UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended August 2, 2008

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

For the transition period from to

Commission file number 0-23071

THE CHILDREN'S PLACE RETAIL STORES, INC.

(Exact name of registrant as specified in its charter)

Delaware (State or other jurisdiction of Incorporation or organization)	**31-1241495** (I.R.S. employer identification number)
915 Secaucus Road **Secaucus, New Jersey** (Address of Principal Executive Offices)	**07094** (Zip Code)

(201) 558-2400
(Registrant's Telephone Number, Including Area Code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes x No o

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See definition of a "large accelerated filer", "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one).

Large accelerated filer x	Accelerated filer o	Non-accelerated filer o (Don't check if smaller reporting company)	Smaller reporting company o

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes o No x

The number of shares outstanding of the registrant's common stock with a par value of $0.10 per share, as of September 5, 2008 was 29,421,489 shares.

THE CHILDREN'S PLACE RETAIL STORES, INC. AND SUBSIDIARIES

QUARTERLY REPORT ON FORM 10-Q

FOR THE PERIOD ENDED AUGUST 2, 2008

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PART I. FINANCIAL INFORMATION

Item 1. Condensed Consolidated Financial Statements.

THE CHILDREN'S PLACE RETAIL STORES, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands)

	(unaudited) August 2, 2008	February 2, 2008	(unaudited) August 4, 2007
ASSETS			
Current assets:			
Cash and cash equivalents	$ 146,704	$ 81,626	$ 80,161
Accounts receivable	26,150	41,143	34,609
Inventories	219,100	196,606	247,091
Prepaid expenses and other current assets	78,167	67,589	69,526
Deferred income taxes	22,149	25,321	15,116
Restricted assets in bankruptcy estate of subsidiary	85,265	—	—
Assets held for sale	—	98,591	95,776
Total current assets	577,535	510,876	542,279
Long-term assets:			
Property and equipment, net	333,783	354,141	342,708
Deferred income taxes	91,163	125,292	84,780
Other assets	6,705	3,065	2,493
Assets held for sale	—	4,163	60,026
Total assets	$ 1,009,186	$ 997,537	$ 1,032,286
LIABILITIES AND STOCKHOLDERS' EQUITY			
LIABILITIES:			
Current liabilities:			
Revolving loan	$ —	$ 88,976	$ 72,225
Short-term portion of term loan	30,000	—	—
Accounts payable	80,287	80,807	120,766
Income taxes payable	5,526	3,845	6,670
Accrued expenses, interest, and other current liabilities	93,619	136,867	121,032
Liabilities of bankruptcy estate of subsidiary	108,409	—	—
Total current liabilities	317,841	310,495	320,693
Long-term liabilities:			
Deferred rent liabilities	105,016	136,708	126,315
Deferred royalty	—	42,988	43,395
Other tax liabilities	24,119	23,520	21,809
Long-term portion of term loan	55,000	—	—
Other long-term liabilities	10,984	11,593	6,444
Total liabilities	512,960	525,304	518,656
COMMITMENTS AND CONTINGENCIES			
STOCKHOLDERS' EQUITY:			
Preferred stock, $1.00 par value, 1,000,000 shares authorized, 0 shares issued and outstanding at August 2, 2008, February 2, 2008, and August 4, 2007	—	—	—
Common stock, $0.10 par value, 100,000,000 shares authorized, 29,337,505, 29,139,664 and 29,083,916 issued and outstanding at August 2, 2008, February 2, 2008, and August 4, 2007, respectively	2,933	2,914	2,909
Additional paid-in capital	202,484	195,591	193,724

Accumulated other comprehensive income	11,486	13,934	11,014
Retained earnings	279,323	259,794	305,983
Total stockholders' equity	496,226	472,233	513,630
Total liabilities and stockholders' equity	$ 1,009,186	$ 997,537	$ 1,032,286

See accompanying notes to these condensed consolidated financial statements.

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THE CHILDREN'S PLACE RETAIL STORES, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)
(In thousands, except per share amounts)

	Thirteen Weeks Ended		Twenty-six Weeks Ended	
	August 2, 2008	August 4, 2007	August 2, 2008	August 4, 2007
Net sales	$ 338,029	$ 290,498	$ 738,241	$ 646,493
Cost of sales	209,480	197,054	438,600	401,075
Gross profit	128,549	93,444	299,641	245,418
Selling, general and administrative expenses	105,920	109,854	225,330	217,629
Depreciation and amortization	17,709	15,154	35,361	29,751
Operating income (loss)	4,920	(31,564)	38,950	(1,962)
Interest income (expense), net	(398)	428	(891)	1,428
Income (loss) from continuing operations before income taxes	4,522	(31,136)	38,059	(534)
Provision (benefit) for income taxes	1,786	(11,330)	15,903	203
Income (loss) from continuing operations	2,736	(19,806)	22,156	(737)
Loss from discontinued operations, net of income taxes	(2,725)	(8,285)	(2,627)	(12,640)
Net income (loss)	$ 11	$ (28,091)	$ 19,529	$ (13,377)
Basic earnings (loss) per share amounts				
Income (loss) from continuing operations	$ 0.09	$ (0.68)	$ 0.76	$ (0.03)
Loss from discontinued operations	(0.09)	(0.28)	(0.09)	(0.43)
Net income (loss)	$ 0.00	$ (0.97)(1)	$ 0.67	$ (0.46)
Basic weighted average common share outstanding	29,255	29,084	29,177	29,084
Diluted earnings (loss) per share amounts				
Income (loss) from continuing operations	$ 0.09	$ (0.68)	$ 0.75	$ (0.03)
Loss from discontinued operations	(0.09)	(0.28)	(0.09)	(0.43)
Net income (loss)	$ 0.00	$ (0.97)(1)	$ 0.66	$ (0.46)
Diluted weighted average common share outstanding	29,599	29,084	29,395	29,084

(1) *Table may not add due to rounding*

See accompanying notes to these condensed consolidated financial statements.

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THE CHILDREN'S PLACE RETAIL STORES, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited) (In thousands)

	Twenty-six Weeks Ended	
	August 2, 2008	August 4, 2007
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net income (loss)	$ 19,529	$ (13,377)
Less loss from discontinued operations	(2,627)	(12,640)
Income (loss) from continuing operations	22,156	(737)
Reconciliation of net income to net cash (used in) provided by operating activities of continuing operations:		
Depreciation and amortization	35,361	29,751
Other amortization	232	135
(Gain) loss on disposal of property and equipment	(1,695)	97
Asset impairment charges	127	635

Stock-based compensation	2,780	2,491
Deferred taxes	37,186	(9,598)
Deferred rent expense and lease incentives	(7,849)	(6,727)
Changes in operating assets and liabilities:		
Accounts receivable	6,316	(512)
Inventories	(23,242)	(74,923)
Prepaid expenses and other current assets	(881)	780
Other assets	(216)	(107)
Accounts payable	51,349	24,877
Accrued expenses, interest and other current liabilities	803	(3,215)
Intercompany (discontinued operations)	(17,995)	24,480
Income taxes payable, net of prepayments	(19,370)	(39,484)
Deferred rent liabilities	2,053	7,994
Other liabilities	779	4,563
Total adjustments	65,738	(38,763)
Net cash provided by (used in) operating activities of continuing operations	87,894	(39,500)
Net cash provided by (used in) operating activities of discontinued operations	23,228	(43,094)
Net cash provided by (used in) operating activities	111,122	(82,594)
CASH FLOWS FROM INVESTING ACTIVITIES:		
Property and equipment purchases, lease acquisition and software costs	(18,530)	(95,780)
Cash received for sale of store assets and leases	2,300	—
Purchase of investments	—	(776,405)
Sale of investments	—	823,255
Net cash used in investing activities of continuing operations	(16,230)	(48,930)
Net cash (used in) provided by investing activities of discontinued operations	(23,743)	23,117
Net cash used in investing activities	(39,973)	(25,813)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Borrowings under revolving credit facilities	649,174	158,994
Repayments under revolving credit facilities	(718,735)	(86,774)
Borrowings under term loan	85,000	—
Exercise of stock options and employee stock purchases	3,695	—
Capital contribution to subsidiary in discontinued operations	(8,250)	—
Deferred financing costs	(3,839)	—
Net cash provided by financing activities of continuing operations	7,045	72,220
Net cash used in financing activities of discontinued operations	(11,878)	—
Net cash (used in) provided by financing activities	(4,833)	72,220
Effect of exchange rate changes on cash of continuing operations	(987)	1,720
Effect of exchange rate changes on cash of discontinued operations	(251)	612
Effect of exchange rate changes on cash	(1,238)	2,332
Net increase (decrease) in cash and cash equivalents	65,078	(33,855)
Cash and cash equivalents, beginning of year	81,626	114,016
Cash and cash equivalents, end of quarter	$ 146,704	$ 80,161

See accompanying notes to these condensed consolidated financial statements.

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THE CHILDREN'S PLACE RETAIL STORES, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited) (In thousands)

	Twenty-six Weeks Ended	
	August 2, 2008	August 4, 2007
OTHER CASH FLOW INFORMATION:		
Net cash (refunded) paid during the year for income taxes	$ (4,012)	$ 38,730
Cash paid during the year for interest	1,591	973
Decrease in accrued purchases of property and equipment, lease acquisition and software costs	(10,757)	(8,724)
Land received for distribution center	—	1,800

See accompanying notes to these condensed consolidated financial statements.

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THE CHILDREN'S PLACE RETAIL STORES, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. BASIS OF PRESENTATION

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States ("U.S. GAAP") for interim financial information and the rules and regulations of the Securities and Exchange Commission (the "SEC"). Accordingly, certain information and footnote disclosures normally included in the annual consolidated financial statements prepared in accordance with U.S. GAAP have been condensed or omitted.

In the opinion of management, the accompanying unaudited condensed consolidated financial statements contain all adjustments (consisting only of normal recurring accruals) necessary to present fairly The Children's Place Retail Stores, Inc.'s (the "Company") consolidated financial position as of August 2, 2008 and August 4, 2007, the results of its consolidated operations for the thirteen weeks and twenty-six weeks ended August 2, 2008 and August 4, 2007, and its consolidated cash flows for the twenty-six weeks ended August 2, 2008 and August 4, 2007. Due to the seasonal nature of the Company's business, the results of operations for the thirteen and twenty-six weeks ended August 2, 2008 and August 4, 2007 are not necessarily indicative of operating results for a full fiscal year. The accompanying unaudited condensed consolidated financial statements have classified the Disney Store business as discontinued operations in accordance with U.S. GAAP, reflecting the Company's exit of the Disney Store business (see Note 2-Discontinued Operations). Correspondingly, reclassifications have been made to conform to the current year's presentation. Also, a reclassification of cash disbursement overdraft balances from accounts payable to cash to the extent a right of offset exists was made to the August 4, 2007 balances, which had the effect of reducing cash and accounts payable by $4.0 million. These condensed consolidated financial statements should be read in conjunction with the consolidated financial statements for the fiscal year ended February 2, 2008 included in the Company's Annual Report on Form 10-K for the fiscal year ended February 2, 2008 and the Company's Current Report on Form 8-K filed with the SEC on August 6, 2008 to classify the Disney Stores as a discontinued operation.

2. DISCONTINUED OPERATIONS

After a thorough review of the Disney Store business (as defined below), its potential earnings growth, its capital needs and its ability to fund such needs from its own resources, the Company announced on March 20, 2008 that it had decided to exit the Disney Store business. The Company's subsidiaries that operated the Disney Store business are referred to herein interchangeably and collectively as "Hoop." After assessing the above factors and considering Hoop's liquidity, Hoop's Board of Directors determined that the best way to complete an orderly wind-down of Hoop's affairs was for Hoop to seek relief under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code") and pursuant to the Companies' Creditors Arrangement Act (the "CCAA"). On March 26, 2008, Hoop Holdings, LLC, Hoop Retail Stores, LLC and Hoop Canada Holdings, Inc. each filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "U.S. Bankruptcy Court") (Case Nos. 08-10544, 08-10545, and 08-10546, respectively, the "Cases"). On March 27, 2008, Hoop Canada, Inc. filed for protection pursuant to the CCAA in the Ontario Superior Court of Justice (Commercial List) ("Canadian Bankruptcy Court") (Court File No. 08-CL-7453, and together with the Cases, the "Filings"). Each of the foregoing Hoop entities are referred to collectively herein as the "Hoop Entities." After receiving the approval of the U.S. Bankruptcy Court and the Canadian Bankruptcy Court, on April 30, 2008, Hoop transferred the Disney Store business in the U.S. and Canada and a substantial portion of the Disney Store assets to affiliates of The Walt Disney Company ("Disney") in an asset sale (the "Private Sale"), pursuant to section 363 of the Bankruptcy Code (and a similar provision under the CCAA.)

In November 2004, the Company had acquired, through two wholly-owned subsidiaries, certain assets used to operate the Disney Store retail chain in North America (the "Disney Store business") from affiliates of Disney. As a result of this acquisition and a subsequent transaction, Hoop had acquired 315 Disney Stores, consisting of 313 mall-based existing Disney Stores in the United States and Canada and two Disney flagship stores (together, the "Original Acquisition"), along with certain other assets used in the Disney Store business. The Original Acquisition excluded stores located at Disney theme parks, other flagship stores and certain other Disney properties.

Concurrent with the Original Acquisition, the Company entered into a License Agreement (the "License Agreement") and a Guaranty and Commitment (the "Guaranty and Commitment Agreement"). Under the License

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Agreement, Hoop had the right to use certain Disney intellectual property, subject to Disney approval, in the Disney Store business in exchange for ongoing royalty payments. These royalty payments commenced in November 2006, after a two-year royalty holiday period subsequent to the Original Acquisition. Royalty payments were equal to 5% of net sales at the physical Disney Store retail locations, subject to a royalty abatement with respect to a limited number of stores. The amortization of the estimated value of the two-year holiday under the License Agreement was recognized on a straight-line basis over the term of the License Agreement.

The License Agreement, as well as the Company's credit facilities, placed certain liquidity restrictions on the Company. These agreements restricted the commingling of funds between The Children's Place and Hoop, limited borrowings by Hoop from The Children's Place, and limited distributions other than payment for the allocated costs of shared services from Hoop to The Children's Place. From the time of the Original Acquisition, the Company segregated all cash receipts and disbursements, investments and credit facility borrowings and letter of credit activity.

In August 2007, the Company, Hoop and Disney amended the License Agreement by executing the Refurbishment Amendment (the "Refurbishment Amendment"). Subject to compliance with the terms and satisfaction of the conditions in the Refurbishment Amendment, Disney agreed to forbear from exercising any of its rights or remedies under the License Agreement based on previously asserted breaches of the License Agreement. If the Company breached any of the provisions of the Refurbishment Amendment on three or more occasions and Disney had not previously terminated the Refurbishment Amendment, the Company would have owed $18.0 million to Disney with respect to the breach fees called for by the License Agreement. If the Company violated any of the provisions of the Refurbishment Amendment on five or more occasions, the Refurbishment Amendment provided that Disney would have the right to immediately terminate the License Agreement, without any right by the Company to defend, counterclaim, protest or cure. The Refurbishment Amendment set forth specific requirements to remodel and otherwise refresh the Disney Stores while the Refurbishment Amendment remained in effect. In connection with the Refurbishment Amendment, the Company's Board of Directors authorized an investment of $175 million to remodel and refresh stores through fiscal 2011. Prior to the Filings, Hoop had received notices of several material breaches under the License Agreement. Hoop had believed it had cured some of the asserted breaches and intended to cure or to assert defenses to the other asserted breaches.

Since the Filings, the Hoop Entities have managed their properties and have operated their businesses as "debtors-in-possession" under the jurisdiction of the U.S. Bankruptcy Court or the Canadian Bankruptcy Court, as applicable, and in accordance with the applicable provisions of the Bankruptcy Code or the CCAA, as applicable. Neither the Company, as Hoop's parent company nor any of the Company's other subsidiaries, has commenced or plans to commence a Chapter 11 case (or equivalent under applicable bankruptcy laws).

Upon the closing of the Private Sale, affiliates of Disney paid approximately $64.0 million for the acquired assets of the Disney Store business, subject to a post-closing inventory and asset adjustment. Approximately $6.0 million of the purchase price was held in escrow for such true-up purposes. The proceeds received from the Private Sale will be utilized to settle the Hoop Entities' liabilities as "debtors-in-possession" under the jurisdiction of the U.S. Bankruptcy Court or Canadian Bankruptcy Court, as applicable. As a "debtor-in-possession," certain claims against Hoop that existed prior to the Filings are stayed under the jurisdiction of the U.S. Bankruptcy Court or Canadian Bankruptcy Court, as applicable, and are "liabilities subject to compromise" and are reflected in the August 2, 2008 balance sheet within "Liabilities of bankruptcy estate of subsidiary."

According to the terms of the Private Sale, Hoop transferred 217 Disney Stores to affiliates of Disney and granted such affiliates the right to operate and wind-down the affairs of the remaining Disney Stores for a specified time period, after which Disney may choose to return such stores to Hoop's bankruptcy estate for treatment as approved by the relevant bankruptcy court. Additional claims (liabilities subject to compromise) may arise as a result of the rejection of executory contracts, including leases for the stores returned to the Hoop estate, and from the determination by the U.S. Bankruptcy Court or Canadian Bankruptcy Court (or agreed to by Hoop's creditors) of claims allowed for contingencies and other related amounts. Hoop has recorded a liability of approximately $19.2 million for the potential settlement of the remaining Disney Stores leases. Claims secured against Hoop's assets ("secured claims") also are stayed, although the holders of such claims have the right to petition the U.S. Bankruptcy Court or Canadian Bankruptcy Court, as applicable, for relief from the stay.

During the year ended February 2, 2008, the Company recorded $80.3 million in asset impairment charges related to the Company's decision to exit the Disney Store business. In addition, during the year ended February 2, 2008, the Company recorded $6.1 million in costs primarily related to the cancellation of the Disney Store remodeling program. As a "debtor-in-possession," Hoop expects to file a plan of reorganization and disclosure statement (the "Plans") with the U.S. and Canadian bankruptcy courts and get approval of such Plans on or before fiscal year end to settle its obligations with its restricted assets.

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In connection with the closing of the Private Sale, Disney's relevant affiliates released Hoop from its rights and obligations under the License Agreement, as amended by the Refurbishment Amendment and the Guaranty and Commitment Agreement, and any related future liabilities and unlimited claims. Further, in connection with the Private Sale and the satisfaction of other conditions, Disney and its affiliates released the Company from its obligations under the Guaranty and Commitment Agreement and Refurbishment Agreement. Separately, the Company entered into a settlement and release of claims with Hoop and its creditors' committee, which was approved by the U.S. Bankruptcy Court on April 29, 2008. The Company had agreed to:

- Provide transitional services;
- Forgive all pre- and post-bankruptcy petition claims against Hoop, which included inter-company charges for shared services of approximately $24.1 million and a capital contribution the Company made to Hoop of approximately $8.3 million in cash on March 18, 2008;
- Pay severance and other employee costs for the Company's employees servicing Hoop of approximately $7.8 million; and
- Certain other professional fees and other costs.

In addition, the Company may incur other professional fees and other costs during the Hoop Entities' bankruptcy proceedings, as well as claims that might be asserted against the Company in such bankruptcy proceedings.

The Disney Store business has been segregated from continuing operations and included in "Discontinued operations, net of taxes" in the condensed consolidated statements of operation. Since the consummation of the Private Sale on April 30, 2008, Hoop has been in the process of winding down its affairs under the jurisdiction of the U.S. Bankruptcy Court or Canadian Bankruptcy Court, as applicable. In discontinued operations, the Company has reversed its historical allocation of shared services to the Disney Stores and has charged discontinued operations with the administrative and distribution expenses that were attributable to the Disney Stores. During the thirteen and twenty-six weeks ended August 2, 2008, discontinued operations included certain one-time costs related to professional and restructuring fees, as well as severance and other employee costs. Discontinued operations for the thirteen and twenty-six weeks ended August 2, 2008 and August 4, 2007 were comprised of (in thousands):

	Thirteen Weeks Ended		Twenty-six Weeks Ended	
	August 2, 2008	August 4, 2007	August 2, 2008	August 4, 2007
Net sales	$ —	$ 133,799	$ 129,177	$ 256,667
Cost of sales	—	96,940	93,367	180,836
Gross profit	—	36,859	35,810	75,831
Selling, general and administrative expenses	2,122	46,558	46,427	89,381
Restructuring charges	2,470	—	15,984	—
Depreciation and amortization	—	3,415	—	6,553
Operating loss	(4,592)	(13,114)	(26,601)	(20,103)
Gain on disposal of assets and liabilities of discontinued operations	—	—	23,135	—
Interest (expense) income, net	221	138	(791)	456
Loss before income taxes	(4,371)	(12,976)	(4,257)	(19,647)
Benefit for income taxes	(1,646)	(4,691)	(1,630)	(7,007)
Loss from discontinued operations, net of income taxes	$ (2,725)	$ (8,285)	$ (2,627)	$ (12,640)

As of August 2, 2008, the assets and liabilities of Hoop have been segregated and have been included in "Restricted assets in bankruptcy estate of subsidiary" and "Liabilities of bankruptcy estate of subsidiary" in the condensed consolidated balance sheet. They are detailed as follows (in thousands):

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	August 2, 2008
Restricted assets in bankruptcy estate of subsidiary:	
Cash and cash equivalents	$ 72,454
Accounts receivable	11,603
Prepaid expenses	1,208
	$ 85,265
Liabilities of bankruptcy estate of subsidiary:	
Subject to compromise	
Accounts payable - pre-petition	$ 56,973
Accrued expenses and other current liabilities - pre-petition	36,168
Not subject to compromise	
Accounts payable - post-petition	9,794
Accrued expenses and other current liabilities - post-petition	5,474
	$ 108,409

For the condensed consolidated balance sheets as of February 2, 2008 and August 4, 2007, "Assets held for sale" reflect the assets subsequently sold to affiliates of Disney. They are detailed as follows (in thousands):

	February 2, 2008	August 4, 2007
Current assets held for sale:		
Accounts receivable	$ 4,555	$ 1,591
Inventories	88,674	86,779
Prepaid expenses and other current assets	5,362	7,406
	$ 98,591	$ 95,776
Non-current assets held for sale:		
Property and equipment, net	3,317	59,400
Other assets - security deposits	846	626
	$ 4,163	$ 60,026

For the condensed consolidated balance sheets as of February 2, 2008 and August 4, 2007, the remaining assets and liabilities of Hoop are included in their respective balance sheet categories and were included in the following asset and liability categories (in thousands):

	February 2, 2008	August 4, 2007
Cash and cash equivalents	$ 12,644	$ 13,350
Accounts receivable	8,627	9,691
Prepaid expenses and other current assets	11,214	7,748
Total current assets	32,485	30,789
Other assets	497	1,660
Total assets	$ 32,982	$ 32,449
Revolving loan	$ 19,415	$ —
Accounts payable	51,795	36,905
Accrued expenses and other current liabilities	41,662	23,242
Total current liabilities	112,872	60,147
Deferred rent liabilities	25,518	22,112
Deferred royalty	42,988	43,395
Other long-term liabilities	1,863	1,762
Total liabilities	$ 183,241	$ 127,416

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Cash flows from the Company's discontinued operations were as follows (in thousands):

	Twenty-six Weeks Ended	
	August 2, 2008	August 4, 2007
CASH FLOWS FROM OPERATING ACTIVITIES:		
Loss from discontinued operations	$ (2,627)	$ (12,640)
Reconciliation of net income (loss) to net cash (used in) provided by operating activities:		
Depreciation and amortization	—	6,553
Deferred financing fees and related amortization	65	142
Gain on disposal of the Disney Store business	(23,135)	—
Loss on disposal of assets	—	18

Stock compensation	438	303
Deferred royalty, net	(368)	(863)
Deferred rent expense and lease incentives	(881)	(176)
Changes in operating assets and liabilities:		
Accounts receivable	2,357	(233)
Inventories	13,047	(16,604)
Prepaid expenses and other current assets	11,471	(248)
Other assets	732	(132)
Accounts payable	15,794	12,508
Accrued expenses, interest and other current liabilities	(12,228)	(4,428)
Intercompany (continuing operations)	17,995	(24,480)
Income taxes payable, net of prepayments	(254)	(1,034)
Deferred rent liabilities	741	338
Other liabilities	81	(2,118)
Total adjustments	25,855	(30,454)
Net cash provided by (used in) operating activities	23,228	(43,094)
CASH FLOWS FROM INVESTING ACTIVITIES:		
Property and equipment purchases, lease acquisition and software costs	(8,887)	(5,208)
Cash received from sale of Disney Store assets	57,598	—
Restriction of cash	(72,454)	—
Purchase of investments	—	(263,620)
Sale of investments	—	291,945
Net cash (used in) provided by investing activities	(23,743)	23,117
CASH FLOWS FROM FINANCING ACTIVITIES:		
Borrowings under revolving credit facilities	160,237	41,281
Repayments under revolving credit facilities	(179,652)	(41,281)
Cash contribution from parent company	8,250	—
Deferred financing fees	(713)	—
Net cash used in financing activities	(11,878)	—
Effect of exchange rate changes on cash	(251)	612
Net decrease in cash and cash equivalents	(12,644)	(19,365)
Cash and cash equivalents, beginning of year	12,644	32,715
Cash and cash equivalents, end of quarter	$ —	$ 13,350

3. STOCK-BASED COMPENSATION

The Company maintains several equity compensation plans under which it grants various forms of equity compensation, including stock options, deferred and restricted stock and performance awards.

The following tables summarize the Company's equity compensation expense for the thirteen and twenty-six weeks ended August 2, 2008 and August 4, 2007 (in thousands):

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	Thirteen Weeks Ended August 2, 2008			
	Cost of Goods Sold	Selling, General & Administrative	Discontinued Operations	Total
Stock option expense	$ —	$ 209	$ 108	$ 317
Deferred stock expense	115	986	—	1,101
Restricted stock expense	—	155	—	155
Performance award expense	—	290	—	290
Total stock-based compensation expense	$ 115	$ 1,640	$ 108	$ 1,863

	Twenty-six Weeks Ended August 2, 2008			
	Cost of Goods Sold	Selling, General & Administrative	Discontinued Operations	Total
Stock option expense	$ —	$ 299	$ 196	$ 495
Deferred stock expense	247	1,507	242	1,996
Restricted stock expense	—	266	—	266
Performance award expense	—	461	—	461
Total stock-based compensation expense	$ 247	$ 2,533	$ 438	$ 3,218

	Thirteen Weeks Ended August 4, 2007			
	Cost of Goods Sold	Selling, General & Administrative	Discontinued Operations	Total
Stock option expense	$ —	$ 303	$ —	$ 303
Stock compensation expense related to the issuance of liability awards (1)	—	34	(26)	8
Expense related to the modification of previously issued stock options, primarily tolling (2)	8	1,887	3	1,898
Fair market value adjustments of tolled stock options accounted for as liability awards (2)	(390)	(156)	(15)	(561)

Total stock-based compensation expense	$ (382)	$ 2,068	$ (38)	$ 1,648

	Twenty-six Weeks Ended August 4, 2007			
	Cost of Goods Sold	Selling, General & Administrative	Discontinued Operations	Total
Stock option expense	$ —	$ 612	$ —	$ 612
Stock compensation expense related to the issuance of liability awards (1)	—	165	(18)	147
Expense related to the modification of previously issued stock options, primarily tolling (2)	383	2,028	339	2,750
Fair market value adjustments of tolled stock options accounted for as liability awards (2)	(508)	(189)	(18)	(715)
Total stock-based compensation expense	$ (125)	$ 2,616	$ 303	$ 2,794

(1) During fiscal 2006, the Company promised stock options and deferred stock awards for which it was unable to complete the granting process due to the suspension of equity award grants. Based on the Company's commitment to honor these grants, a liability was recorded. In the fourth quarter of fiscal 2007 after the suspension was lifted, these liabilities were converted to equity awards.

(2) Under the terms of the Company's equity compensation plans, terminated employees have 90 days from date of termination to exercise their vested options. Due to the suspension of stock option exercises on September 14, 2006, the Company modified options held by terminated employees to extend their expiration dates until after the date the suspension is lifted (i.e., tolled stock options). After the suspension was lifted on December 10, 2007, terminated employees had the same number of days to exercise their options as if the suspension had not

occurred. Options that were tolled for employees terminated prior to September 14, 2006 were accounted for as liability awards because the option holders were no longer employees at the time of the modification and because of the Company's inability to provide shares upon exercise. These options were reclassified to equity awards after the suspension was lifted. Options that were tolled for employees terminated after September 14, 2006 were accounted for as equity awards because their options were tolled in conjunction with their termination.

The Company recognized a tax benefit related to stock-based compensation expense of $1.3 million and $1.1 million for the twenty-six weeks ended August 2, 2008 and August 4, 2007, respectively.

2008 Long Term Incentive Plan

During the fourth quarter of fiscal 2007, the Company's Board of Directors approved the 2008 Long Term Incentive Plan (the "LTIP"). The LTIP provides for the issuance of deferred stock awards and performance awards to key members of management (the "Participants"). The awards are based on salary level and the fair market value of the Company's common stock on the grant date. Fair market value is equal to the average of the high and low trading price of the Company's common stock. The deferred stock awards vest over three years and have a service requirement only. Key features of the performance awards are as follows:

- Each performance award has a defined number of shares that a Participant can earn (the "Target Shares"). Based on performance levels, Participants can earn up to 200% of their Target Shares.
- The awards have a service requirement and performance criteria that must be achieved for the awards to vest.
- The performance criteria are based on the Company's achievement of operating income levels in each of the fiscal years 2008, 2009 and 2010, as well as in the aggregate.
- Awards may be earned in each of the fiscal years based upon meeting the established performance criteria for that year, however, except in certain circumstances, the Participants must be employed by the Company at the end of the three year performance period or their awards are forfeited.

On March 6, 2008, the Compensation Committee approved the performance criteria and thus established a grant date for accounting purposes.

During the twenty-six weeks ended August 2, 2008, the Company awarded to key members of management: (a) 42,645 deferred stock awards; and (b) performance awards that provide for 42,645 Target Shares (assuming they are earned at 100%). Changes in the Company's unvested Performance Awards for the twenty-six weeks ended August 2, 2008 were as follows:

	Number of Performance Shares (1) (in thousands)	Weighted Average Grant Date Fair Value
Unvested performance shares, beginning of year (2)	210	$ 20.97
Granted	43	31.92
Vested	—	—
Forfeited	(112)	20.97
Unvested performance shares, end of quarter	141	$ 24.28

(1) The number of unvested performance shares is based on the Participants earning their Target Shares at 100%. As of August 2, 2008, the Company estimates that Participants will earn 133% of their Target Shares. The cumulative expense recognized reflects that change in estimation.

(2) As noted above, the performance criteria for the performance awards were established on March 6, 2008. The beginning balance represents those shares authorized in the fourth quarter of fiscal 2007.

Total unrecognized equity compensation expense related to unvested performance awards approximated $4.1 million as of August 2, 2008, which will be recognized over a weighted average period of approximately 2.5 years.

Stock Option Plans

The Company estimates the fair value of issued stock options using the Black-Scholes option pricing model using certain assumptions for stock price volatility, risk-free interest rates, and the expected life of the options as of each grant date. During the thirteen weeks and twenty-six weeks ended August 2, 2008, 30,000 options were granted to two new members of the Company's Board of Directors and the following assumptions were used(1):

	August 2, 2008
Dividend yield	0%
Volatility factor (2)	45.6%
Weighted average risk-free interest rate (3)	3.2%
Expected life of options (4)	5.1 years
Weighted average fair value on grant date	$12.81 per share

(1) Due to the Company's suspension of equity awards during its stock option investigation, no options were granted during the twenty-six weeks ended August 4, 2007.

(2) Expected volatility is based on a 50:50 blend of the historical and implied volatility with a two-year look back on the date of each grant.

(3) The risk-free interest rate is based on the risk-free rate corresponding to the grant date and expected term.

(4) The expected life used in the Black-Scholes calculation is based on a Monte Carlo simulation incorporating a forward-looking stock price model and a historical model of employee exercise and post-vest forfeiture behavior.

Changes in the Company's stock options for the twenty-six weeks ended August 2, 2008 were as follows:

	Number of Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (in years)	Aggregate Intrinsic Value (in thousands)
Options outstanding at beginning of year	2,220,904	$ 31.72	5.8	$ 2,727
Granted	30,000	29.05	9.8	279
Exercised	(177,292)	21.13	N/A	1,853
Forfeited	(683,294)	34.69	N/A	—
Options outstanding at end of quarter	1,390,318	$ 32.32	5.2	$ 11,579
Options exercisable at end of quarter	1,258,649	$ 32.90	4.7	$ 9,991

Changes in the Company's unvested stock options for the twenty-six weeks ended August 2, 2008 were as follows:

	Number of Options (in thousands)	Weighted Average Grant Date Fair Value
Unvested options, beginning of year	128	$ 11.43
Granted	30	12.81
Vested	—	—
Forfeited	(27)	12.42
Unvested options, end of quarter	131	$ 11.55

Total unrecognized equity compensation expense related to unvested stock options approximated $1.1 million as of August 2, 2008, which will be recognized over a weighted average period of approximately 2.0 years.

Deferred and Restricted Stock

Changes in the Company's unvested deferred stock and restricted stock for the twenty-six weeks ended August 2, 2008 were as follows:

	Number of Shares (in thousands)	Weighted Average Grant Date Fair Value

Unvested deferred and restricted stock, beginning of year	493	$	29.74
Granted	298		34.70
Vested	(21)		30.04
Forfeited	(174)		30.04
Unvested deferred and restricted stock, end of quarter	596	$	32.12

Total unrecognized equity compensation expense related to unvested deferred and restricted stock awards approximated $16.5 million as of August 2, 2008, which will be recognized over a weighted average period of approximately 2.7 years.

4. NET INCOME (LOSS) PER COMMON SHARE

In accordance with SFAS No. 128, "Earnings Per Share," the following table reconciles net income (loss) and share amounts utilized to calculate basic and diluted net income (loss) per common share (in thousands):

	Thirteen Weeks Ended		Twenty-six Weeks Ended	
	August 2, 2008	August 4, 2007	August 2, 2008	August 4, 2007
Income (loss) from continuing operations	$ 2,736	$ (19,806)	$ 22,156	$ (737)
Loss from discontinued operations, net of taxes	(2,725)	(8,285)	(2,627)	(12,640)
Net income (loss)	$ 11	$ (28,091)	$ 19,529	$ (13,377)
Basic weighted average common shares	29,255	29,084	29,177	29,084
Dilutive effect of stock awards	344	—	218	—
Diluted weighted average common shares	29,599	29,084	29,395	29,084
Antidilutive stock awards	789	901	1,398	943

Antidilutive stock awards (stock options, deferred stock awards and restricted stock awards) represent those awards that are excluded from the earnings per share calculation as a result of their antidilutive effect in the application of the treasury stock method in the earnings per share calculation.

The net loss per share presented in the condensed consolidated statements of operation for the thirteen and twenty-six weeks ended August 4, 2007, excludes the dilutive effect of the Company's stock awards which would have been anti-dilutive as a result of the net loss.

5. COMPREHENSIVE INCOME (LOSS)

The following table presents the Company's comprehensive income (loss) (in thousands):

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	Thirteen Weeks Ended		Twenty-six Weeks Ended	
	August 2, 2008	August 4, 2007	August 2, 2008	August 4, 2007
Net income (loss)	$ 11	$ (28,091)	$ 19,529	$ (13,377)
Cumulative translation adjustment	(631)	3,045	(2,448)	6,669
Comprehensive income (loss)	$ (620)	$ (25,046)	$ 17,081	$ (6,708)

6. PROPERTY AND EQUIPMENT

Property and equipment consist of the following (in thousands):

	Asset Life	August 2, 2008	February 2, 2008	August 4, 2007
Property and equipment:				
Land and land improvements	—	$ 3,403	$ 3,403	$ 3,403
Building and improvements	25 yrs	30,450	30,450	—
Material handling equipment	15 yrs	31,243	31,086	—
Leasehold improvements	Lease life	341,040	337,536	298,863
Store fixtures and equipment	3-10 yrs	242,829	243,552	217,920
Capitalized software	5 yrs	55,856	51,286	42,031
Construction in progress	—	17,450	12,033	111,991
		722,271	709,346	674,208
Less accumulated depreciation and amortization		(388,488)	(355,205)	(331,500)
Property and equipment, net		$ 333,783	$ 354,141	$ 342,708

As of August 2, 2008, the Company had $6.5 million in property and equipment for which payment had not been made, compared to $16.4 million as of August 4, 2007. These amounts are included in accounts payable and accrued expenses and other current liabilities.

During the second quarter of fiscal 2007, the Company completed construction of a new distribution center in Fort Payne, Alabama. The land, approximately 125 acres upon which the distribution center was built, was as a donation from DeKalb County, Alabama in exchange for the Company's commitment to build the distribution center. The Company recorded the land at its fair value of approximately $1.8 million.

7. CREDIT FACILITIES

On July 31, 2008, the Company entered into the 2008 Credit Agreement (as defined below) and terminated the 2007 Amended Loan Agreement and Letter of Credit Agreement. On May 3, 2008, the Hoop estate repaid all outstanding borrowings under the DIP Credit Facility (as defined below) and on

May 15, 2008, the DIP Credit Facility was closed.

2008 Credit Agreement

On July 31, 2008, the Company and certain of its domestic subsidiaries entered into a credit agreement (the "2008 Credit Agreement") with Wells Fargo Retail Finance, LLC ("Wells Fargo"), as Administrative Agent, Collateral Agent, and Swing Line Lender, Bank of America, N.A., HSBC Bank USA, National Association and JP Morgan Chase Bank, N.A. (collectively, the "Lenders").

The 2008 Credit Agreement consists of a $200 million asset based revolving credit facility, which includes a $175 million letter of credit sub-facility. Amounts outstanding under the 2008 Credit Agreement bear interest, at the Company's option, at:

(i) the prime rate; or
(ii) LIBOR plus a margin of 1.50% to 2.00% based on the amount of the Company's average excess availability under the facility.

In addition, an unused line fee of 0.25% will accrue on the unused portion of the commitments under the facility. Letter of credit fees range from 0.75% to 1.25% for commercial letters of credit and range from 1.50% to 2.00% for standby letters of credit. Letter of credit fees are determined based on the level of availability under the 2008 Credit Agreement and accrue on the undrawn amount of such outstanding letters of credit, respectively. The 2008 Credit Agreement will mature on July 31, 2013. The amount available to be borrowed under the 2008 Credit Agreement at any time depends on the Company's levels of inventory and accounts receivable at such time.

The outstanding obligations under the 2008 Credit Agreement may be accelerated after the occurrence of (and, if applicable, the expiration of the cure period) certain events, including, among others, breach of covenants, the institution of insolvency proceedings, certain defaults under certain other indebtedness and a change of control. Should the maturity of the 2008 Credit Agreement be accelerated for any reason, the Company would be responsible for an early termination fee in the amount of (i) 0.50% of the revolving credit facility ceiling then in effect within the first year of the term of the facility and (ii) 0.25% of the revolving credit facility ceiling then in effect within the second year of the term of the facility. No early termination fee would be incurred after the completion of the second year of the term of the facility.

The 2008 Credit Agreement contains covenants, which include limitations on annual capital expenditures and limitations on the payment of dividends or similar payments. Credit extended under the 2008 Credit Agreement is secured by a first or second priority security interest in substantially all of the Company's assets and substantially all of the assets of its domestic subsidiaries.

The following table presents the components (in millions) of the 2008 Credit Agreement as of August 2, 2008:

	August 2, 2008
2008 Credit Agreement	
Credit facility maximum	$ 200.0
Borrowing Base (1)	163.0
Borrowings outstanding	—
Letters of credit outstanding—merchandise	34.2
Letters of credit outstanding—standby	14.6
Utilization of credit facility at end of period	48.8
Availability	114.2
Average loan balance during the period	—
Highest borrowings during the period	—
Average interest rate	5.0%
Interest rate at end of period	5.0%

(1) The Borrowing Base is calculated based on certain credit card receivable and inventory balances at the end of such period. Under the 2008 Credit Agreement, the Company has the ability to borrow up to the lesser of $200 million or the Borrowing Base.

The Company capitalized approximately $1.6 million in deferred financing costs related to the institution of the 2008 Credit Agreement, which will be amortized on a straight line basis over the term of the 2008 Credit Agreement.

2007 Amended Loan Agreement; Letter of Credit Agreement

In June 2007, the Company and certain of its domestic subsidiaries entered into a Fifth Amended and Restated Loan and Security Agreement (the "2007 Amended Loan Agreement") and a new letter of credit agreement (the "Letter of Credit Agreement") with Wells Fargo as senior lender and administrative and syndication agent, and the Company's other senior lenders to support The Children's Place business and the seasonality of the Company's capital needs and to reduce the fees associated with its credit facility borrowings. The 2007 Amended Loan Agreement provided a facility maximum of $100 million for borrowings and standby letters of credit, with a $30 million "accordion" feature that enabled the Company, at its

option, to increase the facility to an aggregate amount of $130 million, subject to an availability covenant which restricted maximum borrowings to 90% of the facility maximum, or $117 million.

There was also a seasonal over-advance feature that enabled the Company to borrow up to an additional $20 million from July 1 through October 31, subject to satisfying certain conditions, including a condition related to earnings before interest, taxes, depreciation and amortization ("EBITDA") on a trailing 12 month basis based upon the most recent financial statements furnished to Wells Fargo and the Company's estimate of projected pro forma EBITDA for the over-advance period. The LIBOR margin was 1.00% to 1.50%, depending on the Company's average excess availability, and the unused line fee was 0.25%. The 2007 Amended Loan Agreement was terminated on July 31, 2008. Wells Fargo waived the termination fee on the early termination of the 2007 Amended Loan Agreement and Letter of Credit Agreement.

Credit extended under the 2007 Amended Loan Agreement was secured by a first priority security interest in substantially all of the Company's assets, other than assets in Canada and Puerto Rico and assets owned by Hoop. The amount that could be borrowed under the 2007 Amended Loan Agreement depended on levels of inventory and accounts receivable related to The Children's Place business. The 2007 Amended Loan Agreement contained covenants, which included limitations on annual capital expenditures, maintenance of certain levels of excess collateral, and a prohibition on the payment of dividends.

Under the Letter of Credit Agreement, the Company was able to issue letters of credit for inventory purposes for up to $60 million to support The Children's Place business. Interest was paid at the rate of 0.75% (or 1.00% during any period in which amounts remained outstanding under the seasonal over-advance feature) on the aggregate undrawn amount of all letters of credit outstanding thereunder. The Company's obligations under the Letter of Credit Agreement were secured by a security interest in substantially all of the assets of The Children's Place business, other than assets in Canada and Puerto Rico, and assets of Hoop.

Prior to the termination of the 2007 Amended Loan Agreement and Letter of Credit Agreement on July 31, 2008, the Company's average loan balance was $41.6 million, its highest borrowings were $80.6 million and its average interest rate was 5.38% thereunder. The following table presents the components (in millions) of the Company's credit facilities for its Children's Place business as of February 2, 2008 and August 4, 2007:

	February 2, 2008	August 4, 2007
2007 Amended Loan Agreement (1)		
Outstanding borrowings	$ 69.6	$ 72.2
Letters of credit outstanding—standby	14.3	12.2
Utilization of credit facility at end of period	83.9	84.4
Availability covenant (2)	13.0	12.0
Availability (3)	33.1	23.6
Facility maximum(4)	130.0	120.0
Average loan balance during the period	44.1	10.5
Highest borrowings during the period	116.8	87.2
Average interest rate	7.21%	7.89%
Interest rate at end of period	6.00%	8.25%
Letter of Credit Agreement (5)		
Letters of credit outstanding—merchandise	26.5	51.5
Letter of credit facility maximum	60.0	60.0

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(1) On July 31, 2008, the 2007 Amended Loan Agreement was terminated and the Letters of Credit outstanding under the 2007 Amended Loan Agreement were transferred to the 2008 Credit Facility.

(2) Under the 2007 Amended Loan Agreement, the Company was required to keep a minimum of additional availability of at least 10% of the facility maximum.

(3) The amount of availability as of August 4, 2007 has been adjusted to conform with the 2007 Amended loan Agreement.

(4) Under the 2007 Amended Loan Agreement, the facility maximum as of February 2, 2008 was the lesser of $130 million, subject to an availability covenant which restricted maximum borrowings to 90% of the facility maximum, or The Children's Place business' defined borrowing base. Under the 2007 Amended Loan Agreement, the facility maximum as of August 4, 2007 was the lesser of $120 million, subject to an availability covenant which restricted maximum borrowings to 90% of the facility maximum, or The Children's Place business' defined borrowing base.

(5) The Letter of Credit Agreement was cancelable at any time by either the Company or Wells Fargo.

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Amended Hoop Loan Agreement

In connection with the Original Acquisition of the Disney Store business in 2004, the domestic Hoop entity together with certain other Hoop entities entered into a Loan and Security Agreement (the "Hoop Loan Agreement") with Wells Fargo as senior lender and syndication and administrative agent, and certain other lenders, establishing a senior secured credit facility for Hoop. In June 2007, concurrent with the execution of the 2007 Amended Loan Agreement, and in August 2007, Hoop entered into Second and Third Amendments to the Hoop Loan Agreement, both with Wells Fargo, as senior lender and administrative and syndication agent, and the other lenders (together with the Hoop Loan Agreement, the "Amended Hoop Loan Agreement") to reduce the interest rates charged on outstanding borrowings and letters of credit. The Amended Hoop Loan Agreement provided a facility maximum of $75 million for borrowings and provided for a $25 million accordion feature that enabled the Company to increase the facility to an aggregate amount of $100 million, subject to an availability restriction which limited maximum borrowings to 90% of the facility maximum, or $90 million. The accordion feature was available at the Company's option, subject to the amount of eligible inventory and accounts receivable of the domestic Hoop entity.

The Amended Hoop Loan Agreement was terminated on March 26, 2008 as a result of the filing of the Cases and Hoop was required to pay a termination fee of approximately $0.4 million.

Amounts outstanding under the Amended Hoop Loan Agreement bore interest at a floating rate equal to the prime rate or, at Hoop's option, the LIBOR rate plus a pre-determined margin. Depending on the domestic Hoop entity's level of excess availability, the LIBOR margin was 1.50% or 1.75%, commercial letter of credit fees were 0.75% or 1.00%, and standby letter of credit fees were 1.25% or 1.50%. The unused line fee was 0.25%.

Credit extended under the Amended Hoop Loan Agreement was secured by a first priority security interest in substantially all the assets of the domestic Hoop entity as well as a pledge of a portion of the equity interests in Hoop Canada. The Amended Hoop Loan Agreement also contained covenants, including limitations on indebtedness, limitations on capital expenditures and restrictions on the payment of dividends and indebtedness.

