless the context requires otherwise:

(1) the words “include,” “includes” and “including” will be deemed to be followed by the phrase “without limitation;”

(2) in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding” and the word “through” means “to and including;”

(3) the word “will” will be construed to have the same meaning and effect as the word “shall;”

(4) the word “incur” will be construed to mean incur, create, issue, assume, become liable in respect of or suffer to exist (and the words “incurred” and “incurrence” will have correlative meanings);

(5) the word “or” will be construed to mean “and/or;”

(6) 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;

(7) any reference to any Person will be construed to include such Person’s legal successors and permitted assigns; and

(8) the words “asset” and “property” will be construed to have the same meaning and effect.

All references herein to Articles, Sections, Exhibits and Schedules will be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Agreement unless the context otherwise requires. Except as otherwise expressly provided herein, any reference in this Agreement to any Loan Document or organizational document of the Loan Parties means such document as amended, restated, supplemented or otherwise modified from time to time (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document). Any reference to any law will include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation means unless otherwise specified, such law or regulation as amended, modified or supplemented from time to time. Whenever this Agreement refers to the “knowledge” of the Borrower or any Loan Party, such reference will be construed to mean the knowledge of the chief executive officer, president, chief financial officer, treasurer or controller of such Person.

SECTION 1.03 Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature will be construed in accordance with GAAP, as in effect from time to time; *provided* that, notwithstanding anything to the contrary herein, all accounting or financial terms used herein will be construed, and all financial computations pursuant hereto will be made, without giving effect to any election under Statement of Financial Accounting Standards Board Accounting Standards Codification 825-10 (or any other Statement of Financial Accounting Standards Board Accounting Standards Codification having a similar effect) to value any Indebtedness or other liabilities of the Borrower or any Subsidiary at “fair value,” as defined therein. In the event that any Accounting Change (as defined below) occurs and such change results in a change in the method of calculation of financial covenants, standards or terms in this Agreement, then upon the written request of the Borrower or the Administrative Agent (acting at the direction of the Required Lenders), the Borrower and the Required Lenders will enter into good faith negotiations in order to amend such provisions of this Agreement so as to equitably reflect such Accounting Change with the desired result that the criteria for evaluating the Borrower’s financial condition will be the same after such Accounting Change as if such Accounting Change had not occurred; *provided* that provisions of this Agreement as in effect on the date of such Accounting Change will remain in effect until the effective date of such amendment. “**Accounting**

Change” means (1) any change in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or (2) any change in the application of GAAP by the Borrower.

SECTION 1.04 [Reserved].

SECTION 1.05 Currencies. Unless otherwise specifically set forth in this Agreement, monetary amounts are in U.S. Dollars. Notwithstanding anything to the contrary herein, no Default or Event of Default will arise as a result of any limitation or threshold set forth in U.S. Dollars being exceeded solely as a result of changes in currency exchange rates.

SECTION 1.06 [Reserved].

SECTION 1.07 Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction’s laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its equity interests at such time.

SECTION 1.08 [Reserved].

SECTION 1.09 Exchange Rates; Currency Equivalent. All references in the Loan Documents to Loans, Obligations and other amounts shall be denominated in U.S. Dollars, unless expressly provided otherwise. The Equivalent Amount of any amounts denominated or reported under a Loan Document in a currency other than U.S. Dollars shall be determined by the Borrower and shall become effective as of such Revaluation Date and shall be the Equivalent Amount of such amounts until the next Revaluation Date to occur. Notwithstanding anything herein to the contrary, if any Obligation is funded and expressly denominated in a currency other than U.S. Dollars, the Borrower shall repay such Obligation in such other currency.

Notwithstanding anything to the contrary in this Agreement, (i) any representation or warranty that would be untrue or inaccurate, (ii) any undertaking that would be breached, (iii) any basket that is exceeded or (iv) any event that would constitute a Default or an Event of Default, in each case, solely as a result of fluctuations in applicable currency exchange rates, shall not be deemed to be untrue, inaccurate, breached or so constituted, as applicable, solely as a result of such fluctuations in currency exchange rates.

SECTION 1.10 [Reserved].

SECTION 1.11 Rates. The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, (a) the continuation of, administration of, submission of, calculation of or any other matter related to ABR, the Term SOFR Reference Rate, the Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, ABR, the Term SOFR Reference Rate, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of ABR, the Term SOFR Reference Rate, Term SOFR, any alternative, successor

or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain ABR, the Term SOFR Reference Rate, Term SOFR, or any other Benchmark, or any component definition thereof or rates referred to in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service. Under no circumstances will the Administrative Agent be responsible for selecting or determining any Benchmark Replacement if Term SOFR or any other Benchmark will no longer be available past the Benchmark Replacement Date. In the case of a Benchmark Transition Event, the Required Lenders will select the Benchmark Replacement and any Benchmark Replacement Adjustment in consultation with the Borrower prior to the Benchmark Replacement Date and in consultation with the Administrative Agent, ensuring that the Administrative Agent will be able to meet its obligations and requirements under this Agreement with respect to the Benchmark Replacement replacing the applicable Benchmark. No such replacement (including any Conforming Changes to any Loan Document) shall affect the Administrative Agent's own rights, duties or immunities under the Loan Documents or otherwise.

ARTICLE II

The Credits

SECTION 2.01 Commitments. Subject to the terms and conditions set forth herein:

(1) DIP Interim Funding Loans. Subject to the terms and conditions hereof and the Interim DIP Order, and in reliance upon the representations and warranties of the Loan Parties contained herein and the stipulations of the Borrower in the Interim DIP Order, the Fronting Lender in accordance with the Fronting Arrangement agrees to make DIP Interim Funding Loans in U.S. Dollars to the Borrower within one (1) Business Day following entry of the Interim DIP Order in an amount equal to \$400,000,000. The Borrower hereby irrevocably authorizes the Administrative Agent to disburse the proceeds of the DIP Interim Funding Loans pursuant to this Section 2.01(1). The proceeds of the DIP Interim Funding Loans will be disbursed by the Administrative Agent in immediately available funds and in the same form as received from the Fronting Lender, by wire transfer pursuant to a written direction from the Borrower.

(2) DIP Final Funding Loans. Subject to the terms and conditions hereof and the Final DIP Order, and in reliance upon the representations and warranties of the Loan Parties contained herein and the stipulations of the Borrower in the Final DIP Order, the Fronting Lender in accordance with the Fronting Arrangement agrees to make DIP Final Funding Loans in U.S. Dollars to the Borrower within three (3) Business Days following entry of the Interim DIP Order in an amount equal to \$300,000,000. The Borrower hereby irrevocably authorizes the Administrative Agent to disburse the proceeds of the DIP Final Funding Loans pursuant to this Section 2.01(2). The proceeds of the DIP Final Funding Loans will be disbursed by the Administrative Agent in immediately available funds and in the same form as received from the Fronting Lender, by wire transfer pursuant to a written direction from the Borrower.

(3) DIP Subsequent Draw Loans Subject to the terms and conditions hereof and in the DIP Orders and in reliance upon the representations and warranties of the Loan Parties contained herein and the stipulations of the Borrower in the DIP Orders, the Lenders agree to make DIP Subsequent Draw Loans denominated in Dollars to the Borrower on any DIP Subsequent Draw Date in an aggregate principal amount not to exceed such Lender's DIP Subsequent Draw Commitment. The DIP Subsequent Draw Commitments of the Lenders may be funded by the Fronting Lender in accordance with the Fronting

Arrangement and shall be automatically and permanently reduced upon the making of the DIP Subsequent Draw Loans on any DIP Subsequent Draw Date (or, if earlier, on the Maturity Date).

(4) Second Out DIP Roll-Up Loans. Subject to the terms and conditions set forth herein and in the DIP Orders, (i) following entry of the Interim DIP Order, \$[395,000,000] in principal amount of the Prepetition SPV Secured Notes Obligations, plus accrued and unpaid interest thereon, will be deemed to have been rolled-up and exchanged on a cashless basis dollar-for-dollar for Second Out DIP Roll-Up Loans deemed made by such Lenders and borrowed by the Borrower hereunder and (ii) following entry of the Final DIP Order, \$[357,465,541] in principal amount of the Prepetition SPV Secured Notes Obligations, plus accrued and unpaid interest thereon, will be deemed to have been rolled-up and exchanged on a cashless basis dollar-for-dollar for Second Out DIP Roll-Up Loans deemed made by such Lenders and borrowed by the Borrower hereunder. The Second Out DIP Roll-Up Loans shall be allocated in accordance with the Interim DIP Order and the Final DIP Order.

(5) Third Out Term Loans. Subject to the terms and conditions set forth herein and in the DIP Orders, the total purchase price for of the Participated Prepetition Second Out Notes, including accrued and unpaid interest thereof as of the Petition Date, pursuant to the Prepetition Notes Participation Agreement, shall be deemed borrowed as Third Out Term Loans hereunder on the date thereof and paid on a cashless basis to the Backstop Parties in exchange for such Participated Prepetition Second Out Notes.

(6) For all purposes hereunder, the First Out Term Loans, the Second Out Term Loans (including, once converted, the Second Out DIP Roll-Up Loans) and Third Out Term Loans shall each constitute a different Class of Term Loans. Loans borrowed and repaid or prepaid may not be reborrowed.

SECTION 2.02 Loans and Borrowings.

(1) Each Loan will be made by the Lenders ratably in accordance with their respective Commitments. The failure of any Lender to make any Loan required to be made by it will not relieve any other Lender of its obligations hereunder; *provided* that the Commitments of the Lenders are several and no Lender will be responsible for any other Lender's failure to make Loans as required.

(2) Subject to Section 2.14, each Borrowing shall be comprised entirely of ABR Loans or Term SOFR Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any ABR Loan or Term SOFR Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Term Loan; provided, that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement and such Lender shall not be entitled to any amounts payable under Section 2.15, 2.17 or 2.18 solely in respect of increased costs resulting from such exercise and existing at the time of such exercise.

(3) [Reserved].

SECTION 2.03 Requests for Borrowing.

(1) Borrower shall deliver to Administrative Agent a fully executed Borrowing Request no later than 1:00 p.m. (New York City time) at least three (3) Business Day (or, with respect to the funding of the DIP Interim Funding Loans, one (1) Business Day) (or, in each case, such period as may be agreed by Administrative Agent acting at the direction of the Required Lenders) in advance of any proposed Disbursement Date.

(2) Each such Borrowing Request shall specify: (a) the requested date of the borrowing (which shall be a Business Day), (b) the principal amount of Loans to be borrowed, (c) whether

the Loans to be borrowed constitute DIP Interim Funding Loans, DIP Final Funding Loans or DIP Subsequent Draw Loans, (d) whether such Borrowing is to be ABR Loans or Term SOFR Loans, (e) the wire instructions of the account of the Borrower to which the proceeds of such Loans are to be disbursed and (f) if the requested Borrowing is conditioned on any event, a description of such event.

(3) Notwithstanding anything to the contrary herein, if no election as to the Type of Borrowing is specified, then (a) the requested Borrowing shall be a Term SOFR Borrowing, (b) the Interest Period with respect to any requested Term SOFR Borrowing shall at all times be an Interest Period of one month's duration, (c) promptly following receipt of a Borrowing Request in accordance with this Section 2.03, the Administrative Agent shall advise each Lender of the details thereof and such Lender's portion of each requested Borrowing, and (d) no Borrowing Request shall be required in connection with the Second Out DIP Roll-Up Loans, which Second Out DIP Roll-Up Loans shall be treated as a Term SOFR Borrowing unless and until such Second Out DIP Roll-Up Loans are converted in accordance with Section 2.07.

SECTION 2.04 [Reserved].

SECTION 2.05 [Reserved].

SECTION 2.06 Funding of Borrowings.

(1) The Fronting Lender will make each of the Term Loans to be made by it under Sections 2.01(1), 2.01(2) and 2.01(3) on the proposed date thereof by wire transfer of immediately available funds to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Fronting Lender. The Administrative Agent will make the proceeds of such Term Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to the DIP Escrow Account (other than the DIP Interim Funding Loans, which shall be deposited into the [DIP Proceeds Account] on the initial funding date).

(2) Unless the Administrative Agent has received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (1) of this Section 2.06 and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand (without duplication) such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent at (a) in the case of such Lender, the greater of (i) the Federal Funds Effective Rate and (ii) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (b) in the case of the Borrower, the interest rate applicable to the Loans at such time. If such Lender pays such amount to the Administrative Agent then such amount will constitute such Lender's Loan included in such Borrowing.

SECTION 2.07 Interest Elections.

(1) Each Borrowing initially shall be of a Type specified in the applicable Borrowing Request and, in the case of a Term SOFR Borrowing, shall have an Interest Period of [one month's] duration. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans

comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(2) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by delivering irrevocable written Interest Election Request by electronic means to the Administrative Agent, by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election.

(3) Each written Interest Election Request shall specify the following information in compliance with Section 2.02:

(a) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clause (c) below shall be specified for each resulting Borrowing),

(b) the effective date of the election made pursuant to such Interest Election Request which shall be a Business Day, and

(c) whether the resulting Borrowing is to be an ABR Borrowing or a Term SOFR Borrowing.

(4) Promptly following receipt of an Interest Election Request the Administrative Agent shall advise the Lenders of each Lender's portion of such resulting Borrowing no less than one (1) Business Day before the effective date of the election made pursuant to such Interest Rate Election Request

(5) If the Borrower fails to deliver a timely Interest Election Request with respect to a Term SOFR Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the written request (including a request through electronic means) of the Required Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Term SOFR Borrowing and (ii) unless repaid as provided herein, each Term SOFR Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

SECTION 2.08 Termination of Commitments. The Commitments shall be utilized by the amount of each Loan borrowed and shall be automatically and permanently reduced upon the making of such Loans in the amount borrowed. On the Maturity Date, the unused Commitments shall terminate and be reduced to zero (0), and each Lender shall have no obligation to make any further Loans in respect of such Commitments.

SECTION 2.09 Promise to Pay; Evidence of Debt.

(1) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Term Loan on the Maturity Date, unless any other treatment thereof is selected pursuant to an Acceptable Plan.

(2) Any Lender may request that Loans made by it be evidenced by a promissory note (a "**Note**"). In such event, the Borrower will prepare, execute and deliver to such Lender a Note payable to

such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent and reasonably acceptable to the Borrower. Thereafter, the Loans evidenced by such Note and interest thereon at all times (including after assignment pursuant to Section 10.04) will be represented by one or more Notes in such form payable to the payee named therein (or, if requested by such payee, to such payee and its registered assigns).

(3) The Administrative Agent will maintain accounts in which it will record (a) the amount and currency of each Loan to the Borrower made hereunder, (b) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (c) any amount received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof. The entries made in the accounts maintained pursuant to this paragraph (3) will be *prima facie* evidence of the existence and amounts of the obligations recorded therein; *provided* that the failure of the Administrative Agent to maintain such accounts or any error therein will not in any manner affect the obligations of the Borrower to repay the Obligations in accordance with the terms of this Agreement.

SECTION 2.10 Optional and Mandatory Repayment of Loans. Subject to clause (2) of Section 2.18:⁶

(1) The Borrower will have the right at any time and from time to time to repay any (i) First Out Term Loan, (ii) after the First Out Termination Date shall have occurred, Second Out Term Loan and (iii) after both the First Out Termination Date and the Second Out Termination Date shall have occurred, Third Out Term Loan, in whole or in part, without premium or penalty.

(2) The Borrower shall repay Loans in an amount equal to any mandatory repayment [of principal and/or interest] payable pursuant to Section [] of the DIP Onloan Credit Agreement; provided that such repayment shall be applied to repay (i) the First Out Term Loan, (ii) after the First Out Termination Date shall have occurred, Second Out Term Loan and (iii) after both the First Out Termination Date and the Second Out Termination Date shall have occurred, Third Out Term Loan; provided that the amount of such repayment allocated to principal for the Term Loans being repaid shall be reduced in an amount necessary such that the payment of all amounts received pursuant to Section [] of the DIP Onloan Credit Agreement shall include any accrued interest required to be paid in connection with such prepayment of the Loans pursuant to Section 2.10(6) below.

(3) [Reserved].

(4) [Reserved].

(5) [Reserved].

(6) Each repayment of Term Loans hereunder will be applied to all outstanding Term Loans on a pro rata basis, such that each Lender receives its ratable share of such repayment (based upon the outstanding Term Loans of the applicable Lenders at the time of such repayment). Repayments of Borrowings will be accompanied by accrued interest on the amount repaid (subject to the proviso in Section 2.10(2) with respect to any mandatory prepayment).

SECTION 2.11 [Reserved].

⁶ NTD: Optional and Mandatory prepayments to be added.

SECTION 2.12 Fees and Premiums.

(1) The Borrower shall pay to the Agents, for their own respective accounts, the fees required to be paid pursuant to the Fee Letter, and such fees shall be fully earned, due and payable as specified in the Fee Letter

(2) The Borrower agrees to pay to the Administrative Agent, for the benefit of the Backstop Parties, the premiums set forth in the Backstop Commitment Letter at the times specified therein.

(3) [The Borrower agrees to pay to the Administrative Agent, for the benefit of the Lenders, a commitment premium (the “**Commitment Fee**”) equal to each such Lender’s pro rata share of (a) 2.0% of the aggregate principal amount of the Commitments (excluding, for the avoidance of doubt, the funding of the Second Out DIP Roll-Up Loans and DIP Subsequent Draw Commitments), payable in kind to the Lenders on a pro rata basis in respect of their Commitments upon entry of the Interim DIP Order and (b) 2.0% of the aggregate amount of the Commitments in respect of the Subsequent DIP Draw Commitments (excluding, for the avoidance of doubt, any Second Out DIP Roll-Up Loans).]

(4) In the event that the Scheduled Maturity Date is extended pursuant to a Maturity Extension, on the Initial Scheduled Maturity Date, the Borrower shall pay to the Administrative Agent, for the benefit of each Lender, an extension fee equal to each Lender’s pro rata share of \$20,000,000, payable in kind to the Lenders on a pro rata basis in respect of their Loans and Commitments outstanding in the form of additional Loans of the applicable Class.

(5) All Fees and premiums will be paid on the dates due, in immediately available funds (except with respect to premiums set forth in Section 2.12(2), (3) and (4), which are payable in kind), to the Administrative Agent at the applicable Payment Office for distribution, if and as appropriate, among the Lenders. Once paid, none of the Fees will be refundable under any circumstances. All premiums set forth in Section 2.12(2) and (3) shall be paid in kind when earned in the form of First Out DIP PIK Loans.

SECTION 2.13 Interest.

(1) The Loans comprising each ABR Borrowing shall bear interest at the ABR plus the Applicable Rate.

(2) The Loans comprising each Term SOFR Borrowing shall bear interest at Term SOFR for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(3) Notwithstanding the foregoing, if any principal of or interest on any Loan or any Fees or other amount payable by the Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, each Loan and all overdue amounts shall bear interest, after as well as before judgment, at a rate per annum equal to 2.00% plus the rate otherwise applicable to such Loan as provided in the preceding clauses of this Section 2.13; provided, that this clause (3) shall not apply to any Event of Default that has been waived by the Lenders pursuant to Section 10.08, including, for the avoidance of doubt, the last paragraph of such Section.

(4) [Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and the Maturity Date in accordance with clause (5) below; provided, that (A) interest accrued pursuant to clause (3) of this Section 2.13 shall be payable on demand and (B) in the event of any conversion of a Term SOFR Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof,

for the day on which the Loan or such portion is paid; provided that any Loan that is borrowed and repaid on the same day shall bear interest for one day.]⁷

(5) Accrued interest on each Loan will be payable by the Borrower, in arrears (a) on each Interest Payment Date for such Loan and (b) on the applicable Maturity Date; *provided* that:

(i) The applicable ABR or Term SOFR shall be determined by the Administrative Agent (acting at the direction of the Required Lenders), and such determination shall be conclusive absent manifest error. All interest hereunder on any Loan shall be computed on a daily basis based upon the outstanding principal amount of such Loan as of the applicable date of determination;

(ii) in the event of any repayment of any Loan, accrued interest on the principal amount repaid or prepaid will be payable on the date of such repayment; and

(iii) all interest shall be denominated in Dollars and payable in kind by capitalizing such interest and adding it to the principal amount of the Loans.

(6) All interest hereunder will be computed on the basis of a 360-day year comprised of twelve 30-day months.

SECTION 2.14 Alternative Rate of Interest. Subject to Section 2.22, if, on or prior to the first day of any Interest Period for any Term SOFR Loan:

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

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

then the Administrative Agent shall promptly give notice thereof to the Borrower and the Lenders as promptly as practicable thereafter. Upon notice thereof by the Administrative Agent to the Borrower, any obligation of the Lenders to make or maintain Term SOFR Loans, and any right of the Borrower to continue Term SOFR Loans or to convert ABR Loans to Term SOFR Loans, shall be suspended (to the extent of the affected Term SOFR Loans or affected Interest Periods) until the Administrative Agent (upon the direction of the Required Lenders) revokes such notice. Upon receipt of such notice, (i) the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of Term SOFR Loans (to the extent of the affected Term SOFR Loans or affected Interest Period) or, failing that, any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, an Term SOFR Borrowing in the applicable currency or for the applicable Interest Period, as the case may be, shall be ineffective and, if such Borrowing is denominated in Dollars, such Borrowing shall be converted to or continued as on the last day of the Interest Period applicable thereto as an ABR Borrowing, (ii) if any Borrowing Request requests a new Term SOFR Borrowing in Dollars, such Borrowing shall be made as an ABR Borrowing, (iii) any existing Term SOFR Borrowing denominated in Dollars shall be deemed to have been converted into an ABR Borrowing at the end of the applicable Interest Period and upon any such conversion, the Borrower shall also pay any amounts required pursuant to Section 2.13; provided that if the

⁷ NTD: To be updated.

circumstances giving rise to such notice affect only one Type of Borrowings, then the other Type of Borrowings shall be permitted.

(c) Subject to Section 2.22, if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that Term SOFR cannot be determined pursuant to the definition thereof on any given day, the interest rate on ABR Loans shall be determined by the Administrative Agent without reference to clause (c) of the definition of “ABR” until the Administrative Agent (acting at the direction of the Required Lenders) revokes such determination.

SECTION 2.15 Increased Costs.

(1) If any Change in Law subjects any Recipient to any Taxes (other than (i) Indemnified Taxes and (ii) Excluded Taxes) on its loans, loan principal, letters of credit, commitments or other obligations, or deposits, reserves, other liabilities or capital attributable thereto, and the result of the foregoing is to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

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

(3) A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as applicable, as specified in paragraph (1) or (2) of this Section 2.15 will be delivered to the Borrower and will be conclusive absent manifest error. The Borrower will pay such Lender the amount shown as due on any such certificate within ten days after receipt thereof.

(4) Promptly after any Lender has determined that it will make a request for increased compensation pursuant to this Section 2.15, such Lender will notify the Borrower thereof. Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.15 will not constitute a waiver of such Lender’s right to demand such compensation; *provided* that the Borrower will not be required to compensate a Lender pursuant to this Section 2.15 for any increased costs or reductions incurred more than 180 days prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender’s intention to claim compensation therefor; *provided, further*, that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above will be extended to include the period of retroactive effect thereof.

SECTION 2.16 [Reserved].

SECTION 2.17 Taxes.

(1) Any and all payments by or on account of any obligation of any Loan Party under the Loan Documents will be made free and clear of and without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable withholding agent) requires the deduction or withholding of any Tax from any such payment

by a any applicable withholding agent, then the applicable withholding agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Taxes are Indemnified Taxes, then the sum payable hereunder will be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.17) the Administrative Agent, the Collateral Agent or any Lender, as applicable, receives an amount equal to the amount it would have received had no such deductions been made.

(2) In addition, the Loan Parties will timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent, timely reimburse it for the payment of, any Other Taxes.

(3) Each Loan Party will, jointly and severally, indemnify each Agent and each Lender, within ten days after written demand therefor, for the full amount of any Indemnified Taxes payable or paid by the such Agent or such Lender, on or with respect to any payment by or on account of any obligation of such Loan Party hereunder (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.17) and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to such Loan Party by a Lender (with a copy to the Administrative Agent), or by an Agent on its own behalf, will be conclusive absent manifest error.

(4) As soon as practicable after any payment of Taxes by a Loan Party to a Governmental Authority pursuant to this Section 2.17, such Loan Party will deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(5)

(a) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document will deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, will deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 2.17(5)(b), 2.17(5)(c) and 2.17(6) below) will not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(b) Without limiting the effect of Section 2.17(5)(a) above, each Foreign Lender will deliver to the Borrower and the Administrative Agent on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), two copies of whichever of the following is applicable:

(i) duly completed copies of Internal Revenue Service Form W-8BEN or Form W-8BEN-E (or any subsequent versions thereof or successors thereto), claiming eligibility for benefits of an income tax treaty to which the United States is a party;

(ii) duly completed copies of Internal Revenue Service Form W-8ECI (or any subsequent versions thereof or successors thereto);

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) or 881(c) of the Code, (A) a certificate substantially in the form of the applicable Exhibit D to the effect that such Foreign Lender is not (1) a “bank” within the meaning of Section 881(c)(3)(A) of the Code; (2) a “10 percent shareholder” of the Borrower within the meaning of Section 871(h)(3) or Section 881(c)(3)(B) of the Code; or (3) a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code and (B) duly completed copies of Internal Revenue Service Form W-8BEN or Form W-8BEN-E (or any subsequent versions thereof or successors thereto);

(iv) duly completed copies of Internal Revenue Service Form W-8IMY, together with forms and certificates described in clauses (i) through (iii) above (and additional Internal Revenue Service Form W-8IMYs) or Internal Revenue Service Form W-9 as may be required; or

(v) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made.

In addition, in each of the foregoing circumstances, each Foreign Lender will deliver such forms, if legally entitled to deliver such forms, promptly upon the obsolescence, expiration or invalidity of any form previously delivered by such Foreign Lender. Each Foreign Lender will promptly notify the Borrower at any time it determines that it is no longer in a position to provide any previously delivered certificate to the Borrower (or any other form of certification adopted by the United States of America or other taxing authorities for such purpose). Notwithstanding any other provision of this paragraph, a Lender will not be required to deliver any form pursuant to this Section 2.17 that such Lender is not legally able to deliver;

(c) In addition, each Lender that is not a Foreign Lender will deliver to the Borrower and the Administrative Agent two copies of Internal Revenue Service Form W-9 (or any subsequent versions thereof or successors thereto) on or before the date such Lender becomes a party and upon the expiration of any form previously delivered by such Lender.

(d) On or before the date the Administrative Agent (or any successor to the Administrative Agent) becomes a party to this Agreement, the Administrative Agent (or such successor agent) shall, deliver to the Borrower whichever of the following is applicable: (i) if such agent is a U.S. person, two executed copies of IRS Form W-9 certifying that such agent is exempt from U.S. federal backup withholding or (ii) if such agent is not a U.S. person, (A) with respect to payments received for its own account, two executed copies of IRS Form W-8ECI and (B) with respect to payments received on account of any Lender, two executed copies of IRS Form W-8IMY (together with all required accompanying documentation) certifying that such agent is a U.S. branch

and may be treated as a U.S. person for purposes of applicable U.S. federal withholding Tax. At any time thereafter, such agent shall provide updated documentation previously provided (or a successor form thereto) when any documentation previously delivered has expired or become obsolete or invalid or otherwise upon the reasonable request of the Borrower.

(6) If a payment made to a Recipient under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Recipient were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Recipient will deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Recipient has complied with such Recipient's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 2.17(6), "FATCA" will include any amendments made to FATCA after the date of this Agreement.

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

(7) If any party determines, in its sole discretion, exercised in good faith, that it has received a refund of any Indemnified Taxes as to which it has been indemnified (including by the payment of additional amounts pursuant to this Section 2.17), it will pay over reasonably promptly to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such indemnifying party under this Section 2.17 with respect to the Indemnified Taxes giving rise to such refund), net of all out-of-pocket expenses (including any Taxes imposed with respect to such refund) as is determined by the indemnified party in good faith, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay as soon as reasonably practicable to such indemnified party the amount paid over pursuant to this Section 2.17(7) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 2.17(7), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 2.17(7) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 2.17(7) will not be construed to require any Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes which it deems, in good faith, to be confidential) to the Loan Parties or any other Person.

(8) Each Lender shall severally indemnify the Agents, within ten days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Loan Parties have not already indemnified such Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.04(4)(a) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Agents in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant

Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the applicable Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by an Agent to the Lender from any other source against any amount due to the Agents under this Section 2.17(8).

(9) Each party's obligations under this Section 2.17 will survive the resignation or replacement of the Administrative Agent and/or Collateral Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and this repayment, satisfaction or discharge of all obligations under any Loan Document.

(10) For purposes of this Section 2.17, the term "applicable law" includes FATCA.

SECTION 2.18 Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

(1) Unless otherwise specified, the Borrower will make each payment required to be made by it hereunder (whether of principal, interest, fees or otherwise) prior to 2:00 p.m., New York City time, at the applicable Payment Office of the Administrative Agent (except that payments pursuant to Sections 2.15, 2.17 and 10.05 will be made directly to the Persons entitled thereto) on the date when due, in immediately available funds, without condition or deduction for any defense, recoupment, set-off or counterclaim. Without limiting the generality of the foregoing, any Agent may require that any payments due under this Agreement be made in the United States. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. The Administrative Agent will distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof and will make settlements with the applicable Lenders with respect to other payments at the times and in the manner provided in this Agreement. Except as otherwise provided herein, if any payment hereunder is due on a day that is not a Business Day, the date for payment will be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon will be payable for the period of such extension. Any payment required to be made by the Administrative Agent hereunder will be deemed to have been made by the time required if the Administrative Agent, at or before such time, has taken the necessary steps to make such payment in accordance with the regulations or operating procedures of the clearing or settlement system used by the Administrative Agent to make such payment.

(2) The holders of First Out Term Loans and First Out DIP Commitments, in each case, solely in their capacity as Lenders holding such Loans and/or Commitments, shall (i) seek to recover from all proceeds of Collateral other than the Equity Interests held by Saks Fifth Avenue Holdco II LLC and any other currently unencumbered assets or property of the Debtors before applying the proceeds of Equity Interests held by Saks Fifth Avenue Holdco II LLC to satisfy the Obligations in respect of the First Out DIP Commitments and First Out Term Loans and (ii) shall not seek to recover, whether upon any foreclosure, other disposition or otherwise, from the proceeds of Equity Interests held by Saks Fifth Avenue Holdco II LLC prior to using commercially reasonable efforts to exhaust all remedies against all other Collateral of the Loan Parties and other Collateral (as defined in the DIP Onloan Credit Agreement) of the Debtors which are not Loan Parties first, and shall not seek to recover from (whether upon any foreclosure, other disposition or otherwise), from all proceeds of Collateral other than the Equity Interests held by Saks Fifth Avenue Holdco II LLC and any other currently unencumbered assets or property of the Debtors before applying the proceeds of Equity Interests held by Saks Fifth Avenue Holdco II LLC to satisfy the Obligations in respect of the First Out DIP Commitments and First Out Term Loans.

(3) Except as otherwise provided in this Agreement, if (a) at any time insufficient funds are received by and available to the Administrative Agent from the Borrower to pay fully all amounts of principal, interest and fees and other Obligations then due from the Borrower hereunder or (b) an Event of Default shall have occurred and be continuing and the Administrative Agent or the Collateral Agent receives proceeds or payments of any kind (including proceeds of Collateral) hereunder or under any other Loan Document, such funds, subject to the proviso at the end of this Section 2.18(3), will be applied:

(i) *first*, toward payment of any expenses, fees and indemnities due to the Administrative Agent and Collateral Agent hereunder;

(ii) *second*, toward payment of any expenses, fees and indemnities due to the Lenders (including the Fronting Lender) hereunder, ratably among the parties entitled thereto in accordance with the amounts of expenses, fees and indemnities then due to such parties;

(iii) *third*, toward payment of interest and fees then due from the Borrower hereunder with respect to the First Out Term Loans, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties;

(iv) *fourth*, toward payment of principal then due from the Borrower hereunder with respect to the First Out Term Loans ratably among such amounts and as among the parties entitled thereto in accordance with the amounts of such principal then due to such parties;

(v) *fifth*, toward the payment of all other First Out Obligations of the Borrower then due and payable, ratably among the parties entitled thereto in accordance with the amounts of such First Out Obligations then due to such parties;

(vi) *sixth*, toward payment of interest and fees then due from the Borrower hereunder with respect to the Second Out Term Loans, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties;

(vii) *seventh*, toward payment of principal then due from the Borrower hereunder with respect to the Second Out Term Loans ratably among such amounts and as among the parties entitled thereto in accordance with the amounts of such principal then due to such parties;

(viii) *eighth*, toward the payment of all other Second Out Obligations of the Borrower then due and payable, ratably among the parties entitled thereto in accordance with the amounts of such Second Out Obligations then due to such parties;

(ix) *ninth*, toward payment of interest and fees then due from the Borrower hereunder with respect to the Third Out Term Loans, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties;

(x) *tenth*, toward payment of principal then due from the Borrower hereunder with respect to the Third Out Term Loans ratably among such amounts and as among the parties entitled thereto in accordance with the amounts of such principal then due to such parties;

(xi) *eleventh*, toward the payment of all other Third Out Obligations of the Borrower then due and payable, ratably among the parties entitled thereto in accordance with the amounts of such Third Out Obligations then due to such parties;

(xii) *twelfth*, to payment of all other Obligations of the Borrower then due and payable, ratably among the parties entitled thereto in accordance with the amounts of such Obligations then due to such parties.

(4) Subject to express priorities set forth in Section 2.18(3) above, if any Lender, by exercising any right of set-off or counterclaim or otherwise, obtains payment in respect of any principal of or interest on any of its Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion will purchase (for cash at face value) participations in the Loans of other Lenders to the extent necessary so that the benefit of all such payments will be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans; *provided* that (a) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations will be rescinded and the purchase price restored to the extent of such recovery, without interest, and (b) the provisions of this paragraph (4) will not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to the Borrower or any other Subsidiary or Affiliate thereof (as to which the provisions of this paragraph (4) apply). The Borrower consents to the foregoing and agree, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(5)

(a) Notwithstanding anything contained herein or in any other Loan Document to the contrary, after an Event of Default has occurred and until such Event of Default is cured or waived, so long as the First Out Termination Date has not occurred (after the occurrence of which this Section 2.18(5) shall no longer be operative), (x) any Collateral, (y) any proceeds thereof or (z) any distributions received on account of the Obligations from the Loan Parties (whether or not on account of the Collateral) (i) in connection with the sale or other disposition of, or collection on, any of the foregoing (x) through (z) or (ii) in any insolvency or liquidation proceeding of any Loan Party (including any adequate protection payments) or otherwise, in each case (x) through (z), received by any holder of a Second Out Term Loan or Third Out Term Loan or, in each case, solely in their capacity as such shall be segregated from the other funds and property of such Lender and received and held in trust by such Lender, as trustee, and shall be forthwith paid over, in the same form as received, with any necessary endorsements (but without any express or implied representation or warranty), and applied in accordance with Section 2.18(3) hereof; the foregoing turnover provision shall apply to all cash and any other assets removed from any premises of any Loan by or on behalf of any holder of a Second Out Term Loan or Third Out Term Loan, in each case, solely in their capacity as such, in any manner, in each case, in connection with any enforcement action. After the First Out Termination Date, the turnover provision in this Section 2.18(6)(a) shall no longer apply.

(b) Notwithstanding anything contained herein or in any other Loan Document to the contrary, after an Event of Default has occurred and until such Event of Default is cured or waived, so long as the Second Out Termination Date has not occurred (after the

occurrence of which this Section 2.18(5) shall no longer be operative), (x) any Collateral, (y) any proceeds thereof or (z) any distributions received on account of the Obligations from the Loan Parties (whether or not on account of the Collateral) (i) in connection with the sale or other disposition of, or collection on, any of the foregoing (x) through (z) or (ii) in any insolvency or liquidation proceeding of any Loan Party (including any adequate protection payments) or otherwise, in each case (x) through (z), received by any holder of a Third Out Term Loan solely in their capacity as such shall be segregated from the other funds and property of such Lender and received and held in trust by such Lender, as trustee, and shall be forthwith paid over, in the same form as received, with any necessary endorsements (but without any express or implied representation or warranty), and applied in accordance with Section 2.18(3) hereof; the foregoing turnover provision shall apply to all cash and any other assets removed from any premises of any Loan by or on behalf of any holder of a Third Out Term Loan solely in their capacity as such, in any manner, in each case, in connection with any enforcement action. After the Second Out Termination Date, the turnover provision in this Section 2.18(6)(b) shall no longer apply.

(6) Unless the Administrative Agent has received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may (but shall not be required to), in reliance upon such assumption, distribute to the Lenders the amount due.

(7) If any Lender fails to make any payment required to be made by it pursuant to Section 2.04(3), 2.05(4) or (5), 2.06(2) or 2.18(6), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

SECTION 2.19 Mitigation Obligations; Replacement of Lenders.

(1) If any Lender requests compensation under Section 2.15, 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 2.17, then such Lender will (at the request of the Borrower) use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or assign its rights and obligations hereunder to another of its offices, branches or Affiliates if, in the reasonable judgment of such Lender, such designation or assignment (a) would eliminate or reduce amounts payable pursuant to Section 2.15 or 2.17, as applicable, in the future and (b) would not subject such Lender to any material unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material respect. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(2) If any Lender requests compensation under Section 2.15 or is a Defaulting Lender, 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 2.17, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 10.04), all its interests, rights and obligations under this Agreement to an assignee that assumes such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided* that (a) the Borrower shall have received the prior written consent of the Administrative Agent (acting at the direction of the Required Lenders), which direction shall not unreasonably be withheld, (b) such Lender has received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued

interest and fees) or the Borrower (in the case of all other amounts) and (c) in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17, such assignment will result in a reduction in such compensation or payments. Nothing in this Section 2.19 will be deemed to prejudice any rights that the Borrower may have against any Lender that is a Defaulting Lender.

(3) If any Lender other than the Fronting Lender (each such Lender, a “***Non-Consenting Lender***”) has failed to consent to a proposed amendment, waiver, discharge or termination which, pursuant to the terms of Section 10.08, requires the consent of such Lender with respect to which the Required Lenders have granted their consent, then the Borrower will have the right (unless such Non-Consenting Lender grants such consent) at their sole expense, to replace such Non-Consenting Lender by deeming such Non-Consenting Lender to have assigned its Loans and its Commitments, as applicable, hereunder to one or more assignees reasonably acceptable to the Administrative Agent to the extent the consent of the Administrative Agent (acting at the direction of the Required Lenders) would be required under Section 10.04; *provided* that (a) all Obligations of the Borrower owing to such Non-Consenting Lender (including accrued Fees and any amounts due under Section 2.15 or 2.17, all of which shall be paid by the Borrower) being removed or replaced will be paid in full to such Non-Consenting Lender concurrently with such assignment and (b) the replacement Lender will purchase the foregoing (other than such amounts paid by the Borrower) by paying to such Non-Consenting Lender a price equal to the principal amount thereof *plus* accrued and unpaid interest thereon. No action by or consent of the Non-Consenting Lender will be necessary in connection with such removal or assignment, which will be immediately and automatically effective upon payment of such purchase price. In connection with any such assignment, the Borrower or the Administrative Agent, as applicable, such Non-Consenting Lender and the replacement Lender will otherwise comply with Section 10.04; *provided* that if such Non-Consenting Lender does not comply with Section 10.04 within three Business Days after the Borrower’s request therefor, compliance with Section 10.04 will not be required to effect such assignment.

SECTION 2.20 Illegality. If any Lender reasonably determines that any Change in Law has made it unlawful, or that any Governmental Authority has asserted after the Closing Date that it is unlawful, for any Lender or its applicable Lending Office to make or maintain any Term SOFR Loans, then, on notice thereof by such Lender to the Borrower through the Administrative Agent (an “Illegality Notice”), (i) any obligations of such Lender to make Term SOFR Loans and any right of the Borrower to continue Term SOFR Loans or to convert ABR Borrowings to Term SOFR Borrowings in the applicable currency shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist and (ii) the interest rate on which ABR Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Term SOFR component of the ABR, in each case until each affected Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of an Illegality Notice, (x) the Borrower shall upon demand from any Lender (with a copy to the Administrative Agent), prepay all Term SOFR Borrowings of such Lender in the applicable currency or, if applicable and such Loans are denominated in Dollars, convert all Term SOFR Borrowings of such Lender to ABR Borrowings (the interest rate on which ABR Loans shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to clause (c) of the definition of “ABR”), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Term SOFR Borrowings to such day, or immediately, if such Lender may not lawfully continue to maintain such Loans and (y) in the case of Term SOFR Loans denominated in Dollars, if such notice asserts the illegality of such Lender determining or charging interest rates based upon Term SOFR, the Administrative Agent shall during the period of such suspension compute the ABR applicable to such Lender without reference to the Term SOFR component thereof until the Administrative Agent is advised in writing by each affected Lender that it is no longer illegal for such Lender to determine or charge interest

rates based upon Term SOFR. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so converted.

SECTION 2.21 Defaulting Lenders.

(1) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(a) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement is restricted as set forth in Section 10.08.

(b) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise), will be applied at such time or times as follows:

(i) *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder;

(ii) *second*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Borrower;

(iii) *third*, if so determined by the Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of such Defaulting Lender to fund Loans under this Agreement;

(iv) *fourth*, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement;

(v) *fifth*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and

(vi) *sixth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction;

provided that if such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, such payment will be applied solely to pay the Loans of all non-Defaulting Lenders on a *pro rata* basis prior to being applied to the payment of any Loans of such Defaulting Lender. Any payments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post cash collateral pursuant to this Section 2.22(1)(b) will be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(c) [Reserved].

(d) [Reserved].

(e) [Reserved].

(2) Defaulting Lender Cure. If the Borrower agrees in writing in its reasonable discretion, acting in good faith, that a Defaulting Lender should no longer be deemed to be a Defaulting Lender and notifies the Administrative Agent in writing, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any cash collateral), such Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders or take such other actions as the Borrower may determine in its reasonable discretion, acting in good faith, to be necessary to cause the Loans to be held on a *pro rata* basis by the Lenders in accordance with their Applicable Percentage (without giving effect to Section 2.21(1)(d)), whereupon such Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while such Lender was a Defaulting Lender; and *provided, further*, that, except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from such Lender's having been a Defaulting Lender.

SECTION 2.22 Benchmark Replacement Setting.

(a) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (a) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (b) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders, after consultation with the Borrower during such period, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis.

(b) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent (acting at the direction of the Required Lenders) will have the right to make Conforming Changes from time to time. Notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(c) Notices; Standards for Decisions and Determinations. The Administrative Agent (acting at the direction of the Required Lenders) will promptly notify the Borrower and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Conforming Changes

in connection with the use, administration, adoption or implementation of a Benchmark Replacement, (iii) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.22(d) and (iv) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent (acting at the direction of the Required Lenders) or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.22, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error. Notwithstanding the foregoing, any such determinations, decisions or elections may be made in the Administrative Agent's or such Lender's sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.22.

(d) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by Required Lender in their reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Administrative Agent (acting at the direction of the Required Lenders, in consultation with the Borrower) may, modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent (acting at the direction of the Required Lenders, in consultation with the Borrower) may, modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(e) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any pending request for a SOFR Borrowing of, conversion to or continuation of Term SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to ABR Loans. During a Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of ABR based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of ABR.

ARTICLE III

Representations and Warranties

The Borrower, with respect to itself and each of its Subsidiaries represents and warrants to each Agent and to each of the Lenders on the dates required by Section 4.01(2) or Section 4.02(16), as applicable, that:

SECTION 3.01 Organization; Powers. Subject to the entry of the DIP Orders and the terms thereof, the Borrower and each of its Subsidiaries:

(1) is a partnership, limited liability company, corporation, or trust duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization (to the extent such status or an analogous concept applies to such an organization);

(2) subject to any restrictions arising on account of such Person's status as a "debtor" under the Bankruptcy Code, has all requisite power and authority to own its property and assets and to carry on its business as now conducted, except to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect with respect to any Loan Party (other than the Borrower);

(3) is qualified to do business in each jurisdiction where such qualification is required, except where the failure to so qualify would not reasonably be expected to have a Material Adverse Effect; and

(4) has the power and authority to execute, deliver and perform its obligations under each of the Loan Documents and each other agreement or instrument contemplated thereby to which it is a party and, in the case of the Borrower, to borrow and otherwise obtain credit hereunder.

SECTION 3.02 Authorization. Subject to the entry of the DIP Orders and the terms thereof, the execution, delivery and performance by each of the Loan Parties of each of the Loan Documents to which it is a party, the Borrowings hereunder and the Transactions:

(1) have been duly authorized by all corporate, stockholder, partnership, limited liability company or other applicable action required to be taken by the Loan Parties; and

(2) will not (except where such is excused by the Bankruptcy Code):

(a) violate:

(i) any provision of (1) law, statute, rule or regulation, or of (2) the certificate or articles of incorporation or other constitutive documents (including any partnership, limited liability company or operating agreement or by-laws) of any Loan Party;

(ii) any applicable order of any court or any rule, regulation or order of any Governmental Authority; or

(iii) any provision of any indenture, certificate of designation for preferred stock, agreement or other instrument to which any Loan Party is a party or by which any of them or any of their property is or may be bound;

(b) be in conflict with, result in a breach of, constitute (alone or with notice or lapse of time or both) a default under, or give rise to a right of or result in any cancellation or acceleration of any right or obligation (including any payment) or to a loss of a material benefit under, any such indenture, certificate of designation for preferred stock, agreement or other instrument; or

(c) result in the creation or imposition of any Lien upon any property or assets of any Loan Party, other than the Liens created by the Loan Documents, Permitted Liens (as defined in the DIP Onloan Credit Agreement), Liens permitted by the DIP Orders or any restrictions arising on account of such Loan Party's status as a "debtor" under the Bankruptcy Code;

except with respect to clauses (a) (other than subclause (a)(i)(2) thereof) and (b) of this Section 3.02(2) as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 3.03 Enforceability. Subject to the entry of the DIP Orders and the terms thereof, this Agreement has been duly executed and delivered by the Borrower and constitutes, and each other Loan Document when executed and delivered by each Loan Party that is party thereto will constitute, a legal, valid and binding obligation of such Loan Party enforceable against each such Loan Party in accordance with its terms, subject to:

- (1) the effects of bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or other similar laws affecting creditors' rights generally;
- (2) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law);
- (3) implied covenants of good faith and fair dealing; and
- (4) any foreign laws, rules and regulations as they relate to pledges of Equity Interests in Foreign Subsidiaries.

SECTION 3.04 Governmental Approvals. Subject to the entry of the DIP Orders and the terms thereof, no action, consent or approval of, registration or filing with or any other action by any Governmental Authority or third party is or will be required in connection with the Transactions, the perfection or maintenance of the Liens created under the Security Documents or the exercise by any Agent or any other Secured Party of its rights under the Loan Documents or the remedies in respect of the Collateral, except for:

- (1) the filing of Uniform Commercial Code financing statements and equivalent filings in foreign jurisdictions;
- (2) filings with the United States Patent and Trademark Office and the United States Copyright Office and comparable offices in foreign jurisdictions and equivalent filings in foreign jurisdictions;
- (3) filings of deeds of trusts or mortgages with the applicable filing offices;
- (4) filings which may be required under Environmental Laws;
- (5) filings as may be required under the Exchange Act and applicable stock exchange rules in connection therewith;
- (6) such as have been made or obtained and are in full force and effect;
- (7) such actions, consents and approvals the failure of which to be obtained or made would not reasonably be expected to have a Material Adverse Effect; or
- (8) filings or other actions listed on Schedule 3.04.

SECTION 3.05 [Reserved].

SECTION 3.06 Title to Properties; Possession Under Leases.

(1) The Borrower and its Subsidiaries have valid fee simple title to, or valid leasehold interests in, or easements or other limited property interests in, all of its Real Properties and valid title to its personal property and assets, in each case, except for Permitted Liens or defects in title that do not materially interfere with its ability to conduct its business as currently conducted or to utilize such properties and assets for their intended purposes, in each case, except where the failure to have such title interest, easement or right would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. All such properties and assets are free and clear of Liens, other than Permitted Liens.

(2) Each of the Borrower and its Subsidiaries' leases is in full force and effect, except leases in respect of which the failure to be in full force and effect would not reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 3.06(2), on the Closing Date the Borrower and each of its Subsidiaries enjoys peaceful and undisturbed possession under all such leases, other than leases in respect of which the failure to enjoy peaceful and undisturbed possession would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 3.07 Subsidiaries; Saks Flagship Entities.

(1) Schedule 3.07(1) sets forth as of the Closing Date the name and jurisdiction of incorporation, formation or organization of the Borrower and each Subsidiary thereof and, as to each such Subsidiary, the percentage of each class of Equity Interests owned by the Borrower or by any other Subsidiary of the Borrower.⁸

(2) [Reserved].

(3) (i) SFA Holdings is the direct owner, beneficially and of record of 100% of the Equity Interest issued by Saks Flagship Holdco, (ii) Saks Flagship Holdco is the direct owner, beneficially and of record of 100% of the Equity Interest issued by Saks Flagship Holdco II, (iii) Saks Flagship Holdco II is the direct owner, beneficially and of record of 100% of the Equity Interest issued by Saks Flagship Fee Owner and Saks Flagship GL Tenant, (iv) Saks Flagship Fee Owner has good, marketable and insurable fee simple title to the Saks Flagship Real Estate, free and clear of all Liens, other than Liens in existence on the Closing Date permitted under the Prepetition [FILO] Credit Agreement) and set forth on Schedule 3.07(3), (v) Saks Flagship GL Tenant has a valid leasehold interest in the Saks Flagship Real Estate pursuant to the lease described in clause (a) of the definition of Saks Flagship Lease, (vi) SFA has a valid leasehold interest in the Saks Flagship Real Estate pursuant to the lease described in clause (b) of the definition of Saks Flagship Lease, and (vii) each Saks Flagship Lease is in full force and effect.

SECTION 3.08 Litigation; Compliance with Laws.

(1) Other than in connection with the Chapter 11 Cases, as disclosed in writing to the Specified Ad Hoc Group Advisors or publicly disclosed in any first day pleadings or declarations, or any other pleadings or declarations of the Debtors, the Agents or the Lenders in connection with any proposed Approved Court Order, that, in each case, are filed in the Chapter 11 Cases, there are no actions, suits or proceedings at law or in equity or by or on behalf of any Governmental Authority or in arbitration now pending, or, to the knowledge of the Borrower, threatened in writing against or affecting the Borrower or any of its Subsidiaries or any business, property or rights of any such Person (but excluding any actions, suits or proceedings arising under or relating to any Environmental Laws, which are subject to

⁸ Note to Willkie: Expected to be none.

Section 3.14), in each case, which would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(2) To the knowledge of the Borrower, none of Borrower or its Subsidiaries or their respective properties or assets is in violation of (nor will the continued operation of their material properties and assets as currently conducted violate) any law, rule or regulation (including any zoning, building, ordinance, code or approval, or any building permit, but excluding any Environmental Laws, which are subject to Section 3.14) or any restriction of record or agreement affecting any property, or is in default with respect to any judgment, writ, injunction or decree of any Governmental Authority, where such violation or default would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 3.09 Federal Reserve Regulations.

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

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

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

SECTION 3.11 Use of Proceeds. Subject to the DIP Orders and the terms thereof, the proceeds of the Term Loans will be used in accordance with the Approved Budget (subject to Permitted Variances) or (a) to make payments pursuant to the DIP Orders, including to fund the Carve-Out in accordance with the terms thereof, and (b) if applicable, to fund distributions pursuant to an Acceptable Plan.

SECTION 3.12 Taxes. Except as set forth on Schedule 3.12:

(1) Subject to Bankruptcy Law or except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each of the Borrower and its Subsidiaries has filed or caused to be filed all federal, state, local and non-U.S. Tax returns required to have been filed by it;

(2) Each of the Borrower and its Subsidiaries has timely paid or caused to be timely paid (a) all Taxes shown to be due and payable by it on the returns referred to in clause (1) of this Section 3.12 and (b) all other Taxes or assessments (or made adequate provision (in accordance with GAAP) for the payment of all Taxes due) with respect to all periods or portions thereof ending on or before the Closing Date, which Taxes, if not paid or adequately provided for, would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, in each case except Taxes or assessments that are being contested in good faith by appropriate proceedings and for which the Borrower or any Subsidiary thereof (as the case may be) has set aside on its books adequate reserves in accordance with GAAP or the nonpayment of which is required under the Bankruptcy Code.

SECTION 3.13 No Material Misstatements.

(1) All written statements, written factual information and written factual data (other than projections, estimates and information of a general economic or industry specific nature) concerning the Borrower or any Subsidiary thereof that has been made available to the Administrative Agent or the Lenders, directly or indirectly, by or on behalf of the Borrower or any Subsidiary thereof in connection with the Transactions, when taken as a whole and after giving effect to all supplements and updates provided thereto, is correct in all material respects and does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made.

SECTION 3.14 Environmental Matters. Except as set forth on Schedule 3.14 or as to matters that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

(1) each of the Borrower and its Subsidiaries are in compliance with all Environmental Laws (including having obtained and complied with all permits, licenses and other approvals required under any Environmental Law for the operation of its business);

(2) none of the Borrower or any Subsidiary thereof has received notice of or is subject to any pending, or to the Borrower's knowledge, threatened action, suit or proceeding alleging a violation of, or liability under, any Environmental Law that remains outstanding or unresolved;

(3) to the Borrower's knowledge, no Hazardous Material is located at, on or under any property currently or formerly owned, operated or leased by the Borrower or any Subsidiary thereof and no Hazardous Material has been generated, owned, treated, stored, handled or controlled by a Borrower or any Subsidiary and transported to or released at any location which, in each case, described in this clause (3), would reasonably be expected to result in liability to the Borrower or any Subsidiary thereof; and

(4) there are no agreements in which the Borrower or any Subsidiary thereof has expressly assumed or undertaken responsibility for any known or reasonably anticipated liability or obligation of any other Person arising under or relating to Environmental Laws or Hazardous Materials.

SECTION 3.15 Security Documents. Upon entry of the Interim DIP Order (and, if entered, the Final DIP Order), the Liens granted thereunder by the Borrower and each other Loan Party that is a Debtor to or for the benefit of the Collateral Agent on any Collateral shall be valid and automatically perfected with the priority set forth herein and in the DIP Orders, and no filing or other action will be necessary to perfect or protect such Liens and security interests with respect to such Debtors' Obligations under the Loan Documents and the DIP Orders.

SECTION 3.16 Onloan Credit Agreement. Each of the representations and warranties made by the Onloan Borrower and its Subsidiaries in the Onloan Credit Agreement (as in effect on the Closing Date) are true and correct in all respects.

SECTION 3.17 [Reserved].

SECTION 3.18 No Material Adverse Effect. Since the Closing Date, there has been no event that has had, or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

SECTION 3.19 Insurance. Schedule 3.19 sets forth a true, complete and correct description of all material insurance maintained by or on behalf of the Borrower or any Subsidiary of the Borrower as of the Closing Date. As of such date, such insurance is in full force and effect.

SECTION 3.20 Anti-Money Laundering; Anti-Corruption; Sanctions.

(1) To the extent applicable, each of the Borrower and its Subsidiaries is in compliance and maintains in effect policies and procedures designed to ensure compliance, in all material respects, with the USA PATRIOT Act, and any other similar applicable anti-money laundering laws, Sanctions and regulations.

(2) No part of the proceeds of the Loans will be used by the Borrower or any of its Subsidiaries, directly or (to the knowledge of the Borrower) indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended from time to time.

(3) None of the Borrower or any Subsidiary thereof, nor to the knowledge of the Borrower, any director, officer, employee or agent thereof, is any of the following:

(a) a Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224 on Terrorist Financing effective September 24, 2001 (the “**Executive Order**”) or any other blocking Sanctions;

(b) a Person owned fifty percent or more by any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order or any other blocking Sanctions;

(c) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any applicable laws with respect to terrorism or money laundering;

(d) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order; or

(e) a Person that is named on the most current List of Specially Designated Nationals and Blocked Persons as published by the U.S. Department of the Treasury’s Office of Foreign Assets Control (“**OFAC**”) at its official website or any replacement website or other replacement official publication of such list, HMT’s Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority and none of the proceeds of the Loans or Letters of Credit will be, directly or (to the knowledge of the Borrower) indirectly, offered, lent, contributed or otherwise made available to any Subsidiary, joint venture partner or other Person for the purpose of financing the activities of any Person currently the subject of sanctions administered by OFAC or another relevant sanctions authority.

SECTION 3.21 Intellectual Property; Licenses, Etc. Except as set forth on Schedule 3.21:

(1) except as would not reasonably be expected to have a Material Adverse Effect, the Borrower and each of its Subsidiaries owns, or possesses the right to use, all of the patents, patent rights, trademarks, service marks, trade names, copyrights or mask works, domain names, trade secrets and other intellectual property rights (collectively, “**Intellectual Property Rights**”) that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person;

(2) except as would not reasonably be expected to have a Material Adverse Effect, none of the Borrower or any Subsidiary thereof nor any Intellectual Property Rights, product, process, method, substance, part or other material now employed, sold or offered by the Borrower or any Subsidiary thereof is infringing upon, misappropriating or otherwise violating Intellectual Property Rights of any Person; and

(3) no material claim or litigation regarding any of the foregoing is pending or, to the knowledge of the Borrower, threatened.

SECTION 3.22 Employee Benefit Plans; Labor Matters.

(1) Subject to Bankruptcy Law, the terms of the applicable DIP Orders and any required approval by the Bankruptcy Court and except as would not reasonably be expected to have a Material Adverse Effect, with respect to ERISA Plans the Borrower and each of its ERISA Affiliates are in compliance with the applicable provisions of ERISA and the Code and the regulations and published interpretations thereunder. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events, would reasonably be expected to have a Material Adverse Effect. Except as would not reasonably be expected to have a Material Adverse Effect, the present value of all accumulated benefit obligations under all ERISA Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87, as updated, amended or superseded) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such ERISA Plans, in the aggregate.

(2) Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect (i) there are no strikes, lockouts, slowdowns or other material labor disputes against any Loan Party or any Restricted Subsidiary thereof pending or, to the knowledge of any Loan Party, threatened, (ii) the hours worked by and payments made to employees of the Loan Parties comply with the Fair Labor Standards Act and any other applicable federal, state, local or foreign Law dealing with such matters, (iii) no Loan Party or any of its Restricted Subsidiaries has incurred any liability or obligation under the Worker Adjustment and Retraining Act or similar state Law, (iv) all payments due from any Loan Party and its Restricted Subsidiaries, or for which any claim may be made against any Loan Party or any of its Restricted Subsidiaries, 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, (v) except as set forth on Schedule 3.22, as of the Closing Date, no Loan Party or any Restricted Subsidiary is a party to or bound by any collective bargaining agreement, any management, consulting or employment agreement providing for annual compensation of greater than \$5.0 million, including any bonus, restricted stock, stock option, or stock appreciation plan or agreement or any similar plan, agreement or arrangement (excluding any phantom share plan), (vi) there are no representation proceedings pending or, to any Loan Party's knowledge, threatened to be filed with the National Labor Relations Board, and no labor organization or group of employees of any Loan Party or any Restricted Subsidiary has made a pending demand for recognition, (vii) 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 Restricted Subsidiary pending or, to the knowledge of any Loan Party, 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 Restricted Subsidiaries, or (viii) 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 Restricted Subsidiaries is bound.

SECTION 3.23 Saks Flagship Material Documents.

(1) The representations and warranties of Saks Flagship Fee Owner contained in Article IV of the Incorporated Agreement continue to be true and correct in all material respects except in the case of any representation and warranty qualified by materiality, which shall be true and correct in all respects (as of each date the representations and warranties set forth herein are made or deemed made, except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties will be true and correct in all material respects (except in the case of any representation and warranty qualified by materiality, which shall be true and correct in all respects) as of such earlier date) and except to the extent such representations and warranties are not true and correct as a result of the Chapter 11 Cases or the DIP Facility).

(2) [Reserved.]

(3) Except for the Saks Flagship Material Agreements and the other agreements (if any) copies of which have been delivered to the Administrative Agent, there are no other agreements which are material to the Saks Flagship Entities, the transactions contemplated by the Saks Flagship CMBS Documents or the Ground Lessee Pledge Documentation, or any other material contractual arrangements relating to the Saks Flagship Real Estate. The Loan Parties have provided the Administrative Agent with a true, correct and complete copy of each of the Saks Flagship Material Agreements as of the Closing Date (including any amendments, or modifications thereto and any supplemental agreements material thereto). Each of the Saks Flagship Material Agreements is valid and binding upon the parties thereto.

SECTION 3.24 Chapter 11 Cases.

(1) The Chapter 11 Cases were commenced on the Petition Date, duly authorized in accordance with applicable Requirements of Law, and proper notice thereof has been or will be given, as will proper notice of (i) the DIP Motion (as defined below), (ii) the entry of Interim DIP Order and the Final DIP Order and (iii) the hearings for the entry of the Interim DIP Order and the Final DIP Order. The Debtors shall give, on a timely basis as specified in the Interim DIP Order or the Final DIP Order, as applicable, all notices required to be given to all parties specified in the Interim DIP Order or Final DIP Order, as applicable.

(2) The Debtors are in compliance in all material respects with the terms and conditions of the DIP Orders. Each of the Interim DIP Order (with respect to the period prior to the entry of the Final DIP Order) and the Final DIP Order (from and after the Final DIP Order Entry Date) is in full force and effect and has not been vacated or reversed, is not subject to a stay and has not been modified or amended other than with the consent of the Required Lenders (acting in their sole discretion).

(3) From and after the entry of the Interim DIP Order, pursuant to and to the extent permitted in the Interim DIP Order, (A) the Obligations (i) will constitute allowed joint and several DIP Superpriority Claims and (ii) will be secured by a valid, binding, continuing, enforceable, fully perfected Lien on all of the Collateral pursuant to Sections 364(c)(2), (c)(3) and (d) of the Bankruptcy Code, as applicable, subject only to the Carve Out and (B) the Obligations (as defined in the DIP Onloan Credit Agreement) (i) will constitute allowed joint and several Onloan DIP Superpriority Claims and (ii) will be secured by a valid, binding, continuing, enforceable, fully perfected Lien on all of the Collateral pursuant to Sections 364(c)(2), (c)(3) and (d) of the Bankruptcy Code, as applicable, subject only to the Carve Out.

(4) The entry of the Interim DIP Order (and, when applicable, the Final DIP Order) is effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, the DIP Superpriority Claims, the Onloan DIP Superpriority Claims and Liens without the necessity of the execution (or recordation or filing) of mortgages, security agreements, pledge agreements, financing statements or other agreements or documents.

(5) Each Budget Variance Report delivered pursuant to Section 5.04(9) is true, complete and correct in all material respects for the period covered thereby as of the date such Budget Variance Report is delivered.

(6) Notwithstanding the provisions of section 362 of the Bankruptcy Code, and subject to the applicable provisions of the Interim DIP Order or the Final DIP Order, as the case may be, including, but not limited to, any applicable notice periods therein, upon the Maturity Date, the Administrative Agent and the Lenders shall be entitled to immediately be Paid in Full and to enforce the remedies provided for hereunder or under applicable Requirements of Law, without further notice, motion or application to, hearing before, or order from, the Bankruptcy Court.

ARTICLE IV

Conditions of Lending [NTD: Relevant portions to be conformed to Onloan DIP CA]

SECTION 4.01 [Reserved]

SECTION 4.02 Conditions to Closing Date and DIP Interim Funding Loans.⁹ The effectiveness of this Agreement and the other Loan Documents on the Closing Date and the obligations of the Fronting Lender to fund the DIP Interim Funding Loans upon the entry of the Interim DIP Order shall be subject solely to the satisfaction or waiver by the Required Lenders of the following conditions precedent:

(1) Loan Documents. On the Closing Date, (a) the Borrower and each Lender shall have executed and delivered to the Administrative Agent a counterpart of this Agreement, (b) each Loan Party shall have executed and delivered to the Administrative Agent a counterpart of each Loan Document to which it is a party.