The following table presents the components (in millions) of the Company's credit facility for its Disney Store business as of February 2, 2008 and August 4, 2007:

	February 2, 2008	August 4, 2007
Amended Hoop Loan Agreement/Hoop Loan Agreement		
Outstanding borrowings	$ 19.4	$ —
Letters of credit outstanding—merchandise	17.6	34.0
Letters of credit outstanding—standby	3.5	2.0
Utilization of credit facility at end of period	40.5	36.0
Availability	18.1	39.0
Facility maximum (1)	58.6	75.0
Average loan balance during the period (2)	3.1	0.2
Highest borrowings during the period (2)	26.1	1.9
Average interest rate	7.41%	8.49%
Interest rate charged at end of period	6.00%	8.25%

(1) Under the Amended Hoop Loan Agreement, the facility maximum was the lesser of $75.0 million or Hoop's defined borrowing base.
(2) During the twenty six weeks ended August 4, 2007, there were no borrowings under the Hoop Loan Agreement other than letters of credit that cleared after business hours.

DIP Credit Facility

As of May 3, 2008, the Hoop estate had repaid all outstanding borrowings under the DIP Credit Facility (as defined below). On May 15, 2008, the DIP Credit Facility was closed.

As a result of the filing of the Cases, outstanding indebtedness under the Amended Hoop Loan Agreement, in the amount of approximately $9.3 million, was frozen and capped as of March 26, 2008. In order to fund the bankruptcy proceedings and all projected working capital needs, Wells Fargo and Hoop Retail Stores, LLC entered into a Debtor-In-Possession Loan and Security Agreement, which was approved by the U.S. Bankruptcy Court and dated as of March 28, 2008, consisting of a $35 million revolving credit facility (the "DIP Credit Facility"). In addition, all letters of credit issued

under the Amended Hoop Credit Facility were deemed by the U.S. Bankruptcy Court to be issued under the DIP Credit Facility. Hoop was required to pay a closing fee of approximately $0.3 million for the DIP Credit Facility.

Amounts outstanding under the DIP Credit Facility bore interest at a floating rate equal to the prime rate plus 1.50%, and commercial letter of credit fees and standby letter of credit fees were 2.50%. The unused line fee was 0.375%. Credit extended under the DIP Credit Facility was secured by a first priority security interest in substantially all the assets of the domestic Hoop entity as well as a pledge of a portion of the equity interests in Hoop Canada.

Letter of Credit Fees

Letter of credit fees approximated $0.2 million and $0.3 million in the twenty-six week periods ended August 2, 2008 and August 4, 2007, respectively. Letter of credit fees are included in cost of sales.

8. NOTE PURCHASE AGREEMENT

On July 31, 2008, concurrently with the execution of the 2008 Credit Agreement, the Company and certain of its domestic subsidiaries and Sankaty Credit Opportunities III, L.P., Sankaty Credit Opportunities IV, L.P., RGIP, LLC, Crystal Capital Fund, L.P., Crystal Capital Onshore Warehouse LLC, 1903 Onshore Funding, LLC, and Bank of America, N.A. (collectively, the "Note Purchasers"), together with Sankaty Advisors, LLC, as Collateral Agent, and Crystal Capital Fund Management, L.P., as Syndication Agent, entered into a note purchase agreement ("Note Purchase Agreement").

Under the Note Purchase Agreement, the Company issued $85 million of secured notes (the "Notes") with no amortization with a single payment of principal due on the maturity date, July 31, 2013. Amounts outstanding under the Note Purchase Agreement bear interest at LIBOR, with a floor of 3.00%, plus a margin between 8.50% and 9.75% depending on the Company's leverage ratio. As of August 2, 2008, the interest rate on the Note Purchase Agreement was 11.50%.

The outstanding obligations under the Note Purchase Agreement may be accelerated after the occurrence of (and, if applicable, the expiration of the cure period) certain events, including, among others, breach of covenants, certain defaults under certain other indebtedness, the institution of insolvency proceedings and a material adverse effect. The Company is also required to make mandatory prepayments if a change of control occurs, if it receives cash in excess of certain defined thresholds for the sale of assets or other defined events, if it issues equity or other debt securities, or if annual cash flows are in excess of defined thresholds for each fiscal year. In addition, the outstanding obligations under the Note Purchase Agreement may be prepaid at any time at the discretion of the Company. For all prepayments types (including any made as a result of acceleration), except those relating to excess cash flows in a fiscal year and certain extraordinary receipts, the Company would be responsible for an early termination fee in the amount of (i) 2.00% of the aggregate

principal amount of the Notes then prepaid within the first year of the term of the facility and (ii) 1.50% of the aggregate principal amount of the Notes then prepaid within the second year of the term of the facility. No early termination fee would be incurred after the completion of the second year of the term of the facility. Based on the Company's estimated cash flow for fiscal year 2008, a prepayment of $30 million is expected to be made in the first half of fiscal 2009. Accordingly, $30 million of the Notes are classified as current on the Company's condensed consolidated balance sheet at August 2, 2008.

The Note Purchase Agreement contains covenants, which include limitations on annual capital expenditures, a minimum EBITDA, a maximum leverage ratio, a minimum fixed charge coverage ratio and limitations on the payment of dividends or similar payments. The Company's obligations under the Note Purchase Agreement are secured by a first or second priority security interest in substantially all of the Company's assets and substantially all of the assets of its domestic subsidiaries.

On July 31, 2008, the proceeds from the Note Purchase Agreement were used in part to repay in full the borrowers' outstanding obligations under the 2007 Amended Loan Agreement and the Letter of Credit Agreement; together with the 2007 Amended Loan Agreement, (collectively, the "2007 Facilities") with Wells Fargo as senior lender and administrative and syndication agent, and the Company's other senior lenders (collectively, the "2007 Lenders"). There were no prepayment penalties associated with such repayment. Upon receipt of such repayment by Wells Fargo for the benefit of the 2007 Lenders, the 2007 Facilities and the related guaranty and collateral agreements were terminated and the associated liens were released.

The Company capitalized approximately $2.2 million in deferred financing costs related to the institution of the Note Purchase Agreement, which will be amortized on a straight line basis over the term of the Note Purchase Agreement.

9. LEGAL AND REGULATORY MATTERS

The Company is involved in various legal proceedings arising in the normal course of its business and reserves for litigation settlements and contingencies when it can determine that an adverse outcome is probable and can reasonably estimate associated losses. Estimates are adjusted as facts and circumstances require. In the opinion of management, any ultimate liability arising out of such proceedings will not have a material adverse effect on the Company's financial condition.

Matters Related to Stock Option Practices

SEC and U.S. Attorney Investigations

On September 29, 2006, the Division of Enforcement of the SEC informed the Company that it had initiated an informal investigation into the Company's stock option granting practices. In addition, the Office of the U.S. Attorney for the District of New Jersey has initiated an investigation into the Company's option granting practices. The Company has cooperated with these investigations and has briefed both authorities on the results of an investigation conducted by a sub-committee appointed by the Board of Directors. There have been no developments in these matters since that time.

Shareholder Derivative Litigation

On January 17, 2007, a stockholder derivative action was filed in the United States District Court, District of New Jersey against certain current members of the Board and certain current and former senior executives. The Company was named as a nominal defendant. The complaint alleges, among other things, that certain of the Company's current and former officers and directors (i) breached their fiduciary duties to the Company and its stockholders and were unjustly enriched by improperly backdating certain grants of stock options to officers and directors of the Company, (ii) caused the Company to file false and misleading reports with the SEC, (iii) violated the Exchange Act and common law, (iv) caused the Company to issue false and misleading public statements, and (v) were negligent and abdicated their responsibilities to the Company and its stockholders. The complaint sought money damages, an accounting by the defendants for the proceeds of sales of any allegedly backdated stock options, and the costs and disbursements of the lawsuit, as well as equitable relief. The plaintiff filed amended complaints adding, among other things, a claim for securities fraud under SEC rule 10b-5 and additional defendants and claims. In May 2008, the parties entered into a stipulation of settlement to resolve this action, which settlement was approved by the court on July 21, 2008. The only monetary portion of the settlement was to pay $0.7 million of attorneys' fees and reimbursement of expenses to plaintiffs' counsel. The majority of this cost was covered by the Company's insurance.

Class Action Litigation

On September 21, 2007 a second stockholder class action was filed against the Company and certain current and former senior executives in the United States District Court, Southern District of New York. This complaint alleges, among other things, that certain of the Company's current and former officers made statements to the investing public which misrepresented material facts about the business and operations of the Company, or omitted to state material facts required in order for the statements made by them not to be misleading, causing the price of the Company's stock to be artificially inflated in violation of provisions of the Exchange Act, as amended. It alleges that subsequent disclosures establish the misleading nature of these earlier disclosures. The complaint seeks monetary damages plus interest as well as costs and disbursements of the lawsuit. On October 10, 2007, a third stockholder class action was filed in the United States District Court, Southern District of New York, against the Company and certain of its current and former senior executives. This complaint alleges, among other things, that certain of the Company's current and former officers made statements to the investing public which misrepresented material facts about the business and operations of the Company, or omitted to state material facts required in order for the statements made by them not to be misleading, thereby causing the price of the Company's stock to be artificially inflated in violation of provisions of the Exchange Act, as amended. According to this complaint, subsequent disclosures establish the misleading nature of these earlier disclosures. This complaint seeks, among other relief, compensatory damages plus interest, and costs and expenses of the lawsuit, including counsel and expert fees. These two actions have been consolidated and the plaintiff filed a consolidated amended class action complaint on February 28, 2008. The Company's motion to dismiss was denied by the Court on July 18, 2008. The outcome of this litigation is uncertain. While we believe there are valid defenses to the claims and we will defend ourselves vigorously, no assurance can be given as to the outcome of this litigation. The litigation could distract our management and directors from the Company's affairs, the costs and expenses of the litigation could unfavorably affect our net earnings, and an unfavorable outcome could adversely affect the reputation of the Company.

On or about September 28, 2007, Meghan Ruggiero filed a complaint against the Company and its subsidiary, Hoop Retail Stores, LLC, in the United States District Court, Northern District of Ohio on behalf of herself and similarly situated individuals. The lawsuit alleges violations of the Fair and Accurate Credit Transactions Act ("FACTA") and seeks class certification, an award of statutory and punitive damages, attorneys' fees and costs, and injunctive relief. The plaintiff filed an amended complaint on January 25, 2008. Effective as of March 26, 2008, the prosecution of this lawsuit against Hoop was stayed under the automatic stay provisions of the U.S. Bankruptcy Code by reason of Hoop's petition for relief filed that same day. The outcome of this litigation is uncertain; while the Company believes there are valid defenses to the claims and will defend itself vigorously; no assurance can be given as to the outcome of this litigation.

Other Litigation

On or about July 12, 2006, Joy Fong, a former Disney Store manager in the San Francisco district, filed a lawsuit against the Company and its subsidiary Hoop Retail Stores, LLC in the Superior Court of California, County of Los Angeles. The lawsuit alleges violations of the California Labor Code and California Business and Professions Code and sought class action certification on behalf of Ms. Fong and other individuals similarly situated. The Company filed its answer on August 11, 2006 denying any and all liability, and on January 14, 2007, Ms. Fong filed an amended complaint, adding Disney as a defendant. The Company believes it has meritorious defenses to the claims. Effective as of March 26, 2008, the prosecution of this lawsuit against Hoop was stayed under the automatic stay provisions of the U.S. Bankruptcy Code by reason of Hoop's petition for relief filed that same day. The outcome of this litigation is uncertain; while the Company believes there are valid defenses to the claims, the Company cannot reasonably estimate the amount of loss or range of loss that might be incurred as a result of this matter.

Regulatory Matters

Nasdaq Proceedings

As the Company did not timely file its Quarterly Reports on Form 10-Q for the quarters ended July 29, 2006 and October 28, 2006, its Annual Report on Form 10-K for fiscal 2006, and its Quarterly Reports on Form 10-Q for the quarters ended May 5, 2007 and August 4, 2007 (collectively, the "Required Reports"), the Company was out of compliance with the reporting requirements of the SEC and the Nasdaq Global Select Market ("Nasdaq") for more than one year. On December 5, 2007, the Company filed the Required Reports with the SEC.

On February 6, 2008, the Company received a notice of non-compliance with Nasdaq rules citing our failure to solicit proxies and hold an annual meeting of shareholders for the fiscal year ended February 3, 2007, no later than February 3, 2008. Nasdaq listing rules require that all issuers solicit proxies and hold an annual meeting of its shareholders within 12 months of the end of the issuer's fiscal year end. The Company requested an exception to this rule and submitted a plan of compliance to Nasdaq whereby it anticipated holding its annual shareholders' meeting on June 27, 2008. On April 3, 2008, the Nasdaq Listing Qualifications Panel granted the Company's request for continued listing. The Company informed the Panel it had solicited proxies and had held its 2007 annual shareholders' meeting on June 27, 2008.

Following the resignation of an independent member of the Company's Board of Directors in February 2008, the Company had six directors, three of whom were independent directors. As a result of this resignation, the Company's Board was no longer comprised of a majority of independent directors and therefore was not in compliance with Nasdaq Marketplace Rule 4350(c)(1). On March 5, 2008, the Company received a notice of non-compliance with Nasdaq's independent director requirements. On May 9, 2008, the Company appointed two additional independent directors to the Company's Board of Directors. On May 16, 2008, the Company received a letter from Nasdaq stating that the Company was in compliance with Nasdaq Marketplace Rule 4350(c)(1) as of that date.

10. INCOME TAXES

The Company computes income taxes using the liability method. This method requires recognition of deferred tax assets and liabilities, measured by enacted rates, attributable to temporary differences between financial statement and income tax basis of assets and liabilities. Deferred tax assets and liabilities are comprised largely of book tax differences relating to depreciation, rent expense, inventory and various accruals and reserves.

The Company's effective tax rate from continuing operations for the thirteen weeks and twenty-six weeks ended August 2, 2008 was 39.5% and 41.8%, respectively. During the thirteen weeks and twenty-six weeks ended August 4, 2007 the Company's effective tax rate was 36.4% and (38.0)%, respectively. The effective tax rate is higher in the current year primarily because the Company is no longer permanently reinvested in certain Asian subsidiaries.

The Company adopted FASB Interpretation No. 48, "Accounting for Uncertainty in Income Taxes—An Interpretation of FASB Statement 109" ("FIN 48") on February 4, 2007. FIN 48 clarifies the accounting and reporting for uncertainty in income taxes recognized in an entity's financial statements in accordance with FASB Statement No. 109, "Accounting for Income Taxes", and prescribes a recognition threshold and measurement criteria for financial statement disclosure of tax positions taken or expected to be taken on a tax return. Under FIN 48, the impact of an uncertain income tax position on the income tax return must be recognized at the largest amount that is more-likely-than-not to be sustained upon audit by the relevant taxing authority. An uncertain income tax position will not be recognized if it has less than a 50% likelihood of being sustained. Additionally, FIN 48 provides guidance on de-recognition, classification, interest and penalties, accounting in interim periods, disclosure and transition. FIN 48 is effective for fiscal years beginning after December 15, 2006.

During the thirteen weeks and twenty-six weeks ended August 2, 2008, the Company recognized approximately $0.3 million and $0.6 million, respectively of additional interest expense related to its unrecognized tax benefits. During the thirteen weeks and twenty-six weeks ended August 4, 2007, the Company recognized approximately $0.3 million and $0.5 million, respectively of additional interest expense related to its unrecognized tax benefits. The Company recognizes accrued interest and penalties related to unrecognized income tax liabilities in income tax expense.

The Company is subject to taxation in the U.S. and various states and foreign jurisdictions. With limited exception, the Company is no longer subject to U.S. federal, state, local or non-U.S. income tax audits by taxing authorities for years through 2003. The Internal Revenue Service ("IRS") commenced an

examination of the Company's U.S. consolidated income tax returns for the years 2004 through 2006 during the second quarter of fiscal 2007. The Company believes it is reasonably possible due to the timing of audit settlements and negotiations with state taxing authorities that there may be a significant change to the total amount of unrecognized tax benefits within the next 12 months. The Company cannot reasonably estimate the amount of this change at the current time.

11. INTEREST (EXPENSE) INCOME, NET

The following table presents the components of the Company's interest (expense) income, net (in thousands):

	Thirteen Weeks Ended		Twenty-six Weeks Ended	
	August 2, 2008	August 4, 2007	August 2, 2008	August 4, 2007
Interest income	$ 517	$ 669	$ 1,254	$ 1,181
Tax-exempt interest income	11	240	21	900
Total interest income	528	909	1,275	2,081
Less:				
Interest expense – borrowings	279	408	1,195	417
Capitalized interest		(360)		(360)
Unused line fee	62	39	92	102
Amortization of deferred financing fees	115	13	126	26
Other fees	470	381	753	468
Interest (expense) income, net	$ (398)	$ 428	$ (891)	$ 1,428

12. NEW ACCOUNTING PRONOUNCEMENTS

In September 2006, the FASB issued SFAS No. 157, "Fair Value Measurements" ("SFAS 157"), which provides guidance for using fair value to measure assets and liabilities, defines fair value, establishes a framework for measuring fair value in U.S. GAAP, and expands disclosures about fair value measurements. SFAS 157 is effective for fiscal years beginning after November 15, 2007 and for interim periods within those years, with the exception of all non-financial assets and liabilities which will be effective for years beginning after November 15, 2008. The Company adopted SFAS 157 on February 3, 2008, the first day of fiscal year 2008. The adoption did not have any impact on the Company's condensed consolidated financial statements.

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In February 2007, the FASB issued SFAS No. 159, "The Fair Value Option for Financial Assets and Financial Liabilities—Including an Amendment of FASB Statement No. 115" ("SFAS 159"). This standard permits an entity to choose to measure many financial instruments and certain other items at fair value. Most of the provisions in SFAS 159 are elective; however, the amendment to SFAS 115, "Accounting for Certain Investments in Debt and Equity Securities", applies to all entities with available-for-sale and trading securities. The fair value option established by SFAS 159 permits all entities to choose to measure eligible items at fair value at specified election dates. A business entity will report unrealized gains and losses on items for which the fair value option has been elected in earnings (or another performance indicator if the business entity does not report earnings) at each subsequent reporting date. The fair value option: (a) may be applied instrument by instrument, with a few exceptions, such as investments otherwise accounted for by the equity method; (b) is irrevocable (unless a new election date occurs); and (c) is applied only to entire instruments and not to portions of instruments. The Company adopted the required provisions of SFAS 159 on February 3, 2008, the first day of fiscal year 2008. The Company has chosen not to adopt the elective provisions of SFAS 159 and the remaining provisions did not have any impact on the Company's condensed consolidated financial statements.

13. RELATED PARTY TRANSACTIONS

Merchandise for Re-Sale

During the twenty-six weeks ended August 2, 2008, the Company purchased approximately $0.4 million of footwear from Nina Footwear Corporation. No purchases were made from Nina Footwear Corporation during the thirteen weeks ended August 2, 2008. During the thirteen and twenty-six weeks ended August 4, 2007, the Company purchased approximately $2.7 million and $3.4 million, respectively, of footwear from Nina Footwear Corporation. Stanley Silverstein, who is a member of the Board and the father-in-law of Ezra Dabah, who is also a member of the Board, owns Nina Footwear Corporation with his brother.

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Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of federal securities laws, which are intended to be covered by the safe harbors created thereby. Those statements include, but may not be limited to, the discussions of the Company's operating and growth strategy. Investors are cautioned that all forward-looking statements involve risks and uncertainties including, without limitation, those set forth under the caption "Risk Factors" in the Business section of the Company's Annual Report on Form 10-K for the year ended February 2, 2008. Although the Company believes that the assumptions underlying the forward-looking statements contained herein are reasonable, any of the assumptions could prove to be inaccurate, and therefore, there can be no assurance that the forward-looking statements included in this Quarterly Report on Form 10-Q will prove to be accurate. In light of the significant uncertainties inherent in the forward-looking statements included herein, the inclusion of such information should not be regarded as a representation by the Company or any other person that the objectives and plans of the Company will be achieved. The Company undertakes no obligation to publicly release any revisions to any forward-looking statements contained herein to reflect events and circumstances occurring after the date hereof or to reflect the occurrence of unanticipated events.

The following discussion should be read in conjunction with the Company's unaudited financial statements and notes thereto included elsewhere in this Quarterly Report on Form 10-Q and the annual audited financial statements and notes thereto included in the Company's Annual Report on Form 10-K for the year ended February 2, 2008 and the Company's Current Report on Form 8-K filed with the SEC on August 6, 2008 to classify the Disney Stores as a discontinued operation. The Disney Store business has been reported as discontinued operations in accordance with U.S. GAAP in this Quarterly Report on Form 10-Q, reflecting the Company's exit of the Disney Store business.

RECENT DEVELOPMENTS

Our Board has engaged an investment banking firm to act as its financial advisor in undertaking a review of strategic alternatives to improve operations and enhance shareholder value. As part of this review, our Board and management are assessing a wide variety of options to maximize shareholder value, including, but not limited to, opportunities for organizational and operational improvement, including the potential sale of the Company. The Board has not set any specific timeline for the completion of this strategic review, and there is no assurance that as a result of this review, the Board will decide to change the Company's course of action or engage in any specific transaction. One of our strategic initiatives included a re-financing of the Company. During the thirteen weeks ended August 2, 2008, we entered into an $85 million term loan and a new credit facility to increase our liquidity.

To enable the evaluation of all strategic options for the Company, our Board has granted a request from Mr. Dabah, a member of our Board, and Golden Gate Private Equity, Inc. for approval under Delaware law to facilitate their working together to develop and make a proposal to acquire the Company. There is no assurance that any such proposal will be made or, if made, would lead to an agreement providing for a sale of the Company.

After a thorough review of the Disney Store business, its potential earnings growth, its capital needs and its ability to fund such needs from its own resources, we announced on March 20, 2008 that we had decided to exit the Disney Store business. After assessing the above factors and Hoop's liquidity, Hoop's Board of Directors determined that the best way to complete an orderly wind-down of Hoop's affairs was for Hoop to seek relief under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code"). On March 26, 2008, Hoop Holdings, LLC, Hoop Retail Stores, LLC and Hoop Canada Holdings, Inc. each filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "U.S. Bankruptcy Court") (Case Nos. 08-10544, 08-10545, and 08-10546, respectively, the "Cases"). On March 27, 2008, Hoop Canada, Inc. filed for protection pursuant to the Companies' Creditors Arrangement Act (the "CCAA") in the Ontario Superior Court of Justice (Commercial List) ("Canadian Bankruptcy Court") (Court File No. 08-CL-7453, and together with the Cases, the "Filings"). Each of the foregoing Hoop Entities are referred collectively herein as the "Hoop Entities."

Since these Filings, the Hoop Entities have managed their properties and have operated their businesses as "debtors-in-possession" under the jurisdiction of the U.S. Bankruptcy Court or the Canadian Bankruptcy Court, as applicable, and in accordance with the applicable provisions of the Bankruptcy Code or the CCAA, as applicable. Neither we, as Hoop's parent company, nor any of our other subsidiaries, have commenced or plans to commence a Chapter 11 case (or equivalent under applicable bankruptcy laws).

After receiving approval from the U. S. Bankruptcy Court and the Canadian Bankruptcy Court, on April 30, 2008, Hoop transferred the Disney Store business in the U.S. and Canada and a substantial portion of the Disney Store assets to affiliates of Disney in an asset sale (the "Private Sale"), pursuant to section 363 of the Bankruptcy Code (and a similar provision under the CCAA). Upon closing, affiliates of Disney paid a purchase price of $64.0 million for the acquired assets of the Disney Store business, subject to a post-closing inventory and asset adjustment. Approximately $6 million of the purchase price was placed in escrow for such true-up purposes. The proceeds received from the Private Sale will be utilized to settle the Hoop Entities' liabilities as "debtors-in-possession" under the jurisdiction of the U.S. Bankruptcy Court and the Canadian Bankruptcy Court, as applicable.

In connection with the closing of the Private Sale, Disney's relevant affiliates released Hoop from its rights and obligations under the License Agreement, as amended by the Refurbishment Amendment, the Guaranty and Commitment Agreement, and any related future liabilities and unlimited claims. Further, in connection with the closing of the Private Sale and the satisfaction of other conditions, Disney and its affiliates released us from our obligations under the Guaranty and Commitment Agreement and the Refurbishment Amendment. We also agreed to provide certain transition services through the end of October 2008 to assist Disney in transitioning the Disney Stores to its administrative and distribution systems. During the thirteen weeks ended August 2, 2008, we received $5.4 million, net of variable expenses for these transition services.

Separately, we entered into a settlement and release of claims with Hoop and its creditors' committee, which was approved by the U.S. Bankruptcy Court on April 29, 2008. We have agreed to provide transitional services and to forgive all pre- and post-bankruptcy petition claims against Hoop, which include inter-company charges for shared services and to pay severance and other employee costs for our employees servicing Hoop, and certain other professional fees and other costs we may incur during the Hoop Entities' bankruptcy proceedings, as well as claims that might be asserted against us in such bankruptcy proceedings.

Our annual profitability is highly dependent on our sales and gross margin performance during the third and fourth quarters. During the four weeks ended August 30, 2008, our comparable store sales were flat compared to a 4 % comparable store sales increase in the four weeks ended September 1, 2007.

CRITICAL ACCOUNTING POLICIES

The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States ("U.S. GAAP") requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements, as well as the reported revenues and expenses during the reported period. Actual results could differ from our estimates. The accounting policies that we believe are the most critical to aid in fully understanding and evaluating reported financial results include the following:

Revenue Recognition—Sales are recognized upon purchase by customers at our retail stores or when received by the customer if the product was purchased via the Internet, net of coupon redemptions and anticipated sales returns. Actual sales return rates have historically been within our expectations and the allowance established. However, in the event that the actual rate of sales returns by customers increased significantly, our operational results could be adversely affected.

Our policy with respect to gift cards is to record revenue as gift cards are redeemed for merchandise. Prior to their redemption, unredeemed gift cards for The Children's Place business are recorded as a liability, included within accrued expenses and other current liabilities. We recognize income from gift

cards that are not expected to be redeemed based upon an extended period of dormancy where statutorily permitted.

We offer a private label credit card to our The Children's Place customers that provides a discount on future purchases once a minimum annual purchase threshold has been exceeded. We estimate the future discounts to be provided based on history, the number of customers who have earned or are likely to earn the discount and current year sales trends on the private label credit card. We defer a proportionate amount of revenue from customers based on an estimated value of future discounts. We recognize such deferred revenue as future discounts are taken on sales above the minimum. This is done by utilizing estimates based upon sales trends and the number of customers who have earned the discount privilege. Our private label customers must earn the discount privilege on an annual basis and this privilege expires at our fiscal year end. Accordingly, all deferred revenue is recognized by the end of the fiscal year.

Inventory Valuation—Merchandise inventories are stated at the lower of average cost or market using the retail inventory method. Under the retail inventory method, the valuation of inventories at cost and the resulting gross margins are calculated by applying a cost-to-retail ratio by merchandise department to the retail value of inventories. At any one time,

inventories include items that have been marked down to our best estimate of their fair market value and an estimate of our inventory shrinkage.

We base our decision to mark down merchandise upon its current rate of sale, the season, and the age and sell-through of the item. To the extent that our markdown estimates are not adequate, additional markdowns may have to be recorded, which could reduce our gross margins and operating results. Our success is largely dependent upon our ability to gauge the fashion taste of our customers and to provide a well-balanced merchandise assortment that satisfies customer demand. Any inability to provide the proper quantity of appropriate merchandise in a timely manner could increase future markdown rates.

We adjust our inventory balance based on an annual physical inventory and shrinkage is estimated in interim periods based on the historical results of physical inventories in the context of current year facts and circumstances. To the extent our shrinkage estimate is not adequate, we would be required to reduce our gross profits and operating results.

Equity Compensation—In applying SFAS 123(R), we use the Black-Scholes option pricing model based on a Monte Carlo simulation, which requires extensive use of accounting judgment and financial estimates, including estimates of how long employees will hold their vested stock options before exercise, the estimated volatility of the Company's common stock over the expected term, and the number of options that will be forfeited prior to the completion of vesting requirements. Application of other assumptions could result in significantly different estimates of fair value of stock-based compensation and consequently, the related expense recognized in our financial statements. We also award key management deferred stock awards, restricted stock awards and performance share awards ("Performance Awards") which, if earned, would be satisfied by the issuance of shares of common stock ("Performance Shares").

Accounting for Liabilities Subject to Compromise—As a "debtor-in-possession," certain claims against Hoop that existed prior to the Filings are stayed under the jurisdiction of the U.S. Bankruptcy Court or Canadian Bankruptcy Court, as applicable and are "liabilities subject to compromise", and are reflected in the August 2, 2008 balance sheet within "liabilities of bankruptcy estate of subsidiary." Additional claims (liabilities subject to compromise) may arise as a result of the rejection of executory contracts, including leases for the stores returned to the Hoop estate, and from the determination by the U.S. Bankruptcy Court or Canadian Bankruptcy Court (or agreed to by the Hoop's creditors) of claims allowed for contingencies and other related amounts.

Accounting for Royalties—In exchange for the right to use certain Disney intellectual property, we were required to make royalty payments pursuant to the License Agreement to a Disney subsidiary after a two-year royalty holiday period that ended in November 2006. The amortization of the estimated value of the royalty holiday was recognized on a straight-line basis as a reduction of royalty expense over the term of the License Agreement. During the twenty six weeks ended August 2, 2008, our discontinued operations included the reversal of approximately $42.3 million in deferred royalty expense in conjunction with the termination of the License Agreement in accordance with the Private Sale.

Insurance and Self-Insurance Liabilities—Based on our assessment of risk and cost efficiency, we self-insure and purchase insurance policies to provide for workers' compensation, general liability, property losses, director's and officer's liability, vehicle liability and employee medical benefits. We estimate risks and record a liability based upon historical claim experience, insurance deductibles, severity factors and other actuarial assumptions. While we believe that our risk assessments are appropriate, to the extent that future occurrences and claims differ from our historical experience, additional charges for insurance may be recorded in future periods.

Impairment of Assets—We periodically review our assets when events indicate that their carrying value may not be recoverable. Such events include a history of cash flow losses or a future expectation that we will sell or dispose of an asset significantly before the end of its previously estimated useful life. We periodically evaluate each store's performance and compare the carrying value of each location's fixed assets, principally leasehold improvements and fixtures, to its projected cash flows. An impairment loss is recorded if the projected future cash flows are insufficient to recapture the net book value of their assets. To the extent our estimates of future cash flows are incorrect, additional impairment charges may be recorded in future periods.

Income Taxes—We compute income taxes using the liability method. This method requires recognition of deferred tax assets and liabilities, measured by enacted rates, attributable to temporary differences between financial statement and income tax basis of assets and liabilities. Temporary differences result primarily from depreciation and amortization differences between book and tax and the non-deductibility of certain reserves and accruals in the current tax period for tax purposes. In assessing the need for a valuation allowance, management considers all available evidence including past operating results, estimates of future taxable income and the feasibility of ongoing tax planning strategies. When we change our determination of the amount of deferred tax assets that can be realized, a valuation allowance is established or adjusted with a corresponding impact to income tax expense in the period in which such determination is made.

During the ordinary course of business, there are many transactions and calculations for which the ultimate tax determination is uncertain. As a result, we recognize tax liabilities based on estimates of whether additional taxes and interest will be due. These tax liabilities are recognized when, despite our belief that our tax positions are supportable, we believe that certain positions are likely to be challenged and may not be fully sustained upon review by

tax authorities. We believe that our accruals for tax liabilities are adequate for all open audit years based on our assessment of many factors including past experience and interpretations of tax law. This assessment relies on estimates and assumptions and may involve a series of complex judgments about future events. To the extent that the final tax outcome of these matters is different than the amounts recorded, such differences will impact income tax expense in the period in which such determination is made.

We adopted FASB Interpretation No. 48, "Accounting for Uncertainty in Income Taxes—an Interpretation of FASB Statement No. 109" (FIN 48) on February 4, 2007. FIN 48 clarifies the accounting and reporting for uncertainties in income tax law. This Interpretation prescribes a comprehensive model for the financial statement recognition, measurement, presentation and disclosure of uncertain tax positions taken or expected to be taken in income tax returns.

RESULTS OF OPERATIONS

The following table sets forth, for the periods indicated, selected income statement data expressed as a percentage of net sales. We primarily evaluate the results of our operations as a percentage of net sales rather than in terms of absolute dollar increases or decreases by analyzing the year over year change in our business expressed as a percentage of net sales (i.e. "basis points"). For example, our selling, general and administrative expenses decreased approximately 650 basis points to 31.3% of net sales during the thirteen weeks ended August 2, 2008 from 37.8% during the thirteen weeks ended August 4, 2007. Accordingly, to the extent that our sales have increased at a faster rate than our costs (i.e. "leveraging"), the more efficiently we have utilized the investments we have made in our business. Conversely, if our sales decrease or if our costs grow at a faster pace than our sales (i.e. "de-leveraging"), we have less efficiently utilized the investments we have made in our business.

	Thirteen Weeks Ended		Twenty-six Weeks Ended	
	August 2, 2008	August 4, 2007	August 2, 2008	August 4, 2007
Net sales	100.0%	100.0%	100.0%	100.0%
Cost of sales	62.0	67.8	59.4	62.0
Gross profit	38.0	32.2	40.6	38.0
Selling, general and administrative expenses	31.3	37.8	30.5	33.7
Depreciation and amortization	5.2	5.2	4.8	4.6
Operating income (loss)	1.5	(10.9)	5.3	(0.3)
Interest income (expense), net	(0.1)	0.1	(0.1)	0.2
Income (loss) from continuing operations before income taxes	1.3	(10.7)	5.2	(0.1)
Provision (benefit) for income taxes	0.5	(3.9)	2.2	—
Income (loss) from continuing operations	0.8	(6.8)	3.0	(0.1)
Loss from discontinued operations, net of taxes	(0.8)	(2.9)	(0.4)	(2.0)
Net income (loss)	—%	(9.7)%	2.6%	(2.1)%
Number of stores of continuing operations, end of period	902	883	902	883

Table may not add due to rounding.

Thirteen Weeks Ended August 2, 2008 (the "Second Quarter 2008") Compared to Thirteen Weeks Ended August 4, 2007 (the "Second Quarter 2007")

Net sales increased by $47.5 million, or 16%, to $338.0 million during the Second Quarter 2008 from $290.5 million during the Second Quarter 2007. Our Second Quarter 2008 sales increase resulted from a comparable store sales increase of 9%, which accounted for $23.1 million of our sales increase, a $25.3 million increase in sales from new stores, as well as other stores that did not qualify as comparable stores, and our ecommerce business, partially offset by the impact of closed stores which represented $0.9 million. During the Second Quarter 2007, our comparable store sales decreased 1%. We define comparable store sales as net sales from stores that have been open at least 14 full months and that have not been substantially remodeled during that time. During the Second Quarter 2008, we closed four The Children's Place stores.

Our 9% comparable store sales increase for The Children's Place business was primarily the result of a 6% increase in the number of comparable store sales transactions and a 2% increase in our dollar transaction size. Our 2% increase in our dollar transaction size was primarily driven by more units sold in each transaction. Our average retail price of merchandise sold during the Second Quarter 2008 was comparable to the Second Quarter 2007, resulting from a higher proportion of summer merchandise versus fall merchandise and more "good" versus "best" merchandise sold in our product mix during the Second Quarter 2008, which offset the impact of higher markdowns taken in the Second Quarter 2007. During the Second Quarter 2008, comparable same store sales increased in all geographical regions, departments and store types.

Gross profit increased by $35.1million to $128.5 million during the Second Quarter 2008 from $93.4 million during the Second Quarter 2007. As a percentage of net sales, gross profit increased approximately 580 basis points to 38.0% of net sales during the Second Quarter 2008 from 32.2% of net sales during the Second Quarter 2007. The increase in consolidated gross profit, as a percentage of net sales, resulted primarily from lower markdowns of approximately 350 basis points, the leveraging of occupancy, buying, production and design costs of approximately 160 basis points and a higher initial markup of approximately 90 basis points, partially offset by higher distribution costs of approximately 30 basis points, resulting primarily from our new distribution center in Fort Payne, Alabama.

Selling, general and administrative expenses decreased $3.9 million to $105.9 million during the Second Quarter 2008 from $109.9 million during the Second Quarter 2007. As a percentage of net sales, selling, general and administrative expenses decreased approximately 650 basis points to 31.3% of net sales during the Second Quarter 2008 from 37.8% of net sales during the Second Quarter 2007. Our decrease in selling, general and administrative expenses benefited from the following items, which we consider to be unusual:

- Transition service income, net of variable expenses approximated 160 basis points and was approximately $5.4 million;
- A sale of a store lease approximated 70 basis points and represented income of approximately $2.3 million;
- Lower professional fees incurred during the Second Quarter 2008 of approximately 10 basis points, or approximately $0.1 million lower than the Second Quarter 2007. During the Second Quarter 2008, professional fees of approximately $1.7 million were incurred related to our

restructuring and the stock option investigation compared to approximately $1.8 million in professional fees incurred during the Second Quarter 2007 related to the stock option investigation; and

- Non-cash equity compensation expense incurred in the Second Quarter 2007, that approximated 60 basis points and approximated $1.7 million, associated with option terms that were extended due to the suspension of option exercises.

Excluding the effect of the above items, our selling, general and administrative expenses increased approximately $5.6 million during the Second Quarter 2008. Excluding the effect of the above items, as a percentage of net sales, selling, general and administrative expenses decreased approximately 350 basis points to 33.1% of net sales during the Second Quarter 2008 from 36.6% of net sales during the Second Quarter 2007. Our decrease in selling, general and administrative expenses in the Second Quarter 2008, as a percentage of net sales, which resulted primarily from the leveraging of:

- Payroll costs which were favorable approximately 200 basis points, but were approximately $2.4 million higher than the Second Quarter 2007;
- Marketing expenses which were favorable approximately 150 basis points and were approximately $3.1 million lower in the Second Quarter 2008, due to a shift of marketing spend from the Second Quarter 2008 to later in fiscal 2008;
- Store opening and remodel costs which were favorable approximately 70 basis points, or approximately $1.6 million, reflecting fewer new store openings in the Second Quarter 2008 and the timing of our 2008 new store openings which are planned for the second half of fiscal 2008; and
- Store expenses which were favorable approximately 70 basis points, but were approximately $0.3 million higher than the Second Quarter 2007.

These decreases were partially offset by higher bonus and equity compensation expenses, which were unfavorable approximately 150 basis points and were approximately $5.0 million higher than the Second Quarter 2007.

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Depreciation and amortization amounted to $17.7 million, or 5.2% of net sales, during the Second Quarter 2008, compared to $15.2 million, or 5.2% of net sales, during the Second Quarter 2007. Depreciation expense increased $2.5 million during the Second Quarter 2008 due primarily to our new stores and our distribution centers, particularly our new distribution center in Fort Payne, Alabama.

Interest expense, net amounted to $0.4 million, or 0.1% of net sales, during the Second Quarter 2008, compared to interest income, net of $0.4 million, or 0.1% of net sales, during the Second Quarter 2007. During the Second Quarter 2008, we utilized our credit facility to support our working capital needs until we repaid our credit facility on July 31, 2008 with the proceeds from our new term loan. In the Second Quarter 2007, we recorded interest income, net due to a higher net cash investment position and the capitalization of interest related to our construction projects.

Our provision for income taxes from continuing operations was $1.8 million during the Second Quarter 2008 compared to a benefit from income taxes of $11.3 million during the Second Quarter 2007. Our provision for income taxes increased during the Second Quarter 2008 as a result of our pre-tax earnings in the Second Quarter 2008 compared to a pre-tax loss during the Second Quarter 2007. Our effective tax rate was 39.5% and 36.4% during the Second Quarter 2008 and the Second Quarter 2007, respectively. The increase in our effective tax rate in the Second Quarter 2008 reflects that we are no longer permanently invested in certain of our Asian subsidiaries and we are required to provide U.S. taxes on our earnings in Asia.

Loss from discontinued operations, net of taxes was $2.7 million in the Second Quarter 2008 compared to a loss from discontinued operations, net of taxes of $8.3 million in the Second Quarter 2007. During the Second Quarter 2008, our loss from discontinued operations, before taxes was approximately $4.4 million, compared to a loss from discontinued operations, before taxes of approximately $13.0 million during the Second Quarter 2007. During the Second Quarter 2008, our loss from discontinued operations primarily reflects restructuring charges, primarily comprised of professional fees, of $2.5 million incurred by the Hoop estate and adjustments to accrued expenses, partially offset by interest income received on the proceeds for the Private Sale. During the Second Quarter 2007, our loss from discontinued operations reflects the operational results of the Disney Store business, adjusted for our historical allocation of shared services and charged with the administrative and distribution expenses that were attributable to the Disney Stores.

We reported break even net income during the Second Quarter 2008 compared to a net loss of $28.1 million during the Second Quarter 2007, due to the factors discussed above.

Twenty-Six Weeks Ended August 2, 2008 Compared to Twenty-Six Weeks Ended August 4, 2007

Net sales increased by $91.7 million, or 14% to $738.2 million during the twenty-six weeks ended August 2, 2008 from $646.5 million during the twenty-six weeks ended August 4, 2007. Our sales increase during the twenty-six weeks ended August 2, 2008 resulted from a comparable store sales increase of 7%, which accounted for $40.7 million of our sales increase, a $52.1 million increase in sales from new stores, as well as other stores that did not qualify as comparable stores, and our ecommerce business, partially offset by the impact of closed stores which represented $1.1 million. During the twenty-six weeks ended August 4, 2007, our comparable store sales increased 1%. During the twenty-six weeks ended August 2, 2008, we opened three The Children’s Place stores and closed five The Children’s Place stores.

Our 7% comparable store sales increase for The Children’s Place business was primarily the result of a 5% increase in the number of comparable store sales transactions and a 2% increase in our dollar transaction size. During the twenty-six weeks ended August 2, 2008, comparable same store sales increased in all geographical regions, departments and store types.

Gross profit increased by $54.2 million to $299.6 million during the twenty-six weeks ended August 2, 2008 from $245.4 million during the twenty-six weeks ended August 4, 2007. As a percentage of net sales, gross profit increased approximately 260 basis points to 40.6% of net sales during the twenty-six weeks ended August 2, 2008 from 38.0% of net sales during the twenty-six weeks ended August 4, 2007. The increase in consolidated gross profit, as a percentage of net sales, resulted primarily from lower markdowns of approximately 190 basis points, the leveraging of occupancy, buying, production and design costs of approximately 100 basis points and a higher initial markup of approximately 10 basis points, partially offset by higher distribution costs of approximately 40 basis points, resulting primarily from our new distribution center in Fort Payne, Alabama.

Selling, general and administrative expenses increased $7.7 million to $225.3 million during the twenty-six weeks ended August 2, 2008 from $217.6 million during the twenty-six weeks ended August 4, 2007. As a percentage of net sales, selling, general and administrative expenses decreased approximately 320 basis points to 30.5% of net sales during the twenty-six

weeks ended August 2, 2008 from 33.7% of net sales during the twenty-six weeks ended August 4, 2007. Our increase in selling, general and administrative expenses benefited from the following items, which we consider to be unusual:

- Transition service income, net of variable expenses approximated 70 basis points and was approximately $5.4 million;
- A sale of a store lease approximated 30 basis points and represented income of approximately $2.3 million; and
- Non-cash equity compensation expense incurred in the twenty-six weeks ended August 4, 2007, that approximated 30 basis points and approximated $1.8 million, associated with option terms that were extended due to the suspension of option exercises.

Excluding the effect of the above items, our selling, general and administrative expenses increased approximately $17.2 million during the twenty-six weeks ended August 2, 2008. Excluding the effect of the above items, as a percentage of net sales, selling, general and administrative expenses decreased approximately 180 basis points to 31.6% of net sales during the twenty-six weeks ended August 2, 2008 from 33.4% of net sales during the twenty-six weeks ended August 4, 2007. Our decrease in selling, general and administrative expenses in the twenty-six weeks ended August 2, 2008, as a percentage of net sales, which resulted primarily from the leveraging of:

- Payroll costs which were favorable approximately 120 basis points, but were approximately $4.4 million higher than the twenty-six weeks ended August 4, 2007;
- Marketing expenses which were favorable approximately 150 basis points and were approximately $2.7 million lower than during the twenty-six weeks ended August 4, 2007, due to a shift of marketing spend to the second half of fiscal 2008; and
- Store opening and remodel costs which were favorable approximately 60 basis points, or approximately $3.4 million lower than the twenty-six weeks ended August 4, 2007, reflecting fewer new store openings in the twenty-six weeks ended August 2, 2008.

These decreases were partially offset by:

- Higher bonus and equity compensation expenses, which were unfavorable approximately 80 basis points and were approximately $6.8 million higher than the twenty-six weeks ended August 4, 2007;
- Higher consulting, legal and information technology fees which were unfavorable approximately 50 basis points and were approximately $4.6 million higher than the twenty-six weeks ended August 4, 2007; and
- Impact of exchange rate, which was unfavorable approximately 30 basis points and was unfavorable approximately $1.8 million to the twenty-six weeks ended August 4, 2007.

Depreciation and amortization amounted to $35.4 million, or 4.8% of net sales, during the twenty-six weeks ended August 2, 2008, compared to $29.8 million, or 4.6% of net sales, during the twenty-six weeks ended August 4, 2007. Depreciation expense increased $5.6 million during the twenty-six weeks ended August 2, 2008 due primarily to our new stores and our distribution centers, particularly our new distribution center in Fort Payne, Alabama.

Interest expense, net amounted to $0.9 million, or 0.1% of net sales, during the twenty-six weeks ended August 2, 2008, compared to interest income of $1.4 million, or 0.2% of net sales, during the twenty-six weeks ended August 4, 2007. During the twenty-six weeks ended August 2, 2008, we were borrowing under our credit facility to support our working capital needs compared to a net cash investment position for most of the twenty-six weeks ended August 4, 2007, as well as the capitalization of interest related to our construction projects.

Loss from discontinued operations, net of taxes was $2.6 million in the twenty-six weeks ended August 2, 2008 compared to $12.6 million in the twenty-six weeks ended August 4, 2007. During the twenty-six weeks ended August 2, 2008, our loss from discontinued operations, before taxes was approximately $4.3 million, compared to a loss from discontinued operations, before taxes of approximately $19.6 million during the twenty-six weeks ended August 4, 2007. Our loss before taxes during the twenty-six weeks ended August 2, 2008 contained approximately $16.0 million in professional, restructuring and severance expenses associated with the Hoop bankruptcy filings. During the twenty-six weeks ended August 2, 2008, we also recorded a gain on the disposal of the Disney Store business of approximately $23.1 million, before taxes. We recorded a gain primarily as a result of the write-off of certain non-cash liabilities, such as deferred royalties and rent liabilities. During the twenty-six weeks ended August 2, 2008, interest expense from discontinued operations includes approximately $0.7 million in fees related to the termination of the Hoop credit facility and the establishment of a credit facility as a debtor-in-possession.

Our provision for income taxes from continuing operations was $15.9 million and $0.2 million during the twenty-six weeks ended August 2, 2008 and the twenty-six weeks ended August 4, 2007, respectively. Our provision for income taxes increased during the twenty-six weeks ended August 2, 2008 as a result of higher pre-tax earnings in the twenty-six weeks ended August 2, 2008 compared to the twenty-six weeks ended August 4, 2007. Our effective tax rate was 41.8% and (38.0%) during the twenty-six weeks ended August 2, 2008 and the twenty-six weeks ended August 4, 2007, respectively. The effective tax rate in the twenty-six weeks ended August 2, 2008 reflects that we are no longer permanently invested in certain of our Asian subsidiaries and we are required to provide U.S. taxes on our earnings in Asia. The negative effective tax rate in the twenty-six weeks ended August 4, 2007 reflects certain discrete charges along with a minimal pre tax loss.

Net income in the twenty-six weeks ended August 2, 2008 was $19.5 million, compared to a net loss in the twenty-six weeks ended August 4, 2007 of $13.4 million. The increase in net earnings is due to the factors discussed above.

LIQUIDITY AND CAPITAL RESOURCES

Debt Service/Liquidity

Our working capital needs follow a seasonal pattern, peaking during the second and third quarters when inventory is purchased for the back-to-school and holiday selling seasons. Our primary uses of cash are the financing of new store openings and providing working capital, principally used for inventory purchases. As of August 2, 2008, we had no short-term borrowings under our credit facility and had $85 million in borrowings under a new five

year term loan which we entered into during the Second Quarter 2008. During the Second Quarter 2008, we also replaced our credit facility, the 2007 Amended Loan Agreement, with the 2008 Credit Agreement (as defined below), which provides for borrowings up to $200 million, to increase our liquidity. We expect to be able to meet our capital requirements principally by using the proceeds from our term loan, cash flows from operations and seasonal borrowings under our credit facility. During the first half of fiscal 2008, we have conserved our capital resources through lower capital expenditures and the timing of our capital projects which are planned for the second half of the year. Of the $50 million that we estimate in costs to wind down the Disney Store business, approximately eighty percent has been paid during the twenty-six weeks ended August 2, 2008. (See "—Estimated Costs to Exit the Disney Store Business" below for additional information regarding these costs). Under the terms of the Note Purchase Agreement, we are required to make mandatory prepayments if annual cash flows are in excess of defined thresholds for each fiscal year. This is likely to result in the payment of approximately $30 million in the first half of fiscal 2009.

Termination of the License Agreement

After receiving approval from the U.S. Bankruptcy Court and the Canadian Bankruptcy Court on April 30, 2008, Hoop transferred the Disney Store business in the U.S. and Canada and a substantial portion of the Disney Store assets to affiliates of Disney in an asset sale (the "Private Sale"), pursuant to section 363 of the Bankruptcy Code (and a similar provision under the CCAA). Upon closing, affiliates of Disney paid a purchase price of $64.0 million for the acquired assets of the Disney Store business, subject to a post-closing inventory and asset adjustment. Approximately $6.0 million of the purchase price was placed in escrow for such true-up purposes. The proceeds received from the Private Sale will be utilized to settle the Hoop Entities' liabilities as "debtors-in-possession" under the jurisdiction of the U.S. Bankruptcy Court and the Canadian Bankruptcy Court, as applicable.

In connection with the closing of the Private Sale, Disney's relevant affiliates released Hoop from its rights and obligations under the License Agreement, as amended by the Refurbishment Amendment, the Guaranty and Commitment Agreement, and any related future liabilities and unlimited claims. Further in connection with the closing of the Private Sale and the satisfaction of other conditions, Disney and its affiliates released us from our obligations under the Guaranty and Commitment Agreement and the Refurbishment Amendment. Separately, we entered into a settlement and release of claims with Hoop and its creditors' committee, which was approved by the U.S. Bankruptcy Court on April 29, 2008. We have agreed to provide transitional services and to forgive all pre- and post-bankruptcy petition claims against Hoop, which include inter-company charges for shared services and also included a capital contribution we made to Hoop of approximately $8.3 million in cash, and to pay severance and other employee costs for the Company's employees servicing Hoop, and certain other professional fees and other costs that we may incur during the Hoop Entities' bankruptcy proceedings, as well as claims that might be asserted against us in such bankruptcy proceedings.

Estimated Costs to Exit the Disney Store Business

We estimate that our continuing Children's Place business will make cash outlays of approximately $50 million to exit the Disney Store business, which will include:

- Severance and other employee costs for our employees servicing Hoop Entities of approximately $7.8 million;
- Forgiveness of all pre- and post- petition claims against the Hoop estate, including inter-company charges for shared services of approximately $24.1 million, and a cash capital contribution of approximately $8.3 million that was made to Hoop on March 18, 2008, prior to its bankruptcy filings;
- Legal and other costs we incur during the Hoop entities' bankruptcy proceedings; and
- Claims that might be asserted against us in the bankruptcy proceedings.

During the twenty six weeks ended August 2, 2008, we have disbursed approximately eighty percent of our estimated exit costs.

2008 Credit Agreement

On July 31, 2008, we replaced the 2007 Amended Loan Agreement and Letter of Credit Agreement with the 2008 Credit Agreement. The following section outlines the key terms of the 2008 Credit Agreement.

On July 31, 2008, we, together with certain of our domestic subsidiaries, entered into a credit agreement (the "2008 Credit Agreement") with Wells Fargo Retail Finance, LLC ("Wells Fargo"), as Administrative Agent, Collateral Agent, and Swing Line Lender, Bank of America, N.A., HSBC Bank USA, National Association and JP Morgan Chase Bank, N.A. (collectively, the "Lenders").

The 2008 Credit Agreement consists of a $200 million asset based revolving credit facility, which includes a $175 million letter of credit sub-facility. Amounts outstanding under the 2008 Credit Agreement bear interest, at our option, at:

(i) the prime rate; or

(ii) LIBOR plus a margin of 1.50% to 2.00% based on the amount of our average excess availability under the facility.

In addition, an unused line fee of 0.25% will accrue on the unused portion of the commitments under the facility. Letter of credit fees range from 0.75% to 1.25% for commercial letters of credit and range from 1.50% to 2.00% for standby letters of credit. Letter of credit fees are determined based on the level of availability under the 2008 Credit Agreement and accrue on the undrawn amount of such outstanding letters of credit, respectively. The 2008 Credit Agreement will mature on July 31, 2013. The amount that could be borrowed under the 2008 Credit Agreement at any time depends on our levels of inventory and accounts receivable at such time.

The outstanding obligations under the 2008 Credit Agreement may be accelerated after the occurrence of (and, if applicable, the expiration of the cure period) certain events, including, among others, breach of covenants, the institution of insolvency proceedings, certain defaults under certain other indebtedness and a change of control. Should the maturity of the 2008 Credit Agreement be accelerated for any reason, we would be responsible for an early

termination fee in the amount of (i) 0.50% of the revolving credit facility ceiling then in effect within the first year of the term of the facility and (ii) 0.25% of the revolving credit facility ceiling then in effect within the second year of the term of the facility. No early termination fee would be incurred after the completion of the second year of the term of the facility.

The 2008 Credit Agreement contains covenants, which include limitations on annual capital expenditures and limitations on the payment of dividends or similar payments. Credit extended under the 2008 Credit Agreement is secured by a first or second priority security interest in substantially all of the Company's assets and substantially all of the assets of its domestic subsidiaries.

As of August 2, 2008, we had no outstanding borrowings under the 2008 Credit Agreement and had $33.9 million in commercial letters of credit outstanding and $14.6 million in standby letters of credit outstanding. Availability under the 2008 Credit Agreement was $114.5 million at August 2, 2008. We capitalized approximately $1.6 million in deferred financing costs related to the institution of the 2008 Credit Agreement, which will be amortized on a straight line basis over the term of the 2008 Credit Agreement.

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Note Purchase Agreement

On July 31, 2008, concurrently with the execution of the 2008 Credit Agreement, we, together with certain of our domestic subsidiaries entered into an $85 million term loan (the "Note Purchase Agreement") with Sankaty Credit Opportunities III, L.P., Sankaty Credit Opportunities IV, L.P., RGIP, LLC, Crystal Capital Fund, L.P., Crystal Capital Onshore Warehouse LLC, 1903 Onshore Funding, LLC, and Bank of America, N.A. (collectively, the "Note Purchasers"), together with Sankaty Advisors, LLC, as Collateral Agent, and Crystal Capital Fund Management, L.P., as Syndication Agents.

Under the Note Purchase Agreement, we issued $85 million of secured notes (the "Notes") with no amortization with a single payment of principal due on the maturity date, July 31, 2013. Amounts outstanding under the Note Purchase Agreement bear interest at LIBOR, with a floor of 3.00%, plus a margin between 8.50% and 9.75% depending on the Company's leverage ratio. As of August 2, 2007, the interest rate on the Note Purchase Agreement was 11.50%.

The outstanding obligations under the Note Purchase Agreement may be accelerated after the occurrence of (and, if applicable, the expiration of the cure period) certain events, including, among others, breach of covenants, certain defaults under certain other indebtedness, the institution of insolvency proceedings and a material adverse effect. The Company is also required to make mandatory prepayments if a change of control occurs, if it receives cash in excess of certain defined thresholds for the sale of assets or other defined events, if it issues equity or other debt securities, or if annual cash flows are in excess of defined thresholds for each fiscal year. In addition, the outstanding obligations under the Note Purchase Agreement may be prepaid at any time at the discretion of the Company. For all prepayments types (including any made as a result of acceleration) except those relating to excess cash flows in a fiscal year and certain extraordinary receipts, the Company would be responsible for an early termination fee in the amount of (i) 2.00% of the aggregate principal amount of the Notes then prepaid within the first year of the term of the facility and (ii) 1.50% of the aggregate principal amount of the Notes then prepaid within the second year of the term of the facility. No early termination fee would be incurred after the completion of the second year of the term of the facility. Based on the Company's estimated cash flow for fiscal year 2008, a prepayment of $30 million is expected to be made in the first half of fiscal 2009. Accordingly, $30 million of the Notes are classified as current on the Company's condensed consolidated balance sheet at August 2, 2008.

The Note Purchase Agreement contains covenants, which include limitations on annual capital expenditures, a minimum EBITDA, a maximum leverage ratio, a minimum fixed charge coverage ratio and limitations on the payment of dividends or similar payments. Our obligations under the Note Purchase Agreement are secured by a first or second priority security interest in substantially all of our assets and substantially all of the assets of our domestic subsidiaries.

On July 31, 2008, the proceeds from the Note Purchase Agreement were used in part to repay in full our outstanding obligations under the 2007 Amended Loan Agreement and the Letter of Credit Agreement. There were no prepayment penalties associated with this repayment. Upon receipt by Wells Fargo of this repayment, the 2007 Amended Loan Agreement, the Letter of Credit Agreement and the related guaranty and collateral agreements were terminated and the associated liens were released.

The Company capitalized approximately $2.2 million in deferred financing costs related to the institution of the Note Purchase Agreement, which will be amortized on a straight line basis over the term of the Note Purchase Agreement.

Cash Flows/Capital Expenditures

During the twenty-six weeks ended August 2, 2008, cash flows provided by operating activities were $111.1 million compared to $82.6 million in cash flows used by operating activities in the twenty-six weeks ended August 4, 2007.

Cash provided by operating activities of continuing operations were $87.9 million in the twenty-six weeks ended August 2, 2008 compared to $39.5 million in cash flows used by operating activities of continuing operations in the twenty-six weeks ended August 4, 2007. During the twenty-six weeks ended August 2, 2008, operating activities of continuing operations included a net tax refund of $4.0 million compared to $38.8 million in taxes paid during the twenty-six weeks ended August 4, 2007. During the twenty-six weeks ended August 2, 2008, we reported income from continuing operations of $22.2 million compared to a net loss of $0.7 million in the twenty-six weeks ended August 4, 2007. In the twenty-six weeks ended August 2, 2008, cash flows provided by operating activities of continuing operations were also favorably impacted by a lower seasonal build-up of inventory, increases in our accounts payable, partially offset by a higher intercompany balance with Hoop.

Cash provided by operating activities of discontinued operations was $23.2 million in the twenty-six weeks ended August 2, 2008 compared to cash used by operating activities of discontinued operations of $43.1 million in the twenty-six weeks ended August 4, 2007. The increase in cash provided by operating activities of discontinued operations in the twenty-six weeks ended August 2, 2008 reflects the Private Sale of Hoop's assets, the elimination of prepayments and reduced

payments of liabilities (including intercompany liabilities) due to the Filings. During the twenty-six weeks ended August 4, 2007, cash used by operating activities was primarily due to Hoop's net loss, the seasonal build-up of inventory and the payment of intercompany balances, partially offset by an increase in accounts payable.

Cash flows used in investing activities were $40.0 million in the twenty-six weeks ended August 2, 2008 compared to $25.8 million during the twenty-six weeks ended August 4, 2007.

Cash flows used in investing activities of continuing operations were $16.2 million and $48.9 million in the twenty-six weeks ended August 2, 2008 and the twenty-six weeks ended August 4, 2007, respectively. During the twenty-six weeks ended August 2, 2008, our lower cash flows used in investing activities of continuing operations reflect lower capital expenditures as well as proceeds from the sale of a store lease. During the twenty-six weeks ended August 4, 2007, cash flows used in investing activities on capital expenditures were partially offset by a net sale of short-term investments. The number of new store openings has a significant impact on our cash flows used in investing activities. During the twenty-six weeks ended August 2, 2008, we opened three stores compared to 22 new store openings in the twenty-six weeks ended August 4, 2007. Additionally, capital expenditures in the twenty-six weeks ended August 4, 2007 reflected expenditures made for our new distribution center in Fort Payne, Alabama, which was completed at the end of the second quarter of fiscal 2007, and the Emerson office facility. We decided not to proceed with the Emerson office facility and fully impaired it in the fourth quarter of fiscal 2007.

Cash flows used in investing activities of discontinued operations were $23.7 million in the twenty-six weeks ended August 4, 2008 compared to cash provided by investing activities of $23.1 million in the twenty-six weeks ended August 4, 2007. During the twenty-six weeks ended August 2, 2008, cash flows provided by investing activities of discontinued operations reflected the restriction of all cash to settle liabilities in bankruptcy and payments of capital expenditures, partially offset by the proceeds from the Private Sale. During the twenty-six weeks ended August 4, 2007, cash flows provided by investing activities of discontinued operations reflected a $28.3 million net sale of short term investments, partially offset by $5.2 million in capital expenditures.

Cash flows used in financing activities were $4.8 million in the twenty-six weeks ended August 2, 2008 compared to $72.2 million provided by financing activities in the twenty-six weeks ended August 4, 2007.

Cash flows provided by financing activities of continuing operations were $7.0 million during the twenty-six weeks ended August 2, 2008 compared to $72.2 million during the twenty-six weeks ended August 4, 2007. In the twenty-six weeks ended August 2, 2008, cash flows provided by financing activities of continuing operations reflected proceeds received from the Note Purchase Agreement and the exercise of stock options partially offset by net repayments under our credit facility, a capital contribution to our subsidiary in bankruptcy and deferred financing costs associated with Note Purchase Agreement. During the twenty-six weeks ended August 4, 2007, cash flows provided by financing activities reflected net borrowings under our credit facility. In the twenty-six weeks ended August 4, 2007, there were no stock option exercises due to the suspension of trading activity due to the Company's stock option investigation.

During the twenty-six weeks ended August 2, 2008, cash flows used in financing activities of discontinued operations reflected the net repayment of the DIP Credit Facility and deferred financing fees paid to terminate the Amended Hoop Loan Agreement and to establish the DIP Credit Facility, partially offset by the capital contribution from the parent company. During the twenty-six weeks ended August 4, 2007, there were no net cash flows generated by the financing activities of discontinued operations.

We anticipate that total capital expenditures for continuing operations will be in the range of approximately $65 to $75 million in fiscal 2008. Approximately $55 million of our planned capital expenditures will provide for the opening of approximately 30 new stores and 17 store remodelings at The Children's Place. We also anticipate receiving approximately $12 million in lease incentives in fiscal 2008. The remainder of our 2008 capital expenditure budget will be utilized for information technology and other initiatives.

Our ability to meet our capital requirements in fiscal 2008 will depend on our ability to generate cash flows from operations and seasonal borrowings under our credit facilities. Cash flow generated from operations will depend on our ability to achieve our financial plans. We believe that the proceeds from our Note Purchase Agreement, cash on hand, cash generated from operations and funds available to us through our credit facility will be sufficient to fund our capital and other cash flow requirements over the next 12 months.

Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.

In the normal course of business, the Company's financial position and results of operations are routinely subject to market risk associated with interest rate movements on borrowings and investments and currency rate movements on non-U.S. dollar denominated assets, liabilities and income. The Company utilizes cash from operations and short-term borrowings to fund its working capital and investment needs. Cash, cash equivalents and investments are normally invested in short-term financial instruments that will be used in operations within a year of the balance sheet date. Because of the short-term nature of these investments, changes in interest rates would not materially affect the fair value of these financial instruments.

The Company's revolving credit facility with Wells Fargo provides a source of financing for its working capital requirements. The Company's revolving credit facility bears interest at the Company's option at either a floating rate equal to the prime rate or a floating rate equal to the prime rate plus a pre-determined spread. As a result, the Company's interest expense is subject to fluctuations in the prime rate and LIBOR rate. As of August 2, 2008, the Company had no borrowings outstanding under its revolving credit facility. Refer to Note 7—Credit Facilities in the accompanying condensed consolidated financial statements for a discussion of the facility.

Additionally, the Company's interest rate under its $85 million term loan with Sankaty is subject to fluctuations in LIBOR. The Company's term loan bears interest at LIBOR, with a floor of 3.00% and a margin between 8.50% and 9.75%, depending on the Company's leverage ratio. As of August 2, 2008, the interest rate under the term loan was 11.50%. Under the terms of this term loan, the Company is required to make mandatory prepayments if it receives cash in excess of certain defined thresholds for the sale of assets or other defined events, if it issues equity or other debt securities, or if annual cash

flows are in excess of defined thresholds for each fiscal year. Based on the Company's estimated cash flow for fiscal year 2008, a prepayment of approximately $30 million is expected to be made in the first half of fiscal 2009.

Assets and liabilities outside the United States are primarily located in Canada and Hong Kong. The Company's investments in its Canadian subsidiaries are considered long-term. However, the Company is not deemed to be permanently invested in its Hong Kong subsidiary. The Company has not hedged these net investments and as of August 2, 2008, the Company is not a party to any derivative financial instruments.

As of August 2, 2008, the Company had approximately $61.3 million of its cash and investments held in foreign countries, of which approximately $33.2 million was in Canada and approximately $28.1 million in Asia. While the Company does not have substantial financial assets in China, it imports a large percentage of its merchandise from that country. Consequently, any significant or sudden change in China's political, foreign trade, financial, banking or currency policies and practices could have a material adverse impact on the Company's financial position or results of operations.

In addition to the Company's Asian operations, the Company has a growing business in Canada. While currency rates with the Canadian dollar have generally moved in the Company's favor, currency rates in the twenty–six weeks ended August 2, 2008 moved against the Company. Foreign currency fluctuations could have a material adverse effect on our business and results of operation.

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Item 4. CONTROLS AND PROCEDURES.

Evaluation of Disclosure Controls and Procedures

Management, including our principal executive officers (our Interim Chief Executive Officer and our Executive Vice President—Finance and Administration) and our principal financial officer (our Executive Vice President - Finance and Administration), evaluated the effectiveness of our disclosure controls and procedures as defined in Rule 13a-15(e) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as of August 2, 2008. Based on that evaluation, our principal executive officers and principal financial officer concluded that our disclosure controls and procedures were effective as of August 2, 2008 to ensure that all information required to be disclosed in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms and is accumulated and communicated to our management, including our principal executive and principal financial officer, or persons performing similar functions, as appropriate to allow timely decisions regarding disclosure.

The Company's management, including our principal executive officers (our Interim Chief Executive Officer and our Executive Vice President—Finance and Administration), does not expect that our disclosure controls and procedures or our internal controls will prevent all error and fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the Company have been detected.

Changes in Internal Control Over Financial Reporting

There have been no changes in our internal controls over financial reporting that occurred during our most recently completed fiscal quarter to which this report relates that have materially affected, or are reasonably likely to materially affect, our internal controls over financial reporting.

During the twenty-six weeks ended August 2, 2008, we exited Disney Store operations and Disney Store business has been classified as discontinued operations in accordance with the generally accepted accounting principles ("GAAP''). This change had no material impact on our internal controls over financial reporting.

Part II - OTHER INFORMATION

Item 1. LEGAL PROCEEDINGS.

We are involved in various legal proceedings arising in the normal course of business and reserve for litigation settlements and contingencies when we can determine that an adverse outcome is probable and can reasonably estimate associated losses. Estimates are adjusted as facts and circumstances require. In the opinion of management, any ultimate liability arising out of such proceedings will not have a material adverse effect on the Company's financial condition.

On September 29, 2006, the Division of Enforcement of the SEC informed us that it had initiated an informal investigation into our stock option granting practices. In addition, the Office of the U.S. Attorney for the District of New Jersey has initiated an investigation into our option granting practices. We have cooperated with these investigations and have briefed both authorities on the results of an investigation conducted by a sub-committee appointed by the Board of Directors. There have been no developments in these matters since that time.

On January 17, 2007, a stockholder derivative action was filed in the United States District Court, District of New Jersey against certain current members of the Board of Directors and certain current and former senior executives. The Company has been named as a nominal defendant. The complaint alleges, among other things, that certain of our current and former officers and directors (i) breached their fiduciary duties to the Company and its stockholders and were unjustly enriched by improperly backdating certain grants of stock options to officers and directors of the Company, (ii) caused the Company to file false and misleading reports with the SEC, (iii) violated the Exchange Act and common law, (iv) caused the Company to issue false and misleading public statements and (v) were negligent and abdicated their responsibilities to the Company and its stockholders. The complaint sought money damages, an accounting by the defendants for the proceeds of sales of any allegedly backdated stock options, and the costs and disbursements of the lawsuit, as well as equitable relief. The plaintiff filed amended complaints adding, among other things, a claim for securities fraud under SEC rule 10b-5 and additional defendants and claims. In May 2008, the parties entered into a stipulation settlement to resolve this action, which settlement was approved by the court on July 21, 2008. The only monetary portion of the settlement was to pay $0.7 million of attorneys' fees and reimbursement of expenses to plaintiffs' counsel. The majority of this cost was covered by the Company's insurance.

On September 21, 2007 a second stockholder class action was filed in the United States District Court, Southern District of New York against the Company and certain of its current and former senior executives. The complaint alleges, among other things, that certain of the Company's current and former officers made statements to the investing public which misrepresented material facts about the business and operations of the Company, or omitted to state material facts required in order for the statements made by them not to be misleading, causing the price of the Company's stock to be artificially inflated in violation of provisions of the Exchange Act, as amended. It alleges that subsequent disclosures establish the misleading nature of these earlier disclosures. The complaint seeks monetary damages plus interest as well as costs and disbursements of the lawsuit. On October 10, 2007, a third stockholder class action was filed in the United States District Court, Southern District of New York, against the Company and certain of its current and former senior executives. This complaint alleges, among other things, that certain of the Company's current and former officers made statements to the investing public which misrepresented material facts about the business and operations of the Company, or omitted to state material facts required in order for the statements made by them not to be misleading, thereby causing the price of the Company's stock to be artificially inflated in violation of provisions of the Exchange Act, as amended. According to this complaint, subsequent disclosures establish the misleading nature of these earlier disclosures. This complaint seeks, among other relief, compensatory damages plus interest, and costs and expenses of the lawsuit, including counsel and expert fees. These two actions have been consolidated and the plaintiff filed a consolidated amended class action complaint on February 28, 2008. The Company's motion to dismiss was denied by the court on July 18, 2008. The outcome of this litigation is uncertain. While we believe there are valid defenses to the claims and we will defend ourselves vigorously, no assurance can be given as to the outcome of this litigation. The litigation could distract our management and directors from the Company's affairs, the costs and expenses of the litigation could unfavorably affect our net earnings, and an unfavorable outcome could adversely affect the reputation of the Company.

On or about July 12, 2006, Joy Fong, a former Disney Store manager in the San Francisco district, filed a lawsuit against the Company and its subsidiary Hoop Retail Stores, LLC in the Superior Court of California, County of Los Angeles. The lawsuit alleges violations of the California Labor Code and California Business and Professions Code and sought class action certification on behalf of Ms. Fong and other individuals similarly situated. We filed our answer on August 11, 2006 denying any and all liability, and on January 14, 2007, Ms. Fong filed an amended complaint, adding Disney as a defendant. We believe we have meritorious defenses to the claims. Effective as of March 26, 2008, the prosecution of this lawsuit against Hoop was stayed under the automatic stay provisions of the U.S. Bankruptcy Code by reason of Hoop's petition for relief filed that same day. The outcome of this litigation is uncertain; while we believe there are valid defenses to the claims, we cannot reasonably estimate the amount of loss or range of loss that might be incurred as a result of this matter.

On or about September 28, 2007, Meghan Ruggiero filed a complaint against the Company and its subsidiary, Hoop Retail Stores, LLC, in the United States District Court, Northern District of Ohio on behalf of herself and other similarly situated individuals. The lawsuit alleges violations of the Fair and Accurate Credit Transactions Act ("FACTA") and seeks class certification, an award of statutory and punitive damages, attorneys' fees and costs, and injunctive relief. The plaintiff filed an amended complaint on January 25, 2008. Effective as of March 26, 2008, the prosecution of this lawsuit against Hoop was stayed under the automatic stay provisions of the U.S. Bankruptcy Code by reason of Hoop's petition for relief filed that same day. The outcome of this litigation is uncertain; while we believe there are valid defenses to the claims and will defend ourselves vigorously, no assurance can be given as to the outcome of this litigation.

Item 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS.

The Company's Annual Meeting of Stockholders was held on June 27, 2008. The following matters were voted on by the stockholders:

1. Election of six Directors. Robert Fisch, Louis Lipschitz and Stanley Silverstein were elected to the Company's Board as Class I Directors for a term expiring in 2010. The results of the voting were as follows for Mr. Fisch: 20,727,646 votes in favor of Mr. Fisch and 5,983,670 votes withheld. The results of the voting were as follows for Mr. Lipschitz: 25,655,842 votes in favor of Mr. Lipschitz and 1,055,474 votes withheld. The results of the voting were as follows for Mr. Silverstein: 22,551,666 votes in favor of Mr. Silverstein and 4,159,650 votes withheld. Joseph Alutto, Charles Crovitz and Ezra Dabah were elected to the Company's Board as Class II Directors for a term expiring in 2011. The results of the voting were as follows for Mr. Alutto: 26,594,338 votes in favor of Mr. Alutto and 116,978 votes withheld. The results of the voting were as follows for Mr. Crovitz: 20,879,669 votes in favor of Mr. Crovitz and 5,831,647 votes withheld. The results of the voting were as follows for Mr. Dabah: 22,053,509 votes in favor of Mr. Dabah and 4,657,807 withheld. A vote for a director could have been cast for the director or withheld.

Abstentions and broker non-votes were not considered. Continuing Class III directors, whose terms will expire in 2009, are Malcolm Elvey and Sally Frame Kasaks.

2. Ratification of BDO Seidman LLP as the independent registered public accounting firm of the Company for the fiscal year ending January 31, 2009. The results of the votes were as follows: 26,644,101 votes in favor, 46,358 votes against, and 20,856 votes abstaining. Broker non-votes were not considered.

3. Approval of our Annual Management Incentive Bonus Plan. The results of the voting were as follows: 22,828,397 votes in favor, 142,548 votes against, 781,446 votes abstaining and 2,958,925 broker non-votes.

4. Approval of an amendment to our Certificate of Incorporation to provide for majority voting in director elections. The results of the voting were as follows: 26,539,886 votes in favor, 146,627 votes against, and 24,802 votes abstaining.

5. Approval of an amendment to our Amended and Restated 2005 Equity Incentive Plan regarding non-employee director compensation. The results of the voting were as follows: 20,988,988 votes in favor, 1,979,971 votes against, 783,432 votes abstaining and 2,958,925 broker non-votes.

6. Approval of an amendment to our Amended and Restated 2005 Equity Incentive Plan limiting awards that can be made to a participant in any one year. The results of the voting were as follows: 22,112,684 votes in favor, 858,661 votes against, 781,046 votes abstaining and

2,958,925 broker non-votes.

Item 6. Exhibits.

Exhibits

Exhibit No.	Description of Document
10.5(+)	Amended and Restated Certificate of Incorporation, dated July 29, 2008.
10.6(+)	Second Amended and Restated Bylaws as of June 27, 2008.
10.7(+)	Form of Indemnity Agreement, dated as of June 27, 2008, between the Company and certain members of Management and its Board of Directors.
10.8(+)	Credit Agreement dated, as of July 31, 2008, among the Company, as lead borrower, certain of its subsidiaries, as borrowers and as guarantors, Wells Fargo Retail Finance, LLC, as administrative agent, collateral agent and swing line lender, and Bank of America, N.A., JP Morgan Chase, N.A., and HSBC Business Credit (USA) Inc., as lenders.
10.9(+)	Note Purchase Agreement, dated as of July 31, 2008, among the Company, as issuer, and certain of its subsidiaries as guarantors, The Note Purchasers, Sankaty Advisors, LLC, as collateral agent and Crystal Capital Fund Management, L.P., as syndication agent.
31.1(+)	Certificate of Principal Executive Officer pursuant to Rule 13a-14(a)/Rule 15d-14(a) under the Securities Exchange Act of 1934.
31.2(+)	Certificate of Principal Executive Officer and Principal Financial Officer pursuant to Rule 13a-14(a)/Rule 15d-14(a) under the Securities Exchange Act of 1934.
32(+)	Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
99.1(+)	Press Release issued by the Company on July 10, 2008 reporting June 2008 sales results.
99.2(+)	Press Release issued by the Company on August 10, 2008 reporting July 2008 sales results.

(+) Filed herewith.

SIGNATURES

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

THE CHILDREN'S PLACE
RETAIL STORES, INC.

Date: September 9, 2008

By: /S/ CHARLES CROVITZ
CHARLES CROVITZ
Interim Chief Executive Officer
(A Principal Executive Officer)

Date: September 9, 2008

By: /S/ SUSAN RILEY
SUSAN RILEY
Executive Vice President, Finance and Administration

(A Principal Executive Officer and
Principal Financial Officer)

Amended and Restated Certificate of Incorporation,
dated July 29, 2008

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
THE CHILDREN'S PLACE RETAIL STORES, INC.

(Pursuant to Sections 242 and 245 of the
General Corporation Law of the State of Delaware)

THE CHILDREN'S PLACE RETAIL STORES, INC. (the "Corporation"), a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "General Corporation Law"), DOES HEREBY CERTIFY:

1. That the name of the Corporation is THE CHILDREN'S PLACE RETAIL STORES, INC.; the Corporation was originally incorporated under the name "The Children's Place Retail Stores II, Inc." pursuant to the General Corporation Law and the Corporation's original certificate of incorporation was filed with the Secretary of State of the State of Delaware on June 3, 1988. The Corporation's certificate of incorporation was subsequently amended by a certificate of merger on July 29, 1988, and pursuant to such amendment, the Corporation was renamed "The Children's Place Retail Stores, Inc." The Corporation's certificate of incorporation was subsequently amended and restated on each of June 28, 1996, December 31, 1996 and September 18, 1997.

2. That the Board of Directors duly adopted resolutions proposing to amend and restate the Corporation's certificate of incorporation, declaring said amendment and restatement to be advisable and in the best interests of the Corporation and its stockholders, and authorizing the appropriate officers of the Corporation to solicit the consent of the stockholders therefor.

3. That this Amended and Restated Certificate of Incorporation, which restates and integrates and further amends the provisions of the Corporation's certificate of incorporation, was duly adopted by the board of directors and stockholders of the Corporation in accordance with Sections 242 and 245 of the General Corporation Law.

5. That the Corporation's certificate of incorporation be amended and restated in its entirety to read as follows:

ARTICLE ONE

The name of the corporation is THE CHILDREN'S PLACE RETAIL STORES, INC. (the "Corporation").

ARTICLE TWO

The address of the Corporation's registered office in the State of Delaware is 2711 Centerville Road, Suite 400, in the City of Wilmington, County of New Castle. The name of its registered agent at such address is Corporation Service Company.

ARTICLE THREE

The nature of the business and of the purposes to be conducted and promoted by the Corporation are to conduct any lawful business, to promote any lawful purpose and to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware.

ARTICLE FOUR

The Corporation shall have authority, to be exercised by the Board of Directors, to issue (i) 100,000,000 shares of common stock of the par value of $0.10 per share (the "Common Stock") and (ii) 1,000,000 shares of preferred stock of the par value of $1.00 per share (the "Preferred Stock"). The Preferred Stock may be issued (A) in one or more series and with such designations, powers, preferences, rights, and such qualifications, limitations or restrictions thereof, as the Board of Directors shall fix by resolution or resolutions which are permitted by Section 151 of the General Corporation Law of the State of Delaware for any such series of Preferred Stock, and (B) in such number of shares in each such series as the Board of Directors shall, by resolution, fix, provided that the aggregate number of all shares of Preferred Stock issued shall not exceed the number of shares of Preferred Stock authorized hereby.

Each holder of Common Stock shall at every meeting of stockholders of the Corporation be entitled to one vote in person or by proxy on each matter submitted to a vote of stockholders for each share of Common Stock held by such holder as of the record date for such meeting. Subject to the rights, if any, of the holders of the Preferred Stock, the holders of the Common Stock shall be entitled to the entire voting power, all dividends declared and paid by the Corporation and all assets of the Corporation available for distribution to stockholders in the event of any liquidation, dissolution or winding up of the Corporation.

ARTICLE FIVE

The number of directors which shall constitute the whole Board of Directors of the Corporation shall be not less than three nor more than 12 and the exact number shall be fixed from time to time by the Board of Directors pursuant to a resolution adopted by a majority of the directors then in office; provided, however, that such maximum number of directors may be increased from time to time to reflect the rights, if any, of holders of Preferred Stock to elect directors in accordance with the terms of the resolution or resolutions adopted by the Board of Directors providing for the issue of such shares of Preferred Stock. The number of directors may be increased or decreased only by action of the Board of Directors. The directors, other than those who

may be elected by the holders of any series of Preferred Stock, will be classified with respect to the time for which they severally hold office into three classes, as nearly equal in number as possible, designated Class I, Class II and Class III. The directors first appointed to Class I will hold office for a term expiring at the annual meeting of stockholders of the Corporation to be held in 1998; the directors first appointed to Class II will hold office for a term expiring at the annual meeting of stockholders of the Corporation to be held in 1999; and the directors first appointed to Class III will hold office for a term expiring at the annual meeting of stockholders of the Corporation to be held in 2000, with the members of each class to hold office until their successors are elected and qualified. At each succeeding annual meeting of the stockholders of the Corporation, the successors of the class of directors whose terms expire at that meeting will be elected to hold office for a term expiring at the annual meeting of stockholders held in the third year following the year of their election and until their successors are elected and qualified. Election of directors of the Corporation need not be by written ballot unless requested by the Chairman of the Board of Directors or by the holders of a majority of the voting power of the outstanding shares of stock entitled to vote in the election of directors and present in person or represented by proxy at a meeting of the stockholders at which directors are to be elected.

Subject to the rights, if any, of the holders of the Preferred Stock with respect to the election of directors, directors shall be elected by a majority of votes cast by the shares present at a meeting of stockholders and entitled to vote on the election of directors at such meeting, a quorum being present at such meeting, unless the election is contested, in which case directors shall be elected by a plurality of votes cast by the shares present at such meeting. A “majority of votes cast” means that the number of votes cast “for” the election of the nominee exceeds 50% of the total number of votes cast “for” or “against” the election of that nominee. A “contested election” shall mean an election at which the number of nominees for election as director is greater than the number of directors to be elected. For purposes hereof, the number of nominees shall be determined as of the last date on which a stockholder in accordance with the Bylaws of the Corporation may nominate a person for election as a director in order for such nomination to be required to be presented for a vote of the stockholders. Cumulative voting shall not apply in the election of directors and no stockholder will be permitted to accumulate votes in respect of the election of any director.

ARTICLE SIX

Subject to the rights, if any, of the holders of any Preferred Stock, the power to fill vacancies on the Board of Directors (whether by reason of resignation, removal, death, an increase in the number of directors or otherwise) shall be vested solely in the Board of Directors, and vacancies may be filled by the affirmative vote of a majority of the directors then in office, even if less than a quorum, or by the sole remaining director, unless all directorships are vacant, in which case the stockholders shall fill the then existing vacancies. Any director chosen by the Board of Directors to fill a vacancy (including a vacancy resulting from an increase in the number of directors) shall hold office for the remainder of the full term of the class of directors in which the vacancy occurred (or in which the new directorship was created) and until that director’s successor shall be elected and shall have qualified. No decrease in the number of directors constituting the Board of Directors may shorten the term of any incumbent director.

ARTICLE SEVEN

Special meetings of the stockholders of the Corporation for any purpose or purposes may be called at any time by the Chairman of the Board of Directors or by the Secretary of the Corporation within ten calendar days after receipt of a written request from a majority of the total number of directors which the Corporation would have if there were no vacancies. Such special meetings may not be called by any other person or persons.

ARTICLE EIGHT

Any action required by the General Corporation Law of the State of Delaware to be taken at an annual or special meeting of stockholders of the Corporation, and any action which otherwise may be taken at any annual or special meeting of stockholders of the Corporation, shall be taken only at a duly called meeting of the stockholders of the Corporation and, notwithstanding Section 228 of the General Corporation Law of the State of Delaware, no such action shall be taken by written consent or consents without a meeting of the stockholders of the Corporation.

ARTICLE NINE

Except as otherwise provided by law, at any annual or special meeting of the stockholders of the Corporation, only such business shall be conducted or considered as shall have been properly brought before the meeting. Except as otherwise provided herein, in order to have been properly brought before the meeting, such business must have been either (A) specified in the written notice of the meeting, or any supplement thereto, given to the stockholders of record on the record date for such meeting by or at the direction of the Board of Directors; (B) brought before the meeting at the direction of the Chairman of the Board, the President or the Board of Directors; or (C) specified in a written notice given by or on behalf of a stockholder of record on the record date for such meeting entitled to vote thereat or a duly authorized proxy for such stockholder, in accordance with all requirements set forth in this Article Nine. A notice referred to in clause (C) of the preceding sentence must be delivered personally to, or mailed to and received at, the principal executive office of the Corporation, addressed to the attention of the Secretary, not less than 45 days nor more than 60 days prior to the meeting; provided, however, that in the event that less than 55 days’ notice or prior public disclosure of the date of the meeting was given or made to stockholders, notice by the stockholder to be timely must be so received not later than the close of business on the tenth day following the day on which such notice of the date of the meeting was mailed or such public disclosure was made, whichever first occurred. Such notice referred to in clause (C) of the second sentence of this Article Nine shall set forth: (i) a full description of each such item of business proposed to be brought before the meeting and the reasons for conducting such business at such meeting; (ii) the name and address of the person proposing to bring such business before the meeting; (iii) the class and number of shares held of record, held beneficially and represented by proxy by such person as of the record date for the meeting (if such date has then been made publicly available) and as of the date of such notice; (iv) if any item of such business involves a nomination for director, all information regarding each such nominee that would be required to be set forth in a definitive proxy statement filed with the Securities and Exchange Commission (the “Commission”) pursuant to Section 14 of the Securities Exchange Act of 1934, as amended, or any successor

thereto (the "Exchange Act"), and the written consent of each such nominee to serve if elected; (v) any material interest of the stockholder in such item of business; and (vi) all other information that would be required to be filed with the Commission if, with respect to the business proposed to be brought before the meeting, the person proposing such business was a participant in a solicitation subject to Section 14 of the Exchange Act. No business shall be brought before any meeting of stockholders of the Corporation otherwise than as provided in this Article Nine. The Board of Directors may require a proposed nominee for director to furnish such other information as may be required to be set forth in a stockholder's notice of nomination which pertains to the nominee or which may be reasonably required to determine the eligibility of such proposed nominee to serve as a director of the Corporation. The chairman of the meeting may, if the facts warrant, determine that a nomination or stockholder proposal was not made in accordance with the foregoing procedure, and if the chairman should so determine, the chairman shall so declare to the meeting and the defective nomination or proposal shall be disregarded.

ARTICLE TEN

The Bylaws of the Corporation, as amended and restated on the date hereof, are hereby adopted by the Board of Directors. In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind the Bylaws of the Corporation, by the affirmative vote of a majority of the total number of directors which the Corporation would have if there were no vacancies.

Notwithstanding anything contained in this Certificate of Incorporation to the contrary, Sections 6(b), 6(j) and 6(l) of Article I of the Bylaws, Sections 2(b), 2(c) and 2(d) of Article II of the Bylaws and Article VI of the Bylaws may not be amended or repealed by the stockholders, and no provision inconsistent therewith may be adopted by the stockholders, without the affirmative vote of the holders of at least 75% of the voting power of the outstanding shares of stock entitled to vote in the election of directors, voting as a single class.

ARTICLE ELEVEN

To the fullest extent that the General Corporation Law of the State of Delaware, as it exists on the date hereof or as it may hereafter be amended, permits the limitation or elimination of the liability of directors, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. Notwithstanding the foregoing, a director shall be liable to the extent provided by applicable law (1) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (3) under Section 174 of the General Corporation Law of the State of Delaware or any successor provision thereto, or (4) for any transaction from which the director derived any improper personal benefit. The provisions of this Article Eleven are not intended to, and shall not, limit, supersede or modify any other defense available to a director under applicable law. Neither the amendment or repeal of this Article Eleven, nor the adoption of any provision of this Certificate of Incorporation inconsistent with this Article Eleven, shall adversely affect any right or protection of a director of the Corporation existing at the time of such amendment, repeal or adoption.

ARTICLE TWELVE

The Corporation shall, to the fullest extent permitted by Section 145 of the General Corporation Law of the State of Delaware, as the same may be amended and supplemented, or by any successor provision thereto ("Section 145"), indemnify any and all persons whom it shall have power to indemnify under Section 145 from and against any and all of the expenses, liabilities or other matters referred to in or covered by Section 145. The Corporation shall advance expenses to the fullest extent permitted by Section 145. Such right to indemnification and advancement of expenses shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person. The indemnification and advancement of expenses provided for herein shall not be deemed exclusive of any other rights which any person may have or hereafter acquire under any statute, Bylaw, agreement, vote of stockholders or disinterested directors or otherwise. Without limiting the generality or the effect of the foregoing, the Corporation may enter into one or more agreements with any person which provide for indemnification greater than or different from that provided in this Article Twelve or Section 145. Neither the amendment or repeal of this Article Twelve, nor the adoption of any provision of this Certificate of Incorporation inconsistent with this Article Twelve, shall adversely affect any right or protection of any person existing at the time of such amendment, repeal or adoption.

The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions hereof or under Section 145 of the General Corporation Law or any other applicable law.

ARTICLE THIRTEEN

Subject to the rights, if any, of the holders of any Preferred Stock to elect additional directors or to remove directors so elected, a duly elected director of the Corporation may be removed from such position by the stockholders only for cause and only in the manner specified in this Article Thirteen. Any such removal may be effected only by the affirmative vote of the holders of a majority of the voting power of the outstanding shares of stock entitled to vote in the election of directors, voting as a single class. Except as may be provided by applicable law, cause for removal will be deemed to exist only if the director whose removal is proposed has been convicted of a felony or adjudicated by a court of competent jurisdiction to be liable to the Corporation or its stockholders for misconduct as a result of (a) a breach of such director's duty of loyalty to the Corporation, (b) any act or omission by such director not in good faith or which involves a knowing violation of law or (c) any transaction from which such director derived an improper personal benefit, and such conviction or adjudication is no longer subject to direct appeal.

ARTICLE FOURTEEN

Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this Corporation under the provisions of

Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under the provisions of Section 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders, of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders, of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

ARTICLE FIFTEEN

Any amendment, alteration, change or repeal of any provision contained in the second paragraph of Article Five or in Article Six, Seven, Eight, Nine, Ten or Thirteen or this Article Fifteen of this Certificate of Incorporation, or the adoption of any provision inconsistent therewith, may be effected only by the affirmative vote of the holders of 75% of the voting power of the outstanding shares of stock entitled to vote in the election of directors, voting as a single class, and all rights conferred on stockholders herein are granted subject to any provision of the General Corporation Laws of the State of Delaware, as amended.

This Amended and Restated Certificate of Incorporation was duly adopted in accordance with the provisions of Section 242 and Section 245 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, this Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of this corporation on this 29th day of July 2008.

THE CHILDREN'S PLACE RETAIL STORES, INC.

By: /s/ Susan J. Riley
Name: Susan J. Riley
Title: Executive Vice President, Finance & Administration

Second Amended and Restated Bylaws
as of June 27, 2008

SECOND AMENDED AND RESTATED BYLAWS

OF

THE CHILDREN'S PLACE RETAIL STORES, INC.

(A Delaware Corporation)

ARTICLE I

STOCKHOLDERS

1. CERTIFICATES REPRESENTING STOCK.

(a) Every holder of stock in the Corporation shall be entitled to have a certificate signed by, or in the name of, the Corporation by the Chairman of the Board of Directors, if any, or by the President or a Vice President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the Corporation, representing the number of shares owned by such person in the Corporation. If such certificate is countersigned by a transfer agent other than the Corporation or its employee or by a registrar other than the Corporation or its employee, any other signature on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

(b) Whenever the Corporation shall be authorized to issue more than one class of stock or more than one series of any class of stock, and whenever the Corporation shall issue any shares of its stock as partly paid stock, the certificates representing shares of any such class or series or of any such partly paid stock shall set forth thereon the statements prescribed by the General Corporation Law of the State of Delaware (the "DGCL"). Any restrictions on the transfer or registration of transfer of any shares of stock of any class or series shall be noted conspicuously on the certificate representing such shares.

(c) The Corporation may issue a new certificate of stock in place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Board of Directors may require the owner of any lost, stolen or destroyed certificate, or such person's legal representative, to give the Corporation a bond sufficient to indemnify the Corporation and its transfer agent or agents and registrar or registrars against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of any such new certificate.

2. FRACTIONAL SHARE INTERESTS.

The Corporation may, but shall not be required to, issue fractions of a share.

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3. STOCK TRANSFERS.