(2) DIP Onloan Term Loan Facility. On or prior to the Closing Date, the “Closing Date” (as defined in the DIP Onloan Term Loan Facility) shall have occurred and the DIP Onloan Credit Agreement shall have been executed on terms and in substance satisfactory to the Required Lenders.

(3) Fees. All fees, invoices, costs and expenses (including, without limitation, legal fees and expenses) required to be paid by the Borrower to the Specified Ad Hoc Group Advisors, the Backstop Parties and the Agents on the Closing Date have been paid, or substantially simultaneously with the initial funding of the amounts borrowed under this Agreement shall be paid, in each case to the extent due (which amount may be offset against the proceeds from the Loans made on the Closing Date under this Agreement).

(4) The Administrative Agent shall have received, in the case of a Borrowing, a Borrowing Request as required by Section 2.03.

(5) Corporate Documents, etc. The Agents and the Lenders shall have received a certificate of a Responsible Officer of the Borrower dated the Closing Date and certifying:

(a) that attached thereto is a true and complete copy of the charter or other similar organizational document (each, a “Governing Document”) of each Loan Party, and each amendment thereto, certified as being a true and correct copy thereof by the Secretary of State or

⁹ NTD: To be updated. PJT EL must be acceptable prior to signing. Axonic CP TBD.

other applicable Governmental Authority of the jurisdiction in which such Loan Party, as applicable, is organized, or that such Governing Document has not been amended, repealed, modified or restated since the same was delivered in connection with the Prepetition OpCo Notes Indenture;

(b) that attached thereto is a true and complete copy of a good standing certificate (or equivalent evidence) of the Secretary of State or other applicable Governmental Authority of the jurisdiction in which each Loan Party, as applicable, is organized;

(c) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors of each Loan Party, as applicable, authorizing the execution, delivery and performance of the Loan Documents to which it is a party or any other document delivered in connection wherewith on the Closing Date and certifying that such resolutions have not been modified, rescinded or amended and are in full force and effect;

(d) as to the incumbency and specimen signature of each Responsible Officer executing this Agreement (together with a certificate of another officer as to the incumbency and specimen signature of the Responsible Officer executing the certificate pursuant to this Section 4.02(6));

(e) The applicable Debtors shall have amended the organizational documents for 12 East 49th Street LLC in a form and substance reasonably satisfactory to the Required Lenders and obtained all necessary consents or approvals to give effect to such amendment;

(6) The Petition Date shall have occurred, and the Borrower and each other Loan Party as of the Closing Date shall be a Debtor and a debtor-in-possession in the Chapter 11 Cases;

(7) The Chapter 11 Cases shall not have been dismissed or converted to cases under chapter 7 of the Bankruptcy Code;

(8) No trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code or examiner with expanded powers shall have been appointed in any of the Chapter 11 Cases;

(9) Security Documents. The Loan Parties shall have used reasonable best efforts to take the relevant perfection steps required to be taken by the Collateral Documents on or prior to the Closing Date; provided that, upon entry of the Interim DIP Order (and, if entered, the Final DIP Order), the Collateral Agent shall have valid and automatically perfected security interests as set forth in this Agreement, the Security Documents and in the DIP Orders, and no filing or other action will be necessary to perfect or protect such security interests with respect to the Debtors' obligations under the Loan Documents and such DIP Order;

(10) [Reserved]

(11) Interim DIP Order. The Interim DIP Order shall have been entered by the Bankruptcy Court and shall be in full force and effect, including the purchase of participation interests in the DIP Onloan Borrower's 11.000% Senior Secured Second Out Notes due 2029 contemplated thereby, and shall not have been vacated or reversed, shall not be subject to any stay, and shall not have been modified or amended in any respect without the consent of the Required Lenders and (solely with respect to its own rights, obligations, liabilities, duties and treatment) the Administrative Agent, and the Debtors shall be in compliance with the Interim DIP Order;

(12) First Day Orders The Lenders and the Administrative Agent shall have received advanced drafts of the “first day orders” to be entered by the Bankruptcy Court (the “**First Day Orders**”) in respect of the first day motions and applications in respect of the Chapter 11 Cases (the “**First Day Motions**”) (including, without limitation, any order approving significant or outside the ordinary course of business transactions entered on (or prior to) the Closing Date and the Cash Management Order) and a list of critical vendors, consignors, and concession parties (which for the avoidance of doubt may only be paid in accordance with the Approved Budget), and the forms of the First Day Motions filed in the Chapter 11 Cases shall be, in each case, in form and substance reasonably satisfactory to the Required Lenders and (solely with respect to its own treatment) the Agents, and (ii) except as would not adversely affect the Lenders, the Agents, or the Prepetition Secured Parties, all First Day Orders intended to be entered by the Bankruptcy Court at or immediately after the Debtors’ “first day” hearing shall have been entered by the Bankruptcy Court, shall be reasonably acceptable to the Required Lenders and (solely with respect to its own treatment) the Agents, and shall be in full force and effect; *provided* that notwithstanding anything to the contrary in the First Day Motions or First Day Orders, the Borrower acknowledges and agrees that to the extent of any conflict between the provisions of the First Day Motions or First Day Orders, on the one hand, and the DIP Orders and this Agreement, on the other hand, the terms and conditions of the DIP Orders and this Agreement shall apply, as applicable;

(13) No Default or Event of Default. As of the Closing Date, immediately after giving effect to the entrance into of the Loan Documents and the incurrence of the Term Loans on the Closing Date, no Default or Event of Default shall have occurred and be continuing;

(14) Representations and Warranties. The representations and warranties contained in this Agreement and the other Loan Documents shall be true and correct in all material respects as of the Closing Date (*provided* that the foregoing materiality qualifiers shall not be applicable to any representations qualified or modified by materiality);

(15) Officer’s Certificate. On the Closing Date, the Borrower shall have delivered to the Administrative Agent and the Lenders a certificate of a Responsible Officer of the Borrower certifying as to the satisfaction of the conditions in Sections 4.02(13) and (14);

(16) DIP ABL Credit Agreement. The Debtors shall have received commitments for the DIP ABL Facility on terms and conditions reasonably acceptable to the Required Lenders, and the incurrence of the DIP ABL Obligations and entry into the DIP ABL Facility and all related agreements by the relevant Debtors shall be approved by an order of the Bankruptcy Court, the relevant Debtors shall have entered into the DIP ABL Credit Agreement and the same shall remain in full force and effect and no Default or Event of Default (each as defined therein) shall exist thereunder;

(17) Other Management Matters.

(a) [Reserved].

(b) The Loan Parties shall have adopted resolutions setting forth an exclusive scope of authority for a special committee of the Board of Directors of the DIP Onloan Borrower and its Subsidiaries and the Chief Restructuring Officer, which shall be substantially consistent in form and substance with the terms delivered to the Specified Ad Hoc Group Legal Advisor on January [8], 2026 and otherwise approved by the Required Lenders.

(18) Prepetition Notes Participation Agreement. The Borrower shall have entered into the Prepetition Notes Participation Agreement, which agreement shall be on terms and conditions acceptable to the Required Lenders; and

(19) Accounts. The DIP Proceeds Account shall have been established in a form acceptable to the Lenders;

There are no conditions, implied or otherwise, to the making of DIP Interim Funding Loans on the Closing Date other than as set forth in the preceding clauses (1) through (19) of Section 4.02, and upon satisfaction or waiver of such conditions Loans will be made by the Lenders. Without limiting the generality of the provisions of Section 9.03, for purposes of determining whether the conditions specified in this Section 4.02 have occurred, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to such Lender, in the case of any such Lender, unless such Lender has notified the Administrative Agent of any disagreement in writing prior to the proposed Closing Date specifying its objection thereto.

SECTION 4.03 Conditions to Borrowing of the DIP Final Funding Loans. The obligations of the Fronting Lender to fund the DIP Final Funding Loans upon entry of the Final DIP Order shall not become effective until the date on which each of the following conditions shall be satisfied (or waived by the Required Lenders in their sole discretion) after giving effect to such borrowing:

(1) Each of the conditions set forth in the preceding Section 4.02 shall have been satisfied or waived by the Required Lenders;

(2) Final DIP Order. The Final DIP Order shall have been entered by the Bankruptcy Court and shall be in full force and effect, and shall not have been vacated or reversed, shall not be subject to any stay, and shall not have been modified or amended in any respect without the consent of the Required Lenders and (solely with respect to its own rights, obligations, liabilities, duties and treatment) the Agents, and the Debtors shall be in compliance with the Final DIP Order;

(3) Second Day Orders. (a) The Loan Parties shall use commercially reasonable efforts to have all material "second day orders" (the "**Second Day Orders**") and all related pleadings intended to be filed or entered on or prior to the date of entry of the Final DIP Order and any order establishing material procedures for the administration of the Chapter 11 Cases (any such motions other than First Day Motions, the "**Second Day Motions**") entered by the Bankruptcy Court on or prior to the date of entry of the Final DIP Order, and (b) all pleadings related to procedures for approval of significant transactions, including, without limitation, asset sale procedures, regardless of when filed or entered, shall be in form and substance reasonably satisfactory to the Required Lenders; *provided* that notwithstanding anything to the contrary in the Second Day Motions or Second Day Orders, the Borrower acknowledges and agrees that to the extent of any conflict between the provisions of the Second Day Motions or Second Day Orders, on the one hand, and the DIP Orders and this Agreement, on the other hand, the terms and conditions of the DIP Orders and this Agreement shall apply, as applicable;

(4) No Default or Event of Default. Immediately before and after giving effect to the Borrowing of the DIP Final Funding Loans, no Default or Event of Default shall have occurred and be continuing; and

(5) DIP Proceeds Account Control Agreement. The DIP Proceeds Account Control Agreement shall be in full force and effect.

(6) Fees. All fees, invoices, costs and expenses (including, without limitation, legal fees and expenses) required to be paid by the Borrower to the Specified Ad Hoc Group Advisors, the Agents and the Backstop Parties have been paid, or substantially simultaneously with the funding of the DIP Final

Funding Amounts borrowed under this Agreement shall be paid, in each case to the extent due, subject to the DIP Orders.

There are no conditions, implied or otherwise, to the making of the DIP Final Funding Loans upon entry of the Final DIP Order after entry of the Final DIP Order other than as set forth in the preceding clauses (1) through (6) of this Section 4.03, and upon satisfaction or waiver of such conditions Loans will be made by the Lenders. Without limiting the generality of the provisions of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.03, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted, or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to such Lender unless such Lender has notified the Administrative Agent of any disagreement in writing prior to the proposed Borrowing Date.

SECTION 4.04 Conditions to Borrowing of the DIP Subsequent Draw Loans. The obligations of the Lenders (or the Fronting Lender on their behalf) to fund the DIP Subsequent Draw Loans after entry of the Final DIP Order shall not become effective until the date on which each of the following conditions shall be satisfied (or waived by the Required Lenders in their sole discretion) after giving effect to such borrowing:

(1) Each of the conditions set forth in the preceding Sections 4.02 and 4.03, shall have been satisfied or waived by the Required Lenders;

(2) Milestones The Milestones in Sections 5.12(6) and (7) of the DIP Onloan Credit Agreement (as in effect on the Closing Date) have been satisfied;

(3) No Default or Event of Default. Immediately before and after giving effect to the Borrowing of the DIP Subsequent Draw Loans, as applicable, no Default or Event of Default shall have occurred and be continuing; and

(4) Fees. All fees, invoices, costs and expenses (including, without limitation, legal fees and expenses) required to be paid by the Borrowers to the Specified Ad Hoc Group Advisors, the Agents and the Backstop Parties have been paid, or substantially simultaneously with the funding of the the DIP Subsequent Draw Loans borrowed under this Agreement shall be paid, in each case to the extent due, subject to the DIP Orders or another Approved Court Order, as applicable.

There are no conditions, implied or otherwise, to the making of the DIP Subsequent Draw Loans after entry of the Final DIP Order other than as set forth in the preceding clauses (1) through (4) of this Section 4.04, and upon satisfaction or waiver of such conditions Loans will be made by the Lenders. Without limiting the generality of the provisions of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.04, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted, or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to such Lender unless such Lender has notified the Administrative Agent of any disagreement in writing prior to the proposed Borrowing Date.

ARTICLE V

*Affirmative Covenants*¹⁰

The Borrower and each Loan Party covenants and agrees with the Agents and each Lender that so long as this Agreement is in effect and until the Commitments have been terminated and the Obligations (other than contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted) have been Paid in Full, the Borrower will, and will cause each Subsidiary to (other than in the case of Section 5.04):

SECTION 5.01 Existence; Businesses and Properties.

(1) Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect

(2) (a) Do or cause to be done all things necessary to lawfully obtain, preserve, renew, extend and keep in full force and effect the permits, franchises, authorizations, Intellectual Property Rights, licenses and rights with respect thereto necessary to the normal conduct of its business and (b) at all times maintain and preserve all property necessary to the normal conduct of its business and keep such property in good repair, working order and condition (ordinary wear and tear excepted) and from time to time make, or cause to be made, all needful and proper repairs, renewals, additions, improvements and replacements thereto necessary in order that the business carried on in connection therewith, if any, may be properly conducted at all times, in each case, except:

- (i) as expressly permitted by this Agreement;
- (ii) such as may expire, be abandoned or lapse in the ordinary course of business; or
- (iii) where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

SECTION 5.02 Insurance. Maintain, with insurance companies reasonably believed to be financially sound and reputable, insurance in such amounts and against such risks as are customarily maintained by similarly situated companies engaged in the same or similar businesses operating in the same or similar locations, and cause the Collateral Agent to be listed as a co-loss payee on property and casualty policies and as an additional insured on liability policies. The Borrower will furnish to the Administrative Agent, upon request, information in reasonable detail as to the insurance so maintained.

SECTION 5.03 Taxes. Subject to Bankruptcy Law, the terms of the applicable Order and any required approval by the Bankruptcy Court, pay and discharge promptly when due all federal and material state and local Taxes imposed upon it or its income or profits or in respect of its property, before the same becomes delinquent or in default; *provided* that such payment and discharge will not be required with respect to any Tax if (1) the validity or amount thereof is being contested in good faith by appropriate proceedings and (2) the Borrower or any affected Restricted Subsidiary thereof, as applicable, has set aside on its books reserves in accordance with GAAP with respect thereto.

¹⁰ NTD: Subject to covenants to be agreed, including governance arrangements, Simon JV treatment and Flagship CMBS treatment.

SECTION 5.04 Financial Statements, Reports, etc. Furnish to the Administrative Agent (which will promptly furnish such information to the Lenders) and, subject to customary confidentiality undertakings, make available to potential Lenders/assignees:

(1) Required Reporting. The Borrower shall provide the Administrative Agent (i) with copies of any notices, reports, financial statements, budgets, documents or other written materials that are expressly required to be delivered to the DIP Onloan Agents or the DIP Onloan Lenders pursuant to the terms of the DIP Onloan Credit Agreement, the DIP Orders or any Approved Order, as and when due thereunder, (ii) with copies of any other notices, reports, financial statements, budgets, documents or other written materials received by the Borrower in its capacity as DIP Onloan Lenders pursuant to the terms of the Prepetition FILO Credit Agreement or Prepetition NPC Credit Agreement from any of the parties thereto promptly, and in any event within 1 day after its receipt thereof, and (iii) notice of the occurrence of any “default” or similar event under the DIP Onloan Credit Agreement, Prepetition FILO Credit Agreement or Prepetition NPC Credit Agreement as soon as possible and in any event within 1 day after the Borrower becomes aware of the occurrence thereof, in each case, except to the extent that such notices, reports, financial statements, budgets, documents or other written materials have been delivered directly to the DIP Onloan Administrative Agent or the SGUS Lenders. For the avoidance of doubt, such materials shall be required to be delivered whether or not the DIP Onloan Credit Agreement remains in effect.

(2) Promptly upon receipt thereof, all financial statements, reports, budgets and other written materials delivered to the Borrower, as the DIP Onloan Lender, from the DIP Onloan Borrower, pursuant to the terms of Sections 5.04 or 5.05 of the DIP Onloan Credit Agreement, the DIP Orders or any Approved Court Order (including, without limitation, the Updated Budgets and Budget Variance Reports (each, as defined in the DIP Orders)), except to the extent that such financial statements, reports, budgets or other written materials have been delivered directly to the DIP Onloan Administrative Agent or the SGUS Lenders. For the avoidance of doubt, such materials shall be required to be delivered whether or not the DIP Onloan Credit Agreement remains in effect.

(3) Compliance Certificates. Concurrently with any delivery of Required Financial Statements (as defined in the DIP Onloan Credit Agreement, a certificate of a Financial Officer of the Borrower (such certificate the “*Compliance Certificate*”), certifying that no Default or Event of Default has occurred and is continuing or, if a Default or Event of Default has occurred and is continuing, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto, and to the extent not previously delivered to the Administrative Agent, attaching copies of each amendment, modification or supplement (or waiver) entered into in connection with any Saks Flagship Material Agreement;

(4) Budget. The Loan Parties shall comply with the terms of Paragraph [3(f)(iii)] of the Interim DIP Order (and, once entered, the comparable provisions of the Final DIP Order) with respect to permitting its actual aggregate receipts to be less than the forecasted aggregate disbursements, or actual aggregate disbursements to exceed the forecasted aggregate disbursements, in each case, as set forth in the Approved Budget by the Permitted Variances.

(5) concurrently with the delivery of the Annual Financial Statements, an updated Perfection Certificate reflecting all changes since the date of the information most recently received pursuant to this paragraph or Section 5.10;

(6) promptly upon request by the Administrative Agent (so long as the following are obtainable using commercially reasonable measures), copies of any documents described in Section 101(k)(1) of ERISA that the Borrower may request with respect to any Multiemployer Plan; *provided* that if the Borrower has not requested such documents from the administrator or sponsor of the applicable

Multiemployer Plan, the Borrower shall promptly make a request for such documents or notices from such administrator or sponsor and shall provide copies of such documents and notices promptly after receipt thereof;

(7) within five (5) Business days following the end of each fiscal month (commencing with the fiscal month ending on or around January 31, 2026), (i) a consolidated balance sheet of the Borrower and its Subsidiaries and (ii) a certificate of a Responsible Officer on behalf of the Borrower that the Borrower was in compliance with its obligations under Section 6.08 at all times during the preceding calendar month;

Anything to the contrary notwithstanding, the obligations in clauses (1) and (2) of this Section 5.04 may be satisfied with respect to financial information of the DIP Onloan Borrower and the Restricted Subsidiaries (as defined in the DIP Onloan Credit Agreement) by furnishing (1) the applicable financial statements of the DIP Onloan Borrower or any Parent Entity or (2) the DIP Onloan Borrower's or any Parent Entity's, as applicable, Form 10-K, 10-Q or 8-K, as applicable, filed with the SEC; *provided* that with respect to each of clause (1) and (2) of this Section 5.04 to the extent such information relates to a Parent Entity, such information is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to a Parent Entity, on the one hand, and the information relating to the DIP Onloan Borrower and the Restricted Subsidiaries (as defined in the DIP Onloan Credit Agreement) on a standalone basis, on the other hand, and (b) to the extent such information is in lieu of information required to be provided under Section 5.04(1), such materials are accompanied by a report and opinion of independent public accountants of recognized national standing, or such other accountants as are reasonably acceptable to the Administrative Agent, and accompanied by an opinion of such accountants (which opinion shall not be subject to any "going concern" statement, explanatory note or like qualification or exception, other than any emphasis of matter paragraph or other than a "going concern" statement, explanatory note or like qualification or exception solely with respect to, or resulting solely from, (x) an upcoming maturity date under any Indebtedness occurring within one year from the time such opinion is delivered or any actual or potential inability to satisfy any financial maintenance covenant under any Indebtedness or (y) the activities, performance, assets or liabilities of Unrestricted Subsidiaries).

Documents required to be delivered pursuant to this Section 5.04 may be delivered electronically in accordance with Section 10.01(5).

SECTION 5.05 Litigation and Other Notices. Furnish to the Administrative Agent (which will promptly thereafter furnish to the Lenders) written notice of the following promptly after any Responsible Officer of the Borrower obtains actual knowledge thereof:

(1) any Default or Event of Default, specifying the nature and extent thereof and the corrective action (if any) proposed to be taken with respect thereto;

(2) the filing or commencement of any action, suit or proceeding, whether at law or in equity or by or before any Governmental Authority or in arbitration, against the Borrower or any of the Subsidiaries as to which an adverse determination is reasonably probable and which, if adversely determined, would reasonably be expected to have a Material Adverse Effect; and

(3) the occurrence of any ERISA Event that, together with all other ERISA Events that have occurred, would reasonably be expected to result in a material liability to a Loan Party.

SECTION 5.06 Compliance with Laws. Comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property (including the Bankruptcy Code, ERISA,

Anti-Corruption Laws, OFAC and the PATRIOT Act), except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect; *provided* that this Section 5.06 will not apply to Environmental Laws, which are the subject of Section 5.09, or laws related to Taxes, which are the subject of Section 5.03.

SECTION 5.07 Maintaining Records; Access to Properties and Inspections; Appraisals.

(1) Permit any Persons designated by the Administrative Agent, to visit and inspect the financial records and the properties of the Borrower or any other Debtor at reasonable times, upon reasonable prior notice to and reasonable coordination with the Borrower, and as often as reasonably requested during normal business hours, to make extracts from and copies of such financial records, and permit any Persons designated by the Administrative Agent, upon reasonable prior notice to the Borrower, to discuss the affairs, finances and condition the Borrower or any other Debtor with the officers thereof and independent accountants therefor (subject to such accountant's policies and procedures) (it being understood that a representative of the Borrower shall be permitted to be present in any discussions with officers, employees, agent, advisors and independent accountants).¹¹

(2) [Reserved].

(3) [Reserved].

(4) [Reserved]

(5) Notwithstanding anything to the contrary in this Agreement (including Sections 5.04(11), 5.05, 5.07(1) and (2), and 5.12) or any other Loan Document, none of the Loan Parties or any of the Subsidiaries will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter with any competitor to the Borrower or any of its Subsidiaries or that (1) constitutes non-financial trade secrets or non-financial proprietary information; (2) in respect of which disclosure is prohibited by law or any binding agreement; (3) is subject to attorney-client or similar privilege or constitutes attorney work product; or (4) creates an unreasonably excessive expense or burden on the Borrower or any of its Subsidiaries.

SECTION 5.08 Use of Proceeds. Use the proceeds of the Loans in accordance with Section 3.11; *provided* that the Borrower shall not use the proceeds of the Loans in violation of any Sanctions.

SECTION 5.09 Compliance with Environmental Laws. Comply, and make commercially reasonable efforts to cause all lessees and other Persons occupying its fee-owned Real Properties to comply, with all Environmental Laws applicable to its operations and properties, and obtain and renew all material authorizations and permits required pursuant to Environmental Law for its operations and properties, in each case in accordance with Environmental Laws, except, in each case, to the extent the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.10 Further Assurances; Additional Security.

(1) (a) If (x) a Subsidiary of the DIP Onloan Borrower that is a Subsidiary of a Flagship Guarantor (other than an Unrestricted Subsidiary) is formed or acquired after the Closing Date (including any such Subsidiary deemed to be newly formed or organized by operation of Section 1.07), or (y) a Subsidiary of the Borrower (other than any Unrestricted Subsidiary) is formed or acquired after the Closing Date (including any such Subsidiary deemed to be newly formed or organized by operation of

¹¹ NTD: conforms to onloan.

Section 1.07), then the Borrower shall, within ten days after the date such Subsidiary is formed or acquired (or such longer period as the Administrative Agent agrees acting at the direction of the Required Lenders), cause such Subsidiary to:

(i) deliver a joinder to the Collateral Agreement, substantially in the form specified therein, duly executed on behalf of such Subsidiary;

(ii) to the extent required by and subject to the exceptions set forth in the Collateral Agreement, pledge the outstanding Equity Interests (other than Excluded Equity Interests) owned by such Subsidiary, and cause each Loan Party owning any Equity Interests issued by such Subsidiary to pledge such outstanding Equity Interests (other than Excluded Equity Interests), and deliver all certificates (if any) representing such Equity Interests, together with stock powers or other instruments of transfer with respect thereto endorsed in blank, to the Collateral Agent (or a designated bailee thereof);

(iii) to the extent such Subsidiary is a Wholly Owned Domestic Subsidiary and to the extent required by and subject to the exceptions set forth in this Section 5.10 or the Security Documents, deliver to the Collateral Agent (or a designated bailee thereof) Uniform Commercial Code financing statements with respect to such Subsidiary and such other documents reasonably requested by the Collateral Agent (acting at the direction of the Required Lenders) to create the Liens intended to be created under the Security Documents and perfect such Liens to the extent required by the Security Documents;

(iv) except as otherwise contemplated by this Section 5.10 or any Security Document, obtain all consents and approvals required to be obtained by it in connection with (A) the execution and delivery of all Security Documents (or supplements thereto) to which it is a party and the granting by it of the Liens thereunder and (B) the performance of its obligations thereunder; and

(v) deliver all documentation and other information about such Subsidiary that is required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act.

(b) [Reserved].

(2) Furnish to the Administrative Agent, within ten days after such change (or such longer period as reasonable agreed to by the Administrative Agent (acting at the direction of the Required Lenders)), written notice of any change in any Loan Party’s:

(a) corporate or organization name;

(b) organizational structure;

(c) location (determined as provided in UCC Section 9-307); or

(d) solely if required for perfecting a security interest in the applicable jurisdiction, organizational identification number (or equivalent) or Federal Taxpayer Identification Number.

(3) Execute any and all other documents, financing statements, agreements and instruments, and take all such other actions (including the filing and recording of financing statements and

other documents), not described in the preceding clauses (1) and (2) and that may be required under any applicable law, or that the Administrative Agent (acting at the direction of the Required Lenders) may reasonably request, to satisfy the requirements set forth in this Section 5.10 and in the Security Documents with respect to the creation and perfection of the Liens on the Collateral in favor of the Collateral Agent, for the benefit of the Secured Parties, contemplated herein and in the Security Documents and to cause such requirement to be and remain satisfied, all at the expense of the Borrower, and provide to the Administrative Agent, from time to time upon reasonable request, evidence as to the perfection and priority of the Liens created by the Security Documents.

(4) Notwithstanding anything herein to the contrary,

(a) the other provisions of this Section 5.10 need not be satisfied with respect to any Excluded Assets or Excluded Equity Interests or any exclusions and carve outs from the perfection requirements set forth in the Collateral Agreement or with respect to any Unrestricted Subsidiary;

(b) neither the Borrower nor the other Loan Parties will be required to grant a security interest in any asset or perfect a security interest in any Collateral to the extent the cost, burden, difficulty or consequence of obtaining or perfecting a security interest therein outweighs the benefit of the security afforded thereby as reasonably determined by the Administrative Agent (acting at the direction of the Required Lenders); and

(c) no actions will be required outside of the United States in order to create or perfect any security interest in any assets located outside of the United States and no foreign law security or pledge agreements, foreign law mortgages or deeds or foreign intellectual property filings or searches will be required, in each case other than with respect to Foreign Subsidiaries that are or become Subsidiary Loan Parties or Flagship Guarantors; *provided, however*, that (i) in the event a Responsible Officer of the Borrower (reasonably and in good faith) and the Collateral Agent (acting at the direction of the Required Lenders) mutually determine that the burden or cost of obtaining foreign-law governed Security Documents or creating or taking perfections steps in any such foreign jurisdictions outweighs the benefit afforded thereby to the Secured Parties or obtaining foreign-law governed Security Documents or creating or taking such perfection steps in any such foreign jurisdictions is impracticable, impossible or ineffective or would give rise to or result in any violation of applicable law, then no such foreign-law governed Security Documents nor creation or the taking of perfection steps in any such foreign jurisdictions shall be required to be provided with respect to such Subsidiary Loan Party or Flagship Guarantor and (ii) notwithstanding anything to the contrary contained herein or in any other Loan Document, in the event that any foreign-law governed Security Documents or the creation or taking of perfection steps in any such foreign jurisdictions are being obtained in accordance with this clause (c), the Borrower and the Required Lenders shall mutually agree on customary “Agreed Security Principles” and a reasonable and customary timeline to complete such Security Documents and/or filings or perfection actions or steps (which may be longer than the timelines otherwise agreed to in this Section 5.10). Notwithstanding anything else herein to the contrary, nothing in this Section 5.10 shall require the joinder of any Subsidiary as a Guarantor under the Loan Documents, or required such Subsidiary to grant a security interest in any of its assets to secure the Obligations, if such joinder or grant of security interest would result in (a) material adverse tax consequences (including, without limitation, as a result of the operation of Section 956 of the Code) or (b) material adverse regulatory consequences, in each case to Holdings, the Borrower, and/or any of its Subsidiaries, taken as a whole, as reasonably determined in good faith by the Borrower and the Required Lenders

SECTION 5.11 Cash Management Systems

(a) The Loan Parties shall maintain their cash management arrangements in compliance with the Cash Management Orders, subject to amendments reasonably acceptable to the Required Lenders; provided that the Cash Management Motion and the Cash Management Orders shall be in form and substance reasonably acceptable to the Required Lenders. No pledged bank account will be closed during the Chapter 11 Cases without the prior written consent of the Administrative Agent (acting at the direction of the Required Lenders) and nothing in the Interim DIP Order or Final DIP Order will alter or impair any security interest or perfection thereof that existed as of the Petition Date or that arises after the Petition Date. The Borrower and its Subsidiaries shall not make any payment or disbursement for any purpose that is not contemplated by the Approved Budget.

SECTION 5.12 Certain Milestones. The Loan Parties shall ensure that each of the milestones set forth in Section 5.12 of the Onloan DIP Credit Agreement, as in effect on the Closing Date, (the “*Milestones*”) is achieved in accordance with the applicable timing referred to therein (or such later dates as approved in writing by the Required Lenders in their sole discretion, which approval may be provided via electronic mail).

SECTION 5.13 Lender Calls. The Borrower shall, if requested by the Administrative Agent (acting at the direction of the Required Lenders), (a) no more than one (1) time per calendar week, hold a conference call or teleconference, at a reasonable time selected by the Borrower, with all of the Specified Ad Hoc Group Advisors that choose to participate, and (b) no more than one (1) time per calendar month, hold a conference call or teleconference, at a time selected by the Borrower and reasonably acceptable to the Required Lenders, with all of the Lenders that choose to participate, in each case, to review information recently reported in pursuant to Section 5.04.]Post-Closing Matters.¹² Operations in the Ordinary Course of Business. Each Loan Party shall and shall cause its Subsidiaries to, at all times during the terms of this Agreement, continue to operate in the ordinary course of its business, in each case subject to this Agreement, the DIP Orders and the Approved Budget.

SECTION 5.16 Axonic Adversary Proceedings. Within five (5) days following the Closing Date, the Borrower shall cause each Loan Party, Affiliate or Subsidiary party to that certain *Amended and Restated Conditional Bond Purchase Agreement*, dated March 18, 2021 (“CBPA”), with Axonic Credit Opportunities Master Fund, LP (“Axonic”) to file an adversary complaint in each applicable Chapter 11 Case (the “Adversary Complaint”) against Axonic related to the CBPA in a form acceptable to the Borrower and the Required Lenders.

SECTION 5.17 Saks Flagship Material Agreements.¹³

(1) (i) Maintain each such Saks Flagship Material Agreement in full force and effect; (ii) use commercially reasonable efforts to enforce all of its rights that are material to the Debtors, the Saks Flagship Entities or the Administrative Agent under each such Saks Flagship Material Agreement in accordance with its terms; (iii) take such actions as may be from time to time reasonably requested by the Administrative Agent (acting at the request of the Required Lenders) with respect to the enforcement or administration of the Saks Flagship Material Agreements; and (iv) provide the Administrative Agent and the Lenders with such information and reports with regard to the Saks Flagship Material Agreements as either shall reasonably request from time to time (including any requests made by the Administrative Agent or any of the Lenders on behalf of the Required Lenders).

¹² NTD: To be added as necessary.

¹³ NTD: To revise to reflect business agreement with respect to treatment of the Flagship.

(2) deliver (or cause to be delivered) to Administrative Agent, promptly following the delivery of such documents to the CMBS Lenders, each of the financial statements, certificates or other documents required to be delivered to the CMBS Lenders under Section 5.11 of the Incorporated Agreement, in each case including detailed calculations of the applicable financial covenants to the extent required under the Incorporated Agreement in connection with such financial statements, certificates or other document. The Lenders and the Agents hereby agree that the Loan Parties shall be permitted to deliver (or cause to be delivered) each such financial statement, certificate or other document in the manner specified in the Incorporated Agreement.

(3) Cause (i) Saks Flagship GL Tenant at all times to be the tenant under the Saks Flagship Lease described in clause (a) of the definition thereof and (ii) SFA at all times to be the tenant under the Saks Flagship Lease described in clause (b) of the definition thereof, except with the written consent of the Administrative Agent (at the direction of the Required Lenders).

SECTION 5.18 Certain Bankruptcy Matters. The Loan Parties shall comply (i) after entry thereof, with all of the requirements and obligations set forth in the DIP Orders and the Cash Management Order, as each such order is amended and in effect from time to time in accordance with this Agreement, (ii) after entry thereof, with each Approved Court Order, as each such order is amended and in effect in accordance with this Agreement and (iii) to the extent not covered by subclause (i) or (ii), after entry thereof, with the First Day Orders, Second Day Orders and any orders approving any pleadings seeking to establish material procedures for administration of the Chapter 11 Cases or approving significant or material non-ordinary course transactions and obtained in the Chapter 11 Cases, as each such order is amended and in effect in accordance with this Agreement; provided that such orders shall be in form and substance reasonably satisfactory to the Administrative Agent and the Required Lenders, shall not have been vacated, reversed or stayed and shall not have been amended or modified except in a manner reasonably satisfactory to the Administrative Agent and the Lenders.

SECTION 5.19 Priority of Liens; No Discharge.

(a) Each of the Loan Parties hereby covenants, represents, warrants and agrees that, upon entry of, and subject to the terms of, the Interim DIP Order (and when applicable, the Final DIP Order) (including and without prejudice to, without limitation, in each case, any rights or liens or perfected security interests (and the priorities thereof) granted under the Interim DIP Order or Final DIP Order under any other provision of Section 364 of the Bankruptcy Code or any other applicable provisions of the Bankruptcy Code) and subject to the Carve Out as set forth in the DIP Orders in all respects, (A) the Obligations: (i) pursuant to Section 364(c)(1) of the Bankruptcy Code, shall at all times constitute allowed DIP Superpriority Claims in the Chapter 11 Cases; and (ii) pursuant to Section 364(c)(2), (c)(3) and (d) of the Bankruptcy Code, shall be secured by a valid, binding, enforceable, non-avoidable, and automatically perfected senior priority Lien upon the Collateral and (B) the Obligations (as defined in the DIP Onloan Credit Agreement): (i) pursuant to Section 364(c)(1) of the Bankruptcy Code, shall at all times constitute allowed Onloan DIP Claims in the Chapter 11 Cases; and (ii) pursuant to Section 364(c)(2), (c)(3) and (d) of the Bankruptcy Code, shall be secured by a valid, binding, enforceable, non-avoidable, and automatically perfected senior priority Lien upon the Collateral.

(b) The relative priorities of the Liens on property and assets of Loan Parties described in this Section 5.19 with respect to the Collateral shall be as set forth in the Interim DIP Order (and, when entered, the Final DIP Order). In accordance with the Interim DIP Order (or, once entered, the Final DIP Order), all of the Liens on property and assets of Loan Parties described in this Section 5.19 shall be effective and perfected upon entry of the Interim DIP Order, without the necessity of the execution, recordation of filings by the Loan Parties or security agreements,

control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the Administrative Agent or Collateral Agent, of, or over, any Collateral, as set forth in the Interim DIP Order (and, when entered, the Final DIP Order).

(c) Notwithstanding the provisions of section 362 of the Bankruptcy Code, and subject to the applicable provisions of the Interim DIP Order (and, when applicable, the Final DIP Order), upon the occurrence of the Maturity Date (whether by acceleration or otherwise), the Administrative Agent and the Collateral Agent shall be entitled to immediately be Paid in Full in cash of the Obligations and to enforce the remedies provided for hereunder.

(d) Each of the Loan Parties agrees that (i) its obligations under the Loan Documents or DIP Onloan Documents shall not be discharged by the entry of an order confirming any Chapter 11 Plan (and each of the Loan Parties, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby irrevocably waives any such discharge), (ii) the DIP Claim granted to the Administrative Agent and the Lenders pursuant to the DIP Superpriority Orders and the Liens granted to the Collateral Agent and the Lenders pursuant to the DIP Orders shall not be affected in any manner by the entry of an order confirming any chapter 11 plan and (iii) the Onloan DIP Claim granted to the DIP Onloan Agents and the Lenders (as defined in the DIP Onloan Credit Agreement) pursuant to the DIP Orders shall not be affected in any manner by the entry of an order confirming any Chapter 11 Plan.

SECTION 5.20 Ratings. [The Company agrees to use commercially reasonable efforts (a) to obtain a rating on the Term Loans (other than the Second Out Term Loans and the Third Out Term Loans) from two of Moody's, S&P or Fitch Ratings Inc. (x) promptly within 60 days following the Petition Date and (y) in any event, within 90 days following the Petition Date, and (b) to maintain such rating, if obtained, from such rating agencies (or any successors thereto).]

SECTION 5.21 Enforcement of Rights and Remedies. The Borrower shall (i) enforce, to the best of its ability, its rights under the DIP Onloan Credit Agreement, Prepetition FILO Credit Agreement and Prepetition NPC Credit Agreement and (ii) take such actions as may be from time to time requested by the Administrative Agent and/or Collateral Agent, on written instruction from Required Lenders, with respect to the enforcement or administration of the DIP Onloan Credit Agreement, Prepetition FILO Credit Agreement and Prepetition NPC Credit Agreement.

SECTION 5.22 Press Releases. As soon as practicably (a) but no later than 24 hours prior to the release of any press releases, public filings, public announcements, or other communications with any news media, or material mass communications, other than in the ordinary course of business and unrelated to this Agreement with any customers, vendors, current or former employees, in each case, to be made by the Loan Parties or any of their Subsidiaries relating to this Agreement or the transactions contemplated hereby and any amendments thereof and (b) at least two (2) Business Days (it being understood that such period may be shortened to the extent there are exigent circumstances that require such public communication to be made to comply with applicable law) prior to any communications outside the ordinary course of business relating in any way to collective bargaining agreements, contract negotiations, pension, or other postemployment benefit matters to current or former employees, retirees or their beneficiaries, PBGC, or any union, (each, a "**Chapter 11 Cases Communication**"), the Debtors shall provide a copy of any such press releases, statements or communications to the Specified Ad Hoc Group Advisors.]

SECTION 5.23 The Borrower and each Loan Party further covenants and agrees with the Agents and each Lender that so long as this Agreement is in effect and until the Commitments have been terminated and the Obligations (other than contingent indemnification and reimbursement obligations that

are not yet due and payable and for which no claim has been asserted) have been Paid in Full, the DIP Onloan Borrower will, and will cause each of its Restricted Subsidiaries (as defined in the DIP Onloan Credit Agreement, as in effect on the Closing Date) to comply with each of the covenants set forth in Article V of the DIP Onloan Credit Agreement, as in effect on the Closing Date (it being understood that non-compliance by the DIP Onloan Borrower or any of its Subsidiaries shall constitute a breach regardless of whether the Borrower or the Loan Parties control any such Person), regardless of whether the DIP Onloan Credit Agreement remains in effect.

ARTICLE VI

Negative Covenants

So long as this Agreement is in effect and until the Commitments have been terminated and the Obligations have been Paid in Full:

SECTION 6.01 Indebtedness The Borrower and each Subsidiary of the Borrower covenants and agrees with each Lender that it will not and will not permit any Subsidiary of the Borrower to issue, incur, assume or be or become liable for any Indebtedness, except the following (collectively, “**Permitted Indebtedness**”):

- (1) Indebtedness created under the Loan Documents and any Guarantees thereof, in each case incurred by one or more Loan Parties;
- (2) Indebtedness existing on the Closing Date under the Prepetition SPV Secured Notes Indenture;
- (3) all taxes, assessments and governmental charges levied upon the Borrower or upon its income, profits or property;
- (4) Indebtedness of the Borrower arising pursuant to SPV Expenses; and
- (5) unsecured Indebtedness in an aggregate outstanding principal amount which, when taken together with the principal amount of all other Indebtedness incurred pursuant to this clause and then outstanding, will not exceed \$1,000,000.

SECTION 6.02 Liens The Borrower and each Subsidiary of the Borrower covenants and agrees with each Lender that it will not and will not permit any Subsidiary of the Borrower to create, incur, assume or permit to exist any Lien on any property or assets (including stock or other securities of any person, including the Borrower and each Subsidiary) at the time owned by it or on any income or revenues or rights in respect of any thereof, except the following (collectively, “**Permitted Liens**”):

- (1) Liens securing the Indebtedness incurred in accordance with clause (1) of the definition of “Permitted Debt” and Obligations related thereto;
- (2) Liens securing the Indebtedness incurred in accordance with clause (2) of the definition of “Permitted Debt” and Obligations related thereto; and
- (3) Liens for Taxes, assessments or other governmental charges or levies not yet delinquent or that are being contested in compliance with Section 5.03.

Notwithstanding anything herein or any other Loan Document to the contrary, neither the Borrower nor any of its Subsidiaries shall directly or indirectly, create, incur, assume or suffer to exist any Lien securing Indebtedness for borrowed money on any Excluded Assets constituting Real Property pursuant to clause (3) of the definition of Excluded Assets contained in the Collateral Agreement.

SECTION 6.03 Subsidiaries. The Borrower will not, directly or indirectly, form, acquire or otherwise establish any Subsidiary without the prior written consent of the Required Lenders.

SECTION 6.04 Investments, Loans and Advances. The Borrower and each Subsidiary of the Borrower covenants and agrees with each Lender that it will not and will not permit any Subsidiary of the Borrower to purchase, hold or acquire (including pursuant to any merger, consolidation or amalgamation with a Person that is not a Wholly Owned Subsidiary immediately prior to such merger, consolidation or amalgamation) any Equity Interests, evidences of Indebtedness or other securities of, make or permit to exist any loans or advances to or Guarantees of the obligations of, or make or permit to exist any investment or any other interest in any other Person, or purchase, lease or otherwise acquire (in one transaction or a series of transactions) all or any substantial part of the assets of any other Person or any division, unit or business of any other Person (each, an “**Investment**” and with all such Investments being valued at their original fair market value and without taking into account subsequent increases or decreases in value), except the following (collectively, “**Permitted Investments**”):

(1) Investments in the form of loans extended on or after the Closing Date by the Borrower to the DIP Onloan Borrower and evidenced by the DIP Onloan Credit Agreement;

(2) Investments in cash and Cash Equivalents approved by the Required Lenders;

(3) (a) Redemptions of Prepetition SPV Secured Notes in exchange for the Second Out DIP Roll-Up Loans, (b) purchases of participations in the Participated Prepetition Second Out Notes using the proceeds of the Third Out Term Loans pursuant to the Prepetition Notes Participation Agreement and (c) the roll-up of Prepetition FILO Obligations and Prepetition NPC Obligations in accordance with the DIP Onloan Credit Agreement, in each case in accordance with the Approved Budget and the Interim Order; and

(4) Investments existing on the Closing Date in the form of loans extended prior to the Closing Date under the Prepetition FILO Credit Agreement or Prepetition NPC Credit Agreement.

Notwithstanding anything to the contrary, no such Investments shall be permitted after the Petition Date unless such Investments are made strictly in accordance with the Approved Budget (subject to Permitted Variances).

SECTION 6.05 Mergers, Consolidations and Sales of Assets. The Borrower and each Subsidiary of the Borrower covenants and agrees with each Lender that it will not and will not permit any Subsidiary of the Borrower to (x) merge into, or consolidate or amalgamate with, any other Person, or permit any other Person to merge into or consolidate or amalgamate with it, or (y) sell, transfer or otherwise dispose of (in one transaction or in a series of transactions) all or any part of its assets (including any Sale and Lease-Back Transaction and/or the issuance, sale, transfer or other disposition of any Equity Interests of any Subsidiary) (this clause (y), an “**Asset Sale**”), except that this Section 6.05 will not prohibit the disposition of cash and Cash Equivalents.

Notwithstanding anything to the contrary, no Asset Sales shall be permitted after the Petition Date unless such Asset Sales are made strictly in accordance with the Approved Budget (subject to Permitted Variances).

SECTION 6.06 Restricted Payments. The Borrower and each Subsidiary of the Borrower covenants and agrees with each Lender that it will not and will not permit any Subsidiary of the Borrower to declare or pay any dividend or make any other distribution (by reduction of capital or otherwise), directly or indirectly, whether in cash, property, securities or a combination thereof, with respect to any of its Equity Interests (other than dividends and distributions on Equity Interests payable solely by the issuance of additional Equity Interests (other than Disqualified Stock) of the Person paying such dividends or distributions) or directly or indirectly redeem, purchase, retire or otherwise acquire for value any of its Equity Interests or set aside any amount for any such purpose (other than through the issuance of additional Equity Interests (other than Disqualified Stock) of the Person redeeming, purchasing, retiring or acquiring such shares) (the foregoing, “**Restricted Payments**”).

SECTION 6.07 Transactions with Affiliates. The Borrower and each Subsidiary of the Borrower covenants and agrees with each Lender that it will not and will not permit any Subsidiary of the Borrower to sell or transfer any property or assets to, or purchase or acquire any property or assets from, or otherwise engage in any other transaction with, any of its Affiliates, unless such transaction is deemed in good faith by a majority of the Disinterested Directors of the Borrower or any Parent Entity (or any disinterested members of any appropriate committee thereof) to be on terms no less favorable to the Borrower and its Subsidiaries, as applicable, than would be obtained in a comparable arm’s length transaction with a Person that is not an Affiliate, except that this Section 6.07 will not prohibit Investments in the form of loans extended on or after the Closing Date by the Borrower to the DIP Onloan Borrower and evidenced by the DIP Onloan Credit Agreement or any other transaction expressly permitted under this Article VI.

Notwithstanding anything to the contrary, no such transactions with Affiliates shall be permitted after the Petition Date unless such transactions are made strictly in accordance with the Approved Budget (subject to Permitted Variances).

Notwithstanding any other provisions hereof, the Borrower and each Subsidiary of the Borrower covenants and agrees with each Lender that it will not and will not permit any Subsidiary to engage at any time in any business or activity other than (i) extending loans to the to the DIP Onloan Borrower under the DIP Onloan Credit Agreement (including the roll-up of Prepetition FILO Obligations and Prepetition NPC Obligations pursuant thereto), Prepetition FILO Credit Agreement or Prepetition NPC Credit Agreement, (ii) holding Permitted Investments, (iii) the incurrence of Indebtedness under this Agreement and the Prepetition SPV Secured Notes Indenture and the performance of the terms and obligations under this Agreement and the Prepetition SPV Secured Notes Indenture, and (iv) the redemptions of Prepetition SPV Secured Notes in exchange for the Second Out DIP Roll-Up Loans, and purchases of participations in the Participated Prepetition Second Out Notes using the proceeds of the Third Out Term Loans pursuant to the Prepetition Notes Participation Agreement.

SECTION 6.08 Limitation on Payments and Modifications of Indebtedness; Modifications of Certificate of Incorporation, By Laws and Certain Other Agreements; etc. The Borrower and each Subsidiary of the borrower covenants and agrees with each Lender that it will not and will not permit any Subsidiary of the Borrower to:

(1) amend, restate, supplement, revoke or otherwise modify the Organizational Documents of the Borrower in any manner.

(2) amend, restate, supplement, revoke or otherwise modify the Organizational Documents of any Subsidiary of the Borrower in any manner. In the event any Organizational Document or any provision thereof is altered, amended, terminated or otherwise modified in any respect whatsoever, such Subsidiary of the Borrower shall promptly, and in any event within 5 days thereafter, provide written notice thereof to the Administrative Agent and shall provide the Administrative Agent with copies of each executed, filed or otherwise effective document relating thereto.

(3) (I) make any cash payment or other distribution in cash in respect of any Prepetition Indebtedness, unsecured or subordinated in right of payment or in respect of Liens (collectively, “**Junior Financing**”) or (II) make any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposits, on account of the purchase, redemption, retirement, acquisition, cancellation or termination in respect of any Prepetition Financing or Junior Financing; or (III) amend or modify, or permit the amendment or modification of, any provision of any agreement, document or instrument evidencing or relating to any Prepetition Indebtedness or any other Indebtedness that constitutes Material Indebtedness, other than (i) any amendment, modification, change or payment permitted under any Approved Court Order and (ii) redemptions of Prepetition SPV Secured Notes in exchange for the Second Out DIP Roll-Up Loan and purchases of participations in the Participated Prepetition Second Out Notes using the proceeds of the Third Out Term Loans pursuant to the Prepetition Notes Participation Agreement.

(4) From the Petition Date, permit any Subsidiary to enter into any agreement or instrument that by its terms restricts any Subsidiary that is not a Guarantor or the Borrower, Restricted Payments from such Subsidiary to the Borrower or any other Loan Party that is a direct or indirect parent of such Subsidiary or (b) with respect to any such Subsidiary that is a Guarantor or Borrower, the granting of Liens by such Subsidiary pursuant to the Security Documents, except as expressly permitted under this Agreement or pursuant to a restriction imposed by applicable law;

Notwithstanding anything to the contrary, no such payments on Restricted Indebtedness shall be permitted after the Petition Date unless such payments are made strictly in accordance with the Approved Budget (subject to Permitted Variances).

SECTION 6.09 Financial Covenant. The Borrower shall not permit Liquidity as of Friday of each week, or if Friday is not a Business Day, the next successive Business Day, to be less than \$50.0 million.

SECTION 6.10 Saks Flagship Material Agreements.

(1) Notwithstanding anything to the contrary contained in any Saks Flagship Material Agreement, no Saks Flagship Entity shall, or shall be permitted to:

(a) Assign or otherwise transfer any of its rights and obligations under any of the Saks Flagship Material Agreements to which it is a party, except with respect to the Saks Flagship Fee Owner pursuant to Section 2.7 of the Incorporated Agreement;

(b) Add any Debtor or any other Subsidiary of a Debtor as an obligor under any Saks Flagship Material Agreement to the extent such Person is not a party to such Saks Flagship Material Agreement as of the Closing Date;

(c) Create, incur, assume or suffer to exist any voluntary Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired or sign or file or suffer to exist under the UCC or any similar Law or statute of any jurisdiction a financing statement or

registration that names any Saks Flagship Entity as debtor; sign or suffer to exist any security agreement authorizing any Person thereunder to file such financing statement or registration; or collaterally assign or otherwise transfer as collateral security any accounts or other rights to receive income, other than, as to all of the above, Liens in respect of the Indebtedness permitted pursuant to Section 6.12(d) below limited, in the case of clauses (x) and (y) thereof, to the aggregate principal amount of such Indebtedness outstanding on June 27, 2025;

(d) Create, incur, assume, guarantee, suffer to exist or otherwise become or remain liable with respect to, any Indebtedness, except Indebtedness of (x) the Saks Flagship Fee Owner under the Incorporated Agreement provided that the aggregate principal amount outstanding at any time shall not exceed \$1,250.0 million *less* the aggregate amount of principal repayments made in respect thereof after the Closing Date, (y) Saks Flagship Holdco II under the Ground Lessee Pledge Documentation in an aggregate amount of liabilities thereunder not to exceed \$107.0 million and (z) in the form of Guarantees by one or more of the Saks Flagship Entities of the Obligations, the Indebtedness under the DIP Onloan Credit Agreement, the Secured Notes (as defined in the DIP Onloan Credit Agreement), or the Prepetition SPV Secured Notes Indenture;

(e) Enter into any “Loan Bifurcation” or “New Mezzanine Loan” in each case, as defined in the Incorporated Agreement;

(f) Increase or incur any additional obligations, or extend the obligations, in each case, under the Ground Lessee Pledge Documentation; or

(g) amend, restate, supplement, revoke or otherwise modify (i) any Saks Flagship Material Agreement or (ii) the Organizational Documents of any Saks Flagship Entity, in each case, without the prior written consent of the Required Lenders.

SECTION 6.11 Additional Bankruptcy Matters. No Loan Party shall and no Loan Party shall permit any of its Restricted Subsidiaries to, without the Required Lenders’ prior written consent, do any of the following:

(1) assert, join, support or prosecute any claim or cause of action against any of the Lenders, unless such claim or cause of action is in connection with the enforcement of the Loan Documents against any of the Agents or Lenders; provided that nothing contained in this Section 6.13(a) shall prohibit the Loan Parties from responding to or complying with discovery requests of any statutory committee appointed or appearing in the Chapter 11 Cases, in whatever form, made in connection with an investigation against any Agent or the Lenders or the payment from proceeds of the Loans of professional fees related thereto;

(2) subject to Section 8.01, object to, contest, delay, prevent or interfere with in any material manner the exercise of rights and remedies by the Agents or the other Secured Parties with respect to the Collateral following the occurrence of an Event of Default; provided, that any Loan Party may contest or dispute whether an Event of Default has occurred in accordance with the terms of the DIP Orders; or

(3) file, amend, modify, execute, or enter into, or file a pleading seeking authority to execute, enter into, amend, or modify, any pleading or document and which requested relief would constitute an Approved Court Order, unless permitted under the definition of Approved Court Order;

(4) withdraw or settle the Axonic Adversary Proceeding; or

(5) [assume or reject executory contracts or unexpired leases pursuant to Section 365 of the Bankruptcy Code, unless permitted under the definition of Approved Court Order.]

SECTION 6.12 Material Agreements

(1) The Borrower shall (i) not take any action which could reasonably be expected to result in the DIP Onloan Credit Agreement, Prepetition FILO Credit Agreement or Prepetition NPC Credit Agreement ceasing to be in full force and effect; (ii) use enforce, to the best of its ability, its rights under the DIP Onloan Credit Agreement, Prepetition FILO Credit Agreement and Prepetition NPC Credit Agreement; and (iii) take such actions as may be from time to time requested by the Administrative Agent and/or Collateral Agent, on written instruction from Required Lenders, with respect to the enforcement or administration of the DIP Onloan Credit Agreement, Prepetition FILO Credit Agreement and Prepetition NPC Credit Agreement.

(2) The Borrower shall not amend, waive or modify any provision of the DIP Onloan Credit Agreement, Prepetition FILO Credit Agreement or Prepetition NPC Credit Agreement without the prior written consent of the Required Lenders.

SECTION 6.13 [Critical Vendor Payments]. Notwithstanding any relief granted in any First Day Orders or Second Day Orders, but subject to any order confirming a chapter 11 plan of the Debtors, the Debtors shall not make any payment to any Critical Vendors (as defined in paragraph 12 of the Debtors' motion seeking, among other things, to pay certain prepetition claims of certain wholesale, merchandise vendors and non-merchandise vendors and suppliers [Bankruptcy Court Docket No. 14]), consignors or concessionaires on account of any prepetition claim of such persons in excess of \$250,000, including any claim entitled to priority under section 503(b)(9), without the consent of the Required Lenders (such consent not to be unreasonably withheld, conditioned or delayed, it being understood that such consent may be conditioned on such vendor entering into a trade agreement on terms acceptable to the Required SGUS Lenders) or as otherwise agreed with the Required Lenders. The Debtors may, in their business judgment, enter into a trade agreement in connection with any payments made on account of a prepetition claim of a Critical Vendor, concessionaire or consignor; *provided* that the form of written trade agreement related thereto shall be subject to the consent of the Required Lenders (such consent not to be unreasonably withheld, conditioned or delayed) or as otherwise agreed with the Required Lenders.]

SECTION 6.14 [Executory Contracts; Unexpired Leases]. The Debtors shall not assume or reject executory contracts or unexpired leases pursuant to Section 365 of the Bankruptcy Code without the prior written consent of the Required Lenders.]

SECTION 6.15 DIP Onloan Loan Party Organizational Documents. The DIP Onloan Borrower and each other DIP Onloan Loan Party shall not amend, restate, supplement, revoke or otherwise modify their Organizational Documents in any manner without the prior written consent of the Required Lenders.

SECTION 6.16 Onloan Negative Covenants. The DIP Onloan Borrower and each of its Restricted Subsidiaries (as defined in the DIP Onloan Credit Agreement, as in effect on the Closing Date) shall comply with each of the covenants set forth in Section VI of the DIP Onloan Credit Agreement, as in effect on the Closing Date (it being understood that non-compliance by the DIP Onloan Borrower or any of its Subsidiaries shall constitute a breach regardless of whether the Borrower or the Loan Parties control any such Person), regardless of whether the DIP Onloan Credit Agreement remains in effect.

ARTICLE VII

[Reserved]

ARTICLE VIII

Events of Default

SECTION 8.01 Events of Default. Each of the following events (each, an “*Event of Default*”):

(1) any representation or warranty made or deemed made by or on behalf of the Borrower or any other Debtor herein, in any other Loan Document or in any DIP Onloan Document, or any representation, warranty, statement or information contained in any certificate, financial statement or document furnished by or on behalf of the Borrower or any other Debtor pursuant to any Loan Document or DIP Onloan Document proves to have been false or misleading in any material respect when so made or deemed made;

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

(3) default is made in the payment of any interest on any Loan or in the payment of any Fee, any other amount due under any Loan Document or any amount due pursuant to the DIP Orders (other than an amount referred to in clause (2) of this Section 8.01), when and as the same becomes due and payable, and such default continues unremedied for a period of three (3) Business Days;

(4) the Debtors fail to satisfy one of the Milestones in Section 5.12(1) through (6) of the DIP Onloan Credit Agreement (without regard as to whether the DIP Onloan Agents have taken action to provide notice of a Default or Event of Default based on such failure);

(5) default is made in the due observance or performance by the Borrower or any other Debtor of any covenant, condition or agreement contained in any Loan Document (other than those specified in clauses (2), (3), (4) and (14) of this Section 8.01), and such default continues unremedied for a period of five (5) Business Days after notice thereof from the Administrative Agent to the Borrower (or such longer period in the sole discretion of the Administrative Agent (acting at the direction of the Required Lenders);

(6) (a) any event or condition occurs that (i) results in any Material Indebtedness becoming due prior to its scheduled maturity or (ii) enables or permits (with all applicable grace periods having expired) the holder or holders of any Material Indebtedness or, in any case, any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity, (b) (x) the Borrower, any Guarantor or any of their respective Subsidiaries or (y) the DIP Onloan Borrower or any Restricted Subsidiary thereof fails to pay the principal of any other Material Indebtedness, at the stated final maturity thereof; or (c) any “event of default” or other event or condition occurs under the Prepetition OpCo Notes Indenture that (i) results in the Indebtedness under the Prepetition OpCo Notes Indenture becoming due prior to its scheduled maturity or (ii) enables or permits (with all applicable grace periods having expired) the holder or holders of any Indebtedness under the Prepetition OpCo Notes Indenture or, in any case, any trustee or agent on its or their behalf to cause any Indebtedness under the Prepetition OpCo Notes Indenture to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; *provided that* clauses (6)(a), (b) and (c) will not apply to (x) secured Indebtedness that

becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness, and (y) any Prepetition Indebtedness or any Indebtedness incurred prior to the Petition Date so long as the remedies under such Indebtedness are, in each case, subject to the Automatic Stay, or (d) there shall occur any Event of Default or equivalent term under any of the DIP Onloan Documents (with all applicable grace periods having expired);

(7) a Change of Control occurs;

(8) an involuntary proceeding is commenced or an involuntary petition is filed in a court of competent jurisdiction seeking:

(a) relief in respect of any Restricted Subsidiary that is not a Debtor or of a substantial part of the property or assets of the DIP Onloan Borrower or any Restricted Subsidiaries under the Bankruptcy Code, or any other federal, state or foreign bankruptcy, insolvency, or similar law and such proceeding or petition continues undischarged, undismissed or unstayed for 60 calendar days, or an order or decree approving or ordering any of the foregoing is entered;

(b) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Restricted Subsidiary of any Debtor that is not a Debtor or for a substantial part of the property or assets of any such Restricted Subsidiary and such appointment occurs and continues undischarged, undismissed or unstayed for 60 calendar days from the date of such appointment; or

(c) the winding up or liquidation of any Restricted Subsidiary of any Debtor that is not a Debtor and such proceeding or petition continues undischarged, undismissed or unstayed for 60 calendar days, or an order or decree approving or ordering any of the foregoing is entered;

provided that this clause (8) shall not apply to the extent that either (A)(x) with respect to the case of any such Subsidiary that is not a Debtor, within five Business Days after the commencement thereof, such case becomes jointly administered with the Chapter 11 Cases and (y) each of the Interim DIP Order and/or Final DIP Order (as applicable) are made applicable to such Restricted Subsidiary as a Post-Petition guarantor hereunder or under the DIP Onloan Credit Agreement on terms and conditions reasonably satisfactory to the Required Lenders or (B) such proceeding would not reasonably be expected to have a Material Adverse Effect with respect to any Loan Party.