Upon compliance with provisions restricting the transfer or registration of transfer of shares of stock, if any, transfers or registration of transfers of shares of stock of the Corporation shall be made only on the stock ledger of the Corporation by the registered holder thereof, or by such person's attorney thereunto authorized by power of attorney duly executed and filed with the Secretary of the Corporation or with a transfer agent or a registrar, if any, and on surrender of the certificate or certificates for such shares of stock properly endorsed and the payment of all taxes due thereon.

4. RECORD DATE FOR STOCKHOLDERS.

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty nor less than ten days before the date of such meeting. If no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty days prior to such action. If no record date has been fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

5. MEANING OF CERTAIN TERMS.

As used herein in respect of the right to notice of a meeting of stockholders or a waiver thereof or to participate or vote thereat or to consent or dissent in writing in lieu of a meeting, as the case may be, the term "share" or "shares" or "share of stock" or "shares of stock" or "stockholder" or "stockholders" refers to an outstanding share or shares of stock and to a holder or holders of record of outstanding shares of stock when the Corporation is authorized to issue only one class of shares of stock, and said reference is also intended to include any outstanding share or shares of stock and any holder or holders of record of outstanding shares of stock of any class upon which or upon whom the Amended and Restated Certificate of Incorporation of the Corporation (the "Certificate of Incorporation") confers such rights where there are two or more classes or series of shares of stock or upon which or upon whom the DGCL confers such rights notwithstanding that the Certificate of Incorporation may provide for more than one class or series of shares of stock,

one or more of which are limited or denied such rights thereunder; provided, however, that no such right shall vest in the event of an increase or a decrease in the authorized number of shares of stock of any class or series which is otherwise denied voting rights under the provisions of the Certificate of Incorporation, including any preferred stock which is denied voting rights under the provisions of the resolution or resolutions adopted by the Board of Directors with respect to the issuance thereof.

6. STOCKHOLDER MEETINGS.

(a) Annual Meetings. An annual meeting of the stockholders of the Corporation shall be held within 150 days after the end of each fiscal year of the Corporation, commencing with the fiscal year ending on or about January 31, 1998, for the purpose of electing directors and transacting such other business as may properly come before the meeting.

(b) Special Meetings. Special meetings of the stockholders of the Corporation for any purpose or purposes may be called at any time by the Chairman of the Board of Directors or by the Secretary of the Corporation within ten calendar days after receipt of a written request from a majority of the total number of directors which the Corporation would have if there were no vacancies. Such special meetings may not be called by any other person or persons.

(c) Time and Place of Meetings. Subject to the provisions of Section 6(a), each meeting of stockholders shall be held on such date, at such hour, and at such place, either within or without the State of Delaware, as fixed by the Board of Directors from time to time or in the notice of the meeting or, in the case of an adjourned meeting, as announced at the meeting at which the adjournment is taken. Whenever the Board of Directors shall fail to fix such place, the meeting shall be held at the registered office of the Corporation in the State of Delaware.

(d) Notice of Meetings; Waiver of Notice. Written notice of all meetings shall be given, stating the place, date and hour of the meeting. The notice of an annual meeting shall state that the meeting is called for the election of Directors and for the transaction of other business which may properly come before the meeting, and shall (if any other action which could be taken at a special meeting is to be taken at such annual meeting), state such other action or actions as are known at the time of such notice. The notice of a special meeting shall in all instances state the purpose or purposes for which the meeting is called. If any action is proposed to be taken which would, if taken, entitle stockholders to receive payment for their shares of stock, the notice shall include a statement of that purpose and to that effect. Except as otherwise provided by the DGCL, a copy of the notice of any meeting shall be given, personally or by mail, not less than ten days nor more than sixty days before the date of the meeting, unless the lapse of the prescribed period of time shall have been waived, and directed to each stockholder at such person's address as it appears on the records of the Corporation. Notice by mail shall be deemed to be given when deposited, with postage thereon prepaid, in the United States mail. If a meeting is adjourned to another time, not more than thirty days after the date of the meeting at which the adjournment is taken, and/or to another place, and if an announcement of the adjourned time and place is made at the meeting at which the adjournment is taken, it shall not be necessary to give notice of the adjourned meeting unless the Board of Directors, after adjournment, fixes a new record date for the adjourned meeting. Notice need not be given to any stockholder who submits a written waiver of notice before or after the time stated therein. Attendance of a person at a meeting of stockholders shall constitute a waiver of notice of such meeting, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice.

(e) Quorum and Manner of Acting. Subject to the provisions of these Amended and Restated Bylaws (the "Bylaws"), the Certificate of Incorporation and any provision of the DGCL as to the vote that is required for a specified action, the presence in person or by proxy of the holders of a majority of the outstanding shares of the Corporation entitled to vote at any meeting of stockholders shall constitute a quorum for the transaction of business, and the vote in person or by proxy of the holders of a majority of the shares constituting such quorum shall be binding on all stockholders of the Corporation. A majority of the shares present in person or by proxy and entitled to vote may, regardless of whether or not they constitute a quorum, adjourn the meeting to another time and place. Any business which might have been transacted at the original meeting may be transacted at any adjourned meeting at which a quorum is present.

When a quorum is present to organize a meeting, it is not broken by the subsequent withdrawal of any stockholders.

(f) Voting. Each stockholder entitled to vote in accordance with the terms of the Certificate of Incorporation and of these Bylaws, or, with respect to the issuance of preferred stock, in accordance with the terms of a resolution or resolutions of the Board of Directors, shall be entitled to one vote, in person or by proxy, for each share of stock entitled to vote held by such stockholder. The vote required for the election of directors shall be as provided in the Certificate of Incorporation. In voting on the election of directors, stockholders shall also be provided the opportunity to abstain, and abstentions, votes designated to be withheld from the election of a director and shares present but not voted in respect of the election of a director, if any, shall not be considered as votes cast. Any other action shall be authorized by a majority of the votes cast except where the DGCL, the Certificate of Incorporation or these Bylaws prescribe a different percentage of votes and/or a different exercise of voting power. Voting by ballot shall not be required for corporate action except as otherwise provided by the DGCL or by the Certificate of Incorporation.

(g) Judges of Election. The Board of Directors, in advance of any meeting of stockholders, may, but need not, appoint one or more inspectors of election or judges of the vote, as the case may be, to act at the meeting or any adjournment thereof. If an inspector or inspectors or judge or judges are not appointed by the Board of Directors, the chairman of the meeting may, but need not, appoint one or more inspectors or judges. In case any person who may be appointed as an inspector or judge fails to appear or act, the vacancy may be filled by appointment made by the chairman of the meeting. Each inspector or judge, if any, before entering upon the discharge of such person's duties, shall take and sign an oath faithfully to execute the duties of inspector or judge at such meeting with strict impartiality and according to the best of his or her ability. The inspectors or judges, if any, shall determine the number of shares of stock outstanding and the voting power of each, the shares of stock represented at the meeting, the existence of a quorum and the validity and effect of proxies and ballots, receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such other acts as are proper to conduct the election or vote with fairness to all stockholders. On

request of the person presiding at the meeting, the inspector or inspectors or judge or judges, if any, shall make a report in writing of any challenge, question or matter determined by such person or persons and execute a certificate of any fact so found.

(h) **List of Stockholders.** A complete list of the stockholders entitled to vote at each meeting of stockholders of the Corporation, arranged in alphabetical order, and showing the address and number of shares registered in the name of each stockholder, shall be prepared and made available for examination during regular business hours by any stockholder for any purpose germane to the meeting. The list shall be available for such examination at the place where the meeting is to be held for a period of not less than ten days prior to the meeting and during the whole time of the meeting. The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by this Section 6(h) or the books of the Corporation, or to vote at any meeting of stockholders.

(i) **Conduct of Meeting.** At every meeting of stockholders, the chairman of the meeting shall be the Chairman of the Board or, in the absence of such officer, the President or, in the absence of both such officers, such person as shall have been designated by the Chairman of the Board or, if such officer has not so designated any person, by the President or, if such officer has not so designated any person, by resolution adopted by the Board of Directors. The chairman of the meeting shall have sole authority to prescribe the agenda and rules of order for the conduct of such meeting of stockholders and to determine all questions arising thereat relating to the order of business and the conduct of the meeting, except as otherwise required by law. The Secretary of the Corporation or, in such person's absence, an Assistant Secretary, shall

act as secretary of every meeting, but if neither the Secretary nor an Assistant Secretary is present the chairman for the meeting shall appoint a secretary of the meeting.

(j) **Stockholder Proposals and Nominations.** Except as otherwise provided by law, at any annual or special meeting of the stockholders of the Corporation, only such business shall be conducted as shall have been properly brought before the meeting. Except as otherwise provided herein, in order to have been properly brought before the meeting, such business must have been either (A) specified in the written notice of the meeting, or any supplement thereto, given to the stockholders of record on the record date for such meeting by or at the direction of the Board of Directors; (B) brought before the meeting at the direction of the Chairman of the Board, the President or the Board of Directors; or (C) specified in a written notice given by or on behalf of a stockholder of record on the record date for such meeting entitled to vote thereat or a duly authorized proxy for such stockholder, in accordance with all requirements set forth in this Section 6(j). A notice referred to in clause (C) of the preceding sentence must be delivered personally to, or mailed to and received at, the principal executive office of the Corporation, addressed to the attention of the Secretary, not less than 45 days nor more than 60 days prior to the meeting; provided, however, that in the event that less than 55 days' notice or prior public disclosure of the date of the meeting was given or made to stockholders, notice by the stockholder to be timely must be so received not later than the close of business on the tenth day following the day on which such notice of the date of the meeting was mailed or such public disclosure was made, whichever first occurred. Such notice referred to in clause (C) of the first sentence of this Section 6(j) shall set forth: (i) a full description of each such item of business proposed to be brought before the meeting and the reasons for conducting such business at such meeting; (ii) the name and address of the person proposing to bring such business before the meeting; (iii) the class and number of shares held of record, held beneficially and represented by proxy by such person as of the record date for the meeting (if such date has then been made publicly available) and as of the date of such notice; (iv) if any item of such business involves a nomination for director, all information regarding each such nominee that would be required to be set forth in a definitive proxy statement filed with the Securities and Exchange Commission (the "Commission") pursuant to Section 14 of the Securities Exchange Act of 1934, as amended, or any successor thereto (the "Exchange Act"), and the written consent of each such nominee to serve if elected; (v) any material interest of the stockholder in such item of business; and (vi) all other information that would be required to be filed with the Commission if, with respect to the business proposed to be brought before the meeting, the person proposing such business was a participant in a solicitation subject to Section 14 of the Exchange Act. No business shall be brought before any meeting of stockholders of the Corporation otherwise than as provided in this Section 6(j). The Board of Directors may require a proposed nominee for director to furnish such other information as may be required to be set forth in a stockholder's notice of nomination which pertains to the nominee or which may be reasonably required to determine the eligibility of such proposed nominee to serve as a director of the Corporation. The chairman of the meeting may, if the facts warrant, determine that a nomination or stockholder proposal was not made in accordance with the foregoing procedure, and if the chairman should so determine, the chairman shall so declare to the meeting and the defective nomination or proposal shall be disregarded.

(k) **Proxy Representation.** Every stockholder may authorize another person or persons to act for such stockholder by proxy in all matters in which a stockholder is entitled to participate, whether by waiving notice of any meeting, voting or participating at a meeting. Every proxy must be signed by the stockholder or by such person's attorney-in-fact. No proxy shall be voted or acted upon after three years from its date unless such proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and, if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally.

(l) **Stockholder Action Without Meetings.** Any action required by the DGCL to be taken at an annual or special meeting of stockholders of the Corporation, and any action which

otherwise may be taken at any annual or special meeting of stockholders of the Corporation, shall be taken only at a duly called meeting of the stockholders of the Corporation and, notwithstanding Section 228 of the DGCL, no such action shall be taken by written consent or consents without a meeting of the stockholders of the Corporation.

ARTICLE II

DIRECTORS

1. FUNCTIONS AND DEFINITION.

The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors of the Corporation. The term "Whole Board" herein refers to the total number of directors which the Corporation would have if there were no vacancies.

2. QUALIFICATIONS, NUMBER AND VACANCIES.

(a) Qualifications. A director need not be a stockholder, a citizen of the United States, or a resident of the State of Delaware.

(b) Number. The number of directors which shall constitute the Whole Board shall be not less than three nor more than 12 and the exact number shall be fixed from time to time by the Board of Directors pursuant to a resolution adopted by a majority of the directors then in office; provided, however, that such maximum number of directors may be increased from time to time to reflect the rights, if any, of holders of Preferred Stock to elect directors in accordance with the terms of the resolution or resolutions adopted by the Board of Directors providing for the issue of such shares of Preferred Stock. The number of directors may be increased or decreased only by action of the Board of Directors.

(c) Vacancies. Subject to the rights, if any, of the holders of any Preferred Stock, the power to fill vacancies on the Board of Directors (whether by reason of resignation, removal, an increase in the number of directors or otherwise) shall be vested solely in the Board of Directors, and vacancies may be filled by the affirmative vote of a majority of the directors then in office, although less than a quorum, or by the sole remaining director, unless all directorships are vacant, in which case the stockholders shall fill the then existing vacancies. Any director chosen by the Board of Directors to fill a vacancy (including a vacancy resulting from an increase in the number of directors) shall hold office for the remainder of the full term of the class of directors in which the vacancy occurred (or in which the new directorship was created) and until that director's successor shall be elected and shall have qualified. No decrease in the number of directors constituting the Board of Directors may shorten the term of any incumbent director.

(d) Election. The directors, other than those who may be elected by the holders of any series of Preferred Stock, will be classified with respect to the time for which they severally hold office in accordance with the Certificate of Incorporation. At the annual meeting of stockholders, the stockholders will elect by a vote in accordance with the terms of the Certificate of Incorporation and of these Bylaws, the directors to succeed those whose terms expire at such meeting. Any director may resign at any time upon written notice to the Corporation.

(e) Nominations. Nominations for the election of Directors may be made the Board of Directors or by any stockholder entitled to vote for the election of Directors who complies with

the provisions of Section 6(j) of Article I of these Bylaws and Article Nine of the Certificate of Incorporation of the Corporation.

3. MEETINGS.

(a) Time. Regular meetings of the Board of Directors shall be held at such time as the Board of Directors shall fix. Special meetings shall be held at such time as may be specified in the notice thereof.

(b) First Meeting. The first meeting of each newly elected Board of Directors may be held immediately after each annual meeting of the stockholders at the same place at which the meeting is held, and no notice of such meeting shall be necessary to call the meeting, provided a quorum shall be present. In the event such first meeting is not so held immediately after the annual meeting of the stockholders, it may be held at such time and place as shall be specified in the notice given as provided for special meetings of the Board of Directors, or at such time and place as shall be fixed by the consent in writing of all of the directors.

(c) Place. Meetings of the Board of Directors, both regular and special, shall be held at such place within or without the State of Delaware as shall be fixed by the Board of Directors.

(d) Call. No call shall be required for regular meetings for which the time and place have been fixed. Special meetings may be called by or at the direction of the Chairman of the Board, the President or a majority of the directors.

(e) Notice Or Actual Or Constructive Waiver. No notice shall be required for regular meetings of the Board of Directors for which the time and place have been fixed. Written, oral or any other mode of notice of the time and place shall be given for special meetings at least twenty-four hours prior to the meeting; notice may be given by telephone or telefax (in which case it is effective when given), by overnight courier or messenger (in which case it is effective when received) or by mail (in which case it is effective seventy-two hours after mailing by prepaid first class mail). The notice of any meeting need not specify the purpose of the meeting. Any requirement of furnishing a notice shall be waived by any director who signs a written waiver of such notice before or after the time stated therein. Attendance of a director at a meeting of the Board of Directors shall constitute a waiver of notice of such meeting, except when the director attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

(f) Quorum And Action. A majority of the Whole Board shall constitute a quorum except when a vacancy or vacancies prevents such majority, whereupon a majority of the directors in office shall constitute a quorum, provided that such majority shall constitute at least one-third (1/3) of the Whole Board. Any director may participate in a meeting of the Board of Directors by means of a conference telephone or similar communications equipment by means of which all directors participating in the meeting can hear each other, and such participation in a meeting of the Board of Directors shall constitute presence in person at such meeting. A majority of the directors present, whether or not a quorum is present, may adjourn a meeting to another time and place. Except as herein otherwise provided, and except as otherwise provided by the DGCL, the act of the Board of Directors shall be the act by vote of a majority of the directors present at a meeting, a quorum being present. The quorum and voting provisions herein stated shall not be construed as conflicting with any provisions of the DGCL, the Certificate of Incorporation and these Bylaws which govern a meeting of directors held to fill vacancies and newly created directorships in the Board of Directors.

(g) Chairman Of The Meeting. The Chairman of the Board, if present and acting, shall preside at all meetings of the Board of Directors. Otherwise, the President, if present and

acting, shall preside, or in the absence of the President, any other director chosen by the Board of Directors shall preside.

4. REMOVAL OF DIRECTORS.

Any or all of the directors may be removed only in accordance with Article Thirteen of the Certificate of Incorporation of the Corporation.

5. COMMITTEES.

The Board of Directors may, by resolution passed by a majority of the Whole Board, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of such committee. Except as otherwise provided by law, any such committee, to the extent provided in the resolution of the Board of Directors, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it. In the absence or disqualification of any member of any such committee or committees, the members thereof present at any meeting and not disqualified from voting, whether or not they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

6. ACTION IN WRITING.

Any action required or permitted to be taken at any meeting of the Board of Directors or any committee thereof may be taken without a meeting if all members of the Board of Directors or such committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Directors or committee.

ARTICLE III

OFFICERS

1. OFFICERS.

The Board of Directors may elect or appoint a Chairman of the Board of Directors, a President, one or more Vice Presidents (which may be denominated with additional descriptive titles), a Secretary, one or more Assistant Secretaries, a Treasurer, one or more Assistant Treasurers, and such other officers as it may determine. The Board of Directors shall designate from among such elected officers a chief executive officer, a chief operating officer, a chief financial officer and a principal accounting officer, and may from time to time make, or provide for, other designations it deems appropriate. The Board of Directors may also appoint, or provide for the appointment of, such other officers and agents as may from time to time appear necessary or advisable in the conduct of the affairs of the Corporation. Any number of offices may be held by the same person, except that no person may at the same time be both the President and the Secretary.

2. TERM OF OFFICE AND REMOVAL.

Unless otherwise provided in the resolution of election or appointment, each officer shall hold office until the meeting of the Board of Directors following the next annual meeting of stockholders and until such officer’s successor has been elected and qualified or until the earlier death, retirement, resignation or removal of such officer. The Board of Directors may remove any officer for cause or without cause.

3. AUTHORITY AND DUTIES.

All officers, as between themselves and the Corporation, shall have such authority and perform such duties in the management of the Corporation as may be provided in these Bylaws, or, to the extent not so provided, by the Board of Directors.

4. THE CHAIRMAN OF THE BOARD OF DIRECTORS.

The Chairman of the Board may be, but shall not be required to be, the Chief Executive Officer of the Corporation. In addition, the Chairman of the Board of Directors, if present and acting, shall preside at all meetings of the stockholders and all meetings of the Board of Directors.

5. THE PRESIDENT.

The President may be, but shall not be required to be, the chief operating officer and/or chief financial officer of the Corporation. In the absence of the Chairman of the Board of Directors, the President shall preside at all meetings of the stockholders and all meetings of the Board of Directors. Except to the extent otherwise provided in these Bylaws, the President shall have general authority to execute any and all documents in the name of the Corporation and to supervise and control all of the business and affairs of the Corporation. In the absence of the President, his duties shall be performed and his powers may be exercised by the chief financial officer of the Corporation or by such other officer as shall be designated by the Board of Directors.

6. VICE PRESIDENTS.

Any Vice President that may have been appointed and shall perform such other duties as the Board of Directors shall prescribe.

7. THE SECRETARY.

The Secretary shall keep in safe custody the seal of the Corporation and affix it to any instrument when authorized by the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors, the Chairman of the Board, the President or the chief financial officer. The Secretary (or in such officer’s absence, an Assistant Secretary, but if neither is present another person selected by the chairman for the meeting) shall have the duty to record the proceedings of the meetings of the stockholders and Board of Directors in a book to be kept for that purpose.

8. THE TREASURER.

The Treasurer shall have the care and custody of the corporate funds, and other valuable effects, including securities, and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and directors, at the regular meetings of the Board of Directors, or whenever they may require it, an accounting of all transactions as Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, the Treasurer shall give the Corporation a bond for such term, in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of such office and for the restoration to the Corporation, in case of such person's death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in such person's possession or under such person's control belonging to the Corporation.

ARTICLE IV

CORPORATE SEAL
AND
CORPORATE BOOKS

The corporate seal shall be in such form as the Board of Directors shall prescribe. The books of the Corporation may be kept within or without the State of Delaware, at such place or places as the Board of Directors may, from time to time, determine.

ARTICLE V

FISCAL YEAR

The fiscal year of the Corporation shall be fixed, and shall be subject to change, by the Board of Directors.

ARTICLE VI

INDEMNITY

1. INDEMNIFICATION.

(a) Any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise (including employee benefit plans) (hereinafter an "indemnitee"), shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification than permitted prior thereto), against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such indemnitee in connection with such action, suit or proceeding, if the indemnitee acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and with respect to any criminal action or proceeding, had no reasonable cause to believe such conduct was unlawful. The termination of the proceeding, whether by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not, in and of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal action or proceeding, had reasonable cause to believe such conduct was unlawful.

(b) Any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise (including employee benefit plans), shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification than permitted prior thereto), against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the

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Corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the court in which such suit or action was brought, shall determine, upon application, that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

2. ADVANCEMENT OF EXPENSES.

All reasonable expenses incurred by or on behalf of the indemnitee in connection with any suit, action or proceeding may be advanced to the indemnitee by the Corporation.

3. INDEMNIFICATION NOT EXCLUSIVE.

The indemnification and advancement of expenses provided for in this Article V shall not be deemed exclusive of any other rights which any person may have or hereafter acquire under any statute, the Certificate of Incorporation, a Bylaw of the Corporation, agreement, vote of stockholders or disinterested

directors or otherwise.

4. CONTINUATION OF INDEMNIFICATION.

The right to indemnification and advancement of expenses provided by this Article V shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

ARTICLE VII

AMENDMENTS

1. BY THE STOCKHOLDERS.

These Bylaws may be amended by the stockholders only (i) at a meeting called for that purpose and (ii) in a manner not inconsistent with any provision of law or the Certificate of Incorporation of the Corporation.

2. BY THE DIRECTORS.

These Bylaws may be amended by the affirmative vote of a majority of the Whole Board, in any manner not inconsistent with any provision of law or the Certificate of Incorporation of the Corporation.

Exhibit 10.7

Form of Indemnity Agreement dated as of June 27, 2008
between the Company and certain members of
Management and its Board of Directors

The Children's Place Retail Stores, Inc.

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT (this "**Agreement**") dated as of June 27, 2008, is made by and between **The Children's Place Retail Stores, Inc.**, a Delaware corporation (the "**Company**"), and ("**Indemnitee**").

RECITALS

A. The Company desires to attract and retain the services of highly qualified individuals as directors and officers.

B. The Company's Amended and Restated Certificate of Incorporation (the "**Certificate**") and Amended and Restated By-Laws (the "**Bylaws**") require that the Company indemnify its directors and officers to the fullest extent permitted by the Delaware General Corporation Law, as amended (the "**DGCL**"), under which the Company is organized, and the Certificate and Bylaws expressly provide that the indemnification provided therein is not exclusive and contemplates that the Company may enter into separate agreements with its directors and officers to set forth specific indemnification provisions.

C. The Company desires and has requested Indemnitee to serve or continue to serve as a director or officer of the Company and has proferred this Agreement to Indemnitee as an additional inducement to serve in such capacity.

D. Indemnitee is willing to serve, or to continue to serve, as a director or officer of the Company if Indemnitee is furnished the indemnity provided for herein by the Company.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Definitions.

(a) Expenses. For purposes of this Agreement, the term "expenses" shall be broadly construed and shall include, without limitation, all out-of-pocket costs of any type or nature whatsoever (including, without limitation, all reasonable attorneys', other professional and expert fees and related disbursements, witness fees, and any premiums, security for and other costs

relating to any appeal bond) actually and reasonably incurred by Indemnitee in connection with investigating, defending, responding to or appealing a proceeding or establishing or enforcing a right to indemnification or advancement of expenses under this Agreement. In the event Indemnitee is required to spend more than three hours in the course of any day (including travel time) as a witness (including as a deposition witness) or otherwise in attendance at a hearing in connection with a proceeding or otherwise is required to similarly commit his or her time in connection with a proceeding (other than a proceeding in respect of which Indemnitee is not entitled to indemnification in accordance with Section 10(b) hereof or has been determined not to be entitled to indemnification in accordance with Section 7 hereof), Indemnitee shall be entitled to reasonable compensation from the Company for his or her time so spent and, accordingly in such event, the term "expenses" shall also include reasonable compensation for such time spent by Indemnitee (as well as travel expenses reasonably incurred by Indemnitee in connection with attending such a hearing), if, but only if, Indemnitee at such time is not serving as a director or officer of, and is not in the employment of, or otherwise providing services for compensation to, the Company or any subsidiary. The rate of compensation to be provided to Indemnitee in such event shall be comparable to that provided to an independent director of the Company for a comparable commitment of time in accordance with the Company's then existing director compensation policies (if any) unless compensation at such rate shall be unreasonable in relation to the time so spent by Indemnitee. For such purpose, if the Company's director compensation policy provides for a "per meeting" fee, the amount of such fee shall be presumed to be reasonable compensation for the time so spent by the Indemnitee as if the time so spent had been spent at a meeting of the Board of Directors of the Company (unless compensation on such basis shall be unreasonable in relation to the time so spent by Indemnitee).

(b) Judgments. For purposes of this Agreement, "judgments" shall be broadly construed and shall include any judgment (including, without limitation, any award of damages and any mandatory or prohibitory injunction, rescission, imposition of a constructive trust, an accounting or any other equitable relief or a declaratory judgment), arbitral award, fine or penalty, or any tax for which the Company or any subsidiary would also or otherwise be liable, for which Indemnitee shall become liable or to which Indemnitee shall become subject as a result of any proceeding and any amount paid in settlement of any proceeding.

(c) Proceeding. For purposes of this Agreement, the term "proceeding" shall be broadly construed and shall include any threatened, pending, or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or other proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, legislative, administrative or investigative nature (including any notice of liability for any tax), and in which Indemnitee was, is or is threatened to be, involved as a party, a witness or otherwise by reason of: (i) the fact that Indemnitee is or was a director or officer of the Company; (ii) the fact that any

action was taken or omitted, or is alleged to have been taken or omitted, by Indemnitee as a director or officer of the Company or, at a time when Indemnitee was serving as a director or officer of the Company, in any other capacity on behalf of the Company or any subsidiary; or (iii) the fact that Indemnitee is or was serving at the request of the Company as a director, officer, trustee, partner, employee or fiduciary of another corporation or a partnership, joint venture, trust, employee benefit plan or other enterprise (as the case may be), whether or not Indemnitee is serving in any such capacity at the time when any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses is provided under this Agreement (including in each case, without limitation but subject to Sections 6 and 10, any proceeding commenced or asserted against Indemnitee relating to any person's right or claim to indemnity or advancement of expenses).

(d) **Subsidiary.** For purposes of this Agreement, the term "subsidiary" means any corporation or limited liability company of which more than 50% of the outstanding voting securities or equity interests are owned, directly or indirectly, by the Company and one or more of its subsidiaries, and any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Company as a director, officer, trustee, partner, employee or fiduciary.

(e) **Independent Counsel.** For purposes of this Agreement, the term "independent counsel" means a law firm, or a partner (or, if applicable, member) of such a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five (5) years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party or (ii) any other party to the proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "independent counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

2. Consideration.

(a) The Company acknowledges that its obligations imposed under this Agreement are in addition to and of force and effect independent of its obligations to Indemnitee under the Certificate or Bylaws, that this Agreement is intended to induce Indemnitee to serve, or continue to serve, as a director or officer of the Company, and that Indemnitee is relying upon this Agreement in serving as a director or officer of the Company.

(b) In reliance upon the Company's obligations under this Agreement, Indemnitee is commencing or continuing to serve as a director or officer of the Company. Indemnitee may at any time and for any reason resign from such position (subject to any other contractual obligation or any obligation imposed by operation of law). The Company shall have no obligation under this Agreement

to continue Indemnitee in such position or any other position for any period of time and shall not be precluded by the provisions of this Agreement from removing Indemnitee from any such position at any time.

3. Rights to Indemnification.

(a) **Indemnification Respecting Third Party Proceedings.** Subject to Section 10 below, the Company shall indemnify Indemnitee if Indemnitee is, or is threatened to be, made a party to or otherwise involved in any proceeding, other than a proceeding by or in the right of the Company to procure a judgment in its favor, from and against any and all expenses actually and reasonably incurred by Indemnitee in connection with investigating, defending, responding to, settling or appealing such proceeding and any judgments resulting from such a proceeding (including, without limitation, any tax also or otherwise payable by the Company or any subsidiary for which Indemnitee becomes liable).

(b) **Indemnification Respecting Derivative Actions and Direct Actions by the Company.** Subject to Section 10 below, the Company shall indemnify Indemnitee, if Indemnitee is, or is threatened to be, made a party to or otherwise involved in any proceeding by or in the right of the Company to procure a judgment in its favor against any and all expenses actually and reasonably incurred by Indemnitee in connection with investigating, defending, responding to settling or appealing such proceeding; provided, however, that indemnification shall be provided for any claim, issue or matter as to which Indemnitee has been adjudged to be liable to the Company only to the extent that the court in which such judgment was rendered or the Court of Chancery of the State of Delaware shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

For the avoidance of doubt, it is understood and agreed that any costs or expenses incurred by Indemnitee in connection with Indemnitee or any person associated with Indemnitee soliciting proxies with respect to the election of a director of the Company or any other matter submitted for a vote of the stockholders of the Company shall not be considered costs or expenses relating to a proceeding subject to indemnification or advancement pursuant to this Agreement; it being further understood, however, that (i) expenses actually and reasonably incurred by Indemnitee in connection with investigating, defending, responding to, settling or appealing a proceeding to which Indemnitee is made a party or otherwise involved or threatened to be made a party or otherwise involved and that arises out of or relates to any such proxy solicitation shall be expenses subject to indemnification and advancement pursuant to this Agreement except as otherwise provided by section 10 and (ii) nothing in this sentence is intended to limit the Company's expenditure of funds in connection with the solicitation of proxies on behalf of the Board of Directors of the Company or the reimbursement by the Company as permitted by law of costs or expenses in connection with any other solicitation of proxies that is determined to have been for the benefit of the Company.

4. Indemnification of Expenses of Successful Defense. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee has been successful on the merits or otherwise in defense of any proceeding or in defense of any claim, issue or matter therein, including the dismissal of any proceeding without prejudice, the Company shall indemnify Indemnitee from and against all expenses actually and reasonably incurred by Indemnitee in connection with investigating, defending, responding to or appealing such proceeding.

5. Partial Indemnification. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of any expenses actually and reasonably incurred by Indemnitee in investigating, defending, responding to, settling or appealing a proceeding, but is

precluded by applicable law or the specific terms of this Agreement to indemnification for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

6. Right to Advancement of Expenses. To the extent not prohibited by law, the Company shall as herein further provided reimburse Indemnitee, in advance of determining Indemnitee's entitlement to indemnification hereunder, for any expenses actually and reasonably incurred by Indemnitee in connection with investigating, defending, responding to, settling or appealing any proceeding. Indemnitee shall also be entitled to reimbursement of any and all expenses actually and reasonably incurred by Indemnitee in preparing and submitting to the Company information to support requests for indemnification or advancement of expenses hereunder. Such advancement or reimbursement shall be made within twenty (20) days after the receipt by the Company of (i) a written statement or statements requesting such advances or reimbursement (which shall include copies of invoices received by Indemnitee documenting with reasonable particularity the services for which such expenses were incurred but, in the case of invoices in connection with legal services, no references to legal work performed or to expenditures made shall be required that, in the reasonable judgment of Indemnitee's counsel, would cause Indemnitee to waive any privilege accorded by applicable law) and (ii) upon request of the Company, an undertaking confirming Indemnitee's obligation to repay the advancement of expenses if and to the extent that it is ultimately determined by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Company against such expenses. Advances shall be unsecured, interest free and without regard to Indemnitee's ability to repay the expenses. Indemnitee agrees that, without limiting the Company's right to seek further written confirmation from Indemnitee to such effect, the execution and delivery of this Agreement by Indemnitee shall constitute an undertaking by Indemnitee to repay to the Company any advance of expenses made by the Company if and to the extent (and only to the extent) that it is ultimately determined by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Company against such expenses. The right to advancement of expenses under this Section 6 shall continue until final disposition of any proceeding, including any appeal thereof. Notwithstanding the foregoing, Indemnitee shall not be entitled to advancement of expenses incurred in a proceeding commenced by Indemnitee for which indemnity is excluded pursuant to Section 10(b) of this Agreement, provided that the Company shall

make a determination with respect thereto within 20 days after receiving a request from Indemnitee for such advancement (but the Company shall not be precluded from thereafter making such determination based on additional facts or information that becomes available to it).

7. Notice and Other Procedures.

(a) Notification of Proceeding. Indemnitee will notify the Company in writing promptly upon being served with any summons, citation, subpoena, complaint, indictment, information, notice of liability or other document relating to any proceeding which may be subject to indemnification or advancement of expenses hereunder; provided, however, that the failure of Indemnitee to so notify the Company shall not relieve the Company of any obligation which it may have to provide indemnification or to advance expenses to Indemnitee under this Agreement or otherwise unless the Company shall have been materially prejudiced by not having notice of such proceeding.

(b) Request for Indemnification and Indemnification Payments. Indemnitee shall notify the Company promptly in writing upon receiving notice of the issuance of any judgment or arbitral award or any demand or other requirement to make a payment of a judgment in respect of which Indemnitee believes Indemnitee is entitled to indemnification under the terms of this Agreement; provided, however, that, except as may be provided by any applicable statute of limitations, the failure of Indemnitee so to notify the Company shall not relieve the Company of any obligation which it may have to provide indemnification to Indemnitee against such judgment under this Agreement or otherwise.

(c) Indemnification Determinations. Upon request of Indemnitee, the Company, to the extent required by the DGCL, shall promptly (and in any event in accordance with the following timing requirements), make a determination in good faith as to whether with respect to the matter as to which such indemnification is requested Indemnitee satisfied the applicable standard for conduct established under the DGCL for indemnification, such determination to be made:

(i) if Indemnitee is a director or officer at the time the determination is to be made, by (A) the Board of Directors of the Company by the vote at a meeting thereof of a majority of the members of the Board who are not parties to such proceeding, even if less than a quorum (or by the unanimous written consent of all the Board members, provided there are members who are not parties to such proceeding) or (B) by a committee of the Board of Directors composed of directors who are not parties to such proceeding and authorized and designated to make such decision by the vote at a meeting of the Board of Directors of a majority of the members of the Board who are not parties to such proceeding, even if less than a quorum (or authorized and designated by the unanimous written consent of all the committee members), or (C) if there are no directors who are not parties to such proceeding, or if so directed by the Board by

action of the directors satisfying the requirements of clause (A) of this subparagraph or if so directed by a committee of the Board composed and designated in compliance with the requirements of clause (B) of this subparagraph, by independent legal counsel in a written opinion; or

(ii) if Indemnitee is not a director or officer at the time the determination is to be made, (A) by the Board of Directors or a committee thereof by action thereof satisfying the requirements of clause (A) or (B) of subparagraph (i) of this Section or (B) by an officer of the Company duly authorized by action of the Board of Directors or a committee thereof by action thereof satisfying the requirements of clause (A) or (B) of subparagraph (i) of this Section or (C) if directed by the Board of Directors or a duly authorized committee or officer, by independent legal counsel in a written opinion.

The Company shall use its best efforts to cause a meeting of the Board or a Board committee to be held for purposes of making the determination of Indemnitee's satisfaction of the applicable standard of conduct, or the appointment of independent legal counsel to make such determination, to be held within 15 days of receipt of Indemnitee's request for indemnification and to have any such determination, including a determination to be made by independent legal counsel, completed within 60 days of such receipt. Alternatively, the Company may seek to have such determination made by action of the shareholders of the Company at a duly held meeting, provided that the Company has reasonably determined that such determination can be made within 60 days of such receipt. The Company shall give Indemnitee prompt written notice of the scheduling of any such Board, Board committee or shareholder meeting and the making of any such determination.

(d) Standards to be Applied. Any such determination shall be reasonably made by the decision-making party based upon the facts known to the decision-making party at the time such determination is made. The termination of a proceeding by judgment, order, settlement conviction, or upon a plea of nolo contendere or its equivalent shall not, by itself, create a presumption that the Indemnitee did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interest of the corporation, and, with respect to any criminal proceeding, had reasonable cause to believe that his or her conduct was unlawful. With respect to actions concerning an employee benefit plan of the Company or any subsidiary, if Indemnitee acted in good faith and in a manner he or she reasonably believed to be in the interest of the participants and beneficiaries of the employee benefit plan shall be deemed to have acted in a manner not opposed to the best interests of the corporation. If the determination shall be to the effect that Indemnitee satisfied the applicable standard of conduct, the amount of indemnity to which Indemnitee shall be entitled shall be paid to Indemnitee promptly. If the determination is to the effect that the Indemnitee did not meet the applicable standard of conduct in respect of the matter for which indemnification is sought hereunder, the Company shall give Indemnitee a reasonably detailed statement of the reasons for such determination. Such

determination shall be without prejudice to Indemnitee's right to have a court determination thereof made in accordance with Section 7(d) hereof. Claims for advancement of expenses shall be made under the provisions of Section 6 hereof rather than Section 7(c) and this Section 7(d).

(e) Assumption of Defense. In the event the Company shall be requested by Indemnitee to pay the expenses of any proceeding and the Company shall acknowledge in writing to Indemnitee its obligation under Section 6 to pay such expenses, the Company, if appropriate, shall be entitled to assume the defense of such proceeding, or to participate to the extent permissible in such proceeding, with counsel reasonably acceptable to Indemnitee. Upon assumption of the defense by the Company and the retention of such counsel by the Company, the Company shall not be liable to Indemnitee under this Agreement for any fees of counsel subsequently incurred by Indemnitee with respect to the same proceeding, provided that Indemnitee shall have the right to employ separate counsel in such proceeding at Indemnitee's sole cost and expense. Notwithstanding the foregoing, if Indemnitee's counsel delivers a written notice to the Company stating that such counsel has reasonably concluded that there is an actual or potential conflict of interest between the Company and Indemnitee in the conduct of any such defense or the Company shall not, in fact, have employed counsel or otherwise actively pursued the defense of such proceeding within a reasonable time, then in any such event the fees and expenses of Indemnitee's counsel to review whether there is such a conflict of interest and provide notice of a conflict of interest and to defend such proceeding shall be subject to the indemnification and advancement of expense provisions of this Agreement.

8. Enforcement of Rights Hereunder.

(a) Enforcement. In the event the Company (i) fails to make a timely indemnification payment or a timely determination of Indemnitee's entitlement to indemnification in accordance with Section 7(c) and (d) above and Section 10 or (ii) determines in accordance with Section 7(c) and (d) above that Indemnitee is not entitled to indemnification or (iii) fails to advance in a timely manner expenses in accordance with Section 6 above, then Indemnitee shall have the right to apply to any court of competent jurisdiction for the purpose of determining Indemnitee's entitlement to indemnification or enforcing Indemnitee's right to indemnification or advancement of expenses pursuant to this Agreement, as applicable. In such a hearing or proceeding, the burden of proof shall be on the Company to prove that indemnification or advancement of expenses to Indemnitee is not required under this Agreement or permitted by applicable law. Any determination by the Company (including its Board of Directors, stockholders or independent counsel) that Indemnitee is not entitled to indemnification hereunder shall not be a defense by the Company to an action to determine Indemnitee's entitlement to indemnification nor create any presumption that Indemnitee is not entitled to indemnification or advancement of expenses hereunder and Indemnitee shall be entitled to a de novo determination of its entitlement thereto.

(b) Indemnification of Enforcement and Certain Other Expenses. The Company shall indemnify Indemnitee against all expenses actually and reasonably incurred by Indemnitee in connection with any hearing or proceeding to determine, or enforce, Indemnitee's right to indemnification or advancement of expenses hereunder (including any proceeding commenced by Indemnitee), except in a situation where (i) the Company has determined that Section 10 is applicable or has determined in accordance herewith that Indemnitee is not entitled to indemnification hereunder by reason of not satisfying the applicable standard of conduct and (ii) the Company prevails on the merits in all material respects in such hearing or proceeding with respect to such determination; it being understood that Indemnitee shall not be entitled hereunder to advancement by the Company of expenses incurred by Indemnitee in connection with a proceeding commenced by Indemnitee to enforce his or her right to advancement of expenses or indemnification hereunder (but shall be entitled hereunder to indemnification against such expenses as were actually and reasonably incurred by Indemnitee in connection with such a proceeding upon conclusion thereof unless it has been determined in such proceeding that Indemnitee was not entitled to the advancement of expenses or indemnification sought by Indemnitee to be enforced).

(c) No Offset. Indemnitee's rights hereunder to receive payment of amounts as indemnification or advancement of expenses shall not be subject to offset, set-off or reduction on account of, and shall be separate from, any obligation or liability that Indemnitee may have to the Company or any subsidiary and shall be paid without regard thereto.

9. Insurance. To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors or officers of the Company or of any subsidiary, including any "tail coverage ("D&O Insurance"), the Company shall use its best efforts to cause Indemnitee, at the Company's expense, to be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any then-current director or officer of the Company or any subsidiary under such policy or policies. If, at the time of its receipt of a notice of a proceeding pursuant to the terms hereof, the Company has D&O Insurance in effect and the proceeding relates to one or more claims that could be covered by such D&O Insurance, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies and shall not discriminate against Indemnitee in regard to the Indemnitiee's access to coverage under such policy or policies in comparison to any other then-current director or officer. Indemnitee agrees to cooperate with the Company by providing any reasonable release requested by the insurance carrier and corresponding release of the Company for payments made to Indemnitee in satisfaction of the Company's indemnification and other obligations hereunder.

10. Exceptions.

(a) Certain Matters. Any provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement to indemnify Indemnitee on account of (i) any proceeding with respect to remuneration paid to Indemnitee as a director, officer, employee or in any other capacity if it is determined by final judgment or other final adjudication that such remuneration was provided in violation of law (it being understood, however, that Indemnitee's right to indemnification and advancement of expenses with regard to remuneration matters are further limited as provided by Section 10(b) hereof) or (ii) a final judgment rendered against Indemnitee for an accounting, disgorgement or repayment of profits made from the purchase or sale by Indemnitee of securities of the Company, or in connection with a settlement by or on behalf of Indemnitee to the extent it is acknowledged by Indemnitee and the Company that such amount paid in settlement resulted from Indemnitee's conduct from which Indemnitee received monetary personal profit, in violation of the provisions of Section 16(b) of the Securities Exchange Act of 1934, as amended, or (iii) any proceeding for which the Board (or any committee thereof) has determined prior to the date of this Agreement that the Indemnitee is not entitled to indemnification. For purposes of the foregoing sentence, a final judgment or other adjudication may be reached in either the underlying proceeding or action in connection with which indemnification is sought or a separate proceeding or action to establish rights and liabilities under this Agreement. The exclusion provided by clause (i) of the first sentence of this Section 10(a) shall not limit the exclusion provided by Section 10(b) hereof.

(b) Claims Initiated by Indemnitee. Any provision herein to the contrary notwithstanding, the Company shall not be obligated to indemnify or advance expenses to Indemnitee with respect to proceedings or claims initiated or brought by Indemnitee against the Company or its current or former directors, officers, employees or other agents and not by way of defense, except (i) with respect to proceedings brought to establish or enforce a right to indemnification or advancement of expenses under this Agreement or under any other agreement, provision in the Certificate or Bylaws or applicable law or (ii) with respect to any other proceeding initiated by Indemnitee that is either approved by the Board of Directors or with respect to which Indemnitee's participation is required by applicable law. However, indemnification or advancement of expenses may be provided by the Company in specific cases as to which indemnification or advancement of expenses is excluded by the foregoing provisions of this Section 10(b) if the Board of Directors determines it to be appropriate.

(c) Unauthorized Settlements. Any provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement to indemnify Indemnitee under this Agreement for any amounts paid in settlement of a proceeding effected without the Company's written consent. Neither the Company nor Indemnitee shall unreasonably withhold consent to any proposed settlement; provided, however, that the Company may in any event

decline to consent to (or to otherwise admit or agree to any liability for indemnification hereunder in respect of) any proposed settlement if the Company is also a party in such proceeding and determines in good faith that such settlement is not in the best interests of the Company and its stockholders.

(d) Securities Law Liabilities. Any provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement to indemnify Indemnitee or otherwise act in violation of any undertaking appearing in and required by the rules and regulations promulgated under the Securities Act of 1933, as amended (the "**Act**"), or in any registration statement filed with the SEC under the Act. Indemnitee acknowledges that paragraph (h) of Item 512 of Regulation S-K currently generally requires the Company to undertake in connection with any registration statement filed under the Act to submit the issue of the enforceability of Indemnitee's rights under this Agreement in connection with any liability under the Act to a court of appropriate jurisdiction with respect to the consistency of the indemnification provided hereunder with public policy and to be governed by any final adjudication of such issue. Indemnitee specifically agrees that any such undertaking shall supersede any contrary provisions of this Agreement and that Indemnitee's rights hereunder shall be subject to any such undertaking. In addition, Indemnitee acknowledges that the Securities and Exchange Commission believes that indemnification for liabilities arising under the federal securities laws is against public policy and is, therefore, unenforceable and that claims for indemnification should be submitted to appropriate courts for adjudication. Accordingly, Indemnitee further acknowledges that the Company may submit claims for indemnification against liabilities imposed under such laws made by Indemnitee hereunder to such adjudication in connection with handling such claims in accordance with Section 7 hereof.

11. Nonexclusivity and Survival of Rights. The provisions for indemnification and advancement of expenses set forth in this Agreement shall not be deemed exclusive of any other rights which Indemnitee may at any time be entitled under any provision of applicable law, the Certificate, Bylaws, any insurance policy or other agreements, both as to action in Indemnitee's capacity as a director or officer or any other capacity. However, where they are applicable, the procedures and standards provided by this Agreement shall apply with respect to Indemnitee's right to indemnification and advancement of expenses. Indemnitee's rights hereunder shall continue after Indemnitee has ceased acting as a director or officer of the Company and shall inure to the benefit of the heirs, executors, administrators and assigns of Indemnitee. The obligations and duties of the Company to Indemnitee under this Agreement shall be binding on the Company and its successors and assigns until terminated in accordance with its terms. The Company shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Company, expressly to assume and agree in writing to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this

Agreement in respect of any action taken or omitted by such Indemnitee in his or her status as such prior to such amendment, alteration or repeal. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to

every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, by Indemnitee shall not prevent the concurrent assertion or employment of any other right or remedy by Indemnitee.