(9) Any Restricted Subsidiary of any Debtor that is not a Debtor:

(a) voluntarily commences any proceeding or files any petition seeking relief under the Bankruptcy Code, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law;

(b) consents to the institution of, or fails to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in clause (8) of this Section 8.01;

(c) applies for or consents to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any such Restricted Subsidiary or for a substantial part of the property or assets of any such Restricted Subsidiary;

(d) files an answer admitting the material allegations of a petition filed against it in any such proceeding;

(e) makes a general assignment for the benefit of creditors; or

(f) becomes unable or admits in writing its inability or fails generally to pay its debts as they become due;

provided that the foregoing clauses (i) through (vi) shall not apply to the extent that (A)(x) with respect to the case of any such Subsidiary that is not a Debtor, within five Business Days after the commencement thereof, such case becomes jointly administered with the Chapter 11 Cases and (y) each of the Interim DIP Order and/or Final DIP Order (as applicable) are made applicable to such Subsidiary as a Post-Petition guarantor hereunder or under the DIP Onloan Credit Agreement on terms and conditions reasonably satisfactory to the Required Lenders or (B) such event or occurrence would not reasonably be expected to have a Material Adverse Effect with respect to any Loan Party;

(10) except for any Approved Court Order fixing the amount of any claim in the Chapter 11 Cases, the Borrower or any other Loan Parties that are Debtors fail to pay with respect to any Post-Petition Liabilities one or more final judgments aggregating in excess of \$[2.5] million (to the extent not covered by insurance), which judgments are not discharged or effectively waived or stayed for a period of 45 consecutive days, or any action is legally taken by a judgment creditor to levy upon assets or properties of the Borrower or any such Loan Party to enforce any such judgment;

(11) (a) a trustee is appointed by a United States district court to administer any ERISA Plan or (b) an ERISA Event or ERISA Events occurs with respect to any ERISA Plan or Multiemployer Plan, and, in each case, with respect to clauses (a) and (b) above, such event or condition, together with all other such events or conditions, if any, results or is reasonably expected to result in liability of any Loan Party in an aggregate amount in excess of \$5,000,000; or

(12) (a) any material provision of any Loan Document or DIP Onloan Document ceases to be, or is asserted in writing by the Borrower or any other Debtor not to be, for any reason, a legal, valid and binding obligation of any party thereto, (b) any security interest purported to be created by any Security Document, DIP Onloan Document or the DIP Orders on any material portion of the Collateral or the Collateral (as defined in the DIP Onloan Credit Agreement) ceases to be, or is asserted in writing by any Debtor not to be, a valid and perfected, first priority (except as otherwise expressly provided in this Agreement or such Security Document or such DIP Order) security interest in the securities, assets or properties covered thereby, or (c) the Guarantees pursuant to the Security Documents, the Security Documents (as defined in the DIP Onloan Credit Agreement) or the DIP Orders by any Debtor of any of the Obligations or the Obligations (as defined in the DIP Onloan Credit Agreement), as applicable, cease to be in full force and effect (other than as expressly in accordance with the terms thereof or in such DIP Order) or are asserted in writing by any Debtor not to be in effect or not to be legal, valid and binding obligations, except in the cases of clauses (a) and (b), in connection with an Asset Sale permitted by this Agreement;

(13) Chapter 11 Cases. The occurrence of any of the following in the Chapter 11 Cases:

(a) the entry by the Bankruptcy Court of a final, non-appealable order (A) converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, (B) dismissing any of the Chapter 11 Cases (or any subsequent chapter 7 case), or (C) pursuant to which the Bankruptcy Court abstains from hearing any of the Chapter 11 Cases (or any subsequent

chapter 7 case), or (ii) the filing by any Debtor or any Subsidiary or Affiliate thereof of a motion or other pleading seeking the entry of any such orders;

(b) any Debtor's exclusive right to file and/or solicit acceptances of a Chapter 11 Plan under section 1121 of the Bankruptcy Code is terminated for any reason, unless such order was entered as a result of a request by, or received support from, the Administrative Agent (acting at the direction of the Required Lenders);

(c) the failure of any Debtor to comply with the DIP Orders in any material respect, including by transferring or seeking to transfer cash out of the Escrow Account [or the Carve Out Account]¹⁴ (as each is defined in the DIP Orders) other than as permitted under the DIP Orders;

(d) any DIP Order is revoked, remanded, vacated, reversed, stayed, rescinded, or modified (other than modifications consented to by the Administrative Agent (acting at the direction of the Required Lenders);

(e) the appointment of a (A) trustee, (B) responsible officer, or (C) examiner or disinterested person with expanded powers relating to the operations or the business of any of the Debtors in the Chapter 11 Cases (having powers beyond those set forth in the sections 1106(a)(3) and (4) of the Bankruptcy Code) (other than a fee examiner under section 1104(c) of the Bankruptcy Code) or (ii) the filing by any Debtor or any Subsidiary or Affiliate thereof of a motion or other pleading seeking the entry of an order implementing any such appointment;

(f) any administrative expense claim against any Debtor is allowed having priority over or ranking in parity with the rights of the Agents, other than in respect of the Carve Out and as expressly permitted under the Loan Documents and the DIP Orders;

(g) any Debtor consents to the payment, settlement, grant of, or stipulation to pay, settle or grant, adequate protection with respect to any of the prepetition secured debt of the Debtors, other than to the extent permitted under the DIP Orders and the Approved Budget, or the Bankruptcy Court enters an order allowing any of the foregoing;

(h) (A) the Debtors propose, file or support, or the Bankruptcy Court enters an order (1) confirming or approving any Chapter 11 Plan that is not an Acceptable Plan or (2) approving the adequacy of a disclosure statement in connection with any Chapter 11 Plan that is not an Acceptable Plan, or (B) the Debtors shall support or fail to contest in good faith the filing or confirmation of any Chapter 11 Plan that is not an Acceptable Plan filed by any other Person, in each case without the written approval of the Administrative Agent (acting at the direction of the Required Lenders);

(i) any of the Debtors incurs or seeks to incur post-petition loans or other financial accommodations pursuant to section 364(c) or (d) of the Bankruptcy Code (other than the DIP Facility or other Indebtedness permitted by the Loan Documents and such loans or financial accommodations will not provide for the Obligations and the Prepetition Secured Obligations being Paid in Full on or prior to the closing of such loans or financial accommodations;

(j) Any of the Debtors or any Subsidiary or Affiliate thereof shall (A) assert that the Liens on the Collateral securing the Obligations, the DIP Superpriority Claims, the Onloan

¹⁴ NTD: To define in the DIP Order

DIP Claims or the guarantees of the Obligations by the Guarantors are invalid, or any such liens, claims or guarantees shall be invalidated, or (B) file or otherwise commence, join in, assist, support or otherwise participate as an adverse party in any suit, challenge or proceeding against any of the Secured Parties (in their capacity as such) in respect of the DIP Facility or the Prepetition Secured Parties (in their capacity as such) in respect of the Prepetition Onloan Credit Agreements or Prepetition Secured Onloan Obligations, including with respect to the Debtors' stipulations, admissions, agreements and releases included in the DIP Orders, or seeking the invalidation or subordination or otherwise challenging the DIP Superpriority Claims, the Onloan DIP Claims or the Liens granted to secure the Obligations; *provided* that the Debtors shall not be precluded from contesting whether an Event of Default has occurred and is continuing;

(k) the termination of the Debtors' use of Cash Collateral or Prepetition Collateral, or the entry of an order by the Bankruptcy Court terminating or denying the Debtors' use of Cash Collateral or Prepetition Collateral;

(l) the entry of a final, non-appealable order by the Bankruptcy Court granting relief from the Automatic Stay to any other creditor or party in interest in the Chapter 11 Cases that would permit such other creditor or party in interest to (A) pursue actions that would have a material adverse effect on the Debtors or their estates or (B) proceed against any portion of the Collateral exceeding \$[1,000,000] in value in the aggregate;

(m) the entry of a final, non-appealable order by the Bankruptcy Court allowing any claim or claims under section 506(c) of the Bankruptcy Code or otherwise to surcharge any (i) Collateral or (ii) subject to entry of the Final DIP Order, any Prepetition Collateral;

(n) subject to entry of the Final DIP Order, the filing of a motion by the Borrower, any Guarantor or any Subsidiary thereof or any of their respective Affiliates seeking to limit, or the entry by the Bankruptcy Court of an order limiting, the extension under Section 552(b) of the Bankruptcy Code of the Prepetition Liens on the Prepetition Collateral to any proceeds, products, offspring, or profits of the Prepetition Collateral acquired by any Loan Party or DIP Onloan Loan Party after the Petition Date;

(o) any of the Secured Parties with respect to the Collateral or, subject to entry of the Final DIP Order, the Prepetition Secured Parties with respect to the Prepetition Collateral, are subject to the equitable doctrine of marshaling;

(p) any of the DIP Orders are amended, supplemented, vacated, stayed or otherwise modified, including pursuant to an order of the Bankruptcy Court (or the Debtors seek to amend, supplement, vacate, stay or otherwise modify any of foregoing, including making any filing seeking to make any such amendment, vacation, stay or modification or take any other act in furtherance of the foregoing) without the prior written consent of the Administrative Agent (at the direction of the Required Lenders);

(q) except as set forth in any motions or other pleadings which have been delivered to and are acceptable to the Required Lenders or as set forth in the DIP Orders, the payment of, or, with respect to the Debtors, application for authority to pay, any claim that arose prior to the Petition Date, without the prior written consent of the Administrative Agent (at the direction of the Required Lenders);

(r) the entry of an order in any of the Chapter 11 Cases avoiding or permitting recovery of any portion of the payments made on account of the Obligations or the Prepetition Secured Obligations, including the issuance of the Second Out DIP Roll-Up Loans;

(s) other than with the prior written consent of the Administrative Agent (acting at the direction of the Required Lenders), the filing of a motion by any Loan Party or any of their respective Subsidiaries or Affiliates seeking, or the Bankruptcy Court shall enter an order granting, a change in venue with respect to the Chapter 11 Cases; or

(t) the Borrower, any Loan Party or any Subsidiary or Affiliate thereof shall take any action in support or in furtherance of any occurrence that would constitute an Event of Default pursuant to this Section 8.01(13), or any other Person shall do so and such application is not contested in good faith by the Borrower and the relief requested is granted in an order that is not stayed pending appeal;

(14) default is made in the due observance or performance by the Borrower of Section 6.08(1);

(15) [the exercise of rights or remedies by (i) Axonic in respect of the Equity Interests of Saks Flagship GL Tenant or (ii) CMBS Lenders against any assets or property of any Saks Flagship Entity,]

then, (i) (a) after the occurrence of an Event of Default, the Administrative Agent (acting at the direction of the Required Lenders) may direct the Debtors to commence a process for a sale of all or any material portion of the Collateral (the “**Sales Process**” and such direction, a “**Sale Notice**”), at which time (i) within [two (2)] Business Days after the delivery of the Sale Notice, the Debtors shall file a motion or motions seeking approval of bidding and sales procedures and related relief with respect to the Sales Process, in a form and substance acceptable to the Required Lenders (collectively, the “**Bid Procedures Pleadings**”) and (b) within [30] days after delivery of the Sale Notice, obtain entry of orders approving the Bid Procedures Pleadings in form and substance acceptable to the Required Lenders, (ii) upon the occurrence of any such Event of Default (other than as described in clauses (4), (8) or (9) of this Section 8.01) and at any time thereafter during the continuance of such Event of Default, the Administrative Agent, at the direction of the Required Lenders, will, by notice to the Borrower, take any or all of the following actions, at the same or different times: (A) terminate forthwith the Commitments, (B) declare the Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Borrower accrued hereunder and under any other Loan Document, will become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding; (C) [reserved] and (D) exercise all rights and remedies granted to it under any Loan Document and all of its rights under any other applicable law or in equity, and (ii) upon the occurrence of any Event of Default described in clause (8) or (9) of this Section 8.01, the principal of the Loans then outstanding, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Borrower accrued hereunder and under any other Loan Document, will automatically become due and payable and the Administrative Agent shall be deemed to have made a demand for cash collateral to the full extent permitted under Section 2.05(11), without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding.

ARTICLE IX

*The Agents*SECTION 9.01 Appointment.

(1) Each Lender hereby irrevocably authorizes, designates and appoints U.S. Bank to act on its behalf as the Administrative Agent and Collateral Agent under this Agreement and the other Loan Documents, as applicable, and each such Lender irrevocably authorizes the Administrative Agent and Collateral 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 Administrative Agent and Collateral Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. In addition, to the extent required under the laws of any jurisdiction other than the United States, each of the Lenders hereby grants to the Administrative Agent any required powers of attorney to execute any Security Document governed by the laws of such jurisdiction on such Lender's behalf. Notwithstanding any provision to the contrary elsewhere in this Agreement, no Agent shall have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender, Secured Party or any other Person 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 such Agent. To the extent required by any applicable law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any other Governmental Authority asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender because the appropriate form was not delivered or was not properly executed or because such Lender failed to notify the Administrative Agent of a change in circumstance which rendered the exemption from, or reduction of, withholding Tax ineffective or for any other reason, such Lender shall indemnify the Administrative Agent fully for all amounts paid, directly or indirectly, by the Administrative Agent as Tax or otherwise, including any penalties or interest and together with all expenses (including legal expenses, allocated internal costs and out-of-pocket expenses) incurred. For the avoidance of doubt, no Borrower shall have liability for the actions of the Administrative Agent pursuant to the immediately preceding sentence. It is understood and agreed that the use of the term "agent", "administrative agent", and "collateral agent" herein or in any other Loan Documents (or any other similar term) with reference to the Agents is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used as a matter of market custom and is intended to create or reflect only an administrative relationship between contracting parties. No Agent shall be deemed to assume any obligations or liabilities of any Lender under this Agreement or any other Loan Document.

(2) Each Lender and the other Secured Parties (except for each Agent) irrevocably appoints and authorizes the Collateral Agent to act as the collateral agent of such Lender and such other Secured Party (and to hold any security interest, charge or other Lien created by this Agreement or the other Security Documents for and on behalf of the Secured Parties) for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and authorizes as are reasonably incidental thereto. In this connection, the Administrative Agent, the Collateral Agent (and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent or the Collateral Agent pursuant to Section 9.02 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights and remedies thereunder at the direction of the Required Lenders (or the Supermajority Holders or such other number or percentage of the Lenders as shall expressly be required under this Agreement or the other Loan Documents), shall be entitled to the benefits of all provisions of this Article IX (including Section 9.07) as if set forth in full herein with respect thereto. Without limiting the generality

of the foregoing, the Lenders hereby expressly authorize the Administrative Agent and the Collateral Agent, as applicable, to execute any and all documents (including releases) with respect to the Collateral and the rights of the Secured Parties with respect thereto, as contemplated by and in accordance with the provisions of the Loan Documents and acknowledge and agree that any such action by any Agent shall bind all Lenders.

(3) In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, (a) the Administrative Agent (irrespective of whether the principal of any Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise (i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of any or all of the Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Agents and the Secured Parties and any of their Subagents allowed in such judicial proceeding and (ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same, and (b) any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under the Loan Documents. Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

(4) The Lenders and each other Secured Party shall act collectively through the Administrative Agent with respect to the Obligations and the Loan Documents. Without limiting the delegation of authority to the Agents set forth herein, the Required Lenders shall direct the Agents with respect to the exercise of rights and remedies hereunder and under other Loan Documents (including with respect to alleging the existence or occurrence of, and exercising rights and remedies as a result of, any Default or Event of Default), the exercise of rights and remedies with respect to (i) the Transactions, (ii) the Loans and any securities, notes, or other interests issued pursuant to this Agreement and (iii) any Collateral with respect to the Obligations. Any such rights and remedies shall not be exercised other than through the Agents. None of the foregoing shall preclude any Lender from exercising any right of set-off in accordance with the provisions of Section 10.06 or from exercising rights and remedies (other than the enforcement of Collateral) with respect to any payment default after the occurrence of the applicable Maturity Date with respect to any Loans made by it.

(5) For purposes of clarity and notwithstanding anything contained in this Agreement or any other Loan Document to the contrary, and without limiting any rights, protections, immunities or indemnities afforded to any Agent hereunder (including without limitation this Article IX), with respect to instances described by phrases such as “satisfactory to the [Administrative][Collateral] Agent”, “approved by the [Administrative][Collateral] Agent”, “acceptable to the [Administrative][Collateral] Agent”, “as determined by the [Administrative][Collateral] Agent”, “in the [Administrative][Collateral] Agent’s discretion”, “selected by the [Administrative][Collateral] Agent”, “elected by the [Administrative][Collateral] Agent”, “requested by the [Administrative][Collateral] Agent” and phrases of similar import that authorize and permit an Agent to approve, disapprove, determine, act or decline to act in its discretion shall be subject to the Administrative Agent or the Collateral Agent, as applicable, receiving written direction from the Required Lenders (or such other number or percentage of the Lenders as shall be

expressly provided for herein or in the other Loan Documents), in order to take such action or to exercise such rights. Nothing contained in this Agreement shall require any Agent to exercise any discretionary acts and any permissive grant of power to any Agent hereunder shall not be construed to be a duty to act.

SECTION 9.02 Delegation of Duties. Each Agent may execute any of its duties under this Agreement and the other Loan Documents (including for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof)) by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. No Agent shall be responsible for the negligence or misconduct of the agents or attorneys-in-fact selected by it with reasonable care. Each Agent may also from time to time, when such Agent deems it to be necessary or desirable, appoint one or more trustees, co-trustees, collateral co-agents, collateral subagents or attorneys-in-fact (each, a “***Subagent***”) with respect to all or any part of the Collateral; *provided* that no such Subagent shall be authorized to take any action with respect to any Collateral unless and except to the extent expressly authorized in writing by such Agent. Should any instrument in writing from the Borrower or any other Loan Party be required by any Subagent so appointed by such Agent to more fully or certainly vest in and confirm to such Subagent such rights, powers, privileges and duties, the Borrower shall, or shall cause such Loan Party to, execute, acknowledge and deliver any and all such instruments promptly upon request by such Agent. If any Subagent, or successor thereto, shall die, become incapable of acting, resign or be removed, all rights, powers, privileges and duties of such Subagent, to the extent permitted by law, shall automatically vest in and be exercised by the applicable Agent until the appointment of a new Subagent. No Agent shall be responsible for the negligence or misconduct of any agent, attorney-in-fact or Subagent that it selects in accordance with the foregoing provisions of this Section 9.02 in the absence of such Agent’s gross negligence or willful misconduct in the selection of such Subagent, as determined by a final and nonappealable judgment of a court of competent jurisdiction.

SECTION 9.03 Exculpatory Provisions. None of the Agents, their respective Affiliates or any of the Agents’ Related Parties shall be (1) liable for any action lawfully taken or omitted to be taken by such Agent 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 non-appealable decision of a court of competent jurisdiction to have resulted from its or such Person’s own gross negligence or willful misconduct, in connection with its duties expressly set forth herein; *provided*, however, that no action taken or not taken by any Agent at the direction of the Required Lenders (or the Supermajority Holders or such other number or percentage of the Lenders as expressly provided for in this Agreement or the other Loan Documents) shall be considered gross negligence or willful misconduct of such Agent) or (2) responsible in any manner to any of the Lenders or any other Person 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, order or other document referred to or provided for in, or received by the Agents under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document or for any failure of any Loan Party party thereto to perform its obligations hereunder or thereunder. The Agents shall not be under any obligation to any 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. No Agent shall have any duties or obligations except those expressly set forth herein and in the other Loan Documents to which it is a party. Without limiting the generality of the foregoing, (a) no Agent shall be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing, and (b) no Agent shall, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information including, but not limited to, any information concerning the business, prospects, operations, property, financial and other condition or creditworthiness relating to the Borrower or any of its Affiliates that is communicated to or obtained by such Agent or its Affiliates in any capacity. No Agent shall be responsible or have any liability for, or have

any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Institutions; further, without limiting the generality of the foregoing, no Agent shall be (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Institution or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Institution. No Agent shall be responsible for, nor chargeable with, knowledge of the terms and conditions of any agreement, instrument or document other than such Loan Documents to which it is a party, whether or not an original or a copy of such agreement has been provided to such Agent. No Agent shall be required to risk or expend its own funds in performing its obligations hereunder or under any other Loan Document or to take any action which in its reasonable judgment may cause it to incur any expense or financial or other liability for which it is not indemnified to its satisfaction. No Agent shall be liable for any indirect, special, punitive or consequential damages (including but not limited to lost profits) whatsoever, even if it has been informed of the likelihood thereof and regardless of the form of action. No Agent shall be responsible for or have any duty to ascertain or inquire into:

- (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document;
- (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith;
- (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default;
- (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Security Documents;
- (v) the value or the sufficiency of any Collateral; or
- (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, or any other Loan Document.

No Agent shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that such Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); provided that such Agent shall not be required to take any action that, in its judgment or the judgment of its counsel, may expose such Agent to liability or that is contrary to any Loan Document or applicable Law. As to any matters not expressly provided for by this Agreement or any other Loan Document, each Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder or thereunder in accordance with written instructions given by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), and such instructions, and any action taken or failure to act pursuant thereto, shall be binding on all of the Lenders. No Agent shall have any liability for any failure or delay in taking any actions contemplated herein as a result of the failure or delay on the part of the Required Lenders to provide such instructions.

No Agent shall have any liability for any failure, inability or unwillingness on the part of any Lender to provide accurate and complete information on a timely basis to such Agent, or otherwise on the part of

any such party to comply with the terms of this Agreement or the other Loan Documents, and shall not have any liability for any inaccuracy or error in the performance or observance on such Agent's part of any of its duties hereunder or any other Loan Document that is caused by or results from any such inaccurate, incomplete or untimely information received by it, or other failure on the part of any such other party to comply with the terms hereof.

In no event shall any Agent be responsible or liable for: (i) delays or failures in performance resulting from acts beyond its control, including, but not limited to, acts of God, strikes, lockouts, riots, acts of war, epidemics, pandemics, governmental regulations imposed after the fact, fire, communication line failures, computer viruses, power failures, earthquakes or other disasters, the unavailability of communications or computer facilities, the failure of equipment or interruption of communications or computer facilities, or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility, (ii) any delay, error omission or default of any mail, telegraph, cable or wireless agency or operator, (iii) the acts or edicts of any government or governmental agency or other group or entity exercising governmental powers or (iv) any other causes beyond such Agent's control whether or not of the same class or kind as specified above. For the avoidance of doubt, each Agent's rights, protections, indemnities and immunities provided herein shall apply to each Agent for any actions taken or omitted to be taken under this Agreement or any other Loan Documents and any other related agreements in any of their respective capacities and each Agent shall be afforded all of the rights, powers, immunities and indemnities set forth in this Agreement and in all of the other Loan Documents to which it is a signatory as if such rights, powers, immunities and indemnities were specifically set out in each such other Loan Document.

SECTION 9.04 Reliance by Agent. Each Agent shall be entitled to conclusively rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document, order, judgment, signature, resolution, representation, affidavit, letter or other writing (including any electronic message, Internet or intranet website posting or other distribution) or conversation believed in good faith by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. Each Agent also may conclusively rely upon any statement made to it orally or by telephone and believed in good faith by it to have been made by the proper Person and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of any Loan, that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received written notice to the contrary from such Lender prior to such Borrowing. Each Agent may consult with legal counsel (which may, but need not be, counsel to the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. Each 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 applicable Agent. Each 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 consent or direction of the Required Lenders (or, such other number or percentage of the Lenders as shall be expressly required under this Agreement or the other Loan Documents) as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. Each 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 such other number or percentage of the Lenders as shall expressly be provided for herein or in the other Loan Documents), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Loans.

SECTION 9.05 Notice of Default. No Agent shall be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless a responsible officer of such Agent with direct responsibility for the administration of this Agreement has received written 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 an Agent receives such a notice, such Agent shall give notice thereof to the Lenders. The applicable Agent shall take such action with respect to such Default or Event of Default as shall be directed by the Required Lenders (or such other number or percentage of the Lenders as shall expressly be provided for herein or in the other Loan Documents); *provided* that unless and until the applicable Agent shall have received such directions, the Administrative 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 9.06 Non-Reliance on Agents and Other Lenders. Each Lender expressly acknowledges that none of the Agents has, nor any of their respective officers, directors, employees, agents, attorneys-in-fact or affiliates have, made any representation or warranty to it, and that no act by the Agents hereafter taken, including any consent to, and acceptance of any assignment or review of the affairs of any Loan Party of any Affiliate thereof, shall be deemed to constitute any representation or warranty by the Agents to any Lender as to any matter, including whether the Agents have disclosed material information in their possession. Each Lender represents to the Agents that it has, independently and without reliance upon the Agents, any other Lender or any of their related parties and based on such documents and information as it has deemed appropriate, made its own credit analysis of, appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrower hereunder. Each Lender also acknowledges that it will, independently and without reliance upon the Agents, any other Lender or any of their related parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties. Each Lender represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility and (ii) it is engaged in making, acquiring or holding commercial loans in the ordinary course and is entering into this Agreement as a Lender for the purpose of making, acquiring or holding commercial loans and providing other facilities set forth herein as may be applicable to such Lender, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument, and each Lender agrees not to assert a claim in contravention of the foregoing. Each Lender represents and warrants that it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities. The Agents shall not have any duty or responsibility to provide any Lender with any other credit or other information concerning the affairs, financial condition or business of any Loan Party that may come into the possession of the Agents or any of their respective officers, directors, employees, agents, attorneys-in-fact or affiliates.

SECTION 9.07 Indemnification. The Lenders (other than the Fronting Lender) agree to indemnify each Agent in its capacity as such and their Related Parties (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so), in the amount of its *pro rata* share (based on its exposure hereunder) (determined at the time such indemnity is sought), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the

Loans) be imposed on, incurred by or asserted against any Agent or their Related Parties in any way relating to or arising out of the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by the 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 non-appealable decision of a court of competent jurisdiction to have resulted from such Agent's gross negligence or willful misconduct. The failure of any Lender to reimburse an Agent promptly upon demand for its ratable share of any amount required to be paid by the Lenders to the applicable Agent as provided herein shall not relieve any other Lender of its obligation hereunder to reimburse the Administrative Agent for its ratable share of such amount, but no Lender shall be responsible for the failure of any other Lender to reimburse the applicable Agent such other Lender's ratable share of such amount. The agreements in this Section 9.07 shall survive the termination of this Agreement, the resignation or removal of each Agent, the payment of the Loans and all other amounts payable hereunder.

SECTION 9.08 Agent in Its Individual Capacity. Each Agent and its affiliates may (without obligation) 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 Loans made or renewed by it, each Agent shall have the same rights and powers under this Agreement and the other Loan Documents as any Lender and may exercise the same as though it were not the Administrative Agent, and the terms "Lender" and "Lenders" shall include each Agent in its individual capacity.

SECTION 9.09 Successor Agent. Any Agent may resign upon ten (10) days' notice to the Lenders and the Borrower. If an Agent resigns under this Agreement and the other Loan Documents, then the Required Lenders shall appoint from among the Lenders a successor agent for the Lenders and the other Secured Parties, which successor agent shall (unless a Specified Event of Default shall have occurred and be continuing) be subject to approval by the Borrower (which approval shall not be unreasonably withheld, conditioned or delayed), whereupon such successor agent shall succeed to the rights, powers and duties of the applicable Agent, and the reference to the resigning Administrative Agent and/or Collateral Agent, as applicable, means 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 other Lenders. If no successor agent has accepted appointment as Agent by the date that is ten (10) days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective, and the Required Lenders hereunder shall, on behalf of the Lenders appoint a successor agent which shall (unless a Specified Event of Default shall have occurred and be continuing) be subject to approval by the Borrower (which approval shall not be unreasonably withheld, conditioned or delayed). After any retiring Agent's resignation as Agent, the provisions of this Article IX, Section 10.05 and any other provision of this Agreement or the other Loan Documents that expressly survive the resignation or removal of such Agent shall inure to its benefit as to any actions taken or omitted to be taken by it while it was an Agent under this Agreement and the other Loan Documents. Any entity into which an Agent may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, conversion or consolidations which an Agent may be party, or any corporation or association to which all or substantially all of the corporate trust or agency business and assets as a whole or substantially as a whole of an Agent may be transferred or sold, shall be the successor Agent under this Agreement and each Loan Document and will have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or any further action.

SECTION 9.10 [Reserved].

SECTION 9.11 Recovery of Erroneous Payments. (a) If the Administrative Agent or the Collateral Agent (x) notifies a Lender or Secured Party, or any Person who has received funds on behalf of a Lender or Secured Party (any such Lender, Secured Party or other recipient (and each of their respective successors and assigns), a “Payment Recipient”) that the Administrative Agent or the Collateral Agent, as applicable, has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds (as set forth in such notice from the Administrative Agent or the Collateral Agent) received by such Payment Recipient from the Administrative Agent or the Collateral Agent or any of its respective Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, Secured Party or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an “Erroneous Payment”) and (y) demands in writing the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent or the Collateral Agent, as applicable, pending its return or repayment as contemplated below in this Section 9.11 and held in trust for the benefit of the Administrative Agent or the Collateral Agent, as applicable, and such Lender or Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two Business Days thereafter (or such later date as the Administrative Agent or the Collateral Agent, as applicable, may, in its sole discretion, specify in writing), return to the Administrative Agent or the Collateral Agent, as applicable, the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon (except to the extent waived in writing by the Administrative Agent or the Collateral Agent, as applicable) in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent or the Collateral Agent, as applicable, in same day funds at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent or the Collateral Agent, as applicable, in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent or the Collateral Agent, as applicable, to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(a) Without limiting the immediately preceding clause (a), each Lender, Secured Party or any Person who has received funds on behalf of a Lender or Secured Party (and each of their respective successors and assigns), agrees that if it (or a Payment Recipient on its behalf) receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent or the Collateral Agent (or any of its respective Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Agreement or in a notice of payment, prepayment or repayment sent by the Administrative Agent or the Collateral Agent, as applicable (or any of its respective Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent or the Collateral Agent, as applicable (or any of its respective Affiliates), or (z) that such Lender or Secured Party, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then in each such case:

(i) it acknowledges and agrees that (A) in the case of immediately preceding clauses (x) or (y), an error and mistake shall be presumed to have been made (absent written confirmation from the Administrative Agent or the Collateral Agent, as applicable, to the contrary) or (B) an error and mistake has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender or Secured Party shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of

its knowledge of the occurrence of any of the circumstances described in immediately preceding clauses (x), (y) and (z)) notify the Administrative Agent or the Collateral Agent, as applicable, of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent or the Collateral Agent, as applicable, pursuant to this Section 9.11(b).

For the avoidance of doubt, the failure to deliver a notice to the Administrative Agent or the Collateral Agent pursuant to this Section 9.11(b) shall not have any effect on a Payment Recipient's obligations pursuant to Section 9.11(a) or on whether or not an Erroneous Payment has been made.

(b) Each Lender or Secured Party hereby authorizes the Administrative Agent and the Collateral Agent to set off, net and apply any and all amounts at any time owing to such Lender or Secured Party under any Loan Document, or otherwise payable or distributable by the Administrative Agent or the Collateral Agent to such Lender or Secured Party under any Loan Document or from any other source against any amount that the Administrative Agent or the Collateral Agent has demanded to be returned under the immediately preceding clause (a).

(c) The parties hereto agree that (x) irrespective of whether the Administrative Agent or the Collateral Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent or the Collateral Agent, as applicable, shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Lender or Secured Party, to the rights and interests of such Lender or Secured Party, as the case may be) under the Loan Documents with respect to such amount (the "Erroneous Payment Subrogation Rights") and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrowers or any other Loan Party; provided that this Section 9.11 shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of the Borrower relative to the amount (and/or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by the Administrative Agent or the Collateral Agent; provided, further, that for the avoidance of doubt, the immediately preceding clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent or the Collateral Agent from the Borrower for the purpose of making such Erroneous Payment.

(d) Notwithstanding anything to the contrary contained herein, and for the avoidance of doubt, in no event shall the occurrence of an Erroneous Payment (or the existence of any Erroneous Payment Subrogation Rights or other rights of the Administrative Agent or the Collateral Agent in respect of an Erroneous Payment) result in the Administrative Agent or the Collateral Agent becoming, or being deemed to be, a Lender hereunder or the holder of any Loans hereunder.

(e) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent or the Collateral Agent for the return of any Erroneous Payment received, including, without limitation, any defense based on "discharge for value" or any similar doctrine.

(f) Each party's obligations, agreements and waivers under this Section 9.11 shall survive the resignation or replacement of the Administrative Agent and/or the Collateral Agent, any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

SECTION 9.12 Credit Bidding The Secured Parties, hereby irrevocably authorize the Collateral Agent (either directly or via one or more acquisition vehicles), at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise but excluding such Obligations owing to the Agent) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (i) at any sale thereof conducted under the provisions of the Bankruptcy Code, including under Sections 363, 1123 or 1129 of the Bankruptcy Code, or (ii) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Collateral Agent (whether by judicial action or otherwise) in accordance with any applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the applicable Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis among the Lenders and in accordance with the Lien priorities set forth in the DIP Orders (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (A) the Collateral Agent (or the Required Lenders on its behalf) shall be authorized to form one or more acquisition vehicles in which all of the Lenders are able to own any such Equity Interests and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Obligations to be credit bid, to make a bid, (B) the Required Lenders to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof) shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in Section 10.08 of this Agreement, (C) the Collateral Agent, acting at the direction of the Required Lenders, shall be authorized to assign the relevant Obligations to any such acquisition vehicle pro rata by the Lenders, as a result of which each of the Lenders shall be deemed to have received a pro rata portion of any Equity Interests and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Obligations to be credit bid, all without the need for any Loan Party or acquisition vehicle to take any further action and (D) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

SECTION 9.13 Collateral and Guarantee Matters. Each Lender irrevocably authorizes the Administrative Agent and the Collateral Agent, as applicable [(and subject to the provisions of the DIP Intercreditor Agreement)]:

(1) to release any Lien on any property granted to or held by the Administrative Agent or Collateral Agent under any Loan Document:

(a) upon termination of the Commitments and the date on which all Obligations are Paid in Full (other than contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted);

(b) that is sold or to be sold or otherwise disposed of or transferred as part of or in connection with any sale, Investment, Restricted Payment or other transaction permitted hereunder or under any other Loan Document;

(c) if approved, authorized or ratified in writing in accordance with Section 10.08 hereof;

(d) that constitutes Excluded Assets; or

(e) if the property subject to such Lien is owned by a Guarantor, upon release of such Guarantor from its obligations under this Agreement and the other Loan Documents pursuant to clause (2) below;

(2) to release any Guarantor from its obligations under the Loan Documents if such Person ceases to be a Subsidiary of any Debtor as a result of a transaction permitted hereunder; *provided*, that no release shall be permitted if such Person continues to guarantee or be an obligor in respect of any Prepetition Indebtedness or any refinancings or replacements thereof; and

Upon request by any Agent at any time, the Required Lenders will confirm in writing such Agent's authority to release or subordinate its interest in particular types or items of property, to provide that its interests in particular types or items of property are equal to the interests of any other Person, or to release any Loan Party from its obligations under the Loan Documents. In each case specified in this Section 9.13, the applicable Agent shall promptly (and each Lender irrevocably authorizes the applicable Agent to), at the Borrowers' expense, execute and deliver, without representation, recourse or warranty, to the applicable Loan Party such documents, including (without limitation) termination or partial release statements, as such Loan Party shall prepare and may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item or to provide that its interests are equal to the interests of any other Person, or to release such Subsidiary Loan Party from its obligations under the Loan Documents, in each case in accordance with the terms of the Loan Documents and this Section 9.13. Notwithstanding anything contained in this Agreement or any Loan Document to the contrary, prior to releasing its interest in any Collateral, or to release any Guarantor from its Guarantee pursuant to this Section 9.13, the Administrative Agent and/or the Collateral Agent shall be entitled to receive a certificate of a Responsible Officer of the Borrower (which each Agent is entitled to conclusively rely upon without independent investigation or inquiry) certifying that the execution and delivery of such document or instrument evidencing or authorizing such release or subordination is authorized or permitted by this Agreement and the other Loan Documents and that the applicable transaction is permitted under this Agreement.

SECTION 9.14 [Reserved].

SECTION 9.15 ERISA Representation.

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

(a) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance

into, participation in, administration of and performance of the Loans, the Commitments or this Agreement,

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

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

(d) such other representation, warranty and covenant as may be agreed in writing between the Agents, in their sole discretion, and such Lender.

In addition, either (1) subclause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in subclause (iv) in the immediately preceding clause (a), or (2) Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Agents and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that none of the Agents or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by any Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

SECTION 9.16 Filings and Flood Insurance Laws.

Neither the Administrative Agent nor the Collateral Agent shall be responsible for (i) the perfection of any Lien or for the filing, form, content or renewal of any UCC financing statements, fixture filings, mortgages, deeds of trust and such other documents or instruments, it being understood that the Borrower shall be solely responsible for, and shall arrange for, the filing and continuation of financing statements or other filing or recording documents or instruments for the perfection of security interests in the Collateral, (ii) the preparation, form, content, sufficiency or adequacy of any such financing statements, (iii) insuring the Collateral or for the payment of Taxes, charges, assessments or liens upon the Collateral, (iv) independently requesting or examining insurance coverage with respect to any Collateral, or (v) obtaining, monitoring or continuing any flood hazard determinations or flood insurance policies or determining whether any flood hazard determinations or flood insurance policies are or should be obtained in respect of the Collateral, and each Lender shall be solely responsible for determining whether it requires that any flood

hazard determinations or flood insurance policies be obtained in respect of the Collateral and that it will not rely on the Administrative Agent or the Collateral Agent to make such determination or to see that any such flood hazard determinations or flood insurance policies are in fact obtained.

ARTICLE X

Miscellaneous [Relevant portions to be conformed to Onloan DIP CA.]

SECTION 10.01 Notices; Communications.

(1) Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 10.01(2)), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile or e-mail, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, in each case, as follows:

(a) if to any Loan Party or Agent, to the address, facsimile number, e-mail address or telephone number specified for such Person on Schedule 10.01; and

(b) if to any other Lender, to the address, facsimile number, e-mail address or telephone number specified in its Administrative Questionnaire.

(2) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; *provided* that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; *provided* that approval of such procedures may be limited to particular notices or communications.

(3) Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received. Notices sent by facsimile shall be deemed to have been given when sent and confirmation of transmission received (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in Section 10.01(2) shall be effective as provided in such Section 10.01(2).

(4) Any party hereto may change its address, facsimile number or e-mail address for notices and other communications hereunder by notice to the other parties hereto.

(5) Documents required to be delivered pursuant to Section 5.04 (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically (including as set forth in Section 10.17) and if so delivered, shall be deemed to have been delivered on the date (a) on which the Borrower posts such documents or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 10.01 or (b) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender, the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided* that the Borrower shall notify the Administrative Agent (by facsimile or e-mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic

versions (i.e., soft copies) of such documents; *provided, further*, that, upon reasonable request by the Administrative Agent, the Borrower shall also provide a hard copy to the Administrative Agent of any such document; *provided, further*, that any documents posted for which a link is provided after normal business hours for the recipient shall be deemed to have been given at the opening of business on the next Business Day for such recipient. No Agent shall have any obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Loan Parties with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

SECTION 10.02 Survival of Agreement. All covenants, agreements, representations and warranties made by the Loan Parties herein, in the other Loan Documents and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the Lenders and shall survive the making by the Lenders of the Loans, the execution and delivery of the Loan Documents regardless of any investigation made by such Persons or on their behalf, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any Fee or any other amount payable under this Agreement or any other Loan Document is outstanding and so long as the Commitments have not been terminated. Without prejudice to the survival of any other agreements contained herein, indemnification and reimbursement obligations contained herein (including pursuant to Sections 2.15, 2.17, 2.18, Article IX and 10.05) shall survive the resignation or removal of an Agent, the payment in full of the principal and interest hereunder and the termination of the Commitments or this Agreement.

SECTION 10.03 Binding Effect. This Agreement shall become effective when it has been executed by the Borrower and the Agents and the Lenders and when the Administrative Agent has received copies hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the Borrower, the Guarantors, the Administrative Agent, each Lender and their respective permitted successors and assigns.

SECTION 10.04 Successors and Assigns.

(1) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (a) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Supermajority Holders (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (b) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 10.04. Nothing in this Agreement, expressed or implied, will be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (to the extent provided in paragraph (3) of this Section 10.04) and, to the extent expressly contemplated hereby, the Related Parties of each of the Agents and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement or the other Loan Documents.

(2) Subject to the conditions set forth in paragraph (3) of this Section 10.04, any Lender may assign to one or more assignees (other than a natural person or a Defaulting Lender) (each, an “Assignee”) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans at the time owing to it).

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

(a) except in the case of (1) an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, (2) an assignment of the entire remaining amount of the assigning Lender’s

Commitments or Loans, or (3) assignments by the Fronting Lender in its capacity as such in accordance with the Fronting Arrangement, the amount of the Commitments or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$100,000.00, unless each of the Borrower and the Administrative Agent (at the direction of the Required Lenders) otherwise consent; *provided* that (1) no such consent of the Borrower shall be required if a Specified Event of Default has occurred and is continuing, and (2) such amounts shall be aggregated in respect of each Lender and its Affiliates or Approved Funds (with simultaneous assignments to or by two or more Approved Funds being treated as one assignment for purposes of meeting the minimum assignment amount requirement), if any;

(b) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance acceptable to the Administrative Agent (or, if previously agreed with the Administrative Agent, manually), and (except in the case of an assignment to an Approved Fund or otherwise agreed by the Administrative Agent in its sole discretion) shall pay to the Administrative Agent a processing and recordation fee of \$3,500;

(c) the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and any tax forms required to be delivered pursuant to Section 2.17;

(d) [Reserved]; and

(e) the assignor shall deliver to the Administrative Agent any Note issued to it with respect to the assigned Loan.

For the purposes of this Section 10.04, “**Approved Fund**” means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

(f) Subject to acceptance and recording thereof pursuant to paragraph (2)(e) of this Section 10.04, from and after the effective date specified in each Assignment and Acceptance, the Assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender’s rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.15, 2.17 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such Assignment and Acceptance). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 10.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (4) of this Section 10.04 to the extent such participation would be permitted by such Section 10.04(4).

(g) Each of (i) the Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders and the Commitments of, and principal amount (and stated interest with respect thereto) of the Term Loans owing to, each Lender pursuant to the terms hereof from time to time

(collectively, the “**Register**”). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender (solely with respect to such Lender’s Loans) at any reasonable time and from time to time upon reasonable prior written notice.

(h) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an Assignee, the Assignee’s completed Administrative Questionnaire (unless the Assignee shall already be a Lender hereunder), all applicable tax forms, any Note outstanding with respect to the assigned Loan, the processing and recordation fee referred to in paragraph (2)(b)(ii) of this Section 10.04 and any written consent to such assignment required by paragraph (2) of this Section 10.04, the Administrative Agent promptly shall accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment, whether or not evidenced by a promissory note, shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph (2)(e).

(4) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the Assignee thereunder shall be deemed to confirm to and agree with each other and the other parties hereto as follows: (a) such assigning Lender warrants that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim and that its Commitment, and the outstanding balances of its Loans, in each case, without giving effect to assignments thereof which have not become effective, are as set forth in such Assignment and Acceptance; (b) except as set forth in clause (a) above, 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 execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto, or the financial condition of the Borrower or any Subsidiary or the performance or observance by the Borrower or any Subsidiary of any of its obligations under this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto; (c) the Assignee represents and warrants that it is legally authorized to enter into such Assignment and Acceptance; (d) the Assignee confirms that it has received a copy of this Agreement, together with copies of the most recent Required Financial Statements delivered pursuant to Section 5.04 of the DIP Onloan Credit Agreement, 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; (e) the Assignee will independently and without reliance upon the Administrative 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; (f) the Assignee appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers under this Agreement as are delegated to the Administrative Agent by the terms of this Agreement, together with such powers as are reasonably incidental thereto; (g) the Assignee agrees that it will perform in accordance with their terms all the obligations which by the terms of this Agreement are required to be performed by it as a Lender; and (h) the Assignee agrees to be bound by the provisions of Section 10.25.

(5)

(a) Any Lender may, without the consent of, or notice to, the Administrative Agent or, subject to Section 10.04(10), the Borrower, sell participations to one or more banks or other entities (a “**Participant**”) in all or a portion of such Lender’s rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans owing to it); *provided that*

- (i) such Lender's obligations under this Agreement shall remain unchanged;
- (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations; and
- (iii) the Borrower, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

Any agreement pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to exercise any right or remedy with respect to the Loans and any securities or interests issued pursuant to this Agreement and any Collateral. Subject to clause (4)(b) of this Section 10.04, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.15 and 2.17 (subject to the requirements and limitations therein, including the requirements under Section 2.17(5)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (2) of this Section 10.04. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.06 as though it were a Lender; *provided* that such Participant shall be subject to Section 2.18(4) as though it were a Lender. Any Participant that seeks to receive the foregoing benefits under Sections 2.15, 2.17 or 10.06 must act through the Lender that sold the participation to the Participant, and such Lender must comply with all other requirements for seeking such benefits, including complying with Section 9.01(4) of this Agreement. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "***Participant Register***"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations and Proposed Treasury Regulations Section 1.163-5(b) (or any amended or successor version). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, no Agent shall have any responsibility for maintaining a Participant Register.

(b) A Participant shall not be entitled to receive any greater payment under Section 2.15 or 2.17 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent.

(6) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank and in the case of any Lender that is an Approved Fund, any pledge or assignment to any holders of obligations owed, or securities issued, by such Lender, including to any trustee for, or any other representative of, such holders, and this Section 10.04 shall not apply to any such pledge or assignment of a security interest; *provided* that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or Assignee for such Lender as a party hereto.

(7) The Borrower, upon receipt of written notice from the relevant Lender, agrees to issue Notes to any Lender requiring Notes to facilitate transactions of the type described in paragraph (5) of this Section 10.04.

(8) [Reserved].

(9) [Reserved].

(10) Notwithstanding the foregoing, unless an Event of Default has occurred and is continuing, no assignment may be made or participation sold to a Disqualified Institution without the prior written consent of the Borrower; *provided that*, in connection with a participation, the Lenders shall have received a list of the Disqualified Institutions prior to the executions of such participation rights.

SECTION 10.05 Expenses; Indemnity.

(1) The Borrower agrees to pay all reasonable, documented and invoiced out-of-pocket expenses incurred by each Agent and the Fronting Lender in connection with the Chapter 11 Cases generally, preparation, negotiation and execution of this Agreement and the other Loan Documents (including as to post-closing matters), or by the Administrative Agent and the Fronting Lender (and in the case of enforcement of this Agreement, each Lender) in connection with the preparation, execution and delivery, amendment, modification, waiver or enforcement of this Agreement (including expenses incurred in connection with due diligence and initial and ongoing Collateral examination to the extent incurred with the reasonable prior approval of the Borrower or provided for in this Agreement) or in connection with the administration of this Agreement and any amendments, modifications or waivers of the provisions hereof or thereof, including (i) the reasonable, documented and invoiced fees, charges and disbursements of a single counsel for the Agents (which shall be Seward & Kissel LLP), the reasonable, documented and invoiced fees, charges and disbursements of a single counsel for the Fronting Lender (which shall be Dentons US LLP), one firm of local counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions), (ii) the reasonable, documented and invoiced fees, charges and disbursements of the Specified Ad Hoc Group Advisors for the Required Lenders, and one firm of local counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions) (iii) the reasonable, documented and invoiced fees, charges and disbursements of one counsel to the Fronting Lender, and (iv) in the case of any actual or perceived conflict of interest, one additional firm of counsel for each Agent and, in the case of enforcement of this Agreement, the Lenders.

(2) The Borrower, jointly and severally, agree to indemnify each Agent, the Fronting Lender, each other Lender, each of their respective Affiliates and each of their respective directors, officers, employees, agents, advisors, controlling Persons, equityholders, partners, members and other representatives and each of their respective successors and permitted assigns and their Affiliates (each such Person being called an “**Indemnatee**”) against, and to hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and reasonable, documented and invoiced out-of-pocket fees and expenses (limited to reasonable and documented legal fees of a single firm of counsel for (i) the Agents, taken as a whole, (ii) all other Indemnitees, taken as a whole, and (iii) if necessary, one firm of counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions) for the Agents, taken as a whole and all other Indemnitees taken as a whole (and, in the case of an actual or perceived conflict of interest, where the Indemnatee affected by such conflict informs the Borrower of such conflict and thereafter retains its own counsel, of an additional counsel for group of affected Indemnitees similarly situated taken as a whole)), incurred by or asserted against any Indemnatee arising out of, in any way connected with, or as a result of:

(a) the execution or delivery of this Agreement or any other Loan Document, the performance by the parties hereto and thereto of their respective obligations thereunder or the consummation of the Transactions and the other transactions contemplated hereby and thereby;

(b) the use of the proceeds of the Loans;

(c) the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents; or

(d) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto and regardless of whether such matter is initiated by a third party or by the Borrower or any of their Subsidiaries or Affiliates or creditors; *provided* that no Indemnitee will be indemnified for any loss, claim, damage, liability, cost or expense to the extent it: (i) has been determined by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from (A) the gross negligence, bad faith or willful misconduct of such Indemnitee or any of its Related Parties or (B) a material breach of the obligations of such Indemnitee under the Loan Documents or (ii) relates to any proceeding between or among Indemnities other than (A) claims against an Agent or its Affiliates, in each case, in their capacity or in fulfilling their role as the agent or arranger or any other similar role under the Loan Documents (excluding their role as a Lender) to the extent such Persons are otherwise entitled to receive indemnification under this Section 10.05(2) or (B) claims arising out of any act or omission on the part of the Borrower or their Subsidiaries.

(3) Subject to and without limiting the generality of the foregoing sentence, the Borrower agrees to indemnify each Indemnitee against, and hold each Indemnitee harmless from, any and all losses claims, damages, liabilities and related expenses, including reasonable, documented and invoiced fees, charges and disbursements of one firm of counsel for (i) the Agents, taken as a whole, (ii) all other Indemnities, taken as a whole, and, (iii) if necessary, one firm of counsel in each appropriate jurisdiction (which may include a single special counsel in multiple jurisdictions) for the Agents, taken as a whole and all other Indemnities taken as a whole (and, in the case of an actual or perceived conflict of interest, an additional counsel for each group of Indemnities similarly situated) and reasonable, documented and invoiced consultant fees, in each case, incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result any Claim arising under Environmental Laws against the Borrower or any of the Subsidiaries, or any actual or alleged presence, Release or threatened Release of Hazardous Materials at, under, on or from any property for which the Borrower or any Subsidiaries would reasonably be expected to be held liable under Environmental Laws; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such Indemnitee or any of its Related Parties.

(4) Any indemnification or payments required by the Loan Parties under this Section 10.05 shall not apply with respect to Taxes other than (x) any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim and (y) expenses related to the enforcement of Section 2.17.

(5) To the fullest extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Commitment, any Loan or the use of the proceeds thereof, the Transactions and the other transactions contemplated hereby and thereby. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any

information or other materials distributed by it 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.

(6) The agreements in this Section 10.05 shall survive the resignation of an Agent, the replacement of any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all the other Obligations and the termination of this Agreement. All amounts due under this Section 10.05 shall be payable on written demand therefor accompanied by reasonable documentation with respect to any reimbursement, indemnification or other amount requested.

SECTION 10.06 Right of Set-off.

(1) If an Event of Default shall have occurred and be continuing, each Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other Indebtedness at any time owing by such Lender to or for the credit or the account of any Borrower or any Guarantor against any and all of the Obligations of any Borrower or any Guarantor now or hereafter existing under this Agreement or any other Loan Document held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or such other Loan Document and although such Obligations may be unmaturing. The rights of each Lender under this Section 10.06(1) are in addition to other rights and remedies (including other rights of set-off) that such Lender may have, but may be exercised only at the direction of the Administrative Agent or the Required Lenders.

SECTION 10.07 Applicable Law THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN THE OTHER LOAN DOCUMENTS) AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK (EXCEPT FOR CONFLICTS OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION).

SECTION 10.08 Waivers; Amendment.

(1) No failure or delay of any Agent or any Lender in exercising any right or power hereunder or under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of each Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by the Borrower or any other Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (2) of this Section 10.08, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on the Borrower or any other Loan Party in any case shall entitle such Person to any other or further notice or demand in similar or other circumstances.

(2) Neither this Agreement nor any other Loan Document nor any provision hereof or thereof, nor any Event of Default, may be waived, amended or modified except:

(a) as provided in Sections 2.21 and 10.20;

(b) in the case of this Agreement, pursuant to an agreement or agreements in writing (including via e-mail) entered into by the Borrower, the Administrative Agent (acting at the direction of the Required Lenders (which may be by email between the Specified Ad Hoc Group Legal Advisor and primary counsel to the Borrower)); and

(c) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by each party thereto and the Administrative Agent (acting at the direction of the Required Lenders);

provided, however, that, except as provided in Sections 2.21 and 10.20, no such agreement will:

(i) decrease, forgive, waive or excuse the principal amount of, or any interest on, or (except in connection with a Maturity Extension) extend the final maturity of, or decrease the rate of interest on, any Loan without the prior written consent of each Lender adversely directly affected thereby; *provided* that any such agreement may allow for the principal amount of any Loans to be paid in the form of equity securities or other Indebtedness with the consent of the Supermajority Holders;

(ii) increase or extend the Commitment of any Lender or decrease, waive or excuse the fees of any Lender or Agent without the prior written consent of such Lender or Agent (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or Events of Default or of a mandatory reduction in the aggregate Commitments shall not constitute an increase of the Commitments of any Lender);

(iii) except in connection with a Maturity Extension, extend any date on which payment of principal or interest on any Loan or any Fee or other payment is due, without the prior written consent of each Lender adversely affected thereby (it being agreed and understood that (A) any agreements which allow for the principal amount of any Loans to be paid in the form of equity securities or other Indebtedness shall only require the consent of the Supermajority Holders and (B) any agreements which extend the maturity of any Loans shall only require the consent of the Required Lenders);

(iv) amend the provisions of Section 2.08, 2.18 and 5.11(2)(b) of this Agreement, Section 5.2 of the Collateral Agreement or any analogous provision of any other Loan Document, in a manner that would by its terms alter the pro rata sharing of payments required thereby or the relative priorities of such payments or commitment terminations permitted, without the prior written consent of each Lender adversely affected thereby;

(v) [reserved];

(vi) amend or modify the provisions of this Section 10.08 or the definition of the term “Required Lenders”, or “Supermajority Holders” as the case may be, or any other provision hereof specifying the number or percentage of Lenders, Required Lenders, or Supermajority Holders as the case may be, required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the prior written consent of each applicable Lender;

(vii) except in connection with an Asset Sale permitted under this Agreement or otherwise in accordance with the Loan Documents (in each case, as in effect on the Closing Date), release all or substantially all of the Collateral under all the Security Documents, or release all or substantially all of the value of the Guarantees by the Guarantors, or release the Borrower from its Obligations hereunder, in each case without the prior written consent of each Lender;

(viii) except as expressly permitted herein or in any other Loan Document, subordinate the Obligations and/or Liens hereunder or under the other Loan Documents, to any other Indebtedness without the prior written consent of each Lender; or

(ix) [reserved];

provided that (A) no such agreement shall amend, modify or otherwise affect the rights, benefits, immunities, indemnities or duties of any Agent hereunder without the prior written consent of such Agent, as applicable and (B) no such agreement described in clause (i), (ii), (iii), (iv), (vi), (vii) or (viii) shall be effective unless the Lenders, Required Lenders or Supermajority Holders, as applicable, required to approve such agreement provide such approval.

provided further that notwithstanding the foregoing, this Agreement may be amended to make any change that by its terms only affects the rights and duties of Lenders holding Loans or Commitments of a particular Class (and not Lenders holding Loans or Commitments of any other Class or the Required Lenders or Supermajority Holders) with the consent of the Lenders holding the relevant Loans or Commitments voting as if such Class were the only Class hereunder.

Each Lender shall be bound by any waiver, amendment or modification authorized by this Section 10.08 and any consent by any Lender pursuant to this Section 10.08 shall bind any assignee of such Lender.

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

(4) The Fronting Lender agrees that notwithstanding anything to the contrary herein or in any other Loan Document, the Fronting Lender will not exercise any voting rights under Section 10.08 in respect of the Commitments or the Term Loans that it holds as a fronting lender on behalf of any Person hereunder and only such Person shall have the right to exercise any voting rights under Section 10.08(b) in respect of such Commitments or such Term Loans on its own behalf *provided* that the action or vote to be taken does not affect the Fronting Arrangement, the DIP Syndication Procedures or to the timing or amount of any payment due to the Fronting Lender or any indemnification or reimbursements obligations due to the Fronting Lender.

(5) [Reserved].

(6) Notwithstanding the foregoing, no consent of any Defaulting Lender will be required other than with respect to any amendment or waiver set forth in clauses (a) through (c) of Section 10.08(2) that directly and adversely affects such Lender.

(7) Notwithstanding the foregoing, the Administrative Agent, with the consent of the Borrower, may (without obligation) amend, modify or supplement any Loan Document without the consent of any Lender or the Required Lenders in order to correct, amend or cure any ambiguity, inconsistency or defect or correct any typographical error, any error or omission of a technical nature or other manifest error in any Loan Document, and such amendment, modification or supplement shall become effective without any further action or consent of any other party to any Loan Document if the same is not objected to in writing by the Required Lenders within five Business Days following receipt of notice thereof. Notification of such amendment shall be made by the Administrative Agent to the Lenders promptly upon such amendment becoming effective.

Notwithstanding anything to the contrary herein, upon the occurrence and during the continuance of an “Event of Default” (as defined in the DIP Onloan Credit Agreement), the Required Lenders (or, if so specified by this Agreement, the Supermajority Holders) shall have the exclusive right to “step-in” and instruct any and all Lenders (as defined in the DIP Onloan Credit Agreement) to take actions, including voting, amendments, waivers, and other discretionary actions, solely at the direction of the Required Lenders (or, if so specified by the DIP Onloan Credit Agreement, the Supermajority Holders), for any approval, consent, enforcement or other rights granted to any of them under the DIP Onloan Credit Agreement and the other DIP Onloan Documents. Subject to the other provisions of this Agreement, the Administrative Agent shall take any actions reasonably requested by the Required Lenders or Supermajority Lenders, as applicable, in connection with such instructions and actions.

SECTION 10.09 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the applicable interest rate, together with all fees and charges that are treated as interest under applicable law (collectively, the “*Charges*”), as provided for herein or in any other document executed in connection herewith, or otherwise contracted for, charged, received, taken or reserved by any Lender, shall exceed the maximum lawful rate (the “*Maximum Rate*”) that may be contracted for, charged, taken, received or reserved by such Lender in accordance with applicable law, the rate of interest payable hereunder, together with all Charges payable to such Lender, shall be limited to the Maximum Rate; *provided* that such excess amount shall be paid to such Lender on subsequent payment dates to the extent not exceeding the legal limitation. In no event will the total interest received by any Lender exceed the amount which it could lawfully have received and any such excess amount received by any Lender will be applied to reduce the principal balance of the Loans or to other amounts (other than interest) payable hereunder to such Lender, and if no such principal or other amounts are then outstanding, such excess or part thereof remaining will be paid to the Borrower.

SECTION 10.10 Entire Agreement. This Agreement, the other Loan Documents and the agreements regarding certain Fees referred to herein constitute the entire contract between the parties relative to the subject matter hereof. Any previous agreement among or representations from the parties or their Affiliates with respect to the subject matter hereof is superseded by this Agreement and the other Loan Documents. Notwithstanding the foregoing, the Fee Letter shall survive the execution and delivery of this Agreement and remain in full force and effect. Nothing in this Agreement or in the other Loan Documents, expressed or implied, is intended to confer upon any party other than the parties hereto and thereto any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.

SECTION 10.11 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO

A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.11.

SECTION 10.12 Severability. In the event any one or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 10.13 Counterparts. This Agreement may be executed in one or more counterparts, including by means of facsimile or other electronic transmission, each of which shall be an original and all of which shall together constitute one and the same document. This Agreement shall be valid, binding and enforceable against a party when executed and delivered by an authorized individual on behalf of the party by means of (i) an original manual signature; (ii) a faxed, scanned or photocopied manual signature or (iii) any other electronic signature permitted by the federal Electronic Signatures in Global and National Commerce Act, state enactments of the Uniform Electronic Transactions act, and/or any other relevant electronic signatures law, including any relevant provisions of the UCC (collectively, “**Signature Law**”), in each case to the extent applicable. Each faxed, scanned, or photocopied manual signature, or other electronic signature, shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Each party hereto shall be entitled to conclusively rely upon, and shall have no liability with respect to, any faxed, scanned, or photocopied manual signature, or other electronic signature, of any other party and shall have no duty to investigate, confirm or otherwise verify the validity or authenticity thereof. For the avoidance of doubt, original manual signatures shall be used for execution or indorsement of writings when required under the UCC or other Signature Law due to the character or intended character of the writings.

SECTION 10.14 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 10.15 Jurisdiction; Consent to Service of Process.

(1) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any New York State court or federal court of the United States of America sitting in the Borough of Manhattan in New York City, any appellate court from any thereof (collectively, “**New York Courts**”) and the Bankruptcy Court in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding shall be heard and determined in such New York State court or Bankruptcy Court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. 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 any of the other Loan Documents in

the courts of any jurisdiction, except that each of the Loan Parties agrees that (a) it will not bring any such action or proceeding in any court other than New York Courts or the Bankruptcy Court (it being acknowledged and agreed by the parties hereto that any other forum would be inconvenient and inappropriate in view of the fact that more of the Lenders who would be affected by any such action or proceeding have contacts with the State of New York than any other jurisdiction), and (b) in any such action or proceeding brought against any Loan Party in any other court, it will not assert any cross-claim, counterclaim or setoff, or seek any other affirmative relief, except to the extent that the failure to assert the same will preclude such Loan Party from asserting or seeking the same in the New York Courts or the Bankruptcy Court.

(2) Each of the parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in any New York State or federal court, including the Bankruptcy Court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

SECTION 10.16 Confidentiality. Each of the Lenders and each of the Agents agrees (and agrees to cause each of its respective Affiliates) to use all information provided to it by or on behalf of the Borrower or its Subsidiaries under the Loan Documents or otherwise in connection with the Transactions solely for the purposes of the transactions contemplated by this Agreement and the other Loan Documents and shall not publish, disclose or otherwise divulge such information (other than information that (1) has become generally available to the public other than as a result of a disclosure by such party; (2) has been independently developed by such Lender or the Administrative Agent without violating this Section 10.16; or (3) was available to such Lender or the Administrative Agent from a third party having, to such Person's knowledge, no obligations of confidentiality to the Borrower or any other Loan Party) and shall not reveal the same other than to its and its Affiliates' directors, trustees, officers, employees and advisors with a need to know, agents, other parties to this Agreement or to any Person that approves or administers the loan facilities hereunder on behalf of such Lender or any numbering, administration or settlement service providers (so long as each such Person shall have been instructed to keep the same confidential in accordance with this Section 10.16) or otherwise with the prior written consent of the Borrower, except:

(a) to the extent necessary to comply with law or any legal process or the requirements of any Governmental Authority, the National Association of Insurance Commissioners or of any securities exchange on which securities of the disclosing party or any Affiliate of the disclosing party are listed or traded, in which case such Person agrees, to the extent practicable and not prohibited by applicable law, to inform you promptly thereof prior to disclosure;

(b) as part of normal reporting or review procedures to, or examinations by, Governmental Authorities or any bank accountants or bank regulatory authority exercising examination or regulatory authority, in which case (except with respect to any audit or examination conducted by any such bank accountant or bank regulatory authority) such Person agrees, to the extent practicable and not prohibited by applicable law, to inform you promptly thereof prior to disclosure;

(c) to its parent companies, Affiliates, limited partner, investors, prospective investors auditors or current or prospective limited partners (so long as each such Person shall have been instructed to keep the same confidential in accordance with this Section 10.16);

(d) in order to enforce its rights under any Loan Document in a legal proceeding;

(e) to any pledgee or assignee under Section 10.04(5) or any other prospective assignee of, or prospective Participant in, any of its rights under this Agreement (so long as such Person shall have been instructed to keep the same confidential in accordance with this Section 10.16);

(f) [reserved]; and

(g) to its financing sources (so long as any such financing source shall have been instructed to keep the same confidential in accordance with this Section 10.16).

Notwithstanding the foregoing, (i) no such information shall be disclosed to a Disqualified Institution that constitutes a Disqualified Institution at the time of such disclosure, unless an Event of Default has occurred and is continuing, without the Borrower's prior written consent and (ii) any Agent or Lender may, at its own expense and in the ordinary course issue customary news releases and publish "tombstone" advertisements and other announcements relating to this transaction in newspapers, trade journals and other appropriate media (which may include use of logos of one or more of the Loan Parties) (collectively, "**Trade Announcements**"), subject to the Borrower's prior written consent. Such Agent or such Lender shall provide a draft reasonably in advance of any Trade Announcement to the Borrower for review and comment prior to the publication thereof.

For the avoidance of doubt, nothing herein prohibits any individual from communicating or disclosing information regarding suspected violations of laws, rules, or regulations to a governmental, regulatory, or self-regulatory authority without any notification to any person.

SECTION 10.17 Platform; Borrower Materials. The Borrower hereby acknowledges that (1) the Administrative Agent will make available to the Lenders materials or information provided by or on behalf of the Borrower hereunder (collectively, "**Borrower Materials**") by posting the Borrower Materials on Syndtrack, Debtdomain, Intralinks or another similar electronic system (the "**Platform**") and (2) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Borrower or its securities) (each, a "**Public Lender**"). The Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that:

(a) all the Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, means that the word "PUBLIC" shall appear prominently on the first page thereof;

(b) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent and the Lenders to treat the Borrower Materials as either publicly available information or not material information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States Federal and state securities laws;

(c) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor;" and

(d) the Administrative Agent shall be entitled to treat the Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor."

Notwithstanding the foregoing, the following Borrower Materials shall be deemed to be marked “PUBLIC” unless the Borrower notifies the Administrative Agent that any such document contains MNPI: (1) the Loan Documents, (2) [reserved], (3) any notification of the identity of Disqualified Institutions and (4) all information delivered pursuant to clauses (1), (2) and (3) of Section 5.04.

THE PLATFORM AND THE COMMUNICATIONS ARE PROVIDED “AS IS” AND “AS AVAILABLE”. THE APPLICABLE PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS, OR THE ADEQUACY OF THE APPROVED ELECTRONIC PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS OR OMISSIONS IN THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS. 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 APPLICABLE PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE APPROVED ELECTRONIC PLATFORM. IN NO EVENT SHALL THE ANY AGENT OR ANY OF THEIR RESPECTIVE RELATED PARTIES (COLLECTIVELY, “APPLICABLE PARTIES”) HAVE ANY LIABILITY TO ANY LOAN PARTY, ANY LENDER OR ANY OTHER PERSON OR ENTITY FOR DAMAGES OF ANY KIND, INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF ANY BORROWER’S OR THE SUCH AGENT’S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET OR THE APPROVED ELECTRONIC PLATFORM.

SECTION 10.18 [Reserved].

SECTION 10.19 USA PATRIOT Act Notice. Each Lender that is subject to the USA PATRIOT Act, and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the USA PATRIOT Act. The Borrower shall provide any information or documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act and the Beneficial Ownership Regulation.