12. Subrogation. In the event a payment is made to Indemnitee under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who, at the request and expense of the Company, shall execute all papers required and shall do everything that may be reasonably necessary to secure such rights, including the execution of such documents necessary to enable the Company effectively to bring suit to enforce such rights.

13. Interpretation of Agreement. It is understood that the parties hereto intend this Agreement to be interpreted and enforced so as to provide indemnification to Indemnitee to the fullest extent now or hereafter permitted by law. To the extent that a change in the DGCL, whether by statute or judicial decision, permits greater indemnification or advancement of expenses than would be afforded currently under the Certificate, Bylaws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change.

14. Severability. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever, (a) the validity, legality and enforceability of the remaining provisions of the Agreement (including without limitation, all portions of any paragraphs of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Agreement (including, without limitation, all portions of any paragraph of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable and to give effect to Section 13 hereof.

15. Amendment and Waiver. No supplement, modification, amendment, termination, or cancellation of this Agreement shall be binding unless executed in writing by the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

16. Notice. Except as otherwise provided herein, any notice or demand which, by the provisions hereof, is required or which may be given to or served upon the parties hereto shall be in writing and, if by telegram, telecopy or telex, shall be deemed to have been validly served, given or delivered when sent, if by overnight delivery, courier or personal delivery, shall be deemed to have been validly served, given or delivered

upon actual delivery and, if mailed, shall be deemed to have been validly served, given or delivered three (3) business days after deposit in the United States mail, as registered or certified mail, with proper postage prepaid and addressed to the party or parties to be notified at the addresses set forth on the signature page of this Agreement (or such other address(es) as a party may designate for itself by like notice). If to the Company, notices and demands shall be delivered to the attention of the Secretary of the Company.

17. Governing Law. This Agreement shall be governed exclusively by and construed according to the laws of the State of Delaware, without giving effect to the principles, policies or provisions thereof governing conflict or choice of laws.

18. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute but one and the same Agreement. Only one such counterpart need be produced to evidence the existence of this Agreement.

19. Headings. The headings of the sections of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction hereof.

20. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings and negotiations, written and oral, between the parties with respect to the subject matter of this Agreement; provided, however, that this Agreement is a supplement to and in furtherance of the Certificate, the Bylaws, the DGCL and any other applicable law, and shall not be deemed a substitute therefor, and does not diminish or abrogate any rights of Indemnitee thereunder.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement effective as of the date first above written.

THE CHILDREN'S PLACE RETAIL STORES, INC.

By: ______________________

Name: ______________________
Title: ______________________

INDEMNITEE

____
Signature of Indemnitee

____

Print or Type Name of Indemnitee

____

____

Indemnitee's Address for Notice

Exhibit 10.8

Credit Agreement dated as of July 31, 2008 among the Company, as lead borrower, certain of its subsidiaries, as borrowers and as guarantors, Wells Fargo Retail Finance, LLC, as administrative agent, collateral agent and swing line lender, and Bank of America, N.A., JP Morgan Chase, N.A., and HSBC Business Credit (USA) Inc., as lenders

CREDIT AGREEMENT

Dated as of July 31, 2008

Among

THE CHILDREN'S PLACE RETAIL STORES, INC.,
as the Lead Borrower
for
The Borrowers Party Hereto

The BORROWERS Party Hereto

The GUARANTORS Party Hereto

WELLS FARGO RETAIL FINANCE, LLC,
as Administrative Agent, Collateral Agent and Swing Line Lender

and

The LENDERS Party Hereto

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F Joinder Agreement
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H Credit Card Notification
I Intercreditor Agreement

CREDIT AGREEMENT

This CREDIT AGREEMENT ("Agreement") is entered into as of July 31, 2008, among

THE CHILDREN'S PLACE RETAIL STORES, INC., a Delaware corporation for itself and as agent (in such capacity, the "Lead Borrower") for the other Borrowers now or hereafter party hereto;

the BORROWERS now or hereafter party hereto;

the GUARANTORS now or hereafter party hereto;

each lender from time to time party hereto (individually, a "Lender" and, collectively, the "Lenders"), and

WELLS FARGO RETAIL FINANCE, LLC, as Administrative Agent, Collateral Agent and Swing Line Lender.

The Borrowers have requested that the Lenders provide a revolving credit facility, and the Lenders have indicated their willingness to lend, in each case on the terms and conditions set forth herein.

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

ARTICLE I.
DEFINITIONS AND ACCOUNTING TERMS

1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below:

"ACH" means automated clearing house transfers.

"Accommodation Payment" as defined in Section 10.20(d).

"Account" means "accounts" as defined in the UCC, and also means a right to payment of a monetary obligation, whether or not earned by performance, (a) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (b) for services rendered or to be rendered, (c) for a policy of insurance issued or to be issued, (d) for a secondary obligation incurred or to be incurred or (e) arising out of the use of a credit or charge card or information contained on or for use with the card.

"Acquisition" means, with respect to any Person (a) an Investment in, or a purchase of a Controlling interest in, the Equity Interests of any other Person, (b) a purchase or other acquisition of all or substantially all of the assets or properties of, another Person or of any business unit of another Person, (c) any merger or consolidation of such Person with any other Person or other transaction or series of transactions resulting in the acquisition of all or

substantially all of the assets, or a Controlling interest in the Equity Interests, of any Person, or (d) any acquisition by such Person of any group of Store locations comprising more than five percent (5%) of the number of Stores operated by the acquiring Person as of the date of such acquisition, in each case acquired in any transaction or group of transactions which are part of a common plan.

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

"Adjustment Date" means the first day of each Fiscal Quarter, commencing with the first day of the fourth Fiscal Quarter of 2008.

"Administrative Agent" means Wells Fargo Retail Finance, LLC, in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

"Administrative Agent's Office" means the Administrative Agent's address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Administrative Agent may from time to time notify the Lead Borrower and the Lenders.

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

"Affiliate" means, with respect to any 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. Any references to the Affiliates of any Loan Party herein or in any other Loan Document shall not include Hoop, unless explicitly stated otherwise.

"Agent(s)" means, individually, the Administrative Agent or the Collateral Agent and, collectively, means both of them.

"Aggregate Commitments" means the Commitments of all of the Lenders.

"Agreement" means this Credit Agreement.

"Alabama Capital Lease" means a capital lease for the inventory handling system of the Borrowers and/or any of their Affiliates located at the Alabama Property.

"Alabama Sale-Leaseback Transaction" means the sale-leaseback of the Alabama Property pursuant to a lease on market terms.

"Alabama Property" means the land, together with the buildings, structures, parking areas, and other improvements thereon, owned by Services Company and located at 1377 Airport Road, Fort Payne, Alabama.

"Applicable Margin" means:

(a) From and after the Closing Date until the first Adjustment Date, the percentages set forth in Level I of the pricing grid below; and

(b) From and after the first Adjustment Date, the Applicable Margin shall be determined from the following pricing grid based upon the Average Excess Availability as of the Fiscal Quarter ended immediately preceding such Adjustment Date; provided that, if any of the financial statements delivered pursuant to Section 6.01 of this Agreement or any Borrowing Base Certificate is at any time restated or otherwise revised (including as a result of an audit, but excluding revisions resulting from (i) normal year-end audit adjustments and changes in GAAP or its application to the financial statements delivered pursuant to Section 6.01 of this Agreement or (ii) any other cause other than the correction of an error, omission or misrepresentation of the Loan Parties), or if the information set forth in any such financial statements or any such Borrowing Base Certificate, otherwise proves to be false or incorrect when delivered such that the Applicable Margin would have been higher than was otherwise in effect during any period, without constituting a waiver of any Default or Event of Default arising as a result thereof, interest due under this Agreement shall be immediately recalculated at such higher rate for any applicable periods and shall be due and payable on demand.

Level	Average Excess Availability	LIBOR Margin	Base Rate Margin	Commercial Letter of Credit Fee	Standby Letter of Credit Fee
I	Greater than or equal to $50,000,000	1.50%	0.00%	0.75%	1.50%
II	Less than $50,000,000 but greater than or equal to $25,000,000	1.75%	0.00%	1.00%	1.75%
III	Less than $25,000,000	2.00%	0.00%	1.25%	2.00%

"Applicable Percentage" means, with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of the Aggregate Commitments represented by such Lender's Commitment at such time. If the commitment of each Lender to make Loans and the obligation of the L/C Issuer

to make L/C Credit Extensions have been terminated pursuant to Section 8.02, or if the Aggregate Commitments have expired, then the Applicable Percentage of each Lender shall be determined based on the Applicable Percentage of such Lender most recently in effect, giving effect to any subsequent assignments. The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on Schedule 2.01 or in

the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

"Approved Fund" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

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

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit E or any other form approved by the Administrative Agent.

"Attributable Indebtedness" means, on any date, in respect of any Capital Lease Obligation of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP.

"Audited Financial Statements" means the audited Consolidated balance sheet of the Lead Borrower and its Subsidiaries for the Fiscal Year ended February 2, 2008, and the related Consolidated statements of income or operations and cash flows for such Fiscal Year of the Lead Borrower and its Subsidiaries, including the notes thereto.

"Availability" means the lesser of (a) or (b), where:

(a) is the result of:

(i) The Revolving Credit Ceiling,

Minus

(ii) The aggregate Outstanding Amount of all Credit Extensions to, or for the account of, the Borrowers; and

(b) is the result of:

(i) The Borrowing Base,

Minus

(ii) The aggregate Outstanding Amount of all Credit Extensions to, or for the account of, the Borrowers.

"Availability Period" means the period from and including the Closing Date to the earliest of (a) the Maturity Date, (b) the date of termination of the Aggregate Commitments pursuant to Section 2.06, or (c) the date of termination of the commitment of each Lender to

make Loans and of the obligation of the L/C Issuer to make L/C Credit Extensions pursuant to Section 8.02.

"Availability Reserves" means, without duplication of any other Reserves or items that are otherwise addressed or excluded through eligibility criteria, such reserves as the Administrative Agent from time to time determines in its reasonable discretion as being appropriate: (a) to reflect the impediments to the Agents' ability to realize upon the Collateral, (b) to reflect claims and liabilities that the Administrative Agent determines will need to be satisfied in connection with the realization upon the Collateral, (c) to reflect criteria, events, conditions, contingencies or risks which adversely affect any component of the Borrowing Base, or the assets, business, financial performance or financial condition of any Loan Party, or (d) to reflect that a Default or an Event of Default has occurred and is continuing (provided that, in the case of this clause (d) only, the reserve shall be reasonably related to the event giving rise to such Default or Event of Default). Without limiting the generality of the foregoing, Availability Reserves may include (but are not limited to) such reserves as the Administrative Agent from time to time determines in its reasonable discretion as being appropriate based on: (i) rent; (ii) customs duties and other costs to release Inventory which is being imported into the United States; (iii) outstanding Taxes and other governmental charges, including, without limitation, ad valorem, real estate, personal property, sales, and other Taxes which may have priority over the interests of the Collateral Agent in the Collateral; (iv) salaries, wages and benefits due to employees of any Borrower which may have priority over the interests of the Collateral Agent in the Collateral; (v) Customer Credit Liabilities (provided that the Administrative Agent shall only impose reserves in respect of Customer Credit Liabilities if either (A) an Event of Default has occurred and is continuing or (B)(i) Excess Availability is less than $50,000,000 and (ii) there has been a material increase (as determined by the Administrative Agent in its reasonable discretion) in the Borrowers' liabilities in respect of outstanding Customer Credit Liabilities, compared to historical levels, as reflected in the Borrowers' books and records); (vi) warehousemen's or bailee's charges and other Permitted Encumbrances which may have priority over the interests of the Collateral Agent in the Collateral; (vii) Cash Management Reserves; and (viii) Bank Products Reserves.

"Average Excess Availability" shall mean the average daily Excess Availability for the immediately preceding Fiscal Quarter.

"Bank Products" means any services or facilities provided to any Loan Party by a Lender or any of its Affiliates (but excluding Cash Management Services) on account of (a) Swap Contracts, (b) purchase cards, (c) merchant services constituting a line of credit, and (d) leasing.

"Bank Products Reserves" means such reserves as the Administrative Agent from time to time determines in its reasonable discretion as being appropriate to reflect the liabilities and obligations of the Loan Parties with respect to Bank Products then provided or outstanding.

"Base Rate" means for any day a fluctuating rate per annum equal to the higher of (a) the Federal Funds Rate plus 1/2 of 1% and (b) the rate of interest in effect for such day as publicly announced from time to time by Wells Fargo Bank as its "prime rate." The "prime rate" is a rate set by Wells Fargo Bank based upon various factors including Wells Fargo Bank'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 rate announced by Wells Fargo Bank shall take effect at the opening of business on the day specified in the public announcement of such change.

"Base Rate Loan" means a Loan that bears interest based on the Base Rate.

"Blocked Account" has the meaning provided in Section 6.13(a)(i).

"Blocked Account Agreement" has the meaning provided in Section 6.13(a)(i).

"Blocked Account Bank" means Wachovia Bank, National Association and each other bank with whom deposit accounts are maintained in which any funds of any of the Loan Parties from one or more DDAs are concentrated and with whom a Blocked Account Agreement has been, or is required to be, executed in accordance with the terms hereof.

"Blocked Person" has the meaning provided in Section 5.26.

"Borrowers" means, collectively, the Lead Borrower, Services Company, and each other Person who shall from time to time enter into a Joinder Agreement as a Borrower.

"Borrowing" means a Committed Borrowing or a Swing Line Borrowing, as the context may require.

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

(a) the face amount of Eligible Credit Card Receivables multiplied by the Credit Card Advance Rate;

plus

(b) the lesser of (i) the retail value of Eligible Inventory, net of Inventory Reserves, multiplied by the NRLV Percentage of the NRLV of Eligible Inventory or (ii) the retail value of Eligible Inventory, net of Inventory Reserves, multiplied by the Inventory Advance Rate;

plus

(c) the lesser of (i) the retail value of Eligible In-Transit Inventory, net of Inventory Reserves, multiplied by the NRLV Percentage of the NRLV of Eligible In-Transit Inventory or (ii) the retail value of Eligible In-Transit Inventory, net of Inventory Reserves, multiplied by the Inventory Advance Rate; provided that in no event shall the amount available to be borrowed pursuant to this clause (c) exceed $23,000,000;

plus

(d) with respect to any Eligible Letter of Credit, the lesser of (i) the Cost of the Inventory supported by such Eligible Letter of Credit, net of Inventory Reserves, multiplied by the NRLV Percentage of the NRLV of the Inventory supported by such

Eligible Letter of Credit, or (ii) the Cost of the Inventory supported by such Eligible Letter of Credit, net of Inventory Reserves, multiplied by the Eligible Letter of Credit Advance Rate;

plus

(e) the lesser of (i) FMV of Eligible Real Estate, net of Realty Reserves, multiplied by the Real Estate Advance Rate or (ii) $15,000,000.00;

minus

(f) the Excess Availability Reserve;

minus

(g) the then amount of all Availability Reserves.

"Borrowing Base Certificate" has the meaning provided in Section 6.02(c).

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent's Office is located and, if such day relates to any LIBO Rate Loan, means any such day on

which dealings in Dollar deposits are conducted by and between banks in the London interbank market.

"Canadian Letter of Credit" means any Letter of Credit caused to be issued pursuant to this Agreement by Services Company for the purchase of Inventory for the benefit of Children's Place Canada, which shall be issued in Dollars.

"Canadian Letter of Credit Sublimit" means $10,000,00.00.

"Canadian Subsidiary" means any Subsidiary of any Borrower that is organized under the laws of Canada or any province, state or political subdivision thereof.

"Capital Expenditures" means, with respect to any Person for any period, (a) all expenditures made (whether made in the form of cash or other property) or costs incurred for the acquisition or improvement of fixed or capital assets of such Person (excluding normal replacements and maintenance which are properly charged to current operations), in each case that are (or should be) set forth as capital expenditures in a Consolidated statement of cash flows of such Person for such period, in each case prepared in accordance with GAAP, and (b) Capital Lease Obligations incurred by a Person during such period.

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

"Cash Collateralize" has the meaning specified in Section 2.03(g).

"Cash Dominion Event" means either (i) the occurrence and continuance of any Specified Event of Default, or (ii) the failure of the Borrowers to maintain Excess Availability of at least $25,000,000.00, which failure continues for five (5) consecutive Business Days. For purposes of this Agreement, the occurrence of a Cash Dominion Event shall be deemed continuing at the Administrative Agent's option (i) so long as such Specified Event of Default has not been waived, and/or (ii) if the Cash Dominion Event arises as a result of the Borrowers' failure to achieve Excess Availability as required hereunder, until Excess Availability has exceeded $25,000,000.00 for forty-five (45) consecutive days, in which case a Cash Dominion Event shall no longer be deemed to be continuing for purposes of this Agreement; provided that a Cash Dominion Event shall be deemed continuing (even if a Specified Event of Default is no longer continuing and/or Excess Availability exceeds the required amount for forty-five (45) consecutive days) at all times after a Cash Dominion Event has occurred and been discontinued on three (3) occasions after the Closing Date.

"Cash Management Reserves " means such reserves as the Administrative Agent, from time to time, determines in its reasonable discretion as being appropriate to reflect the reasonably anticipated liabilities and obligations of the Loan Parties with respect to Cash Management Services then provided or outstanding.

"Cash Management Services" means any one or more of the following types or services or facilities provided to any Loan Party by a Lender or any of its Affiliates: (a) ACH transactions, (b) cash management services, including, without limitation, controlled disbursement services, treasury, depository, overdraft, and electronic funds transfer services, (c) foreign exchange facilities, (d) credit or debit cards, and (e) merchant services not constituting a Bank Product.

"Cash on Hand" means, as of any date of determination, the amount of unrestricted cash of the Borrowers that is (a) deposited in an account of the Borrowers maintained with Wells Fargo Bank, which account is subject to a valid, enforceable and first priority perfected security interest in favor of the Collateral Agent pursuant to a control agreement, in form and substance satisfactory to the Collateral Agent, and (b) not subject to any Lien, except in favor of the Collateral Agent and the Revolving Credit Agent.

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

"CERCLIS" means the Comprehensive Environmental Response, Compensation, and Liability Information System maintained by the United States Environmental Protection Agency.

"CFC" means a Person that is a controlled foreign corporation under Section 957 of the Code.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any Law, rule, regulation or treaty, (b) any change in any Law, rule, regulation or treaty or in the administration, interpretation or application

thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

"Change of Control" means an event or series of events by which:

(a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than the existing shareholders of the Lead Borrower set forth on Schedule 1.02 or a "person" or "group" Controlled by one of the existing shareholders of the Lead Borrower set forth on Schedule 1.02, becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have "beneficial ownership" of all securities that such "person" or "group" has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an "option right")), directly or indirectly, of 25% or more of the Equity Interests of the Lead Borrower entitled to vote for members of

the board of directors or equivalent governing body of the Lead Borrower on a fully-diluted basis (and taking into account all such Equity Interests that such "person" or "group" has the right to acquire pursuant to any option right); or

(b) the Lead Borrower fails at any time to own, directly or indirectly, 100% of the Equity Interests of each other Loan Party free and clear of all Liens (other than Liens in favor of the Collateral Agent and Liens securing the Note Obligations having the priority set forth in the Intercreditor Agreement), except where such failure is as a result of a transaction permitted by the Loan Documents.

"Children's Place Canada" means The Children's Place (Canada), LP, an Ontario limited partnership.

"Closing Date" means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01, which shall be July 31, 2008.

"Code" means the Internal Revenue Code of 1986, and the regulations promulgated thereunder, as amended and in effect.

"Collateral" means any and all "Collateral" as defined in any applicable Security Document and all other property that is or is intended under the terms of the Security Documents to be subject to Liens in favor of the Collateral Agent.

"Collateral Access Agreement" means an agreement reasonably satisfactory in form and substance to the Collateral Agent executed by (a) a bailee or other Person in possession of Collateral, or (b) a landlord of Real Estate leased by any Loan Party, pursuant to which such Person (i) acknowledges the Collateral Agent's Lien on the Collateral, (ii) releases or subordinates such Person's Liens in the Collateral held by such Person or located on such Real Estate, (iii) as to any landlord, provides the Collateral Agent with reasonable access to the Collateral located in or on such Real Estate and a reasonable time to sell and dispose of the Collateral from such Real Estate, and (iv) makes such other agreements with the Collateral

Agent as the Collateral Agent may reasonably require; provided that the Real Property Waiver and Consent for the Loan Parties' distribution center located at 3800 East Philadelphia Street, Ontario, California and the Landlord's Waiver for the Loan Parties' corporate headquarters located at 915 Secaucus Road, Secaucus, New Jersey, each executed and delivered pursuant to the Existing Credit Agreement, shall be deemed to be Collateral Access Agreements hereunder.

"Collateral Agent" means Wells Fargo Retail Finance, LLC, acting in such capacity for its own benefit and the ratable benefit of the other Credit Parties.

"Commercial Letter of Credit" means any Letter of Credit issued for the purpose of providing the primary payment mechanism in connection with the purchase of Inventory by a Borrower in the ordinary course of business of such Borrower.

"Commitment" means, as to each Lender, its obligation to (a) make Committed Loans to the Borrowers pursuant to Section 2.01, (b) purchase participations in L/C Obligations, and (c) purchase participations in Swing Line Loans, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender's name on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"Commitment Fee" has the meaning provided in Section 2.09(a).

"Committed Borrowing" means a borrowing consisting of simultaneous Committed Loans of the same Type and, in the case of LIBO Rate Loans, having the same Interest Period made by each of the Lenders pursuant to Section 2.01.

"Committed Loan" has the meaning specified in Section 2.01.

"Committed Loan Notice" means a notice of (a) a Committed Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of LIBO Rate Loans, pursuant to Section 2.02, which, if in writing, shall be substantially in the form of Exhibit A.

"Compliance Certificate" means a certificate substantially in the form of Exhibit D.

"Concentration Account" has the meaning provided in Section 6.13(c).

"Consent" means actual consent given by a Lender from whom such consent is sought; or the passage of ten (10) Business Days from receipt of written notice to a Lender from the Administrative Agent of a proposed course of action to be followed by the Administrative Agent without such Lender's giving the Administrative Agent written notice of that Lender's objection to such course of action.

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

"Contractual Obligation" means, as to any Person, any provision of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

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

"Cost" means the calculated cost of purchases, based upon the Borrowers' accounting practices in effect on the Closing Date (as such accounting practices may change or be modified from time to time in accordance with GAAP), as determined from invoices received by the Borrowers, the Borrowers' purchase journals or the Borrowers' stock ledger. "Cost" does not include inventory capitalization costs or other non-purchase price charges (such as freight) used in the Borrowers' calculation of cost of goods sold.

"Credit Card Advance Rate" means 90%.

"Credit Card Notifications" has the meaning provided in Section 6.13(a)(i).

"Credit Extensions" mean each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

"Credit Party" or "Credit Parties" means (a) individually, (i) each Lender and its Affiliates, (ii) each Agent, (iii) each L/C Issuer, (iv) each beneficiary of each indemnification obligation undertaken by any Loan Party under any Loan Document, (v) any other Person to whom Obligations under this Agreement and other Loan Documents are owing, and (vi) the successors and assigns of each of the foregoing, and (b) collectively, all of the foregoing.

"Credit Party Expenses" means, without limitation, (a) all reasonable out-of-pocket expenses incurred by the Agents and their respective Affiliates, in connection with this Agreement and the other Loan Documents, including without limitation (i) the reasonable fees, charges and disbursements of (A) one primary counsel for the Agents and one local counsel in each applicable jurisdiction, (B) outside consultants for the Agents, (C) appraisers, (D) commercial finance examinations, and (E) all such reasonable out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Obligations, (ii) in connection with (A) the syndication of the credit facilities provided for herein, (B) the preparation, negotiation, administration, management, execution and delivery of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (C) the enforcement or protection of their rights in connection with this Agreement or the Loan Documents or efforts to preserve, protect, collect, or enforce the Collateral, or (D) any workout, restructuring or negotiations in respect of any Obligations, and (b) with respect to the L/C Issuer, and its Affiliates, all reasonable out-of-pocket expenses incurred in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder; and (c) all reasonable out-of-pocket expenses incurred by the Credit Parties who are not the Agents, the L/C Issuer or any Affiliate of any of them, after the occurrence and during the

continuance of an Event of Default, provided that such Credit Parties shall be entitled to reimbursement for no more than one primary counsel and one local counsel in each applicable jurisdiction (absent a conflict of interest in which case the Credit Parties may engage and be reimbursed for additional counsel), one outside consultant and one financial advisor, in each case representing or advising all such Credit Parties.

"Customer Credit Liabilities" means, at any time, the aggregate remaining value at such time of (a) outstanding gift certificates and gift cards of the Borrowers entitling the holder thereof to use all or a portion of the certificate or gift card to pay all or a portion of the purchase price for any Inventory, and (b) outstanding merchandise credits and customer deposits of the Borrowers.

"Customs Broker Agreement" means an agreement, in form and substance reasonably satisfactory to the Collateral Agent, among a Borrower, a customs broker, freight forwarder or other carrier, and the Collateral Agent, in which the customs broker, freight forwarder or other carrier acknowledges that it has control over and holds the documents evidencing ownership of the subject Inventory for the benefit of the Collateral Agent and agrees, upon notice from the Collateral Agent, to hold and dispose of the subject Inventory solely as directed by the Collateral Agent; provided that the Customs Broker Agency Agreement executed and delivered pursuant to the Existing Credit Agreement by C-Air Customhouse Broker/C-Air International shall be deemed to be a Customs Broker Agreement hereunder.

"DDA" means each checking or other demand deposit account maintained by any of the Loan Parties.

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

"Default" means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

"Default Rate" means (a) when used with respect to Obligations other than Letter of Credit Fees, an interest rate equal to (i) the Base Rate plus (ii) the Applicable Margin, if any, applicable to Base Rate Loans, plus (iii) 2% per annum; provided, however, that with respect to a LIBO Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Margin) otherwise applicable to such LIBO Rate Loan plus 2% per annum, and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Margin for Standby Letters of Credit or Commercial Letters of Credit, as applicable, plus 2% per annum.

"Defaulting Lender" means any Lender that (a) has failed to fund any portion of the Committed Loans, participations in L/C Obligations or participations in Swing Line Loans required to be funded by it hereunder within one Business Day of the date required to be funded by it hereunder, (b) has otherwise failed to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within one Business Day of the date

when due, unless the subject of a good faith dispute, or (c) has been deemed insolvent or become the subject of a bankruptcy or insolvency proceeding.

"Disposition" or "Dispose" means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction and any sale, transfer, license or other disposition of (whether in one transaction or in a series of transactions) all or substantially all of its assets to or in favor of any Person) of any property (including, without limitation, any Equity Interests) by any Person (or the granting of any option or other right to do any of the

foregoing), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith .

"Dollars" and "$" mean lawful money of the United States.

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

"Early Termination Fee" has the meaning set forth in Section 2.09(b).

"Eligible Assignee" means (a) a Credit Party or any of its Affiliates; (b) a bank, insurance company, or company engaged in the business of making commercial loans, which Person, together with its Affiliates, has a combined capital and surplus in excess of $250,000,000; (c) an Approved Fund; (d) any Person to whom a Credit Party assigns its rights and obligations under this Agreement as part of an assignment and transfer of such Credit Party's rights in and to a material portion of such Credit Party's portfolio of asset based credit facilities, and (e) any other Person (other than a natural person); provided, however, that each Eligible Assignee described in clauses (a) through (e), above, shall be reasonably acceptable to, and subject to the approval of, the Administrative Agent, the L/C Issuer, the Swing Line Lender, and the Lead Borrower (each such approval not to be unreasonably withheld or delayed) to the extent provided in Section 10.06(b) of this Agreement; provided further that, notwithstanding the foregoing, "Eligible Assignee" shall not include a Loan Party or any of the Loan Parties' Affiliates or Subsidiaries.

"Eligible Credit Card Receivables" means Accounts due to a Borrower on a non-recourse basis from Visa, Mastercard, American Express Company, Discover, and other major credit card processors, in each case acceptable to the Administrative Agent in its reasonable discretion, as they arise in the ordinary course of business, which have been earned by performance, and are deemed by the Administrative Agent in its reasonable discretion to be eligible for inclusion in the calculation of the Borrowing Base. Without limiting the foregoing, unless the Administrative Agent otherwise agrees, none of the following shall be deemed to be Eligible Credit Card Receivables:

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

(b) Accounts due from major credit card processors with respect to which a Loan Party does not have good, valid and marketable title, free and clear of any Lien (other than Liens granted to the Collateral Agent and Liens to secure the Note Purchase Facility);

(c) Accounts due from major credit card processors that are not subject to a first priority security interest in favor of the Collateral Agent (it being the intent that chargebacks in the ordinary course by the credit card processors shall not be deemed violative of this clause);

(d) Accounts due from major credit card processors which are disputed, are with recourse, or with respect to which a claim, counterclaim, offset or chargeback has been asserted (to the extent of such claim, counterclaim, offset or chargeback);

(e) Accounts due from major credit card processors as to which the credit card processor has the right under certain circumstances to require a Loan Party to repurchase the Accounts from such credit card processor; or

(f) Accounts due from major credit card processors which the Administrative Agent determines in its reasonable discretion to be uncertain of collection.

"Eligible In-Transit Inventory" means, as of any date of determination thereof, without duplication, Inventory:

(a) for which full payment has been delivered to the seller of such Inventory and evidence of such payment has been received by the Administrative Agent;

(b) which has been shipped from a location outside of the United States for receipt by a Borrower within forty-five (45) days of the date of shipment, but which has not yet been delivered to such Borrower;

(c) for which the purchase order is in the name of a Borrower and title to such Inventory has passed to such Borrower;

(d) for which the document of title reflects a Borrower as consignee or, if requested by the Collateral Agent, names the Collateral Agent as consignee, and in each case as to which the Collateral Agent has control over the documents of title which evidence ownership of the subject Inventory (such as, if requested by the Collateral Agent, by the delivery of a Customs Broker Agreement);

(e) which is insured against types of loss, damage, hazards and risks, and in amounts, reasonably satisfactory to the Collateral Agent;

(f) for which the common carrier is not an Affiliate of the applicable vendor or supplier; and

(g) that does not qualify as Eligible Inventory solely because it is not located in the United States of America (excluding territories or possessions of the United States) at a location that is owned or leased by a Borrower, but which otherwise would constitute Eligible Inventory.

Each Committed Loan Notice or Swing Line Loan Notice, as the context requires, shall be deemed a certification by the Borrowers that, to the best knowledge of the Borrowers, all

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Eligible In-Transit Inventory included in the most recent Borrowing Base Certificate meets all of the Borrowers' representations and warranties contained in the Loan Documents concerning Eligible Inventory, that the Borrowers know of no reason why such Eligible Inventory would not be accepted by the

Borrowers when it arrives and that the shipment, as evidenced by the documents, conforms to the related order documents.

"Eligible Inventory" means, as of the date of determination thereof, without duplication, items of Inventory (other than Eligible In-Transit Inventory or Inventory supported by an Eligible Letter of Credit) of a Borrower that are finished goods, merchantable and readily saleable to the public in the ordinary course deemed by the Administrative Agent in its reasonable discretion to be eligible for inclusion in the calculation of the Borrowing Base, in each case that, except as otherwise agreed by the Administrative Agent, complies with each of the representations and warranties respecting Inventory made by the Borrowers in the Loan Documents, and that 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, the following items of Inventory shall not be included in Eligible Inventory:

(a) Inventory that is not solely owned by a Borrower or a Borrower does not have good and valid title thereto;

(b) Inventory that is leased by, or is on consignment to, a Borrower;

(c) Inventory (other than Eligible In-Transit Inventory or Inventory supported by an Eligible Letter of Credit) that is not located in the United States of America (excluding territories or possessions of the United States) at a location that is owned or leased by a Borrower, except to the extent that the Borrowers have furnished the Administrative Agent with (i) any UCC financing statements or other documents that the Administrative Agent may determine to be necessary to perfect its security interest in such Inventory at such location, and (ii) a Collateral Access Agreement executed by the Person owning any such location;

(d) Inventory that 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 are special order or custom items, work-in-process, raw materials, or that constitute spare parts, promotional, marketing, packaging and shipping materials or supplies used or consumed in a Borrower's business, (iv) are not in compliance 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;

(e) Inventory that is not subject to a perfected first-priority security interest in favor of the Collateral Agent;

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

(g) Inventory that is not insured in compliance with the provisions of Section 5.10 hereof; or

(h) Inventory that has been sold but not yet delivered or as to which a Borrower has accepted a deposit.

"Eligible Letter of Credit" means, as of any date of determination thereof, a Commercial Letter of Credit which supports the purchase of Inventory, (a) which Inventory does not constitute Eligible In-Transit Inventory and for which no documents of title have then been issued, (b) which Inventory otherwise would constitute Eligible Inventory, (c) which Commercial Letter of Credit has an expiry within one hundred twenty (120) days of the date of initial issuance of such Commercial Letter of Credit, and (d) which Commercial Letter of Credit provides that it may be drawn only after the Inventory is completed and after documents of title have been issued for such Inventory reflecting a Borrower or the Collateral Agent as consignee of such Inventory.

"Eligible Letter of Credit Advance Rate" means 70%.

"Eligible Real Estate" means the Alabama Property and any other Real Estate which satisfies all of the following conditions and is otherwise deemed by the Required Lenders in their reasonable discretion to be eligible for inclusion in the calculation of the Borrowing Base:

(a) The applicable Borrower owns fee title to such Real Estate;

(b) The applicable Borrower has executed and delivered to the Collateral Agent such mortgages and other documents as the Collateral Agent may request;

(c) The applicable Borrower has delivered to the Collateral Agent a title insurance policy or marked-up title commitment having the effect of a policy of title insurance and environmental studies, and other real estate items, as required by, and satisfactory to, the Collateral Agent, including, but not limited to, those items required by FIRREA;

(d) The Collateral Agent has a perfected first-priority lien in such Real Estate, subject only to Permitted Encumbrances;

(e) Such parcel of Real Estate has been appraised by a third party appraiser acceptable to the Collateral Agent;

(f) Such Real Estate is used by a Borrower for offices or as a Store or distribution center; and

(g) As to any particular property, the applicable Borrower is in compliance with the representations, warranties and covenants set forth in the mortgage relating to such Real Estate.

"Environmental Compliance Reserve" means, with respect to Eligible Real Estate, any reserve which the Agents, from time to time in their reasonable discretion establish for estimable amounts that are reasonably likely to be expended by any of the Loan Parties in order for such Loan Party and its operations and property (a) to comply with any notice from a Governmental

Authority asserting non-compliance with Environmental Laws, or (b) to correct any such non-compliance with Environmental Laws.

"Environmental Laws" means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

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

"Equipment" has the meaning set forth in the Security Agreement.

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

"ERISA" means the Employee Retirement Income Security Act of 1974.

"ERISA Affiliate" means any trade or business (whether or not incorporated) under common control with the Lead Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

"ERISA Event" means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by the Lead Borrower or any ERISA Affiliate from a Pension 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 that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Lead Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which

constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; or (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Lead Borrower or any ERISA Affiliate.

"Event of Default" has the meaning specified in Section 8.01. An Event of Default shall be deemed to be continuing unless and until that Event of Default has been duly waived as provided in Section 10.01 hereof.

"Excess Availability" means, as of any date of determination thereof by the Administrative Agent, the result, if a positive number, of:

(a) The lesser of:

(i) the Borrowing Base; or

(ii) the Revolving Credit Ceiling;

minus

(b) The aggregate Outstanding Amount of all Credit Extensions.

"Excess Availability Reserve" means an amount equal to the lesser of (a) the product of (i) the amount generated by clauses (a) through (e) of the Borrowing Base multiplied by (ii) ten percent (10%) or (b) the product of (i) the Revolving Credit Ceiling then in effect multiplied by (ii) ten percent (10%); provided, however, if the amount generated by clauses (a) through (e) of the Borrowing Base minus the amount set forth in clause (a) above is greater than the Revolving Credit Ceiling then in effect, the Excess Availability Reserve shall be $0.

"Excluded Taxes" means, with respect to the Administrative Agent, any Lender, the L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of the Borrowers hereunder, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located, (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which any Borrower is located and (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrowers under Section 10.13), any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party hereto (or designates a new Lending Office) or is attributable to such Foreign Lender's failure or inability (other than as a result of a Change in Law) to comply with Section 3.01(d), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from the Borrowers with respect to such withholding tax pursuant to Section 3.01(a).

"Existing Credit Agreement" means that certain Fifth Amended and Restated Loan and Security Agreement, dated as of June 28, 2007, by and between, among others, the Borrowers,

the financial institutions party thereto from time to time as lenders, and Wells Fargo Retail Finance, LLC, as Agent, as amended and in effect as of the Closing Date.

"Existing Letters of Credit" means each of the letters of credit issued under the Existing Credit Agreement and the L/C Demand Facility and outstanding on the Closing Date, as listed on Schedule 2.03(k) hereto.

"Extraordinary Receipt" means any cash received by or paid to or for the account of any Person not in the ordinary course of business, including tax refunds, pension plan reversions, proceeds of insurance (other than proceeds of business interruption insurance to the extent such proceeds constitute compensation for lost earnings), condemnation awards (and payments in lieu thereof), indemnity payments and any purchase price adjustments.

"Facility Guaranty" means the Guaranty dated as of the Closing Date made by the Guarantors in favor of the Administrative Agent and the Lenders and each other Guaranty hereafter made by a Guarantor in favor of the Administrative Agent and the Lenders, in form reasonably satisfactory to the Administrative Agent.

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

"Fee Letter" means the letter agreement, dated as of the Closing Date, among the Borrowers and the Agents.

"FIRREA" means the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended from time to time.

"Fiscal Month" means any fiscal month of any Fiscal Year, which month shall generally end on the Saturday closest to the last day of each calendar month in accordance with the fiscal accounting calendar of the Loan Parties.

"Fiscal Quarter" means any fiscal quarter of any Fiscal Year, which quarters shall generally end on the Saturday closest to the last day of each April, July, October and January of such Fiscal Year in accordance with the fiscal accounting calendar of the Loan Parties.

"Fiscal Year" means the fifty-two (52) or fifty-three (53) week period that ends on the Saturday closest to January 31st of each calendar year.

"FMV" means, as to any Eligible Real Estate, the fair market value of such Eligible Real Estate as set forth in the most recent appraisal of such Eligible Real Estate as determined from

time to time by an independent appraisal firm engaged by, and acceptable to, the Administrative Agent.

"Foreign Lender" means any Lender that is organized under the laws of a jurisdiction other than that in which the Lead Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"FRB" means the Board of Governors of the Federal Reserve System of the United States.

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

"GAAP" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

"Governmental Authority" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Guarantee" means, as to any Person, any (a) any obligation, contingent or otherwise, of such Person 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 such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if

not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"Guarantor" means each Subsidiary of the Lead Borrower listed on Schedule 1.01 annexed hereto and each other Subsidiary of the Lead Borrower that shall be required to execute and deliver a Facility Guaranty or Facility Guaranty supplement pursuant to Section 6.12.

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"Hoop" means, collectively, Hoop Holdings, LLC, a Delaware limited liability company, and its Subsidiaries.

"Indebtedness" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and, in each case, payable in accordance with customary trade practices);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) All Attributable Indebtedness in respect of Capital Lease Obligations of such Person, but excluding any obligations of such Person in respect of operating leases;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person, or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Indemnitees" has the meaning specified in Section 10.04(a).

"Information" has the meaning specified in Section 10.07.

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

"Intellectual Property Security Agreement" means the Intellectual Property Security Agreement dated as of the Closing Date among the Loan Parties and the Collateral Agent, granting a Lien in the Intellectual Property and certain other assets of the Loan Parties, as amended and in effect from time to time.

"Intercreditor Agreement" means an agreement substantially in the form of Exhibit I.

"Interest Payment Date" means (a) as to any Loan other than a Base Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; provided, however, that if any Interest Period for a LIBO Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan (including a Swing Line Loan), the first day of each month (or if such day is not a Business Day, on the next succeeding Business Day) and the Maturity Date.

"Interest Period" means, as to each LIBO Rate Loan, the period commencing on the date such LIBO Rate Loan is disbursed or converted to or continued as a LIBO Rate Loan and ending

on the date one, two, three or six months thereafter, as selected by the Lead Borrower in its Committed Loan Notice; provided that:

(i) 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;

(ii) 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;

(iii) no Interest Period shall extend beyond the Maturity Date; and

(iv) notwithstanding the provisions of clause (iii), no Interest Period shall have a duration of less than one (1) month, and if any Interest Period applicable to a LIBO Borrowing would be for a shorter period, such Interest Period shall not be available hereunder.

For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

"Inventory" has the meaning given that term in the UCC, and shall also include, without limitation, all: (a) goods which (i) are leased by a Person as lessor, (ii) are held by a Person for sale or lease or to be furnished under a contract of service, (iii) are furnished by a Person under a contract of service, or (iv) consist of raw materials, work in process, or materials used or consumed in a business; (b) goods of said description in transit; (c) goods of said description which are returned, repossessed or rejected; and (d) packaging, advertising, and shipping materials related to any of the foregoing.

"Inventory Advance Rate" means thirty percent (30%).

"Inventory Reserves" means such reserves as may be established from time to time by the Administrative Agent in the Administrative Agent's reasonable discretion with respect to the determination of the saleability, at retail, of the Eligible Inventory or which reflect such other factors as affect the realizable value of the Eligible Inventory.

"Investment" means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person, or (c) any Acquisition, or (d) any other investment of money or capital in order to obtain a profitable return. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

"IRS" means the United States Internal Revenue Service.

"Issuer Documents" means with respect to any Letter of Credit, the Letter Credit Application, and any other document, agreement and instrument entered into by, among or between the L/C Issuer, the Administrative Agent and a Borrower (or any Subsidiary) or in favor of the Administrative Agent or L/C Issuer and relating to any such Letter of Credit.

"Joinder Agreement" means an agreement, in the form attached hereto as Exhibit F pursuant to which, among other things, a Person becomes a party to, and bound by the terms of, this Agreement and/or the other Loan Documents in the same capacity and to the same extent as either a Borrower or a Guarantor, as the Administrative Agent may determine.

"Landlord Lien State" means Pennsylvania, Virginia and Washington and such other state(s) in which a landlord's claim for rent may have priority over the lien of the Collateral Agent in any of the Collateral.

"Laws" means each international, foreign, Federal, state and local statute, treaty, rule, guideline, regulation, ordinance, code and administrative or judicial precedent or authority, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and each applicable administrative order, directed duty, request, license, authorization and permit of, and agreement with, any Governmental Authority, in each case whether or not having the force of law.

"L/C Advance" means, with respect to each Lender, such Lender's funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage.

"L/C Borrowing" means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Committed Borrowing.

"L/C Credit Extension" means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

"L/C Demand Facility" means that certain $60,000,000 letter of credit facility established by Wells Fargo Retail Finance, LLC and certain other financial institutions providing for the issuance of commercial letters of credit for the account of the Borrowers pursuant to the terms of the L/C Demand

Facility Letter of Credit Agreement.

"L/C Demand Facility Letter of Credit Agreement" means that certain Letter of Credit Agreement, dated as of June 28, 2007, by and between, among others, the Borrowers, the financial institutions party thereto from time to time as lenders, and Wells Fargo Retail Finance, LLC, as Agent, as amended and in effect from time to time.

"L/C Issuer" means (a) Wells Fargo Bank in its capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder (which successor may only be a Lender selected by the Administrative Agent in its discretion) and (b) any other Lender selected by the Lead Borrower in its discretion with the consent of the Administrative Agent (which consent shall not be unreasonably withheld). The L/C Issuer may, in its discretion, arrange for

one or more Letters of Credit to be issued by Affiliates of the L/C Issuer, in which case the term "L/C Issuer" shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

"L/C Obligations" means, as at any date of determination, the aggregate undrawn amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amounts available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.05. 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 applicable Law, such Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn.

"L/C Responsible Person" means any employee or officer of a Borrower.

"Lease" means any agreement, whether written or oral, no matter how styled or structured, pursuant to which a Loan Party is entitled to the use or occupancy of any space in a structure, land, improvements or premises for any period of time.

"Lender" has the meaning specified in the introductory paragraph hereto and, as the context requires, includes the Swing Line Lender.

"Lending Office" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Lead Borrower and the Administrative Agent.

"Letter of Credit" means each Standby Letter of Credit and each Commercial Letter of Credit issued hereunder (including any Canadian Letter of Credit). Without limiting the foregoing, all Existing Letters of Credit shall be deemed to have been issued hereunder and shall for all purposes be deemed to be "Letters of Credit" hereunder.

"Letter of Credit Application" means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the L/C Issuer.

"Letter of Credit Expiration Date" means the day that is seven days prior to the Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

"Letter of Credit Fee" has the meaning specified in Section 2.03(h).

"Letter of Credit Sublimit" means an amount equal to $175,000,000. The Letter of Credit Sublimit is part of, and not in addition to, the Aggregate Commitments. A permanent reduction of the Aggregate Commitments shall not require a corresponding pro rata reduction in the Letter of Credit Sublimit; provided, however, that if the Aggregate Commitments are reduced to an amount less than the Letter of Credit Sublimit, then the Letter of Credit Sublimit shall be reduced to an amount equal to (or, at Lead Borrower's option, less than) the Aggregate Commitments.

"LIBO Borrowing" means a Borrowing comprised of LIBO Rate Loans.

"LIBO Rate" means for any Interest Period with respect to a LIBO Rate Loan, the rate per annum equal to the British Bankers Association LIBOR Rate ("BBA LIBOR"), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period. If such rate is not available at such time for any reason, then the "LIBO Rate" for such Interest Period shall be the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the LIBO Rate Loan being made, continued or converted by Wells Fargo Bank and with a term equivalent to such Interest Period would be offered to Wells Fargo Bank by major banks in the London interbank eurodollar market in which Wells Fargo Bank participates at their request at approximately 11:00 a.m. (London time) two Business Days prior to the commencement of such Interest Period.

"LIBO Rate Loan" means a Committed Loan that bears interest at a rate based on the Adjusted LIBO Rate.

"Lien" means (a) any mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale, Capital Lease Obligation, or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing) and (b) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Liquidation" means the exercise by the Administrative Agent or Collateral Agent of those rights and remedies accorded to such Agents 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 Administrative Agent, of any public, private or GOB 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" means an extension of credit by a Lender to the Borrowers under Article II in the form of a Committed Loan or a Swing Line Loan.

"Loan Account" has the meaning assigned to such term in Section 2.11(a).

"Loan Documents" means this Agreement, each Note, each Issuer Document, the Fee Letter, all Borrowing Base Certificates, the Blocked Account Agreements, the Credit Card Notifications, the Security Documents, each Facility Guaranty, the Intercreditor Agreement and any other instrument or agreement now or hereafter executed and delivered in connection herewith, or in connection with any transaction arising out of any Cash Management Services and Bank Products provided by a Lender or any of its Affiliates, each as amended and in effect from time to time.

"Loan Parties" means, collectively, the Borrowers and each Guarantor.

"Material Adverse Effect" means (a) a material adverse change in, or a material adverse effect upon, the results of operations, business, properties, liabilities (actual or contingent) or condition (financial or otherwise) of the Loan Parties and their Subsidiaries taken as a whole; (b) a material impairment of the ability of any Loan Party to perform its obligations under any Loan Document to which it is a party; or (c) a material impairment of the rights and remedies of the Agent or the Lenders under any Loan Document or a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party. In determining whether any individual event would result in a Material Adverse Effect, notwithstanding that such event in and of itself does not have such effect, a Material Adverse Effect shall be deemed to have occurred if the cumulative effect of such event and all other then existing events would result in a Material Adverse Effect.

"Material Contract" means, with respect to any Person, each contract to which such Person is a party, the termination or breach of which would be reasonably likely to result in a Material Adverse Effect.

"Material Indebtedness" means Indebtedness of the Loan Parties under the Note Purchase Facility and other Indebtedness (other than the Obligations) of the Loan Parties in an aggregate principal amount exceeding $3,000,000. For purposes of determining the amount of Material Indebtedness at any time, the amount of the obligations in respect of any Swap Contract at such time shall be calculated at the Swap Termination Value thereof.

"Maturity Date" means July 31, 2013.

"Maximum Rate" has the meaning provided therefor in Section 10.09.

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

"Mortgage" means the Mortgage on the Alabama Property by Services Company in favor of the Collateral Agent.

"Mortgage Policy" has the meaning given that term in Section 6.21(b).

"Multiemployer Plan" means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Lead Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

"Net Proceeds" means:

(a) with respect to any Disposition by any Loan Party or any of its Subsidiaries (including, without limitation, any Disposition of the Alabama Property in connection with the Alabama Sale-Leaseback Transaction), or any Extraordinary Receipt received or paid to the account of any Loan Party or any of its Subsidiaries, the excess, if any, of (i) the sum of cash and cash equivalents received in connection with such transaction (including any cash or cash equivalents received by way of deferred payment

pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the applicable asset by a Lien permitted hereunder which is senior to the Collateral Agent's Lien on such asset and that is required to be repaid (or to establish an escrow for the future repayment thereof) in connection with such transaction (other than Indebtedness under the Loan Documents, but including the payment of the proceeds from any Note Purchasers Priority Collateral in reduction of the Indebtedness under the Note Purchase Facility), (B) the reasonable and customary out-of-pocket expenses incurred by such Loan Party or such Subsidiary in connection with such transaction (including, without limitation, appraisals, and brokerage, legal, title and recording or transfer tax expenses and commissions) paid by any Loan Party to third parties (other than Affiliates)); and

(b) with respect to the sale or issuance of any Equity Interest by any Loan Party or any of its Subsidiaries, or the incurrence or issuance of any Indebtedness by any Loan Party or any of its Subsidiaries, the excess of (i) the sum of the cash and cash equivalents received in connection with such transaction over (ii) the sum of (A) the underwriting discounts and commissions, and other reasonable and customary out-of-pocket expenses, incurred by such Loan Party or such Subsidiary in connection therewith and (B) the principal amount of any Indebtedness (plus any premium or other required payment on account thereof) under the Note Purchase Facility that is required to be repaid in connection with such transaction.

"Non-Consenting Lender" has the meaning provided therefor in Section 10.01.

"Note" means a promissory note made by the Borrowers in favor of a Lender evidencing Loans made by such Lender, substantially in the form of Exhibit C.

"Note Documents" means the Note Purchase Agreement, the Senior Secured Second Lien Notes due June 2013 issued under the Note Purchase Agreement, and all "Loan Documents" (as such term is defined in the Note Purchase Agreement), each as amended and in effect from time to time.

"Note Obligations" has the meaning given that term in the Intercreditor Agreement.

"Note Purchase Agreement" means that certain Note Purchase Agreement dated as of the Closing Date among the Lead Borrower, as issuer, the initial note purchasers party thereto, Sankaty Advisors, LLC, as collateral agent, and Crystal Capital Fund Management, L.P., as syndication agent.

"Note Purchasers" means the note purchasers from time to time party to the Note Purchase Agreement.

"Note Purchasers Priority Collateral" has the meaning given that term in the Intercreditor Agreement.

"Note Purchase Facility" means the $85,000,000 senior secured second lien note purchase facility dated as of the Closing Date established by the Note Purchasers for the benefit

of the Lead Borrower pursuant to the Note Documents, as amended and in effect from time to time.

"NPL" means the National Priorities List under CERCLA.

"NRLV" means the net appraised retail liquidation value of the Borrowers' Inventory (expressed as a percentage of the Cost of such Inventory) as determined from time to time by an independent appraiser engaged by the Administrative Agent.

"NRLV Percentage" means ninety percent (90%).

"Obligations" means (a) all advances to, and debts (including principal, interest, fees, costs, and expenses), liabilities, obligations, covenants and indemnities of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit (including payments in respect of reimbursement of disbursements, interest thereon and obligations to provide cash collateral therefor), whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding, and (b) any Other Liabilities.

"Organization Documents" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; (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, 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 formation or organization of such entity, and (d) in each case, all shareholder or other equity holder agreements, voting trusts and similar arrangements to which such Person is a party or which is applicable to its Equity Interests and all other arrangements relating to the Control or management of such Person.

"Other Liabilities" means (a) any Cash Management Services furnished to any of the Loan Parties or any of their Subsidiaries and/or (b) any transaction with any Lender or any of their respective Affiliates, which arises out of any Bank Product entered into with any Loan Party and any such Person, as each may be amended from time to time.

"Other Taxes" means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

"Outstanding Amount" means (i) with respect to Committed Loans and Swing Line Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Committed Loans and Swing Line Loans

occurring on such date; and (ii) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Borrowers of Unreimbursed Amounts.

"Overadvance" means a Credit Extension to the extent that, immediately after its having been made, Availability is less than zero.

"Participant" has the meaning specified in Section 10.06(d).

"Payment Conditions" means, at the time of determination with respect to any payment or prepayment of Indebtedness, that (a) no Default or Event of Default has occurred and is continuing or would arise as a result of making such payment or prepayment, and (b) at least five (5) days prior to making such payment or prepayment, the Lead Borrower shall have provided to the Administrative Agent a certificate signed by a Responsible Officer of the Lead Borrower, in form and substance reasonably satisfactory to the Administrative Agent, certifying that (i) in the case of any payment or prepayment of Indebtedness in an aggregate amount not to exceed $20,000,000 in any Fiscal Year, Excess Availability immediately prior to, and projected pro forma Excess

Availability (measured as of the end of each Fiscal Month) for the six Fiscal Months immediately following, and after giving effect to, such payment or prepayment shall be equal to or greater than $50,000,000, (ii) in the case of any payment or prepayment of Indebtedness in an aggregate amount in excess of $20,000,000 in any Fiscal Year, the sum of Excess Availability plus Cash on Hand immediately prior to, and the sum of projected pro forma Excess Availability plus projected pro forma Cash on Hand (in each case, measured as of the end of each Fiscal Month) for the twelve Fiscal Months immediately following, and after giving effect to, such payment or prepayment shall be equal to or greater than $75,000,000, and (iii) the Loan Parties, on a Consolidated basis, are, and will continue to be, Solvent after giving effect to such payment or prepayment.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Pension Plan" means any "employee pension benefit plan" (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Borrower or any ERISA Affiliate or to which any Borrower or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five plan years.

"Permitted Acquisition" means an Acquisition in which all of the following conditions are satisfied:

(a) No Default or Event of Default has occurred and is continuing or, immediately following such Acquisition or after taking into account the pro forma financials, would result from the consummation of such Acquisition;

(b) Such Acquisition shall have been approved by the Board of Directors of the Person (or similar governing body if such Person is not a corporation) which is the subject of such Acquisition and such Person shall not have announced that it will oppose

such Acquisition or shall not have commenced any action which alleges that such Acquisition shall violate applicable Law;

(c) The Lead Borrower shall have furnished the Administrative Agent with thirty (30) days' prior written notice of such intended Acquisition and shall have furnished the Administrative Agent with a current draft of the acquisition documents (and final copies thereof as and when executed), a summary of any due diligence undertaken by the Loan Parties in connection with such Acquisition, appropriate financial statements of the Person which is the subject of such Acquisition, pro forma projected financial statements for the twelve (12) month period following such Acquisition after giving effect to such Acquisition (including balance sheets, cash flows and income statements by month for the acquired Person, individually, and on a Consolidated basis with all Loan Parties), and such other information as the Administrative Agent may reasonably require, all of which shall be reasonably satisfactory to the Administrative Agent;

(d) Either (i) the legal structure of the Acquisition shall be acceptable to the Administrative Agent in its discretion, or (ii) the Loan Parties shall have provided the Administrative Agent with a solvency opinion from an unaffiliated third party valuation firm reasonably satisfactory to the Administrative Agent;

(e) After giving effect to the Acquisition, if the Acquisition is an Acquisition of the Equity Interests, a Loan Party shall acquire and own, directly or indirectly, a majority of the Equity Interests in the Person being acquired and shall Control a majority of any voting interests or shall otherwise Control the governance of the Person being acquired;

(f) If the assets acquired in such Acquisition are to be included in the Borrowing Base, the Administrative Agent shall have received (i) the results of appraisals of the assets (or the assets of the Person) to be acquired in such Acquisition and of a commercial finance examination of the Person which is (or whose assets are) being acquired, and (ii) 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;

(g) Any assets acquired shall be utilized in, and if the Acquisition involves a merger, consolidation or stock acquisition, the Person which is the subject of such Acquisition shall be engaged in, a business otherwise permitted to be engaged in by a Borrower under this Agreement;

(h) If the Person which is the subject of such Acquisition will be maintained as a Subsidiary of a Loan Party, or if the assets acquired in an acquisition will be transferred to a Subsidiary which is not then a Loan Party, such Subsidiary (unless such Subsidiary is a CFC, in which case such Subsidiary will not be required to be joined as a Borrower or Guarantor) shall have been joined as a "Borrower" hereunder or as a Guarantor, as the Administrative Agent shall determine, and the Collateral Agent shall have received a security interest and/or mortgage interest in such Subsidiary's Equity Interests, Inventory, Accounts and other property of the same nature as constitutes

collateral under the Security Documents (subject only to Permitted Encumbrances having priority by operation of law and, in the case of the Note Purchasers Priority Collateral, Liens securing the obligations of the Borrowers with respect to the Note Purchase Facility);

(i) The total consideration paid for all such Acquisitions (whether in cash, tangible property, notes or other property) after the Closing Date shall not exceed in the aggregate the sum of $50,000,000.00; and

(j) Prior to, and on a pro forma basis for the six months immediately following, and after giving effect to, such Acquisition, Excess Availability will be greater than or equal to $50,000,000.00.

"Permitted Disposition" means any of the following:

(a) Dispositions of Inventory in the ordinary course of business, including liquidations or other Dispositions of Inventory in connection with Store closings in the ordinary course of business;

(b) bulk sales or other Dispositions of the Inventory of a Loan Party not in the ordinary course of business in connection with Store closings, at arm's length, provided, that such Store closures and related Inventory Dispositions shall not exceed (i) in any Fiscal Year of the Lead Borrower and its Subsidiaries, five percent (5%) of the number of the Loan Parties' Stores as of the beginning of such Fiscal Year (net of new Store openings) and (ii) in the aggregate from and after the Closing Date, ten percent (10%) of the number of the Loan Parties' Stores in existence as of the Closing Date (net of new Store openings), provided further that all sales of Inventory in connection with Store closings shall be in accordance with liquidation agreements and with professional liquidators reasonably acceptable to the Agents; provided further that all Net Proceeds received in connection therewith are applied to the Obligations if then required in accordance with Section 2.05 hereof;

(c) non-exclusive licenses of Intellectual Property of a Loan Party or any of its Subsidiaries in the ordinary course of business;

(d) licenses for the conduct of licensed departments within the Loan Parties' Stores in the ordinary course of business; provided that, if requested by the Agents, the Agents shall have entered into an intercreditor agreement with the Person operating such licensed department on terms and conditions reasonably satisfactory to the Agents;

(e) (i) Dispositions of Equipment in the ordinary course of business that is substantially worn, damaged, obsolete or, in the judgment of a Loan Party, no longer useful or necessary in its business or that of any Subsidiary and is not replaced with similar property having at least equivalent value and (ii) other Dispositions of Equipment having a fair market value not to exceed $500,000 in the aggregate in any Fiscal Year;

(f) sales, transfers and Dispositions among the Loan Parties or by any Subsidiary to a Loan Party, including, without limitation, distributions or transfers of

some or all of the assets of Twin Brook to the Lead Borrower, provided that before, or within three (3) Business Days after, any such distribution or transfer, the Lead Borrower shall have caused the former assets of Twin Brook so distributed to be pledged to the Collateral Agent for the benefit of the Credit Parties;

(g) sales, transfers and Dispositions of or by any Subsidiary which is not a Loan Party to another Subsidiary that is not a Loan Party;

(h) as long as no Default or Event of Default shall have occurred and be continuing or would arise therefrom, the Alabama Capital Lease; provided that the Collateral Agent shall have received a Collateral Access Agreement from the lessor under the Alabama Capital Lease; and

(i) as long as no Default or Event of Default shall have occurred and be continuing or would arise therefrom, the Alabama Sale-Leaseback Transaction; provided that (i) such sale is made for fair market value, (ii) the Net Proceeds paid in cash are in an amount at least equal to the greater of the amounts advanced, or available to be advanced, against the Alabama Property under the Borrowing Base, (iii) all Net Proceeds received in connection with any such transaction are applied to the Obligations, and (iv) the Collateral Agent shall have received a Collateral Access Agreement from the purchaser of the Alabama Property.

"Permitted Encumbrances" means:

(a) Liens imposed by law for Taxes that are not yet due or are being contested in compliance with Section 6.04;

(b) Carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by applicable Law, arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested in compliance with Section 6.04;

(c) Pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations, other than any Lien imposed by ERISA;

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

(e) Liens in respect of judgments that would not constitute an Event of Default hereunder;

(f) Easements, covenants, conditions, restrictions, building code laws, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or materially interfere

with the ordinary conduct of business of a Loan Party and such other minor title defects or survey matters that are disclosed by current surveys that, in each case, do not materially interfere with the current use of the real property;

(g) Liens existing on the date hereof and listed on Schedule 7.01 and any renewals or extensions thereof, provided that (i) the property covered thereby is not changed, (ii) the amount secured or benefited thereby is not increased, (iii) the direct or any contingent obligor with respect thereto is not changed, and (iv) any renewal or extension of the obligations secured or benefited thereby is otherwise permitted hereunder;

(h) Liens on fixed or capital assets acquired by any Loan Party which are permitted under clause (c) of the definition of Permitted Indebtedness so long as (i) the Indebtedness secured thereby does not exceed the cost of acquisition of such fixed or capital assets and (ii) such Liens shall not extend to any other property or assets of the Loan Parties;

(i) Liens in favor the Collateral Agent;

(j) Landlords' and lessors' Liens in respect of rent not in default;

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

(l) Liens arising solely by virtue of any statutory or common law provisions relating to banker's liens, liens in favor of securities intermediaries, rights of setoff or similar rights and remedies as to deposit accounts or securities accounts or other funds maintained with depository institutions or securities intermediaries;

(m) Liens arising from precautionary UCC filings regarding "true" operating leases or, to the extent permitted under the Loan Documents, the consignment of goods to a Loan Party;

(n) Liens on the Collateral securing the Note Obligations having the priority set forth in the Intercreditor Agreement;

(o) Liens referred to in Schedule B of the Mortgage Policy insuring the Mortgage; and

(o) Liens in favor of customs and revenues authorities imposed by applicable Law arising in the ordinary course of business in connection with the importation of goods and securing obligations (i) that are not overdue by more than thirty (30) days, or (ii)(A) that are being contested in good faith by appropriate proceedings, (B) the applicable Loan Party or Subsidiary has set aside on its books adequate reserves with

respect thereto in accordance with GAAP and (C) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation;

provided, however, that, except as provided in any one or more of clauses (a) through (o) above, the term "Permitted Encumbrances" shall not include any Lien securing obligations for borrowed money.

"Permitted Indebtedness" means:

(a) Indebtedness outstanding on the date hereof and listed on Schedule 7.03 and any Permitted Refinancing Indebtedness in respect thereof;

(b) Indebtedness of any Loan Party to any other Loan Party; provided that such Indebtedness shall (i) be evidenced by such documentation as the Administrative Agent may reasonably require, (ii) constitute "Collateral" under this Agreement and the Security Documents, (iii) be on terms (including subordination terms) reasonably acceptable to the Administrative Agent, and (iv) be otherwise permitted pursuant to Section 7.03;

(c) (i) transfers permitted by Section 7.18 and (ii) intercompany Indebtedness incurred in the ordinary course of business between the Loan Parties located within the United States, on the one hand, and their Affiliates in Puerto, Rico, Canada and Asia, on the other hand, to the extent otherwise permitted pursuant to clause (h) of the definition of Permitted Investments;

(d) Without duplication of Indebtedness described in clause (f) of this definition, purchase money Indebtedness of any Loan Party to finance the acquisition of any fixed or capital assets, including the Alabama Capital Lease and other Capital Lease Obligations, and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and any Permitted Refinancing Indebtedness in respect thereof; provided, however, that the aggregate principal amount of Indebtedness permitted by this clause (d) shall not exceed $5,000,000 at any time outstanding; provided further that, if requested by the Collateral Agent, the Loan Parties shall cause the holders of any such Indebtedness incurred after the Closing Date to enter into a Collateral Access Agreement;

(e) any liability or obligation of any Borrower to any other Borrower or to any Affiliate of any Borrower, and any liability or obligation of any Affiliate of any Borrower to any Borrower or to any other Affiliate of any Borrower, to reimburse or share the costs of any services or third party expenses in accordance with the terms of any intercompany cost-sharing agreement or arrangement, provided that no Default or Event of Default shall have occurred and be continuing or would arise therefrom;

(f) Subordinated Indebtedness;

(g) Indebtedness incurred in connection with the Alabama Sale-Leaseback Transaction, provided that (i) such sale is made for fair market value, (ii) the Net

Proceeds paid in cash are in an amount at least equal to the greater of the amounts advanced or available to be advanced against the Alabama Property under the Borrowing Base, (iii) all Net Proceeds received in connection with any such Indebtedness are applied to the Obligations, and (iv) the Collateral Agent shall have received a Collateral Access Agreement from the purchaser of the Alabama Property;

(h) the Obligations;

(i) Indebtedness under the Note Purchase Facility (including Guarantees of the Borrowers or any Guarantor in respect of such Indebtedness), and any Permitted Refinancing Indebtedness in respect thereof;

(j) Indebtedness owed by any Canadian Subsidiary to any Borrower;

(k) Guarantees of any Borrower in respect of the obligations of Hoop under those certain leases described on Schedule 1.03; and

(l) other unsecured Indebtedness in an aggregate principal amount not to exceed $15,000,000 at any time outstanding.

"Permitted Investments" means:

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof having maturities of not more than 360 days from the date of acquisition thereof; provided that the full faith and credit of the United States of America is pledged in support thereof;

(b) commercial paper issued by any Person organized under the laws of any state of the United States of America and rated at least "Prime-1" (or the then equivalent grade) by Moody's or at least "A-1" (or the then equivalent grade) by S&P, in each case with maturities of not more than 180 days from the date of acquisition thereof;

(c) time deposits with, or insured certificates of deposit or bankers' acceptances of, any commercial bank that (i) (A) is a Lender or (B) is organized under the laws of the United States of America, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States of America, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (c) of this definition and (iii) has combined capital and surplus of at least $1,000,000,000, in each case with maturities of not more than 180 days from the date of acquisition thereof;

(d) fully collateralized repurchase agreements with a term of not more than thirty (30) days for securities described in clause (a) above (without regard to the limitation on maturity contained in such clause) and entered into with a financial institution satisfying the criteria described in clause (c) above or with any primary dealer and having a market value at the time that such repurchase agreement is entered into of

not less than 100% of the repurchase obligation of such counterparty entity with whom such repurchase agreement has been entered into;

(e) Investments, classified in accordance with GAAP as current assets of the Loan Parties, in any money market fund, mutual fund, or other investment companies that are registered under the Investment Company Act of 1940, as amended, which are administered by financial institutions that have the highest rating obtainable from either Moody's or S&P, and which invest solely in one or more of the types of securities described in clauses (a) through (d) above;

(f) Investments existing on the Closing Date, and set forth on Schedule 7.02, but not any increase in the amount thereof or any other modification of the terms thereof;

(g) (i) Investments by any Loan Party and its Subsidiaries in their respective Subsidiaries outstanding on the date hereof, (ii) additional Investments by any Loan Party and its Subsidiaries in any other Loan Party (provided that the Lead Borrower shall be permitted to make additional Investments in Twin Brook in an aggregate amount not to exceed $750,000 in any Fiscal Year), and (iii) additional Investments by any Loan Party in Subsidiaries that are not Loan Parties not to exceed $1,000,000 in the aggregate in any Fiscal Year;

(h) so long as no Event of Default shall have occurred and be continuing, or would result therefrom, the Lead Borrower may make loans and advances to its Subsidiaries in an aggregate amount not to exceed $5,000,000 at any time outstanding;

(i) intercompany loans and advances or other intercompany Indebtedness permitted pursuant to clauses (b), (c), (e) and (j) of the definition of Permitted Indebtedness;

(j) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(k) Guarantees constituting Permitted Indebtedness;

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

(m) so long as no Event of Default shall have occurred and be continuing, or would result therefrom, (i) loans and advances to officers, directors and employees of the Loan Parties and Subsidiaries in the ordinary course of business for travel, entertainment, relocation and analogous business purposes, and (ii) other loans and advances to officers, directors and employees of the Loan Parties and Subsidiaries in an aggregate amount not to exceed $6,000,000 at any time outstanding; and

(n) Investments constituting Permitted Acquisitions;

provided, however, that notwithstanding the foregoing, after the occurrence and during the continuance of a Cash Dominion Event, no such Investments specified in clauses (a) through (e) shall be permitted unless such Investments are pledged to the Collateral Agent as additional Collateral for the Obligations pursuant to such agreements as may be reasonably required by the Collateral Agent.

"Permitted Overadvance" means an Overadvance made by the Administrative Agent, in its discretion, which:

(a) Is made (i) to maintain, protect or preserve the Collateral and/or the Credit Parties' rights under the Loan Documents or which is otherwise for the benefit of the Credit Parties; or (ii) to enhance the likelihood of, or to maximize the amount of, repayment of any Obligation; or (iii) to pay any other amount chargeable to any Loan Party hereunder; and

(b) Together with all other Permitted Overadvances then outstanding, shall not (i) exceed ten percent (10%) of the Revolving Credit Ceiling at any time or (ii) unless a Liquidation is occurring, remain outstanding for more than forty-five (45) consecutive Business Days, unless in each case, the Required Lenders otherwise agree;

provided however, that the foregoing shall not (i) modify or abrogate any of the provisions of Section 2.03 regarding the Lender's obligations with respect to Letters of Credit, or (ii) result in any claim or liability against the Administrative Agent (regardless of the amount of any Overadvance) for "inadvertent Overadvances" (i.e. where an Overadvance results from changed circumstances beyond the control of the Administrative Agent (such as a reduction in the collateral value)), and such "inadvertent Overadvances" shall not reduce the amount of Permitted Overadvances allowed hereunder; provided further that in no event shall the Administrative Agent make an Overadvance, if after giving effect thereto, the principal amount of the Credit Extensions would exceed the Aggregate Commitments (as in effect prior to any termination of the Commitments pursuant to Section 2.06 hereof).

"Permitted Refinancing Indebtedness" means, with respect to any Person, any refinancing, refunding, renewal or extension of any Indebtedness of such Person (or any successor of such Person); provided that (i) the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder, and the direct or contingent obligor with respect thereto is not changed as a result of or in connection with such refinancing, refunding, renewal or extension, (ii) the result of such extension, renewal or replacement shall not be an earlier maturity date or decreased weighted average life of such Indebtedness, (iii) the terms relating to principal amount, amortization, maturity, and collateral (if any), of any such refinancing, refunding, renewing or extending Indebtedness, and of any agreement entered into and of any instrument issued in connection therewith, are no less favorable in any material respect to the Loan Parties or the Lenders than the terms of any agreement or instrument governing the

Indebtedness being refinanced, refunded, renewed or extended and the interest rate applicable to any such refinancing, refunding, renewing or extending Indebtedness does not exceed the then applicable market interest rate, and (iv) if the Indebtedness being refinanced, refunded, renewed or extended is Subordinated Indebtedness, such refinancing, refunding, renewal or extension (A) is subordinated in right of payment to the Obligations on terms at least as favorable, taken as a whole, to the Lenders as those contained in the documentation governing the Subordinated Indebtedness being refinanced, refunded, renewed or extended, and (B) contains covenants and events of default that are not more restrictive taken as a whole than the covenants and events of default contained in the documentation governing the Indebtedness being refinanced (as determined in good faith by the Lead Borrower).

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

"Plan" means any "employee benefit plan" (as such term is defined in Section 3(3) of ERISA) established by a Borrower or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any ERISA Affiliate.

"Pledge Agreement" means, collectively, (a) the Pledge Agreement dated as of the Closing Date between the Lead Borrower and the Collateral Agent and (b) the Pledge Agreement dated as of the Closing Date between Twin Brook Insurance Company, Inc. and the Collateral Agent, in each case as amended and in effect from time to time.

"Prepayment Event" means:

(a) Any sale, transfer or other Disposition (including, without limitation, any Disposition of the Alabama Property in connection with the Alabama Sale-Leaseback Transaction, but excluding any Disposition permitted pursuant to clauses (a), (c), (d), (e), (f) and (g) of the definition of Permitted Dispositions) of any property or asset of a Loan Party; provided that any individual Disposition for which any Loan Party or any of its Subsidiaries receives Net Proceeds in an amount not to exceed $2,500,000 prior to the occurrence of a Cash Dominion Event shall not be deemed a Prepayment Event;

(b) Any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of a Loan Party, unless (i) the proceeds therefrom are required to be paid to the holder of a Lien on such property or asset having priority over the Lien of the Collateral Agent or (ii) prior to the occurrence of a Cash Dominion Event, the proceeds therefrom are utilized for purposes of replacing or repairing the assets in respect of which such proceeds, awards or payments were received within 180 days of the occurrence of the damage to or loss of the assets being repaired or replaced; provided that any individual casualty or other insured damage to, or taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of a Loan Party for which any Loan Party receives Net Proceeds in an amount not to exceed $2,500,000 prior to the occurrence of a Cash Dominion Event shall not be deemed a Prepayment Event;

(c) The issuance by a Loan Party of any Equity Interests, other than any such issuance of Equity Interests (i) to a Loan Party, (ii) as consideration for a Permitted Acquisition or (iii) as a compensatory issuance to any employee, director, or consultant (including under any option plan);

(d) The incurrence by a Loan Party of any Indebtedness for borrowed money other than Permitted Indebtedness; or

(e) The receipt by any Loan Party of any Extraordinary Receipts; provided that the receipt of any individual Extraordinary Receipt in an amount not to exceed $2,500,000 prior to the occurrence of a Cash Dominion Event shall not be deemed a Prepayment Event.

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

"Real Estate Advance Rate" means 50%.

"Realty Reserves" means such reserves as the Administrative Agent from time to time determines in the Administrative Agent's reasonable discretion as being appropriate to reflect the impediments to the Agents' ability to realize upon any Eligible Real Estate. Without limiting the generality of the foregoing, Realty Reserves may include (but are not limited to) (i) Environmental Compliance Reserves, (ii) reserves for (A) municipal taxes and assessments, (B) repairs and (C) remediation of title defects, and (iii) reserves for Indebtedness secured by Liens having priority over the Lien of the Collateral Agent.

"Register" has the meaning specified in Section 10.06(c).

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

"Reportable Event" means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

"Reports" has the meaning provided in Section 9.11(a).

"Request for Credit Extension" means (a) with respect to a Committed Borrowing, conversion or continuation of Committed Loans, a Committed Loan Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Application, and (c) with respect to a Swing Line Loan, a Swing Line Loan Notice.

"Required Lenders" means, as of any date of determination, Lenders holding 50.1% or more of the Aggregate Commitments or, if the Commitment of each Lender to make Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.02, Lenders holding in the aggregate 50.1% or more of the Total Outstandings (with

the aggregate amount of each Lender's risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed "held" by such Lender for purposes of this definition); provided that the Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

"Reserves" means all Inventory Reserves, Availability Reserves and Realty Reserves.

"Responsible Officer" means the chief executive officer, president, chief financial officer or treasurer of a Loan Party or any of the other individuals designated in writing to the Administrative Agent by an existing Responsible Officer of a 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 shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"Restricted Payment" means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of any Person or any of its Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to such Person's stockholders, partners or members (or the equivalent of any thereof), or any option, warrant or other right to acquire any such dividend or other distribution or payment. Without limiting the foregoing, "Restricted Payments" with respect to any Person shall also include all payments made by such Person with any proceeds of a dissolution or liquidation of such Person.

"Revolving Credit Ceiling" means $200,000,000, as such amount may be modified in accordance with the terms of this Agreement.

"S&P" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. and any successor thereto.

"Security Agreement" means the Security Agreement dated as of the Closing Date among the Loan Parties and the Collateral Agent.

"Security Documents" means the Security Agreement, the Pledge Agreement, the Intellectual Property Security Agreement, the Mortgage, the Blocked Account Agreements, the Credit Card Notifications, and each other security agreement or other instrument or document executed and delivered to the Collateral Agent pursuant to this Agreement or any other Loan Document granting a Lien to secure any of the Obligations.

"Services Company" means The Children's Place Services Company, LLC, a Delaware limited liability company.

"Settlement Date" has the meaning provided in Section 2.14(a).

"Shareholders' Equity" means, as of any date of determination, Consolidated shareholders' equity of the Lead Borrower and its Subsidiaries as of that date determined in accordance with GAAP.

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

"Solvent" and "Solvency" means, with respect to any Person on a particular date, that on such date (a) at fair valuation, all of the properties and assets of such Person are greater than the sum of the debts, including contingent liabilities, of such Person, (b) the present fair saleable value of the properties and assets of such Person is not less than the amount that would be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person is able to realize upon its properties and assets and pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, (d) such Person does not intend to, and does not believe that it will, incur debts beyond such Person's ability to pay as such debts mature, and (e) such Person is not engaged in a business or a transaction, and is not about to engage in a business or transaction, for which such Person's properties and assets would constitute unreasonably small capital after giving due consideration to the prevailing practices in the industry in which such Person is engaged. The amount of all guarantees at any time shall be computed as the amount that, in light of all the facts and circumstances existing at the time, can reasonably be expected to become an actual or matured liability.

"Specified Event of Default" means the occurrence of any Event of Default described in any of Sections 8.01(a), 8.01(b)(i), 8.01(b)(ii), 8.01(d), 8.01(e), 8.01(f), 8.01(g), 8.01(h), 8.01(i), 8.01(j), 8.01(l), 8.01(m), 8.01(n), 8.01(q), 8.01(r) or 8.01(s).

"Standby Letter of Credit" means any Letter of Credit that is not a Commercial Letter of Credit and that (a) is used in lieu or in support of performance guaranties or performance, surety or similar bonds (excluding appeal bonds) arising in the ordinary course of business, (b) is used in lieu or in support of stay or appeal bonds, (c) supports the payment of insurance premiums for reasonably necessary casualty insurance carried by any of the Loan Parties, or (d) supports payment or performance for identified purchases or exchanges of products or services in the ordinary course of business.

"Standby Letter of Credit Sublimit" means $50,000,000.

"Stated Amount" means at any time the maximum amount for which a Letter of Credit may be honored.

"Statutory Reserve Rate" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the FRB to which any Lender is subject with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. LIBO Rate Loans shall be deemed to constitute

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eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"Store" means any retail store (which may include any real property, fixtures, equipment, inventory and other property related thereto) operated, or to be operated, by any Loan Party.

"Subordinated Indebtedness" means Indebtedness which is expressly subordinated in right of payment to the prior payment in full of the Obligations and which is in form and on terms approved in writing by the Administrative Agent.

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares Equity Interests having ordinary voting power for the election of directors or other governing body are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of a Loan Party. Any reference to the Subsidiaries of the Lead Borrower herein or in any other Loan Document shall not include Hoop, unless explicitly stated otherwise.

"Swap Contract" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

"Swap Termination Value" means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

"Swing Line" means the revolving credit facility made available by the Swing Line Lender pursuant to Section 2.04.

"Swing Line Borrowing" means a borrowing of a Swing Line Loan pursuant to Section 2.04.

"Swing Line Lender" means Wells Fargo Retail Finance, LLC, in its capacity as provider of Swing Line Loans, or any successor swing line lender hereunder.

"Swing Line Loan" has the meaning specified in Section 2.04(a).

"Swing Line Loan Notice" means a notice of a Swing Line Borrowing pursuant to Section 2.04(a), which, if in writing, shall be substantially in the form of Exhibit B.

"Swing Line Sublimit" means an amount equal to the lesser of (a) $20,000,000 or (b) the Aggregate Commitments. The Swing Line Sublimit is part of, and not in addition to, the Aggregate Commitments.

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority in connection with any and all payments to be made by or on account of any obligation of the Borrowers hereunder or under any other Loan Document, including any interest, additions to tax or penalties applicable thereto.

"Termination Date" means the earliest to occur of (i) the Maturity Date, (ii) the date on which the maturity of the Obligations is accelerated (or deemed accelerated) and the Commitments are irrevocably terminated (or deemed terminated) in accordance with Article VIII.

"Total Outstandings" means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

"Twin Brook" means Twin Brook Insurance Company, Inc., a New York captive insurance company.

"Type" means, with respect to a Committed Loan, its character as a Base Rate Loan or a LIBO Rate Loan.

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

"Uncapped Excess Availability" means, as of any date of determination thereof by the Administrative Agent, the result, if a positive number, of:

(a) the Borrowing Base;

minus

(b) the aggregate Outstanding Amount of all Credit Extensions.

"Unfunded Pension Liability" means the excess of a Pension Plan's benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan's assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year.

"United States" and "U.S." mean the United States of America.

"Unreimbursed Amount" has the meaning specified in Section 2.03(c)(i).

"Wells Fargo Bank" means Wells Fargo Bank, N.A., a national banking association.

1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "herein," "hereof" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) 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."

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

1.03 Accounting Terms.

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Lead Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrowers shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrowers shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

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

1.05 Letter of Credit Amounts. Unless otherwise specified, all references herein to the amount of a Letter of Credit at any time shall be deemed to be the Stated Amount of such Letter of Credit in effect at such time; provided, however, that, except as otherwise provided in Section 2.03(h), with respect to any Letter of Credit that, by its terms or the terms of any Issuer Documents related thereto, provides for one or more automatic increases in the Stated Amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum Stated Amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum Stated Amount is in effect at such time.

ARTICLE II.
THE COMMITMENTS AND CREDIT EXTENSIONS

2.01 Committed Loans; Reserves.

(a) Subject to the terms and conditions set forth herein, each Lender severally agrees to make loans (each such loan, a "Committed Loan") to the Borrowers from time

to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time outstanding the lesser of (x) the amount of such Lender's Commitment, or (y) such Lender's Applicable Percentage of the Borrowing Base; subject in each case to the following limitations:

(i) after giving effect to any Committed Borrowing, the Total Outstandings shall not exceed the lesser of (A) the Aggregate Commitments, or (B) the Borrowing Base;

(ii) after giving effect to any Committed Borrowing, the aggregate Outstanding Amount of the Committed Loans of any Lender, plus such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations, plus such Lender's Applicable Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Lender's Commitment;

(iii) The Outstanding Amount of all L/C Obligations shall not at any time exceed the Letter of Credit Sublimit; and

(iv) After giving effect to all Credit Extensions, no Overadvance shall exist.

Within the limits of each Lender's Commitment, and subject to the other terms and conditions hereof, the Borrowers may borrow under this Section 2.01, prepay under Section 2.05, and reborrow under this Section 2.01 Committed Loans may be Base Rate Loans or LIBO Rate Loans, as further provided herein.

(b) The following are the Reserves as of the Closing Date:

(i) Shrink (an Inventory Reserve): An amount equal to 0.70% of the gross sales of the Borrowers for the Fiscal Year to date; and

(ii) Rent (an Availability Reserve): An amount equal to (A) one (1) months' rent for all of the Borrowers' leased locations in Pennsylvania, Virginia and Washington, other than leased locations with respect to which the Collateral Agent has received a Collateral Access Agreement, and (B) three (3) months' rent for the Borrowers' distribution center located in Dayton, New Jersey.

(c) The Administrative Agent shall have the right, at any time and from time to time on or after the Closing Date in its reasonable discretion to establish, modify or eliminate Reserves.

2.02 Borrowings, Conversions and Continuations of Committed Loans.

(a) Committed Loans (other than Swing Line Loans) shall be either Base Rate Loans or LIBO Rate Loans, as the Lead Borrower may request subject to and in accordance with this Section 2.02. Subject to the other provisions of this Section 2.02, Committed Borrowings of more than one Type may be incurred at the same time.

(b) Each Committed Borrowing, each conversion of Committed Loans from one Type to the other, and each continuation of LIBO Rate Loans shall be made upon the Lead Borrower's irrevocable notice to the Administrative Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent not later than 1:00 p.m. (i) three Business Days prior to the requested date of any Borrowing of, conversion to or continuation of LIBO Rate Loans or of any conversion of LIBO Rate Loans to Base Rate Loans, and (ii) one Business Day prior to the requested date of any Borrowing of Base Rate Loans. Each telephonic notice by the Lead Borrower pursuant to this Section 2.02(b) must be confirmed promptly by delivery to the Administrative Agent of a written Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Lead Borrower. Each Borrowing of, conversion to or continuation of LIBO Rate Loans shall be in a principal amount of $1,000,000 or a whole multiple of $500,000 in excess thereof. Except as provided in Sections 2.03(c) and 2.04(c), each Borrowing of, or conversion to, Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof. Each Committed Loan Notice (whether telephonic or written) shall specify (i) whether the Lead Borrower is requesting a Borrowing, a conversion of Committed Loans from one Type to the other, or a continuation of LIBO Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Committed Loans to be borrowed, converted or continued, (iv) the Type of Committed Loans to be borrowed or to which existing Committed Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Lead Borrower fails to specify a Type of Committed Loan in a Committed Loan Notice or if the Lead Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Committed Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable LIBO Rate Loans. If the Lead Borrower requests a Borrowing of, conversion to, or continuation of LIBO Rate Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. Notwithstanding anything to the contrary herein, a Swing Line Loan may not be converted to a LIBO Rate Loan.

(c) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Committed Loans, and if no timely notice of a conversion or continuation is provided by the Lead Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans described in Section 2.02(b). In the case of a Committed Borrowing, each Lender shall make the amount of its Committed Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Credit Extension, Section 4.01), the Administrative Agent shall use reasonable efforts to make all funds so received available to the Borrowers in like funds by no later than 4:00 p.m. on the day of receipt by the Administrative Agent either by (i) crediting the account of the Lead Borrower on the books of the Administrative Agent with the amount of such funds or (ii) wire transfer

of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Lead Borrower; provided, however, that if, on the date the Committed Loan Notice with respect to such Borrowing is given by the Lead Borrower, there are L/C Borrowings outstanding, then the proceeds of such Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings, and second, shall be made available to the Borrowers as provided above.

(d) The Administrative Agent, without the request of the Lead Borrower, may advance any interest, fee, service charge, Credit Party Expenses, or other payment to which any Credit Party is entitled from the Loan Parties pursuant hereto or any other Loan Document, as and when due and payable, and may charge the same to the Loan Account notwithstanding that an Overadvance may result thereby. The Administrative Agent shall advise the Lead Borrower of any such advance or charge promptly after the making thereof. Such action on the part of the Administrative Agent shall not constitute a waiver of the Administrative Agent's rights and the Borrowers' obligations under Section 2.05(c). Any amount which is added to the principal balance of the Loan Account as provided in this Section 2.02(d) shall bear interest at the interest rate then and thereafter applicable to Base Rate Loans.

(e) Except as otherwise provided herein, a LIBO Rate Loan may be continued or converted only on the last day of an Interest Period for such LIBO Rate Loan. Upon the occurrence and during the continuance of a Default, the Administrative Agent may, and at the direction of the Required Lenders shall, prohibit Loans from being requested as, converted to or continued as, LIBO Rate Loans.

(f) The Administrative Agent shall promptly notify the Lead Borrower and the Lenders of the interest rate applicable to any Interest Period for LIBO Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Lead Borrower and the Lenders of any change in Wells Fargo Bank's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(g) After giving effect to all Committed Borrowings, all conversions of Committed Loans from one Type to the other, and all continuations of Committed Loans as the same Type, there shall not be more than ten (10) Interest Periods in effect with respect to Committed Loans.

(h) The Administrative Agent, the Lenders, the Swing Line Lender and the L/C Issuer shall have no obligation to make any Loan or to provide any Letter of Credit if an Overadvance would result. The Administrative Agent may, in its discretion, make Permitted Overadvances without the consent of the Lenders, the Swing Line Lender and the L/C Issuer and each Lender shall be bound thereby. Any Permitted Overadvance may constitute a Swing Line Loan. A Permitted Overadvance is for the account of the Borrowers and shall constitute a Loan and an Obligation and shall be repaid by the Borrowers in accordance with the provisions of Section 2.05(c). The making of any such Permitted Overadvance on any one occasion shall not obligate the Administrative Agent or any Lender to make or permit any Permitted Overadvance on any other occasion or to

permit such Permitted Overadvances to remain outstanding. The making by the Administrative Agent of a Permitted Overadvance shall not modify or abrogate any of the provisions of Section 2.03 regarding the Lenders' obligations to purchase participations with respect to Letters of Credit or of Section 2.04 regarding the Lenders' obligations to purchase participations with respect to Swing Line Loans. Without limiting the foregoing, the Administrative Agent shall have no liability for, and no Loan Party or Credit Party shall have the right to, or shall, bring any claim of any kind whatsoever against the Administrative Agent with respect to "inadvertent Overadvances" (i.e. where an Overadvance results from changed circumstances beyond the control of the Administrative Agent (such as a reduction in the collateral value)) regardless of the amount of any such Overadvance(s).

2.03 Letters of Credit.

(a) The Letter of Credit Commitment.

(i) Subject to the terms and conditions set forth herein, (A) the Administrative Agent, in reliance upon the agreements of the Lenders set forth in this Section 2.03, shall endeavor to cause the L/C Issuer from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit (including Canadian Letters of Credit) for the account of the Borrowers, and to amend or extend Letters of Credit previously issued by the L/C Issuer, in accordance with Section 2.03(b) below; and (B) the Lenders severally agree to participate in Letters of Credit (including Canadian Letters of Credit) issued for the account of the Borrowers and any drawings thereunder; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (v) the Outstanding Amount of the L/C Obligations with respect to Standby Letters of Credit shall not exceed the Standby Letter of Credit Sublimit, (w) the Outstanding Amount of the L/C Obligations with respect to Canadian Letters of Credit shall not exceed the Canadian Letter of Credit Sublimit, (x) the Total Outstandings shall not exceed the lesser of the Aggregate Commitments or the Borrowing Base, (y) the aggregate Outstanding Amount of the Committed Loans of any Lender, plus such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations, plus such Lender's Applicable Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Lender's Commitment, and (z) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit. Each request by the Lead Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrowers that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrowers' ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrowers may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. Any L/C Issuer (other than Wells Fargo Bank or any of its Affiliates) shall notify the Administrative Agent in writing on each Business Day of all Letters of Credit issued on the prior Business Day by such L/C Issuer.

(ii) No Letter of Credit shall be issued if:

(A) subject to Section 2.03(b)(iii), the expiry date of such requested Standby Letter of Credit would occur more than twelve months after the date of issuance or last extension, unless the Required Lenders have approved such expiry date; or

(B) subject to Section 2.03(b)(iii), the expiry date of such requested Commercial Letter of Credit would occur more than 120 days after the date of issuance or last extension, unless the Required Lenders have approved such expiry date; or

(C) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless either such Letter of Credit is Cash Collateralized on or prior to the Letter of Credit Expiration Date or all the Lenders have approved such expiry date.

(iii) No Letter of Credit shall be issued without the prior consent of the Administrative Agent if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from issuing such Letter of Credit, or any Law applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the L/C Issuer in good faith deems material to it;

(B) the issuance of such Letter of Credit would violate one or more policies of the L/C Issuer applicable to letters of credit generally;

(C) such Letter of Credit is to be denominated in a currency other than Dollars; provided that if the L/C Issuer, in its discretion and with the consent of the Administrative Agent, issues a Letter of Credit denominated in a currency other than Dollars, all reimbursements by the Borrowers of the honoring of any drawing under such Letter of Credit shall be paid in Dollars; or

(D) a default of any Lender's obligations to fund under Section 2.03(c) exists or any Lender is at such time a Defaulting Lender hereunder, unless the Administrative Agent or the L/C Issuer has entered into satisfactory arrangements with the Borrowers or such Lender to eliminate the L/C Issuer's risk with respect to such Lender.

(iv) The L/C Issuer shall not amend any Letter of Credit if (A) the L/C Issuer would not be permitted at such time to issue such Letter of Credit in its amended form under the terms hereof, (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit or (C) such Letter of Credit has been amended on four (4) prior occasions.

(v) The L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the L/C Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article IX with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in Article IX included the L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuer.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Lead Borrower delivered to the Administrative Agent (with a copy to the L/C Issuer) in the form of a Letter of Credit Application, appropriately completed and signed by an L/C Responsible Person; provided, however, that in no event shall any Letter of Credit be amended more than four (4) times after the issuance thereof. Any Letter of Credit Application or other document delivered hereunder that is signed by an L/C Responsible Person shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action, and such L/C Responsible Person shall be conclusively presumed to have acted on behalf of the Lead Borrower. Such Letter of Credit Application must be received by the Administrative Agent not later than 1:00 p.m. at least two Business Days (or such other date and time as the Administrative Agent may agree in a particular instance in its sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. Promptly after receipt of any Letter of Credit Application, the Administrative Agent will confirm with the L/C Issuer (by telephone or in writing) that the L/C Issuer has received a copy of such Letter of Credit Application from the Lead Borrower and, if not, the Administrative Agent will provide the L/C Issuer with a copy thereof. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the Administrative Agent and the L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; and (G) such other matters as the Administrative Agent or the L/C Issuer may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit

Application shall specify in form and detail satisfactory to the Administrative Agent and the L/C Issuer (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as the Administrative Agent and the L/C Issuer may require. Additionally, the Lead Borrower shall furnish to the L/C Issuer and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the L/C Issuer or the Administrative Agent may reasonably require.