THE PLATFORM AND THE COMMUNICATIONS ARE PROVIDED “AS IS” AND “AS AVAILABLE”. THE APPLICABLE PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS, OR THE ADEQUACY OF THE APPROVED ELECTRONIC PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS OR OMISSIONS IN THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS. 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 APPLICABLE PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE APPROVED ELECTRONIC PLATFORM. IN NO EVENT SHALL THE ANY AGENT OR ANY OF THEIR RESPECTIVE RELATED PARTIES (COLLECTIVELY, “APPLICABLE PARTIES”) HAVE ANY LIABILITY TO ANY LOAN PARTY, ANY LENDER OR ANY OTHER PERSON OR ENTITY FOR DAMAGES OF ANY KIND, INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF ANY BORROWER’S OR

THE SUCH AGENT'S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET OR THE APPROVED ELECTRONIC PLATFORM.

SECTION 10.20 [Reserved].

SECTION 10.21 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees that: (1) (a) the arranging and other services regarding this Agreement provided by the Agents are arm's-length commercial transactions between the Borrower, on the one hand, and the Agents, on the other hand, (b) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it deemed appropriate, and (c) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (2) (a) each Agent is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any other Person and (b) no Agent has any obligation to the Borrower 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; and (3) the Agents and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and no Agent has any obligation to disclose any of such interests to the Borrower or any of its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Agents with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

SECTION 10.22 [Reserved].

SECTION 10.23 DIP Orders Control. In the event of any conflict between any terms and provisions set forth in this Agreement and those set forth in the DIP Orders, the terms and provisions of the DIP Orders shall supersede and control the terms and provisions of this Agreement.

SECTION 10.24 Electronic Execution of Assignments and Certain Other Documents. The words "execution," "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without any limitation Assignment and Acceptance, amendments, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; *provided*, that notwithstanding anything contained herein to the contrary the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it, it being understood that the authorization under this paragraph includes use or acceptance by the Administrative Agent of a manually signed paper communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed communication converted into another format, for transmission, delivery and/or retention.

[Signature pages follow]

IN WITNESS WHEREOF, the undersigned have executed this Term Loan Credit Agreement as of the date set forth above.

SGUS LLC, as the Borrower

By:_____

Name:

Title:

**U.S. BANK TRUST COMPANY, NATIONAL
ASSOCIATION**, as Administrative Agent

By: _____

Name:

Title:

BARCLAYS BANK PLC,
as Fronting Lender

By: _____
Name:
Title:

Exhibit C

OpCo DIP Credit Agreement

DEBTOR-IN-POSSESSION TERM LOAN CREDIT AGREEMENT,¹

dated as of January [•], 2026,

among

SAKS GLOBAL HOLDINGS LLC,
as Holdings and a Debtor and Debtor-In-Possession under Chapter 11 of the Bankruptcy Code,

SAKS GLOBAL ENTERPRISES LLC,
as Borrower and a Debtor and Debtor-In-Possession under Chapter 11 of the Bankruptcy Code

THE LENDERS PARTY HERETO

and

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,
as Administrative Agent and Collateral Agent

¹ Subject to ongoing negotiation and finalization among the Global Debtors and the DIP Lenders, and their respective rights are reserved.

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I Definitions	1
SECTION 1.01 Defined Terms	1
SECTION 1.02 Terms Generally	41
SECTION 1.03 Accounting Terms; GAAP	42
SECTION 1.04 [Reserved].....	43
SECTION 1.05 Currencies.....	43
SECTION 1.06 [Reserved].....	43
SECTION 1.07 Divisions.....	43
SECTION 1.08 [Reserved].....	43
SECTION 1.09 Exchange Rates; Currency Equivalent	43
SECTION 1.10 Required SGUS Lenders and Administrative Agent	43
SECTION 1.11 Rates	44
ARTICLE II The Credits	45
SECTION 2.01 Commitments	45
SECTION 2.02 Loans and Borrowings.....	46
SECTION 2.03 Requests for Borrowing.....	46
SECTION 2.04 DIP Funding Notices	47
SECTION 2.05 [Reserved].....	47
SECTION 2.06 Funding of Borrowings.....	47
SECTION 2.07 Interest Elections	48
SECTION 2.08 Termination of Commitments	49
SECTION 2.09 Promise to Pay; Evidence of Debt.....	49
SECTION 2.10 Optional Repayment of Loans	49
SECTION 2.11 Mandatory Repayment of Loans.	50
SECTION 2.12 Fees.....	50
SECTION 2.13 Interest	51
SECTION 2.14 Alternative Rate of Interest.....	52
SECTION 2.15 Increased Costs	53
SECTION 2.16 [Reserved].....	53
SECTION 2.17 Taxes.....	53
SECTION 2.18 Payments Generally; <i>Pro Rata</i> Treatment; Sharing of Set-offs	57
SECTION 2.19 Mitigation Obligations; Replacement of Lenders.....	58
SECTION 2.20 Illegality.....	59
SECTION 2.21 Defaulting Lenders	60
SECTION 2.22 Benchmark Replacement Setting.....	61
ARTICLE III Representations and Warranties	63
SECTION 3.01 Organization; Powers	63
SECTION 3.02 Authorization	63
SECTION 3.03 Enforceability	64
SECTION 3.04 Governmental Approvals.....	64
SECTION 3.05 Management Matters	65
SECTION 3.06 Title to Properties; Possession Under Leases	65
SECTION 3.07 Subsidiaries.....	65
SECTION 3.08 Litigation; Compliance with Laws	65

SECTION 3.09	Federal Reserve Regulations	66
SECTION 3.10	Investment Company Act	66
SECTION 3.11	Use of Proceeds	66
SECTION 3.12	Taxes.....	66
SECTION 3.13	No Material Misstatements.....	67
SECTION 3.14	Environmental Matters	67
SECTION 3.15	Security Documents.....	67
SECTION 3.16	[Reserved].....	67
SECTION 3.17	[Reserved].....	67
SECTION 3.18	No Material Adverse Effect.....	67
SECTION 3.19	Insurance.....	68
SECTION 3.20	Anti-Money Laundering; Anti-Corruption; Sanctions	68
SECTION 3.21	Intellectual Property; Licenses, Etc	68
SECTION 3.22	Employee Benefit Plans.....	69
SECTION 3.23	[Reserved].....	70
SECTION 3.24	Chapter 11 Cases	70
ARTICLE IV	Conditions of Lending	70
SECTION 4.01	[Reserved].....	70
SECTION 4.02	Conditions to Closing Date and DIP Interim Funding Loans.....	70
SECTION 4.03	Conditions to Borrowing of the DIP Final Funding Loans	73
SECTION 4.04	Conditions to Borrowing of the DIP Subsequent Draw Loans.....	74
ARTICLE V	Affirmative Covenants	75
SECTION 5.01	Existence; Businesses and Properties	75
SECTION 5.02	Insurance.....	76
SECTION 5.03	Taxes.....	76
SECTION 5.04	Financial Statements, Reports, etc.....	76
SECTION 5.05	Litigation and Other Notices	79
SECTION 5.06	Compliance with Laws	79
SECTION 5.07	Maintaining Records; Access to Properties and Inspections; Appraisals	80
SECTION 5.08	Use of Proceeds	80
SECTION 5.09	Compliance with Environmental Laws	80
SECTION 5.10	Further Assurances; Additional Security.....	80
SECTION 5.11	Cash Management Systems	83
SECTION 5.12	Certain Milestones.....	83
SECTION 5.13	Lender Calls.....	85
SECTION 5.14	Post-Closing Matters	85
SECTION 5.15	Operations in the Ordinary Course of Business	85
SECTION 5.16	Axonic Adversary Proceedings	85
SECTION 5.17	Public Communications.....	85
SECTION 5.18	Certain Bankruptcy Matters	85
SECTION 5.19	Priority of Liens; No Discharge.....	86
ARTICLE VI	Negative Covenants	86
SECTION 6.01	Indebtedness	86
SECTION 6.02	Liens	89
SECTION 6.03	[Reserved].....	92
SECTION 6.04	Investments, Loans and Advances.....	93
SECTION 6.05	Mergers, Consolidations and Sales of Assets	95

SECTION 6.06	Restricted Payments	97
SECTION 6.07	Transactions with Affiliates.....	98
SECTION 6.08	Business.....	101
SECTION 6.09	Limitation on Payments and Modifications of Indebtedness; Modifications of Certificate of Incorporation, By Laws and Certain Other Agreements; etc	101
SECTION 6.10	Financial Covenant	102
SECTION 6.11	Designated IPCo Subsidiaries	102
SECTION 6.12	Critical Vendor Payments.....	102
SECTION 6.13	[Press Releases; Communications	102
SECTION 6.14	[Sell Down Orders.....	102
SECTION 6.15	Other Management Matters	103
SECTION 6.16	Additional Bankruptcy Matters	103
ARTICLE VII [Reserved].....		103
ARTICLE VIII Events of Default.....		103
SECTION 8.01	Events of Default.....	103
ARTICLE IX The Agents		109
SECTION 9.01	Appointment	109
SECTION 9.02	Delegation of Duties	111
SECTION 9.03	Exculpatory Provisions.....	111
SECTION 9.04	Reliance by Agent	113
SECTION 9.05	Notice of Default	114
SECTION 9.06	Non-Reliance on Agents and Other Lenders	114
SECTION 9.07	Indemnification.....	115
SECTION 9.08	Agent in Its Individual Capacity.....	115
SECTION 9.09	Successor Agent	115
SECTION 9.10	[Reserved].....	116
SECTION 9.11	Recovery of Erroneous Payments.....	116
SECTION 9.12	Credit Bidding	118
SECTION 9.13	Collateral and Guarantee Matters	118
SECTION 9.14	[Reserved].....	119
SECTION 9.15	ERISA Representation.....	119
SECTION 9.16	Filings and Flood Insurance Laws.....	120
ARTICLE X Miscellaneous.....		121
SECTION 10.01	Notices; Communications.....	121
SECTION 10.02	Survival of Agreement.....	122
SECTION 10.03	Binding Effect.....	122
SECTION 10.04	Successors and Assigns	122
SECTION 10.05	Expenses; Indemnity.....	124
SECTION 10.06	Right of Set-off.....	126
SECTION 10.07	Applicable Law.....	127
SECTION 10.08	Waivers; Amendment.....	127
SECTION 10.09	Interest Rate Limitation	130
SECTION 10.10	Entire Agreement.....	130
SECTION 10.11	WAIVER OF JURY TRIAL	130
SECTION 10.12	Severability.....	130
SECTION 10.13	Counterparts	130

SECTION 10.14	Headings.....	131
SECTION 10.15	Jurisdiction; Consent to Service of Process.....	131
SECTION 10.16	Confidentiality.....	131
SECTION 10.17	Platform; Borrower Materials.....	133
SECTION 10.18	[Reserved].....	134
SECTION 10.19	USA PATRIOT Act Notice.....	134
SECTION 10.20	Security Documents and Intercreditor Agreements.....	134
SECTION 10.21	[Reserved].....	134
SECTION 10.22	No Advisory or Fiduciary Responsibility.....	134
SECTION 10.23	[Reserved].....	135
SECTION 10.24	DIP Orders Control.....	135
SECTION 10.25	Electronic Execution of Assignments and Certain Other Documents.....	135

Exhibits and Schedules

Exhibit A	Form of Assignment and Acceptance
Exhibit B	Form of Borrowing Request
Exhibit C	Form of Interest Election Request
Exhibit D	Form of U.S. Tax Compliance Certificate
Exhibit E	Form of Interim DIP Order
Exhibit F	Form of DIP Funding Notice

Schedule 1.01(1)	Commitments
Schedule 3.04	Governmental Approvals
Schedule 3.06(2)	Possession under Leases
Schedule 3.07(1)	Subsidiaries
Schedule 3.12	Taxes
Schedule 3.14	Environmental Matters
Schedule 3.19	Insurance
Schedule 3.21	Intellectual Property
Schedule 3.22	Collective Bargaining Agreements
Schedule 6.01	Indebtedness
Schedule 6.02	Liens
Schedule 6.07	Transactions with Affiliates
Schedule 10.01	Notice Information

Annex A	Initial Approved Budget

THIS DEBTOR-IN-POSSESSION TERM LOAN CREDIT AGREEMENT, dated as of January [•], 2026 (as amended, restated, amended and restated, supplemented, extended, renewed or otherwise modified from time to time, this “**Agreement**”), is by and among SAKS GLOBAL HOLDINGS LLC, a Delaware limited liability company (“**Holdings**”), SAKS GLOBAL ENTERPRISES LLC, a Delaware limited liability company (the “**Borrower**”), the Lenders party hereto from time to time and U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association organized under the laws of the United States of America (“**U.S. Bank**”), as the Administrative Agent and as the Collateral Agent. All capitalized terms used herein and defined in Article I are used herein as therein defined.

RECITALS

WHEREAS, on the Petition Date (as defined below), Holdings, the Borrower and certain of the Borrower’s Subsidiaries filed voluntary petitions for relief with the Bankruptcy Court, initiating their respective cases that are pending under chapter 11 of the Bankruptcy Code (each case of Holdings, the Borrower and each other Debtor, a “**Chapter 11 Case**” and collectively, the “**Chapter 11 Cases**”). The Debtors continue to operate their businesses and manage their properties as debtors and debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, the Borrower has requested that the Lenders provide a debtor-in-possession credit facility, in a principal amount of up to \$[1,752,465,541] (the “**DIP Facility**”) consisting of (I) up to \$1,000,000,000 (excluding fees, premiums and other amounts paid in kind) consisting of: (a) up to \$400,000,000 which shall be made available upon entry of the Interim DIP Order, (b) up to \$300,000,000 which shall be made available upon entry of the Final DIP Order and (c) up to \$300,000,000 available after the entry of the Final DIP Order and pursuant to the conditions precedent to each such drawing (the “**Subsequent Draws**”), and (II) \$[752,465,541] in principal amount of Roll-Up DIP Loans, in each case, on the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, the priority of the DIP Facility with respect to the Collateral granted as security for the payment and performance of the Obligations shall be as set forth in the Interim DIP Order and the Final DIP Order, as applicable, in each case, upon entry thereof by the Bankruptcy Court and in the Security Documents.

AGREEMENT

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

ARTICLE I

Definitions

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

“**ABG Investment Agreement**” means each subscription agreement between Saks Global Investor L.P. and Authentic Brands Group LLC or its Affiliates, as amended, restated, supplemented or otherwise modified from time to time.

“**ABR**” means, for any day, a fluctuating rate per annum equal to the highest of (a) the Federal Funds Effective Rate in effect for such day plus 0.50%, (b) the Prime Rate in effect on such day and (c) Term SOFR for a one-month Interest Period on such day (or if such day is not a Business Day, the

immediately preceding Business Day) plus 1.00%. Any change in such rate due to a change in the Prime Rate, the Federal Funds Effective Rate or Term SOFR shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or Term SOFR, as the case may be. Notwithstanding anything to the contrary, ABR shall not be less than 1.00%².

“ABR Borrowing” means a Borrowing comprised of ABR Loans.

“ABR Loan” means any Term Loan bearing interest at a rate determined by reference to the ABR in accordance with the provisions of Article II.

“ABR Term SOFR Determination Day” has the meaning assigned to such term in the definition of the term “Term SOFR”.

“Acceptable Confirmation Order” means an order of the Bankruptcy Court confirming an Acceptable Plan, as the same may be amended, supplemented, or modified from time to time after entry thereof, in each case, (a) [in form and substance satisfactory to the Required SGUS Lenders] and (b) solely with respect to those provisions thereof that affect the rights, duties, liabilities or treatment of the Agents, in form and substance reasonably satisfactory to the Agents.

“Acceptable Plan” means a Chapter 11 Plan (including all exhibits, schedules and supplements thereto) for any of the Debtors or their estates that either (1)(a) provides for the termination of all Commitments, and (b) provides for all Obligations to be Paid in Full on or prior to the effective date thereof, or (2) complies with the provisions of the Restructuring Support Agreement (including any restructuring term sheet) in all respects [and is otherwise in form and substance satisfactory to the Required SGUS Lenders] and solely with respect to those provisions thereof that affect the rights, duties, liabilities or treatment of the Agents, is in form and substance reasonably satisfactory to the Agents.

“Account” means, with respect to a Person, any of such Person’s now owned and hereafter acquired or arising accounts (as defined in the UCC), including, whether or not constituting “accounts” (as defined in the UCC), any rights to payment for the sale, lease, license, assignment or other disposition of goods or rendition of services, whether or not they have been earned by performance or arising out of the use of a credit or charge card or information contained on or used with such card (and whether same is an “Account” or “General Intangible” as defined in the UCC).

“Account Bank” means Bank of America, N.A or any other financial institution that (a) is reasonably acceptable to the Required SGUS Lenders and (b) replaces the Account Bank pursuant to arrangements and documentation which, in each case, are reasonably acceptable to the Required SGUS Lenders.

“Account Debtor” has the meaning provided in the UCC and includes, without limitation, any Person who may become obligated to any Loan Party under, with respect to, or on account of, an Account.

“Accounting Change” has the meaning assigned to such term in Section 1.03.

“Ad Hoc Group” means those holders of Prepetition Indebtedness represented by the Specified Ad Hoc Group Advisors.

“Adequate Protection Liens” has the meaning assigned to such term in the DIP Order.

² NTD: Subject to Company review.

“Administrative Agent” means U.S. Bank, in its capacity as administrative agent for itself and the Lenders hereunder, and any duly appointed successor in such capacity.

“Administrative Agent’s Office” means the Administrative Agent’s address and, as appropriate, account specified in this Agreement, or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent, if applicable.

“Affiliate” means, when used with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified; *provided*, that for the avoidance of doubt, SGUS LLC, a Delaware limited liability company, shall be deemed not to be an Affiliate of the Borrower or any Parent Entity or any of their respective Subsidiaries notwithstanding this definition.

“Agents” means the Administrative Agent and the Collateral Agent, in their respective capacities as such or any one of them as the context requires.

“Agreement” has the meaning assigned to such term in the introductory paragraph hereof.

“Annual Financial Statements” has the meaning assigned to such term in Section 5.04(1).

“Applicable Percentage” means, with respect to any Lender, such Lender’s share of the aggregate Term Loans outstanding at that time; provided that, in accordance with Section 2.21, so long as any Lender shall be a Defaulting Lender, such Defaulting Lender’s Term Loans, as applicable, shall be disregarded in the calculation of Applicable Percentage.

“Applicable Rate” means a percentage per annum equal to, with respect to (a) SOFR Loans, 10.00% *per annum* and (b) ABR Loans, 9.00% *per annum*.

“Approved Court Order” means:

(a) each of the DIP Orders, as such order is modified, altered, amended or otherwise changed or supplemented and in effect from time to time in accordance with this Agreement and acceptable to the Required SGUS Lenders;

(b) any other order entered by the Bankruptcy Court regarding or relating to: (i) any rights or remedies of any Secured Party, (ii) the Loan Documents (including the Loan Parties’ obligations thereunder), (iii) the Collateral, any DIP Liens thereon, any DIP Superpriority Claims or any DIP SGUS Superpriority Claims (including any sale or other disposition of Collateral or the priority of any such DIP Liens, DIP Superpriority Claims or DIP SGUS Superpriority Claims), (iv) the use of cash collateral in the Chapter 11 Cases, (v) any debtor-in-possession financing of the Debtors, (vi) adequate protection or otherwise expressly relating to any Prepetition Indebtedness or (vii) any Chapter 11 Plan, in the case of each of the foregoing clauses (i) through (vii), (A) subject to any consent rights of the Required SGUS Lenders (acting in their sole discretion, but not to be unreasonably withheld or delayed), (B) solely with respect to those provisions thereof that affect the rights, duties, liabilities or treatment of the Agents, in form and substance reasonably satisfactory to the Agents, (C) that has not been vacated, reversed or stayed and (D) that has not been amended or modified in a manner adverse to the rights of the Lenders except with (1) the consent of the Required SGUS Lenders (acting in their sole discretion, but not to be unreasonably withheld or delayed) and (2) solely with respect to those provisions thereof that affect the rights, duties,

liabilities or treatment of the Agents, the consent of the Agents (not to be unreasonably withheld or delayed); and

(c) any other order entered by the Bankruptcy Court (i) subject to any consent rights of the Required SGUS Lenders (not to be unreasonably withheld or delayed), (ii) solely with respect to those provisions thereof that affect the rights, duties, liabilities or treatment of the Agents, in form and substance reasonably satisfactory to the Agents, and (iii) that has not been amended or modified in a manner adverse to the rights of the Lenders except with (A) the consent of the Required SGUS Lenders (not to be unreasonably withheld or delayed) and (B) solely with respect to those provisions thereof that affect the rights, duties, liabilities or treatment of the Agents, the consent of the Agents (not to be unreasonably withheld or delayed).

“Approved Budget” means, initially, the Initial Approved Budget, and if an Updated Budget has been approved (including, for the avoidance of doubt, if an Updated Budget has been deemed approved) by the Required SGUS Lenders in accordance with the DIP Orders, such Updated Budget.

“Approved Fund” has the meaning assigned to such term in Section 10.04(2).

“Approved Saks OFF 5th Debtor Transfers” means, with respect to any Saks OFF 5th Debtor, intercompany Investments (including intercompany Indebtedness), Restricted Payments or other transfers from any Loan Party, directly or indirectly, to such Saks OFF 5th Debtor; *provided* that such transfers (x) comply with the DIP Orders and Approved Court Orders (y) the Approved Budget.

“Approved TopCo Guarantor Transfers” means, with respect to any TopCo Guarantor, intercompany Investments (including intercompany Indebtedness), Restricted Payments or other transfers from any Loan Party, directly or indirectly, to such TopCo Guarantor; *provided* that such transfers (x) comply with the DIP Orders, (y) the Approved Budget and (z) have been approved (including as to the aggregate amount, form and purpose of such transfers) by the Required SGUS Lenders.

“Asset Sale” has the meaning assigned to such term in Section 6.05.

“Assignee” has the meaning assigned to such term in Section 10.04(2).

“Assignment and Acceptance” means an assignment and acceptance entered into by a Lender and an Assignee, and accepted by the Administrative Agent and (if required by Section 10.04) the Borrower, substantially in the form of Exhibit A or such other form (including electronic documentation generated by use of an electronic platform) that is approved by the Administrative Agent.

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

“Authentic JV” means Authentic Luxury Group, LLC, or other joint venture formed, established or created with Authentic Brands Group LLC in connection with the investment of Authentic Brands Group LLC or its Affiliates into Saks Global Investor L.P. prior to the Closing Date or, in each case, any successor entity thereto.

“Authentic JV Documents” has the meaning assigned to the term “Joint Venture Documents” in that certain Amended and Restated Limited Liability Company Agreement of Saks Global IP Holdings LLC, dated as of December 23, 2024, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to this Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 2.22(d).

“Backstop Commitment Letter” means that certain Senior Secured Super-Priority Debtor in Possession Facility Backstop Commitment Letter, dated as of January [14], 2026, by and among the Borrower, SGUS LLC, and the “Backstop Parties” party thereto.

“Backstop Party” has the meaning assigned to such term in the Backstop Commitment Letter.

“Backstop Premium” has the meaning assigned to such term in the Backstop Commitment Letter.

“Bankruptcy Code” means Title 11 of the United States Code (11 USC § 101 et seq.), as now constituted or hereafter amended from time to time.

“Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of Texas, Houston Division or any other court having jurisdiction over the Chapter 11 Cases from time to time.

“Bankruptcy Law” shall mean each of (a) the Bankruptcy Code, (b) any other domestic or foreign law relating to liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, administration, insolvency, reorganization, debt adjustment, receivership or similar debtor relief laws from time to time in effect and affecting the rights of creditors generally (including without limitation any plan of arrangement provisions of applicable corporation statutes), and (iv) any order made by a court of competent jurisdiction in respect of any of the foregoing.

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

“Benchmark” means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.22.

“Benchmark Replacement” means, with respect to any Benchmark Transition Event, the first alternative set forth in the order below that can be determined by the Administrative Agent (acting at the direction of the Required SGUS Lenders) for the applicable Benchmark Replacement Date (provided that any Benchmark Replacement shall be administratively feasible for the Administrative Agent):

(a) Daily Simple SOFR; or

(b) the sum of: (i) the alternate benchmark rate that has been selected by the Administrative Agent (acting at the direction of the Required SGUS Lenders) and the Borrower giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement

to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (ii) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to clause (a) or (b) above would be less than 1.00%, the Benchmark Replacement will be deemed to be 1.00% for the purposes of this Agreement and the other Loan Documents.³ Notwithstanding anything herein or in any other Loan Document to the contrary, in determining the Benchmark Replacement, the Required SGUS Lenders will consider in good faith any proposal reasonably requested by the Borrower and not adverse to the Lenders that is intended to prevent the use of the Benchmark Replacement from resulting in a deemed exchange of any Indebtedness hereunder under Section 1001 of the Code.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent (acting at the direction of the Required SGUS Lenders) and the Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities at such time.

“Benchmark Replacement Date” means the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

³ NTD: Subject to Company review.

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Unavailability Period**” means, the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.22 and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.22.

“**Beneficial Owner**” has the meaning given to that term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular “person” (as that term is used in Section 13(d)(3) of the Exchange Act), such “person” will not be deemed to have beneficial ownership of any securities that such “person” has the right to acquire or vote only upon the happening of any future event or contingency (including the passage of time) that has not yet occurred. The terms “**Beneficial Ownership**”, “**Beneficially Owns**” and “**Beneficially Owned**” have a corresponding meaning.

“**Beneficial Ownership Certification**” means a certification regarding beneficial ownership or control as required by the Beneficial Ownership Regulation.

“**Beneficial Ownership Regulation**” means 31 C.F.R. § 1010.230.

“**Benefit Plan**” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“Bidding Procedures” has the meaning assigned to such term in Section 5.12.

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

“Board of Directors” means, as to any Person, the board of directors, board of managers or other governing body of such Person, or if such Person is owned or managed by a single entity, the board of directors, board of managers or other governing body of such entity, and the term **“directors”** means members of the Board of Directors.

“Book Value” means book value as determined in accordance with U.S. GAAP.

“Borrower” has the meaning assigned to such term in the introductory paragraph hereof.

“Borrower Materials” has the meaning assigned to such term in Section 10.17(1).

“Borrowing” means a borrowing of the Term Loans made on a single date and, in the case of Term SOFR Loans, as to which a single Interest Period is in effect.

“Borrowing Request” shall mean a request by the Borrower in accordance with the terms of Section 2.03 and substantially in the form of Exhibit B or another form approved by the Administrative Agent.

“Budget Variance Report” shall mean the variance report described in Paragraph [3(f)(iii)] of the Interim DIP Order (and, once entered, the comparable provisions of the Final DIP Order).

“Business Day” means any day except Saturday, Sunday and any day which shall be in New York City or the state where the Administrative Agent’s Office is located a legal holiday or a day on which banking institutions are authorized or required by law or other government action to close in New York City, provided, however, that when used in connection with a Term SOFR Loan, the term “Business Day” shall also exclude any day that is not a U.S. Government Securities Business Day.

“Capital Lease Obligations” means, with respect to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other similar arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases or financing leases on a balance sheet of such Person under GAAP (as in effect on December 31, 2018, notwithstanding any modification or interpretative change thereto thereafter and excluding the effect to any treatment of leases under Accounting Standards Codification 842 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect)) and, for purposes hereof, the amount of such obligations at any time will be the capitalized amount thereof at such time determined in accordance with GAAP.

“Capital Stock” means:

- (1) in the case of a corporation, corporate stock;
- (2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;
- (3) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and

(4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

“*Carve Out*” has the meaning given to such term in the Interim DIP Order or the Final DIP Order, as applicable.

“*Cash Collateral*” has the meaning specified in the Interim DIP Order and, when applicable, the Final DIP Order.

“*Cash Equivalents*” means:

(1) U.S. Dollars, Canadian Dollars, Japanese yen, Sterling, Euros or the national currency of any participating member of the European Union or, in the case of any Foreign Subsidiary, any local currencies held by it from time to time in the ordinary course of business and not for speculation;

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

(3) time deposits, eurodollar time deposits, certificates of deposit and money market deposits, in each case, with maturities not exceeding one year from the date of acquisition thereof, and overnight bank deposits, in each case, with any commercial bank having capital, surplus and undivided profits of not less than \$250.0 million;

(4) repurchase obligations for underlying securities of the types described in clauses (2) and (3) above and clause (6) below entered into with a bank meeting the qualifications described in clause (3) above;

(5) commercial paper or variable or fixed rate notes maturing not more than one year after the date of acquisition issued by a corporation rated at least “P-1” by Moody’s or “A-1” by S&P (or reasonably equivalent ratings of another internationally recognized rating agency);

(6) securities with maturities of two years or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof, having one of the two highest rating categories obtainable from either Moody’s or S&P (or reasonably equivalent ratings of another internationally recognized rating agency);

(7) Indebtedness issued by Persons with a rating of at least “A 2” by Moody’s or “A” by S&P (or reasonably equivalent ratings of another internationally recognized rating agency), in each case, with maturities not exceeding one year from the date of acquisition, and marketable short-term money market and similar securities having a rating of at least “P-2” or “A-2” from either Moody’s or S&P (or reasonably equivalent ratings of another internationally recognized rating agency);

(8) Investments in money market funds with average maturities of 12 months or less from the date of acquisition that are rated “Aaa3” by Moody’s and “AAA” by S&P (or reasonably equivalent ratings of another internationally recognized rating agency);

(9) instruments equivalent to those referred to in clauses (1) through (8) above denominated in any foreign currency comparable in credit quality and tenor to those referred to above customarily utilized in the countries where any such Subsidiary is located or in which such Investment is made; and

(10) shares of mutual funds whose investment guidelines restrict 95.0% of such funds' investments to those satisfying the provisions of clauses (1) through (9) above; and

(11) investments of the type made pursuant to Borrowers' investment policy in effect as of the Closing Date (a copy of which has been provided to the Administrative Agent and the Lenders), or as amended, modified, supplemented or updated from time to time with the Administrative Agent's consent (acting at the direction of the Required SGUS Lenders).

"Cash Management Bank" means any provider of Cash Management Services that, at the time such Cash Management Obligations were entered into or, if entered into prior to the Closing Date, on the Closing Date, was the Administrative Agent, a Lender or an Affiliate of the foregoing, whether or not such Person subsequently ceases to be the Administrative Agent, a Lender or an Affiliate of the foregoing.

"Cash Management Motion" means (a) that certain *Global Debtors' Motion for Interim and Final Orders (I) Authorizing Debtors to (A) Continue to Maintain Their Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, and (C) Continue to Perform Intercompany Transactions; and (II) Granting Related Relief* filed in the Chapter 11 Cases on January [], 2026 [Docket No. [] and (b) any other motion of the Debtors seeking interim or final approval of the Debtors' maintenance of their cash management system and treasury arrangements.

"Cash Management Order" shall mean (a) any interim or final orders approving the Cash Management Motion and (b) any other an order of the Bankruptcy Court entered in the Chapter 11 Cases that authorizes the Debtors to maintain their existing cash management and treasury arrangements, in each case, subject to the consent rights of the Required SGUS Lenders in their sole discretion (not to be unreasonably withheld or delayed), as the same may be amended, supplemented, or modified from time to time after entry thereof subject to the consent rights of the Required SGUS Lenders in their sole discretion.

"Cash Management Obligations" means obligations owed by any Loan Party or its Restricted Subsidiaries to any Cash Management Bank in respect of or in connection with Cash Management Services and designated by the Cash Management Bank and the Borrower in writing to the Administrative Agent as "Cash Management Obligations" under this Agreement; it being understood that no Agent shall be deemed to have knowledge of any Cash Management Obligations unless and until the Administrative Agent receives written notice from such Cash Management Bank (a) setting forth such Cash Management Obligations and providing administrative details and tax forms for such Cash Management Bank, (b) appointing each Agent as its agent under this Agreement and the other Loan Documents and (c) agreed to be bound by the terms of this Agreement and the other Loan Documents.

"Cash Management Services" means any treasury, depository, pooling, netting, overdraft, stored value card, purchase card (including so called "procurement card" or "P-card"), debit card, credit card, cash management, supply chain financing and similar services and any automated clearing house transfer of funds.

"Change in Law" means:

(1) the adoption of any law, rule or regulation after the Closing Date; or

(2) any change in law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the Closing Date; or

(3) compliance by any Lender (or, for purposes of Section 2.15(2), by any lending office of such Lender or by such Lender's holding company, if any) with any written request, guideline or directive (whether or not having the force of law) of any Governmental Authority, made or issued after the Closing Date; *provided* that, notwithstanding anything herein to the contrary, (a) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives promulgated thereunder or issued in connection therewith and (b) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States of America or foreign regulatory authorities, in each case pursuant to Basel III, in each case will be deemed to be a "Change in Law," regardless of the date enacted, adopted, promulgated or issued.

A "***Change of Control***" will be deemed to occur if:

(1) at any time, Holdings ceases to Beneficially Own, directly or indirectly, 100.0% of the issued and outstanding Equity Interests of the Borrower; or

(2) at any time, the Borrower ceases to Beneficially Own, directly or indirectly, 100.0% of the issued and outstanding Equity Interests of the Subsidiary Loan Parties; or

(3) at any time, a "change of control" (or comparable event) occurs under any indenture, credit agreement or similar debt agreement in respect of Prepetition Indebtedness or the DIP ABL Credit Agreement; or

(4) any combination of Permitted Holders shall fail to own beneficially (within the meaning of Rules 13d-3 and 13d-5 of the Exchange Act as in effect on the Closing Date), directly or indirectly, in the aggregate Equity Interests representing at least a majority of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Holdings.

Notwithstanding the preceding or any provision of Section 13d-3 of the Exchange Act, (i) a Person or group shall not be deemed to beneficially own Voting Stock subject to a stock or asset purchase agreement, merger agreement, option agreement, warrant agreement or similar agreement (or voting or option or similar agreement related thereto) until the consummation of the acquisition of the Voting Stock in connection with the transactions contemplated by such agreement, (ii) [reserved], (iii) a Person or group will not be deemed to beneficially own the Voting Stock of another Person as a result of its ownership of Voting Stock or other securities of such other Person's parent entity (or related contractual rights) unless it owns 50% or more of the total voting power of the Voting Stock entitled to vote for the election of directors of such parent entity having a majority of the aggregate votes on the board of directors (or similar body) of such parent entity, and (iv) the right to acquire Voting Stock (so long as such Person does not have the right to direct the voting of the Voting Stock subject to such right) or any veto power in connection with the acquisition or disposition of Voting Stock will not cause a party to be a beneficial owner.

"***Chapter 11 Cases***" has the meaning assigned to such term in the recitals of this Agreement.

"***Chapter 11 Plan***" means a plan of reorganization or liquidation in any or all of the Chapter 11 Cases with respect to the Debtors (other than any Parent Entity (other than Holdings)).

"***Chapter 11 Cases Communication***" has the meaning assigned to such term in Section 5.17.

“Charges” has the meaning assigned to such term in Section 10.09.

“Class” means, when used with respect to: (a) any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are DIP Interim Funding Loans, DIP Final Funding Loans, DIP Subsequent Draw Loans or the Roll-Up DIP Loans; and (b) any Lender, refers to whether such Lender has a Term Loan of a particular Class.

“Closing Date” means the date on which the conditions set forth in Section 4.02 of this Agreement are satisfied or waived by the Required SGUS Lenders.

“Code” means the Internal Revenue Code of 1986, as amended.

[**“Collateral”** shall have the meaning given to the term “DIP Collateral” in the Interim DIP Order (and, when applicable, the Final DIP Order) and words of similar intent, and shall include all present and after acquired assets and property, whether real, personal, tangible, intangible or mixed of the Loan Parties, wherever located, on which Liens are or are purported to be granted pursuant to the DIP Orders to secure the payment and performance of the Obligations.]

“Collateral Agent” means U.S. Bank, in its capacity as Collateral Agent for itself and the other Secured Parties, and any duly appointed successor in that capacity.

“Collateral Agreement” means the Collateral Agreement, dated as of the date hereof, by and among the Borrower, the other Loan Parties and the Collateral Agent, as may be amended, restated, supplemented or otherwise modified from time to time.

“Commitment” means any DIP Interim Funding Commitment, DIP Final Funding Commitment or DIP Subsequent Draw Commitment.

“Commitment Premium” has the meaning assigned to such term in Section 2.12(2).

“Compliance Certificate” has the meaning assigned to such term in Section 5.04(4).

“Conforming Changes” means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “ABR,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, administrative or operational matters) that the Required SGUS Lenders decide may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Required SGUS Lenders decide that adoption of any portion of such market practice is not administratively feasible or if the Required SGUS Lenders determine that no market practice for the administration of any such rate exists, in such other manner of administration as the Required SGUS Lenders decide is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents); *provided*, that any such changes shall be administratively feasible for the Administrative Agent.

“continuing” means, with respect to any Default or Event of Default, that such Default or Event of Default has not been cured or waived.

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

“**Control Agreement**” means any “**Control Agreement**” as defined in the Collateral Agreement.

“**Credit Support**” means, with respect to any Person and any Indebtedness or other Indebtedness Obligations, (i) such Person’s Guarantee of, or becoming a direct or indirect obligor with respect to, such Indebtedness or other Indebtedness Obligations, (ii) such Person’s pledge or other hypothecation of its assets to directly or indirectly secure or provide recourse with respect to such Indebtedness or other Indebtedness Obligations, (iii) such Person becoming directly or indirectly liable for such Indebtedness or other Indebtedness Obligations or (iv) such Person providing any other form of direct or indirect credit support for such Indebtedness or other Indebtedness Obligations (including by means of a “keepwell” or other similar commitment).

“**Daily Simple SOFR**” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent (acting at the direction of the Required SGUS Lenders) in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for syndicated business loans; *provided* that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent (acting at the direction of the Required SGUS Lenders) may establish another convention.

“**Debtor**” or “**Debtors**” means Holdings, the Borrower and certain of the Borrower’s Subsidiaries, each, as debtors and debtors-in-possession; *provided* for the purposes hereof, the Saks OFF 5th Debtors should not be deemed a “Debtor” hereunder.

“**December 2024 Transactions**” has the meaning assigned to the term “**Transactions**” in the Prepetition ABL Credit Agreement.

“**Default**” means any event or condition which, but for the giving of notice, lapse of time or both, would constitute an Event of Default.

“**Defaulting Lender**” means any Lender whose acts or failure to act, whether directly or indirectly, constitutes a Lender Default. The Administrative Agent shall not be deemed to have knowledge or notice of designation of any Lender as a “Defaulting Lender” hereunder unless the Administrative Agent has received written notice thereof from the Borrower, which the Administrative Agent may conclusively rely upon without incurring liability therefor, and absent receipt of such notice, the Administrative Agent may conclusively assume that no Lender under this Agreement has been designated as a “Defaulting Lender.”

“**Deposit Account**” means any “deposit account” as such term is defined in the UCC as in effect on the date hereof in the State of New York.

“**Designated IPCo Subsidiary**” means (w) any Subsidiary of the Borrower that has been designated as a “Designated IPCo Subsidiary” as of the Closing Date under and as defined in any Prepetition Credit Agreement, (x) any Subsidiary as the Borrower may designate from time to time to be a Designated IPCo Subsidiary in a written notice provided to the Administrative Agent (including any newly acquired or newly formed Subsidiary or a Person becoming a Subsidiary through merger, consolidation or other business combination transaction, or Investment therein) (subject to the consent of the Required SGUS Lenders) and (y) any Subsidiary of such Subsidiary that is so designated; *provided* that:

(1) at the time of such designation, such Subsidiary and its Subsidiaries do not own any Equity Interests of the Borrower or any of its Subsidiaries other than Equity Interests of a Designated IPCo Subsidiary or a Subsidiary of the Subsidiary to be so designated;

(2) at the time of such designation, such Subsidiary and its Subsidiaries do not, directly or through its ownership of any Equity Interests of any Person, own any assets other than (a) the Equity Interests of the Authentic JV and/or another Designated IPCo Subsidiary, (b) cash and Cash Equivalents, in each case consisting of royalty payments received from the Authentic JV and (c) intellectual property (including Material Intellectual Property);

(3) the aggregate fair market value of all outstanding Investments owned by the Borrower and its Subsidiaries in such Subsidiary designated as a Designated IPCo Subsidiary will be deemed to be an Investment made as of the time of the designation, and such designation will only be permitted if such Investment would constitute a Permitted Investment at that time (including an Investment that would constitute a Permitted IP Transaction after giving effect to such designation);

(4) such designation shall not cause an Event of Default at the time of such designation and after giving pro forma effect thereto;

(5) to the extent such Subsidiary owns intellectual property or is concurrently transferred intellectual property, such designation shall comply with all requirements of a Permitted IP Transaction; and

(6) the Borrower may redesignate any Designated IPCo Subsidiary to be a Subsidiary that is not a Designated IPCo Subsidiary if that redesignation would not cause an Event of Default.

“DIP ABL Credit Agreement” means that certain Senior Secured, Super-Priority Debtor-In-Possession ABL Credit Agreement, dated on or about the date hereof, by and among Holdings, the Borrower, the Lenders thereto from time to time and Bank of America, N.A. as administrative agent.

“DIP ABL Facility” means the asset based credit facility pursuant to the DIP ABL Credit Agreement.

“DIP ABL Intercreditor Agreement” means the Intercreditor Agreement, dated as of the Closing Date, by and among Bank of America, N.A. as administrative agent under the DIP ABL Credit Agreement, the Administrative Agent and any other parties party thereto from time to time, and acknowledged by the Loan Parties, as amended, restated, amended and restated, replaced, supplemented and/or otherwise modified from time to time.

“DIP ABL Loans” means “Loans” as defined in the DIP ABL Credit Agreement.

“DIP ABL Obligations” means “Obligations” as defined in the DIP ABL Credit Agreement.

“DIP ABL Priority Collateral” shall have the meaning given to the term “ABL Priority Collateral” in the DIP ABL Intercreditor Agreement.

“DIP Escrow Account” has the meaning assigned to such term in the DIP SGUS Credit Agreement.

“DIP Facility” shall have the meaning given to such term in the recitals to this Agreement.

“DIP Final Funding Commitment” means, with respect to each Lender, the commitment of such Lender to make or otherwise fund DIP Final Funding Loans on any DIP Final Funding Date, pursuant to Section 2.01(2), in an aggregate amount not to exceed the applicable amount set forth opposite such Lenders’ name set forth on Schedule 1.01(1) or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the DIP Final Funding Commitments as of the Closing Date is \$300,000,000.

“DIP Final Funding Date” means any funding date on which the conditions set forth in Section 4.03 are satisfied (or waived in accordance with Section 10.08).

“DIP Final Funding Loans” means any borrowing hereunder of term loans in respect of the DIP Final Funding Commitments.

“DIP Funding Period” has the meaning specified in Section 2.04.

“DIP Funding Notice” shall mean a notice by the Borrower in accordance with the terms of Section 2.04 and substantially in the form of Exhibit F or another form approved by the Administrative Agent.

“DIP Interim Funding Commitment” means, with respect to each Lender, the commitment of such Lender to make or otherwise fund DIP Interim Funding Loans on the DIP Interim Funding Date, pursuant to Section 2.01(1), in an aggregate amount not to exceed the applicable amount set forth opposite such Lenders’ name set forth on Appendix A or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the DIP Interim Funding Commitments as of the Closing Date is \$400,000,000.00.

“DIP Interim Funding Date” means the date on which the conditions set forth in Section 4.02 are satisfied (or waived in accordance with Section 10.08).

“DIP Interim Funding Loans” means any borrowing hereunder of term loans in respect of the DIP Interim Funding Commitments.

“DIP Lien” has the meaning assigned to [“OpCo DIP Liens”] in the DIP Orders.

“DIP Motion” has the meaning specified in Section 5.12.

“DIP Orders” means the Interim DIP Order and the Final DIP Order.

“DIP Proceeds Account” means the Deposit Account of the Borrower (a) maintained with the Account Bank with account number ending in 6334, and (b) subject to a first-priority Lien in favor of the Collateral Agent pursuant to this Agreement, the Collateral Agreement, the DIP Order [and the DIP Proceeds Account Control Agreement].

“DIP Proceeds Account Control Agreement” means [a deposit account control agreement, by and among the Borrower, Account Bank and Collateral Agent] in form and substance reasonably satisfactory to the Collateral Agent and the Required SGUS Lenders that is sufficient to give the Collateral Agent “control” (for purposes of Article 8 and 9 of the Uniform Commercial Code) over the DIP Proceeds Account.

“DIP SGUS Administrative Agent” means U.S. Bank, in its capacity as administrative agent under the DIP SGUS Credit Agreement.

“DIP SGUS Agents” means, collectively, the DIP SGUS Administrative Agent and the DIP SGUS Collateral Agent.

“DIP SGUS Borrower” means SGUS LLC, a Delaware limited liability company.

“DIP SGUS Claims” means the administrative expense claims of the DIP SGUS Lenders, the DIP SGUS Administrative Agent and the DIP SGUS Collateral Agent granted by the Bankruptcy Court pursuant to the DIP Orders against each Debtor that is a DIP SGUS Loan Party, subject to the terms set forth in the Interim DIP Order and, when entered, the Final DIP Order, and junior only to the Carve Out to the extent set forth in the Interim DIP Order.

“DIP SGUS Collateral Agent” means U.S. Bank Trust Company, National Association, in its capacity as collateral agent under the DIP SGUS Credit Agreement.

“DIP SGUS Credit Agreement” means (i) that certain Debtor-in-Possession Term Loan Credit Agreement, dated as of the date hereof, as the same may be amended, amended and restated, modified, supplemented, extended or renewed from time to time in accordance with the terms thereof, among the DIP SGUS Borrower, as borrower, the guarantors party thereto, the lenders party thereto from time to time, the DIP SGUS Administrative Agent and the DIP SGUS Collateral Agent.

“DIP SGUS Documents” means, collectively, the DIP SGUS Credit Agreement, the “Loan Documents” as defined in the DIP SGUS Credit Agreement and each of the other agreements, documents and instruments providing for, evidencing or securing any DIP SGUS Obligations.

“DIP SGUS Lenders” means the “Lenders”, as defined in the DIP SGUS Credit Agreement.

“DIP SGUS Loan Parties” means the “Loan Parties”, as defined in the DIP SGUS Credit Agreement.

“DIP SGUS Obligations” means “Obligations”, as defined in the DIP SGUS Credit Agreement.

“DIP SGUS Superpriority Claims” means the superpriority expense claims of the DIP SGUS Lenders, the DIP SGUS Administrative Agent and the DIP SGUS Collateral Agent granted by the Bankruptcy Court pursuant to the DIP Orders against each DIP SGUS Loan Party, subject to the terms set forth in the Interim DIP Order and, when entered, the Final DIP Order, and junior only to the Carve Out to the extent set forth in the Interim DIP Order.

“DIP SGUS Term Loans” means the term loans under the DIP SGUS Credit Agreement.

“DIP SGUS Term Loan Facility” means that certain debtor-in-possession, senior secured credit facility pursuant to the DIP SGUS Credit Agreement.

“DIP Subsequent Draw Commitment” means, with respect to each Lender, the commitment of such Lender to make or otherwise fund DIP Subsequent Draw Loans on any Subsequent Draw Date, pursuant to Section 2.01(3), in an aggregate amount not to exceed the applicable amount set forth opposite such Lenders’ name set forth on Schedule 1.01(1) or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the DIP Subsequent Draw Commitment as of the Closing Date is \$300,000,000.00.

“DIP Subsequent Draw Date” means any funding date on which the conditions set forth in Section 4.04 are satisfied (or waived in accordance with Section 10.08).

“DIP Subsequent Draw Loans” means any borrowing hereunder of term loans in respect of the DIP Subsequent Draw Commitments.

“DIP Superpriority Claims” means all of the allowed superpriority administrative expense claims of the Administrative Agent and the other Secured Parties on account of the Obligations, which claims shall be entitled to the benefits of section 364(c)(1) and 364(e) of the Bankruptcy Code, having priority over any and all administrative expenses of the kind that are specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 364(c)(1), 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 1113, 1114 or any other provisions of the Bankruptcy Code and any other claims against the Loan Parties. DIP Superpriority Claims shall, at all times be (x) junior only to the Carve Out, (y) subject to the DIP Order, senior to any and all other administrative expense claims or other claims against the Loan Parties or their estates, in the Chapter 11 Cases and any subsequent proceedings under Chapter 7 of the Bankruptcy Code and (z) subject to the DIP ABL Intercreditor Agreement.

“DIP Term Loan Priority Collateral” has the meaning assigned to such term in the DIP ABL Intercreditor Agreement.

“Disinterested Director” means, with respect to any Person and transaction, a member of the Board of Directors of such Person who does not have any material direct or indirect financial interest in or with respect to such transaction.

“Disqualified Institution” means:

- (1) any Person that is a competitor of the Parent, and any Person controlling or controlled by any such competitor, and identified by the Borrower in writing to the Administrative Agent on or prior to the Closing Date;
- (2) certain banks, financial institutions, other institutional lenders and investors and other entities that are identified by the Borrower in writing to the Administrative Agent on or prior to the Closing Date; and
- (3) any Affiliates of such competitors, controlling persons, controlled persons or institutions described in the foregoing clauses (1) and (2) that are clearly identifiable as such solely on the basis of their names (other than bona fide fixed income investors or debt funds that are Affiliates of competitors described in clause (1) above, but not of institutions described in clause (2) above) or identified by the Borrower in writing to the Administrative Agent on or prior to the Closing Date.

Notwithstanding the foregoing, each Loan Party and the Lenders acknowledge and agree that the Administrative Agent will not have any responsibility or obligation to determine whether any Lender or potential Lender is a Disqualified Institution and no duty to monitor the schedule of Disqualified Institutions and shall have no liability in connection therewith (including, without limitation, with respect to or arising out of any assignment or participation of Loans or Commitments, or disclosure of confidential information to a Disqualified Institution).

“Disqualified Stock” means, with respect to any Person, any Equity Interests of such Person that, by their terms (or by the terms of any security or other Equity Interests into which they are convertible or for which they are redeemable or exchangeable at the option of the holder thereof), or upon the happening of any event or condition:

(1) mature or are mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale are subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments);

(2) are redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part;

(3) provide for the scheduled payments of dividends in cash; or

(4) either mandatorily or at the option of the holders thereof, are or become convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Stock, in each case, prior to the date that is ninety-one (91) days after the earlier of:

(a) the Maturity Date; and

(b) the date on which the Loans and all other Obligations (other than contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted) are repaid in full and the Commitments are terminated;

provided that only the portion of the Equity Interests that so mature or are mandatorily redeemable, are so convertible or exchangeable or are so redeemable at the option of the holder thereof prior to such date will be deemed to be Disqualified Stock; *provided, further*, that if such Equity Interests are issued to any employee or to any plan for the benefit of employees of any Parent Entity, the Borrower or its Subsidiaries or by any such plan to such employees, such Equity Interests will not constitute Disqualified Stock solely because they may be required to be repurchased by any Parent Entity, the Borrower or any of its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, death or disability; and *provided, further*, that any class of Equity Interests of such Person that by its terms authorizes such Person to satisfy its obligations thereunder by delivery of Equity Interests that is not Disqualified Stock will not be deemed to be Disqualified Stock.

“Dollars”, ***“U.S. Dollars”*** or ***“\$”*** means lawful money of the United States of America.

“Domestic Subsidiary” means any Subsidiary of the Borrower that is organized under the laws of the United States, any state thereof or the District of Columbia, and ***“Domestic Subsidiaries”*** means any two or more of them. Unless otherwise indicated in this Agreement, all references to Domestic Subsidiaries will mean Domestic Subsidiaries of the Borrower.

“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 and is subject to the supervision of an EEA Resolution Authority, 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 of an EEA Resolution Authority with its parent.

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

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

“Environment” means ambient air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata, and natural resources such as flora and fauna.

“Environmental Laws” means all applicable laws (including common law), statutes, rules, regulations, codes, ordinances, orders, legally binding agreements and final, legally binding decrees or judgments, in each case, promulgated or entered into by or with any Governmental Authority, relating to the Environment, preservation or reclamation of natural resources, the generation, management, Release or threatened Release of, or exposure to, any Hazardous Material or to occupational health and safety matters (to the extent relating to exposure to Hazardous Materials).

“Equity Interests” means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

“Equivalent Amount” means, at any time, (a) with respect to any amount denominated in U.S. Dollars, such amount, and (b) with respect to any amount denominated in any currency other than U.S. Dollars, the equivalent amount thereof in U.S. Dollars as determined by the Borrower at such time on the basis of the Spot Rate for the purchase of U.S. Dollars with such currency as of the close of business on the immediately preceding Business Day.

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

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with any Loan Party, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302, 303 and 306(g) of ERISA and Section 412 and 430 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means:

- (1) a Reportable Event, or the requirements of Section 4043(b) of ERISA apply, with respect to an ERISA Plan;
- (2) a withdrawal by any Loan Party or, to the knowledge of the Borrower, any ERISA Affiliate from an ERISA Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations by any Loan Party or, to the knowledge of the Borrower, any ERISA Affiliate that is treated as a termination or withdrawal under Section 4062(e) of ERISA;
- (3) a complete or partial withdrawal by any Loan Party or, to the knowledge of the Borrower, any ERISA Affiliate from a Multiemployer Plan, receipt of written notification by any Loan Party or, to the knowledge of the Borrower, any ERISA Affiliate concerning the imposition of Withdrawal Liability on it or written notification that a Multiemployer Plan is, or is expected to be, insolvent within the meaning of Title IV of ERISA or endangered or in critical status within the meaning of Section 305 of ERISA or Section 432 of the Code;

(4) (a) the provision by an ERISA Plan administrator or the PBGC to any Loan Party or, to the knowledge of the Borrower, any ERISA Affiliate of notice of intent to terminate an ERISA Plan or to appoint a trustee to administer an ERISA Plan, (b) the treatment of an ERISA Plan or Multiemployer Plan amendment as a termination under Sections 4041 or 4041A of ERISA or (c) the commencement of proceedings by the PBGC to terminate an ERISA Plan or Multiemployer Plan;

(5) the incurrence by any Loan Party or, to the knowledge of the Borrower, any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any ERISA Plan or Multiemployer Plan, other than for the timely payment of plan contributions or PBGC premiums due but not delinquent under Section 4007 of ERISA;

(6) the application for a minimum funding waiver under Section 302(c) of ERISA or Section 412(c) of the Code with respect to an ERISA Plan;

(7) the imposition of a lien on the assets of any Loan Party under Section 303(k) of ERISA with respect to any ERISA Plan or Section 430(k) of the Code; and

(8) a determination that any ERISA Plan is in “at risk” status (within the meaning of Section 303 of ERISA or Section 430 of the Code).

“**ERISA Plan**” means any “employee pension benefit plan” as defined in Section 3(2) of ERISA (other than a Multiemployer Plan) that is (1) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA; and (2) either (a) sponsored or maintained (at the time of determination or at any time within the five (5) years prior thereto) by any Loan Party or any ERISA Affiliate or (b) in respect of which any Loan Party or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“**Euro**” and “**€**” mean the single currency of the Participating Member States.

“**Event of Default**” has the meaning assigned to such term in Section 8.01.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

“**Excluded Assets**” means “Excluded Assets” as defined in the Collateral Agreement.

“**Excluded Equity Interests**” means “Excluded Equity Interests” as defined in the Collateral Agreement.

“**Excluded Taxes**” means, with respect to any Recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder:

(1) income Taxes imposed on or measured by its net income (however denominated) branch profits Taxes or franchise Taxes imposed in lieu of net income Taxes, in each case, (a) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (b) that are Other Connection Taxes;

(2) in the case of a Lender, any U.S. federal withholding Taxes (including any backup withholding Tax) that is imposed on amounts hereunder to or for the account of such Lender under the law applicable at the time (i) such Lender becomes a party to this Agreement (other than pursuant to an assignment request by the Borrower under Section 2.19(2)) or (ii) such Lender changes its lending office, except to the extent that in each case, the Lender's assignor (if any), at the time of assignment (or such Lender immediately before it changed its lending office), was entitled to receive additional amounts from the Loan Party with respect to any withholding tax pursuant to Section 2.17(1) or Section 2.17(3);

(3) Taxes that are attributable to such Lender's or Administrative Agent's failure to comply with Section 2.17(5) or Section 2.17(6);

(4) any U.S. federal withholding Taxes imposed under FATCA.

"Executive Order" has the meaning assigned to such term in Section 3.20(3)(a).

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations thereunder or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code (or any amended or successor version described above), and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code.

"Federal Funds Effective Rate" means, for any day, the rate per annum calculated by the Federal Reserve Bank of New York based on such day's federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; *provided* that if the Federal Funds Effective Rate as so determined would be less than 0.00%, such rate shall be deemed to be 0.00% for purposes of this Agreement.

"Fee Letter" means the Fee Schedule for Corporate Trust Services, dated as of the Closing Date, by and between the Borrower and the Agents, and as otherwise amended, supplemented or modified from time to time.

"Fees" means all fees set forth in the Fee Letter and all other fees relating hereto.

"Final DIP Order" means a final order of the Bankruptcy Court entered in the Chapter 11 Cases after a final hearing under Bankruptcy Rule 4001(c)(2) or such other procedures as approved by the Bankruptcy Court, authorizing and approving on a final basis, among other things, the DIP Facility, the DIP SGUS Term Loan Facility and the DIP ABL Facility, which order shall be in form and substance satisfactory to the Required SGUS Lenders.

"Final DIP Order Entry Date" means mean the date on which the Final DIP Order is entered by the Bankruptcy Court.

"First Day Motions" has the meaning assigned to such term in Section 4.02(12).

"First Day Orders" has the meaning assigned to such term in Section 4.02(12).

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

“Flood Insurance Laws” means, collectively, (a) the National Flood Insurance Reform Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood disaster Protection Act of 1973) as now or hereafter in effect or any successor statute thereto, (b) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (c) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto and any and all official rulings and interpretation thereunder or thereof.

“Foreign Lender” means any Lender that is organized under the laws of a jurisdiction other than the United States of America. For purposes of this definition, the United States of America, each state thereof and the District of Columbia will be deemed to constitute a single jurisdiction.

“Foreign Subsidiary” means any Subsidiary that not a Domestic Subsidiary.

“GAAP” means generally accepted accounting principles in the United States of America as in effect from time to time, including those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession (but excluding the policies, rules and regulations of the SEC applicable only to public companies).

Notwithstanding anything to the contrary above or in the definition of “Capital Lease Obligations”, in the event of a change under GAAP (or the application thereof) requiring any leases to be capitalized that are not required to be capitalized as of December 31, 2018, only those leases that would result or would have resulted in Capital Lease Obligations on December 31, 2018 (assuming for purposes hereof that they were in existence on the Closing Date) will be considered capital leases and all calculations under this Agreement will be made in accordance therewith.

“Governmental Authority” means any federal, state, local or (to the extent applicable and legally binding) foreign court or governmental agency, authority, instrumentality or regulatory or legislative body.

“Ground Lessee Pledge Documentation” means that certain Amended and Restated Pledge Agreement by and between Saks Fifth Avenue Holdco II LLC, as pledgor, and the pledgee named therein, as pledgee, dated as of March 18, 2021, and any and all other documentation entered into in connection therewith or relating thereto, certified copies of which have been delivered to the Administrative Agent on or prior to the Closing Date, as the same may be modified, amended, supplemented or replaced from time to time in accordance with the terms thereof.

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

(1) any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect:

(a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep well, to purchase assets, goods, securities or services, to take or pay or otherwise) or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness or other obligations;

(b) to purchase or lease property (other than operating leases or leases of real property), securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof;

(c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation;

(d) entered into for the purpose of assuring in any other manner the holders of such Indebtedness or other obligation of the payment thereof or to protect such holders against loss in respect thereof (in whole or in part); or

(e) as an account party in respect of any letter of credit, bank guarantee or other letter of credit guaranty issued to support such Indebtedness or other obligation; or

(2) any Lien on any assets of the guarantor securing any Indebtedness (or any existing right, contingent or otherwise, of the holder of Indebtedness to be secured by such a Lien) of any other Person, whether or not such Indebtedness or other obligation is assumed by the guarantor;

provided, that the term “Guarantee” will not include endorsements of instruments for deposit or collection in the ordinary course of business or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted by this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee will be deemed to be an amount equal to the stated or determinable amount of the Indebtedness in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith. The term “**Guaranteed**” as used herein will have a corresponding meaning.

“**Guarantee Agreement**” means the Guarantee Agreement, dated as of the Closing Date, among the Loan Parties and the Administrative Agent, as amended, supplemented, restated and/or otherwise modified from time to time.

“**Guarantors**” means (1) Holdings, (2) each Subsidiary Loan Party, (3) each TopCo Guarantor and (4) subject and pursuant to Section 5.10, any Person that Guarantees the Indebtedness under the DIP ABL Credit Agreement.

“**Hazardous Materials**” means all pollutants, contaminants, wastes, chemicals, materials, substances and constituents, including explosive or radioactive substances or petroleum or petroleum byproducts or distillates, friable asbestos or friable asbestos-containing materials, polychlorinated biphenyls or radon gas, in each case, that are regulated or would give rise to liability under any Environmental Law due to their dangerous or deleterious properties.

“**Hedge Agreement**” means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions, in each case, not entered into for speculative purposes; *provided* that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of Borrower or any of its Subsidiaries will be a Hedge Agreement.

“Holding Company” means any Person so long as such Person directly or indirectly holds 100% of the total voting power of the Voting Stock of the Borrower, and at the time such Person acquired such voting power, no Person and no group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision), including any such group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) (other than any Permitted Holder), shall have beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision), directly or indirectly, of more than 50% of the total voting power of the Voting Stock of such Person.

“Holdings” has the meaning assigned to such term in the introductory paragraph hereof.

“Indebtedness” means, with respect to any Person, without duplication:

- (1) all obligations of such Person for borrowed money;
- (2) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments;
- (3) all obligations of such Person under conditional sale or title retention agreements relating to property or assets purchased by such Person;
- (4) all obligations of such Person issued or assumed as the deferred purchase price of property or services, to the extent the same would be required to be shown as a long-term liability on a balance sheet prepared in accordance with GAAP;
- (5) all Capital Lease Obligations of such Person;
- (6) [reserved];
- (7) the principal component of all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and bank guarantees;
- (8) the principal component of all obligations of such Person in respect of bankers’ acceptances;
- (9) all Guarantees by such Person of Indebtedness described in clauses (1) through (8) above; and
- (10) the amount of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock (excluding accrued dividends that have not increased the liquidation preference of such Disqualified Stock);

provided that Indebtedness will not include:

- (a) trade payables, accrued expenses and intercompany liabilities arising in the ordinary course of business;
- (b) prepaid or deferred revenue arising in the ordinary course of business;
- (c) purchase price holdbacks arising in the ordinary course of business in respect of a portion of the purchase prices of an asset to satisfy unperformed obligations of the seller of such asset; or

(d) in connection with the purchase by the Borrower or any Subsidiary of any business, any deferred or prepaid revenue, post-closing payment adjustments to which the seller may become entitled to the extent such payment is determined by a final closing balance sheet or such payment depends on the performance of such business after the closing; *provided, however*, that, at the time of closing, the amount of any such payment is not determinable and, to the extent such payment thereafter becomes fixed and determined, the amount is paid in a timely manner.

The Indebtedness of any Person will include the Indebtedness of any partnership in which such Person is a general partner, other than to the extent that the instrument or agreement evidencing such Indebtedness expressly limits the liability of such Person in respect thereof.

“Indebtedness Obligations” means any principal, interest (including any interest accruing subsequent to the filing of a petition in bankruptcy, reorganization or similar proceeding at the rate provided for in the documentation with respect thereto, whether or not such interest is an allowed claim under applicable state, federal or foreign law), premium, penalties, fees, indemnifications, reimbursements (including reimbursement obligations with respect to letters of credit and bankers’ acceptances), damages and other liabilities payable under the documentation governing any Indebtedness.

“Indemnified Taxes” means (1) all Taxes, other than Excluded Taxes imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document; and (2) to the extent not otherwise described in clause (1), Other Taxes.

“Indemnitee” has the meaning assigned to such term in Section 10.05(2).

“Initial Approved Budget” means the “Initial Budget” as defined in and attached to the Interim DIP Order.