(ii) Immediately upon the issuance or amendment of each Letter of Credit, each Lender shall be deemed to (without any further action), and hereby irrevocably and unconditionally agrees to, purchase from the L/C Issuer, without recourse or warranty, a risk participation in such Letter of Credit in an amount equal to the product of such Lender's Applicable Percentage times the amount of such Letter of Credit. Upon any change in the Commitments under this Agreement, it is hereby agreed that with respect to all L/C Obligations, there shall be an automatic adjustment to the participations hereby created to reflect the new Applicable Percentages of the assigning and assignee Lenders.

(iii) If the Lead Borrower so requests in any applicable Letter of Credit Application, the Administrative Agent may, in its sole and absolute discretion, cause the L/C Issuer to issue a Standby Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); provided that any such Auto-Extension Letter of Credit must permit the L/C Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Standby Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Non-Extension Notice Date") in each such twelve-month period to be agreed upon at the time such Standby Letter of Credit is issued. Unless otherwise directed by the Administrative Agent or L/C Issuer, the Lead Borrower shall not be required to make a specific request to the Administrative Agent or L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to permit the extension of such Standby Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that the Administrative Agent shall instruct the L/C Issuer not to permit any such extension if (A) the Administrative Agent has determined that it would not be permitted, or would have no obligation, at such time to cause the issuance of such Standby Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.03(a) or otherwise), or (B) the L/C Issuer has received notice (which may be by telephone or in writing) on or before the day that is thirty days before the Non-Extension Notice Date (1) from the Administrative Agent that the Required Lenders have elected not to permit such extension or (2) from the Administrative Agent or the Lead Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, and in each such case directing the L/C Issuer not to permit such extension.

(iv) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the L/C Issuer will make available to the Lead Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the L/C Issuer shall notify the Administrative Agent thereof and the Administrative Agent shall notify the Lead Borrower; provided, however, that any failure to give or delay in giving such notice shall not relieve the Borrowers of their obligation to reimburse the L/C Issuer and the Lenders with respect to any such payment. If the Administrative Agent notifies the Lead Borrower of any such notice of a drawing not later than 1:30 p.m. on the date of any payment by the L/C Issuer under a Letter of Credit (each such date, an "Honor Date"), the Borrowers shall reimburse the L/C Issuer through the Administrative Agent on the same day in an amount equal to the amount of such drawing. If the

Administrative Agent notifies the Lead Borrower of any such notice of a drawing later than 1:30 p.m. on any Honor Date, the Borrowers shall reimburse the L/C Issuer through the Administrative Agent by 10:00 a.m. on the next day in an amount equal to the amount of such drawing. If the Borrowers fail to so reimburse the L/C Issuer by such time, the Administrative Agent shall promptly notify each Lender of the Honor Date, the amount of the unreimbursed drawing (the "Unreimbursed Amount"), and the amount of such Lender's Applicable Percentage thereof. In such event, the Borrowers shall be deemed to have requested a Committed Borrowing of Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Aggregate Commitments and the conditions set forth in Section 4.02 (other than the delivery of a Committed Loan Notice). Any notice given by the L/C Issuer or the Administrative Agent pursuant to this Section 2.03(c)(i) may be given by telephone or electronic means.

(ii) Each Lender shall upon any notice pursuant to Section 2.03(c)(i) make funds available to the Administrative Agent for the account of the L/C Issuer at the Administrative Agent's Office in an amount equal to its Applicable Percentage of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrowers in such amount. The Administrative Agent shall remit the funds so received to the L/C Issuer.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Committed Borrowing of Base Rate Loans because the conditions set forth in Section 4.02 cannot be satisfied or for any other reason, the Borrowers

shall be deemed to have incurred from the L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Lender's payment to the Administrative Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.03.

(iv) Until each Lender funds its Committed Loan or L/C Advance pursuant to this Section 2.03(c) to reimburse the L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Applicable Percentage of such amount shall be solely for the account of the L/C Issuer.

(v) Each Lender's obligation to make Committed Loans or L/C Advances to reimburse the L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the L/C Issuer, any Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Lender's obligation to make Committed Loans pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 4.02 (other than delivery by the Lead Borrower of a Committed Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrowers to reimburse the L/C Issuer for the amount of any payment made by the L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Lender fails to make available to the Administrative Agent for the account of the L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), the L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the L/C Issuer in accordance with banking industry rules on interbank compensation plus any administrative, processing or similar fees customarily charged by the L/C Issuer in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Committed Loan included in the relevant Committed Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the L/C Issuer submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (vi) shall be conclusive absent manifest error.

(d) Repayment of Participations.

(i) At any time after the L/C Issuer has made a payment under any Letter of Credit and has received from the Administrative Agent a Lender's L/C Advance in respect of such payment in accordance with Section 2.03(c), if the Administrative Agent receives for the account of the L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrowers or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Applicable Percentage thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's L/C Advance was outstanding) in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the L/C Issuer in its discretion), each Lender shall pay to the Administrative Agent for the account of the L/C Issuer its Applicable Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Obligations Absolute. The obligation of the Borrowers to reimburse the L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this

Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrowers or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by the L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law;

(v) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrowers or any of their Subsidiaries; or

(vi) the fact that any Event of Default shall have occurred and be continuing.

The Lead Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Lead Borrower's instructions or other irregularity, the Lead Borrower will promptly notify the Administrative Agent and the L/C Issuer. The Borrowers shall be conclusively deemed to have waived any such claim against the L/C Issuer and its correspondents unless such notice is given as aforesaid.

(f) Role of L/C Issuer. Each Lender and the Borrowers agree that, in paying any drawing under a Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable to any Lender for: (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; (iii) 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 or any error in interpretation of technical terms; or (iv) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The Borrowers hereby assume all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrowers' pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable or responsible for any of the matters described in clauses (i) through (v) of Section 2.03(e); provided, however, that anything in such clauses to the contrary notwithstanding, the Borrowers may have a claim against the L/C Issuer, and the

L/C Issuer may be liable to the Borrowers, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrowers which the Borrowers prove were caused by the L/C Issuer's willful misconduct or gross negligence or the L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the L/C Issuer 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 (or the L/C Issuer may 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), and the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(g) Cash Collateral. Upon the request of the Administrative Agent, (i) if the L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, or (ii) if, as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, the Borrowers shall, in each case, promptly Cash Collateralize the then Outstanding Amount of all L/C Obligations. Sections 2.05 and 8.02(c) set forth certain additional requirements to deliver Cash Collateral hereunder. For purposes of this Section 2.03, Section 2.05 and Section 8.02(c), "Cash Collateralize" means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the L/C Issuer and the Lenders, as collateral for the L/C Obligations, cash or deposit account balances in an amount equal to 105% (in the case of Letters of Credit denominated in a currency other than Dollars, in an amount at least equal to 110%) of the Outstanding Amount of all L/C Obligations, pursuant to documentation in form and substance satisfactory to the Administrative Agent and the L/C Issuer (which documents are hereby Consented to by the Lenders). Derivatives of such term have corresponding meanings. The Borrowers hereby grant to the Collateral Agent a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash Collateral shall be maintained in blocked, non-interest bearing deposit accounts at Wells Fargo Bank or an account maintained by the Administrative Agent. If at any time the Administrative Agent determines that any funds held as Cash Collateral are subject to any right or claim of any Person other than the Administrative Agent or that the total amount of such funds is less than the aggregate Outstanding Amount of all L/C Obligations, the Borrowers will, forthwith upon demand by the Administrative Agent, pay to the Administrative Agent, as additional funds to be deposited as Cash Collateral, an amount equal

to the excess of (x) such aggregate Outstanding Amount over (y) the total amount of funds, if any, then held as Cash Collateral that the Administrative Agent determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit for which funds are on deposit as Cash Collateral, such funds shall be applied, to the extent permitted under applicable Laws, to reimburse the L/C Issuer and, to the extent not so applied, shall thereafter be applied to satisfy other Obligations.

(h) Letter of Credit Fees. The Borrowers shall pay to the Administrative Agent, for the account of each Lender in accordance with its Applicable Percentage, a Letter of Credit fee (the "Letter of Credit Fee") (i) for each Commercial Letter of Credit, equal to the Applicable Margin multiplied by the daily Stated Amount under such Letter of Credit, and (ii) for each Standby Letter of Credit, equal to the Applicable Margin multiplied by the daily Stated Amount under such Letter of Credit. For purposes of computing the daily Stated Amount available to be drawn under any Letter of Credit, the Stated Amount of the Letter of Credit shall be determined in accordance with Section 1.05; provided that, for purposes only of calculating the Letter of Credit Fee owing hereunder, the daily Stated Amount available to be drawn under any Letter of Credit that provides for one or more automatic increases in the Stated Amount thereof shall be deemed to be the maximum Stated Amount then in effect under such Letter of Credit (at the time of each such calculation of the Letter of Credit Fee), rather than the maximum Stated Amount for which such Letter of Credit may be honored. Letter of Credit Fees shall be (i) due and payable on the first day of each month (or if such day is not a Business Day, on the next succeeding Business Day), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand, and (ii) computed on a monthly basis in arrears. If there is any change in the Applicable Margin during any month, the daily amount available to be drawn under of each Letter of Credit shall be computed and multiplied by the Applicable Margin separately for each period during such month that such Applicable Margin was in effect. Notwithstanding anything to the contrary contained herein, while any Event of Default has occurred and is continuing, the Administrative Agent may, and upon the request of the Required Lenders shall, notify the Lead Borrower that all Letter of Credit Fees shall accrue at the Default Rate and thereafter such Letter of Credit Fees shall accrue at the Default Rate to the fullest extent permitted by applicable Laws.

(i) Consignment of Bill of Lading. The Borrowers shall, upon the request of the Administrative Agent, consign to the Borrowers, the Collateral Agent or the L/C Issuer any bill of lading for Inventory which is supported by an Eligible Letter of Credit issued by the L/C Issuer.

(j) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

(k) Existing Letters of Credit. The Borrowers, the Agents, the Lenders and the L/C Issuer agree that the Existing Letters of Credit shall be deemed Letters of Credit hereunder as if issued by the L/C Issuer hereunder and, from and after the Closing Date, shall be subject to and governed by the terms and conditions hereof.

2.04 Swing Line Loans.

(a) The Swing Line. Subject to the terms and conditions set forth herein, the Swing Line Lender agrees, in reliance upon the agreements of the other Lenders set forth in this Section 2.04, to make loans (each such loan, a "Swing Line Loan") to the Borrowers from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line

Sublimit, notwithstanding the fact that such Swing Line Loans, when aggregated with the Applicable Percentage of the Outstanding Amount of Committed Loans and L/C Obligations of the Lender acting as Swing Line Lender, may exceed the amount of such Lender's Commitment; provided, however, that after giving effect to any Swing Line Loan, (i) the Total Outstandings shall not exceed the lesser of (A) the Aggregate Commitments, or (B) the Borrowing Base, and (ii) the aggregate Outstanding Amount of the Committed Loans of any Lender at such time, plus such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations at such time, plus such Lender's Applicable Percentage of the Outstanding Amount of all Swing Line Loans at such time shall not exceed such Lender's Commitment, and provided, further, that the Borrowers shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan. Within the foregoing limits, and subject to the other terms and conditions hereof, the Borrowers may borrow under this Section 2.04, prepay under Section 2.05, and reborrow under this Section 2.04. Each Swing Line Loan shall bear interest only at a rate based on the Base Rate. Immediately upon the making of a Swing Line Loan, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Lender's Applicable Percentage times the amount of such Swing Line Loan.

(b) Borrowing Procedures. Each Swing Line Borrowing shall be made upon the Lead Borrower's irrevocable notice to the Swing Line Lender and the Administrative Agent, which may be given by telephone. Each such notice must be received by the Swing Line Lender and the Administrative Agent not later than 3:00 p.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, and (ii) the requested borrowing date, which shall be a Business Day. Each such telephonic notice must be confirmed promptly by delivery to the Swing Line Lender and the Administrative Agent of a written Swing Line Loan Notice, appropriately completed and signed by a Responsible Officer of the Lead Borrower. Promptly after receipt by the Swing Line Lender of any telephonic Swing Line Loan Notice, the Swing Line Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swing Line Loan Notice and, if not, the Swing Line Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Swing Line Lender has received notice (by telephone or in writing) from the Administrative Agent at the request of the Required Lenders prior to 3:00 p.m. on the date of the proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the proviso to the first sentence of Section 2.04(a), or (B) that one or more of the applicable conditions specified in Article IV is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender shall, not later than 4:00 p.m. on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line Loan available to the Borrowers at its office by crediting the account of the Lead Borrower on the books of the Swing Line Lender in immediately available funds.

(c) Refinancing of Swing Line Loans.

(i) The Swing Line Lender, at any time in its sole and absolute discretion, may request, on behalf of the Borrowers (which hereby irrevocably authorize the Swing Line Lender to so request on their behalf), that each Lender make a Base Rate Loan in an amount equal to such Lender's Applicable Percentage of the amount of Swing Line Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Committed Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the Aggregate Commitments and the conditions set forth in Section 4.02. The Swing Line Lender shall furnish the Lead Borrower with a copy of the applicable Committed Loan Notice promptly after delivering such notice to the Administrative Agent. Each Lender shall make an amount equal to its Applicable Percentage of the amount specified in such Committed Loan Notice available to the Administrative Agent in immediately available funds for the account of the Swing Line Lender at the Administrative Agent's Office not later than 1:00 p.m. on the day specified in such Committed Loan Notice, whereupon, subject to Section 2.03(c)(ii), each Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrowers in such amount. The Administrative Agent shall remit the funds so received to the Swing Line Lender.

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Committed Borrowing in accordance with Section 2.04(c)(i), the request for Base Rate Loans submitted by the Swing Line Lender as set forth herein shall be deemed to be a request by the Swing Line Lender that each of the Lenders fund its risk participation in the relevant Swing Line Loan and each Lender's payment to the Administrative Agent for the account of the Swing Line Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Lender fails to make available to the Administrative Agent for the account of the Swing Line Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swing Line Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the Swing Line Lender in accordance with banking industry rules on interbank compensation plus any administrative, processing or similar fees customarily charged by the Swing Line Lender in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the principal amount so paid shall constitute such Lender's Committed Loan included in the relevant Committed Borrowing or funded participation in the relevant Swing Line Loan, as the case may be. A certificate of the Swing Line Lender submitted to any Lender (through the Administrative Agent) with respect

to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Lender's obligation to make Committed Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Swing Line Lender, the Borrowers or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Lender's obligation to make Committed Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 4.02. No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrowers to repay Swing Line Loans, together with interest as provided herein.

(d) Repayment of Participations.

(i) At any time after any Lender has purchased and funded a risk participation in a Swing Line Loan, if the Swing Line Lender receives any payment on account of such Swing Line Loan, the Swing Line Lender will distribute to such Lender its Applicable Percentage of such payment (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's risk participation was funded) in the same funds as those received by the Swing Line Lender.

(ii) If any payment received by the Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by the Swing Line Lender under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the Swing Line Lender in its discretion), each Lender shall pay to the Swing Line Lender its Applicable Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the Federal Funds Rate. The Administrative Agent will make such demand upon the request of the Swing Line Lender. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Interest for Account of Swing Line Lender. The Swing Line Lender shall be responsible for invoicing the Borrowers for interest on the Swing Line Loans. Until each Lender funds its Base Rate Loan or risk participation pursuant to this Section 2.04 to refinance such Lender's Applicable Percentage of any Swing Line Loan, interest in respect of such Applicable Percentage shall be solely for the account of the Swing Line Lender.

(f) Payments Directly to Swing Line Lender. The Borrowers shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.

2.05 Prepayments.

(a) The Borrowers may, upon irrevocable notice from the Lead Borrower to the Administrative Agent, at any time or from time to time voluntarily prepay Committed Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Administrative Agent not later than 1:00 p.m. (A) three Business Days prior to any date of prepayment of LIBO Rate Loans and (B) on the date of prepayment of Base Rate Loans; (ii) any prepayment of LIBO Rate Loans shall be in a principal amount of $1,000,000 or a whole multiple of $500,000 in excess thereof; and (iii) any prepayment of Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Committed Loans to be prepaid and, if LIBO Rate Loans, the Interest Period(s) of such Committed Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If such notice is given by the Lead Borrower, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a LIBO Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Each such prepayment shall be applied to the Committed Loans of the Lenders in accordance with their respective Applicable Percentages.

(b) The Borrowers may, upon irrevocable notice from the Lead Borrower to the Swing Line Lender (with a copy to the Administrative Agent), at any time or from time to time, voluntarily prepay Swing Line Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Swing Line Lender and the Administrative Agent not later than 3:00 p.m. on the date of the prepayment, and (ii) any such prepayment shall be in a minimum principal amount of $100,000. Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Lead Borrower, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(c) If for any reason the Total Outstandings at any time exceed the lesser of the Aggregate Commitments or the Borrowing Base, each as then in effect, the Borrowers shall immediately prepay Committed Loans, Swing Line Loans and L/C Borrowings and/or Cash Collateralize the L/C Obligations (other than L/C Borrowings) in an aggregate amount equal to such excess; provided, however, that the Borrowers shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.05(c) unless after the prepayment in full of the Loans the Total Outstandings exceed the lesser of the Aggregate Commitments or the Borrowing Base, each as then in effect.

(d) After the occurrence and during the continuance of a Cash Dominion Event, the Borrowers shall prepay the Loans and Cash Collateralize the L/C Obligations in accordance with the provisions of Section 6.13 hereof. In addition, the Borrowers shall prepay the Loans and Cash Collateralize the L/C Obligations in an amount equal to the Net Proceeds (other than, with respect only to the Note Purchasers Priority Collateral, such portion of the Net Proceeds that are then required to be paid to the Note Purchasers under the Note Purchase Facility) received by a Loan Party on account of a Prepayment Event, irrespective of whether or not a Cash Dominion Event then exists and is continuing. The Agents shall not be obligated to release their Liens on any Collateral until such Net Proceeds have been so received (to the extent required in this clause (d)). The application of such Net Proceeds to the Loans shall not reduce the Commitments. If all Obligations then due are paid, any excess Net Proceeds shall be remitted to the operating account of the Borrowers maintained with the Administrative Agent.

(e) Prepayments made pursuant to this Section 2.05, first, shall be applied ratably to the L/C Borrowings and the Swing Line Loans, second, shall be applied ratably to the outstanding Committed Loans, third, shall be used to Cash Collateralize the remaining L/C Obligations; and, fourth, the amount remaining, if any, after the prepayment in full of all L/C Borrowings, Swing Line Loans and Committed Loans outstanding at such time and the Cash Collateralization of the remaining L/C Obligations in full may be retained by the Borrowers for use in the ordinary course of its business. Upon the drawing of any Letter of Credit that has been Cash Collateralized, the funds held as Cash Collateral shall be applied (without any further action by or notice to or from the Borrowers or any other Loan Party) to reimburse the L/C Issuer or the Lenders, as applicable, and, to the extent not so applied, shall thereafter be returned to the Borrowers.

2.06 Termination or Reduction of Commitments.

(a) The Borrowers may, upon irrevocable notice from the Lead Borrower to the Administrative Agent, terminate the Aggregate Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit or from time to time permanently reduce the Aggregate Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit; provided that (i) any such notice shall be received by the Administrative Agent not later than 1:00 p.m. (A) thirty (30) days prior to the date of any termination of the Aggregate Commitments and (B) five (5) Business Days prior to the date of any reduction of the Aggregate Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit, (ii) any such partial reduction shall be in an aggregate amount of $5,000,000 or any whole multiple of $1,000,000 in excess thereof, (iii) the Borrowers shall not terminate or reduce (A) the Aggregate Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Outstandings would exceed the Aggregate Commitments, (B) the Letter of Credit Sublimit if, after giving effect thereto, the Outstanding Amount of L/C Obligations not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit, and (C) the Swing Line Sublimit if, after giving effect thereto, and to any concurrent payments hereunder, the Outstanding Amount of Swing Line Loans hereunder would exceed the Swing Line Sublimit.

(b) If, after giving effect to any reduction of the Aggregate Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit exceeds the amount of the Aggregate Commitments, such Letter of Credit Sublimit or Swing Line Sublimit shall be automatically reduced by the amount of such excess.

(c) The Administrative Agent will promptly notify the Lenders of any termination or reduction of the Letter of Credit Sublimit, Swing Line Sublimit or the Aggregate Commitments under this Section 2.06. Upon any reduction of the Aggregate Commitments, the Commitment of each Lender shall be reduced by such Lender's Applicable Percentage of such reduction amount. All fees (including, without limitation, Commitment Fees, Early Termination Fees and Letter of Credit Fees) and interest in respect of the Aggregate Commitments accrued until the effective date of any termination of the Aggregate Commitments shall be paid on the effective date of such termination.

2.07 Repayment of Loans.

(a) The Borrowers shall repay to the Lenders on the Termination Date the aggregate principal amount of Committed Loans outstanding on such date.

(b) To the extent not previously paid, the Borrowers shall repay the outstanding balance of the Swing Line Loans on the Termination Date.

2.08 Interest.

(a) Subject to the provisions of Section 2.08(b) below, (i) each LIBO Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Adjusted LIBO Rate for such Interest Period plus the Applicable Margin; (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Margin; and (iii) each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Margin.

(b) (i) If any amount payable under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) If any other Event of Default has occurred and is continuing, then the Administrative Agent may, and upon the request of the Required Lenders shall, notify the Lead Borrower that all outstanding Obligations shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate and thereafter, until such Event of Default has been duly waived as provided in Section 10.01 hereof, such Obligations shall bear interest at the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

2.09 Fees. In addition to certain fees described in subsection (h) of Section 2.03:

(a) Commitment Fee. The Borrowers shall pay to the Administrative Agent, for the account of each Lender, in accordance with its Applicable Percentage, a commitment fee (the "Commitment Fee") equal to 0.25% times the average daily amount by which the Aggregate Commitments exceed the sum of (i) the Outstanding Amount of Loans and (ii) the Outstanding Amount of L/C Obligations. The Commitment Fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable monthly in arrears on the first day of each month (or if such day is not a Business Day, on the next succeeding Business Day), commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period. The Commitment Fee shall be calculated monthly in arrears.

(b) Early Termination Fee. In the event that the Termination Date occurs, for any reason, prior to the Maturity Date, the Borrowers shall pay to the Administrative Agent, for the ratable benefit of the Lenders, a fee (the "Early Termination Fee") in respect of amounts which are or become payable by reason thereof equal to: (i) one-half of one percent (0.50%) of the Revolving Credit Ceiling then in effect if the Termination Date shall occur at any time on or before July 31, 2009; and (ii) one-quarter of one percent (0.25%) of the Revolving Credit Ceiling then in effect if the Termination Date shall occur at any time on or after July 31, 2009 but on or before July 31, 2010. No Early Termination Fee shall be due if the Termination Date shall occur at any time after July 31, 2010. All parties to this Agreement agree and acknowledge that the Lenders will have suffered damages on account of the early termination of this Agreement and that, in view of the difficulty in ascertaining the amount of such damages, the Early Termination Fee constitutes reasonable compensation and liquidated damages to compensate the Lenders on account thereof.

(c) Other Fees. The Borrowers shall pay to the Administrative Agent fees in the amounts and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

2.10 Computation of Interest and Fees. All computations of interest and fees shall be made on the basis of a 360-day year and actual days elapsed. 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 repaid on the same day on which it is made shall, subject to Section 2.12, bear interest for one day. Each

determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.11 Evidence of Debt.

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by the Administrative Agent (the "Loan Account") in the ordinary course of business. In addition, each Lender may record in such Lender's internal records, an appropriate notation evidencing the date and amount of each Loan from such Lender, each payment and prepayment of principal of any such Loan, and each payment of interest, fees and other amounts due in connection with the Obligations due to such Lender. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount owing with respect to the Obligations. In the event of any

conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrowers shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto. Upon receipt of an affidavit of a Lender as to the loss, theft, destruction or mutilation of such Lender's Note and upon cancellation of such Note, the Borrowers will issue, in lieu thereof, a replacement Note in favor of such Lender, in the same principal amount thereof and otherwise of like tenor.

(b) In addition to the accounts and records referred to in Section 2.11(a), each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swing Line Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

2.12 Payments Generally; Administrative Agent's Clawback.

(a) General. All payments to be made by the Borrowers shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received

by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrowers shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of LIBO Rate Loans (or in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such 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 Section 2.02 (or in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrowers a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Committed Borrowing available to the Administrative Agent, then the applicable Lender and the Borrowers severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrowers to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, 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, and (B) in the case of a payment to be made by the Borrowers, the interest rate applicable to Base Rate Loans. If the Borrowers and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrowers the amount of such interest paid by the Borrowers for such period. If such Lender pays its share of the applicable Committed Borrowing to the Administrative Agent, then the principal amount so paid shall constitute such Lender's Committed Loan included in such Committed Borrowing. Any payment by the Borrowers shall be without prejudice to any claim the Borrowers may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Borrowers; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Lead Borrower prior to the time at which any payment is due to the Administrative Agent for the account of the Lenders or the L/C Issuer hereunder that the Borrowers will not make such payment, the Administrative Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the L/C Issuer, as the case may be, the amount due. In such event, if the Borrowers have not in fact made such payment, then each of the Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or the L/C Issuer, 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 Lead Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrowers by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof (subject to the provisions of the last paragraph of Section 4.02 hereof), the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest, within seven (7) days after it is determined by the Administrative Agent that the conditions to the applicable Credit Extension set forth in Article IV have not been satisfied.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Committed Loans, to fund participations in Letters of Credit and Swing Line Loans and to make payments pursuant to Section 10.04(c) are several and not joint. The failure of any Lender to make any Committed Loan, to fund any such participation or to make any payment under Section 10.04(c) on any date required hereunder shall not

relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Committed Loan, to purchase its participation or to make its payment under Section 10.04(c).

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

2.13 Sharing of Payments by Lenders. If any Credit Party shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of, interest on, or other amounts with respect to, any of the Obligations resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Obligations greater than its pro rata share thereof as provided herein (including as in contravention of the priorities of payment set forth in Section 8.03), then the Credit Party receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Obligations of the other Credit Parties, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Credit Parties ratably and in the priorities set forth in Section 8.03, provided that:

(a) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or

subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(b) the provisions of this Section shall not be construed to apply to (x) any payment made by the Loan Parties pursuant to and in accordance with the express terms of this Agreement or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Committed Loans or subparticipations in L/C Obligations or Swing Line Loans to any assignee or participant, other than to the Borrowers or any Subsidiary thereof (as to which the provisions of this Section shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

2.14 Settlement Among Lenders.

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

(b) The Administrative Agent shall deliver to each of the Lenders promptly after a Settlement Date a summary statement of the amount of outstanding Committed Loans for the period and the amount of repayments received for the period. As reflected on the summary statement, (i) the Administrative Agent shall transfer to each Lender its Applicable Percentage of repayments, and (ii) each Lender shall transfer to the Administrative Agent (as provided below) or the Administrative Agent shall transfer to each Lender, such amounts as are necessary to insure that, after giving effect to all such transfers, the amount of Committed Loans made by each Lender shall be equal to such Lender's Applicable Percentage of all Committed Loans outstanding as of such Settlement Date. If the summary statement requires transfers to be made to the Administrative Agent by the Lenders and is received prior to 1:00 p.m. on a Business Day, such transfers shall be made in immediately available funds no later than 3:00 p.m. that day; and, if received after 1:00 p.m., then no later than 3:00 p.m. on the next Business Day. The obligation of each Lender to transfer such funds is irrevocable, unconditional and without recourse to or warranty by the Administrative Agent. If and to the extent any Lender shall not have so made its transfer to the Administrative Agent, such 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.

ARTICLE III.
TAXES, YIELD PROTECTION AND ILLEGALITY;
APPOINTMENT OF LEAD BORROWER

3.01 Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Borrowers hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes, provided that if the Borrowers shall be required by applicable Law to deduct any Indemnified Taxes (including any Other Taxes) from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent, Lender or L/C Issuer, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrowers shall make such deductions and (iii) the Borrowers shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Law.

(b) Payment of Other Taxes by the Borrowers. Without limiting the provisions of subsection (a) above, the Borrowers shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Law.

(c) Indemnification by the Loan Parties. The Loan Parties shall indemnify the Administrative Agent, each Lender and the L/C Issuer, within 10 days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Administrative Agent, such Lender or the L/C Issuer, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Lead Borrower by a Lender or the L/C Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or the L/C Issuer, shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrowers to a Governmental Authority, the Lead Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Status of Lenders. Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which any Borrower is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any other Loan Document shall deliver to the Lead Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable law or reasonably requested by the Lead Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if requested by the Lead Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Lead Borrower or the Administrative Agent as will enable the Lead Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

Without limiting the generality of the foregoing, in the event that any Borrower is resident for tax purposes in the United States, any Foreign Lender shall deliver to the Lead Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) 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 request of the Lead Borrower or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(i) duly completed copies of Internal Revenue Service Form W-8BEN 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;

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a “bank” within the meaning of section 881(c)(3)(A) of the Code, (B) a “10 percent shareholder” of the Borrowers within the meaning of section 881(c)(3)(B) of the Code, or (C) a “controlled foreign corporation” described in section 881(c)(3)(C) of the Code and (y) duly completed copies of Internal Revenue Service Form W-8BEN; or

(iv) 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 Lead Borrower to determine the withholding or deduction required to be made.

(f) Treatment of Certain Refunds. If the Administrative Agent, any Lender or the L/C Issuer determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by the Borrowers or with respect to which the Borrowers have paid additional amounts pursuant to this Section, it shall pay to

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the Borrowers an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrowers under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent, such Lender or the L/C Issuer, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Borrowers, upon the request of the Administrative Agent, such Lender or the L/C Issuer, agree to repay the amount paid over to the Borrowers (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent, such Lender or the L/C Issuer in the event the Administrative Agent, such Lender or the L/C Issuer is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Administrative Agent, any Lender or the L/C Issuer to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrowers or any other Person.

3.02 Illegality. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund LIBO Rate Loans, or to determine or charge interest rates based upon the LIBO Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Lead Borrower through the Administrative Agent, any obligation of such Lender to make or continue LIBO Rate Loans or to convert Base Rate Loans to LIBO Rate Loans shall be suspended until such Lender notifies the Administrative Agent and the Lead Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrowers shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all LIBO Rate Loans of such Lender to Base Rate Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such LIBO Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such LIBO Rate Loans. Upon any such prepayment or conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or converted.

3.03 Inability to Determine Rates. If the Required Lenders determine that for any reason in connection with any request for a LIBO Rate Loan or a conversion to or continuation thereof that (a) Dollar deposits are not being offered to banks in the London interbank market for the applicable amount and Interest Period of such LIBO Rate Loan, (b) adequate and reasonable means do not exist for determining the LIBO Rate for any requested Interest Period with

respect to a proposed LIBO Rate Loan, or (c) the LIBO Rate for any requested Interest Period with respect to a proposed LIBO Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Lead Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain LIBO Rate Loans shall be suspended until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Lead Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of LIBO Rate Loans or, failing that, will be deemed to have converted such request into a request for a Committed Borrowing of Base Rate Loans in the amount specified therein.

3.04 Increased Costs; Reserves on LIBO Rate Loans.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the LIBO Rate) or the L/C Issuer;

(ii) subject any Lender or the L/C Issuer to any tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit or any LIBO Rate Loan made by it, or change the basis of taxation of payments to such Lender or the L/C Issuer in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 3.01 and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender or the L/C Issuer); or

(iii) impose on any Lender or the L/C Issuer or the London interbank market any other condition, cost or expense affecting this Agreement or LIBO Rate Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any LIBO Rate Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or the L/C Issuer, the Borrowers will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

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

(c) Certificates for Reimbursement. A certificate of a Lender or the L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or the L/C Issuer or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Lead Borrower shall be conclusive absent manifest error. The Borrowers shall pay such Lender or the L/C Issuer, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or the L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender’s or the L/C Issuer’s right to demand such compensation, provided that the Borrowers shall not be required to compensate a Lender or the L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender or the L/C Issuer, as the case may be, notifies the Lead Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender’s or the L/C Issuer’s intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

3.05 Compensation for Losses. Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrowers shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrowers (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Lead Borrower; or

(c) any assignment of a LIBO Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Lead Borrower pursuant to Section 10.13;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrowers shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrowers to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each LIBO Rate Loan made by it at the LIBO Rate for such Loan by a matching deposit or other borrowing in the London interbank market for a comparable amount and for a comparable period, whether or not such LIBO Rate Loan was in fact so funded.

3.06 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall use commercially reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, the Borrowers may replace such Lender in accordance with Section 10.13.

3.07 Survival. All of the Borrowers' obligations under this Article III shall survive termination of the Aggregate Commitments and repayment of all other Obligations hereunder.

3.08 Designation of Lead Borrower as Borrowers' Agent.

(a) Each Borrower hereby irrevocably designates and appoints the Lead Borrower as such Borrower's agent to obtain Credit Extensions, the proceeds of which shall be available to each Borrower for such uses as are permitted under this Agreement. As the disclosed principal for its agent, each Borrower shall be obligated to each Credit Party on account of Credit Extensions so made as if made directly by the applicable Credit Party to such Borrower, notwithstanding the manner by which such Credit Extensions are recorded on the books and records of the Lead Borrower and of any other Borrower. In addition, each Loan Party other than the Borrowers hereby irrevocably designates and appoints the Lead Borrower as such Loan Party's agent to represent such Loan Party in all respects under this Agreement and the other Loan Documents.

(b) Each Borrower recognizes that credit available to it hereunder is in excess of and on better terms than it otherwise could obtain on and for its own account and that one of the reasons therefor is its joining in the credit facility contemplated herein with all other Borrowers. Consequently, each Borrower hereby assumes and agrees to discharge all Obligations of each of the other Borrowers.

(c) The Lead Borrower shall act as a conduit for each Borrower (including itself, as a "Borrower") on whose behalf the Lead Borrower has requested a Credit

Extension. Neither the Administrative Agent nor any other Credit Party shall have any obligation to see to the application of such proceeds therefrom.

ARTICLE IV.
CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

4.01 Conditions of Initial Credit Extension. The obligation of the L/C Issuer and each Lender to make its initial Credit Extension hereunder is subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance reasonably satisfactory to the Administrative Agent:

(i) executed counterparts of this Agreement sufficient in number for distribution to the Administrative Agent, each Lender and the Lead Borrower;

(ii) a Note executed by the Borrowers in favor of each Lender requesting a Note;

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may require evidencing (A) the authority of each Loan Party to enter into this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party and (B) the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party;

(iv) copies of each Loan Party's Organization Documents and such other documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization;

(v) favorable opinions of (A) Gibson, Dunn & Crutcher LLP, counsel to the Loan Parties, (B) Maynard, Cooper & Gale, P.C., LLC, local Alabama real estate counsel, (C) Stroock & Stroock & Lavan LLP, special counsel to Twin Brook, and (D) McGuireWoods LLP, special counsel to The Children's Place (Virginia), LLC, each addressed to the Administrative Agent and each Lender, as to such matters concerning the Loan Parties and the Loan Documents as the Administrative Agent may reasonably request;

(vi) a certificate signed by a Responsible Officer of the Lead Borrower certifying (A) that the conditions specified in Sections 4.02(a) and (b) have been

satisfied, (B) that, excluding the filing for bankruptcy and the implementation of the bankruptcy proceeding of Hoop, there has been no event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect, (C) either that (1) no consents, licenses or approvals (other than those referenced in Section 4.01(a)(iii) of this Agreement) are required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, or (2) that all such consents, licenses and approvals have been obtained and are in full force and effect, and (D) to the Solvency of the Loan Parties on a Consolidated basis as of the Closing Date after giving effect to the transactions contemplated hereby;

(vii) evidence that all insurance required to be maintained pursuant to the Loan Documents and all endorsements in favor of the Agents required under the Loan Documents have been obtained and are in effect;

(viii) a payoff letter from the lenders under the Existing Credit Agreement satisfactory in form and substance to the Administrative Agent evidencing that the Existing Credit Agreement has been or concurrently with the Closing Date is being terminated, all obligations thereunder are being paid in full, and all Liens securing obligations under the Existing Credit Agreement have been or concurrently with the Closing Date are being released;

(ix) the Security Documents (including, without limitation, the Mortgage) and, to the extent not previously delivered to the Administrative Agent pursuant to the Existing Credit Agreement, certificates evidencing any stock being pledged thereunder, together with undated stock powers executed in blank, each duly executed by the applicable Loan Parties;

(x) the Intercreditor Agreement, duly executed by each of the parties thereto;

(xi) all other Loan Documents, each duly executed by the applicable Loan Parties and the other parties thereto;

(xii) certified copies of the Note Documents, duly executed by the parties thereto, together with such other agreements, instruments and documents delivered in connection therewith as the Administrative Agent shall reasonably request;

(xiii) results of searches or other evidence reasonably satisfactory to the Collateral Agent (in each case dated as of a date reasonably satisfactory to the Collateral Agent) indicating the absence of Liens on the assets of the Loan Parties, except for Permitted Encumbrances and Liens for which termination statements and releases, satisfactions and discharges of any mortgages, or subordination agreements reasonably satisfactory to the Collateral Agent are

being tendered concurrently with such extension of credit or other arrangements reasonably satisfactory to the Collateral Agent for the delivery of such termination statements and releases have been made;

(xiv) (A) all documents and instruments, including Uniform Commercial Code financing statements, required by law or reasonably requested by the Collateral Agent to be filed, registered or recorded to create or perfect the first priority Liens intended to be created under the Loan Documents and all such documents and instruments shall have been so filed, registered or recorded to the satisfaction of the Collateral Agent and (B) the Credit Card Notifications and Blocked Account Agreements required pursuant to Section 6.13 hereof;

(xv) a Phase I environmental site assessment report in accordance with ASTM Standard E1527-05, in form and substance reasonably satisfactory to the Collateral Agent, from an environmental consulting firm reasonably acceptable to the Collateral Agent, which report shall identify recognized environmental conditions with respect to the Alabama Property and shall, to the extent possible, quantify any related costs and liabilities associated with such conditions, and the Collateral Agent shall be satisfied with the nature and amount of any such matters;

(xvi) an appraisal (based upon FMV) of the Alabama Property complying with the requirements of FIRREA by a third party appraiser reasonably acceptable to the Collateral Agent and otherwise in form and substance reasonably satisfactory to the Collateral Agent; and

(xvii) such other assurances, certificates, documents, consents or opinions as the Agents reasonably may require.

(b) After giving effect to (i) the first funding under the Loans and the funding under the Note Purchase Facility, (ii) any charges to the Loan Account made in connection with the establishment of the credit facility contemplated hereby and (iii) all Letters of Credit to be issued at, or immediately subsequent to, such establishment, Excess Availability shall be not less than $80,000,000.

(c) The Administrative Agent shall have received a Borrowing Base Certificate dated the Closing Date, relating to the week ended on July 26, 2008, and executed by a Responsible Officer of the Lead Borrower.

(d) The Administrative Agent shall be reasonably satisfied that any financial statements delivered to it fairly present the business and financial condition of the Loan Parties and that there has been no Material Adverse Effect since the date of the most recent financial information delivered to the Administrative Agent.

(e) The Administrative Agent shall have received and be satisfied with (i) a detailed forecast for the period commencing on the Closing Date and ending with the end of the then Fiscal Year, which condition shall be deemed to have been satisfied by the Administrative Agent's receipt of the lender presentation dated June 2, 2008.

(f) There shall not be pending any litigation or other proceeding, the result of which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(g) The consummation of the transactions contemplated hereby shall not violate any Applicable Law or any Organization Document.

(h) The Borrowers shall have entered into the Note Purchase Facility, and the terms of, and the documentation evidencing, the Note Purchase Facility shall be reasonably satisfactory to the Administrative Agent.

(i) All fees required to be paid to the Agents on or before the Closing Date shall have been paid in full, and all fees required to be paid to the Lenders on or before the Closing Date shall have been paid in full.

(j) The Borrowers shall have paid all fees, charges and disbursements of counsel to the Administrative Agent to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrowers and the Administrative Agent).

(k) The Administrative Agent shall have received all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the USA PATRIOT Act.

(l) No material changes in governmental regulations or policies affecting any Loan Party or any Credit Party shall have occurred prior to the Closing Date.

4.02 Conditions to all Credit Extensions. The obligation of each Lender to honor any Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Committed Loans to the other Type, or a continuation of LIBO Rate Loans) is subject to the following conditions precedent:

(a) The representations and warranties of each other Loan Party contained in Article V or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, and except that for purposes of this Section 4.02, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01.

(b) Except for good faith disputes between a Borrower and its landlords, no Default or Event of Default shall have occurred and be continuing, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) The Administrative Agent and, if applicable, the L/C Issuer or the Swing Line Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

(d) No injunction, writ, restraining order, or other order of any nature prohibiting, directly or indirectly, the extending of such credit shall have been issued and remain in force by any Governmental Authority against any Borrower, any Agent, any Lender or any of their Affiliate.

(e) The amount of any requested Loan or Letter of Credit shall not exceed Availability at such time.

Each Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Committed Loans to the other Type or a continuation of LIBO Rate Loans) submitted by the Lead Borrower shall be deemed to be a representation and warranty by the Borrowers that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension. The conditions set forth in this Section 4.02 are for the sole benefit of the Credit Parties, but until the Required Lenders otherwise direct the Administrative Agent to cease making Committed Loans, the Lenders will fund their Applicable Percentage of all Committed Loans and L/C Advances and participate in all Swing Line Loans and Letters of Credit whenever made or issued, which are requested by the Lead Borrower and which, notwithstanding the failure of the Loan Parties to comply with the provisions of this Article IV, are agreed to by the Administrative Agent; provided, however, the making of any such Loans or the issuance of any Letters of Credit shall not be deemed a modification or waiver by any Credit Party of the provisions of this Article IV on any future occasion or a waiver of any rights or the Credit Parties as a result of any such failure to comply.

ARTICLE V.
REPRESENTATIONS AND WARRANTIES

To induce the Credit Parties to enter into this Agreement and to make Loans and to issue Letters of Credit hereunder, each Loan Party represents and warrants to the Administrative Agent and the other Credit Parties that:

5.01 Existence, Qualification and Power. Each Loan Party and each Subsidiary thereof: (a) is a corporation, limited liability company, partnership or limited partnership, duly organized or formed, validly existing and, where applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization; (b) has all requisite power and authority and all requisite governmental licenses, permits, authorizations, consents and approvals to (i) own or lease its assets and carry on its business as currently conducted or as proposed to be conducted and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party; and (c) is duly qualified and is licensed and, where applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of

its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. Schedule 5.01 annexed hereto sets forth, as of the Closing Date, each Loan Party's name as it appears in official filings in its state of incorporation or organization and the name under which each Loan Party conducts its business (if different), its state of incorporation or organization, organization type, organization number, if any, issued by its state of incorporation or organization, its federal employer identification number and the address of its chief executive office and principal place of business.

5.02 Authorization; No Contravention. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is, or is to be, a party has been duly authorized by all necessary corporate or other organizational action and does not and will not: (a) contravene the terms of any of such Person's Organization Documents; (b) conflict in any material respect with, or result in any breach, termination, or contravention of, or constitute a default under, or require any payment to be made under (i) any Material Contract or any Material Indebtedness to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries, (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject, or (iii) any governmental licenses, permits, authorizations, consents and approvals; except, in each case referred to in this clause (b), to the extent that any such conflict, breach, termination, contravention or default could not reasonably be expected to have a Material Adverse Effect; (c) result in or require the creation of any Lien upon any asset of any Loan Party (other than Liens in favor of the Collateral Agent under the Security Documents); or (d) violate any Law.

5.03 Governmental Authorization; Other Consents. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, except for (a) the perfection or maintenance of the Liens created under the Security Documents (having the priority set forth in the Intercreditor Agreement), or (b) such as have been obtained or made and are in full force and effect.

5.04 Binding Effect. This Agreement has been, and each other Loan Document, when delivered, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

5.05 Financial Statements; No Material Adverse Effect.

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of the Lead Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period

covered thereby, except as otherwise expressly noted therein; and (iii) show all Material Indebtedness and other liabilities, direct or contingent, of the Lead Borrower and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

(b) The unaudited Consolidated balance sheet of the Lead Borrower and its Subsidiaries dated May, 2008, and the related Consolidated statements of income or operations and cash flows for the Fiscal Month ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present the financial condition of the Lead Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

(c) Since the date of the Audited Financial Statements, excluding the filing for bankruptcy and the implementation of the bankruptcy proceeding of Hoop, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

5.06 Litigation. Except as otherwise set forth in Schedule 5.06, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Loan Parties after due and diligent investigation, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or any of its Subsidiaries or against any of its properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.07 No Default. No Loan Party or any Subsidiary is in default under or with respect to, or party to, any Material Contract or any Material Indebtedness. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

5.08 Ownership of Property; Liens.

(a) Each of the Loan Parties and each Subsidiary thereof has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, free and clear of all Liens, other than Permitted Encumbrances, except for such defects in title and leasehold interests as could not, individually or in the aggregate, reasonably be expected to have a

Material Adverse Effect Each of the Loan Parties and each Subsidiary has good and marketable title to, valid leasehold interests in, or valid licenses to use, all personal property (including Intellectual Property) and assets material to the ordinary conduct of its business as currently conducted or as proposed to be conducted, free and clear of all Liens, other than Permitted Encumbrances, except for such defects in title, leasehold interests and licenses as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Schedule 5.08(b)(1) sets forth the address (including street address, county and state) of all Real Estate that is owned by the Loan Parties, together with a list of the holders of any mortgage or other Lien thereon as of the Closing Date. Each Loan Party and each of its Subsidiaries has good, marketable and insurable fee simple title to the real property owned by such Loan Party or such Subsidiary, free and clear of all Liens, other than Permitted Encumbrances, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Schedule 5.08(b)(2) sets forth the address (including street address, county and state) of all Leases of the Loan Parties, together with a list of the lessor and its contact information with respect to each such Lease as of the Closing Date. Each of such Leases is in full force and effect as of the Closing Date and the Loan Parties are not in default of the terms thereof, except for such defaults as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(c) Schedule 7.01 sets forth a complete and accurate list of all Liens on the property or assets of each Loan Party and each of its Subsidiaries, showing as of the date hereof the lienholder thereof and the property or assets of such Loan Party or such Subsidiary subject thereto. The property of each Loan Party and each of its Subsidiaries is subject to no Liens, other than Liens set forth on Schedule 7.01, and Permitted Encumbrances.

(d) Schedule 7.02 sets forth a complete and accurate list of all Investments held by any Loan Party or any Subsidiary of a Loan Party on the date hereof, showing as of the date hereof the amount, obligor or issuer and maturity, if any, thereof.