“Intellectual Property Rights” has the meaning assigned to such term in Section 3.21(1).

“Interest Election Request” shall mean a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.07 and substantially in the form of Exhibit C or another form approved by the Administrative Agents.

“Interest Payment Date” shall mean, (a) with respect to any Term SOFR Loan, (i) the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and (ii) in addition, the date of any refinancing or conversion of such Borrowing with or to a Borrowing of a different Type on a Business Day that is not the last day of an Interest Period under clause (a)(i) of this definition and (b) with respect to any ABR Loan, the last Business Day of each calendar quarter.

“Interest Period” shall mean, as to any Term SOFR Borrowing, the period commencing on the date of such Borrowing or on the last day of the immediately preceding Interest Period applicable to such Borrowing, as applicable, and ending on the numerically corresponding day (or, if there is no numerically corresponding day, on the last day) in the calendar month that is one (1) month thereafter;⁴ *provided*, that if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day. Interest shall accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period. Any Interest Period that commences on the last Business Day of a calendar month (or on a

⁴ NTD: Subject to Company review.

day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the next calendar month of such Interest Period. No Interest Period shall extend beyond the Maturity Date. No tenor that has been removed from this definition pursuant to Section 2.22(d) shall be available for specification in such Borrowing Request or Interest Election Request.

“Interim DIP Order” means an interim order of the Bankruptcy Court approving the Loan Documents and related matters in the form set forth as Exhibit E, as the same may be amended, supplemented, or modified from time to time after entry thereof in form and substance satisfactory to the Required SGUS Lenders in their sole discretion.

“Interim DIP Order Entry Date” shall mean the date on which the Interim DIP Order is entered by the Bankruptcy Court.

“Investor Group” means (a) any or all of (i) the members of HBC GP LLC on the Prepetition ABL Initial Effective Date, (ii) the respective limited partners in the Parent, any holding company thereof created in connection with the December 2024 Transactions, and Saks Global Investor L.P. on the Prepetition ABL Initial Effective Date and (iii) the holders of equity interests in NMG Parent LLC, a Delaware limited liability company, immediately prior to the consummation of the Merger (as defined in the Prepetition ABL Credit Agreement), any holding company or similar entity established to act on their behalf, or any agent or representative acting on their behalf, and, in each case of clauses (i), (ii) and (iii), any of their respective successors, (b) the respective Affiliates of the Persons described in clause (a) (other than, in each case, the Borrower and its Subsidiaries or any portfolio company) and (c) any group members of a group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act as in effect on the Closing Date) of which the Persons described in clauses (a) and (b) are members; *provided* that the Persons described in clauses (a) and (b) beneficially own a majority of the Equity Interests beneficially owned by such group.

“Investment” has the meaning assigned to such term in Section 6.04.

“Investment Grade Rating” means a rating equal to or higher than Baa3 (or the equivalent) by Moody’s and BBB- (or the equivalent) by S&P (or reasonably equivalent ratings of another internationally recognized rating agency).

“Investment Grade Securities” means:

- (1) securities issued or directly and fully guaranteed or insured by the U.S. government or any agency or instrumentality thereof (other than Cash Equivalents);
- (2) securities that have an Investment Grade Rating, but excluding any debt securities or instruments constituting loans or advances among the Borrower and its Subsidiaries;
- (3) corresponding instruments in countries other than the United States customarily utilized for high quality investments and in each case with maturities not exceeding two years from the date of acquisition; and
- (4) investments in any fund that invests at least 95.0% of its assets in investments of the type described in clauses (1) and (2) above which fund may also hold immaterial amounts of cash pending investment and/or distribution.

“Junior Financing” has the meaning assigned to such term in Section 6.09(2).

“Lender” means each financial institution listed on Schedule 1.01(1) (other than any such Person that has ceased to be a party hereto pursuant to an Assignment and Acceptance in accordance with Section 10.04), as well as any Person that becomes a Lender hereunder pursuant to Section 10.04.

“Lender Default” means:

(1) the refusal (which may be given verbally or in writing and has not been retracted) or failure of any Lender to make available its portion of any Borrowing or reimbursement obligations, which refusal or failure is not cured within two Business Days after the date of such refusal or failure, unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s good faith determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable Default, shall be specifically identified in such writing) has not been satisfied;

(2) the failure of any Lender to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due;

(3) the failure of any Lender within three Business Days after request by the Administrative Agent or the Borrower to confirm that it will comply with its funding obligations with respect to the Term Loans; *provided* that such Lender will cease to be a Defaulting Lender pursuant to this clause (3) upon receipt of such written confirmation by the Administrative Agent and the Borrower; or

(4) any Lender has notified the Borrower and the Administrative Agent that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations with respect to the Term Loans or under other similar agreements in which it commits to extend credit.

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

“Lien” means, with respect to any asset (1) any mortgage, deed of trust, lien, hypothecation, pledge, charge, security interest or similar encumbrance in or on such asset; or (2) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset; *provided* that in no event will an operating lease or an agreement to sell be deemed to constitute a Lien.

“Liquidity” means, at any time, an amount equal to the sum of, without duplication, (a) the amount of total Unrestricted Cash and Cash Equivalents held by Holdings and its Subsidiaries, including all Loan Parties and DIP SGUS Loan Parties, and (b) “Excess Availability” under and as defined in the DIP ABL Credit Agreement.⁵

“Liquidity Report” has the meaning assigned to such term in Section 5.04(16).

“Loan Documents” means this Agreement, the Security Documents, the Guarantee Agreement, the DIP ABL Intercreditor Agreement, any Note, any other intercreditor agreement entered into pursuant to this Agreement, and any other amendment or other agreement or document evidencing or governing the Obligations hereunder, and, solely for the purposes of Sections 3.01, 3.02, and 8.01(3) hereof, the Fee

⁵ NTD: Subject to Company review.

Letter; *provided* that, for the avoidance of doubt, the Loan Documents shall not include any DIP SGUS Documents.

“Loan Parties” means the Borrower, Holdings and the other Guarantors.

“Loans” means the Term Loans made by any Lender or any Affiliate of any Lender pursuant to this Agreement.

“Management Stockholders” means the members of management of the Borrower (or any Parent Entity) or its Subsidiaries who are holders of Equity Interests of the Borrower or of any Parent Entity on the Prepetition ABL Initial Effective Date or became holders of such Equity Interests in connection with the December 2024 Transactions or pursuant to any equity incentive or compensation plan approved by the Board of Directors of the Borrower (or any Parent Entity) or its Subsidiaries within six months of the Prepetition ABL Initial Effective Date.

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

“Material Adverse Effect” means a material adverse effect on:

- (1) the business, assets, financial condition or results of operations of the Loan Parties and their Restricted Subsidiaries (taken as a whole);
- (2) the ability of the Borrower and the Guarantors (taken as a whole) to perform their payment obligations under the Loan Documents; or
- (3) the rights and remedies of the Administrative Agent, the Collateral Agent and the Lenders (taken as a whole) under the Loan Documents;

provided that Material Adverse Effect shall expressly exclude the effect of (a) the filing of the Chapter 11 Cases, the events and conditions resulting from or leading up thereto and/or typically resulting from the filing of cases under the chapter 11 of the Bankruptcy Code, (b) any action required to be taken under the Loan Documents, the DIP Orders or any Approved Court Order, and (c) any matters (including, for the avoidance of doubt, any litigation) (i) disclosed in the Schedules hereto, and/or (ii) publicly disclosed in any first day pleadings or declarations, or any other pleadings or declarations of the Debtors, the Agents or the Lenders in connection with any proposed Approved Court Order, that, in each case, are filed in the Chapter 11 Cases or related materials filed.

“Material Indebtedness” means Indebtedness for borrowed money (other than the Obligations or any Indebtedness owed to the Borrower or a Restricted Subsidiary) of the Borrower or any Subsidiary Loan Party in an aggregate outstanding principal amount exceeding \$1,000,000; *provided* that Material Indebtedness shall at all times include the DIP ABL Facility.

“Material Intellectual Property” means intellectual property that is material to the business of the Borrower and its Restricted Subsidiaries, taken as a whole.

“Maturity Date” means the earliest to occur of (a) the Scheduled Maturity Date, (b) the “effective date” of any Chapter 11 Plan, (c) the consummation of a sale or other disposition of all or substantially all assets of the Debtors, taken as a whole, under section 363 of the Bankruptcy Code, (d) the date of acceleration of the Obligations or the termination of the DIP Facility in accordance with the terms hereof and (e) the “Maturity Date” as defined in the DIP SGUS Credit Agreement.

“**Maturity Extension**” has the meaning assigned to such term in the definition of “Scheduled Maturity Date”.

“**Maximum Rate**” has the meaning assigned to such term in Section 10.09.

“**Milestones**” shall have the meaning given to such term in Section 5.12.

“**MNPI**” means any material nonpublic information regarding Holdings and its Subsidiaries that has not been disclosed to the Lenders generally (other than Lenders who elect not to receive such information). For purposes of this definition “material nonpublic information” means nonpublic information that would reasonably be expected to be material to a decision by any Lender to assign or acquire any Commitments and/or Loans or to enter into any of the transactions contemplated thereby.

“**Monthly Financial Statements**” has the meaning assigned to such term in Section 5.04(3).

“**Moody’s**” means Moody’s Investors Service, Inc. or any successor to the rating agency business thereof.

“**Multiemployer Plan**” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which any Loan Party or any ERISA Affiliate (other than one considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Code Section 414) is making or accruing an obligation to make contributions, or has within any of the preceding five (5) plan years made or accrued an obligation to make contributions.

“**New Money DIP Loans**” means, individually or collectively, as the context may require, the DIP Interim Funding Loans, DIP Final Funding Loans and the DIP Subsequent Draw Loans.

“**New York Courts**” has the meaning assigned to such term in Section 10.15.

“**NOL Motion**” means the *Debtors’ Joint Emergency Motion for Entry of an Order (I) Establishing Notice and Hearing Procedures for Transfers of Equity Interests in Debtors and Declarations of Worthlessness with Respect to Equity Interests in Saks Global Holdings LLC; (II) Establishing Record Date for Notice and Sell-Down Procedures for Transferring Claims Against the Debtors; and (III) Granting Related Relief* filed in the Chapter 11 Cases on January [], 2026 [Docket No. []].

“**Non-Consenting Lender**” has the meaning assigned to such term in Section 2.19(3).

“**Note**” has the meaning assigned to such term in Section 2.09(2).

“**Obligations**” means all amounts owing to any Agent or any Lender pursuant to the terms of this Agreement or any other Loan Document (including any contingent indemnification and reimbursement obligations, or other payments required under Section 10.05), including all interest and expenses accrued or accruing (or that would, absent the commencement of an insolvency or liquidation proceeding, accrue) (including all reasonable and documented fees, charges and disbursements of the Specified Ad Hoc Group Advisors and counsel to the Agents, in each case, required to be paid by the Borrower pursuant to Section 10.05, including all indemnity claims of the Ad Hoc Group and the Agents pursuant to Section 10.05) after the commencement by or against any Loan Party of any proceeding under the Bankruptcy Code or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law naming such Loan Party as the debtor in such proceeding, in accordance with and at the rate specified in this Agreement, whether or not the claim for such interest or expense is allowed or allowable as a claim in such proceeding.

“**OFAC**” has the meaning assigned to such term in Section 3.20(3)(e). “**Other Connection Taxes**” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising solely from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“**Other Taxes**” means any and all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.19(2)).

“**Paid in Full**” has the meaning assigned to such term in the DIP Orders and the term “**Payment in Full**” will have the correlative meaning.

“**Parent**” means HBC I L.P., a Delaware limited partnership.

“**Parent Entity**” means any direct or indirect parent of the Borrower, including, as applicable, Holdings and the Parent.

“**Pari Passu Intercreditor Agreement**” means the Equal Priority Intercreditor Agreement, dated as of August 8, 2025, by and among Holdings, the Borrower, the other grantors party thereto from time to time, the Prepetition Administrative Agent under the Prepetition NPC Credit Agreement, the Prepetition NPC Collateral Agent, and Citibank, N.A. as collateral agent and trustee for the Prepetition Secured Notes, as amended, restated, amended and restated, supplemented, replaced or otherwise modified from time to time.

“**Payment Administration Agreement**” means the Payment Administration Agreement, dated as of August 8, 2025, among, inter alios, Holdings, the Borrower, the other grantors party thereto, the Prepetition Administrative Agent under the Prepetition NPC Credit Agreement and the Prepetition FILO Credit Agreement, Citibank, N.A., as collateral agent for the Prepetition SPV Noteholders, as collateral agent for the “Initial Notes Secured Parties” (as defined therein) and as the Prepetition Secured Notes Trustee, and each Additional Agent (as defined therein) from time to time party thereto, as amended, restated, amended and restated, supplemented, replaced or otherwise modified from time to time.

“**Payment Office**” means, the office of the Administrative Agent located at such office as the Administrative Agent may designate to the Borrower and the Lenders from time to time.

“**PBGC**” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA, or any successor thereto.

“**Perfection Certificate**” means that certain Perfection Certificate, dated as of the Closing Date, executed and delivered by the Loan Parties, and each other Perfection Certificate (which shall be in form and substance consistent with the Perfection Certificate delivered on the Closing Date or otherwise reasonably acceptable to the Required SGUS Lenders) delivered by the Loan Parties pursuant to Section 5.04(9), in each case, as the same may be amended, amended and restated, supplemented or otherwise modified from time to time in accordance with this Agreement.

“**Periodic Term SOFR Determination Day**” has the meaning specified in the definition of “Term SOFR”.

“Permitted Holders” means, collectively, (i) any member of the Investor Group and any Permitted Parent, (ii) the Management Stockholders (including any Management Stockholders holding Equity Interests through an equity-holding vehicle), (iii) any Person who is acting solely as an underwriter in connection with a public or private offering of Equity Interests of any Parent Entity or the Borrower, acting in such capacity, (iii) any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act or any successor provision) of which any of the foregoing, any Holding Company, Permitted Plan or any Person or group that becomes a Permitted Holder specified in the last sentence of this definition are members and any member of such group; *provided* that, in the case of such group and without giving effect to the existence of such group or any other group, Persons referred to in subclauses (i) through (iii), collectively, have beneficial ownership of more than 50% of the total voting power of the Voting Stock of the Borrower or any Parent Entity held by such group, (v) any Holding Company and (vi) any Permitted Plan.

“Permitted Indebtedness” has the meaning assigned to such term in Section 6.01.

“Permitted Investments” has the meaning assigned to such term in Section 6.04.

“Permitted IP Transaction” has the meaning assigned to such term in Section 6.11.

“Permitted Liens” has the meaning assigned to such term in Section 6.02.

“Permitted Parent” means any Parent Entity that, at the time it became a Parent Entity, was a Permitted Holder pursuant to clause (i) of the definition thereof.

“Permitted Plan” means any employee benefits plan of the Borrower or any of its Affiliates and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan.

“Permitted Variances” has the meaning assigned to such term in the DIP Orders.

“Person” means any natural person, corporation, business trust, joint venture, association, company, partnership, limited liability company, government, individual or family trust, Governmental Authority or other entity of whatever nature.

“Petition Date” means the date on which the Debtors file chapter 11 petitions with the Bankruptcy Court.

“Plan Effective Date” means the date of the substantial consummation (as defined in section 1101(2) of the Bankruptcy Code, which for purposes hereof shall be no later than the effective date) of an Acceptable Plan.

“Platform” has the meaning assigned to such term in Section 10.17.

“Pledged Collateral” has the meaning assigned to such term in the Collateral Agreement.

“Post-Petition” shall mean the time period commencing immediately upon filing of the Chapter 11 Cases.

“Prepetition ABL Credit Agreement” means that certain ABL Credit Agreement, dated as of December 23, 2024, among Holdings, the Borrower, the co-borrowers party thereto, the Prepetition ABL Credit Agreement Agent and the lenders party thereto from time to time, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“Prepetition ABL Credit Agreement Agent” means Bank of America, N.A. (and permitted successors thereto) in its capacity as administrative agent and collateral agent under the Prepetition ABL Credit Agreement.

“Prepetition ABL Initial Effective Date” means December 23, 2024.

“Prepetition ABL Obligations” means the “Obligations” as defined in the Prepetition ABL Credit Agreement.

“Prepetition Administrative Agent” means SGUS LLC, in its capacity as Administrative Agent under the Prepetition FILO Credit Agreement or the Prepetition NPC Credit Agreement, as applicable.

“Prepetition Collateral” means (a) the “Collateral” (or any similar term) as defined in the Prepetition Security Documents and (b) all other assets and property that secure the Prepetition Secured Obligations.

“Prepetition Credit Agreements” means, collectively, the Prepetition Onloan Credit Agreements, the Prepetition ABL Credit Agreement, the Prepetition OpCo Notes Indenture, the Prepetition Secured Notes Indenture and the Prepetition SPV Secured Notes Indenture.

“Prepetition Existing Secured Notes” has the meaning assigned to such term in the definition of Prepetition Secured Notes.

“Prepetition Existing Secured Notes Indenture” has the meaning assigned to such term in the definition of Prepetition Secured Notes Indenture.

“Prepetition FILO Collateral Agent” means Bank of America, N.A., in its capacity as Collateral Agent for itself and the other secured parties under the Prepetition FILO Credit Agreement and the Prepetition Security Documents.

“Prepetition FILO Credit Agreement” means the Term Loan Credit Agreement, dated as of June 27, 2025, as may be amended, restated, amended and restated, supplemented, waived or otherwise modified from time to time, by and among Saks Global Enterprises LLC, as the borrower, the Prepetition Administrative Agent, and the Prepetition Lenders.

“Prepetition FILO Obligations” means “Obligations” as defined in the Prepetition FILO Credit Agreement.

“Prepetition Indebtedness” means any Indebtedness incurred pursuant to the Prepetition Onloan Credit Agreements, the Prepetition ABL Credit Agreement, the Prepetition OpCo Notes Indenture, the Prepetition Secured Notes Indenture or the Prepetition SPV Secured Notes Indenture.

“Prepetition Liens” means each of the Liens on the Prepetition Collateral granted by the Grantors (or any similar term) as defined in the Prepetition Security Documents to secure any Prepetition Secured Obligations.

“Prepetition NPC Collateral Agent” means Citibank, N.A. in its capacity as Collateral Agent, for itself and the other secured parties under the Prepetition NPC Credit Agreement.

“Prepetition NPC Credit Agreement” means the Term Loan Credit Agreement, dated as of August 8, 2025, as may be amended, restated, amended and restated, supplemented, waived or otherwise modified

from time to time, by and among Saks Global Enterprises LLC, as the borrower, the Prepetition Administrative Agent, and the Prepetition Lenders.

“Prepetition NPC Obligations” means “Obligations” as defined in the Prepetition NPC Credit Agreement.

“Prepetition Onloan Credit Agreements” means, collectively, the Prepetition FILO Credit Agreement and the Prepetition NPC Credit Agreement.

“Prepetition Onloan Documents” means (a) the Prepetition Onloan Credit Agreements, (b) the Prepetition Security Documents, and (c) each of the other “Loan Documents” (as defined in the Prepetition Onloan Credit Agreements).

“Prepetition OpCo Notes Indenture” means that certain Indenture, dated as of August 8, 2025, by and among the Borrower, as issuer, the guarantors party thereto and Citibank, N.A. as trustee and as collateral agent, relating to the issuance of those certain 11.000% Senior Secured Second Out Notes due 2029 and 11.000% Senior Secured Third Out Notes due 2029.

“Prepetition Secured Notes” means, collectively, (i) the 11.000% Senior Secured Notes due 2029 issued under the Prepetition Secured Notes Indenture (the **“Prepetition Existing Secured Notes”**), and (ii) the 11.000% Senior Secured Second Out Notes due 2029 and 11.000% Senior Secured Third Out Notes due 2029 issued under the Prepetition OpCo Notes Indenture, together with any additional notes which are issued as a result of the capitalization of accrued and unpaid interest thereon.

“Prepetition Secured Notes Collateral” has the meaning assigned to the term “Collateral” in the Prepetition Secured Notes Indenture or any corresponding term in any Prepetition Secured Notes Indenture in effect from time to time.

“Prepetition Secured Notes Documents” means, collectively, the Prepetition Secured Notes Indenture, the Prepetition Secured Notes and each of the other agreements, documents and instruments providing for, evidencing or securing any Prepetition Secured Notes Obligations.

“Prepetition Secured Notes Indenture” means (i) that certain Indenture, dated as of December 16, 2024 and as the same may be amended, amended and restated, modified, supplemented, extended or renewed from time to time in accordance with the terms hereof and thereof, among Holdings, the Borrower, as issuer, the other guarantors party thereto and the Prepetition Secured Notes Trustee, pursuant to which \$2,200.0 million aggregate principal amount of Prepetition Existing Secured Notes were issued (the **“Prepetition Existing Secured Notes Indenture”**), and (ii) the Prepetition OpCo Notes Indenture.

“Prepetition Secured Notes Obligations” means (a) any “Notes Obligations”, as defined in the Prepetition Secured Notes Indenture, or (b) any “Notes Obligations”, as defined in the Prepetition OpCo Notes Indenture.

“Prepetition Secured Notes Trustee” means Citibank, N.A., in its capacities as trustee and as notes collateral agent under the Prepetition Existing Secured Notes Indenture and the Prepetition OpCo Notes Indenture.

“Prepetition Secured Onloan Obligations” means the “Secured Obligations” as defined in the Prepetition Onloan Credit Agreements.

“Prepetition Security Documents” means, collectively (a) the Security Documents as defined in the Prepetition FILO Credit Agreement, (b) the Security Documents as defined in the Prepetition NPC Credit Agreement) and (c) any other security documents, mortgages, and ancillary agreements pursuant to which the Prepetition FILO Collateral Agent or Prepetition NPC Collateral Agent have been granted a Lien on the Prepetition Collateral.

“Prepetition SPV Secured Notes Indenture” means that certain Indenture, dated June 27, 2025, by and among SGUS LLC, a Delaware limited liability company, as issuer, the guarantors party thereto and Citibank, N.A. as trustee and as collateral agent, relating to the issuance of those certain 11.000% Senior Secured Asset Based Notes due 2029 (the ***“Prepetition SPV Notes”***).

“Prepetition SPV Noteholders” means the holders of Prepetition SPV Notes from time to time.

“Prepetition SPV Notes” has the meaning assigned to such term in the definition of Prepetition SPV Secured Notes Indenture.

“Prime Rate” shall mean the rate of interest per annum last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Required SGUS Lenders) or any similar release by the Federal Reserve Board (as determined by the Required SGUS Lenders). Any change in the Prime Rate shall take effect at the opening of business on the day such change is publicly announced or quoted as being effective.

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

“Public Lender” has the meaning assigned to such term in Section 10.17.

“Qualified Counterparty” means any counterparty to any Secured Hedge Agreement that, at the time such Secured Hedge Agreement was entered into or on the Closing Date, was an Agent, a Lender or an Affiliate of the foregoing, whether or not such Person subsequently ceases to be an Agent, a Lender or an Affiliate of the foregoing.

“Qualified Equity Interests” means any Equity Interests other than Disqualified Stock.

“Quarterly Financial Statements” has the meaning assigned to such term in Section 5.04(2).

“Rate” shall have the meaning assigned to such term in the definition of the term “Type.”

“Real Estate Subsidiary” means any Subsidiary of the Borrower (including Simon JVCo and its Subsidiaries) substantially all of the assets of which (other than cash and cash equivalents) consist of rights, title and interest in and to parcels of or interests in Real Property (or ownership of the Equity Interests of a Subsidiary owning solely such interests in Real Property or a Subsidiary that solely owns such a Subsidiary); *provided* that in no event shall any Loan Party be a Real Estate Subsidiary.

“Real Estate Venture” means any investment of the Borrower or its Subsidiaries in the equity of another Person substantially all of the assets of which Person (other than cash and cash equivalents) consist of rights, title and interest in and to parcels of or interests in Real Property (or ownership of the Equity Interests of a Person owning solely such interests in Real Property or a Subsidiary that solely owns such a

Person) and that has been designated to the Administrative Agent as a “Real Estate Venture” in a certificate of a Responsible Officer of the Borrower.

“**Real Property**” means, collectively, all right, title and interest (including any leasehold estate) in and to any and all parcels of or interests in real property owned in fee or leased by any Loan Party, together with, in each case, all easements, hereditaments and appurtenances relating thereto, and all improvements and appurtenant fixtures incidental to the ownership or lease thereof.

“**Recipient**” means the Administrative Agent and any Lender, as applicable.

“**Refinance**” means Indebtedness issued in exchange for, or converted from, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund the Indebtedness being Refinanced and the terms “**Refinanced**” and “**Refinancing**” will have correlative meanings.

“**Register**” has the meaning assigned to such term in Section 10.04(3)(g).

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

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

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

“**Release**” means any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the Environment.

“**Relevant Governmental Body**” means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York.

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

“**Required Financial Statements**” has the meaning assigned to such term in Section 5.04(3).

“**Required Lenders**” means, at any time, Lenders having Loans outstanding that, taken together, represent more than 50.0% of the sum of all Loans outstanding at such time. Any Defaulting Lender will be disregarded in determining Required Lenders; *provided* that subject to the Borrower’s right to replace Defaulting Lenders as set forth herein, Defaulting Lenders will be included in determining Required Lenders with respect to:

- (1) any amendment that would disproportionately affect the obligation of the Borrower to make payment of the Loans or Commitments of such Defaulting Lender as compared to other Lenders holding the same class of such Loans or Commitments;

- (2) any amendment relating to:
 - (a) increases in the Commitment of such Defaulting Lender;
 - (b) reductions of principal, interest, fees or premium applicable to the Loans or Commitments of such Defaulting Lender;
 - (c) extensions of final maturity or the due date of any amortization, interest, fee or premium payment applicable to the Loans or Commitments of such Defaulting Lender; and
- (3) matters requiring the approval of each Lender under Sections 10.08(2)(c)(vi) and (vii).

“Required SGUS Lenders” means the “Required Lenders” as defined in the DIP SGUS Credit Agreement.

“Requirement of Law” means, as to any Person, the charter and 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.

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Responsible Officer” means, with respect to any Loan Party, the chief executive officer, president, vice president, secretary, assistant secretary or any Financial Officer of such Loan Party or any other individual designated in writing to the Administrative Agent by an existing Responsible Officer of such Loan Party as an authorized signatory of any certificate or other document to be delivered hereunder. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party will be conclusively presumed to have been authorized by all necessary corporate, partnership or other action on the part of such Loan Party and such Responsible Officer will be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Payments” has the meaning assigned to such term in Section 6.06.

“Restricted Subsidiary” means each Subsidiary of the Borrower other than any Unrestricted Subsidiary.

“Roll-Up DIP Loans” has the meaning assigned to such term in Section 2.01(4).

“S&P” means Standard & Poor’s Ratings Services or any successor entity thereto.

“Saks OFF 5th Debtors” shall mean Saks OFF 5TH Holdings LLC and its direct and indirect Subsidiaries.

“Sanctions” means any financial, economic, or trade sanctions law, regulations, rules, decisions, embargoes and/or restrictive measures imposed, administered or enforced by the United States government (including without limitation, OFAC), the United Nations Security Council, the European Union, His Majesty’s Treasury (“HMT”) or other relevant sanctions authority.

["**Scheduled Maturity Date**" means July [], 2026⁶ (the "**Initial Scheduled Maturity Date**"); *provided* that the Borrower may, with the written consent of the Required SGUS Lenders, extend the Scheduled Maturity Date to the date that is no more than three (3) months after the Initial Schedule Maturity Date (the "**Maturity Extension**"); *provided, further*, that the Scheduled Maturity Date shall be no later than the "Scheduled Maturity Date" as defined in the DIP SGUS Credit Agreement.]

"**SEC**" means the Securities and Exchange Commission or any successor thereto.

"**Secured Hedge Agreement**" means any Hedge Agreement entered into or assumed between or among the Borrower or any other Subsidiary and any Qualified Counterparty and designated by the Qualified Counterparty and the Borrower in writing to the Administrative Agent as a "Secured Hedge Agreement" under this Agreement; it being understood that no Agent shall be deemed to have knowledge of any Secured Hedge Agreement unless and until the Administrative Agent receives written notice from the Borrower, any other Subsidiary or the Qualified Counterparty setting forth such Secured Hedge Agreement and providing administrative details and tax forms for such Qualified Counterparty.

"**Second Day Motions**" has the meaning assigned to such term in Section 4.03(3).

"**Second Day Orders**" has the meaning assigned to such term in Section 4.03(3).

"**Secured Parties**" means the collective reference to the "Secured Parties" as defined in the Collateral Agreement.

"**Securities Account**" means any "securities account" as such term is defined in the UCC as in effect on the date hereof in the State of New York.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Security Documents**" means collectively, the DIP Orders, the Collateral Agreement, the Guarantee Agreement, the DIP Proceeds Account Control Agreement, any grant of Intellectual Property and each of the security agreements and other instruments and documents executed and delivered by any Loan Party pursuant thereto or pursuant to Section 5.10 or Section 5.15, including any and all Control Agreements.

"**Settlement Date**" has the meaning assigned to such term in Section 2.18(2).

"**SFA**" means Saks & Company LLC, a Delaware limited liability company.

"**SFA Holdings**" means SFA Holdings Inc., a Tennessee corporation.

"**Signature Law**" has the meaning assigned to such term in Section 10.13.

"**Simon JVCo**" means HBS Global Properties LLC, a Delaware limited liability company.

"**SOFR**" means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

⁶ NTD: To be coterminous with the SGUS DIP and the ABL DIP (6 months after closing).

“SOFR Administrator” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“Specified Ad Hoc Group Advisors” shall mean Paul, Weiss Rifkind, Wharton & Garrison LLP, Lazard Frères & Co and FTI Consulting Ltd.

“Specified Ad Hoc Group Legal Advisor” means Paul, Weiss Rifkind, Wharton & Garrison LLP.

“Specified Closures” means store closures with arrangements with respect to Inventory mutually agreed with the Store Closing Consultant.

“Specified Event of Default” means any Event of Default under Section 8.01(2), 8.01(3), 8.01(8) or 8.01(9).

“Spot Rate” means the exchange rate, as reasonably determined by the Required SGUS Lenders, that is applicable to conversion of one currency into another currency, which is (a) the exchange rate reported by Bloomberg (or other commercially available source reasonably designated by the Required SGUS Lenders) as of the end of the preceding Business Day in the financial market for the first currency; or (b) if such report is unavailable for any reason, the spot rate for the purchase of the first currency with the second currency as in effect during the preceding Business Day in the Required SGUS Lender’s principal foreign exchange trading office for the first currency.

“Structuring Premium” has the meaning assigned to such term in the Backstop Commitment Letter.

“Sterling” and **“£”** mean the lawful currency of the United Kingdom.

“Store Closing Consultant” shall mean a consultant engaged on terms and conditions reasonably satisfactory to the Administrative Agent to assist the Loan Parties with respect to the Specified Closures and any similar store closings permitted hereunder or in the Approved Court Orders, it being understood that Great American Group, LLC is an acceptable Store Closing Consultant.

“Subagent” has the meaning assigned to such term in Section 9.02.

“Subordinated Indebtedness” means any Indebtedness that is expressly subordinated in right of payment to the Obligations, which subordination terms shall be reasonably satisfactory to the Required SGUS Lenders.

“Subsidiary” means, with respect to any Person, any corporation, partnership, limited liability company or other entity of which (1) Equity Interests having ordinary voting power (other than Equity Interests having such power only by reason of the happening of a contingency) to elect a majority of the Board of Directors of such corporation, partnership, limited liability company or other entity are at the time owned by such Person; or (2) other than in the case of ALG Aggregator LLC, more than 50.0% of the Equity Interests are at the time owned by such Person. Unless otherwise indicated in this Agreement, all references to Subsidiaries will mean Subsidiaries of the Borrower.

“Subsidiary Loan Parties” means each “Guarantor” (as defined in any of Credit Agreement) other than Holdings as of the Closing Date.

“Supermajority SGUS Lenders” means the “Supermajority Holders” as defined in the DIP SGUS Credit Agreement.

“**Taxes**” means any and all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or similar charges imposed by any Governmental Authority and any and all interest and penalties related thereto.

“**Term Loan**” means, individually or collectively, as the context may require, the DIP Interim Funding Loans, DIP Final Funding Loans, DIP Subsequent Draw Loans and the Roll-Up DIP Loans,

“**Term SOFR**” means,

(a) for any calculation with respect to a Term SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the “**Periodic Term SOFR Determination Day**”) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, and

(b) for any calculation with respect to an ABR Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the “**ABR Term SOFR Determination Day**”) that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any ABR Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such ABR SOFR Determination Day.

“**Term SOFR Administrator**” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Required SGUS Lenders in their reasonable discretion).

“**Term SOFR Borrowing**” shall mean a Borrowing comprised of Term SOFR Loans.

“**Term SOFR Loan**” means a Term Loan that bears interest at a rate based on Term SOFR.

“**Term SOFR Reference Rate**” means the forward-looking term rate based on SOFR.

“**TopCo Guarantee Agreement**” means a guarantee agreement, between one or more TopCo Guarantors, as guarantors, and the Administrative Agent, in form and substance reasonably acceptable to the Required SGUS Lenders, as amended, supplemented, restated and/or otherwise modified from time to time; *provided* that such TopCo Guarantee Agreement shall provide, with respect to any TopCo Guarantor party thereto, that the aggregate amount of Obligations guaranteed by such TopCo Guarantor and secured, pursuant to the DIP Orders, by a [first-priority] Lien on the assets of such TopCo Guarantor shall be capped at the aggregate amount of Approved TopCo Guarantor Transfers made to such TopCo Guarantor.

“TopCo Guarantor” means (a) any direct or indirect parent of Holdings that the Borrower may elect, in its sole discretion, from time to time, upon written notice to the Administrative Agent, to cause to Guarantee the Obligations and that execute a TopCo Guarantee Agreement and (b) any Parent Entity (other than Holdings) who receives an Approved TopCo Guarantor Transfer.

“Trade Announcement” has the meaning assigned to such term in Section 10.16.

“Transactions” means, collectively, (a) the execution, delivery and performance of the Loan Documents, the creation of the Liens pursuant to the Security Documents and the borrowings hereunder, and (b) the payment of all fees and expenses to be paid and owing in connection with the foregoing.

“Transaction Costs” means the fees, premiums, commissions and expenses payable by Holdings, the Borrower and its Subsidiaries in connection with the Transactions.

“Treasury Regulations” means the regulations promulgated under the Code, as such regulations may be amended from time to time.

“Type” shall mean, when used in respect of any Term Loan, the Rate by reference to which interest on such Term Loan is determined. For purposes hereof, the term **“Rate”** shall include Term SOFR and the ABR.

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any Person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain Affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“Uniform Commercial Code” or **“UCC”** means the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

[**“Unrestricted Cash”** means, as of any date, the sum of the amount of cash of Holdings and its Subsidiaries (including, for the avoidance of doubt, the Loan Parties and the DIP SGUS Loan Parties), as set forth on the balance sheet of Holdings and its Subsidiaries, including the cash proceeds of any funded Loans or other funded Indebtedness, it being understood that such amount shall exclude in any event (i) cash held in the DIP Escrow Account, (ii) any cash or investment identified on such balance sheet as “restricted” and cash or investments restricted in favor of the Secured Parties or the “Secured Parties” under and as defined in the DIP SGUS Credit Agreement and (iii) any amount to the extent any use thereof for application to the payment for Indebtedness under the Loan Documents is restricted or prohibited by Law or contract. For the avoidance of doubt, funds in the DIP Proceeds Account or the DIP Escrow Account shall be deemed not to be Unrestricted Cash automatically and immediately prior to the occurrence of any Event of Default]

“Unrestricted Subsidiary” means each of HBS Global Properties LLC, Saks Off 5TH Holdings LLC, Saks Flagship Real Property LLC and HBC-Simon LLC and any Subsidiary of any of the foregoing as of the Closing Date.

“Updated Budget” has the meaning assigned to such term in the DIP Orders.

“Updated Budget Delivery Date” has the meaning assigned to such term in the DIP Orders.

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

“U.S. Bank” has the meaning assigned to such term in the introductory paragraph hereof.

“U.S. Government Securities Business Day” means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“Voting Stock” means, as of any date, the Capital Stock of any Person that is at the time entitled to vote (without regard to the occurrence of any contingency) in the election of the Board of Directors of such Person.

“Weighted Average Life to Maturity” means, when applied to any Indebtedness as of any date, the number of years obtained by dividing (1) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payment of principal (excluding nominal amortization), including payment at final maturity, in respect thereof by (b) the number of years (calculated to the nearest 1/12) that will elapse between such date and the making of such payment; by (2) the then outstanding principal amount of such Indebtedness.

“Wholly Owned Domestic Subsidiary” means, with respect to any Person, a Domestic Subsidiary of such Person that is a Wholly Owned Subsidiary. Unless otherwise indicated in this Agreement, all references to Wholly Owned Domestic Subsidiaries will mean Wholly Owned Domestic Subsidiaries of the Borrower.

“Wholly Owned Subsidiary” means, with respect to any Person, a Subsidiary of such Person, all of the Equity Interests of which (other than directors' qualifying shares or other similar shares required pursuant to applicable law) are owned by such Person or another Wholly Owned Subsidiary of such Person. Unless otherwise indicated in this Agreement, all references to Wholly Owned Subsidiaries will mean Wholly Owned Subsidiaries of the Borrower.

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

SECTION 1.02 Terms Generally. The definitions set forth or referred to in Section 1.01 will apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun will include the corresponding masculine, feminine and neuter forms. Unless the context requires otherwise:

(1) the words “include,” “includes” and “including” will be deemed to be followed by the phrase “without limitation;”

(2) in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding” and the word “through” means “to and including;”

(3) the word “will” will be construed to have the same meaning and effect as the word “shall;”

(4) the word “incur” will be construed to mean incur, create, issue, assume, become liable in respect of or suffer to exist (and the words “incurred” and “incurrence” will have correlative meanings);

(5) the word “or” will be construed to mean “and/or;”

(6) 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;

(7) any reference to any Person will be construed to include such Person’s legal successors and permitted assigns; and

(8) the words “asset” and “property” will be construed to have the same meaning and effect.

All references herein to Articles, Sections, Exhibits and Schedules will be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Agreement unless the context otherwise requires. Except as otherwise expressly provided herein, any reference in this Agreement to any Loan Document or organizational document of the Loan Parties means such document as amended, restated, supplemented or otherwise modified from time to time (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document). Any reference to any law will include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation means unless otherwise specified, such law or regulation as amended, modified or supplemented from time to time. Any reference to any order of the Bankruptcy Court will include any Approved Court Order amending, replacing or superseding such order. Whenever this Agreement refers to the “knowledge” of the Borrower or any Loan Party, such reference will be construed to mean the knowledge of the chief executive officer, president, chief financial officer, treasurer or controller of such Person.

SECTION 1.03 Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature will be construed in accordance with GAAP, as in effect from time to time; *provided* that, notwithstanding anything to the contrary herein, all accounting or financial terms used herein will be construed, and all financial computations pursuant hereto will be made, without giving effect to any election under Statement of Financial Accounting Standards Board Accounting Standards Codification 825-10 (or any other Statement of Financial Accounting Standards Board Accounting Standards Codification having a similar effect) to value any Indebtedness or other liabilities of the Borrower or any Subsidiary at “fair value,” as defined therein. In the event that any Accounting Change (as defined below) occurs and such change results in a change in the method of calculation of financial covenants, standards or terms in this Agreement, then upon the written request of the Borrower or the Administrative Agent (acting at the direction of the Required SGUS Lenders), the Borrower and the

Required SGUS Lenders will enter into good faith negotiations in order to amend such provisions of this Agreement so as to equitably reflect such Accounting Change with the desired result that the criteria for evaluating the Borrower's financial condition will be the same after such Accounting Change as if such Accounting Change had not occurred; *provided* that provisions of this Agreement as in effect on the date of such Accounting Change will remain in effect until the effective date of such amendment. "**Accounting Change**" means (1) any change in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or (2) any change in the application of GAAP by the Borrower.

SECTION 1.04 [Reserved].

SECTION 1.05 Currencies. Unless otherwise specifically set forth in this Agreement, monetary amounts are in U.S. Dollars. Notwithstanding anything to the contrary herein, no Default or Event of Default will arise as a result of any limitation or threshold set forth in U.S. Dollars being exceeded solely as a result of changes in currency exchange rates.

SECTION 1.06 [Reserved].

SECTION 1.07 Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its equity interests at such time.

SECTION 1.08 [Reserved].

SECTION 1.09 Exchange Rates; Currency Equivalent. All references in the Loan Documents to Loans, Obligations and other amounts shall be denominated in U.S. Dollars, unless expressly provided otherwise. The Equivalent Amount of any amounts denominated or reported under a Loan Document in a currency other than U.S. Dollars shall be determined by the Borrower and shall become effective as of such Revaluation Date and shall be the Equivalent Amount of such amounts until the next Revaluation Date to occur. Notwithstanding anything herein to the contrary, if any Obligation is funded and expressly denominated in a currency other than U.S. Dollars, the Borrowers shall repay such Obligation in such other currency.

Notwithstanding anything to the contrary in this Agreement, (i) any representation or warranty that would be untrue or inaccurate, (ii) any undertaking that would be breached, (iii) any basket that is exceeded or (iv) any event that would constitute a Default or an Event of Default, in each case, solely as a result of fluctuations in applicable currency exchange rates, shall not be deemed to be untrue, inaccurate, breached or so constituted, as applicable, solely as a result of such fluctuations in currency exchange rates.

SECTION 1.10 Required SGUS Lenders and Administrative Agent.

For purposes of this Agreement and the other Loan Documents, any reference to a consent, direction, instruction, action, concurrence, approval or request of the Required SGUS Lenders shall mean a written consent, direction, instruction, action, concurrence, approval or request from DIP SGUS Lenders constituting the Required SGUS Lenders, as applicable, which may be in the form of an email or other form of written communication and which may come from the Specified Ad Hoc Group Legal Advisor, as applicable, delivered in accordance with the notice provisions hereof. Each party hereto (and any third party beneficiaries hereto) hereby acknowledges and agrees that any such email or other communication from

the Specified Ad Hoc Group Legal Advisor, as applicable, shall be conclusively presumed to have been authorized by a written direction or instruction from the Required SGUS Lenders, and the Specified Ad Hoc Group Legal Advisor shall be conclusively presumed to have acted on behalf of and at the written direction or instruction from the Required SGUS Lenders (and each Agent and Loan Parties shall be entitled to conclusively rely on such presumption without independent investigation or inquiry). For the avoidance of doubt, with respect to each reference herein to (i) documents, agreements or other matters being “satisfactory,” “acceptable,” “reasonably satisfactory” or “reasonably acceptable” (or any expression of similar import) to the Required SGUS Lenders, as applicable, such determination may be communicated by a direction of the Required SGUS Lenders, as applicable, as contemplated above and/or (ii) any matter requiring the consent or approval of, or a determination by, the Required SGUS Lenders, as applicable, such consent, approval or determination may be communicated as contemplated above. Each Agent and each of the Loan Parties shall be entitled to conclusively rely upon, and shall not incur any liability for relying upon, any direction or purported direction of the Required SGUS Lenders (directly or through its counsel), as applicable, and each Agent and Loan Parties shall not have any responsibility to independently investigate, inquire or determine whether such direction has in fact been authorized by the Required SGUS Lenders, as applicable.

The Agents will act as directed by the Required SGUS Lenders (as directed by the Required SGUS Lenders) in connection with any actions under the Payment Administration Agreement, the Pari Passu Intercreditor Agreement, the DIP ABL Intercreditor Agreement or any other intercreditor agreements under which the Agents in their capacity as the Administrative Agent or the Collateral Agent hereunder have succeeded or succeeds to any rights or obligations under any of the foregoing.

SECTION 1.11 Rates. The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, (a) the continuation of, administration of, submission of, calculation of or any other matter related to ABR, the Term SOFR Reference Rate, the Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, ABR, the Term SOFR Reference Rate, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of ABR, the Term SOFR Reference Rate, Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain ABR, the Term SOFR Reference Rate, Term SOFR, or any other Benchmark, or any component definition thereof or rates referred to in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service. Under no circumstances will the Administrative Agent be responsible for selecting or determining any Benchmark Replacement if Term SOFR or any other Benchmark will no longer be available past the Benchmark Replacement Date. In the case of a Benchmark Transition Event, the Required SGUS Lenders will select the Benchmark Replacement and any Benchmark Replacement Adjustment in consultation with the Borrower prior to the Benchmark Replacement Date and in consultation with the Administrative Agent, ensuring that the Administrative Agent will be able to meet its obligations and requirements under this Agreement with respect to the Benchmark Replacement replacing the applicable Benchmark. No such replacement (including any Conforming Changes to any Loan

Document) shall affect the Administrative Agent's own rights, duties or immunities under the Loan Documents or otherwise.

ARTICLE II

The Credits

SECTION 2.01 Commitments. Subject to the terms and conditions set forth herein:

(1) DIP Interim Funding Loans. Subject to the terms and conditions set forth herein and in the Interim DIP Order, and in reliance upon the representations and warranties of the Loan Parties contained herein and the stipulations of the Borrower in the Interim DIP Order, each Lender severally, and not jointly, agrees to make DIP Interim Funding Loans in U.S. Dollars to the Borrower as soon as practicable following entry of the Interim DIP Order but in any event within one (1) Business Day thereof, in accordance with Section 2.06(1) in an amount equal to such Lender's DIP Interim Funding Commitment. The Borrower hereby irrevocably authorizes the Administrative Agent to disburse the proceeds of the DIP Interim Funding Loans pursuant to this Section 2.01(1). The proceeds of the DIP Interim Funding Loans will be disbursed by the Administrative Agent in immediately available funds and in the same form as received from the Lenders, by wire transfer pursuant to a written direction from the Borrower.

(2) DIP Final Funding Loans. Subject to the terms and conditions set forth herein and in the Final DIP Order, and in reliance upon the representations and warranties of the Loan Parties contained herein and the stipulations of the Borrower in the Final DIP Order, each Lender severally, and not jointly, agrees to make DIP Final Funding Loans in U.S. Dollars to the Borrower beginning as soon as practicable following entry of the Final DIP Order but in any event within [three (3) Business Days] thereof, in accordance with Sections 2.06(1) and (2) and the DIP Orders in an aggregate amount equal to such Lender's DIP Final Funding Commitment. The Borrower hereby irrevocably authorizes the Administrative Agent to disburse the proceeds of the Final DIP Term Loans pursuant to this Section 2.01(2). The proceeds of the Final DIP Term Loans will be disbursed by the Administrative Agent in immediately available funds and in the same form as received from the Lenders, by wire transfer pursuant to a written direction from the Borrower.

(3) DIP Subsequent Draw Loans. Subject to the terms and conditions set forth herein and in the DIP Orders, and in reliance upon the representations and warranties of the Loan Parties contained herein and the stipulations of the Borrower in the DIP Orders, each Lender severally, and not jointly, agrees to make DIP Subsequent Draw Loans in U.S. Dollars to the Borrower in accordance with Sections 2.06(1) and (2) and the DIP Orders on any DIP Subsequent Draw Date in a principal amount not to exceed such Lender's ratable portion of its DIP Subsequent Draw Commitment. The Borrower hereby irrevocably authorizes the Administrative Agent to disburse the proceeds of each DIP Subsequent Draw Loan pursuant to this Section 2.01(2). The proceeds of the DIP Subsequent Draw Loans will be disbursed by the Administrative Agent in immediately available funds and in the same form as received from the Lenders, by wire transfer pursuant to a written direction from the Borrower.

(4) Roll-Up DIP Loans. Subject to the terms and conditions set forth herein and in the DIP Orders, the Prepetition FILO Obligations and Prepetition NPC Obligations held by the Lenders will be deemed to have been rolled-up and exchanged on a cashless basis dollar-for-dollar for term loans deemed made by such Lenders and borrowed by the Borrower hereunder (collectively, the "**Roll-Up DIP Loans**");

(a) Following entry of the Interim DIP Order, on the Closing Date, in exchange for \$[395,000,000] in principal amount of the Prepetition FILO Obligations, plus accrued and unpaid interest thereon, and \$[357,465,441] in principal amount of the Prepetition NPC

Obligations, plus accrued and unpaid interest thereon, Roll-Up DIP Loans in a principal amount equal to the total amount of such principal of, and accrued and unpaid interest on, such Prepetition FILO Obligations and Prepetition NPC Obligations shall be deemed funded by the Lenders hereunder; and

(b) Following entry of the Final DIP Order, on the date that the Final DIP Term Loans are funded hereunder, in exchange for any remaining principal amount of Prepetition FILO Obligations, plus accrued and unpaid interest thereon, and any remaining principal amount of Prepetition FILO Obligations, plus accrued and unpaid interest thereon, Roll-Up DIP Loans in a principal amount equal to the total amount of such principal of, and accrued and unpaid interest on, such Prepetition FILO Obligations and Prepetition NPC Obligations shall be deemed funded by the Lenders hereunder.

(5) For all purposes hereunder, DIP Interim Funding Loans, DIP Final Funding Loans, and DIP Subsequent Draw Loans and, once converted, Roll-Up DIP Loans constitute different Classes of Term Loans. Loans borrowed and repaid or prepaid may not be reborrowed.

SECTION 2.02 Loans and Borrowings.

(1) Each Loan will be made by the Lenders ratably in accordance with their respective Commitments. The failure of any Lender to make any Loan required to be made by it will not relieve any other Lender of its obligations hereunder; *provided* that the Commitments of the Lenders are several and no Lender will be responsible for any other Lender's failure to make Loans as required.

(2) Subject to Section 2.14, each Borrowing shall be comprised entirely of ABR Loans or Term SOFR Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any ABR Loan or Term SOFR Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Term Loan; provided, that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement and such Lender shall not be entitled to any amounts payable under Section 2.15, 2.17 or 2.18 solely in respect of increased costs resulting from such exercise and existing at the time of such exercise.

(3) [Reserved].

SECTION 2.03 Requests for Borrowing.

(1) Borrower shall deliver to Administrative Agent a fully executed Borrowing Request no later than 1:00 p.m. (New York City time) at least three (3) Business Day (or, with respect to the funding of the DIP Interim Funding Loans, one (1) Business Day) (or, in each case, such period as may be agreed by Administrative Agent acting at the direction of the Required SGUS Lenders) in advance of any proposed Disbursement Date.

(2) Each such Borrowing Request shall specify: (a) the requested date of the borrowing (which shall be a Business Day), (b) the principal amount of Loans to be borrowed, (c) whether the Loans to be borrowed constitute DIP Interim Funding Loans, DIP Final Funding Loans or DIP Subsequent Draw Loans, (d) whether such Borrowing is to be ABR Loans or Term SOFR Loans, (e) the wire instructions of the account of the Borrower to which the proceeds of such Loans are to be disbursed and (f) if the requested Borrowing is conditioned on any event, a description of such event.

(3) Notwithstanding anything to the contrary herein, if no election as to the Type of Borrowing is specified, then (a) the requested Borrowing shall be a Term SOFR Borrowing, (b) the Interest

Period with respect to any requested Term SOFR Borrowing shall at all times be an Interest Period of one month's duration, (c) promptly following receipt of a Borrowing Request in accordance with this Section 2.03, the Administrative Agent shall advise each Lender of the details thereof and such Lender's portion of each requested Borrowing, and (d) no Borrowing Request shall be required in connection with the Roll-Up DIP Loans, which Roll-Up DIP Loans shall be treated as a Term SOFR Borrowing unless and until such Roll-Up DIP Loans are converted in accordance with Section 2.07.

SECTION 2.04 DIP Funding Notices. Commencing on January 13, 2026 for the period ending January 23, 2026, and then, by [12:00 p.m. on January 23, 2026 and every other Friday] thereafter for the following two-week period (each such covered period, the "***DIP Funding Period***"), the Borrower will submit a DIP Funding Notice to the Administrative Agent, which DIP Funding Notice shall set forth the aggregate amount of Loans and DIP ABL Loans required to be borrowed by the Loan Parties in accordance with the Approved Budget for such DIP Funding Period, as calculated in accordance with the formula set forth therein.

SECTION 2.05 [Reserved].

SECTION 2.06 Funding of Borrowings.

(1) Subject to the terms and conditions herein and in the DIP Orders, the Administrative Agent will make Loans available to the Borrower on the proposed date thereof by wire transfer to the DIP Proceeds Account.

(2) Certain Funding and Use of Proceeds Mechanics.

(a) [With respect to proceeds of the DIP Interim Funding Loans, (i) the Borrower's utilization of the initial \$15,000,000 of DIP Interim Funding Loans may be used for any purpose permitted by this Agreement and (ii) thereafter and until all DIP Interim Funding Loans have been utilized, with respect to utilizations of DIP Interim Funding Loans proceeds in a manner permitted by this Agreement, the Loan Parties shall use reasonable best efforts to fund the total amount of all such disbursements for any Funding Period, taken as a whole, with an amount of DIP Interim Funding Loans not to exceed 80% of such disbursements and an amount of the DIP ABL Loans provided in accordance with the applicable Funding Notice not to exceed 20% of such disbursements; *provided* that, to the extent any DIP ABL Loans would not be available for any DIP Funding Period due to the Total Revolving Credit Exposure (as defined in the DIP ABL Credit Agreement) exceeding the Line Cap (as defined in the DIP ABL Credit Agreement), the Loan Parties shall be permitted to fund disbursements with respect to such DIP Funding Period using DIP Interim Funding Loans to the extent of such excess; and]

(b) [Following utilization of all proceeds of DIP Interim Funding Loans, each Lender shall, subject to the conditions precedent set forth in Section 4.03 and 4.04, respectively, make DIP Final Funding Loans and DIP Subsequent Draw Loans in the amounts set forth in each DIP Funding Notice, which borrowings shall be made concurrently with borrowings of DIP ABL Loans pursuant to the terms of the DIP ABL Credit Agreement and in accordance with such DIP Funding Notice; *provided* that to the extent the amount of DIP ABL Loans to be funded as reflected in any DIP Funding Notice would cause the Total Revolving Credit Exposure (as defined in the DIP ABL Credit Agreement) to exceed the Line Cap (as defined in the ABL DIP Credit Agreement), the amount of Loans made pursuant to such DIP Funding Notice shall be increased in an amount equal to such excess such that the aggregate amount funded to the Borrower in the form of DIP ABL Loans and Loans shall equal the total amount reflected in the applicable DIP Funding Notice.]

(3) Unless the Administrative Agent has received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with this Section 2.06 and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand (without duplication) such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent at (a) in the case of such Lender, the greater of (i) the Federal Funds Effective Rate and (ii) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (b) in the case of the Borrower, the interest rate applicable to the Loans at such time. If such Lender pays such amount to the Administrative Agent then such amount will constitute such Lender's Loan included in such Borrowing.

SECTION 2.07 Interest Elections.

(1) Each Borrowing initially shall be of a Type specified in the applicable Borrowing Request and, in the case of a Term SOFR Borrowing, shall have an Interest Period of one month's duration. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(2) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by delivering irrevocable written Interest Election Request by electronic means to the Administrative Agent, by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election.

(3) Each written Interest Election Request shall specify the following information in compliance with Section 2.02:

(a) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clause (c) below shall be specified for each resulting Borrowing),

(b) the effective date of the election made pursuant to such Interest Election Request which shall be a Business Day, and

(c) whether the resulting Borrowing is to be an ABR Borrowing or a Term SOFR Borrowing.

(4) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise the Lenders of each Lender's portion of such resulting Borrowing no less than one (1) Business Day before the effective date of the election made pursuant to such Interest Rate Election Request.

(5) If the Borrower fails to deliver a timely Interest Election Request with respect to a Term SOFR Borrowing prior to the end of the Interest Period applicable thereto, then, unless such

Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the written request (including a request through electronic means) of the Required SGUS Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Term SOFR Borrowing and (ii) unless repaid as provided herein, each Term SOFR Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

SECTION 2.08 Termination of Commitments. The Commitments shall be utilized by the amount of each Loan borrowed and shall be automatically and permanently reduced upon the making of such Loans in the amount borrowed. On the Maturity Date, the unused Commitments shall terminate and be reduced to zero (0), and each Lender shall have no obligation to make any further Loans in respect of such Commitments.

SECTION 2.09 Promise to Pay; Evidence of Debt.

(1) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Term Loan Lender the then unpaid principal amount of each Term Loan on the Maturity Date, unless any other treatment thereof is selected pursuant to an Acceptable Plan.

(2) Any Lender may request that Loans made by it be evidenced by a promissory note (a “*Note*”). In such event, the Borrower will prepare, execute and deliver to such Lender a Note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent and reasonably acceptable to the Borrower. Thereafter, the Loans evidenced by such Note and interest thereon at all times (including after assignment pursuant to Section 10.04) will be represented by one or more Notes in such form payable to the payee named therein (or, if requested by such payee, to such payee and its registered assigns).

(3) The Administrative Agent will maintain accounts in which it will record (a) the amount and currency of each Loan to the Borrower made hereunder, (b) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (c) any amount received by the Administrative Agent hereunder for the account of the Lenders and each Lender’s share thereof. The entries made in the accounts maintained pursuant to this paragraph (3) will be *prima facie* evidence of the existence and amounts of the obligations recorded therein; *provided* that the failure of the Administrative Agent to maintain such accounts or any error therein will not in any manner affect the obligations of the Borrower to repay the Obligations in accordance with the terms of this Agreement.

SECTION 2.10 Optional Repayment of Loans.

(1) The Borrower will have the right at any time and from time to time to repay any Loan in whole or in part, without premium or penalty.

(2) [Reserved].

(3) [Reserved].

(4) [Reserved].

(5) [Reserved].

(6) Each repayment of Term Loans hereunder will be applied to all outstanding Term Loans on a pro rata basis, such that each Lender receives its ratable share of such repayment (based upon the outstanding Term Loans of the applicable Lenders at the time of such repayment). Repayments of Borrowings will be accompanied by accrued and unpaid interest pursuant to Section 2.13.

SECTION 2.11 Mandatory Repayment of Loans.

(1) Within three (3) Business Day after receipt by any Loan Party the net cash proceeds received by such Borrower in respect of property insurance or condemnation proceeds, the Borrower shall apply such net cash proceeds to (a) first, prepay up to 100% of the outstanding New Money DIP Loans, and (b) second, prepay up to 100% of the outstanding Roll-Up DIP Loans; provided that, for the avoidance of doubt, any net cash proceeds received with respect to DIP ABL Priority Collateral shall not be required to be used to repay the Loans.

(2) Within three (3) Business Day after any Loan Party incurs, or receives any proceeds of, Indebtedness (other than Indebtedness permitted pursuant to Section 6.01), the Borrower shall (a) first, prepay up to 100% of the outstanding New Money DIP Loans, and (b) second, prepay up to 100% of the outstanding Roll-Up DIP Loans, in each case in an amount equal to the lesser of (A) the amount of such proceeds and (B) the amount of such Indebtedness.

(3) Within three (3) Business Day after any Loan Party makes, or receives any net proceeds from, an Asset Sale (other than in the ordinary course of business), then the Borrower shall, by the third (3rd) Business Day after the relevant Asset Sale, apply such net cash proceeds to (a) first, prepay up to 100% of the outstanding New Money DIP Loans, and (b) second, prepay up to 100% of the outstanding Roll-Up DIP Loans; provided that, for the avoidance of doubt, any net cash proceeds received with respect to DIP ABL Priority Collateral shall not be required to be used to repay the Loans.

Notwithstanding anything to the contrary herein, (x) all prepayments subject to this Section 2.11 shall (i) be subject to the Carve Out to the extent set forth in the DIP Orders, (ii) be accompanied by accrued and unpaid interest pursuant to Section 2.13, and (iii) not be subject to any prepayment, premium, fee, or penalty, as applicable.

For the avoidance of doubt, any amount subject to mandatory prepayment shall be allocated to the repayment of principal, accrued interest, and fees, if applicable, such that the aggregate amount of such mandatory prepayment shall not exceed the amount of the applicable cash proceeds that are the subject of such prepayment. In the event that a transaction or receipt involving a Loan Party that is also a party under DIP ABL Facility obligates any Loan Party to make a mandatory prepayment under both this Agreement and the DIP ABL Facility, the amount subject to mandatory prepayment shall be allocated to prepay the outstanding Obligations and the obligations under the DIP ABL Facility in accordance with the DIP ABL Intercreditor Agreement.

SECTION 2.12 Fees.

(1) The Borrower shall pay to the Agents, for their own respective accounts, the fees required to be paid pursuant to the Fee Letter, and to the DIP SGUS Agents, for their own respective accounts, the fees required to be paid pursuant to the “Fee Letter” (as defined in the DIP SGUS Credit Agreement), and such fees shall be fully earned, due and payable as specified in the Fee Letters.

(2) [The Borrower agrees to pay to the Administrative Agent, for the benefit of the Lenders, a commitment premium (the “**Commitment Premium**”) equal to each such Lender’s pro rata share of (a) 2.0% of the aggregate principal amount of the Commitments (excluding, for the avoidance of doubt,

the funding of the Roll-Up DIP Loans, DIP Final Funding Commitments and DIP Subsequent Draw Commitments), payable in kind to the Lenders on a pro rata basis in respect of their Commitments upon entry of the Interim DIP Order, and (b) 2.0% of the aggregate amount of the DIP Final Funding Commitments and the DIP Subsequent Draw Commitments (excluding, for the avoidance of doubt, any Roll-Up DIP Loans), payable in kind to the Lenders on a pro rata basis in respect of their Commitments upon the funding of DIP Final Funding Commitments.]

(3) [Reserved].

(4) The Borrower agrees to pay to the Administrative Agent, for the benefit of the Lenders, a premium equal to each such Lender's pro rata share of any Backstop Premium or Structuring Premium actually paid in kind by such Lenders pursuant to the DIP SGUS Credit Agreement and the Backstop Commitment Letter, payable in kind to such Lenders on a pro rata basis upon the payments of such Backstop Premium or Structuring Premium.

(5) All Fees will be paid on the dates due, in immediately available funds, to the Administrative Agent at the applicable Payment Office for distribution, if and as appropriate, among the Lenders. Once paid, none of the Fees will be refundable under any circumstances.

(6) In the event that the Scheduled Maturity Date is extended pursuant to a Maturity Extension, on the Initial Scheduled Maturity Date, the Borrower shall pay to the Administrative Agent, for the benefit of each Lender, an extension fee payable in kind to the Lenders on a pro rata basis equal to 2.0% of each Lender's pro rata share of the Loans and Commitments outstanding.

SECTION 2.13 Interest.

(1) The Loans comprising each ABR Borrowing shall bear interest at the ABR plus the Applicable Rate.

(2) The Loans comprising each Term SOFR Borrowing shall bear interest at Term SOFR for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(3) Notwithstanding the foregoing, if any principal of or interest on any Loan or any Fees or other amount payable by the Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, each Loan and all overdue amounts shall bear interest, after as well as before judgment, at a rate per annum equal to 2.00% plus the rate otherwise applicable to such Loan as provided in the preceding clauses of this Section 2.13; provided, that this clause (3) shall not apply to any Event of Default that has been waived by the Lenders pursuant to Section 10.08, including, for the avoidance of doubt, the last paragraph of such Section.

(4) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and the Maturity Date in accordance with clause (5) below; provided, that (A) interest accrued pursuant to clause (3) of this Section 2.13 shall be payable on demand and (B) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable in kind by capitalizing such interest and adding it to the principal amount of the Loans on the date of such repayment or prepayment and (C) in the event of any conversion of a Term SOFR Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; provided that any Loan that is borrowed and repaid on the same day shall bear interest for one day.

(5) Accrued interest on each Loan will be payable by the Borrower, in arrears (a) on each Interest Payment Date for such Loan and (b) on the applicable Maturity Date; *provided* that:

(i) The applicable ABR or Term SOFR shall be determined by the Administrative Agent (acting at the direction of the Required SGUS Lenders), and such determination shall be conclusive absent manifest error. All interest hereunder on any Loan shall be computed on a daily basis based upon the outstanding principal amount of such Loan as of the applicable date of determination;

(ii) in the event of any repayment of any Loan, accrued interest on the principal amount repaid or prepaid will be payable on the date of such repayment; and

(iii) all interest shall be denominated in Dollars and payable in kind by capitalizing such interest and adding it to the principal amount of the Loans.

(6) All interest hereunder will be computed on the basis of a 360-day year comprised of twelve 30-day months.

SECTION 2.14 Alternative Rate of Interest. Subject to Section 2.22, if, on or prior to the first day of any Interest Period for any Term SOFR Loan:

(a) the Administrative Agent determines, after consultation with the Borrower, (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining Term SOFR for such Interest Period; or

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

then the Administrative Agent shall promptly give notice thereof to the Borrower and the Lenders as promptly as practicable thereafter. Upon notice thereof by the Administrative Agent to the Borrower, any obligation of the Lenders to make or maintain Term SOFR Loans, and any right of the Borrower to continue Term SOFR Loans or to convert ABR Loans to Term SOFR Loans, shall be suspended (to the extent of the affected Term SOFR Loans or affected Interest Periods) until the Administrative Agent (upon the direction of the Required SGUS Lenders) revokes such notice. Upon receipt of such notice, (i) the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of Term SOFR Loans (to the extent of the affected Term SOFR Loans or affected Interest Period) or, failing that, any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, an Term SOFR Borrowing in the applicable currency or for the applicable Interest Period, as the case may be, shall be ineffective and, if such Borrowing is denominated in Dollars, such Borrowing shall be converted to or continued as on the last day of the Interest Period applicable thereto as an ABR Borrowing, (ii) if any Borrowing Request requests a new Term SOFR Borrowing in Dollars, such Borrowing shall be made as an ABR Borrowing, (iii) any existing Term SOFR Borrowing denominated in Dollars shall be deemed to have been converted into an ABR Borrowing at the end of the applicable Interest Period and upon any such conversion, the Borrower shall also pay all accrued and unpaid interest on the amount so converted in kind by capitalizing such interest and adding it to the principal amount of the Loans on the date of such conversion; provided that if the circumstances giving rise to such notice affect only one Type of Borrowings, then the other Type of Borrowings shall be permitted.

(c) Subject to Section 2.22, if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that Term SOFR cannot be

determined pursuant to the definition thereof on any given day, the interest rate on ABR Loans shall be determined by the Administrative Agent without reference to clause (c) of the definition of “ABR” until the Administrative Agent (acting at the direction of the Required SGUS Lenders) revokes such determination.

SECTION 2.15 Increased Costs.

(1) If any Change in Law subjects any Recipient to any Taxes (other than (i) Indemnified Taxes and (ii) Excluded Taxes) on its loans, loan principal, letters of credit, commitments or other obligations, or deposits, reserves, other liabilities or capital attributable thereto, and the result of the foregoing is to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

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

(3) A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as applicable, as specified in paragraph (1) or (2) of this Section 2.15 will be delivered to the Borrower and will be conclusive absent manifest error. The Borrower will pay such Lender the amount shown as due on any such certificate within ten days after receipt thereof.

(4) Promptly after any Lender has determined that it will make a request for increased compensation pursuant to this Section 2.15, such Lender will notify the Borrower thereof. Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.15 will not constitute a waiver of such Lender’s right to demand such compensation; *provided* that the Borrower will not be required to compensate a Lender pursuant to this Section 2.15 for any increased costs or reductions incurred more than 180 days prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender’s intention to claim compensation therefor; *provided, further*, that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above will be extended to include the period of retroactive effect thereof.

SECTION 2.16 [Reserved].

SECTION 2.17 Taxes.

(1) Any and all payments by or on account of any obligation of any Loan Party under the Loan Documents will be made free and clear of and without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable withholding agent) requires the deduction or withholding of any Tax from any such payment by any applicable withholding agent, then the applicable withholding agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Taxes are Indemnified Taxes, then the sum payable hereunder will be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.17) the Administrative

Agent, the Collateral Agent or any Lender, as applicable, receives an amount equal to the amount it would have received had no such deductions been made.

(2) In addition, the Loan Parties will timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent, timely reimburse it for the payment of, any Other Taxes.

(3) Each Loan Party will, jointly and severally, indemnify each Agent and each Lender, within ten days after written demand therefor, for the full amount of any Indemnified Taxes payable or paid by the such Agent or such Lender, on or with respect to any payment by or on account of any obligation of such Loan Party hereunder (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.17) and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to such Loan Party by a Lender (with a copy to the Administrative Agent), or by an Agent on its own behalf, will be conclusive absent manifest error.

(4) As soon as practicable after any payment of Taxes by a Loan Party to a Governmental Authority pursuant to this Section 2.17, such Loan Party will deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(5)

(a) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document will deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, will deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 2.17(5)(b), 2.17(5)(c) and 2.17(6) below) will not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(b) Without limiting the effect of Section 2.17(5)(a) above, each Foreign Lender will deliver to the Borrower and the Administrative Agent on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), two copies of whichever of the following is applicable:

(i) duly completed copies of Internal Revenue Service Form W-8BEN or Form W-8BEN-E (or any subsequent versions thereof or successors thereto), claiming eligibility for benefits of an income tax treaty to which the United States is a party;

(ii) duly completed copies of Internal Revenue Service Form W-8ECI (or any subsequent versions thereof or successors thereto);

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) or 881(c) of the Code, (A) a certificate substantially in the form of the applicable Exhibit D to the effect that such Foreign Lender is not (1) a “bank” within the meaning of Section 881(c)(3)(A) of the Code; (2) a “10 percent shareholder” of the Borrower within the meaning of Section 871(h)(3) or Section 881(c)(3)(B) of the Code; or (3) a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code and (B) duly completed copies of Internal Revenue Service Form W-8BEN or Form W-8BEN-E (or any subsequent versions thereof or successors thereto);

(iv) duly completed copies of Internal Revenue Service Form W-8IMY, together with forms and certificates described in clauses (i) through (iii) above (and additional Internal Revenue Service Form W-8IMYs) or Internal Revenue Service Form W-9 as may be required; or

(v) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made.

In addition, in each of the foregoing circumstances, each Foreign Lender will deliver such forms, if legally entitled to deliver such forms, promptly upon the obsolescence, expiration or invalidity of any form previously delivered by such Foreign Lender. Each Foreign Lender will promptly notify the Borrower at any time it determines that it is no longer in a position to provide any previously delivered certificate to the Borrower (or any other form of certification adopted by the United States of America or other taxing authorities for such purpose). Notwithstanding any other provision of this paragraph, a Lender will not be required to deliver any form pursuant to this Section 2.17 that such Lender is not legally able to deliver;

(c) In addition, each Lender that is not a Foreign Lender will deliver to the Borrower and the Administrative Agent two copies of Internal Revenue Service Form W-9 (or any subsequent versions thereof or successors thereto) on or before the date such Lender becomes a party and upon the expiration of any form previously delivered by such Lender.

(d) On or before the date the Administrative Agent (or any successor to the Administrative Agent) becomes a party to this Agreement, the Administrative Agent (or such successor agent) shall, deliver to the Borrower whichever of the following is applicable: (i) if such agent is a U.S. person, two executed copies of IRS Form W-9 certifying that such agent is exempt from U.S. federal backup withholding or (ii) if such agent is not a U.S. person, (A) with respect to payments received for its own account, two executed copies of IRS Form W-8ECI and (B) with respect to payments received on account of any Lender, two executed copies of IRS Form W-8IMY (together with all required accompanying documentation) certifying that such agent is a U.S. branch and may be treated as a U.S. person for purposes of applicable U.S. federal withholding Tax. At any time thereafter, such agent shall provide updated documentation previously provided (or a successor form thereto) when any documentation previously delivered has expired or become obsolete or invalid or otherwise upon the reasonable request of the Borrower.

(6) If a payment made to a Recipient under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Recipient were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Recipient will deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Recipient has complied with such Recipient's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 2.17(6), "FATCA" will include any amendments made to FATCA after the date of this Agreement.

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

(7) If any party determines, in its sole discretion, exercised in good faith, that it has received a refund of any Indemnified Taxes as to which it has been indemnified (including by the payment of additional amounts pursuant to this Section 2.17), it will pay over reasonably promptly to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such indemnifying party under this Section 2.17 with respect to the Indemnified Taxes giving rise to such refund), net of all out-of-pocket expenses (including any Taxes imposed with respect to such refund) as is determined by the indemnified party in good faith, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay as soon as reasonably practicable to such indemnified party the amount paid over pursuant to this Section 2.17(7) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 2.17(7), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 2.17(7) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 2.17(7) will not be construed to require any Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes which it deems, in good faith, to be confidential) to the Loan Parties or any other Person.

(8) Each Lender shall severally indemnify the Agents, within ten days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Loan Parties have not already indemnified such Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.04(4)(a) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Agents in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the applicable Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by an Administrative Agent to the Lender from any other source against any amount due to the Agents under this Section 2.17(8).

(9) Each party's obligations under this Section 2.17 will survive the resignation or replacement of the Administrative Agent and/or Collateral Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and this repayment, satisfaction or discharge of all obligations under any Loan Document.

(10) For purposes of this Section 2.17, the term "applicable law" includes FATCA.

SECTION 2.18 Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

(1) Unless otherwise specified, the Borrower will make each payment required to be made by it hereunder (whether of principal, interest, fees or otherwise) prior to 2:00 p.m., New York City time, at the applicable Payment Office of the Administrative Agent (except that payments pursuant to Sections 2.15, 2.17 and 10.05 will be made directly to the Persons entitled thereto) on the date when due, in immediately available funds, without condition or deduction for any defense, recoupment, set-off or counterclaim. Without limiting the generality of the foregoing, any Agent may require that any payments due under this Agreement be made in the United States. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. The Administrative Agent will distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof and will make settlements with the applicable Lenders with respect to other payments at the times and in the manner provided in this Agreement. Except as otherwise provided herein, if any payment hereunder is due on a day that is not a Business Day, the date for payment will be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon will be payable for the period of such extension. Any payment required to be made by the Administrative Agent hereunder will be deemed to have been made by the time required if the Administrative Agent, at or before such time, has taken the necessary steps to make such payment in accordance with the regulations or operating procedures of the clearing or settlement system used by the Administrative Agent to make such payment.

(2) [Reserved].

(3) Except as otherwise provided in this Agreement, if (a) at any time insufficient funds are received by and available to the Administrative Agent from the Borrower to pay fully all amounts of principal, interest and fees and other Obligations then due from the Borrower hereunder or (b) an Event of Default shall have occurred and be continuing and the Administrative Agent or the Collateral Agent receives proceeds or payments of any kind (including proceeds of Collateral) hereunder or under any other Loan Document, such funds, subject to the proviso at the end of this Section 2.18(3), will be applied:

(i) *first*, toward payment of any expenses, fees and indemnities due to the Administrative Agent and Collateral Agent hereunder;

(ii) *second*, toward payment of any expenses, fees and indemnities due to the Lenders hereunder, ratably among the parties entitled thereto in accordance with the amounts of expenses, fees and indemnities then due to such parties;

(iii) *third*, toward payment of interest and fees then due from the Borrower hereunder with respect to the Loans, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties;

(iv) *fourth*, toward payment of principal then due from the Borrower hereunder with respect to the Loans ratably among such amounts and as among the parties entitled thereto in accordance with the amounts of such principal then due to such parties; and

(v) *fifth*, to payment of all other Obligations of the Borrower then due and payable, ratably among the parties entitled thereto in accordance with the amounts of such Obligations then due to such parties.

(4) Subject to express priorities set forth in Section 2.18(3) above, if any Lender, by exercising any right of set-off or counterclaim or otherwise, obtains payment in respect of any principal of or interest on any of its Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion will purchase (for cash at face value) participations in the Loans of other Lenders to the extent necessary so that the benefit of all such payments will be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans; *provided* that (a) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations will be rescinded and the purchase price restored to the extent of such recovery, without interest, and (b) the provisions of this paragraph (4) will not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to the Borrower or any other Subsidiary or Affiliate thereof (as to which the provisions of this paragraph (4) apply). The Borrower consents to the foregoing and agree, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(5) [Reserved].

(6) Unless the Administrative Agent has received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may (but shall not be required to), in reliance upon such assumption, distribute to the Lenders the amount due.

(7) If any Lender fails to make any payment required to be made by it pursuant to Section 2.04(3), 2.05(4) or (5), 2.06 or 2.18(6), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

SECTION 2.19 Mitigation Obligations; Replacement of Lenders.

(1) If any Lender requests compensation under Section 2.15, 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 2.17, then such Lender will (at the request of the Borrower) use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or assign its rights and obligations hereunder to another of its offices, branches or Affiliates if, in the reasonable judgment of such Lender, such designation or assignment (a) would eliminate or reduce amounts payable pursuant to Section 2.15 or 2.17, as applicable, in the future and (b) would not subject such Lender to any material unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material

respect. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(2) If any Lender requests compensation under Section 2.15 or is a Defaulting Lender, 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 2.17, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 10.04), all its interests, rights and obligations under this Agreement to an assignee that assumes such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided* that (a) the Borrower shall have received the prior written consent of the Administrative Agent (acting at the direction of the Required SGUS Lenders), which direction shall not unreasonably be withheld, (b) such Lender has received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (c) in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17, such assignment will result in a reduction in such compensation or payments. Nothing in this Section 2.19 will be deemed to prejudice any rights that the Borrower may have against any Lender that is a Defaulting Lender.

(3) If any Lender (each such Lender, a “**Non-Consenting Lender**”) has failed to consent to a proposed amendment, waiver, discharge or termination which, pursuant to the terms of Section 10.08, requires the consent of such Lender with respect to which the Required SGUS Lenders have granted their consent, then the Borrower will have the right (unless such Non-Consenting Lender grants such consent) at their sole expense, to replace such Non-Consenting Lender by deeming such Non-Consenting Lender to have assigned its Loans and its Commitments, as applicable, hereunder to one or more assignees reasonably acceptable to the Administrative Agent to the extent the consent of the Administrative Agent (acting at the direction of the Required SGUS Lenders) would be required under Section 10.04; *provided* that (a) all Obligations of the Borrower owing to such Non-Consenting Lender (including accrued Fees and any amounts due under Section 2.15 or 2.17, all of which shall be paid by the Borrower) being removed or replaced will be paid in full to such Non-Consenting Lender concurrently with such assignment and (b) the replacement Lender will purchase the foregoing (other than such amounts paid by the Borrower) by paying to such Non-Consenting Lender a price equal to the principal amount thereof *plus* accrued and unpaid interest thereon. No action by or consent of the Non-Consenting Lender will be necessary in connection with such removal or assignment, which will be immediately and automatically effective upon payment of such purchase price. In connection with any such assignment, the Borrower or the Administrative Agent, as applicable, such Non-Consenting Lender and the replacement Lender will otherwise comply with Section 10.04; *provided* that if such Non-Consenting Lender does not comply with Section 10.04 within three Business Days after the Borrower’s request therefor, such Non-Consenting Lender’s compliance with Section 10.04 will not be required to effect such assignment.

SECTION 2.20 Illegality. If any Lender reasonably determines that any Change in Law has made it unlawful, or that any Governmental Authority has asserted after the Closing Date that it is unlawful, for any Lender or its applicable Lending Office to make or maintain any Term SOFR Loans, then, on notice thereof by such Lender to the Borrower through the Administrative Agent (an “Illegality Notice”), (i) any obligations of such Lender to make Term SOFR Loans and any right of the Borrower to continue Term SOFR Loans or to convert ABR Borrowings to Term SOFR Borrowings in the applicable currency shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist and (ii) the interest rate on which ABR Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Term SOFR component of the ABR, in each case until each affected Lender notifies the

Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of an Illegality Notice, (x) the Borrower shall upon demand from any Lender (with a copy to the Administrative Agent), prepay all Term SOFR Borrowings of such Lender in the applicable currency or, if applicable and such Loans are denominated in Dollars, convert all Term SOFR Borrowings of such Lender to ABR Borrowings (the interest rate on which ABR Loans shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to clause (c) of the definition of “ABR”), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Term SOFR Borrowings to such day, or immediately, if such Lender may not lawfully continue to maintain such Loans and (y) in the case of Term SOFR Loans denominated in Dollars, if such notice asserts the illegality of such Lender determining or charging interest rates based upon Term SOFR, the Administrative Agent shall during the period of such suspension compute the ABR applicable to such Lender without reference to the Term SOFR component thereof until the Administrative Agent is advised in writing by each affected Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon Term SOFR. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so converted in kind by capitalizing such interest and adding it to the principal amount of the Loans on the date of such prepayment or conversion.

SECTION 2.21 Defaulting Lenders.

(1) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(a) Waivers and Amendments. Such Defaulting Lender’s right to approve or disapprove any amendment, waiver or consent with respect to this Agreement is restricted as set forth in Section 10.08.

(b) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise), will be applied at such time or times as follows:

(i) *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder;

(ii) *second*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Borrower;

(iii) *third*, if so determined by the Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of such Defaulting Lender to fund Loans under this Agreement;

(iv) *fourth*, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender’s breach of its obligations under this Agreement;

(v) *fifth*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent

jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and

(vi) *sixth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction;

provided that if such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, such payment will be applied solely to pay the Loans of all non-Defaulting Lenders on a *pro rata* basis prior to being applied to the payment of any Loans of such Defaulting Lender. Any payments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post cash collateral pursuant to this Section 2.22(1)(b) will be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(c) [Reserved].

(d) [Reserved].

(e) [Reserved].

(2) Defaulting Lender Cure. If the Borrower agrees in writing in its reasonable discretion, acting in good faith, that a Defaulting Lender should no longer be deemed to be a Defaulting Lender and notifies the Administrative Agent in writing, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any cash collateral), such Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders or take such other actions as the Borrower may determine in its reasonable discretion, acting in good faith, to be necessary to cause the Loans to be held on a *pro rata* basis by the Lenders in accordance with their Applicable Percentage (without giving effect to Section 2.21(1)(d)), whereupon such Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while such Lender was a Defaulting Lender; and *provided, further*, that, except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from such Lender's having been a Defaulting Lender.

SECTION 2.22 Benchmark Replacement Setting.

(a) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (a) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (b) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders, after consultation with the Borrower during such period, without any amendment to, or further action or consent of any other party

to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required SGUS Lenders. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis.

(b) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent (acting at the direction of the Required SGUS Lenders) will have the right to make Conforming Changes from time to time; provided that, to the extent practicable, the Administrative Agent shall consult with the Borrower in good faith regarding any Conforming Changes prior to their effectiveness. Notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(c) Notices; Standards for Decisions and Determinations. The Administrative Agent (acting at the direction of the Required SGUS Lenders) will promptly notify the Borrower and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement, (iii) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.22(d) and (iv) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent (acting at the direction of the Required SGUS Lenders) or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.22, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error; provided that, to the extent practicable, the Administrative Agent shall consult with the Borrower in good faith prior to making any such determination, decision or election. Notwithstanding the foregoing, any such determinations, decisions or elections may be made in the Administrative Agent's or such Lender's sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.22.

(d) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Required SGUS Lenders in their reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Administrative Agent (acting at the direction of the Required SGUS Lenders) may, after consultation with the Borrower, modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent (acting at the direction of the Required SGUS Lenders) may, after consultation with the Borrower, modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(e) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any pending request for a Term SOFR Borrowing of, conversion to or continuation of Term SOFR Loans to be made, converted or

continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to ABR Loans. During a Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of ABR based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of ABR.

ARTICLE III

Representations and Warranties

The Borrower, with respect to itself and each of the Restricted Subsidiaries (and Holdings, solely with respect to Sections 3.01, 3.02, 3.03, 3.04, 3.08, 3.09, 3.10, 3.13, 3.15, 3.18, 3.20 and 3.24, and solely with respect to itself) represents and warrants to each Agent and to each of the Lenders on the dates required by Section 4.02(16) that:

SECTION 3.01 Organization; Powers. Subject to the entry of the DIP Orders and the terms thereof, Holdings, the Borrower and each Restricted Subsidiary:

(1) is a partnership, limited liability company, corporation, or trust duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization (to the extent such status or an analogous concept applies to such an organization);

(2) subject to any restrictions arising on account of any Loan Party's status as a "debtor" under the Bankruptcy Code, has all requisite power and authority to own its property and assets and to carry on its business as now conducted, except to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect with respect to any Loan Party (other than the Borrower);

(3) is qualified to do business in each jurisdiction where such qualification is required, except where the failure to so qualify would not reasonably be expected to have a Material Adverse Effect; and

(4) has the power and authority to execute, deliver and perform its obligations under each of the Loan Documents and each other agreement or instrument contemplated thereby to which it is a party and, in the case of the Borrower, to borrow and otherwise obtain credit hereunder.

SECTION 3.02 Authorization. Subject to the entry of the DIP Orders and the terms thereof, the execution, delivery and performance by each of the Loan Parties of each of the Loan Documents to which it is a party, the Borrowings hereunder and the Transactions:

(1) have been duly authorized by all corporate, stockholder, partnership, limited liability company or other applicable action required to be taken by the Loan Parties; and

(2) will not (except where such is excused by the Bankruptcy Code):

(a) violate:

(i) any provision of (1) law, statute, rule or regulation, or of (2) the certificate or articles of incorporation or other constitutive documents (including any partnership, limited liability company or operating agreement or by-laws) of any Loan Party;

(ii) any applicable order of any court or any rule, regulation or order of any Governmental Authority; or

(iii) any provision of any indenture, certificate of designation for preferred stock, agreement or other instrument to which any Loan Party is a party or by which any of them or any of their property is or may be bound;

(b) be in conflict with, result in a breach of, constitute (alone or with notice or lapse of time or both) a default under, or give rise to a right of or result in any cancellation or acceleration of any right or obligation (including any payment) or to a loss of a material benefit under, any such indenture, certificate of designation for preferred stock, agreement or other instrument; or

(c) result in the creation or imposition of any Lien upon any property or assets of any Loan Party, other than the Liens created by the Loan Documents, Permitted Liens, Liens permitted by the DIP Orders or any restrictions arising on account of such Loan Party's status as a "debtor" under the Bankruptcy Code;

except with respect to clauses (a) (other than subclause (a)(i)(2) thereof) and (b) of this Section 3.02(2) as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 3.03 Enforceability. Subject to the entry of the DIP Orders and the terms thereof, this Agreement has been duly executed and delivered by Holdings and the Borrower and constitutes, and each other Loan Document when executed and delivered by each Loan Party that is party thereto will constitute, a legal, valid and binding obligation of such Loan Party enforceable against each such Loan Party in accordance with its terms, subject to:

(1) the effects of bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or other similar laws affecting creditors' rights generally;

(2) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law);

(3) implied covenants of good faith and fair dealing; and

(4) any foreign laws, rules and regulations as they relate to pledges of Equity Interests in Foreign Subsidiaries.

SECTION 3.04 Governmental Approvals. Subject to the entry of the DIP Orders and the terms thereof, no action, consent or approval of, registration or filing with or any other action by any Governmental Authority or third party is or will be required in connection with the Transactions, the perfection or maintenance of the Liens created under the Security Documents or the exercise by any Agent or any other Secured Party of its rights under the Loan Documents or the remedies in respect of the Collateral, except for:

(1) the filing of Uniform Commercial Code financing statements and equivalent filings in foreign jurisdictions;

(2) filings with the United States Patent and Trademark Office and the United States Copyright Office and comparable offices in foreign jurisdictions and equivalent filings in foreign jurisdictions;

(3) filings of deeds of trusts or mortgages with the applicable filing offices;

- (4) filings which may be required under Environmental Laws;
- (5) filings as may be required under the Exchange Act and applicable stock exchange rules in connection therewith;
- (6) such as have been made or obtained and are in full force and effect;
- (7) such actions, consents and approvals the failure of which to be obtained or made would not reasonably be expected to have a Material Adverse Effect; or
- (8) filings or other actions listed on Schedule 3.04.

SECTION 3.05 Management Matters. The Board of Directors of the Borrower and each Loan Party have appointed Geoffroy van Raemdonck as Chief Executive Officer as of the Closing Date.

SECTION 3.06 Title to Properties; Possession Under Leases.

(1) The Borrower and the Subsidiary Loan Parties have valid fee simple title to, or valid leasehold interests in, or easements or other limited property interests in, all of its Real Properties and valid title to its personal property and assets, in each case, except for Permitted Liens or defects in title that do not materially interfere with its ability to conduct its business as currently conducted or to utilize such properties and assets for their intended purposes, in each case, except where the failure to have such title interest, easement or right would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. All such properties and assets are free and clear of Liens, other than Permitted Liens.

(2) Each of the Borrower and the Restricted Subsidiaries' leases is in full force and effect, except leases in respect of which the failure to be in full force and effect would not reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 3.06(2), on the Closing Date the Borrower and each of the Restricted Subsidiaries enjoys peaceful and undisturbed possession under all such leases, other than leases in respect of which the failure to enjoy peaceful and undisturbed possession would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 3.07 Subsidiaries.

(1) Schedule 3.07(1) sets forth as of the Closing Date the name and jurisdiction of incorporation, formation or organization of the Borrower and each Restricted Subsidiary and, as to each such Restricted Subsidiary, the percentage of each class of Equity Interests owned by the Borrower or by any other Restricted Subsidiary of the Borrower.

(2) As of the Closing Date, other than as set forth on Schedule 3.07(2), there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments of any nature relating to any Equity Interests owned or held by the Borrower or any Restricted Subsidiary.

SECTION 3.08 Litigation; Compliance with Laws.

(1) Other than in connection with the Chapter 11 Cases, as disclosed in writing to the Specified Ad Hoc Group Advisors or publicly disclosed in any first day pleadings or declarations, or any other pleadings or declarations of the Debtors, the Agents or the Lenders in connection with any proposed Approved Court Order, that, in each case, are filed in the Chapter 11 Cases, there are no actions, suits or proceedings at law or in equity or by or on behalf of any Governmental Authority or in arbitration now

pending, or, to the knowledge of the Borrower, threatened in writing against or affecting Holdings, the Borrower or any Restricted Subsidiary or any business, property or rights of any such Person (but excluding any actions, suits or proceedings arising under or relating to any Environmental Laws, which are subject to Section 3.14), in each case, which would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(2) To the knowledge of the Borrower, none of Holdings, the Borrower, the Restricted Subsidiaries or their respective properties or assets is in violation of (nor will the continued operation of their material properties and assets as currently conducted violate) any law, rule or regulation (including any zoning, building, ordinance, code or approval, or any building permit, but excluding any Environmental Laws, which are subject to Section 3.14) or any restriction of record or agreement affecting any property, or is in default with respect to any judgment, writ, injunction or decree of any Governmental Authority, where such violation or default would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 3.09 Federal Reserve Regulations.

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

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

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

SECTION 3.11 Use of Proceeds. Subject to the DIP Orders and the terms thereof, the proceeds of the Term Loans will be used in accordance with the Approved Budget (subject to Permitted Variances) or (a) to make payments pursuant to the DIP Orders, including to fund the Carve-Out in accordance with the terms thereof, and (b) if applicable, to fund distributions pursuant to an Acceptable Plan.

SECTION 3.12 Taxes. Except as set forth on Schedule 3.12:

(1) Subject to Bankruptcy Law or except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each of the Borrower and the Restricted Subsidiaries has filed or caused to be filed all federal, state, local and non-U.S. Tax returns required to have been filed by it; and

(2) Each of the Borrower and the Restricted Subsidiaries has timely paid or caused to be timely paid (a) all Taxes shown to be due and payable by it on the returns referred to in clause (1) of this Section 3.12 and (b) all other Taxes or assessments (or made adequate provision (in accordance with GAAP) for the payment of all Taxes due) with respect to all periods or portions thereof ending on or before the Closing Date, which Taxes, if not paid or adequately provided for, would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, in each case except Taxes or assessments that are being contested in good faith by appropriate proceedings and for which the Borrower

or any Restricted Subsidiary (as the case may be) has set aside on its books adequate reserves in accordance with GAAP or the nonpayment of which is required under the Bankruptcy Code.

SECTION 3.13 No Material Misstatements. All written statements, written factual information and written factual data (other than projections, estimates and information of a general economic or industry specific nature) concerning Holdings, the Borrower or any Restricted Subsidiary that has been made available to the Administrative Agent or the Lenders, directly or indirectly, by or on behalf of Holdings, the Borrower or any Restricted Subsidiary in connection with the Transactions, when taken as a whole and after giving effect to all supplements and updates provided thereto, is correct in all material respects and does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made.

SECTION 3.14 Environmental Matters. Except as set forth on Schedule 3.14 or as to matters that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

(1) each of the Borrower and its Restricted Subsidiaries are in compliance with all Environmental Laws (including having obtained and complied with all permits, licenses and other approvals required under any Environmental Law for the operation of its business);

(2) none of the Borrower or any Restricted Subsidiary has received notice of or is subject to any pending, or to the Borrower's knowledge, threatened action, suit or proceeding alleging a violation of, or liability under, any Environmental Law that remains outstanding or unresolved;

(3) to the Borrower's knowledge, no Hazardous Material is located at, on or under any property currently or formerly owned, operated or leased by the Borrower or any Restricted Subsidiary and no Hazardous Material has been generated, owned, treated, stored, handled or controlled by a Borrower or any Restricted Subsidiary and transported to or released at any location which, in each case, described in this clause (3), would reasonably be expected to result in liability to the Borrower or any Restricted Subsidiary; and

(4) there are no agreements in which the Borrower or any Restricted Subsidiary has expressly assumed or undertaken responsibility for any known or reasonably anticipated liability or obligation of any other Person arising under or relating to Environmental Laws or Hazardous Materials.

SECTION 3.15 Security Documents. Upon entry of the Interim DIP Order (and, if entered, the Final DIP Order), the Liens granted thereunder by the Debtors that are Loan Parties to or for the benefit of the Collateral Agent on any Collateral shall be valid and automatically perfected with the priority set forth herein and in the DIP Orders, and no filing or other action will be necessary to perfect or protect such Liens and security interests with respect to such Debtors' Obligations under the Loan Documents and the DIP Orders.

SECTION 3.16 [Reserved].

SECTION 3.17 [Reserved].

SECTION 3.18 No Material Adverse Effect. Since the Closing Date, there has been no event that has had, or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

SECTION 3.19 Insurance. Schedule 3.19 sets forth a true, complete and correct description of all material insurance maintained by or on behalf of the Borrower or any Restricted Subsidiary as of the Closing Date. As of such date, such insurance is in full force and effect.

SECTION 3.20 Anti-Money Laundering; Anti-Corruption; Sanctions.

(1) To the extent applicable, each of Holdings, the Borrower and the Subsidiaries is in compliance and maintains in effect policies and procedures designed to ensure compliance, in all material respects, with the USA PATRIOT Act, and any other similar applicable anti-money laundering laws, Sanctions and regulations.

(2) No part of the proceeds of the Loans will be used by the Borrower or any of its Subsidiaries, directly or (to the knowledge of the Borrower) indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended from time to time.

(3) None of Holdings, the Borrower or any Subsidiary, nor to the knowledge of the Borrower, any director, officer, employee or agent thereof, is any of the following:

(a) a Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224 on Terrorist Financing effective September 24, 2001 (the “*Executive Order*”) or any other blocking Sanctions;

(b) a Person owned fifty percent or more by any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order or any other blocking Sanctions;

(c) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any applicable laws with respect to terrorism or money laundering;

(d) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order; or

(e) a Person that is named on the most current List of Specially Designated Nationals and Blocked Persons as published by the U.S. Department of the Treasury’s Office of Foreign Assets Control (“*OFAC*”) at its official website or any replacement website or other replacement official publication of such list, HMT’s Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority and none of the proceeds of the Loans or Letters of Credit will be, directly or (to the knowledge of the Borrower) indirectly, offered, lent, contributed or otherwise made available to any Subsidiary, joint venture partner or other Person for the purpose of financing the activities of any Person currently the subject of sanctions administered by OFAC or another relevant sanctions authority.

SECTION 3.21 Intellectual Property; Licenses, Etc. Except as set forth on Schedule 3.21:

(1) except as would not reasonably be expected to have a Material Adverse Effect, the Borrower and Restricted Subsidiary owns, or possesses the right to use, all of the patents, patent rights, trademarks, service marks, trade names, copyrights or mask works, domain names, trade secrets and other

intellectual property rights (collectively, “*Intellectual Property Rights*”) that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person;

(2) except as would not reasonably be expected to have a Material Adverse Effect, none of the Borrower or Restricted Subsidiary nor any Intellectual Property Rights, product, process, method, substance, part or other material now employed, sold or offered by any Borrower or Subsidiary is infringing upon, misappropriating or otherwise violating Intellectual Property Rights of any Person; and

(3) no material claim or litigation regarding any of the foregoing is pending or, to the knowledge of the Borrower, threatened;

SECTION 3.22 Employee Benefit Plans; Labor Matters.

(1) Subject to Bankruptcy Law, the terms of the applicable DIP Orders and any required approval by the Bankruptcy Court and except as would not reasonably be expected to have a Material Adverse Effect, with respect to ERISA Plans the Borrower and each of its ERISA Affiliates are in compliance with the applicable provisions of ERISA and the Code and the regulations and published interpretations thereunder. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events, would reasonably be expected to have a Material Adverse Effect. Except as would not reasonably be expected to have a Material Adverse Effect, the present value of all accumulated benefit obligations under all ERISA Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87, as updated, amended or superseded) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such ERISA Plans, in the aggregate.

(2) Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect (i) there are no strikes, lockouts, slowdowns or other material labor disputes against any Loan Party or any Restricted Subsidiary thereof pending or, to the knowledge of any Loan Party, threatened, (ii) the hours worked by and payments made to employees of the Loan Parties comply with the Fair Labor Standards Act and any other applicable federal, state, local or foreign Law dealing with such matters, (iii) no Loan Party or any of its Restricted Subsidiaries has incurred any liability or obligation under the Worker Adjustment and Retraining Act or similar state Law, (iv) all payments due from any Loan Party and its Restricted Subsidiaries, or for which any claim may be made against any Loan Party or any of its Restricted Subsidiaries, 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, (v) except as set forth on Schedule 3.22, as of the Closing Date, no Loan Party or any Restricted Subsidiary is a party to or bound by any collective bargaining agreement, any management, consulting or employment agreement providing for annual compensation of greater than \$5.0 million, including any bonus, restricted stock, stock option, or stock appreciation plan or agreement or any similar plan, agreement or arrangement (excluding any phantom share plan), (vi) there are no representation proceedings pending or, to any Loan Party’s knowledge, threatened to be filed with the National Labor Relations Board, and no labor organization or group of employees of any Loan Party or any Restricted Subsidiary has made a pending demand for recognition, (vii) 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 Restricted Subsidiary pending or, to the knowledge of any Loan Party, 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 Restricted Subsidiaries, or (viii) 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 Restricted Subsidiaries is bound.

SECTION 3.23 [Reserved].

SECTION 3.24 Chapter 11 Cases.

(1) The Chapter 11 Cases were commenced on the Petition Date, duly authorized in accordance with applicable Requirements of Law, and proper notice thereof has been or will be given, as will proper notice of (i) the DIP Motion (as defined below), (ii) the entry of Interim DIP Order and the Final DIP Order and (iii) the hearings for the entry of the Interim DIP Order and the Final DIP Order. The Loan Parties that are Debtors shall give, on a timely basis as specified in the Interim DIP Order or the Final DIP Order, as applicable, all notices required to be given to all parties specified in the Interim DIP Order or Final DIP Order, as applicable.

(2) The Loan Parties that are Debtors are in compliance in all material respects with the terms and conditions of the DIP Orders. Each of the Interim DIP Order (with respect to the period prior to the entry of the Final DIP Order) and the Final DIP Order (from and after the Final DIP Order Entry Date) is in full force and effect and has not been vacated or reversed, is not subject to a stay and has not been modified or amended other than with the consent of the Required SGUS Lenders (acting in their sole discretion).

(3) From and after the entry of the Interim DIP Order, pursuant to and to the extent permitted in the Interim DIP Order, the Obligations (i) will constitute allowed joint and several DIP Superpriority Claims and (ii) will be secured by a valid, binding, continuing, enforceable, fully perfected Liens on all of the Collateral pursuant to Sections 364(c)(2), (c)(3) and (d) of the Bankruptcy Code, as applicable, subject only to the Carve Out.

(4) The entry of the Interim DIP Order (and, when applicable, the Final DIP Order) is effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, the DIP Superpriority Claims and Liens without the necessity of the execution (or recordation or filing) of mortgages, security agreements, pledge agreements, financing statements or other agreements or documents.

(5) Each Budget Variance Report delivered pursuant to Section 5.04(9) is true, complete and correct in all material respects for the period covered thereby as of the date such Budget Variance Report is delivered.

(6) Notwithstanding the provisions of section 362 of the Bankruptcy Code, and subject to the applicable provisions of the Interim DIP Order or the Final DIP Order, as the case may be, including but not limited to any applicable notice periods therein, upon the Maturity Date, the Agents and the Lenders shall be entitled to immediately be Paid in Full and to enforce the remedies provided for hereunder or under applicable Requirements of Law, without further notice, motion or application to, hearing before, or order from, the Bankruptcy Court.

ARTICLE IV

Conditions of Lending

SECTION 4.01 [Reserved]

SECTION 4.02 Conditions to Closing Date and DIP Interim Funding Loans. The effectiveness of this Agreement and the other Loan Documents on the Closing Date and the obligations of the Lenders

to fund the DIP Interim Funding Loans upon the entry of the Interim DIP Order shall be subject solely to the satisfaction or waiver by the Required SGUS Lenders of the following conditions precedent:

(1) Loan Documents. On the Closing Date, (a) Holdings, the Borrower and each Lender shall have executed and delivered to the Administrative Agent a counterpart of this Agreement, (b) each Loan Party shall have executed and delivered to the Administrative Agent a counterpart of each Loan Document to which it is a party.

(2) DIP SGUS Term Loan Facility. On or prior to the Closing Date, the “Closing Date” (as defined in the DIP SGUS Credit Agreement) of the DIP SGUS Term Loan Facility shall have occurred and the DIP SGUS Credit Agreement shall have been executed on terms and in substance satisfactory to the Required SGUS Lenders.

(3) Fees. All fees, invoices, costs and expenses (including, without limitation, legal fees and expenses) required to be paid by the Borrowers to the Specified Ad Hoc Group Advisors, the Agents and the Backstop Parties on the Closing Date have been paid, or substantially simultaneously with the initial funding of the amounts borrowed under this Agreement shall be paid, in each case to the extent due (which amount may be offset against the proceeds from the Loans made on the Closing Date under this Agreement).

(4) The Administrative Agent shall have received, in the case of a Borrowing, a Borrowing Request as required by Section 2.03.

(5) Corporate Documents, etc. The Agents and the Lenders shall have received a certificate of a Responsible Officer of the Borrower dated the Closing Date and certifying:

(a) that attached thereto is a true and complete copy of the charter or other similar organizational document (each, a “Governing Document”) of each Loan Party, and each amendment thereto, certified as being a true and correct copy thereof by the Secretary of State or other applicable Governmental Authority of the jurisdiction in which such Loan Party, as applicable, is organized, or that such Governing Document has not been amended, repealed, modified or restated since the same was delivered in connection with the Prepetition OpCo Notes Indenture;

(b) that attached thereto is a true and complete copy of a good standing certificate (or equivalent evidence) of the Secretary of State or other applicable Governmental Authority of the jurisdiction in which each Loan Party, as applicable, is organized;

(c) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors of each Loan Party, as applicable, authorizing the execution, delivery and performance of the Loan Documents to which it is a party or any other document delivered in connection wherewith on the Closing Date and certifying that such resolutions have not been modified, rescinded or amended and are in full force and effect;

(d) as to the incumbency and specimen signature of each Responsible Officer executing this Agreement (together with a certificate of another officer as to the incumbency and specimen signature of the Responsible Officer executing the certificate pursuant to this Section 4.02(6));

(6) The Petition Date shall have occurred, and the Borrower and each other Loan Party as of the Closing Date shall be a Debtor and a debtor-in-possession in the Chapter 11 Cases;

(7) The Chapter 11 Cases shall not have been dismissed or converted to cases under chapter 7 of the Bankruptcy Code;

(8) No trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code or examiner with expanded powers shall have been appointed in any of the Chapter 11 Cases;

(9) Security Documents. The Loan Parties shall have used reasonable best efforts to take the relevant perfection steps required to be taken by the Collateral Documents on or prior to the Closing Date; *provided* that, upon entry of the Interim DIP Order (and, if entered, the Final DIP Order), the Collateral Agent shall have valid and automatically perfected security interests as set forth in this Agreement, the Security Documents and in the DIP Orders, and no filing or other action will be necessary to perfect or protect such security interests with respect to the Debtors' obligations under the Loan Documents and such DIP Order;

(10) Perfection Certificate. On the Closing Date, the Loan Parties shall have delivered to the Administrative Agent and the Lenders an executed Perfection Certificate;

(11) Interim DIP Order. The Interim DIP Order shall have been entered by the Bankruptcy Court and shall be in full force and effect, including the purchase of participation interests in the Borrower's 11.000% Senior Secured Second Out Notes due 2029 contemplated thereby, and shall not have been vacated or reversed, shall not be subject to any stay, and shall not have been modified or amended in any respect without the consent of the Required SGUS Lenders and (solely with respect to its own rights, obligations, liabilities, duties and treatment) the Administrative Agent, and the Debtors shall be in compliance with the Interim DIP Order;

(12) First Day Orders. The Lenders and the Administrative Agent shall have received advanced drafts of the "first day orders" to be entered by the Bankruptcy Court (the "**First Day Orders**") in respect of the first day motions and applications in respect of the Chapter 11 Cases (the "**First Day Motions**") (including, without limitation, any order approving significant or outside the ordinary course of business transactions entered on (or prior to) the Closing Date and the Cash Management Order) and a list of critical vendors, consignors, and concession parties (which for the avoidance of doubt may only be paid in accordance with the Approved Budget), and the forms of the First Day Motions filed in the Chapter 11 Cases shall be, in each case, in form and substance reasonably satisfactory to the Required SGUS Lenders and (solely with respect to its own treatment) the Agents, and (ii) except as would not adversely affect the Lenders, the Agents, or the Prepetition Secured Parties, all First Day Orders intended to be entered by the Bankruptcy Court at or immediately after the Debtors' "first day" hearing shall have been entered by the Bankruptcy Court, shall be reasonably acceptable to the Required SGUS Lenders and (solely with respect to its own treatment) the Agents, and shall be in full force and effect; *provided* that notwithstanding anything to the contrary in the First Day Motions or First Day Orders, the Borrower acknowledges and agrees that to the extent of any conflict between the provisions of the First Day Motions or First Day Orders, on the one hand, and the DIP Orders and this Agreement, on the other hand, the terms and conditions of the DIP Orders and this Agreement shall apply, as applicable;

(13) No Default or Event of Default. As of the Closing Date, immediately after giving effect to the entrance into of the Loan Documents and the incurrence of the Term Loans on the Closing Date, no Default or Event of Default shall have occurred and be continuing;

(14) Representations and Warranties. The representations and warranties contained in this Agreement and the other Loan Documents shall be true and correct in all material respects as of the Closing Date (*provided* that the foregoing materiality qualifiers shall not be applicable to any representations qualified or modified by materiality);

(15) Officer's Certificate. On the Closing Date, the Borrower shall have delivered to the Administrative Agent and the Lenders a certificate of a Responsible Officer of the Borrower certifying as to the satisfaction of the conditions in Sections 4.02(13) and (14); and

(16) DIP ABL Credit Agreement. The Debtors shall have received commitments for the DIP ABL Facility on terms and conditions reasonably acceptable to the Required SGUS Lenders, and the incurrence of the DIP ABL Obligations and entry into the DIP ABL Facility and all related agreements by the relevant Debtors shall be approved by an order of the Bankruptcy Court, the relevant Debtors shall have entered into the DIP ABL Credit Agreement and the same shall remain in full force and effect and no Default or Event of Default (each as defined therein) shall exist thereunder.

(17) Other Management Matters.

(a) [Reserved].

(b) The Loan Parties shall have adopted resolutions setting forth an exclusive scope of authority for a special committee of the Board of Directors of the Borrower and its Subsidiaries and the Chief Restructuring Officer, which shall be substantially consistent in form and substance with the terms delivered to the Specified Ad Hoc Group Legal Advisor on January 8, 2026 and otherwise acceptable to the Required SGUS Lenders.

(18) [DIP Proceeds Account Control Agreement]. The DIP Proceeds Account Control Agreement shall be in full force and effect.]

There are no conditions, implied or otherwise, to the making of DIP Interim Funding Loans on the Closing Date other than as set forth in the preceding clauses (1) through (18) of Section 4.02, and upon satisfaction or waiver of such conditions Loans will be made by the Lenders. Without limiting the generality of the provisions of Section 9.03, for purposes of determining whether the conditions specified in this Section 4.02 have occurred, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to such Lender unless such Lender has notified the Administrative Agent of any disagreement in writing prior to the proposed Closing Date specifying its objection thereto.

SECTION 4.03 Conditions to Borrowing of the DIP Final Funding Loans. The obligations of the Lenders to fund the DIP Final Funding Loans upon and after entry of the Final DIP Order shall not become effective until the date on which each of the following conditions shall be satisfied (or waived by the Required SGUS Lenders in their sole discretion) after giving effect to such borrowing:

(1) Each of the conditions set forth in the preceding Sections 4.02 shall have been satisfied or waived by the Required SGUS Lenders;

(2) Final DIP Order. The Final DIP Order shall have been entered by the Bankruptcy Court and shall be in full force and effect, and shall not have been vacated or reversed, shall not be subject to any stay, and shall not have been modified or amended in any respect without the consent of the Required SGUS Lenders and (solely with respect to its own rights, obligations, liabilities, duties and treatment) the Agents, and the Debtors shall be in compliance with the Final DIP Order;

(3) Second Day Orders. (a) The Loan Parties shall use commercially reasonable efforts to have all material "second day orders" (the "***Second Day Orders***") and all related pleadings intended to be filed or entered on or prior to the date of entry of the Final DIP Order and any order

establishing material procedures for the administration of the Chapter 11 Cases (any such motions other than First Day Motions, the “***Second Day Motions***”) entered by the Bankruptcy Court on or prior to the date of entry of the Final DIP Order, and (b) all pleadings related to procedures for approval of significant transactions, including, without limitation, asset sale procedures, regardless of when filed or entered, shall be in form and substance reasonably satisfactory to the Required SGUS Lenders; *provided* that notwithstanding anything to the contrary in the Second Day Motions or Second Day Orders, the Borrower acknowledges and agrees that to the extent of any conflict between the provisions of the Second Day Motions or Second Day Orders, on the one hand, and the DIP Orders and this Agreement, on the other hand, the terms and conditions of the DIP Orders and this Agreement shall apply, as applicable;

(4) No Default or Event of Default. Immediately before and after giving effect to a Borrowing of the DIP Final Funding Loans, no Default or Event of Default shall have occurred and be continuing;

(5) DIP Funding Amount. The Administrative Agent shall have received a Borrowing Request as required by Section 2.03 and a DIP Funding Notice as required by Section 2.04 and, subject to adjustment pursuant to Section 2.06(2), the amount of such Borrowing shall not exceed the amount set forth in such DIP Funding Notice; and

(6) Fees. [All] fees, invoices, costs and expenses (including, without limitation, legal fees and expenses) required to be paid by the Borrowers to the Specified Ad Hoc Group Advisors, the Agents and the Backstop Parties on or prior to such DIP Final Funding Date have been paid, or substantially simultaneously with the funding of the DIP Final Funding Amounts borrowed under this Agreement shall be paid, in each case to the extent due, subject to the DIP Orders.

There are no conditions, implied or otherwise, to the making of DIP Final Funding Loans after entry of the Final DIP Order other than as set forth in the preceding clauses (1) through (6) of this Section 4.03, and upon satisfaction or waiver of such conditions Loans will be made by the Lenders. Without limiting the generality of the provisions of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.03, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted, or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to such Lender unless such Lender has notified the Administrative Agent of any disagreement in writing prior to the proposed Borrowing Date.

SECTION 4.04 Conditions to Borrowing of the DIP Subsequent Draw Loans. The obligations of the Lenders to fund the DIP Subsequent Draw Loans after entry of the Final DIP Order shall not become effective until the date on which each of the following conditions shall be satisfied (or waived by the Required SGUS Lenders in their sole discretion) after giving effect to such borrowing:

(1) Each of the conditions set forth in the preceding Sections 4.02 and 4.03, shall have been satisfied or waived by the Required SGUS Lenders;

(2) Milestones The Milestones in Sections 5.12(6) and (7) have been satisfied;

(3) DIP SGUS Credit Agreement Funding The “DIP Subsequent Draw Loans” as defined in the DIP SGUS Credit Agreement have been funded;

(4) No Default or Event of Default. Immediately before and after giving effect to the Borrowing of the DIP Subsequent Draw Loans, no Default or Event of Default shall have occurred and be continuing;

(5) DIP Funding Amount. The Administrative Agent shall have received a Borrowing Request as required by Section 2.03 and a DIP Funding Notice as required by Section 2.04 and, subject to adjustment pursuant to Section 2.06(2), the amount of such Borrowing shall not exceed the amount set forth in such DIP Funding Notice; and

(6) Fees. [All] fees, invoices, costs and expenses (including, without limitation, legal fees and expenses) required to be paid by the Borrowers to the Specified Ad Hoc Group Advisors, the Agents and the Backstop Parties on or prior to such DIP Subsequent Draw Date have been paid, or substantially simultaneously with the funding of the DIP Subsequent Draw Loans borrowed under this Agreement shall be paid, in each case to the extent due, subject to the DIP Orders or another Approved Court Order, as applicable.

There are no conditions, implied or otherwise, to the making of the DIP Subsequent Draw Loans after entry of the Final DIP Order other than as set forth in the preceding clauses (1) through (6) of this Section 4.04, and upon satisfaction or waiver of such conditions Loans will be made by the Lenders. Without limiting the generality of the provisions of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.04, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted, or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to such Lender unless such Lender has notified the Administrative Agent of any disagreement in writing prior to the proposed Borrowing Date.

ARTICLE V

Affirmative Covenants

The Borrower covenants and agrees with the Agents and each other Secured Party that so long as this Agreement is in effect and until the Commitments have been terminated and the Obligations (other than contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted) have been Paid in Full, the Borrower will, and will cause the Borrower and each Restricted Subsidiary, to (other than in the case of Section 5.04), or solely with respect to Sections 5.01, 5.03, 5.06, 5.07(1) and 5.10 below, Holdings will:

SECTION 5.01 Existence; Businesses and Properties.

(1) Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect;

(2) (a) Do or cause to be done all things necessary to lawfully obtain, preserve, renew, extend and keep in full force and effect the permits, franchises, authorizations, Intellectual Property Rights, licenses and rights with respect thereto necessary to the normal conduct of its business and (b) at all times maintain and preserve all property necessary to the normal conduct of its business and keep such property in good repair, working order and condition (ordinary wear and tear excepted) and from time to time make, or cause to be made, all needful and proper repairs, renewals, additions, improvements and replacements thereto necessary in order that the business carried on in connection therewith, if any, may be properly conducted at all times, in each case, except:

(i) as expressly permitted by this Agreement;

(ii) such as may expire, be abandoned or lapse in the ordinary course of business; or

(iii) where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

SECTION 5.02 Insurance. Maintain, with insurance companies reasonably believed to be financially sound and reputable, insurance in such amounts and against such risks as are customarily maintained by similarly situated companies engaged in the same or similar businesses operating in the same or similar locations, and cause the Collateral Agent to be listed as a co-loss payee on property and casualty policies and as an additional insured on liability policies. The Borrower will furnish to the Administrative Agent, upon request, information in reasonable detail as to the insurance so maintained.

SECTION 5.03 Taxes.

(1) Subject to Bankruptcy Law, the terms of the applicable Order and any required approval by the Bankruptcy Court, pay and discharge promptly when due all federal and material state and local Taxes imposed upon it or its income or profits or in respect of its property, before the same becomes delinquent or in default; *provided* that such payment and discharge will not be required with respect to any Tax if (1) the validity or amount thereof is being contested in good faith by appropriate proceedings and (2) the Borrower or any affected Restricted Subsidiary, as applicable, has set aside on its books reserves in accordance with GAAP with respect thereto.

(2) [Reserved].

(3) [Reserved].

SECTION 5.04 Financial Statements, Reports, etc. Furnish to the Administrative Agent (which will promptly furnish such information to the Lenders and the DIP SGUS Administrative Agent for furnishing to the DIP SGUS Lenders) and, subject to customary confidentiality undertakings, make available to potential Lenders/assignees:

(1) Annual Financial Statements. within ninety (90) days following the end of each fiscal year, (a) a consolidated balance sheet and related statements of operations, cash flows and owners' equity showing the financial position of the Borrower and the Subsidiaries as of the close of such fiscal year and the consolidated results of its operations during such fiscal year and, in each case, setting forth in comparative form the corresponding figures for the prior fiscal year, (b) a consolidating balance sheet and related statements of operations, cash flows and owners' equity showing the financial position of the Borrower and its Restricted Subsidiaries as of the close of such fiscal year and the consolidating results of its operations during such fiscal year (all such consolidating statements to be presented by the Borrower and its Restricted Subsidiaries on a consolidated basis) and, in each case, setting forth in comparative form the corresponding figures from the prior fiscal year, which consolidated balance sheet and related statements of operations, cash flows and owners' equity will be audited by independent public accountants of recognized national standing, or such other accountants as are reasonably acceptable to the Required SGUS Lenders, and accompanied by an opinion of such accountants to the effect that such consolidated financial statements fairly present, in all material respects, the financial position and results of operations of the Borrower and the Subsidiaries on a consolidated basis in accordance with GAAP]; and such consolidating statements to be certified by a Responsible Officer of the Borrower to the effect that such statements are fairly stated in all material respects when considered in relation to the consolidated financial statements of the Borrower and its Restricted Subsidiaries (the applicable financial statements delivered

pursuant to this clause (1) being the “**Annual Financial Statements**”) and (c) management’s discussion and analysis of the important operational and financial developments during such fiscal year;

(2) Quarterly Financial Statements. within forty-five (45) days following the end of each fiscal quarter of each fiscal year, (a) a consolidated balance sheet and related statements of operations and cash flows showing the financial position of the Borrower and the Subsidiaries as of the close of such fiscal quarter and the consolidated results of its operations during such fiscal quarter and, in each case, the then-elapsed portion of the fiscal year and setting forth in comparative form the corresponding figures for the corresponding periods of the prior fiscal year, (b) a consolidating balance sheet and related statements of operations and cash flows showing the financial position of the Borrower and its Restricted Subsidiaries as of the close of such fiscal quarter and the consolidating results of its operations during such fiscal quarter (all such consolidating statements to be presented by the Borrower and its Restricted Subsidiaries on a consolidated basis) and, in each case, the then-elapsed portion of the fiscal year and setting forth in comparative form the corresponding figures for the corresponding periods of the prior fiscal year, which consolidated balance sheet and related statements of operations and cash flows will be certified by a Responsible Officer of the Borrower on behalf of the Borrower as fairly presenting, in all material respects, the financial position and results of operations of the Borrower and the Subsidiaries on a consolidated basis in accordance with GAAP, subject to normal year-end audit adjustments and the absence of footnotes; and such consolidating statements to be certified by a Responsible Officer of the Borrower to the effect that such statements are fairly stated in all material respects when considered in relation to the consolidated financial statements of the Borrower and its Restricted Subsidiaries (the applicable financial statements delivered pursuant to this clause (2) being the “**Quarterly Financial Statements**”) and (c) management’s discussion and analysis of the important operational and financial developments during such quarterly accounting period;

(3) Monthly Financial Statements. within thirty (30) days following the end of each fiscal month (commencing with the fiscal month ending on or around January 31, 2026, management reporting that is prepared on a monthly basis, including profits and losses and comparative store sales data broken out by banner (the applicable reports delivered pursuant to this clause (3) being the “**Monthly Financial Statements**” and, together with the Annual Financial Statements and Quarterly Financial Statements, the “**Required Financial Statements**”);

(4) Compliance Certificates. concurrently with any delivery of Required Financial Statements, a certificate of a Financial Officer of the Borrower (such certificate the “**Compliance Certificate**”), certifying that no Default or Event of Default has occurred and is continuing or, if a Default or Event of Default has occurred and is continuing, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto;

(5) [reserved];

(6) [reserved];

(7) [reserved];

(8) promptly after the same become publicly available, copies of all periodic and other publicly available reports, proxy statements and, to the extent requested by the Administrative Agent, other materials publicly filed by the Borrower or any Subsidiary with the SEC;

(9) Budget.

(a) The use of Loans under this Agreement and the other Loan Documents shall be consistent with the Approved Budget (subject to Permitted Variances). No proceeds of the Loans shall be used for any purpose not set forth in the Approved Budget. The Initial Approved Budget approved by the Required SGUS Lenders is attached hereto as Annex A for the first thirteen (13) week period from the Petition Date. The Initial Approved Budget shall be the Approved Budget until the next Updated Budget is delivered and has been accepted by the Required SGUS Lenders in accordance with the DIP Orders;

(b) The Borrower shall deliver an Updated Budget to the Administrative Agent (with a copy to the Specified Ad Hoc Group Legal Advisors), for distribution to the DIP SGUS Administrative Agent, on each Updated Budget Delivery Date in accordance with the DIP Orders;

(c) The Borrower shall deliver to the Administrative Agent and the Specified Ad Hoc Group Advisors, a Budget Variance Report in accordance with Paragraph [3(f)(iii)] of the Interim DIP Order (and, once entered, the comparable provisions of the Final DIP Order) on the dates set forth therein;

(d) The Debtors shall comply with the terms of Paragraph [3(f)(iii)] of the Interim DIP Order (and, once entered, the comparable provisions of the Final DIP Order) with respect to permitting its actual aggregate receipts to be less than the forecasted aggregate receipts, actual aggregate disbursements to exceed the forecasted aggregate disbursements, or actual sum of aggregate receipts and disbursements to be less than forecasted sum of actual aggregate receipts and disbursements, in each case, as set forth in the Approved Budget by the Permitted Variances;

(e) The timing of delivery of any deliverables under this Section 5.1 may be extended with the consent of the Administrative Agent (acting at the direction of the Required SGUS Lenders (acting at the direction of the Required SGUS Lenders)), which consent may be conveyed via email from the Specified Ad Hoc Group Advisors to lead counsel to the Borrower.

(10) concurrently with the delivery of the Annual Financial Statements, an updated Perfection Certificate reflecting all changes since the date of the information most recently received pursuant to this paragraph (10) or Section 5.10;

(11) promptly, from time to time, such other information regarding the operations, business affairs and financial condition of the Borrower or any Subsidiary, in each case, as the Administrative Agent may reasonably request (acting at the direction of the Required SGUS Lenders) or as may be reasonably requested by the Required SGUS Lenders;

(12) promptly upon request by the Administrative Agent (so long as the following are obtainable using commercially reasonable measures), copies of any documents described in Section 101(k)(1) of ERISA that the Borrower may request with respect to any Multiemployer Plan; *provided* that if the Borrower has not requested such documents from the administrator or sponsor of the applicable Multiemployer Plan, the Borrower shall promptly make a request for such documents or notices from such administrator or sponsor and shall provide copies of such documents and notices promptly after receipt thereof;

(13) concurrently with the delivery under the DIP ABL Credit Agreement, (a) updated Borrowing Base Certificates (as defined in the DIP ABL Credit Agreement) and (b) any additional reporting provided to the DIP ABL Lenders containing information not provided to the Administrative Agent, the Specific Ad Hoc Group Advisors or the Lenders pursuant to this Agreement;

(14) [Reserved];

(15) [Reserved];

(16) Weekly Reporting Requirements. Not later than 5:00 p.m. on every Monday, beginning with the first full calendar week after the Closing Date:

(a) Liquidity Reporting. A certificate (each, a “**Liquidity Report**”) of a Responsible Officer on behalf of Holdings and its Subsidiaries certifying the amount of Liquidity as of the Friday of the calendar week immediately preceding such delivery date;

(b) Disbursement Reporting. Reporting on (i) all payments and disbursements made from the DIP Proceeds Account and operating accounts during the immediately preceding calendar week, which report shall indicate with respect to each disbursement the line item in the Approved Budget pursuant to which such disbursement was made, (ii) proposed disbursements for the following week, in each case, with rationale and commentary, which report shall indicate with respect to each disbursement the line item in the Approved Budget pursuant to which such disbursement was made, and (iii) the amounts, organized by professional, included in the [Professional Fee Escrow Account (as defined in the DIP Orders)];

(c) Aging Reporting. A summary of accounts payable and accounts receivable aging consistent with the form delivered to the Prepetition ABL Credit Agreement Agent prior to the Closing Date.

Documents required to be delivered pursuant to this Sections 5.04 and 5.05 may be delivered electronically in accordance with Section 10.01(5) and shall be delivered to the Specified Ad Hoc Group Legal Advisor simultaneously with the Agents.

SECTION 5.05 Litigation and Other Notices. Furnish to the Administrative Agent (which will promptly thereafter furnish to the Lenders and the DIP SGUS Administrative Agent for furnishing to the DIP SGUS Lenders) written notice of the following promptly after any Responsible Officer of the Borrower obtains actual knowledge thereof:

(1) any Default or Event of Default, specifying the nature and extent thereof and the corrective action (if any) proposed to be taken with respect thereto;

(2) the filing or commencement of any action, suit or proceeding, whether at law or in equity or by or before any Governmental Authority or in arbitration, against Holdings, the Borrower or any of the Subsidiaries as to which an adverse determination is reasonably probable and which, if adversely determined, would reasonably be expected to have a Material Adverse Effect; and

(3) the occurrence of any ERISA Event that, together with all other ERISA Events that have occurred, would reasonably be expected to result in a material liability to a Loan Party.

SECTION 5.06 Compliance with Laws. Comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property (including the Bankruptcy Code, ERISA, Anti-Corruption Laws, OFAC and the PATRIOT Act), except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect; *provided* that this Section 5.06 will not apply to Environmental Laws, which are the subject of Section 5.09, or laws related to Taxes, which are the subject of Section 5.03.

SECTION 5.07 Maintaining Records; Access to Properties and Inspections; Appraisals.

(1) Permit any Persons designated by the Administrative Agent, to visit and inspect the financial records and the properties of the Borrower or any Restricted Subsidiary at reasonable times, upon reasonable prior notice to and reasonable coordination with the Borrower, and as often as reasonably requested during normal business hours, to make extracts from and copies of such financial records, and permit any Persons designated by the Administrative Agent, upon reasonable prior notice to the Borrower, to discuss the affairs, finances and condition the Borrower or any Restricted Subsidiary with the officers thereof and independent accountants therefor (subject to such accountant's policies and procedures) (it being understood that a representative of the Borrower shall be permitted to be present in any discussions with officers, employees, agent, advisors and independent accountants).

(2) [Reserved].

(3) [Reserved].

(4) [Reserved]

(5) Notwithstanding anything to the contrary in this Agreement (including Sections 5.04(11), 5.05, 5.07(1) and (2), and 5.12) or any other Loan Document, none of the Loan Parties or any of the Subsidiaries will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter with any competitor to the Borrower or any of its Subsidiaries or that (1) constitutes non-financial trade secrets or non-financial proprietary information; (2) in respect of which disclosure is prohibited by law or any binding agreement; (3) is subject to attorney-client or similar privilege or constitutes attorney work product; or (4) creates an unreasonably excessive expense or burden on the Borrower or any of its Subsidiaries.

SECTION 5.08 Use of Proceeds. Use the proceeds of the Loans in accordance with Section 3.11; *provided* that the Borrower shall not use the proceeds of the Loans in violation of any Sanctions.

SECTION 5.09 Compliance with Environmental Laws. Comply, and make commercially reasonable efforts to cause all lessees and other Persons occupying its fee-owned Real Properties to comply, with all Environmental Laws applicable to its operations and properties, and obtain and renew all material authorizations and permits required pursuant to Environmental Law for its operations and properties, in each case in accordance with Environmental Laws, except, in each case, to the extent the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.10 Further Assurances; Additional Security.

(1) [Reserved].

(2) Furnish to the Administrative Agent, within 15 days after such change (or such longer period as reasonable agreed to by the Administrative Agent) (acting at the direction of the Required SGUS Lenders), written notice of any change in any Loan Party's:

(a) corporate or organization name;

(b) organizational structure;

(c) location (determined as provided in UCC Section 9-307); or

(d) solely if required for perfecting a security interest in the applicable jurisdiction, organizational identification number (or equivalent) or Federal Taxpayer Identification Number.