(e) Schedule 7.03 sets forth a complete and accurate list of all Indebtedness of each Loan Party or any Subsidiary of a Loan Party as of the Closing Date, showing as of the Closing Date the amount, obligor or issuer and maturity thereof. As of the Closing Date, after giving effect to the transactions contemplated hereby, the Loan Parties have no Indebtedness except for the Note Obligations, the Indebtedness set forth on Schedule 7.03 and Permitted Indebtedness.

5.09 Environmental Compliance.

(a) No Loan Party or any Subsidiary thereof (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability, except, in each case, as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Except as otherwise set forth in Schedule 5.09, to the knowledge of the Loan Parties, none of the properties currently or formerly owned or operated by any Loan Party or any Subsidiary thereof is listed or proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list or is adjacent to any such property; there are no and never have been any underground or above-ground storage tanks or any

surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed on any property currently owned or operated by any Loan Party or any Subsidiary thereof or, to the best of the knowledge of the Loan Parties, on any property formerly owned or operated by any Loan Party or Subsidiary thereof; there is no asbestos or asbestos-containing material on any property currently owned or operated by any Loan Party or Subsidiary thereof; and Hazardous Materials have not been released, discharged or disposed of on any property currently or formerly owned or operated by any Loan Party or any Subsidiary thereof.

(c) Except as otherwise set forth on Schedule 5,09, no Loan Party or any Subsidiary thereof is undertaking, and no Loan Party or any Subsidiary thereof has completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and all Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any property currently or formerly owned or operated by any Loan Party or any Subsidiary thereof have been disposed of in a manner not reasonably expected to result in material liability to any Loan Party or any Subsidiary thereof.

5.10 Insurance. The properties of the Loan Parties and their Subsidiaries are insured with financially sound and reputable insurance companies which are not Affiliates of the Loan Parties, in such amounts, with such deductibles and covering such risks (including, without limitation, workmen's compensation, public liability, business interruption and property damage insurance) as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Loan Parties or the applicable Subsidiary operates. Schedule 5.10 sets forth a description of all insurance maintained by or on behalf of the Loan Parties as of the Closing Date. Each insurance policy listed on Schedule 5.10 is in full force and effect and all premiums in respect thereof that are due and payable have been paid.

5.11 Taxes. The Loan Parties and their Subsidiaries have filed all Federal, state and other material tax returns and reports required to be filed, and have paid all Federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings being diligently conducted, for which adequate reserves have been provided in accordance with GAAP, as to which Taxes no Lien has been filed and which contest effectively suspends the collection of the contested obligation and the enforcement of any Lien securing such obligation. There is no proposed tax assessment against any Loan Party or any Subsidiary that would, if made, have a Material Adverse Effect. No Loan Party or any Subsidiary thereof is a party to any tax sharing agreement.

5.12 ERISA Compliance.

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state Laws. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable

determination letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and, to the best knowledge of the Lead Borrower, nothing has occurred which would prevent, or cause the loss of, such qualification. The Loan Parties and each ERISA Affiliate have made all required contributions to each Plan subject to Section 412 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Plan. No Lien imposed under the Code or ERISA exists or, to the knowledge of the Lead Borrower, is likely to arise on account of any Plan.

(b) There are no pending or, to the best knowledge of the Lead Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. To the best knowledge of the Lead Borrower, there has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) Except as could not reasonably be expected to have a Material Adverse Effect, individually or in the aggregate, (i) no ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability; (iii) neither any Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) neither any Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) neither any Loan Party nor any ERISA Affiliate has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA.

5.13 Subsidiaries; Equity Interests. The Loan Parties have no Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.13, which Schedule sets forth the legal name, jurisdiction of incorporation or formation and authorized Equity Interests of each such Subsidiary, listed by class, and setting forth the number and percentage of the outstanding Equity Interests of each such class owned directly or indirectly by the applicable Loan Party. All of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and non-assessable and are owned by a Loan Party (or a Subsidiary of a Loan Party) in the amounts specified on Part (a) of Schedule 5.13, free and clear of all Liens except for those created under the Security Documents and the Note Documents. No Loan Party or any of its respective Subsidiaries is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of any Loan Party's Subsidiaries' Equity Interests or any security convertible into or exchangeable for any such Equity Interests. The Loan Parties have no equity investments in any other corporation or entity other than those specifically disclosed in Part (b) of Schedule 5.13. Part (c) of Schedule 5.13 is a complete and accurate description of the authorized Equity Interests of each Loan Party, by class, and a description of the number of shares of each such class that are issued and outstanding. All of the outstanding Equity Interests in the Loan Parties have been validly issued, and are fully paid and non-assessable and, other than with respect to the Lead Borrower, are owned in the amounts specified on Part (c) of

Schedule 5.13, free and clear of all Liens except for those created under the Security Documents and the Note Documents. Except as set forth in Schedule 5.13, there are no subscriptions, options, warrants, or calls relating to any shares of any Loan Party's Equity Interests, including any right of conversion or exchange under any outstanding security or other instrument. No Loan Party is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of its Equity Interests or any security convertible into or exchangeable for any of its Equity Interests. The copies of the Organization Documents of each Loan Party and each amendment thereto provided pursuant to Section 4.01 are true and correct copies of each such document, each of which is valid and in full force and effect.

5.14 Margin Regulations; Investment Company Act.

(a) No Loan Party is engaged or will be engaged, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock. None of the proceeds of the Credit Extensions shall be used directly or indirectly for the purpose of purchasing or carrying any margin stock, for the purpose of reducing or retiring any Indebtedness that was originally incurred to purchase or carry any margin stock or for any other purpose that might cause any of the Credit Extensions to be considered a "purpose credit" within the meaning of Regulations T, U, or X issued by the FRB.

(b) None of the Loan Parties, any Person Controlling any Loan Party, or any Subsidiary is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

5.15 Disclosure. Each Loan Party has disclosed to the Administrative Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other information furnished (whether in writing or orally) by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished), contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

5.16 Compliance with Laws. Each of the Loan Parties and each Subsidiary is in compliance in all material respects with the requirements of all applicable Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

5.17 Intellectual Property; Licenses, Etc. Each Loan Party owns, or holds licenses in, all Intellectual Property, trade names, patent rights and other authorizations that are necessary to the conduct of its business as currently conducted and as proposed to be conducted, and attached hereto as Schedule 5.17 is a true, correct, and complete listing of all material patents, patent applications, trademarks, trademark applications, copyrights, and copyright registrations as to which a Loan Party is the owner or is an exclusive licensee. To the best knowledge of the Lead Borrower after reasonable inquiry, (i) there is no action, proceeding, claim or complaint pending or, threatened in writing to be brought against any Loan Party which might jeopardize any of such Person's interest in any of the foregoing licenses, patents, copyrights, trademarks, trade names, designs or applications, except those which are not, in the aggregate, material to the Loan Parties' financial condition, results of operations or business and (ii) no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by any Loan Party or any Subsidiary infringes upon any rights held by any other Person.

5.18 Labor Matters. There are no strikes, lockouts, slowdowns or other material labor disputes against any Loan Party or any Subsidiary thereof pending or, to the knowledge of any Loan Party, threatened which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Except as set forth on Part (a) of Schedule 5.18, 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, except for any noncompliance which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Except as set forth on Part (b) of Schedule 5.18, no Loan Party or any of its Subsidiaries has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act or similar state Law. All material payments due from any Loan Party and its Subsidiaries, or for which any claim may be made against any Loan Party, on account of wages and employee health and welfare insurance and other benefits, have been paid or properly accrued in accordance with GAAP as a liability on the books of such Loan Party. Except as set forth on Part (c) of Schedule 5.18, no Loan Party or any Subsidiary is a party to or bound by (i) any collective bargaining agreement or (ii) any management agreement, employment agreement, bonus, restricted stock, stock option, or stock appreciation plan or agreement or any similar plan, agreement or arrangement which, in each case in this clause (ii), imposes commitments on such Loan Party or its Subsidiary in excess of $3,000,000 per year. 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 Subsidiary has made a pending demand for recognition. There are no complaints, unfair labor practice charges, grievances, arbitrations, unfair employment practices charges or any other claims or complaints against any Loan Party or any Subsidiary pending or, to the knowledge of 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 Subsidiaries which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. The consummation of the transactions contemplated by the Loan Documents will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Loan Party or any of its Subsidiaries is bound. Each Loan Party and its Subsidiaries are in material compliance with all requirements pursuant to employment standards, labor

relations, health and safety, workers compensation and human rights laws, immigration laws and other applicable employment legislation. To the knowledge of the Loan Parties, no officer or director of any Loan Party who is party to an employment agreement with such Loan Party is in violation of any term of any employment contract or proprietary information agreement with such Loan Party; and to the knowledge of the Loan Parties, the execution of the employment agreements and the continued employment by the Loan Parties of the such persons, will not result in any such violation.

5.19 Security Documents. The Security Documents are effective to create in favor of the Collateral Agent a legal, valid and enforceable security interest in the Collateral, and the Security Documents constitute, or will upon the filing of financing statements and/or the obtaining of "control", in each case with respect to the relevant Collateral as required under the applicable UCC, the creation of a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties thereunder in such Collateral, in each case prior and superior in right to any other Person, except for (a) with respect to the Note Purchasers Priority Collateral only, Liens securing the obligations of the Borrowers with respect to the Note Purchase Facility, and (b) other Permitted Encumbrances having priority under applicable Law.

5.20 Solvency. After giving effect to the transactions contemplated by this Agreement, and before and after giving effect to each Credit Extension, the Loan Parties, on a Consolidated basis, are Solvent. No transfer of property has been or will be made by any Loan Party and no obligation has been or will be incurred by any Loan Party in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of any Loan Party.

5.21 Deposit Accounts; Credit Card Arrangements.

(a) Annexed hereto as Schedule 5.21(a) is a list of all DDAs maintained by the Loan Parties as of the Closing Date, which Schedule includes, with respect to each DDA (i) the name and address of the depository; (ii) the account number(s) maintained with such depository; (iii) a contact person at such depository, and (iv) the identification of each Blocked Account Bank.

(b) Annexed hereto as Schedule 5.21(b) is a list describing all arrangements as of the Closing Date to which any Loan Party is a party with respect to the processing and/or payment to such Loan Party of the proceeds of any credit card charges for sales made by such Loan Party.

5.22 Brokers. No broker or finder brought about the obtaining, making or closing of the Loans or transactions contemplated by the Loan Documents, and no Loan Party or Affiliate thereof has any obligation to any Person in respect of any finder's or brokerage fees in connection therewith. Each Loan Party hereby jointly and severally indemnifies each Credit Party against, and agrees that such Person will hold each such Credit Party harmless from, any claim, demand or liability, including reasonable attorneys' fees, for any broker's, finder's or placement fee or commission incurred by such indemnifying party or the Lead Borrower or its Affiliates or a representative of such Person.

5.23 Customer and Trade Relations. Except for matters which, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, there exists no actual or, to the knowledge of any Loan Party, threatened, termination or cancellation of, or any material adverse modification or change in, the business relationship of any Loan Party with any supplier material to its operations.

5.24 Material Contracts. No Loan Party is in default under any Material Contract to which such Person is a party or by which such Person is bound, the effect of which default is to cause, or to permit the other party(ies) to such Material Contract to cause, with the giving of notice if required, such Material Contract to be terminated. Set forth on Schedule 5.24 is a description of all Material Contracts of the Loan Parties, showing the parties and principal subject matter thereof and amendments and modifications thereto; provided, however, that the Lead Borrower may amend Schedule 5.24 to add additional Material Contracts so long as such amendment occurs by written notice to the Administrative Agent not less than 5 days after the date on which such Loan Party enters into such Material Contract after the Closing Date. Except for matters which, either individually or in the aggregate, could not reasonably be expected to either result in a Material Adverse Effect or expose the Loan Parties to liabilities greater than $5,000,000, each Material Contract (other than those that have expired at the end of their normal terms) (a) is in full force and effect and is binding upon and enforceable against the applicable Loan Party or its Subsidiaries and, to the best of the Lead Borrower's knowledge, each other Person that is a party thereto in accordance with its terms, (b) is not in default due to the action or inaction of any Loan Party or its Subsidiaries and (c) the consummation of the financing arrangements contemplated hereunder, will not constitute or create a default or create a right of termination under any Material Contract.

5.25 Casualty. Neither the businesses nor the properties of any Loan Party or any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.26 Anti-Terrorism Laws.

(a) General. To the knowledge of the Loan Parties, after reasonable inquiry, none of the Loan Parties nor any direct or indirect investor in any Loan Party (other than the Lenders or any direct or indirect investors in the Lenders), is in violation of any Anti-Terrorism Law or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(b) Executive Order No. 13224. To the knowledge of the Loan Parties, after reasonable inquiry, none of the Loan Parties nor any direct or indirect investor in any Loan Party (other than the Lenders or any direct or indirect investors in the Lenders), or their respective agents acting or benefiting in any capacity in connection with the transactions hereunder, is any of the following (each a "Blocked Person"):

(i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224;

(ii) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224;

(iii) a Person or entity with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) a Person or entity that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order No. 13224;

(v) a Person or entity that is named as a "specially designated national" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list; or

(vi) a person or entity who is affiliated or associated with a person or entity listed above.

(c) To the best knowledge of the Loan Parties, after reasonable inquiry, none of the Loan Parties nor, to the knowledge of the Loan Parties, any of its or their agents acting in any capacity in connection with the transactions hereunder (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order No. 13224.

ARTICLE VI.
AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, the Loan Parties shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, and 6.03) cause each Subsidiary to:

6.01 Financial Statements. Deliver to the Administrative Agent, in form and detail satisfactory to the Administrative Agent:

(a) as soon as available, but in any event within ninety (90) days after the end of each Fiscal Year of the Lead Borrower (commencing with the Fiscal Year ending in January 2009), a Consolidated and consolidating balance sheet of the Lead Borrower and its Subsidiaries as at the end of such Fiscal Year, the related Consolidated and consolidating statements of income or operations and Shareholders' Equity and the related Consolidated statement of cash flows (with consolidating reconciliation of cash from the balance sheet to the statement of cash flows that is reasonably acceptable to the Administrative Agent) for such Fiscal Year, setting forth in each case, but only with

respect to the Consolidated statements, in comparative form the figures for (i) the previous Fiscal Year and (ii) such period set forth in the projections delivered pursuant to Section 6.02(c) hereof, all in reasonable detail and prepared in accordance with GAAP, such Consolidated and (where relevant) consolidating statements to be audited and accompanied by (i) a report and unqualified opinion of BDO Seidman, LLP or another public accounting firm of nationally recognized standing reasonably acceptable to the Administrative Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit, (ii) an opinion of such public accounting firm independently assessing the Loan Parties' internal controls over financial reporting in accordance with Item 308 of SEC Regulation S-K, PCAOB Auditing Standard No. 2, and Section 404 of Sarbanes-Oxley expressing a conclusion that contains no statement that there is a material weakness in such internal controls, except for such material weaknesses as to which the Required Lenders do not object and (iii) as to statements not covered by an audit, certification by a Responsible Officer of the Lead Borrower to the effect that such statements are fairly stated in all material respects when considered in relation to the Consolidated and consolidating financial statements of the Lead Borrower and its Subsidiaries;

(b) as soon as available, but in any event within thirty (30) days after the end of each Fiscal Month of each Fiscal Year of the Lead Borrower (except with respect to the last Fiscal Month of each Fiscal Quarter, with respect to which the applicable period for delivery shall be forty-five (45) days rather than thirty (30) days), a Consolidated and consolidating balance sheet of the Lead Borrower and its Subsidiaries as at the end of such Fiscal Month, the related Consolidated and consolidating statements of income or operations (and, with respect to the last Fiscal Month of each Fiscal Quarter, Shareholders' Equity) and the related Consolidated statement of cash flows (with consolidating reconciliation of cash from the balance sheet to the statement of cash flows that is reasonably acceptable to the Administrative Agent) for such Fiscal Month, and for the portion of the Fiscal Year then ended, setting forth in each case, but only with respect to the Consolidated statements, in comparative form the figures for (i) such period set forth in the projections delivered pursuant to Section 6.01(c) hereof, (ii) the corresponding Fiscal Month of the previous Fiscal Year and (iii) the corresponding portion of the previous Fiscal Year, all in reasonable detail, such Consolidated and (where relevant) consolidating statements to be certified by a Responsible Officer of the Lead Borrower as fairly presenting the financial condition, results of operations and cash flows of the Lead Borrower and its Subsidiaries as of the end of such Fiscal Month in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes;

(c) as soon as available, but in any event (i) on or before January 31st of each Fiscal Year of the Lead Borrower, a preliminary month-by-month business plan for the following Fiscal Year prepared by management of the Lead Borrower and reviewed by the board of directors of the Lead Borrower, and (ii) on or before March 1st of each Fiscal Year of the Lead Borrower, a final month-by-month business plan for such Fiscal Year prepared by management of the Lead Borrower (which final business plan shall be approved by the board of directors of the Lead Borrower by March 31st of such Fiscal

Year), in each case the form of which shall be substantially similar to the business plan for the Fiscal Year ended on or about January 31, 2009 and the substance of which shall be reasonably satisfactory to the Administrative Agent, for such Fiscal Year; provided that, if the Lead Borrower delivers a business plan that is not reasonably satisfactory to the Administrative Agent, but that otherwise complies with this Section 6.01(c), this Section 6.01(c) shall be deemed to be satisfied to the extent that the Lead Borrower delivers a business plan reasonably satisfactory to the Administrative Agent on or before March 31 of such Fiscal Year.

6.02 Certificates; Other Information. Deliver to the Administrative Agent, in form and detail satisfactory to the Administrative Agent:

(a) concurrently with the delivery of the financial statements referred to in Section 6.01(a), a certificate of its public accounting firm certifying such financial statements;

(b) concurrently with the delivery of the financial statements referred to in Section 6.01(b), (i) a duly completed Compliance Certificate signed by a Responsible Officer of the Lead Borrower, which shall include (A) a certification as to the amount, if any, of rent under any Leases, and any obligations and liabilities with respect to Taxes, that have not been timely paid, (B) a certification as to the receipt of notice, if any, as to any obligations or liabilities with respect to utilities and/or insurance premiums that have not been timely paid, and (C) a certification as to the acquisition, if any, of any additional Intellectual Property acquired since the date of the last similar certification, and (ii) a copy of management's analysis with respect to such financial statements, which analysis shall be consistent with the analysis previously provided by the Lead Borrower under the Existing Credit Agreement. In the event of any change in generally accepted accounting principles used in the preparation of such financial statements, the Lead Borrower shall also provide a statement of reconciliation conforming such financial statements to GAAP;

(c) on the first Wednesday of each Fiscal Month (or, if such day is not a Business Day, on the next succeeding Business Day), a certificate in the form of Exhibit G (a "Borrowing Base Certificate") showing the Borrowing Base as of the close of business as of the last day of the immediately preceding Fiscal Month, each Borrowing Base Certificate to be certified as complete and correct by a Responsible Officer of the Lead Borrower; provided that (i) if Uncapped Excess Availability at any time is less than $25,000,000 or (ii) an Event of Default has occurred and is continuing, such Borrowing Base Certificate shall be delivered on Wednesday of each week (or, if Wednesday is not a Business Day, on the next succeeding Business Day), as of the close of business on the immediately preceding Saturday;

(d) concurrently with the filing thereof (or upon the request of the Administrative Agent or its auditors, appraisers, accountants, consultants or other representatives), copies of each of the Lead Borrower's federal income tax returns, and any amendments thereto;

(e) promptly upon receipt, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Loan Party by its public accounting firm in connection with the accounts or books of the Loan Parties or any Subsidiary, or any audit of any of them, in each case to the extent permitted by the policies of its public accounting firm at such time;

(f) promptly after the same are available, copies of each annual report, proxy or financial statement, or other document, report or communication sent to the stockholders of the Loan Parties, and copies of all annual, regular, periodic and special reports and registration statements which any Loan Party files with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934 or with any national securities exchange, and in any case not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(g) the financial and collateral reports described on Schedule 6.02 hereto, at the times set forth in such Schedule;

(h) promptly after the furnishing thereof, (i) copies of any statement or report furnished to any holder of debt securities of any Loan Party or any Subsidiary thereof pursuant to the terms of any indenture, loan or credit or similar agreement and (ii) copies of all notices and other communications received or delivered by a Loan Party with respect to the Note Documents (i) which indicate a breach or default of any such document, or (ii) which constitute a notice under Section 7.5 (Notices) of the Note Purchase Agreement (to the extent not otherwise already provided to the Administrative Agent), in each case not otherwise required to be furnished to the Lenders pursuant to Section 6.01 or any other clause of this Section 6.02;

(i) as soon as available, but in any event within 30 days after the end of each Fiscal Year of the Loan Parties (or upon the request of the Administrative Agent or its auditors, appraisers, accountants, consultants or other representatives), (i) a certificate executed by an authorized officer of the Lead Borrower certifying the existence and adequacy of the property and casualty insurance program carried by the Loan Parties and their Subsidiaries, and (ii) a written summary of said program identifying the name of each insurer, the number of each policy and expiration date of each policy, the amounts and types of each coverage, and a list of exclusions and deductibles for each policy.

(j) promptly, and in any event within five Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence received from any Governmental Authority (including, without limitation, the SEC (or comparable agency in any applicable non-U.S. jurisdiction)) concerning any proceeding with, or investigation or possible investigation or other inquiry by such Governmental Authority regarding financial or other operational results of any Loan Party or any Subsidiary thereof or any other matter which, if adversely determined, could reasonably be expected to have a Material Adverse Effect; and

(k) promptly, such additional information regarding the business affairs, financial condition or operations of any Loan Party or any Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request.

Financial statements required to be delivered pursuant to Sections 6.01(a), 6.01(b) or 6.02(f) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Lead Borrower posts such documents, or provides a link thereto on the Lead Borrower's website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Lead Borrower's behalf on EDGAR or another Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) the Lead Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests the Lead Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) the Lead Borrower shall notify the Administrative Agent and each Lender (by telecopier or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Notwithstanding anything contained herein, in every instance, the Lead Borrower shall be required to provide paper copies of the Compliance Certificates required by Section 6.02(b) to the Administrative Agent. 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.

6.03 Notices. Promptly notify the Administrative Agent:

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

(b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including (i) breach or non-performance of, any default under, or termination of, a Material Contract or with respect to Material Indebtedness of any Loan Party or any Subsidiary thereof; (ii) any dispute, litigation, investigation, proceeding or suspension between any Loan Party or any Subsidiary thereof and any Governmental Authority; or (iii) the commencement of, or any material development in, any litigation or any administrative or arbitration proceeding affecting any Loan Party or any Subsidiary thereof, including pursuant to any applicable Environmental Laws;

(c) of any undischarged or unpaid judgments or decrees in excess of $3,000,000, individually or in the aggregate;

(d) of the occurrence of any ERISA Event;

(e) of any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary thereof;

(f) of any change in any Loan Party's senior executive officers;

(g) of the discharge by any Loan Party of its present public accounting firm or any withdrawal or resignation by such public accounting firm;

(h) of any collective bargaining agreement or other labor contract to which a Loan Party becomes a party, the application for the certification of a collective bargaining agent, or any labor negotiations or strikes;

(i) of the filing of any Lien for unpaid Taxes against any Loan Party;

(j) of any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any interest in a material portion of the Collateral under power of eminent domain or by condemnation or similar proceeding or if any material portion of the Collateral is damaged or destroyed; and

(k) of any failure by any Loan Party to pay rent at (i) ten percent (10%) or more of such Loan Party's locations or (ii) any of such Loan Party's locations if such failure continues for more than ten (10) days following the day on which such rent first came due and such failure would be reasonably likely to result in a Material Adverse Effect.

Each notice pursuant to this Section 6.03 shall be accompanied by a statement of a Responsible Officer of the Lead Borrower setting forth details of the occurrence referred to therein and stating what action the Lead Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

6.04 Payment of Obligations. Pay and discharge in full as the same shall become due and payable, all its obligations and liabilities, including (a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, (b) all lawful claims (including, without limitation, claims for labor, materials and supplies and claims of landlords, warehousemen, customs brokers, and carriers) which, if unpaid, would by law become a Lien upon its property (other than a Permitted Encumbrance), and (c) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness, except, in each case, where (a) the validity or amount thereof (other than payroll taxes or taxes that are the subject of a United States federal tax lien) is being contested in good faith by appropriate proceedings diligently conducted, (b) such Loan Party has set aside on its books adequate reserves with respect thereto in accordance with GAAP, (c) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation, and (d) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect. The Lead Borrower will, upon request, furnish the Collateral Agent with proof satisfactory to the Collateral Agent indicating that the Loan Parties and their Subsidiaries have made the payments or deposits described in clause (a) above. Each Loan Party shall, and shall cause each of its Subsidiaries to, pay in conformity with its customary practice all accounts payable incident to the operations of

such Person not referred to in this Section 6.04, above. Nothing contained herein shall be deemed to limit the rights of the Agents with respect to determining Reserves pursuant to this Agreement.

6.05 Preservation of Existence, Etc.. Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization or formation except in a transaction permitted by Section 7.04 or 7.05.

6.06 Maintenance of Properties.

(a) Keep its properties in such repair, working order and condition, and shall from time to time make such repairs, replacements, additions and improvements thereto, as are reasonably necessary for the efficient operation of its business and shall comply at all times in all material respects with all material franchises, licenses and leases to which it is party so as to prevent any loss or forfeiture thereof or thereunder, except where (i) compliance is at the time being contested in good faith by appropriate proceedings and (ii) failure to comply with the provisions being contested has not resulted, and which, in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(b) Take all reasonable actions to possess and maintain all Intellectual Property material to the conduct of their respective businesses and own all right, title and interest in and to, or have a valid license for, all such Intellectual Property. No Loan Party nor any of its Subsidiaries shall take any action, or fail to take any action, that could reasonably be expected to (i) result in the invalidity, abandonment, misuse, lapse, or unenforceability of Intellectual Property which is material to the conduct of the business of the Loan Parties or (ii) knowingly infringe upon or misappropriate any rights of other Persons.

(c) Do all things reasonably necessary in order to comply with all Environmental Laws at any Real Property or otherwise in connection with their operations noncompliance with which could reasonably be expected to cause a Material Adverse Effect, and obtain all permits and other governmental authorizations for their operations under applicable Environmental Laws other than such permits and other authorizations the failure of which to obtain could not, individually or in the aggregate, reasonably be expected to cause a Material Adverse Effect.

6.07 Maintenance of Insurance.

(a) Maintain with financially sound and reputable insurance companies reasonably acceptable to the Administrative Agent and not Affiliates of the Loan Parties, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business and operating in the same or similar locations or as is required by applicable Law, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons and as are reasonably acceptable to the Administrative Agent.

(b) Fire and extended coverage policies maintained with respect to any Collateral shall be endorsed or otherwise amended to include (i) a non-contributing

mortgage clause (regarding improvements to real property) and lenders' loss payable clause (regarding personal property), in form and substance satisfactory to the Collateral Agent, which endorsements or amendments shall provide that the insurer shall pay all proceeds otherwise payable to the Loan Parties under the policies directly to the Collateral Agent, (ii) a provision to the effect that none of the Loan Parties, Credit Parties or any other Person shall be a co-insurer and (iii) such other provisions as the Collateral Agent may reasonably require from time to time to protect the interests of the Credit Parties. Commercial general liability policies shall be endorsed to name the Collateral Agent as an additional insured. Business

interruption policies shall name the Collateral Agent as a loss payee and shall be endorsed or amended to include (i) a provision that, from and after the Closing Date, the insurer shall pay all proceeds otherwise payable to the Loan Parties under the policies directly to the Collateral Agent, (ii) a provision to the effect that none of the Loan Parties, the Administrative Agent, the Collateral Agent or any other party shall be a co-insurer and (iii) such other provisions as the Collateral Agent may reasonably require from time to time to protect the interests of the Credit Parties. Each such policy referred to in this Section 6.07(b) shall also provide that it shall not be canceled, modified or not renewed (i) by reason of nonpayment of premium, except upon not less than ten (10) days' prior written notice thereof by the insurer to the Collateral Agent (giving the Collateral Agent the right to cure defaults in the payment of premiums) or (ii) for any other reason, except upon not less than thirty (30) days' prior written notice thereof by the insurer to the Collateral Agent. The Lead Borrower shall deliver to the Collateral 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 Collateral Agent, including an insurance binder) together with evidence satisfactory to the Collateral Agent of payment of the premium therefor.

(c) None of the Credit Parties, or their agents or employees shall be liable for any loss or damage insured by the insurance policies required to be maintained under this Section 6.07. Each Loan Party shall look solely to its insurance companies or any other parties other than the Credit Parties for the recovery of such loss or damage and such insurance companies shall have no rights of subrogation against any Credit Party or its agents or employees. If, however, the insurance policies do not provide waiver of subrogation rights against such parties, as required above, then the Loan Parties hereby agree, to the extent permitted by law, to waive their right of recovery, if any, against the Credit Parties and their agents and employees. The designation of any form, type or amount of insurance coverage by the any Credit Party under this Section 6.07 shall in no event be deemed a representation, warranty or advice by such Credit Party that such insurance is adequate for the purposes of the business of the Loan Parties or the protection of their properties.

(d) Permit any representatives that are designated by the Collateral Agent to inspect the insurance policies maintained by or on behalf of the Loan Parties and to inspect books and records related thereto and any properties covered thereby. The Loan Parties shall pay the reasonable fees and expenses of any representatives retained by the Collateral Agent to conduct any such inspection.

6.08 Compliance with Laws. Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves have been set aside and maintained by the Loan Parties in accordance with GAAP; (b) such contest effectively suspends enforcement of the contested Laws, and (c) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

6.09 Books and Records; Accountants.

(a) (i) Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Loan Parties or such Subsidiary, as the case may be; and (ii) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over the Loan Parties or such Subsidiary, as the case may be.

(b) At all times retain BDO Seidman, LLP or another public accounting firm which is reasonably satisfactory to the Administrative Agent and instruct such public accounting firm in writing to cooperate with, and be available to, the Administrative Agent or its representatives to discuss the Loan Parties' financial performance, financial condition, operating results, controls, and such other matters, within the scope of the retention of such public accounting firm, as may be raised by the Administrative Agent; provided that the Lead Borrower shall be entitled to participate in any such meetings or discussions. The Lead Borrower hereby irrevocably authorizes and directs all auditors, accountants, or other third parties to deliver to the Administrative Agent, at the Borrowers' expense, copies of the Borrowers' financial statements, papers related thereto, and other accounting records of any nature in their possession, and to disclose to the Administrative Agent any information they may have regarding the Collateral or the financial condition of the Borrowers, in each case to the extent permitted by the policies of such auditors, accountants or other third parties at such time; provided that the Lead Borrower shall be entitled to be provided with copies of any such financial statements, papers, accounting records or disclosures contemporaneously therewith.

6.10 Inspection Rights.

(a) Permit representatives and independent contractors of the Administrative Agent to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and public accounting firm, all at the expense of the Loan Parties and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Lead Borrower; provided, however, that when an Event of Default has occurred and is continuing, the Administrative Agent (or any of its representatives or independent

contractors) may do any of the foregoing at the expense of the Loan Parties at any time during normal business hours and without advance notice.

(b) Upon the request of the Administrative Agent after reasonable prior notice, permit the Administrative Agent or professionals (including investment bankers, consultants, accountants, lawyers and appraisers) retained by the Administrative Agent to conduct appraisals, commercial finance examinations and other evaluations, including, without limitation, of (i) the Lead Borrower's practices in the computation of the Borrowing Base and (ii) the assets included in the Borrowing Base and related financial information such as, but not limited to, sales, gross margins, payables, accruals and reserves. Subject to the following sentences, the Loan Parties shall pay the fees and expenses of the Administrative Agent or such professionals with respect to such evaluations and appraisals as provided below. Without limiting the foregoing, the Loan Parties acknowledge that the Administrative Agent may, in its discretion, undertake up to one (1) real estate appraisal and up to two (2) inventory appraisals and two (2) commercial finance examinations each Fiscal Year at the Loan Parties' expense; provided that, in the event that Excess Availability is at any time less than $35,000,000, the Administrative Agent may, in its discretion, undertake up to three (3) inventory appraisals and three (3) commercial finance examinations each Fiscal Year at the Loan Parties' expense. Notwithstanding anything to the contrary contained herein, the Administrative

Agent may cause additional inventory appraisals and commercial finance examinations to be undertaken (i) as it in its reasonable discretion deems necessary or appropriate, at its own expense, or (ii) if required by applicable Law or if a Default or Event of Default shall have occurred and be continuing, at the expense of the Loan Parties.

6.11 Use of Proceeds. Use the proceeds of the Credit Extensions (a) to refinance the Indebtedness of the Lead Borrower and its Subsidiaries under the Existing Credit Agreement and the L/C Demand Facility, (b) to finance transaction fees and expenses related hereto, (c) to finance the acquisition of working capital assets of the Borrowers, including the purchase of Inventory and Equipment, in each case in the ordinary course of business, (d) to finance Capital Expenditures of the Borrowers, (e) to pay certain obligations owed by the Lead Borrower to third parties as a result of the Hoop bankruptcy in an aggregate amount not to exceed $13,400,000 (net of receipts from Disney), as more fully described on Schedule 6.11 attached hereto, and (f) for general corporate purposes of the Loan Parties, in each case to the extent expressly permitted under applicable Law and the Loan Documents.

6.12 Additional Loan Parties. Notify the Administrative Agent at the time that any Person becomes a Subsidiary, and promptly thereafter (and in any event within fifteen (15) days), cause any such Person (a) which is not a CFC, to (i) become a Loan Party by executing and delivering to the Administrative Agent a Joinder to this Agreement or a counterpart of the Facility Guaranty or such other document as the Administrative Agent shall deem appropriate for such purpose, (ii) grant a Lien to the Collateral Agent on such Person's assets to secure the Obligations, and (iii) deliver to the Administrative Agent documents of the types referred to in clauses (iii) and (iv) of Section 4.01(a) and favorable opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in clause (a)), and (b) if any Equity Interests or Indebtedness of such

Person are owned by or on behalf of any Loan Party, to pledge such Equity Interests and promissory notes evidencing such Indebtedness, in each case in form, content and scope reasonably satisfactory to the Administrative Agent. In no event shall compliance with this Section 6.12 waive or be deemed a waiver or Consent to any transaction giving rise to the need to comply with this Section 6.12 if such transaction was not otherwise expressly permitted by this Agreement or constitute or be deemed to constitute, with respect to any Subsidiary, an approval of such Person as a Borrower or permit the inclusion of any acquired assets in the computation of the Borrowing Base.

6.13 Cash Management.

(a) On or prior to the Closing Date:

(i) deliver to the Administrative Agent copies of notifications (each, a "Credit Card Notification") substantially in the form attached hereto as Exhibit H which have been executed on behalf of such Loan Party and delivered to such Loan Party's credit card clearinghouses and processors listed on Schedule 5.21(b); and

(ii) enter into a blocked account agreement (each, a "Blocked Account Agreement") satisfactory in form and substance to the Agents with each Blocked Account Bank (collectively, the "Blocked Accounts").

The Administrative Agent hereby acknowledges and agrees that, upon delivery of the Credit Card Notifications and Blocked Account Agreements described on Schedule 6.13, the requirements of this Section 6.13(a), and the requirements set forth below in each of Sections 6.13(b) and 6.13(c), shall be deemed to have been satisfied.

(b) (i) Each Credit Card Notification shall require the ACH or wire transfer no less frequently than daily (and whether or not there are then any outstanding Obligations) to a Blocked Account of all payments due from credit card processors, and (ii) the Borrowers shall cause each depository institution listed on Schedule 5.21(a) to cause the ACH or wire transfer no less frequently than daily (and whether or not there are then any outstanding Obligations) to a Blocked Account of all amounts on deposit in each DDA.

(c) Each Blocked Account Agreement shall require, after the occurrence and during the continuance of a Cash Dominion Event, the ACH or wire transfer no less frequently than daily (and whether or not there are then any outstanding Obligations) to the concentration account maintained by the Collateral Agent at Wells Fargo Bank (the "Concentration Account"), of all cash receipts and collections, including, without limitation, the following:

(i) all available cash receipts from the sale of Inventory and other assets;

(ii) all proceeds of collections of Accounts;

(iii) all Net Proceeds, and all other cash payments received by a Loan Party from any Person or from any source or on account of any sale or other transaction or event;

(iv) the then contents of each DDA (net of any minimum balance, not to exceed $2,500.00, as may be required to be kept in the subject DDA by the depository institution at which such DDA is maintained);

(v) the then entire ledger balance of each Blocked Account (net of any minimum balance, not to exceed $2,500.00, as may be required to be kept in the subject Blocked Account by the Blocked Account Bank); and

(vi) the proceeds of all credit card charges.

Prior to the exercise of remedies provided for in Section 8.02 (or before the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), subject to the terms of the

Intercreditor Agreement, all amounts received in the Concentration Account from any source, including the Blocked Account Banks, shall be applied by the Administrative Agent in the order set forth in Section 2.05(e).

(d) Concurrently with the delivery of the financial statements referred to in Section 6.01(b), the Loan Parties shall provide the Collateral Agent with an accounting of the contents of the Blocked Accounts and the Concentration Account, which shall identify, to the reasonable satisfaction of the Collateral Agent, the proceeds from the Note Purchasers Priority Collateral which were deposited into a Blocked Account and swept to the Concentration Account. In addition, the Loan Parties shall provide the Collateral Agent (i) with written notice of any Restricted Payment or other intercompany transfer to be made to any Loan Party by any Subsidiary located outside of the United States, in each case as otherwise permitted pursuant to Sections 7.06 or 7.18, respectively, of this Agreement, no less than five (5) days prior to the receipt thereof and (ii) with written confirmation (which shall include a fed reference number, if applicable) on the date of the receipt of any such Restricted Payment or other intercompany transfer. Upon the receipt of (x) the contents of the Blocked Accounts, and (y) such accounting and/or written confirmation, the Collateral Agent agrees to promptly remit to the agent under the Note Purchase Facility the proceeds of the Note Purchasers Priority Collateral received by the Collateral Agent.

(e) The Concentration Account shall at all times be under the sole dominion and control of the Collateral Agent. The Loan Parties hereby acknowledge and agree that (i) the Loan Parties have no right of withdrawal from the Concentration Account, (ii) the funds on deposit in the Concentration Account shall at all times be collateral security for all of the Obligations and (iii) the funds on deposit in the Concentration Account shall be applied as provided in this Agreement.

(f) In the event that, after the occurrence and during the continuance of a Cash Dominion Event, any Loan Party receives or otherwise has dominion and control of

any proceeds or collections described in Section 6.13(c), such proceeds and collections shall be held in trust by such Loan Party for the Collateral Agent, shall not be commingled with any of such Loan Party's other funds or deposited in any account of such Loan Party and shall, not later than the Business Day after receipt thereof, be deposited into the Concentration Account or dealt with in such other fashion as such Loan Party may be instructed by the Collateral Agent.

(g) Upon the request of the Administrative Agent, the Loan Parties shall cause bank statements and/or other reports to be delivered to the Administrative Agent not less often than monthly, accurately setting forth all amounts deposited in each Blocked Account to ensure the proper transfer of funds as set forth above.

6.14 Information Regarding the Collateral.

(a) Furnish to the Administrative Agent at least thirty (30) days prior written notice of any change in: (i) any Loan Party's name or in any trade name used to identify it in the conduct of its business or in the ownership of its properties; (ii) the location of any Loan Party's chief executive office, its principal place of business, any office in which it maintains books or records relating to Collateral owned by it or any office or facility at which Collateral owned by it is located (including the establishment of any such new office or facility); (iii) any Loan Party's organizational structure or jurisdiction of incorporation or formation; or (iv) any Loan Party's Federal Taxpayer Identification Number or organizational identification number assigned to it by its state of organization. The Loan Parties agree not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the UCC or otherwise that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral (subject only to (i) with respect to the Note Purchasers Priority Collateral only, Liens securing the obligations of the Loan Parties with respect to the Note Purchase Facility, and (ii) other Permitted Encumbrances having priority by operation of applicable Law) for its own benefit and the benefit of the other Credit Parties.

(b) From time to time as may be reasonably requested by the Administrative Agent, and not less than one time per Fiscal Year, the Lead Borrower shall supplement each Schedule hereto, or any representation herein or in any other Loan Document, with respect to any matter arising after the Closing Date that, if existing or occurring on the Closing Date, would have been required to be set forth or described in such Schedule or as an exception to such representation or that is necessary to correct any information in such Schedule or representation which has been rendered inaccurate thereby (and, in the case of any supplements to any Schedule, such Schedule shall be appropriately marked to show the changes made therein). Notwithstanding the foregoing, no supplement or revision to any Schedule or representation shall be deemed the Credit Parties' consent to the matters reflected in such updated Schedules or revised representations nor permit the Loan Parties to undertake any actions otherwise prohibited hereunder or fail to undertake any action required hereunder from the restrictions and requirements in existence prior to the delivery of such updated Schedules or such revision of a representation; nor shall any

such supplement or revision to any Schedule or representation be deemed the Credit Parties' waiver of any Default resulting from the matters disclosed therein.

6.15 Physical Inventories.

(a) Cause not less than one (1) physical inventory to be undertaken, at the expense of the Loan Parties, in each twelve month period, conducted by such inventory takers as are satisfactory to the Collateral Agent and following such methodology as is consistent with the methodology used in the immediately preceding inventory or as otherwise may be satisfactory to the Collateral Agent. The Collateral Agent, at the expense of the Loan Parties, may participate in and/or observe each scheduled physical count of Inventory which is undertaken on behalf of any Loan Party. Upon the request of the Collateral Agent, the Lead Borrower shall provide the Collateral Agent with a reconciliation of the results of such inventory (as well as of any other physical inventory undertaken by a Loan Party) and shall post such results to the Loan Parties' stock ledgers and general ledgers, as applicable.

(b) The Collateral Agent, in its discretion, if any Default shall have occurred and be continuing, may cause additional such inventories to be taken as the Collateral Agent determines (each, at the expense of the Loan Parties).

6.16 Environmental Laws. (a) Conduct its operations and keep and maintain its Real Estate in material compliance with all Environmental Laws; (b) obtain and renew all environmental permits appropriate or necessary for its operations and properties; and (c) implement any and all investigation, remediation, removal and response actions that are necessary to maintain the value and marketability of the Real Estate or to otherwise comply with Environmental Laws pertaining to the presence, generation, treatment, storage, use, disposal, transportation or release of any Hazardous Materials on, at, in, under, above, to, from or about any of its Real Estate, provided, however, that neither a Loan Party nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and adequate reserves have been set aside and are being maintained by the Loan Parties with respect to such circumstances in accordance with GAAP.

6.17 Further Assurances.

(a) Execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements and other documents), that may be required under any applicable Law, or which any Agent may request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created or intended to be created by the Security Documents or the validity or priority of any such Lien, all at the expense of the Loan Parties. The Loan Parties also agree to provide to the Agents, from time to time upon request, evidence satisfactory to the Agents as to the perfection and priority of the Liens created or intended to be created by the Security Documents.

(b) If any material assets are acquired by any Loan Party after the Closing Date (other than assets constituting Collateral under the Security Agreement that become subject to the Lien of the Security Agreement upon acquisition thereof), notify the Agents thereof, and the Loan Parties will cause such assets to be subjected to a Lien securing the Obligations and will take such actions as shall be necessary or shall be requested by any Agent to grant and perfect such Liens, including actions described in paragraph (a) of this Section 6.17, all at the expense of the Loan Parties. In no event shall compliance with this Section 6.17(b) waive or be deemed a waiver or Consent to any transaction giving rise to the need to comply with this Section 6.17(b) if such transaction was not otherwise expressly permitted by this Agreement or constitute or be deemed to constitute Consent to the inclusion of any acquired assets in the computation of the Borrowing Base.

(c) Upon the request of the Collateral Agent, cause each of its customs brokers, freight forwarders and other carriers which, individually, have control over, and/or hold the documents evidencing ownership of, Inventory or other Collateral of the Loan Parties with an aggregate retail value in excess of ten percent (10%) of the retail value of all Inventory or other Collateral of the Loan Parties at such time to deliver a Customs Broker Agreement to the Collateral Agent.

(d) Upon the request of the Collateral Agent, cause any of its landlords with respect to Real Estate acquired or leased after the Closing Date to deliver a Collateral Access Agreement to the Collateral Agent in such form as the Collateral Agent may reasonably require if the aggregate retail value of the Inventory or other Collateral of the Loan Parties at any such location exceeds five percent (5%) of the retail value of all Inventory or other Collateral of the Loan Parties at such time.

6.18 Compliance with Terms of Leaseholds. Except as otherwise expressly permitted hereunder (including, without limitation, in connection with Store closings permitted pursuant to clause (b) of the definition of Permitted Dispositions), make all payments and otherwise perform all obligations in respect of all Leases of real property to which any Loan Party or any of its Subsidiaries is a party, keep such Leases in full force and effect and not allow such Leases to lapse or be terminated or any rights to renew such leases to be forfeited or cancelled, notify the Administrative Agent of any default by any party with respect to such Leases and cooperate with the Administrative Agent in all respects to cure any such default, and cause each of its Subsidiaries to do so, except, in any case, where the failure to do so, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. In the event that the Borrowers become delinquent in their rent payments, the Administrative Agent may establish Reserves against the Borrowing Base for the amount of any landlord liens arising from such delinquency.

6.19 Material Contracts. Perform and observe all of the terms and provisions of each Material Contract to be performed or observed by any Loan Party or any of its Subsidiaries, take all such action required on the part of any Loan Party or any of its Subsidiaries to maintain each such Material Contract in full force and effect, enforce each such Material Contract in accordance with its terms, take all such action to such end as may be from time to time requested by the Administrative Agent and, upon request of the Administrative Agent, make to each other party to each such Material Contract such demands and requests for information and reports or

for action as any Loan Party or any of its Subsidiaries is entitled to make under such Material Contract, and cause each of its Subsidiaries to do so, except, in any case, where the failure to do so, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

6.20 ERISA.

(a) Comply in all material respects with the applicable provisions of ERISA or any other applicable federal, state, provincial, local or foreign law dealing with such matters, except where the failure to comply could reasonably be expected to result in a claim or liability against any Loan Party or its Affiliates of $3,000,000 or more.

(b) Pay and discharge promptly any liability imposed upon it pursuant to the provisions of Title IV of ERISA; provided, however, that neither any Loan Party nor any ERISA Affiliate or any other Subsidiary of the Loan Parties shall be required to pay any such liability if (i) the amount, applicability or validity thereof shall be diligently contested in good faith by appropriate proceedings, and (ii) such Person shall have set aside on its books reserves, in the opinion of the independent certified public accountants of such Person, adequate with respect thereto.

(c) Deliver to the Collateral Agent, promptly, and in any event within 20 days, after (i) the occurrence of any Reportable Event in respect of a Plan, a copy of the materials that are filed with the PBGC, (ii) any Loan Party