(3) Execute any and all other documents, financing statements, agreements and instruments, and take all such other actions (including the filing and recording of financing statements and other documents), not described in the preceding clause and (2) and that may be required under any applicable law, or that the Administrative Agent (acting at the direction of the Required SGUS Lenders) may reasonably request, to satisfy the requirements set forth in this Section 5.10 and in the Security Documents with respect to the creation and perfection of the Liens on the Collateral in favor of the Collateral Agent, for the benefit of the Secured Parties, contemplated herein and in the Security Documents and to cause such requirement to be and remain satisfied, all at the expense of the Borrower, and provide to the Administrative Agent, from time to time upon reasonable request, evidence as to the perfection and priority of the Liens created by the Security Documents.

(4) Notwithstanding anything herein to the contrary,

(a) the other provisions of this Section 5.10 need not be satisfied with respect to any Excluded Assets or Excluded Equity Interests or any exclusions and carve outs from the perfection requirements set forth in the Collateral Agreement;

(b) neither the Borrower nor the other Loan Parties will be required to grant a security interest in any asset or perfect a security interest in any Collateral to the extent the cost, burden, difficulty or consequence of obtaining or perfecting a security interest therein outweighs the benefit of the security afforded thereby as reasonably determined by the Administrative Agent (acting at the direction of the Required SGUS Lenders); and

(c) no actions will be required outside of the United States in order to create or perfect any security interest in any assets located outside of the United States and no foreign law security or pledge agreements, foreign law mortgages or deeds or foreign intellectual property filings or searches will be required, in each case other than with respect to Foreign Subsidiaries that are or become Subsidiary Loan Parties; *provided, however*, that (i) in the event a Responsible Officer of the Borrower (reasonably and in good faith) and the Collateral Agent (acting at the direction of the Required SGUS Lenders) mutually determine that the burden or cost of obtaining foreign-law governed Security Documents or creating or taking perfections steps in any such foreign jurisdictions outweighs the benefit afforded thereby to the Secured Parties or obtaining foreign-law governed Security Documents or creating or taking such perfection steps in any such foreign jurisdictions is impracticable, impossible or ineffective or would give rise to or result in any violation of applicable law, then no such foreign-law governed Security Documents nor creation or the taking of perfection steps in any such foreign jurisdictions shall be required to be provided with respect to such Subsidiary Loan Party and (ii) notwithstanding anything to the contrary contained herein or in any other Loan Document, in the event that any foreign-law governed Security Documents or the creation or taking of perfection steps in any such foreign jurisdictions are being obtained in accordance with this clause (c), the Borrower and the Required SGUS Lenders shall mutually agree on customary "Agreed Security Principles" and a reasonable and customary timeline to complete such Security Documents and/or filings or perfection actions or steps (which may be longer than the timelines otherwise agreed to in this Section 5.10).

(5) If any Person or entity becomes a Guarantor or guarantees any obligations of the DIP ABL Facility, then the Borrower shall, within ten (10) days after the date such person or entity becomes a Guarantor or guarantees any obligations of the DIP ABL Facility (or such longer period as the

Administrative Agent agrees acting at the direction of the Required SGUS Lenders), cause such Subsidiary to:

(i) deliver a joinder to the Collateral Agreement, substantially in the form specified therein, duly executed on behalf of such person or entity; and

(ii) to the extent required by and subject to the exceptions set forth in the Collateral Agreement, pledge the outstanding Equity Interests (other than Excluded Equity Interests) owned by such person or entity, and cause each Loan Party owning any Equity Interests issued by such person or entity to pledge such outstanding Equity Interests (other than Excluded Equity Interests), and deliver all certificates (if any) representing such Equity Interests, together with stock powers or other instruments of transfer with respect thereto endorsed in blank, to the Collateral Agent (or a designated bailee thereof);

(iii) to the extent such person or entity and to the extent required by and subject to the exceptions set forth in this Section 5.10 or the Security Documents, deliver to the Collateral Agent (or a designated bailee thereof) Uniform Commercial Code financing statements with respect to such Subsidiary and such other documents reasonably requested by the Collateral Agent (acting at the direction of the Required SGUS Lenders) to create the Liens intended to be created under the Security Documents and perfect such Liens to the extent required by the Security Documents;

(iv) except as otherwise contemplated by this Section 5.10 or any Security Document, obtain all consents and approvals required to be obtained by it in connection with (A) the execution and delivery of all Security Documents (or supplements thereto) to which it is a party and the granting by it of the Liens thereunder and (B) the performance of its obligations thereunder; and

(v) deliver all documentation and other information about such Subsidiary that is required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act.

(6) If any Parent Entity (other than Holdings) receives an Approved TopCo Guarantor Transfer, then the Borrower shall, within ten (10) days after the date such person or entity receives such Approved TopCo Guarantor Transfer (or such longer period as the Administrative Agent agrees acting at the direction of the Required SGUS Lenders), cause such Parent Entity to:

(i) deliver a TopCo Guarantee Agreement, duly executed on behalf of such Parent Entity;

(ii) to the extent required by and subject to the exceptions set forth in the Collateral Agreement, pledge the outstanding Equity Interests (other than Excluded Equity Interests) owned by such person or entity, and cause each Loan Party owning any Equity Interests issued by such person or entity to pledge such outstanding Equity Interests (other than Excluded Equity Interests), and deliver all certificates (if any) representing such Equity Interests, together with stock powers or other instruments of transfer with respect thereto endorsed in blank, to the Collateral Agent (or a designated bailee thereof);

(iii) to the extent such person or entity and to the extent required by and subject to the exceptions set forth in this Section 5.10 or the Security Documents, deliver to the Collateral Agent (or a designated bailee thereof) Uniform Commercial Code financing

statements with respect to such Subsidiary and such other documents reasonably requested by the Collateral Agent to create the Liens intended to be created under the Security Documents and perfect such Liens to the extent required by the Security Documents;

(iv) except as otherwise contemplated by this Section 5.10 or any Security Document, obtain all consents and approvals required to be obtained by it in connection with (A) the execution and delivery of all Security Documents (or supplements thereto) to which it is a party and the granting by it of the Liens thereunder and (B) the performance of its obligations thereunder; and

(v) deliver all documentation and other information about such Subsidiary that is required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act.

SECTION 5.11 Cash Management Systems

(a) The Loan Parties shall maintain their cash management arrangements in compliance with the Cash Management Orders, subject to amendments reasonably acceptable to the Required SGUS Lenders; provided that the Cash Management Motion and the Cash Management Orders shall be in form and substance reasonably acceptable to the Required SGUS Lenders. No pledged bank account will be closed during the Chapter 11 Cases without the prior written consent of the Administrative Agent (acting at the direction of the Required SGUS Lenders) and nothing in the Interim DIP Order or Final DIP Order will alter or impair any security interest or perfection thereof that existed as of the Petition Date or that arises after the Petition Date. The Borrower and its Subsidiaries shall not make any payment or disbursement for any purpose that is not contemplated by the Approved Budget.

(b) DIP Proceeds Account. Notwithstanding anything to the contrary contained herein, the Borrower shall deposit or credit all net proceeds of the Loans, after giving effect to the payments of all expenses and other disbursements projected to be paid on the date of the applicable borrowing, into the DIP Proceeds Account and which shall be at all times subject to the DIP Proceeds Deposit Account Control Agreement with the Collateral Agent after the execution and delivery thereof pursuant to the terms of this Agreement to provide the Collateral Agent, for the equal and ratable benefit of the Secured Parties, a first-priority, perfected lien on and security interest in, all of the applicable Loan Party’s right, title and interest in, to and under the DIP Proceeds Account. All withdrawals from the DIP Proceeds Account shall be used solely for the permitted purposes described under Section 5.11(f) or pay fees and expenses of Specified Ad Hoc Group Advisors, including withdrawals of proceeds out of the DIP Proceeds Account in anticipation of upcoming payment obligations due within five (5) Business Days after such withdrawal to another operating account of a Loan Party, as determined by the Borrower in good faith. The Borrower shall provide an accounting of the DIP Proceeds Account and proceeds thereof (without duplication of such disclosure that would be included in the Budget Variance Report) upon request by the Required SGUS Lenders or the Administrative Agent (acting at the direction of the Required SGUS Lenders); provided, that such request shall not be made more than once every week and such information shall be delivered to the Administrative Agent to be available to all Lenders. The Borrower shall not be permitted to redesignate or replace the DIP Proceeds Account. Nothing in this Section 5.11(f) shall limit the Carve Out or funding of any amounts contemplated by the Carve Out.

SECTION 5.12 Certain Milestones. The Loan Parties shall ensure that each of the milestones set forth below (the “Milestones”) is achieved in accordance with the applicable timing referred to below

(or such later dates as approved in writing by the Required SGUS Lenders in their sole discretion, which approval may be provided via electronic mail):

(1) No later than one (1) day after the Petition Date, the Debtors shall have filed a motion, in form and substance acceptable to the Required SGUS Lenders, seeking entry of interim and final orders approving the Debtors' entry into the DIP Facility and the use of the Cash Collateral and Prepetition Collateral of the Prepetition Secured Parties (the "**DIP Motion**");

(2) No later than five (5) days after the Petition Date, the Debtors shall have obtained entry of the Interim DIP Order;

(3) No later than 20 days after the Petition Date, the Debtors shall have delivered a framework for a restructuring support agreement to the Administrative Agent;

(4) No later than 45 days after the Petition Date, the Debtors shall have obtained entry of the Final DIP Order;

(5) No later than 50 days after the Petition Date, the Debtors shall have delivered a draft business plan to the Specified Ad Hoc Group Advisors;

(6) No later than 60 days after the Petition Date, the Debtors shall have delivered an updated business plan that is in form and substance acceptable to the Required SGUS Lenders (the "**Business Plan**");

(7) No later than one (1) Business Day after the deadline set forth in clause (6), the Debtors shall enter into a restructuring support agreement (as amended, supplemented or otherwise modified from time to time, the "**Restructuring Support Agreement**") with the members of the Ad Hoc Group that is in form and substance acceptable to the Required SGUS Lenders;

(8) No later than 75 days after the Petition Date, the Debtors shall have filed (i) an Acceptable Plan and corresponding disclosure statement (the "**Disclosure Statement**") and (ii) a motion seeking conditional approval of the Disclosure Statement, approval of solicitation procedures relating to such Acceptable Plan (the "**Solicitation Procedures**") and a combined hearing on the adequacy of the Disclosure Statement and confirmation of the Acceptable Plan, that in each case are reasonably acceptable to the Required SGUS Lenders;

(9) No later than 90 days after the Petition Date, the Debtors shall have obtained a resolution with the CMBS Lenders (as defined in the DIP SGUS Credit Agreement) that is acceptable to the Required SGUS Lenders;

(10) No later than 100 days after the Petition Date, the Debtors shall have obtained entry of a combined order approving the Disclosure Statement and Solicitation Procedures on a conditional basis that is reasonably acceptable to the Required SGUS Lenders;

(11) No later than 110 days after the Petition Date, the Debtors shall have commenced solicitation on the Acceptable Plan pursuant to the Solicitation Procedures;

(12) No later than 140 days after the Petition Date, the Debtors shall have obtained entry of an Acceptable Confirmation Order; and

(13) No later than 160 days after the Petition Date, the Plan Effective Date shall have

occurred;

SECTION 5.13 Lender Calls. The Borrower shall, if requested by the Administrative Agent (acting at the direction of the Required SGUS Lenders), (a) no more than one (1) time per calendar week, hold a conference call or teleconference, at a reasonable time selected by the Borrower, with all of the Specified Ad Hoc Group Advisors that choose to participate, and (b) no more than one (1) time per calendar month, hold a conference call or teleconference, at a time selected by the Borrower and reasonably acceptable to the Required SGUS Lenders, with all of the Lenders that choose to participate, in each case, to review information recently reported in pursuant to Section 5.04.

SECTION 5.14 Post-Closing Matters.⁷

SECTION 5.15 Operations in the Ordinary Course of Business. Each Loan Party shall and shall cause its Subsidiaries to, at all times during the terms of this Agreement, continue to operate in the ordinary course of its business, in each case subject to this Agreement, the DIP Orders and the Approved Budget.

SECTION 5.16 Axonic Adversary Proceedings. Within [ten (10)] days following the Closing Date, the Borrower shall cause each Loan Party, Affiliate or Subsidiary party to that certain *Amended and Restated Conditional Bond Purchase Agreement*, dated March 18, 2021 (“CBPA”), with Axonic Credit Opportunities Master Fund, LP (“Axonic”) to file an adversary complaint in each applicable Chapter 11 Case (the “Adversary Complaint”) against Axonic related to the CBPA in a form acceptable to the Borrower and the Required SGUS Lenders.

SECTION 5.17 Public Communications. [As soon as practicably (a) but no later than 24 hours prior to the release of any press releases, public filings, public announcements, or other communications with any news media, or material mass communications, other than in the ordinary course of business and unrelated to this Agreement with any customers, vendors, current or former employees, in each case, to be made by the Loan Parties or any of their Subsidiaries relating to this Agreement or the transactions contemplated hereby and any amendments thereof and (b) at least two (2) Business Days (it being understood that such period may be shortened to the extent there are exigent circumstances that require such public communication to be made to comply with applicable law) prior to any communications outside the ordinary course of business relating in any way to collective bargaining agreements, contract negotiations, pension, or other postemployment benefit matters to current or former employees, retirees or their beneficiaries, PBGC, or any union, (each, a “*Chapter 11 Cases Communication*”), the Debtors shall provide a copy of any such press releases, statements or communications to the Specified Ad Hoc Group Advisors.]

SECTION 5.18 Certain Bankruptcy Matters. The Loan Parties shall comply (i) after entry thereof, with all of the requirements and obligations set forth in the DIP Orders and the Cash Management Order, as each such order is amended and in effect from time to time in accordance with this Agreement, (ii) after entry thereof, with each Approved Court Order, as each such order is amended and in effect in accordance with this Agreement and (iii) to the extent not covered by subclause (i) or (ii), after entry thereof, with the First Day Orders, Second Day Orders and any orders approving any pleadings seeking to establish material procedures for administration of the Chapter 11 Cases or approving significant or material non-ordinary course transactions and obtained in the Chapter 11 Cases, as each such order is amended and in effect in accordance with this Agreement; provided that such orders shall be in form and substance reasonably satisfactory to the Administrative Agent and the Required SGUS Lenders, shall not

⁷ NTD: To be added as necessary.

have been vacated, reversed or stayed and shall not have been amended or modified except in a manner reasonably satisfactory to the Administrative Agent and the Required SGUS Lenders.

SECTION 5.19 Priority of Liens; No Discharge.

(a) Each of the Loan Parties hereby covenants, represents, warrants and agrees that, upon entry of, and subject to the terms of, the Interim DIP Order (and when applicable, the Final DIP Order) (including and without prejudice to, without limitation, in each case, any rights or liens or perfected security interests (and the priorities thereof) granted under the Interim DIP Order or Final DIP Order under any other provision of Section 364 of the Bankruptcy Code or any other applicable provisions of the Bankruptcy Code) and subject to the Carve Out as set forth in the DIP Orders in all respects, the Obligations: (i) pursuant to Section 364(c)(1) of the Bankruptcy Code, shall at all times constitute allowed DIP Superpriority Claims in the Chapter 11 Cases; and (ii) pursuant to Section 364(c)(2), (c)(3) and (d) of the Bankruptcy Code, shall be secured by a valid, binding, enforceable, non-avoidable, and automatically perfected senior priority Lien upon the Collateral.

(b) The relative priorities of the Liens on property and assets of Debtors described in this Section 5.19 with respect to the Collateral shall be as set forth in the Interim DIP Order (and, when entered, the Final DIP Order). In accordance with the Interim DIP Order (or, once entered, the Final DIP Order), all of the Liens on property and assets of Debtors described in this Section 5.19 shall be effective and perfected upon entry of the Interim DIP Order, without the necessity of the execution, recordation of filings by the Debtors or security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the Administrative Agent or Collateral Agent, of, or over, any Collateral, as set forth in the Interim DIP Order (and, when entered, the Final DIP Order).

(c) Notwithstanding the provisions of section 362 of the Bankruptcy Code, and subject to the applicable provisions of the Interim DIP Order (and, when applicable, the Final DIP Order), upon the occurrence of the Maturity Date (whether by acceleration or otherwise), the Administrative Agent and the Collateral Agent shall be entitled to immediately be Paid in Full in cash of the Obligations and to enforce the remedies provided for hereunder.

(d) Each of the Loan Parties agrees that (i) its obligations under the Loan Documents shall not be discharged by the entry of an order confirming any Chapter 11 Plan (and each of the Loan Parties, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby irrevocably waives any such discharge) and (ii) the DIP Superpriority Claim granted to the Administrative Agent and the Lenders pursuant to the DIP Orders and the Liens granted to the Collateral Agent and the Lenders pursuant to the DIP Orders shall not be affected in any manner by the entry of an order confirming any Chapter 11 Plan.

ARTICLE VI

Negative Covenants

The Borrower (and, solely with respect to Section 6.08(2), Holdings) covenants and agrees with each Lender that, so long as this Agreement is in effect and until the Commitments have been terminated and the Obligations have been Paid in Full, it will not and will not permit any Restricted Subsidiary to:

SECTION 6.01 Indebtedness. Issue, incur, assume or be or become liable for any Post-Petition Indebtedness, except the following (collectively, “*Permitted Indebtedness*”):

(1) Indebtedness created under the Loan Documents and any Guarantees thereof, in each case incurred by one or more Loan Parties;

(2) (a) Indebtedness of a Loan Party incurred pursuant to the DIP ABL Credit Agreement, in an aggregate principal amount not to exceed the lesser of \$1,500,000,000 and the Borrowing Base (as defined in the DIP ABL Credit Agreement) then in effect, and Guarantees of the foregoing by Loan Parties and (b) Indebtedness incurred pursuant to the DIP SGUS Credit Agreement and any Guarantees of the foregoing;

(3) the Prepetition Indebtedness and any Guarantees of the foregoing;

(4) Indebtedness existing on the Closing Date and set forth on Schedule 6.01 (or to the extent not set forth on such Schedule 6.01, where the outstanding principal amount of such Indebtedness is in each case less than \$5.0 million);

(5) Capital Lease Obligations, Indebtedness with respect to mortgage financings and purchase money Indebtedness to finance all or any part of the purchase, lease, construction, installation, repair or improvement of property (real or personal), plant or equipment or other fixed or capital assets in each case, of a Loan Party or a Restricted Subsidiary and Indebtedness arising from the conversion of the obligations of the Borrower or any Restricted Subsidiary under or pursuant to any “synthetic lease” transactions to on-balance sheet Indebtedness of the Borrower or such Restricted Subsidiary, in an aggregate outstanding principal amount, not to exceed \$5.0 million; *provided* that such Indebtedness is incurred within 270 days after the purchase, lease, construction, installation, repair or improvement of the property that is the subject of such Indebtedness;

(6) Indebtedness owed to (including obligations in respect of letters of credit or bank Guarantees or similar instruments for the benefit of) any Person providing workers’ compensation, health, disability or other employee benefits (whether to current or former employees) or property, casualty or liability insurance or self-insurance in respect of such items, or other Indebtedness with respect to reimbursement-type obligations regarding workers’ compensation claims, health, disability or other employee benefits (whether current or former) or property, casualty or liability insurance;

(7) intercompany Indebtedness between or among the Borrower and the Restricted Subsidiaries; *provided* that the aggregate outstanding principal amount of such Indebtedness that is owing by any Restricted Subsidiary that is not a Loan Party to a Loan Party may not exceed the amount, as of the date such Indebtedness is incurred, permitted pursuant to Section 6.04;

(8) Indebtedness pursuant to Hedge Agreements;

(9) Indebtedness of a Loan Party or a Restricted Subsidiary in respect of letters of credit, bank guarantees, bankers’ acceptances, performance, bid, appeal and surety bonds and performance and completion guarantees or similar instruments or obligations issued or created in the ordinary course of business in an aggregate principal amount not to exceed \$1.0 million at any time outstanding;

(10) Guarantees of Indebtedness of the Borrower or any Restricted Subsidiary permitted to be incurred under this Agreement to the extent such Guarantees are permitted by the provisions of Section 6.04 (other than Section 6.04(19));

(11) [reserved];

(12) Indebtedness arising from the honoring by a bank or other financial institution of check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, so long as such Indebtedness (other than credit or purchase cards) is extinguished within ten (10) Business Days after notification received by the Borrower of its incurrence;

(13) [reserved];

(14) [reserved];

(15) Indebtedness consisting of (a) the financing of insurance premiums or (b) take or pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(16) [reserved];

(17) Cash Management Obligations and Indebtedness in respect of Cash Management Services entered into in the ordinary course of business;

(18) [reserved];

(19) [reserved];

(20) [reserved];

(21) Unsecured Indebtedness in respect of short-term obligations to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services so long as such obligations are incurred in the ordinary course of business and not in connection with the borrowing of money;

(22) Indebtedness representing deferred compensation or other similar arrangements incurred by the Borrower or any Subsidiary (a) in the ordinary course of business or (b) in connection with any Permitted Investment;

(23) [reserved];

(24) Customer deposits and advance payments received in the ordinary course of business from customers for goods purchased in the ordinary course of business;

(25) Indebtedness incurred by the Borrower or any Subsidiary in connection with bankers' acceptances, discounted bills of exchange, warehouse receipts or similar facilities, in each case incurred or undertaken in the ordinary course of business;

(26) [reserved];

(27) [reserved];

(28) the DIP Superpriority Claims;

(29) the Adequate Protection Liens;

(30) additional Indebtedness of a Loan Party or a Restricted Subsidiary in an aggregate outstanding principal amount not to exceed \$5.0 million; *provided* that no Indebtedness may be incurred pursuant to this Section 6.02(31) by any Person that is not a Guarantor. and

(31) Guarantees in respect of any real estate financing by Subsidiaries in respect of customary “bad boy” obligations and similar recourse provisions which Guarantees, in the good faith judgment of the Borrower, are not reasonably expected to result in the lenders under such financing actually having recourse to the Borrower or any Subsidiary Loan Party with respect to the monetary obligation owing under such financing incurred by such Subsidiary and (ii) Guarantees in effect as of the Closing Date and provided pursuant to the Ground Lessee Pledge Documentation.

Accrual of interest, the accretion of accreted value, amortization of original issue discount, the payment of interest or dividends in the form of additional Indebtedness with the same terms, and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies, will not be deemed to be an incurrence of Indebtedness for purposes of this Section 6.01. Guarantees of, or obligations in respect of letters of credit relating to Indebtedness that is otherwise included in the determination of a particular amount of Indebtedness will not be included in the determination of such amount of Indebtedness; *provided* that the incurrence of the Indebtedness represented by such Guarantee or letter of credit, as the case may be, was in compliance with this Section 6.01.

For purposes of determining compliance with any U.S. Dollar-denominated restriction on the incurrence of Indebtedness, the U.S. Dollar equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed or first incurred (whichever yields the lower U.S. Dollar equivalent), in the case of revolving credit debt; *provided* that if such Indebtedness is incurred to Refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable U.S. Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. Dollar-denominated restriction will be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced (*plus* unpaid accrued interest and premium (including tender premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses in connection therewith).

All Indebtedness outstanding under this Agreement will be deemed to have been incurred in reliance on the exception in clause (1) of the definition of “Permitted Indebtedness” and all Indebtedness under the DIP ABL Credit Agreement or Guarantees thereof will be deemed to have been incurred pursuant to clause (2) of the definition of “Permitted Indebtedness”.

SECTION 6.02 Liens. Issue, incur, assume or be or become liable for any Lien that secures obligations under any Indebtedness on any property or assets at the time owned by it, except the following (collectively, “***Permitted Liens***”):

(1) Liens securing the Indebtedness incurred in accordance with clauses (1) through (3) of the definition of “Permitted Indebtedness” and Obligations related thereto;

(2) [reserved];

(3) Liens securing Indebtedness existing on the Closing Date and set forth on Schedule 6.02 (or to the extent not set forth on such Schedule 6.02, where the outstanding principal amount of Indebtedness secured by each such Lien is less than \$5.0 million); *provided* that (x) any such Liens on Term Loan Priority Collateral shall be junior to the Lien of the Administrative Agent securing the Obligations and (y) such Liens only secure the obligations that they secure on the Closing Date and do not apply to any other property or assets of the Borrower or any Restricted Subsidiary other than replacements, additions, accessions and improvements thereto;

(4) Liens securing Indebtedness incurred in accordance with Section 6.01(5); *provided* that such Liens only extend to the assets financed with such Indebtedness (and any replacements, additions, accessions and improvements thereto);

(5) Liens securing the Indebtedness incurred in accordance with clause (3) of the definition of “Permitted Indebtedness” and Obligations related thereto;

(6) Liens securing Indebtedness incurred pursuant to Section 6.01(31(ii));

(7) (a) Liens on property or Equity Interests of a Person at the time such Person becomes a Subsidiary if such Liens were not created in connection with, or in contemplation of, such other Person becoming a Subsidiary and (b) Liens on property at the time the Borrower or a Subsidiary acquired such property, including any acquisition by means of a merger or consolidation with or into the Borrower or any of the Subsidiaries, if such Liens were not created in connection with, or in contemplation of, such acquisition;

(8) Liens for Taxes, assessments or other governmental charges or levies not yet delinquent or that are being contested in compliance with Section 5.03;

(9) Liens disclosed by the title insurance commitments or policies delivered on or subsequent to the Closing Date and any replacement, extension or renewal of any such Liens (so long as the Indebtedness and other obligations secured by such replacement, extension or renewal Liens are permitted by this Agreement); *provided* that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal;

(10) Liens securing judgments that do not constitute an Event of Default under Section 8.01(10) and notices of lis pendens and associated rights related to litigation being contested in good faith by appropriate proceedings and in respect of which the Borrower or any affected Subsidiary has set aside on its books reserves in accordance with GAAP with respect thereto;

(11) Liens imposed by law, including landlord’s, carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s, construction or other like Liens arising in the ordinary course of business securing obligations that are not overdue by more than thirty (30) days or that are being contested in good faith by appropriate proceedings and in respect of which, if applicable, the Borrower or a Subsidiary has set aside on its books reserves in accordance with GAAP;

(12) (a) pledges and deposits and other Liens made in the ordinary course of business in compliance with the Federal Employers Liability Act or any other workers’ compensation, unemployment insurance and other similar laws or regulations and deposits securing liability to insurance carriers under insurance or self-insurance arrangements in respect of such obligations and (b) pledges and deposits and other Liens securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the Borrower or any Subsidiary;

(13) deposits to secure the performance of bids, trade contracts (other than for Indebtedness), leases (other than Capital Lease Obligations), the delivery of merchandise or services with factors (to company suppliers), vendors, shippers, brand partners, credit insurers and other service providers (but not to secure Indebtedness or receivables or Capital Lease Obligations), statutory obligations, surety 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 (including letters of credit in lieu of any such bonds or to support the issuance thereof) incurred by the Borrower or any Subsidiary, in each case, in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business;

(14) survey exceptions and such matters as an accurate survey would disclose, easements, trackage rights, leases (other than Capital Lease Obligations), licenses, special assessments, rights of way covenants, conditions, restrictions and declarations on or with respect to the use, ownership or operation of Real Property, servicing agreements, development agreements, site plan agreements and other similar encumbrances incurred in the ordinary course of business and title defects or irregularities that are of a minor nature and that, in the aggregate, do not interfere in any material respect with the ordinary conduct of the business of the Borrower or any Subsidiary;

(15) any interest or title of a lessor or sublessor under any leases or subleases entered into by the Borrower or any Subsidiary in the ordinary course of business;

(16) Liens that are contractual rights of set-off (a) 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 or (b) relating to purchase orders and other agreements entered into with customers of the Borrower or any Subsidiary in the ordinary course of business;

(17) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights;

(18) non-exclusive leases or subleases, licenses or sublicenses (including with respect to intellectual property and software) granted to others in the ordinary course of business that do not interfere in any material respect with the business of the Borrower and the Restricted Subsidiaries, taken as a whole;

(19) Liens solely on any cash earnest money deposits made by the Borrower or any Restricted Subsidiary in connection with any letter of intent or other agreement in respect of any Permitted Investment and in each case approved by the Bankruptcy Court;

(20) the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business which are perfected and in full force and effect prior to the Petition Date;

(21) Liens arising from precautionary Uniform Commercial Code financing statements;

(22) [reserved];

(23) 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;

(24) Liens on securities that are the subject of repurchase agreements constituting Cash Equivalents under clause (4) of the definition thereof;

(25) Liens securing insurance premium financing arrangements with regards to the policies and proceeds thereof;

(26) [reserved];

(27) [reserved];

(28) Liens:

(a) of a collection bank arising under Section 4-210 of the Uniform Commercial Code, or any comparable or successor provision, on items in the course of collection;

(b) attaching to pooling, commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business; or

(c) in favor of banking or other financial institutions or entities, or electronic payment service providers, arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking or finance industry;

(29) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit entered into in the ordinary course of business issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(30) additional Liens securing obligations in an aggregate outstanding amount not to exceed \$1.0 million; provided that, to the extent such Liens are on DIP Term Loan Priority Collateral, such Liens shall rank junior to the Liens thereon securing the Obligations, and shall be subject to the provisions of the DIP ABL Intercreditor Agreement or an intercreditor agreement in form and substance reasonably satisfactory to the Required SGUS Lenders;

(31) [reserved];

(32) to the extent constituting a Lien, rights of setoff, reserves and holdbacks against credit balances of a Loan Party or any of its Subsidiaries with credit card issuers or credit card processors to such Loan Party or any such Subsidiaries arising in the ordinary course of business;

(33) Liens securing amounts owing to any Qualified Counterparty under any Secured Hedge Agreement and Cash Management Obligations, which amounts are secured under the Loan Documents;

(34) Liens which secure Indebtedness incurred in accordance with Section 6.01(10) (provided that such Liens shall attach only to the cash to secure or support such letters of credit or similar instruments);

(35) [reserved];

(36) to the extent constituting a Lien, changes in title with respect to Real Property occurring solely as a result of, or in furtherance of, any redevelopment or repurposing of such Real Property, so long as any such changes in title do not materially and adversely affect the security interest of the Administrative Agent or Collateral Agent in such Real Property (if applicable).

SECTION 6.03 [Reserved].

SECTION 6.04 Investments, Loans and Advances. Purchase, hold or acquire (including pursuant to any merger, consolidation or amalgamation with a Person that is not a Wholly Owned Subsidiary immediately prior to such merger, consolidation or amalgamation) any Equity Interests, evidences of Indebtedness or other securities of, make or permit to exist any loans or advances to or Guarantees of the obligations of, or make or permit to exist any investment or any other interest in any other Person, or purchase, lease or otherwise acquire (in one transaction or a series of transactions) all or any substantial part of the assets of any other Person or any division, unit or business of any other Person (each, an “*Investment*” and with all such Investments being valued at their original fair market value and without taking into account subsequent increases or decreases in value), except the following (collectively, “*Permitted Investments*”):

(1) any Investments existing on the Closing Date and any replacements, refinancings, refunds, extensions, renewals or reinvestments thereof, so long as the amount of any Investment pursuant to this clause (1) is not increased at any time above the amount of such Investment existing on the Closing Date;

(2) Investments made or around the Closing Date in order to consummate or complete the Transactions;

(3) [reserved];

(4) intercompany Investments (including intercompany Indebtedness) among the [Loan Parties (other than Holdings)]; *provided* that no Guarantor may make an Investment following the Petition Date in a non-Debtor pursuant to this subclause (4);

(5) [reserved];

(6) Cash Equivalents and, to the extent not made for speculative purposes, Investment Grade Securities or Investments that were Cash Equivalents or Investment Grade Securities when made;

(7) Investments arising out of the receipt by the Borrower or any of the Subsidiaries of non-cash consideration in connection with any sale of assets permitted under Section 6.05;

(8) accounts receivable, security deposits and prepayments and other credits granted or made in the ordinary course of business and any Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and others, including in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with or judgments against, such account debtors and others, in each case in the ordinary course of business;

(9) Investments acquired as a result of a foreclosure by the Borrower or any Subsidiary with respect to any secured Investments or other transfer of title with respect to any secured Investment in default;

(10) Hedge Agreements;

(11) Investments held by the Borrower or any Subsidiary in the Equity Interests of any Subsidiary to the extent that such Investment was permitted under this Section 6.04 when initially made (other than pursuant to this clause (11));

(12) Investments resulting from pledges and deposits that are Permitted Liens;

(13) Approved Saks Off 5th Debtor Transfers and Approved TopCo Guarantor Transfers;

(14) acquisitions of obligations of one or more officers or other employees of any Parent Entity, Borrower or any Subsidiary of Borrower in connection with such officer's or employee's acquisition of Equity Interests of any Parent Entity, so long as no cash is actually advanced by the Borrower or any Subsidiary to such officers or employees in connection with the acquisition of any such obligations;

(15) Guarantees of operating leases (for the avoidance of doubt, excluding Capital Lease Obligations) or of other obligations that do not constitute Indebtedness, in each case, entered into by the Borrower or any Subsidiary in the ordinary course of business;

(16) Investments to the extent that payment for such Investments is made with Equity Interests of any Parent Entity;

(17) Investments consisting of the redemption, purchase, repurchase or retirement of any Equity Interests permitted under Section 6.06;

(18) Investments in the ordinary course of business consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Uniform Commercial Code Article 4 customary trade arrangements with customers consistent with past practices;

(19) Guarantees permitted under Section 6.01;

(20) 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 Borrower or any Subsidiary;

(21) Investments, including loans and advances, to any Parent Entity so long as Borrower or any Subsidiary would otherwise be permitted to make a Restricted Payment in such amount; *provided* that the amount of any such Investment will be deemed to be a Restricted Payment under the appropriate clause of Section 6.06 for all purposes of this Agreement;

(22) Investments consisting of the contribution of intellectual property pursuant to joint marketing arrangements with other Persons;

(23) purchases or acquisitions of inventory, supplies, materials and equipment or purchases or acquisitions of contract rights or intellectual property in each case in the ordinary course of business;

(24) [reserved];

(25) [reserved];

(26) intercompany current liabilities owed to joint ventures incurred in the ordinary course of business in connection with the cash management operations of the Borrower and its Subsidiaries;

(27) [reserved];

(28) [reserved];

(29) Investments in a Real Estate Subsidiary or Real Estate Venture or any other joint venture consisting of contributions or other transfers of Real Property as of the Closing Date;

(30) to the extent constituting an Investment, any transaction permitted by Section 6.05 (other than clause (5) thereof);

(31) [reserved];

(32) [reserved];

(33) Investments of cash and cash equivalents;

(34) [reserved];

(35) Investments consisting of (x) Permitted IP Transactions or (y) Equity Interests of the Authentic JV made to a Designated IPCo Subsidiary, in each case, as of the Closing Date;

(36) [reserved];

(37) [reserved]; and

(38) Investments in SGUS LLC.

Notwithstanding anything to the contrary, no such Investments shall be permitted after the Petition Date unless such Investments are made strictly in accordance with the Approved Budget (subject to Permitted Variances).

SECTION 6.05 Mergers, Consolidations and Sales of Assets. (x) Merge into, or consolidate or amalgamate with, any other Person, or permit any other Person to merge into or consolidate or amalgamate with it, or (y) sell, transfer or otherwise dispose of (in one transaction or in a series of transactions) all or any part of its assets (this clause (y), an “*Asset Sale*”), except that this Section 6.05 will not prohibit:

(1) if at the time thereof and immediately after giving effect thereto no Event of Default has occurred and is continuing or would result therefrom:

(a) the merger, consolidation or amalgamation of any Subsidiary into (or with) the Borrower in a transaction in which the Borrower is the survivor;

(b) the merger, consolidation or amalgamation of any Subsidiary into or with any Subsidiary Loan Party in a transaction in which the surviving or resulting entity is a Subsidiary Loan Party; and, in the case of each of the foregoing clause (a) and this clause (b), no Person other than the Borrower or a Subsidiary Loan Party receives any consideration;

(c) the merger, consolidation or amalgamation of any Subsidiary that is not a Loan Party into or with any other Subsidiary that is not a Loan Party;

(d) the liquidation or dissolution or change in form of entity of any Subsidiary of the Borrower (a) if a Responsible Officer of the Borrower determines in good faith that such liquidation, dissolution or change in form is in the best interests of the Borrower and is not materially disadvantageous to the Lenders or (b) such liquidation or dissolution is effected pursuant to the DIP Orders or any other order of the court entered in the Chapter 11 Cases; provided that, the assets of any such liquidated or dissolved Subsidiary that is a Loan Party shall be contributed to another Loan Party; or

- (e) the merger, consolidation or amalgamation of any Subsidiary with or into any other Person in order to effect a Permitted Investment so long as the continuing or surviving Person will be a Subsidiary Loan Party if the merging, consolidating or amalgamating Subsidiary was a Subsidiary Loan Party and which, together with each of its Subsidiaries, shall have complied with the requirements of Section 5.10;
- (2) any Asset Sale solely comprised of ABL Priority Collateral if such Asset Sale is made for fair market value (as determined by a Responsible Officer of the Borrower in good faith) and:
 - (i) no Event of Default exists at such time or would result therefrom; and
 - (ii) at least 95.0% of the consideration therefor is in the form of cash and Cash Equivalents;
- (3) (a) the purchase and sale of inventory in the ordinary course of business; (b) the acquisition or lease (pursuant to an operating lease) of any other asset in the ordinary course of business; (c) the sale of surplus, obsolete, damaged or worn out equipment or other property in the ordinary course of business; or (d) the disposition of Cash Equivalents (or Investments that were Cash Equivalents when made), other than an Investment or Restricted Payment not permitted hereunder;
- (4) Asset Sales with respect to any Debtor pursuant to any order of the Bankruptcy Court permitting de minimis asset dispositions without further order of the Bankruptcy Court;
- (5) Investments permitted by Section 6.04 (other than clause (30) thereof), Permitted Liens, and Restricted Payments permitted by Section 6.06;
- (6) the sale of defaulted receivables in the ordinary course of business and not as part of an accounts receivables financing transaction;
- (7) any Asset Sale among the Borrower and the Subsidiary Loan Parties;
- (8) leases, licenses, or subleases or sublicenses of any real or personal property in the ordinary course of business;
- (9) sales, licenses, transfers, abandonments, allowances to lapse or other dispositions of Intellectual Property (as defined in the Collateral Agreement) that are immaterial or no longer used, useful or necessary in the operation of the business of the Borrower or such Subsidiary, as determined by a Responsible Officer of the Borrower reasonably and in good faith and in consultation with the Required SGUS Lenders;
- (10) sales, leases or other dispositions of inventory of the Borrower or any Subsidiary in the ordinary course of business and consistent with past practice, and determined by the management of the Borrower to be no longer useful or necessary in the operation of the business of the Borrower or such Subsidiary, as determined by a Responsible Officer of the Borrower reasonably and in good faith and in consultation with the Required SGUS Lenders;
- (11) any Asset Sale of Real Property expressly included in the Approved Budget;
- (12) to the extent allowable under Section 1031 of the Code (or comparable or successor provision), any exchange of like property (excluding any boot thereon permitted by such provision) for use in any business conducted by the Borrower or any Subsidiary that is not in contravention of Section 6.08;

(13) the Specified Closures, provided that such Specified Closures are conducted in accordance with Section 5.18;

(14) [reserved];

(15) [reserved];

(16) [reserved];

(17) Approved Saks Off 5th Debtor Transfers and Approved TopCo Guarantor Transfers;

(18) to the extent constituting an Asset Sale, changes in title with respect to Real Property occurring solely as a result of, or in furtherance of, any redevelopment or repurposing of such Real Property, so long as any such changes in title do not materially and adversely affect the security interest of the Administrative Agent or Collateral Agent in such Real Property;

(19) (a) Permitted IP Transactions and (b) ordinary course non-exclusive licenses and sublicenses;

(20) the disposition, conversion or other transfer of Equity Interests of the Authentic JV held by the Borrower or its Subsidiaries pursuant to and in accordance with the ABG Investment Agreement; and

(21) the participations pursuant to the Prepetition Notes Participation Agreement.

Notwithstanding anything else in this Agreement to the contrary, (i) dispositions by Loan Parties to non-Loan Parties consisting of Material Intellectual Property or intellectual property used or useful in the operation of the business of the Loan Parties (whether owned by the Borrower or any of its Subsidiaries) shall be prohibited and (ii) no Loan Party shall dispose of, or shall permit any Subsidiary to dispose of, any intellectual property to any Person.

To the extent any Collateral identified to the Administrative Agent is disposed of in a transaction expressly permitted by this Section 6.05 to any Person other than a Borrower or any Guarantor, such Collateral will be free and clear of the Liens created by the Loan Documents, and the applicable Agent (acting at the direction of the Required SGUS Lenders) will take, and each Lender hereby authorizes the each Agent to take, any actions reasonably requested by the Borrower in order to evidence the foregoing, in each case.

Notwithstanding anything to the contrary, no Asset Sales shall be permitted after the Petition Date unless such Asset Sales are made strictly in accordance with the Approved Budget (subject to Permitted Variances).

SECTION 6.06 Restricted Payments. Declare or pay any dividend or make any other distribution (by reduction of capital or otherwise), directly or indirectly, whether in cash, property, securities or a combination thereof, with respect to any of its Equity Interests (other than dividends and distributions on Equity Interests payable solely by the issuance of additional Equity Interests (other than Disqualified Stock) of the Person paying such dividends or distributions) or directly or indirectly redeem, purchase, retire or otherwise acquire for value any of its Equity Interests or set aside any amount for any such purpose (other than through the issuance of additional Equity Interests (other than Disqualified Stock)

of the Person redeeming, purchasing, retiring or acquiring such shares) (the foregoing, “**Restricted Payments**”) other than:

(1) any Restricted Payment on or about the Closing Date to fund the Transaction, including Transaction Costs;

(2) Restricted Payments made strictly in accordance with the Approved Budget (subject to Permitted Variances);

(3) Approved Saks Off 5th Debtor Transfers and Approved TopCo Guarantor Transfers;

(4) Restricted Payments consisting of (I) cash distributions by the Borrower and/or any Restricted Subsidiary for purposes of paying any franchise and similar taxes (and other fees and expenses) required to be paid by the (direct or indirect) owners or equityholders of the Borrower to maintain their existence to the extent such taxes (and other fees and expenses) are attributable to the operations of the Borrower and its subsidiaries; (II) for any taxable period (or portion thereof) for which the Borrower or any of its Restricted Subsidiaries are members of a consolidated, combined, unitary or similar tax group (or, where the Borrower is disregarded as an entity separate from its owner where that owner is a member of such group for U.S. federal or applicable income tax purposes) for U.S. federal or applicable state, local or foreign income or similar tax purposes (a “**Tax Group**”), cash distributions by the Borrower and/or any Restricted Subsidiary to permit any (direct or indirect) parent or other applicable taxpayer or other applicable taxpayer to pay the portion of any U.S. federal, state, local and/or foreign income and similar taxes (including any alternative minimum taxes) of such Tax Group for such taxable period that are attributable to the taxable income or activities of the Borrower and/or the applicable Restricted Subsidiaries (and, to the extent permitted below, the applicable Unrestricted Subsidiaries), as determined under Treas. Reg. § 1.1552-1(a)(1) or using principles analogous thereto; *provided* that for each such taxable period, (1) the amount of such payments made in respect of such taxable period in the aggregate will not exceed the amount that such Borrower and the applicable Restricted Subsidiaries (and, to the extent permitted below, the applicable Unrestricted Subsidiaries) would have been required to pay in respect of such taxable income as stand-alone taxpayers or a stand-alone Tax Group (calculated assuming such Borrower is classified for U.S. federal income tax purposes in the same manner as the applicable parent company and reduced by any such taxes paid directly by the Borrower or any Restricted Subsidiary to the relevant taxing authority for such tax year), and (2) the amount of such payments made in respect of an Unrestricted Subsidiary will be permitted only to the extent that cash distributions were made by an Unrestricted Subsidiary to such Borrower or any Restricted Subsidiary for such purpose; and (III) cash distributions by the Borrower and/or any Restricted Subsidiary to allow HBSFA Holdings Ltd. to pay any Canadian income taxes attributable to income, operations or activities of the Borrower and/or its subsidiaries; and

(5) non-cash repurchases of Equity Interests deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants.

SECTION 6.07 Transactions with Affiliates. Sell or transfer any property or assets to, or purchase or acquire any property or assets from, or otherwise engage in any other transaction with, any of its Affiliates in a transaction involving aggregate consideration in excess of \$1.0 million, unless such transaction is deemed in good faith by a majority of the Disinterested Directors of the Borrower or any Parent Entity (or any disinterested members of any appropriate committee thereof) to be on terms no less favorable to the Borrower and its Restricted Subsidiaries, as applicable, than would be obtained in a comparable arm’s length transaction with a Person that is not an Affiliate, except that this Section 6.07 will not prohibit:

(1) transactions between or among (a)(i) Holdings, the Borrower and the Subsidiary Loan Parties or (ii) Holdings, the Borrower and any Person that becomes a Subsidiary Loan Party as a result of such transaction (including by way of a merger, consolidation or amalgamation in which a Loan Party is the surviving entity) and (b) Holdings, the Borrower and any Subsidiary that is not a Subsidiary Loan Party as of the date of the consummation, so long as (i) such transaction is on an arm's length basis or (ii) involves the sharing of operating, overhead, legal, accounting and other professional fees and expenses (including directors' fees and expenses and administrative, legal, accounting, filings and similar expenses) in the ordinary course of business;

(2) [reserved];

(3) [reserved];

(4) loans or advances to employees or consultants of any Parent Entity, the Borrower or any Subsidiary in accordance with Sections 6.04(2) or (11);

(5) the payment of fees, reasonable out-of-pocket costs and indemnities to directors, officers, consultants and employees of any Parent Entity, the Borrower or any of the Subsidiaries in the ordinary course of business (limited, in the case of any Parent Entity, to the portion of such fees and expenses that are allocable to the Borrower and the Subsidiaries and subject to reasonable pro-ration of joint services, indemnities, costs, fees and expenses);

(6) the transactions, agreements and arrangements in existence on the Closing Date and set forth on Schedule 6.07 or any amendment thereto on arm's-length terms;

(7) (a) any employment agreements entered into by Holdings, the Borrower or any of the Subsidiaries in the ordinary course of business, (b) any subscription agreement or similar agreement pertaining to the repurchase of Equity Interests pursuant to put/call rights or similar rights with employees, officers or directors and (c) any employee compensation, benefit plan or arrangement, any health, disability or similar insurance plan which covers employees, and any reasonable employment contract and transactions pursuant thereto;

(8) Restricted Payments permitted under Section 6.06, including any Approved TopCo Guarantor Transfer,

(9) [reserved];

(10) [reserved];

(11) transactions with Subsidiaries for the purchase or sale of goods, products, parts and services entered into in the ordinary course of business and on arm's length terms;

(12) any transaction in respect of which the Borrower delivers to the Administrative Agent (for delivery to the Lenders) a letter addressed to the Board of Directors of the Borrower or any Parent Entity from an accounting, appraisal or investment banking firm, in each case, of nationally recognized standing that is (a) in the good faith determination of the Borrower qualified to render such letter and (b) reasonably satisfactory to the Administrative Agent, which letter states that such transaction is on terms that are no less favorable to the Borrower or the Restricted Subsidiaries, as applicable, than would be obtained in a comparable arm's length transaction with a Person that is not an Affiliate;

(13) transactions with joint ventures for the purchase or sale of goods, equipment and services entered into in the ordinary course of business and consistent with past practice;

(14) [reserved];

(15) [reserved];

(16) [reserved];

(17) payments or loans (or cancellation of loans) to employees or consultants that are:

(a) approved by a majority of the Disinterested Directors of the Borrower in good faith;

(b) made in compliance with applicable law;

(c) otherwise permitted under this Agreement;

(d) made in accordance with the DIP Orders; and

(e) permitted by the Approved Budget;

(18) transactions with customers, clients, suppliers, or purchasers or sellers of goods or services, in each case, in the ordinary course of business and otherwise in compliance with the terms of this Agreement, that are fair to the Borrower and the Restricted Subsidiaries;

(19) Permitted IP Transactions;

(20) [reserved];

(21) the existence of, or the performance by any Loan Party of its obligations under the terms of, any customary registration rights agreement to which a Loan Party or any Parent Entity is a party or becomes a party in the future;

(22) [reserved];

(23) [reserved];

(24) [reserved];

(25) [reserved];

(26) the ABG Investment Agreement (and any payments or transactions made pursuant thereto), as of the Closing Date;

(27) [reserved]; and

(28) transactions pursuant to Section 6.04(38).

Notwithstanding anything to the contrary, no such transactions with Affiliates shall be permitted after the Petition Date unless such transactions are made strictly in accordance with the Approved Budget (subject to Permitted Variances).

SECTION 6.08 Business.

(1) Notwithstanding any other provisions hereof, engage at any time in any business or business activity other than any business or business activity conducted by the Borrower and the Subsidiaries on the Closing Date (after giving effect to the Transactions) and any similar, corollary, related, ancillary, incidental or complementary business or business activities or a reasonable extension, development or expansion thereof or ancillary thereto.

(2) Holdings will not engage in any business other than its ownership of the capital stock of, and the management of, the Borrower and, indirectly, its Subsidiaries and activities incidental thereto; *provided* that Holdings may engage in those activities that are incidental to (1) the maintenance of its existence in compliance with applicable law, (2) legal, tax and accounting matters in connection with any of the foregoing or following activities, (3) the entering into, and performing its obligations under, this Agreement, the other Loan Documents to which it is a party, the DIP ABL Documents and the other definitive documentation entered into in connection with any of the foregoing, (4) the issuance, sale or repurchase of its Equity Interests and the receipt of capital contributions, (5) the making of dividends or distributions on its Equity Interests, (6) the filing of registration statements, and compliance with applicable reporting and other obligations, under federal, state or other securities laws, (7) the listing of its equity securities and compliance with applicable reporting and other obligations in connection therewith, (8) the retention of (and the entry into, and exercise of rights and performance of obligations in respect of, contracts and agreements with) transfer agents, private placement agents, underwriters, counsel, accountants and other advisors and consultants, (9) the performance of obligations under and compliance with its certificate of incorporation and by-laws, or any applicable law, ordinance, regulation, rule, order, judgment, decree or permit, including, without limitation, as a result of or in connection with the activities of its Subsidiaries, (10) the incurrence and payment of its operating and business expenses and any taxes for which it may be liable (including reimbursement to Affiliates for such expenses paid on its behalf), (11) the consummation of the Transactions, (12) the making of loans to or other Investments in, or incurrence of Indebtedness from, the Borrowers or, in the case of incurrence of Indebtedness, from any Wholly-Owned Domestic Subsidiary which is a Loan Party, as and to the extent not prohibited by this Agreement, (13) [reserved] and (14) any other activity expressly contemplated by this Agreement to be engaged in by Holdings, including, without limitation, repurchases of Indebtedness of the Borrowers not prohibited under this Agreement and entry into and performance of guarantees of permitted Indebtedness of the Borrower and its Subsidiaries. Notwithstanding the foregoing, each of the activities listed in this Section 6.08 or incidental thereto shall only be permitted after the Petition Date subject to and strictly in accordance with the Approved Budget (subject to Permitted Variances).

SECTION 6.09 Limitation on Payments and Modifications of Indebtedness; Modifications of Certificate of Incorporation, By Laws and Certain Other Agreements; etc.

(1) amend or modify the articles or certificate of incorporation (or similar document), by-laws, limited liability company operating agreement, partnership agreement or other organizational documents of Holdings, the Borrower or any Restricted Subsidiary without the prior written consent of the Required SGUS Lenders;

(2) (I) make any cash payment or other distribution in cash in respect of any Prepetition Indebtedness, unsecured or subordinated in right of payment or in respect of Liens (collectively, “**Junior Financing**”) or (II) make any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposits, on account of the purchase, redemption, retirement, acquisition, cancellation or termination in respect of any Prepetition Financing or Junior Financing; or (III) amend or modify, or permit the amendment or modification of, any provision of any agreement, document or instrument evidencing or relating to any Prepetition Indebtedness or any other

Indebtedness that constitutes Material Indebtedness, other than any amendment, modification, change or payment acceptable to the Required SGUS Holders or permitted under any Approved Court Order. For the avoidance of doubt, the DIP ABL Obligations shall not be deemed Junior Financing hereunder.

(3) From the Petition Date, permit any Restricted Subsidiary to enter into any agreement or instrument that by its terms restricts (a) with respect to any Restricted Subsidiary that is not a Guarantor, Restricted Payments from such Restricted Subsidiary to the Borrower or any other Loan Party that is a direct or indirect parent of such Restricted Subsidiary or (b) with respect to any such Restricted Subsidiary that is a Guarantor, the granting of Liens by such Restricted Subsidiary pursuant to the Security Documents, except as expressly permitted under this Agreement or pursuant to a restriction imposed by applicable law;

Notwithstanding anything to the contrary, no such payments on Junior Financing shall be permitted after the Petition Date unless such payments are made strictly in accordance with the Approved Budget (subject to Permitted Variances).

SECTION 6.10 Financial Covenant. The Borrower shall not permit Liquidity as set forth in the most recently delivered Liquidity Report, to be less than \$50.0 million as of the test date set forth therein.

SECTION 6.11 Designated IPCo Subsidiaries. Notwithstanding anything else in this Agreement to the contrary, the Borrower and its Restricted Subsidiaries shall not permit any assignment, contribution, sale, transfer or other disposition of patents, trademarks, know-how or any other intellectual property owned by Holdings, the Borrower or any Restricted Subsidiary to any non-Loan Party (including, for the avoidance of doubt, any Designated IPCo Subsidiary) except transactions required to comply with the existing Authentic JV Documents as in effect on the Closing Date (and any such transaction in compliance with the requirements of this Section 6.11, a “*Permitted IP Transaction*”).

SECTION 6.12 Critical Vendor Payments. [Notwithstanding any relief granted in any First Day Orders or Second Day Orders, but subject to any order confirming a chapter 11 plan of the Debtors, the Debtors shall not make any payment to any Critical Vendors (as defined in paragraph 12 of the Debtors’ motion seeking, among other things, to pay certain prepetition claims of certain wholesale, merchandise vendors and non-merchandise vendors and suppliers [Bankruptcy Court Docket No. 14]), consignors or concessionaires on account of any prepetition claim of such persons in excess of \$250,000, including any claim entitled to priority under section 503(b)(9), without the consent of the Required SGUS Lenders (such consent not to be unreasonably withheld, conditioned or delayed, it being understood that such consent may be conditioned on such vendor entering into a trade agreement on terms acceptable to the Required SGUS Lenders) or as otherwise agreed with the Required SGUS Lenders. The Debtors may, in their business judgment, enter into a trade agreement in connection with any payments made on account of a prepetition claim of a Critical Vendor, concessionaire or consignor; *provided* that the form of written trade agreement related thereto shall be subject to the consent of the Required SGUS Lenders (such consent not to be unreasonably withheld, conditioned or delayed) or as otherwise agreed with the Required SGUS Lenders.]

SECTION 6.13 [Press Releases; Communications]. The Debtors shall not release any Chapter 11 Cases Communication without the prior written consent of the Required SGUS Lenders (which may be by email from the Specified Ad Hoc Group Advisors).]

SECTION 6.14 [Sell Down Orders]. Notwithstanding any relief granted in any First Day Orders or Second Day Orders, the Borrower shall not, and shall not permit any Debtor to file any motion seeking, or otherwise seek entry of, a “Sell-Down Order” (as defined in the NOL Motion) or any other similar order of the Bankruptcy Court requiring any creditor to sell all or any portion of their debt claims against the Debtors, without the prior written consent of the Required SGUS Lenders.]

SECTION 6.15 Other Management Matters. The Loan Parties shall not adopt resolutions changing the exclusive scope of authority for a special committee of the Board of Directors of the Borrower and its Subsidiaries and the Chief Restructuring Officer, which shall be substantially consistent in form and substance with the terms delivered to the Specified Ad Hoc Group Legal Advisor on January 8, 2026 without the prior written consent of the Required SGUS Lenders.

SECTION 6.16 Additional Bankruptcy Matters. No Loan Party shall and no Loan Party shall permit any of its Restricted Subsidiaries to, without the Required SGUS Lenders' prior written consent, do any of the following:

(1) assert, join, support or prosecute any claim or cause of action against any of the Lenders, unless such claim or cause of action is in connection with the enforcement of the Loan Documents against any of the Agents or Lenders; provided that nothing contained in this Section 6.13(a) shall prohibit the Debtors from responding to or complying with discovery requests of any statutory committee appointed or appearing in the Chapter 11 Cases, in whatever form, made in connection with an investigation against any Agent or the Lenders or the payment from proceeds of the Loans of professional fees related thereto;

(2) subject to Section 8.01, object to, contest, delay, prevent or interfere with in any material manner the exercise of rights and remedies by the Agents or the other Secured Parties with respect to the Collateral following the occurrence of an Event of Default; provided, that any Loan Party may contest or dispute whether an Event of Default has occurred in accordance with the terms of the DIP Orders;

(3) file, amend, modify, execute, or enter into, or file a pleading seeking authority to execute, enter into, amend, or modify, any pleading or document and which requested relief would constitute an Approved Court Order, unless permitted under the definition of Approved Court Order;

(4) [withdraw or settle the Axonic Adversary Proceeding without the consent of the Required SGUS Lenders]; and

(5) [assume or reject executory contracts or unexpired leases pursuant to Section 365 of the Bankruptcy Code].

ARTICLE VII

[Reserved]

ARTICLE VIII

Events of Default

SECTION 8.01 Events of Default. Each of the following events (each, an “*Event of Default*”):

(1) any representation or warranty made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or any representation, warranty, statement or information contained in any certificate, financial statement or document furnished by or on behalf of the Borrower or any other Loan Party pursuant to any Loan Document proves to have been false or misleading in any material respect when so made or deemed made;

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

(3) default is made in the payment of any interest on any Loan or in the payment of any Fee, any other amount due under any Loan Document or any amount due pursuant to the DIP Orders (other than an amount referred to in clause (2) of this Section 8.01), when and as the same becomes due and payable, and such default continues unremedied for a period of three (3) Business Days;

(4) the Debtors fail to satisfy one of the Milestones in Sections 5.12(1) through (6) (without regard as to whether the Agents or Required SGUS Lenders have taken action to provide notice of a Default or Event of Default based on such failure);

(5) default is made in the due observance or performance by Holdings, the Borrower or any Subsidiary Loan Party of any covenant, condition or agreement contained in any Loan Document (other than those specified in clauses (2), (3) and (4) of this Section 8.01), and such default continues unremedied for a period of five (5) Business Days after notice thereof from the Administrative Agent to the Borrower (or such longer period in the discretion of the Administrative Agent (acting at the direction of the Required SGUS Lenders));

(6) (a) any event or condition occurs that (i) results in any Material Indebtedness becoming due prior to its scheduled maturity or (ii) enables or permits (with all applicable grace periods having expired) the holder or holders of any Material Indebtedness or, in any case, any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; (b) Holdings, the Borrower or any Restricted Subsidiary fail to pay the principal of any other Material Indebtedness, at the stated final maturity thereof *provided that* clauses (6)(a) and (b) will not apply to (x) secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness, and (y) any Prepetition Indebtedness or any other Indebtedness incurred prior to the Petition Date so long as the remedies under such Indebtedness are, in each case, subject to the Automatic Stay, or (c) there shall occur any Event of Default or equivalent term under any of the DIP SGUS Documents (with all applicable grace periods having expired);

(7) a Change of Control occurs;

(8) an involuntary proceeding is commenced or an involuntary petition is filed in a court of competent jurisdiction seeking:

(a) relief in respect of any Subsidiary that is not a Debtor or of a substantial part of the property or assets of the Borrower or any Subsidiaries under the Bankruptcy Code, or any other federal, state or foreign bankruptcy, insolvency, or similar law and such proceeding or petition continues undischarged, undismissed or unstayed for 60 calendar days, or an order or decree approving or ordering any of the foregoing is entered;

(b) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Subsidiary or for a substantial part of the property or assets of any such Subsidiary and such appointment occurs and continues undischarged, undismissed or unstayed for 60 calendar days from the date of such appointment; or

(c) the winding up or liquidation of any Subsidiary and such proceeding or petition continues undischarged, undismissed or unstayed for 60 calendar days, or an order or decree approving or ordering any of the foregoing is entered;

provided that this clause (8) shall not apply to the extent that either (A) (x) with respect to the case of any such Subsidiary that is not a Debtor, within five Business Days after the commencement thereof, such case becomes jointly administered with the Chapter 11 Cases and (y) each of the Interim DIP Order and/or Final DIP Order (as applicable) are made applicable to such Restricted Subsidiary as a Post-Petition Subsidiary Loan Party hereunder on terms and conditions reasonably satisfactory to the Required SGUS Lenders.

(9) Any Restricted Subsidiary that is not a Debtor:

(a) voluntarily commences any proceeding or files any petition seeking relief under the Bankruptcy Code or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law;

(b) consents to the institution of, or fails to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in clause (8) of this Section 8.01;

(c) applies for or consents to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any such Subsidiary or for a substantial part of the property or assets of any such Subsidiary;

(d) files an answer admitting the material allegations of a petition filed against it in any such proceeding;

(e) makes a general assignment for the benefit of creditors; or

(f) becomes unable or admits in writing its inability or fails generally to pay its debts as they become due;

provided that the foregoing clauses (i) through (vi) shall not apply to the extent that (A) (x) with respect to the case of any such Subsidiary that is not a Debtor, within five Business Days after the commencement thereof, such case becomes jointly administered with the Chapter 11 Cases and (y) each of the Interim DIP Order and/or Final DIP Order (as applicable) are made applicable to such Subsidiary as a Post-Petition Subsidiary Loan Party hereunder on terms and conditions reasonably satisfactory to the Required SGUS Lenders;

(10) except for any Approved Court Order fixing the amount of any claim in the Chapter 11 Cases, Holdings, the Borrower or any of the Loan Parties that are Debtors fail to pay with respect to any Post-Petition Liabilities one or more final judgments aggregating in excess of \$2.5 million (to the extent not covered by insurance), which judgments are not discharged or effectively waived or stayed for a period of 45 consecutive days, or any action is legally taken by a judgment creditor to levy upon assets or properties of the Borrower or any such other Loan Party to enforce any such judgment;

(11) (a) a trustee is appointed by a United States district court to administer any ERISA Plan or (b) an ERISA Event or ERISA Events occurs with respect to any ERISA Plan or Multiemployer Plan, and, in each case, with respect to clauses (a) and (b) above, such event or condition, together with all other such events or conditions, if any, results or is reasonably expected to result in liability of any Loan Party in an aggregate amount in excess of \$5,000,000; or

(12) (a) any material provision of any Loan Document ceases to be, or is asserted in writing by the Borrower or any other Loan Party not to be, for any reason, a legal, valid and binding obligation of any party thereto, (b) any security interest purported to be created by any Security Document or the DIP Orders on any material portion of the Collateral ceases to be, or is asserted in writing by the

Borrower or any other Loan Party not to be, a valid and perfected, first priority (except as otherwise expressly provided in this Agreement or such Security Document or such DIP Order) security interest in the securities, assets or properties covered thereby, or (c) the Guarantees pursuant to the Security Documents or the DIP Orders by any Loan Party of any of the Obligations cease to be in full force and effect (other than as expressly in accordance with the terms thereof or in such DIP Order) or are asserted in writing by the Borrower or any other Loan Party not to be in effect or not to be legal, valid and binding obligations, except in the cases of clauses (a) and (b), in connection with an Asset Sale permitted by this Agreement;

(13) Chapter 11 Cases. The occurrence of any of the following in the Chapter 11 Cases:

(a) the entry by the Bankruptcy Court of a final, non-appealable order (A) converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, (B) dismissing any of the Chapter 11 Cases (or any subsequent chapter 7 case), or (C) pursuant to which the Bankruptcy Court abstains from hearing any of the Chapter 11 Cases (or any subsequent chapter 7 case), or (ii) the filing by any Debtor or any Subsidiary or Affiliate thereof of a motion or other pleading seeking the entry of any such orders;

(b) any Debtor's exclusive right to file and/or solicit acceptances of a Chapter 11 Plan under section 1121 of the Bankruptcy Code is terminated for any reason, unless such order was entered as a result of a request by, or received support from, the Administrative Agent (acting at the direction of the Required SGUS Lenders);

(c) the failure of any Debtor to comply with the DIP Orders in any respect, including by transferring or seeking to transfer cash out of the DIP Escrow Account (as defined in the DIP Orders) or the Carve Out Account (as defined in the DIP Orders) (as each is defined in the DIP Orders) other than as permitted under the DIP Orders;

(d) any DIP Order is revoked, remanded, vacated, reversed, stayed, rescinded, or modified (other than modifications consented to by the Administrative Agent (acting at the direction of the Required SGUS Lenders);

(e) the appointment of a (A) trustee, (B) responsible officer, or (C) examiner or disinterested person with expanded powers relating to the operations or the business of any of the Debtors in the Chapter 11 Cases (having powers beyond those set forth in the sections 1106(a)(3) and (4) of the Bankruptcy Code) (other than a fee examiner under section 1104(c) of the Bankruptcy Code) or (ii) the filing by any Debtor or any Subsidiary or Affiliate thereof of a motion or other pleading seeking the entry of an order implementing any such appointment;

(f) any administrative expense claim against any Debtor is allowed having priority over or ranking in parity with the rights of the Agents, other than in respect of the Carve Out and as expressly permitted under the Loan Documents and the DIP Orders;

(g) any Debtor consents to the payment, settlement, grant of, or stipulation to pay, settle or grant, adequate protection with respect to any of the prepetition secured debt of the Debtors, other than to the extent permitted under the DIP Orders and the Approved Budget, or the Bankruptcy Court enters an order allowing any of the foregoing;

(h) (A) the Debtors propose, file or support, or the Bankruptcy Court enters an order (1) confirming or approving any Chapter 11 Plan that is not an Acceptable Plan or (2) approving the adequacy of a disclosure statement in connection with any Chapter 11 Plan that

is not an Acceptable Plan, or (B) the Debtors shall support or fail to contest in good faith the filing or confirmation of any Chapter 11 Plan that is not an Acceptable Plan filed by any other Person, in each case without the written approval of the Administrative Agent (acting at the direction of the Required SGUS Lenders);

(i) any of the Debtors incurs or seeks to incur post-petition loans or other financial accommodations pursuant to section 364(c) or (d) of the Bankruptcy Code (other than the DIP Facility or other Indebtedness permitted by the Loan Documents and such loans or financial accommodations will not provide for the Obligations and the Prepetition Secured Obligations being Paid in Full on or prior to the closing of such loans or financial accommodations;

(j) Any of the Debtors or any Subsidiary or Affiliate thereof shall (A) assert that the Liens on the Collateral securing the Obligations, the DIP Superpriority Claims or the guarantees of the Obligations by the Guarantors are invalid, or any such liens, claims or guarantees shall be invalidated, or (B) file or otherwise commence, join in, assist, support or otherwise participate as an adverse party in any suit, challenge or proceeding against any of the Secured Parties (in their capacity as such) in respect of the DIP Facility or the Prepetition Secured Parties (in their capacity as such) in respect of the Prepetition Onloan Credit Agreements or Prepetition Secured Onloan Obligations, including with respect to the Debtors' stipulations, admissions, agreements and releases included in the DIP Orders, or seeking the invalidation or subordination or otherwise challenging to the DIP Superpriority Claims or the Liens granted to secure the Obligations; *provided* that the Debtors shall not be precluded from contesting whether an Event of Default has occurred and is continuing;

(k) the termination of the Debtors' use of Cash Collateral or Prepetition Collateral, or the entry of an order by the Bankruptcy Court terminating or denying the Debtors' use of Cash Collateral or Prepetition Collateral;

(l) the entry of a final, non-appealable order by the Bankruptcy Court granting relief from the Automatic Stay to any other creditor or party in interest in the Chapter 11 Cases that would permit such other creditor or party in interest to (A) pursue actions that would have a material adverse effect on the Debtors or their estates or (B) proceed against any portion of the Collateral exceeding \$1,000,000 in value in the aggregate;

(m) the entry of a final, non-appealable order by the Bankruptcy Court allowing any claim or claims under section 506(c) of the Bankruptcy Code or otherwise to surcharge any (i) Collateral or (ii) subject to entry of the Final DIP Order, any Prepetition Collateral;

(n) subject to entry of the Final DIP Order, the filing of a motion by the Borrower, any Subsidiary thereof or any of their respective Affiliates seeking to limit, or the entry by the Bankruptcy Court of an order limiting, the extension under Section 552(b) of the Bankruptcy Code of the Prepetition Liens on the Prepetition Collateral to any proceeds, products, offspring, or profits of the Prepetition Collateral acquired by any Loan Party after the Petition Date;

(o) any of the Secured Parties with respect to the Collateral or, subject to entry of the Final DIP Order, the Prepetition Secured Parties with respect to the Prepetition Collateral, are subject to the equitable doctrine of marshaling;

(p) any of the DIP Orders are amended, supplemented, vacated, stayed or otherwise modified, including pursuant to an order of the Bankruptcy Court (or the Debtors seek

to amend, supplement, vacate, stay or otherwise modify any of foregoing, including making any filing seeking to make any such amendment, vacation, stay or modification or take any other act in furtherance of the foregoing) without the prior written consent of the Administrative Agent (at the direction of the Required SGUS Lenders);

(q) except as set forth in any motions or other pleadings which have been delivered to and are acceptable to the Required SGUS Lenders or as set forth in the DIP Orders, the payment of, or, with respect to the Debtors, application for authority to pay, any claim that arose prior to the Petition Date, without the prior written consent of the Administrative Agent (at the direction of the Required SGUS Lenders);

(r) the entry of an order in any of the Chapter 11 Cases avoiding or permitting recovery of any portion of the payments made on account of the Obligations or the Prepetition Secured Obligations, including the issuance of the Roll-Up DIP Loans;

(s) other than with the prior written consent of the Administrative Agent (acting at the direction of the Required SGUS Lenders), the filing of a motion by any Loan Party or any of their respective Subsidiaries or Affiliates seeking, or the Bankruptcy Court shall enter an order granting, a change in venue with respect to the Chapter 11 Cases; and

(t) the Borrower or any Subsidiary or Affiliate thereof shall take any action in support or in furtherance of any occurrence that would constitute an Event of Default pursuant to this Section 8.01(13), or any other Person shall do so and such application is not contested in good faith by the Borrower and the relief requested is granted in an order that is not stayed pending appeal.

then, (i) (a) after the occurrence of an Event of Default, the Required SGUS may direct the Debtors to commence a process for a sale of all or any material portion of the Collateral (the “**Sales Process**” and such direction, a “**Sale Notice**”), at which time (i) within two (2) Business Days after delivery of the Sale Notice, the Debtors shall file a motion or motions seeking approval of bidding and sales procedures with respect to the Sales Process, in form and substance acceptable to the Required SGUS Lenders (collectively, the “**Bid Procedures Pleadings**”) and (b) within thirty (30) days after delivery of the Sale notice, obtain entry of orders approving the Bid Procedures Pleadings in form and substance acceptable to the Required SGUS Lenders, (ii) upon the occurrence of any Event of Default (other than as described in clauses (4), (8) or (9) of this Section 8.01) and at any time thereafter during the continuance of such Event of Default, the Administrative Agent, at the direction of the Required SGUS Lenders, will, by notice to the Borrower, take any or all of the following actions, at the same or different times: (A) terminate forthwith the Commitments, (B) declare the Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Borrower accrued hereunder and under any other Loan Document, will become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding; (C) if the Loans have been declared due and payable pursuant to clause (B) above, demand cash collateral pursuant to Section 2.05(11); and (D) exercise all rights and remedies granted to it under any Loan Document and all of its rights under any other applicable law or in equity, (iii) upon the occurrence of any Event of Default described in clause (4), (8) or (9) of this Section 8.01, the principal of the Loans then outstanding, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Borrower accrued hereunder and under any other Loan Document, will automatically become due and payable and the Administrative Agent shall be deemed to have made a demand for cash collateral to the full extent permitted under Section 2.05(11), without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by

the Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding and (iv) except as set forth in the DIP Orders, upon the occurrence of any Event of Default and at any time thereafter during the continuance of such Event of Default all withdrawals from the DIP Proceeds Account shall immediately be subject to the express written consent of the Required SGUS Lenders.

ARTICLE IX

The Agents

SECTION 9.01 Appointment.

(1) Each Lender hereby irrevocably authorizes, designates and appoints U.S. Bank to act on its behalf as the Administrative Agent and Collateral Agent under this Agreement and the other Loan Documents, as applicable, and each such Lender irrevocably authorizes the Administrative Agent and Collateral 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 Administrative Agent and the Collateral Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. In addition, to the extent required under the laws of any jurisdiction other than the United States, each of the Lenders hereby grants to the Administrative Agent and the Collateral Agent any required powers of attorney to execute any Security Document governed by the laws of such jurisdiction on such Lender's behalf. Notwithstanding any provision to the contrary elsewhere in this Agreement, no Agent shall have any duties or responsibilities, except those expressly set forth herein or the other Loan Documents to which it is a party, or any fiduciary relationship with any Lender, Secured Party or any other Person, 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 such Agent. To the extent required by any applicable law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any other Governmental Authority asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender because the appropriate form was not delivered or was not properly executed or because such Lender failed to notify the Administrative Agent of a change in circumstance which rendered the exemption from, or reduction of, withholding Tax ineffective or for any other reason, such Lender shall indemnify the Administrative Agent fully for all amounts paid, directly or indirectly, by the Administrative Agent as Tax or otherwise, including any penalties or interest and together with all expenses (including legal expenses, allocated internal costs and out-of-pocket expenses) incurred. For the avoidance of doubt, no Borrower shall have liability for the actions of the Administrative Agent pursuant to the immediately preceding sentence. It is understood and agreed that the use of the term "agent", "administrative agent" and "collateral agent" herein or in any other Loan Documents (or any other similar term) with reference to any Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used as a matter of market custom and is intended to create or reflect only an administrative relationship between contracting parties. No Agent shall be deemed to assume any obligations or liabilities of any Lender under this Agreement or any other Loan Document.

(2) Each Lender and the other Secured Parties (except for each Agent) irrevocably appoints and authorizes the Collateral Agent to act as the collateral agent of such Lender and such other Secured Party (and to hold any security interest, charge or other Lien created by this Agreement or the other Security Documents for and on behalf of the Secured Parties) for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and authorizes as are reasonably incidental thereto. In this connection, the Administrative Agent, the Collateral Agent (and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent or the Collateral Agent pursuant to Section 9.02 for purposes of holding or

enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights and remedies thereunder at the direction of the Required SGUS Lenders (or the Supermajority SGUS Lenders or such other number or percentage of the Lenders as shall expressly be required under this Agreement or the other Loan Documents), shall be entitled to the benefits of all provisions of this Article IX (including Section 9.07) as if set forth in full herein with respect thereto. Without limiting the generality of the foregoing, the Lenders hereby expressly authorize the Administrative Agent and the Collateral Agent, as applicable, to execute any and all documents (including releases) with respect to the Collateral and the rights of the Secured Parties with respect thereto, as contemplated by and in accordance with the provisions of the Loan Documents and acknowledge and agree that any such action by any Agent shall bind all Lenders.

(3) In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, (a) the Administrative Agent (irrespective of whether the principal of any Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise (i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of any or all of the Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Agents and the Secured Parties and any of their Subagents allowed in such judicial proceeding and (ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same, and (b) any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under the Loan Documents. Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

(4) The Lenders and each other Secured Party shall act collectively through the Agents with respect to the Obligations and the Loan Documents. Without limiting the delegation of authority to each Agent set forth herein, the Required SGUS Lenders shall direct the Agents with respect to the exercise of rights and remedies hereunder and under other Loan Documents (including with respect to alleging the existence or occurrence of, and exercising rights and remedies as a result of, any Default or Event of Default), the exercise of rights and remedies with respect to (i) the Transactions, (ii) the Loans and any securities, notes, or other interests issued pursuant to this Agreement and (iii) any Collateral with respect to the Obligations. Any such rights and remedies shall not be exercised other than through the Agents. None of the foregoing shall preclude any Lender from exercising any right of set-off in accordance with the provisions of Section 10.06 or from exercising rights and remedies (other than the enforcement of Collateral) with respect to any payment default after the occurrence of the applicable Maturity Date with respect to any Loans made by it.

(5) For purposes of clarity and notwithstanding anything contained in this Agreement or any other Loan Document to the contrary, and without limiting any rights, protections, immunities or indemnities afforded to any Agent hereunder (including without limitation this Article IX), with respect to instances described by phrases such as “satisfactory to the [Administrative][Collateral] Agent”, “approved by the [Administrative][Collateral] Agent”, “acceptable to the [Administrative][Collateral] Agent”, “as determined by the [Administrative][Collateral] Agent”, “in the [Administrative][Collateral] Agent’s

discretion”, “selected by the [Administrative][Collateral] Agent”, “elected by the [Administrative][Collateral] Agent”, “requested by the [Administrative][Collateral] Agent” and phrases of similar import that authorize and permit an Agent to approve, disapprove, determine, act or decline to act in its discretion shall be subject to the Administrative Agent or the Collateral Agent, as applicable, receiving written direction from the Required SGUS Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), in order to take such action or to exercise such rights. Nothing contained in this Agreement shall require any Agent to exercise any discretionary acts and any permissive grant of power to any Agent hereunder shall not be construed to be a duty to act.

SECTION 9.02 Delegation of Duties. Each Agent may execute any of its duties under this Agreement and the other Loan Documents (including for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof)) by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. No Agent shall be responsible for the negligence or misconduct of the agents or attorneys-in-fact selected by it with reasonable care. Each Agent may also from time to time, when such Agent deems it to be necessary or desirable, appoint one or more trustees, co-trustees, collateral co-agents, collateral subagents or attorneys-in-fact (each, a “**Subagent**”) with respect to all or any part of the Collateral; *provided* that no such Subagent shall be authorized to take any action with respect to any Collateral unless and except to the extent expressly authorized in writing by such Agent. Should any instrument in writing from the Borrower or any other Loan Party be required by any Subagent so appointed by such Agent to more fully or certainly vest in and confirm to such Subagent such rights, powers, privileges and duties, the Borrower shall, or shall cause such Loan Party to, execute, acknowledge and deliver any and all such instruments promptly upon request by such Agent. If any Subagent, or successor thereto, shall die, become incapable of acting, resign or be removed, all rights, powers, privileges and duties of such Subagent, to the extent permitted by law, shall automatically vest in and be exercised by the applicable Agent until the appointment of a new Subagent. No Agent shall be responsible for the negligence or misconduct of any agent, attorney-in-fact or Subagent that it selects in accordance with the foregoing provisions of this Section 9.02 in the absence of the Administrative Agent’s gross negligence or willful misconduct in the selection of such Subagent, as determined by a final and nonappealable judgment of a court of competent jurisdiction.

SECTION 9.03 Exculpatory Provisions. None of the Agents, their respective Affiliates or any of the Agents’ Related Parties shall be (1) liable for any action lawfully taken or omitted to be taken by such Agent 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 non-appealable decision of a court of competent jurisdiction to have resulted from its or such Person’s own gross negligence or willful misconduct, in connection with its duties expressly set forth herein; *provided*, however, that no action taken or not taken by any Agent at the direction of the Required SGUS Lenders (or the Supermajority Majority Lenders or such other number or percentage of the Lenders as expressly provided for in this Agreement or the other Loan Documents) shall be considered gross negligence or willful misconduct of such Agent) or (2) responsible in any manner to any of the Lenders or any other Person 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, order or other document referred to or provided for in, or received by the Agents under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document or for any failure of any Loan Party party thereto to perform its obligations hereunder or thereunder. The Agents shall not be under any obligation to any 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. No Agent shall have any duties or obligations except those expressly set forth herein and in the other Loan Documents to which it is a party. Without limiting the generality of the foregoing,

(a) no Agent shall be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing, and (b) no Agent shall, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information including, but not limited to, any information concerning the business, prospects, operations, property, financial and other condition or creditworthiness relating to the Borrower or any of its Affiliates that is communicated to or obtained by such Agent or its Affiliates in any capacity. No Agent shall be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Institutions; further, without limiting the generality of the foregoing, no Agent shall be (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Institution or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Institution. No Agent shall be responsible for, nor chargeable with, knowledge of the terms and conditions of any agreement, instrument or document other than such Loan Documents to which it is a party, whether or not an original or a copy of such agreement has been provided to such Agent. No Agent shall be required to risk or expend its own funds in performing its obligations hereunder or under any other Loan Document or to take any action which in its reasonable judgment may cause it to incur any expense or financial or other liability for which it is not indemnified to its satisfaction. No Agent shall be liable for any indirect, special, punitive or consequential damages (including but not limited to lost profits) whatsoever, even if it has been informed of the likelihood thereof and regardless of the form of action. No Agent shall be responsible for or have any duty to ascertain or inquire into:

- (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document;
- (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith;
- (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default;
- (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Security Documents;
- (v) the value or the sufficiency of any Collateral; or
- (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, or any other Loan Document

No Agent shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that such Agent is required to exercise as directed in writing by the Required SGUS Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); provided that such Agent shall not be required to take any action that, in its judgment or the judgment of its counsel, may expose such Agent to liability or that is contrary to any Loan Document or applicable Law. As to any matters not expressly provided for by this Agreement or any other Loan Document, each Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder or thereunder in accordance with written instructions given by the Required SGUS Lenders (or

such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), and such instructions, and any action taken or failure to act pursuant thereto, shall be binding on all of the Lenders. No Agent shall have any liability for any failure or delay in taking any actions contemplated herein as a result of the failure or delay on the part of the Required SGUS Lenders to provide such instructions.

No Agent shall have any liability for any failure, inability or unwillingness on the part of any Lender to provide accurate and complete information on a timely basis to such Agent, or otherwise on the part of any such party to comply with the terms of this Agreement or the other Loan Documents, and shall not have any liability for any inaccuracy or error in the performance or observance on such Agent's part of any of its duties hereunder or any other Loan Document that is caused by or results from any such inaccurate, incomplete or untimely information received by it, or other failure on the part of any such other party to comply with the terms hereof.

In no event shall any Agent be responsible or liable for: (i) delays or failures in performance resulting from acts beyond its control, including, but not limited to, acts of God, strikes, lockouts, riots, acts of war, epidemics, pandemics, governmental regulations imposed after the fact, fire, communication line failures, computer viruses, power failures, earthquakes or other disasters, the unavailability of communications or computer facilities, the failure of equipment or interruption of communications or computer facilities, or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility, (ii) any delay, error omission or default of any mail, telegraph, cable or wireless agency or operator, (iii) the acts or edicts of any government or governmental agency or other group or entity exercising governmental powers or (iv) any other causes beyond such Agent's control whether or not of the same class or kind as specified above. For the avoidance of doubt, each Agent's rights, protections, indemnities and immunities provided herein shall apply to each Agent for any actions taken or omitted to be taken under this Agreement or any other Loan Documents and any other related agreements in any of their respective capacities and each Agent shall be afforded all of the rights, powers, immunities and indemnities set forth in this Agreement and in all of the other Loan Documents to which it is a signatory as if such rights, powers, immunities and indemnities were specifically set out in each such other Loan Document.

SECTION 9.04 Reliance by Agent. Each Agent shall be entitled to conclusively rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document, order, judgment, signature, resolution, representation, affidavit, letter or other writing (including any electronic message, Internet or intranet website posting or other distribution) or conversation believed in good faith by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. Each Agent also may conclusively rely upon any statement made to it orally or by telephone and believed in good faith by it to have been made by the proper Person and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of any Loan, that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received written notice to the contrary from such Lender prior to such Borrowing. Each Agent may consult with legal counsel (which may, but need not be, counsel to the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. Each 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 applicable Agent. Each 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 consent or direction of the Required SGUS Lenders (or, such other number or percentage of the Lenders as shall be expressly required under this Agreement or the other Loan Documents) as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and

expense that may be incurred by it by reason of taking or continuing to take any such action. Each 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 SGUS Lenders (or such other number or percentage of the Lenders as shall expressly be provided for herein or in the other Loan Documents), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Loans.

SECTION 9.05 Notice of Default. No Agent shall be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless a responsible officer of such Agent with direct responsibility for the administration of this Agreement has received written 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 an Agent receives such a notice, such Agent shall give notice thereof to the Lenders. The applicable Agent shall take such action with respect to such Default or Event of Default as shall be directed by the Required SGUS Lenders (or such other number or percentage of the Lenders as shall expressly be provided for herein or in the other Loan Documents); *provided* that unless and until the applicable Agent shall have received such directions, the Administrative 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 9.06 Non-Reliance on Agents and Other Lenders. Each Lender expressly acknowledges that none of the Agents has, nor any of their respective officers, directors, employees, agents, attorneys-in-fact or affiliates have, made any representation or warranty to it, and that no act by the Agents hereafter taken, including any consent to, and acceptance of any assignment or review of the affairs of any Loan Party of any Affiliate thereof, shall be deemed to constitute any representation or warranty by the Agents to any Lender as to any matter, including whether the Agents have disclosed material information in their possession. Each Lender represents to the Agents that it has, independently and without reliance upon the Agents any other Lender or any of their related parties and based on such documents and information as it has deemed appropriate, made its own credit analysis of, appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrower hereunder. Each Lender also acknowledges that it will, independently and without reliance upon the Agents, any other Lender or any of their related parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties. Each Lender represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility and (ii) it is engaged in making, acquiring or holding commercial loans in the ordinary course and is entering into this Agreement as a Lender for the purpose of making, acquiring or holding commercial loans and providing other facilities set forth herein as may be applicable to such Lender, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument, and each Lender agrees not to assert a claim in contravention of the foregoing. Each Lender represents and warrants that it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities. The Agents shall not have any duty or responsibility to provide any Lender with any other credit or other information concerning the affairs, financial condition or business of any Loan Party that may come into the possession of the Agents or any of their respective officers, directors, employees, agents, attorneys-in-fact or affiliates.

SECTION 9.07 Indemnification. The Lenders agree to indemnify each Agent in its capacity as such and their Related Parties (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so), in the amount of its *pro rata* share (based on its exposure hereunder) (determined at the time such indemnity is sought), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against any Agent or their Related Parties 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 non-appealable decision of a court of competent jurisdiction to have resulted from the such Agent's gross negligence or willful misconduct. The failure of any Lender to reimburse an Agent promptly upon demand for its ratable share of any amount required to be paid by the Lenders to the applicable Agent as provided herein shall not relieve any other Lender of its obligation hereunder to reimburse such Agent for its ratable share of such amount, but no Lender shall be responsible for the failure of any other Lender to reimburse the applicable Agent such other Lender's ratable share of such amount. The agreements in this Section 9.07 shall survive the termination of this Agreement, the resignation or removal of each Agent, the payment of the Loans and all other amounts payable hereunder.

SECTION 9.08 Agent in Its Individual Capacity. Each Agent and its affiliates may (without obligation) 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 Loans made or renewed by it, each Agent shall have the same rights and powers under this Agreement and the other Loan Documents as any Lender and may exercise the same as though it were not the Administrative Agent, and the terms "Lender" and "Lenders" shall include each Agent in its individual capacity.

SECTION 9.09 Successor Agent. Any Agent may resign upon ten (10) days' notice to the Lenders and the Borrower. If an Agent resigns under this Agreement and the other Loan Documents, then the Required SGUS Lenders shall appoint from among the Lenders a successor agent for the Lenders and the other Secured Parties, which successor agent shall (unless a Specified Event of Default shall have occurred and be continuing) be subject to approval by the Borrower (which approval shall not be unreasonably withheld, conditioned or delayed), whereupon such successor agent shall succeed to the rights, powers and duties of the applicable Agent, and the reference to the resigning Administrative Agent and/or Collateral Agent, as applicable, means 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 other Lenders. If no successor agent has accepted appointment as Agent by the date that is ten (10) days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective, and the Required SGUS Lenders hereunder shall, on behalf of the Lenders appoint a successor agent which shall (unless a Specified Event of Default shall have occurred and be continuing) be subject to approval by the Borrower (which approval shall not be unreasonably withheld, conditioned or delayed). After any retiring Agent's resignation as Agent, the provisions of this Article IX, Section 10.05 and any other provision of this Agreement or the other Loan Documents that expressly survive the resignation or removal of such Agent shall inure to its benefit as to any actions taken or omitted to be taken by it while it was an Agent under this Agreement and the other Loan Documents. Any entity into which an Agent may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, conversion or consolidations which an Agent may be party, or any corporation or association to which all or substantially all of the corporate trust or agency business and assets as a whole or substantially as a whole of an Agent may be transferred or sold, shall be the successor Agent under this

Agreement and each Loan Document and will have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or any further action.

SECTION 9.10 [Reserved].

SECTION 9.11 Recovery of Erroneous Payments. (a) If the Administrative Agent or the Collateral Agent (x) notifies a Lender or Secured Party, or any Person who has received funds on behalf of a Lender or Secured Party (any such Lender, Secured Party or other recipient (and each of their respective successors and assigns), a “Payment Recipient”) that the Administrative Agent or the Collateral Agent, as applicable, has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds (as set forth in such notice from the Administrative Agent or the Collateral Agent) received by such Payment Recipient from the Administrative Agent or the Collateral Agent or any of its respective Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, Secured Party or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an “Erroneous Payment”) and (y) demands in writing the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent or the Collateral Agent, as applicable, pending its return or repayment as contemplated below in this Section 9.11 and held in trust for the benefit of the Administrative Agent or the Collateral Agent, as applicable, and such Lender or Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two Business Days thereafter (or such later date as the Administrative Agent or the Collateral Agent, as applicable, may, in its sole discretion, specify in writing), return to the Administrative Agent or the Collateral Agent, as applicable, the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon (except to the extent waived in writing by the Administrative Agent or the Collateral Agent, as applicable) in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent or the Collateral Agent, as applicable, in same day funds at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent or the Collateral Agent, as applicable, in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent or the Collateral Agent, as applicable, to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting the immediately preceding clause (a), each Lender, Secured Party or any Person who has received funds on behalf of a Lender or Secured Party (and each of their respective successors and assigns), agrees that if it (or a Payment Recipient on its behalf) receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent or the Collateral Agent (or any of its respective Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Agreement or in a notice of payment, prepayment or repayment sent by the Administrative Agent or the Collateral Agent, as applicable (or any of its respective Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent or the Collateral Agent, as applicable (or any of its respective Affiliates), or (z) that such Lender or Secured Party, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then in each such case:

(i) it acknowledges and agrees that (A) in the case of immediately preceding clauses (x) or (y), an error and mistake shall be presumed to have been made (absent written confirmation

from the Administrative Agent or the Collateral Agent, as applicable, to the contrary) or (B) an error and mistake has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender or Secured Party shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of the occurrence of any of the circumstances described in immediately preceding clauses (x), (y) and (z)) notify the Administrative Agent or the Collateral Agent, as applicable, of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent or the Collateral Agent, as applicable, pursuant to this Section 9.11(b).

For the avoidance of doubt, the failure to deliver a notice to the Administrative Agent or the Collateral Agent pursuant to this Section 9.11(b) shall not have any effect on a Payment Recipient's obligations pursuant to Section 9.11(a) or on whether or not an Erroneous Payment has been made.

(c) Each Lender or Secured Party hereby authorizes the Administrative Agent and the Collateral Agent to set off, net and apply any and all amounts at any time owing to such Lender or Secured Party under any Loan Document, or otherwise payable or distributable by the Administrative Agent or the Collateral Agent to such Lender or Secured Party under any Loan Document with respect to any payment of principal, interest, fees or other amounts against any amount that the Administrative Agent or the Collateral Agent has demanded to be returned under the immediately preceding clause (a).

(d) The parties hereto agree that (x) irrespective of whether the Administrative Agent or the Collateral Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent or the Collateral Agent, as applicable, shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Lender or Secured Party, to the rights and interests of such Lender or Secured Party, as the case may be) under the Loan Documents with respect to such amount (the "Erroneous Payment Subrogation Rights") and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrowers or any other Loan Party; provided that this Section 9.11 shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of the Borrower relative to the amount (and/or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by the Administrative Agent or the Collateral Agent; provided, further, that for the avoidance of doubt, the immediately preceding clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent or the Collateral Agent from the Borrower for the purpose of making such Erroneous Payment.

(e) Notwithstanding anything to the contrary contained herein, and for the avoidance of doubt, in no event shall the occurrence of an Erroneous Payment (or the existence of any Erroneous Payment Subrogation Rights or other rights of the Administrative Agent or the Collateral Agent in respect of an Erroneous Payment) result in the Administrative Agent or the Collateral Agent becoming, or being deemed to be, a Lender hereunder or the holder of any Loans hereunder.

(f) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim

by the Administrative Agent or the Collateral Agent for the return of any Erroneous Payment received, including, without limitation, any defense based on “discharge for value” or any similar doctrine.

(g) Each party’s obligations, agreements and waivers under this Section 9.11 shall survive the resignation or replacement of the Administrative Agent and/or the Collateral Agent, any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

SECTION 9.12 Credit Bidding. The Secured Parties, hereby irrevocably authorize the Collateral Agent (either directly or via one or more acquisition vehicles), at the direction of the Required SGUS Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise but excluding such Obligations owing to the Agent) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (i) at any sale thereof conducted under the provisions of the Bankruptcy Code, including under Sections 363, 1123 or 1129 of the Bankruptcy Code, or (ii) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Collateral Agent (whether by judicial action or otherwise) in accordance with any applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the applicable Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis among the Lenders and in accordance with the Lien priorities set forth in the DIP Orders (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (A) the Collateral Agent (or the Required SGUS Lenders on its behalf) shall be authorized to form one or more acquisition vehicles in which all of the Lenders are able to own any such Equity Interests and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Obligations to be credit bid, to make a bid, (B) the Required SGUS Lenders to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof) shall be governed, directly or indirectly, by the vote of the Required SGUS Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required SGUS Lenders contained in Section 10.08 of this Agreement, (C) the Collateral Agent, acting at the direction of the Required SGUS Lenders, shall be authorized to assign the relevant Obligations to any such acquisition vehicle pro rata by the Lenders, as a result of which each of the Lenders shall be deemed to have received a pro rata portion of any Equity Interests and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Obligations to be credit bid, all without the need for any Loan Party or acquisition vehicle to take any further action and (D) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

SECTION 9.13 Collateral and Guarantee Matters. Each Lender irrevocably authorizes the Administrative Agent and the Collateral Agent, as applicable (and subject to the provisions of the DIP ABL Intercreditor Agreement):

(1) to release any Lien on any property granted to or held by the Administrative Agent or Collateral Agent under any Loan Document:

(a) upon termination of the Commitments and the date on which all Obligations are Paid in Full (other than contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted);

(b) that is sold or to be sold or otherwise disposed of or transferred as part of or in connection with any sale, Investment, Restricted Payment or other transaction permitted hereunder or under any other Loan Document;

(c) if approved, authorized or ratified in writing in accordance with Section 10.08 hereof;

(d) that constitutes Excluded Assets; or

(e) if the property subject to such Lien is owned by a Subsidiary Loan Party, upon release of such Subsidiary Loan Party from its obligations under this Agreement and the other Loan Documents pursuant to clause (2) below;

provided, in each case, that any such release of Liens shall not be permitted if such assets or property continue to be encumbered by a Lien securing the obligations under any Prepetition Indebtedness or the DIP ABL Facility, or, in each case, any refinancings or replacements thereof;

(2) to release any Subsidiary Loan Party from its obligations under the Loan Documents if such Person ceases to be a Restricted Subsidiary as a result of a transaction permitted hereunder; and

Upon request by any Agent at any time, the Required SGUS Lenders will confirm in writing such Agent's authority to release or subordinate its interest in particular types or items of property, to provide that its interests in particular types or items of property are equal to the interests of any other Person, or to release any Loan Party from its obligations under the Loan Documents. In each case specified in this Section 9.13, the applicable Agent shall promptly (and each Lender irrevocably authorizes the applicable Agent to), at the Borrowers' expense, execute and deliver, without representation, recourse or warranty, to the applicable Loan Party such documents, including (without limitation) termination or partial release statements, as such Loan Party shall prepare and may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item or to provide that its interests are equal to the interests of any other Person, or to release such Subsidiary Loan Party from its obligations under the Loan Documents, in each case in accordance with the terms of the Loan Documents and this Section 9.13. Notwithstanding anything contained in this Agreement or any Loan Document to the contrary, prior to releasing its interest in any Collateral, or to release any Guarantor from its Guarantee pursuant to this Section 9.13, the Administrative Agent and/or the Collateral Agent shall be entitled to receive a certificate of a Responsible Officer of the Borrower (which each Agent is entitled to conclusively rely upon without independent investigation or inquiry) certifying that the execution and delivery of such document or instrument evidencing or authorizing such release or subordination is authorized or permitted by this Agreement and the other Loan Documents and that the applicable transaction is permitted under this Agreement.

SECTION 9.14 [Reserved].

SECTION 9.15 ERISA Representation.

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

(a) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Commitments or this Agreement,

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

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

(d) such other representation, warranty and covenant as may be agreed in writing between the Agents, in their sole discretion, and such Lender.

In addition, either (1) subclause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in subclause (iv) in the immediately preceding clause (a), or (2) Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Agents and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that none of the Agents or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender involved in such Lender’s entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by any Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

SECTION 9.16 Filings and Flood Insurance Laws. Neither the Administrative Agent nor the Collateral Agent shall be responsible for (i) the perfection of any Lien or for the filing, form, content or renewal of any UCC financing statements, fixture filings, mortgages, deeds of trust and such other documents or instruments, it being understood that the Borrower shall be solely responsible for, and shall arrange for, the filing and continuation of financing statements or other filing or recording documents or

instruments for the perfection of security interests in the Collateral, (ii) the preparation, form, content, sufficiency or adequacy of any such financing statements, (iii) insuring the Collateral or for the payment of Taxes, charges, assessments or liens upon the Collateral, (iv) independently requesting or examining insurance coverage with respect to any Collateral, or (v) obtaining, monitoring or continuing any flood hazard determinations or flood insurance policies or determining whether any flood hazard determinations or flood insurance policies are or should be obtained in respect of the Collateral, and each Lender shall be solely responsible for determining whether it requires that any flood hazard determinations or flood insurance policies be obtained in respect of the Collateral and that it will not rely on the Administrative Agent or the Collateral Agent to make such determination or to see that any such flood hazard determinations or flood insurance policies are in fact obtained.

ARTICLE X

Miscellaneous

SECTION 10.01 Notices; Communications.

(1) Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 10.01(2)), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile or e-mail, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, in each case, as follows:

(a) if to any Loan Party or the Agents, to the address, facsimile number, e-mail address or telephone number specified for such Person on Schedule 10.01; and

(b) if to any other Lender, to the address, facsimile number, e-mail address or telephone number specified in its Administrative Questionnaire.

(2) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; *provided* that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; *provided* that approval of such procedures may be limited to particular notices or communications.

(3) Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received. Notices sent by facsimile shall be deemed to have been given when sent and confirmation of transmission received (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in Section 10.01(2) shall be effective as provided in such Section 10.01(2).

(4) Any party hereto may change its address, facsimile number or e-mail address for notices and other communications hereunder by notice to the other parties hereto.

(5) Documents required to be delivered pursuant to Section 5.04 (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically

(including as set forth in Section 10.17) and if so delivered, shall be deemed to have been delivered on the date (a) on which the Borrower posts such documents or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 10.01 or (b) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender, the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided* that the Borrower shall notify the Administrative Agent (by facsimile or e-mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents; *provided, further*, that, upon reasonable request by the Administrative Agent, the Borrower shall also provide a hard copy to the Administrative Agent of any such document; *provided, further*, that any documents posted for which a link is provided after normal business hours for the recipient shall be deemed to have been given at the opening of business on the next Business Day for such recipient. No Agent shall have any obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Loan Parties with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

SECTION 10.02 Survival of Agreement. All covenants, agreements, representations and warranties made by the Loan Parties herein, in the other Loan Documents and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the Lenders and shall survive the making by the Lenders of the Loans, the execution and delivery of the Loan Documents regardless of any investigation made by such Persons or on their behalf, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any Fee or any other amount payable under this Agreement or any other Loan Document is outstanding and so long as the Commitments have not been terminated. Without prejudice to the survival of any other agreements contained herein, indemnification and reimbursement obligations contained herein (including pursuant to Sections 2.15, 2.17, Article IX and 10.05) shall survive the resignation or removal of an Agent, the payment in full of the principal and interest hereunder and the termination of the Commitments or this Agreement.

SECTION 10.03 Binding Effect. This Agreement shall become effective when it has been executed by the Borrower and the Agents and the Lenders and when the Administrative Agent has received copies hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the Borrower, the Subsidiary Loan Parties, the Administrative Agent, each Lender and their respective permitted successors and assigns.

SECTION 10.04 Successors and Assigns.

(1) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (a) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Supermajority SGUS Lenders (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (b) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 10.04. Nothing in this Agreement, expressed or implied, will be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (to the extent provided in paragraph (3) of this Section 10.04) and, to the extent expressly contemplated hereby, the Related Parties of each of the Agents and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement or the other Loan Documents.

(2) Subject to the conditions set forth in paragraph (3) of this Section 10.04, any Lender may assign to one or more assignees (other than a natural person or a Defaulting Lender) (each, an

“*Assignee*”) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans at the time owing to it) with the prior written consent the Required SGUS Lenders.

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

(a) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender’s Commitments or Loans, the amount of the Commitments or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$5.0 million, unless the Administrative Agent (at the direction of the Required SGUS Lenders) otherwise consent; *provided* that such amounts shall be aggregated in respect of each Lender and its Affiliates or Approved Funds (with simultaneous assignments to or by two or more Approved Funds being treated as one assignment for purposes of meeting the minimum assignment amount requirement), if any;

(b) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance acceptable to the Administrative Agent (or, if previously agreed with the Administrative Agent, manually), and, except in the case of an assignment to an Approved Fund, shall pay to the Administrative Agent a processing and recordation fee of \$3,500;

(c) the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and any tax forms required to be delivered pursuant to Section 2.17;

(d) [Reserved]; and

(e) the assignor shall deliver to the Administrative Agent any Note issued to it with respect to the assigned Loan.

For the purposes of this Section 10.04, “*Approved Fund*” means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

(f) Subject to acceptance and recording thereof pursuant to paragraph (2)(e) of this Section 10.04, from and after the effective date specified in each Assignment and Acceptance, the Assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender’s rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.15, 2.17 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such Assignment and Acceptance). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 10.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (4) of this Section 10.04 to the extent such participation would be permitted by such Section 10.04(4).

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

(h) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an Assignee, the Assignee’s completed Administrative Questionnaire (unless the Assignee shall already be a Lender hereunder), all applicable tax forms, any Note outstanding with respect to the assigned Loan, the processing and recordation fee referred to in paragraph (2)(b)(ii) of this Section 10.04 and any written consent to such assignment required by paragraph (2) of this Section 10.04, the Administrative Agent promptly shall accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment, whether or not evidenced by a promissory note, shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph (2)(e).

(4) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the Assignee thereunder shall be deemed to confirm to and agree with each other and the other parties hereto as follows: (a) such assigning Lender warrants that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim and that its Commitment, and the outstanding balances of its Loans, in each case, without giving effect to assignments thereof which have not become effective, are as set forth in such Assignment and Acceptance; (b) except as set forth in clause (a) above, 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 execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto, or the financial condition of the Borrower or any Subsidiary or the performance or observance by the Borrower or any Subsidiary of any of its obligations under this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto; (c) the Assignee represents and warrants that it is legally authorized to enter into such Assignment and Acceptance; (d) the Assignee confirms that it has received a copy of this Agreement, together with copies of the most recent Required Financial Statements delivered pursuant to Section 5.04, 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; (e) the Assignee will independently and without reliance upon the Administrative 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; (f) the Assignee appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers under this Agreement as are delegated to the Administrative Agent by the terms of this Agreement, together with such powers as are reasonably incidental thereto; (g) the Assignee agrees that it will perform in accordance with their terms all the obligations which by the terms of this Agreement are required to be performed by it as a Lender; and (h) the Assignee agrees to be bound by the provisions of Section 10.25.

SECTION 10.05 Expenses; Indemnity.

(1) Subject to the DIP Orders, the Borrower agrees to pay all reasonable, documented and invoiced out-of-pocket expenses incurred by each Agent in connection with the Chapter 11 Cases generally, the preparation negotiation and execution of this Agreement and the other Loan Documents (including as to post-closing matters), or by each Agent (and in the case of enforcement of this Agreement, each Lender) in connection with the preparation, execution and delivery, amendment, modification, waiver or enforcement of this Agreement (including expenses incurred in connection with due diligence and initial and ongoing Collateral examination to the extent incurred with the reasonable prior approval of the Borrower or provided for in this Agreement) or in connection with the administration of this Agreement and any amendments, modifications or waivers of the provisions hereof or thereof, including (i) the reasonable, documented and invoiced fees, charges and disbursements of a single counsel for the Agents (which shall be Seward & Kissel LLP), one firm of local counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions), (ii) the reasonable, documented and invoiced fees, charges and disbursements of the Specified Ad Hoc Group Advisors for the Required SGUS Lenders, and one firm of local counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions) and (iii) in the case of any actual or perceived conflict of interest, one additional firm of counsel for each Agent and, in the case of enforcement of this Agreement, the Lenders.

(2) The Borrower, jointly and severally, agree to indemnify each Agent, each Lender, each of their respective Affiliates and each of their respective directors, officers, employees, agents, advisors, controlling Persons, equityholders, partners, members and other representatives and each of their respective successors and permitted assigns and their Affiliates (each such Person being called an “**Indemnitee**”) against, and to hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and reasonable, documented and invoiced out-of-pocket fees and expenses (limited to reasonable and documented legal fees of a single firm of counsel for all (i) the Agents, taken as a whole, (ii) all other Indemnitees, taken as a whole, and, (iii) if necessary, one firm of counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions) for the Agents, taken as a whole and all other Indemnitees taken as a whole (and, in the case of an actual or perceived conflict of interest, where the Indemnitee affected by such conflict informs the Borrower of such conflict and thereafter retains its own counsel, of an additional counsel for group of affected Indemnitees similarly situated taken as a whole)), incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of:

(a) the execution or delivery of this Agreement or any other Loan Document, the performance by the parties hereto and thereto of their respective obligations thereunder or the consummation of the Transactions and the other transactions contemplated hereby and thereby;

(b) the use of the proceeds of the Loans;

(c) the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents; or

(d) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto and regardless of whether such matter is initiated by a third party or by the Borrower or any of their Subsidiaries or Affiliates or creditors; *provided* that no Indemnitee will be indemnified for any loss, claim, damage, liability, cost or expense to the extent it: (i) has been determined by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from (A) the gross negligence, bad faith or willful misconduct of such Indemnitee or any of its Related Parties or (B) a material breach of the obligations of such Indemnitee under the Loan Documents or (ii) relates to any proceeding between or among Indemnitees other than (A) claims against an Agent or its Affiliates, in each case, in their

capacity or in fulfilling their role as the agent or arranger or any other similar role under the Loan Documents (excluding their role as a Lender) to the extent such Persons are otherwise entitled to receive indemnification under this Section 10.05(2) or (B) claims arising out of any act or omission on the part of the Borrower or their Subsidiaries.

(3) Subject to and without limiting the generality of the foregoing sentence, the Borrower agrees to indemnify each Indemnitee against, and hold each Indemnitee harmless from, any and all losses claims, damages, liabilities and related expenses, including reasonable, documented and invoiced fees, charges and disbursements of one firm of counsel for all Indemnities, taken as a whole, and, if necessary, one firm of counsel in each appropriate jurisdiction (which may include a single special counsel in multiple jurisdictions) for all Indemnities taken as a whole (and, in the case of an actual or perceived conflict of interest, an additional counsel for each group of Indemnities similarly situated) and reasonable, documented and invoiced consultant fees, in each case, incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result any Claim arising under Environmental Laws against the Borrower or any of the Subsidiaries, or any actual or alleged presence, Release or threatened Release of Hazardous Materials at, under, on or from any property for which the Borrower or any Subsidiaries would reasonably be expected to be held liable under Environmental Laws; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such Indemnitee or any of its Related Parties.

(4) Any indemnification or payments required by the Loan Parties under this Section 10.05 shall not apply with respect to Taxes other than (x) any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim and (y) expenses related to the enforcement of Section 2.17.

(5) To the fullest extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Commitment, any Loan or the use of the proceeds thereof, the Transactions and the other transactions contemplated hereby and thereby. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it 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.

(6) The agreements in this Section 10.05 shall survive the resignation of an Agent, the replacement of any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all the other Obligations and the termination of this Agreement. All amounts due under this Section 10.05 shall be payable on written demand therefor accompanied by reasonable documentation with respect to any reimbursement, indemnification or other amount requested.

SECTION 10.06 Right of Set-off.

(1) If an Event of Default shall have occurred and be continuing, each Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other Indebtedness at any time owing by such Lender to or for the credit or the account of any Borrower or any Subsidiary Loan Party against any and all of the Obligations of any Borrower or any Subsidiary Loan Party now or hereafter existing under this Agreement or any other Loan Document held by such Lender,

irrespective of whether or not such Lender shall have made any demand under this Agreement or such other Loan Document and although such Obligations may be unmaturred. The rights of each Lender under this Section 10.06(1) are in addition to other rights and remedies (including other rights of set-off) that such Lender may have, but may be exercised only at the direction of the Administrative Agent or the Required SGUS Lenders.

SECTION 10.07 Applicable Law. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN THE OTHER LOAN DOCUMENTS) AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK (EXCEPT FOR CONFLICTS OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION).

SECTION 10.08 Waivers; Amendment.

(1) No failure or delay of any Agent or any Lender in exercising any right or power hereunder or under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of each Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by the Borrower or any other Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (2) of this Section 10.08, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on the Borrower or any other Loan Party in any case shall entitle such Person to any other or further notice or demand in similar or other circumstances.

(2) Neither this Agreement nor any other Loan Document nor any provision hereof or thereof, nor any Event of Default, may be waived, amended or modified except:

- (a) as provided in Sections 2.21 and 10.20;
- (b) in the case of this Agreement, pursuant to an agreement or agreements in writing (including via e-mail) entered into by the Borrower and the Required SGUS Lenders (which may be by email between the Specified Ad Hoc Group Legal Advisor and primary counsel to the Borrower); and
- (c) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by each party thereto and the Administrative Agent (acting at the direction of the Required SGUS Lenders);

provided, however, that, except as provided in Sections 2.21 and 10.20, no such agreement will:

- (i) decrease, forgive, waive or excuse the principal amount of, or any interest on, or (except in connection with a Maturity Extension) extend the final maturity of, or decrease the rate of interest on, any Loan, without the prior written consent of each Lender adversely directly affected thereby (it being agreed and understood that any agreement

which extends the maturity of any Loans shall only require the consent of the Required SGUS Lenders); *provided* that any such agreement may (x) permit interest on the Loans to be paid-in-kind, or (y) allow for the principal amount of any Loans to be paid in the form of equity securities or other Indebtedness with the consent of the Supermajority SGUS Lenders;

(ii) increase or extend the Commitment of any Lender or decrease, waive or excuse the fees of any Lender or Agent without the prior written consent of such Lender or Agent (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or Events of Default or of a mandatory reduction in the aggregate Commitments shall not constitute an increase of the Commitments of any Lender);

(iii) except in connection with a Maturity Extension, extend any date on which payment of principal or interest on any Loan or any Fee or other payment is due, without the prior written consent of each Lender adversely affected thereby (it being agreed and understood that (A) any agreements which (x) permit interest on the Loans to be paid-in-kind or (y) allow for the principal amount of any Loans to be paid in the form of equity securities or other Indebtedness shall only require the consent of the Supermajority SGUS Lenders and (B) any agreements which extends the maturity of any Loans shall only require the consent of the Required SGUS Lenders);

(iv) amend the provisions of Section 2.08, 2.18 and 5.11(2)(b) of this Agreement, Section 5.2 of the Collateral Agreement or any analogous provision of any other Loan Document, in a manner that would by its terms alter the pro rata sharing of payments required thereby or the relative priorities of such payments or commitment terminations permitted, without the prior written consent of each Lender adversely affected thereby;

(v) [reserved];

(vi) amend or modify the provisions of this Section 10.08 or the definition of the term “Lenders”, “Required Lenders”, “Required SGUS Lenders” or “Supermajority SGUS Lenders” as the case may be, or any other provision hereof specifying the number or percentage of Lenders, Required Lenders, Required SGUS Lenders or Supermajority SGUS Lenders as the case may be, required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the prior written consent of each applicable Lender or DIP SGUS Lender;

(vii) except in connection with an Asset Sale permitted under this Agreement or otherwise in accordance with the Loan Documents (in each case, as in effect on the Closing Date), release all or substantially all of the Collateral under all the Security Documents, or release all or substantially all of the value of the Guarantees by the Guarantors, or release the Borrower from its Obligations hereunder, in each case without the prior written consent of each Lender;

(viii) except as expressly permitted herein or in any other Loan Document, subordinate the Obligations and/or Liens hereunder or under the other Loan Documents, to any other Indebtedness without the prior written consent of each Lender; or

(ix) amend, modify or waive the provisions of the Agreement or any other Loan Document in a manner that is adverse to the interests of the DIP SGUS Lenders (in

their capacity as such) in any material respect without the prior written consent of the Required SGUS Lenders;

provided that no such agreement shall amend, modify or otherwise affect the rights, benefits, immunities, indemnities or duties of any Agent hereunder without the prior written consent of such Agent; and

Each Lender shall be bound by any waiver, amendment or modification authorized by this Section 10.08 and any consent by any Lender pursuant to this Section 10.08 shall bind any assignee of such Lender.

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

(4) [Reserved].

(5) [Reserved].

(6) Notwithstanding the foregoing, no consent of any Defaulting Lender will be required other than with respect to any amendment or waiver set forth in clauses (a) through (c) of Section 10.08(2) that directly and adversely affects such Lender.

(7) Notwithstanding the foregoing, the Administrative Agent, with the consent of the Borrower, may (without obligation) amend, modify or supplement any Loan Document without the consent of any Lender or the Required SGUS Lenders in order to correct, amend or cure any ambiguity, inconsistency or defect or correct any typographical error, any error or omission of a technical nature or other manifest error in any Loan Document, and such amendment, modification or supplement shall become effective without any further action or consent of any other party to any Loan Document if the same is not objected to in writing by the Required SGUS Lenders within five Business Days following receipt of notice thereof. Notification of such amendment shall be made by the Administrative Agent to the Lenders promptly upon such amendment becoming effective.

(8) Notwithstanding the foregoing, solely in connection with the incurrence of any additional Indebtedness by the Borrower or its Subsidiaries that would otherwise be permitted under this Agreement, any amendment is proposed by the Borrower to add one or more provisions to this Agreement that is (A) necessary in the judgment of the Borrower to satisfy the requirements or conditions of such additional Indebtedness in order for it to be permitted hereunder, (B) consistent with the applicable provisions in the definitive documentation relating to such additional Indebtedness and (C) in the reasonable judgment of the Required SGUS Lenders, more favorable to the Lenders (or to the applicable subset thereof) than the existing Agreement, then the Administrative Agent (acting at the direction of the Required SGUS Lenders) and the Borrower shall be permitted to amend such provisions without any further action or consent of any other party if the same is not objected to in writing by the Required SGUS Lenders to the Administrative Agent within five Business Days following receipt of notice thereof.

Notwithstanding anything to the contrary herein, upon the occurrence and during the continuance of an “Event of Default” (as defined in the DIP SGUS Credit Agreement), the Required SGUS Lenders (or,

if so specified by this Agreement, the Supermajority SGUS Lenders) shall have the exclusive right to “step-in” and instruct any and all Lenders to take actions, including voting, amendments, waivers, and other discretionary actions, and the holders of the DIP SGUS Term Loans and the Agents shall be explicit third-party beneficiaries of and under this Agreement and the Loan Documents for any approval, consent, enforcement or other rights granted to any of them under this Agreement and the Loan Documents.

SECTION 10.09 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the applicable interest rate, together with all fees and charges that are treated as interest under applicable law (collectively, the “***Charges***”), as provided for herein or in any other document executed in connection herewith, or otherwise contracted for, charged, received, taken or reserved by any Lender, shall exceed the maximum lawful rate (the “***Maximum Rate***”) that may be contracted for, charged, taken, received or reserved by such Lender in accordance with applicable law, the rate of interest payable hereunder, together with all Charges payable to such Lender, shall be limited to the Maximum Rate; *provided* that such excess amount shall be paid to such Lender on subsequent payment dates to the extent not exceeding the legal limitation. In no event will the total interest received by any Lender exceed the amount which it could lawfully have received and any such excess amount received by any Lender will be applied to reduce the principal balance of the Loans or to other amounts (other than interest) payable hereunder to such Lender, and if no such principal or other amounts are then outstanding, such excess or part thereof remaining will be paid to the Borrower.

SECTION 10.10 Entire Agreement. This Agreement, the other Loan Documents and the agreements regarding certain Fees referred to herein constitute the entire contract between the parties relative to the subject matter hereof. Any previous agreement among or representations from the parties or their Affiliates with respect to the subject matter hereof is superseded by this Agreement and the other Loan Documents. Notwithstanding the foregoing, the Fee Letter shall survive the execution and delivery of this Agreement and remain in full force and effect. Nothing in this Agreement or in the other Loan Documents, expressed or implied, is intended to confer upon any party other than the parties hereto and thereto any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.

SECTION 10.11 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.11.

SECTION 10.12 Severability. In the event any one or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 10.13 Counterparts. This Agreement may be executed in one or more counterparts, including by means of facsimile or other electronic transmission, each of which shall be an original and all

of which shall together constitute one and the same document. This Agreement shall be valid, binding and enforceable against a party when executed and delivered by an authorized individual on behalf of the party by means of (i) an original manual signature; (ii) a faxed, scanned or photocopied manual signature or (iii) any other electronic signature permitted by the federal Electronic Signatures in Global and National Commerce Act, state enactments of the Uniform Electronic Transactions act, and/or any other relevant electronic signatures law, including any relevant provisions of the UCC (collectively, “***Signature Law***”), in each case to the extent applicable. Each faxed, scanned, or photocopied manual signature, or other electronic signature, shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Each party hereto shall be entitled to conclusively rely upon, and shall have no liability with respect to, any faxed, scanned, or photocopied manual signature, or other electronic signature, of any other party and shall have no duty to investigate, confirm or otherwise verify the validity or authenticity thereof. For the avoidance of doubt, original manual signatures shall be used for execution or indorsement of writings when required under the UCC or other Signature Law due to the character or intended character of the writings.

SECTION 10.14 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 10.15 Jurisdiction; Consent to Service of Process.

(1) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any New York State court or federal court of the United States of America sitting in the Borough of Manhattan in New York City, any appellate court from any thereof (collectively, “***New York Courts***”) and the Bankruptcy Court in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding shall be heard and determined in such New York State court or Bankruptcy Court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. 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 any of the other Loan Documents in the courts of any jurisdiction, except that each of the Loan Parties agrees that (a) it will not bring any such action or proceeding in any court other than New York Courts or the Bankruptcy Court (it being acknowledged and agreed by the parties hereto that any other forum would be inconvenient and inappropriate in view of the fact that more of the Lenders who would be affected by any such action or proceeding have contacts with the State of New York than any other jurisdiction), and (b) in any such action or proceeding brought against any Loan Party in any other court, it will not assert any cross-claim, counterclaim or setoff, or seek any other affirmative relief, except to the extent that the failure to assert the same will preclude such Loan Party from asserting or seeking the same in the New York Courts or the Bankruptcy Court.

(2) Each of the parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in any New York State or federal court, including the Bankruptcy Court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

SECTION 10.16 Confidentiality. Each of the Lenders and each of the Agents agrees (and agrees to cause each of its respective Affiliates) to use all information provided to it by or on behalf of the Borrower

or its Subsidiaries under the Loan Documents or otherwise in connection with the Transactions solely for the purposes of the transactions contemplated by this Agreement and the other Loan Documents and shall not publish, disclose or otherwise divulge such information (other than information that (1) has become generally available to the public other than as a result of a disclosure by such party; (2) has been independently developed by such Lender or the Administrative Agent without violating this Section 10.16; or (3) was available to such Lender or the Administrative Agent from a third party having, to such Person's knowledge, no obligations of confidentiality to the Borrower or any other Loan Party) and shall not reveal the same other than to its and its Affiliates' directors, trustees, officers, employees and advisors with a need to know, agents, other parties to this Agreement or to any Person that approves or administers the loan facilities hereunder on behalf of such Lender or any numbering, administration or settlement service providers (so long as each such Person shall have been instructed to keep the same confidential in accordance with this Section 10.16) or otherwise with the prior written consent of the Borrower, except:

(a) to the extent necessary to comply with law or any legal process or the requirements of any Governmental Authority, the National Association of Insurance Commissioners or of any securities exchange on which securities of the disclosing party or any Affiliate of the disclosing party are listed or traded, in which case such Person agrees, to the extent practicable and not prohibited by applicable law, to inform you promptly thereof prior to disclosure;

(b) as part of normal reporting or review procedures to, or examinations by, Governmental Authorities or any bank accountants or bank regulatory authority exercising examination or regulatory authority, in which case (except with respect to any audit or examination conducted by any such bank accountant or bank regulatory authority) such Person agrees, to the extent practicable and not prohibited by applicable law, to inform you promptly thereof prior to disclosure;

(c) to its parent companies, Affiliates, limited partner, investors, prospective investors auditors or current or prospective limited partners (so long as each such Person shall have been instructed to keep the same confidential in accordance with this Section 10.16);

(d) in order to enforce its rights under any Loan Document in a legal proceeding;

(e) to any prospective assignee of, or prospective Participant in, any of its rights under this Agreement (so long as such Person shall have been instructed to keep the same confidential in accordance with this Section 10.16);

(f) [reserved]; and

(g) to its financing sources (so long as any such financing source shall have been instructed to keep the same confidential in accordance with this Section 10.16).

Notwithstanding the foregoing, (i) no such information shall be disclosed to a Disqualified Institution that constitutes a Disqualified Institution at the time of such disclosure, unless an Event of Default has occurred and is continuing, without the Borrower's prior written consent and (ii) any Agent or Lender may, at its own expense and in the ordinary course issue customary news releases and publish "tombstone" advertisements and other announcements relating to this transaction in newspapers, trade journals and other appropriate media (which may include use of logos of one or more of the Loan Parties) (collectively, "**Trade Announcements**"), subject to the Borrower's prior written consent. Such Agent or such Lender shall provide a draft reasonably in advance of any Trade Announcement to the Borrower for review and comment prior to the publication thereof.

For the avoidance of doubt, nothing herein prohibits any individual from communicating or disclosing information regarding suspected violations of laws, rules, or regulations to a governmental, regulatory, or self-regulatory authority without any notification to any person.

SECTION 10.17 Platform; Borrower Materials. The Borrower hereby acknowledges that (1) the Administrative Agent will make available to the Lenders materials or information provided by or on behalf of the Borrower hereunder (collectively, “**Borrower Materials**”) by posting the Borrower Materials on Syndtrack, Debtdomain, Intralinks or another similar electronic system (the “**Platform**”) and (2) certain of the Lenders may be “public-side” Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Borrower or its securities) (each, a “**Public Lender**”). The Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that:

(a) all the Borrower Materials shall be clearly and conspicuously marked “PUBLIC” which, at a minimum, means that the word “PUBLIC” shall appear prominently on the first page thereof;

(b) by marking Borrower Materials “PUBLIC,” the Borrower shall be deemed to have authorized the Administrative Agent and the Lenders to treat the Borrower Materials as either publicly available information or not material information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States Federal and state securities laws;

(c) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Investor;” and

(d) the Administrative Agent shall be entitled to treat the Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Investor.”

Notwithstanding the foregoing, the following Borrower Materials shall be deemed to be marked “PUBLIC” unless the Borrower notifies the Administrative Agent that any such document contains MNPI: (1) the Loan Documents, (2) [reserved], (3) any notification of the identity of Disqualified Institutions and (4) all information delivered pursuant to clauses (1), (2) and (3) of Section 5.04.

THE PLATFORM AND THE COMMUNICATIONS ARE PROVIDED “AS IS” AND “AS AVAILABLE”. THE APPLICABLE PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS, OR THE ADEQUACY OF THE APPROVED ELECTRONIC PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS OR OMISSIONS IN THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS. 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 APPLICABLE PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE APPROVED ELECTRONIC PLATFORM. IN NO EVENT SHALL THE ANY AGENT OR ANY OF THEIR RESPECTIVE RELATED PARTIES (COLLECTIVELY, “APPLICABLE PARTIES”) HAVE ANY LIABILITY TO ANY LOAN PARTY, ANY LENDER OR ANY OTHER PERSON OR ENTITY FOR DAMAGES OF ANY KIND, INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF ANY BORROWER’S OR

THE SUCH AGENT'S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET OR THE APPROVED ELECTRONIC PLATFORM.

SECTION 10.18 [Reserved].

SECTION 10.19 USA PATRIOT Act Notice. Each Lender that is subject to the USA PATRIOT Act, and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the USA PATRIOT Act. The Borrower shall provide any information or documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act and the Beneficial Ownership Regulation.

SECTION 10.20 Security Documents and Intercreditor Agreements.

(1) The parties hereto authorize the Administrative Agent to enter into (x) the DIP ABL Intercreditor Agreement in the form executed on the date hereof or in such other form as may be satisfactory to the Administrative Agent, and (y) any other intercreditor agreement as may be contemplated herein or determined by the Administrative Agent to be consistent herewith, in such form as may be satisfactory to the Administrative Agent. The Administrative Agent may from time to time enter into a modification of the Intercreditor Agreement or any other intercreditor agreement, as the case may be, for the purpose of causing new or additional Indebtedness Obligations to become subject thereto.

(2) Each Lender hereunder:

(a) agrees to the terms of the DIP ABL Intercreditor Agreement; and

(b) agrees that it will be bound by and will take no actions contrary to the provisions of the DIP ABL Intercreditor Agreement.

(3) Each Lender hereunder (a) consents to the subordination of Liens provided for in the DIP ABL Intercreditor Agreement, if any (b) agrees that it will be bound by and will take no actions contrary to the provisions of the DIP ABL Intercreditor Agreement and (c) authorizes and instructs the Administrative Agent to enter into the DIP ABL Intercreditor Agreement on behalf of such Lender.

SECTION 10.21 [Reserved].

SECTION 10.22 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees that: (1) (a) the arranging and other services regarding this Agreement provided by the Agents are arm's-length commercial transactions between the Borrower, on the one hand, and the Agents, on the other hand, (b) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it deemed appropriate, and (c) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (2) (a) each Agent is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any other Person and (b) no Agent has any obligation to the Borrower 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; and (3) the Agents and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and no Agent has any obligation to disclose any of such interests to the Borrower or any of its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Agents with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

SECTION 10.23 [Reserved].

SECTION 10.24 DIP Orders Control. In the event of any conflict between any terms and provisions set forth in this Agreement and those set forth in the DIP Orders, the terms and provisions of the DIP Orders shall supersede and control the terms and provisions of this Agreement

SECTION 10.25 Electronic Execution of Assignments and Certain Other Documents. The words “execution,” “signed,” “signature,” and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without any limitation Assignment and Acceptance, amendments, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; *provided*, that notwithstanding anything contained herein to the contrary the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it, it being understood that the authorization under this paragraph includes use or acceptance by the Administrative Agent of a manually signed paper communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed communication converted into another format, for transmission, delivery and/or retention.

[Signature pages follow]

IN WITNESS WHEREOF, the undersigned have executed this Debtor-In-Possession Term Loan Credit Agreement as of the date set forth above.

SAKS GLOBAL ENTERPRISES LLC, as the
Borrower

By:
Name:
Title:

**U.S. BANK TRUST COMPANY, NATIONAL
ASSOCIATION**, as Administrative Agent and Collateral
Agent

By:
Name:
Title:

SGUS LLC, as a Lender

By:
Name:
Title: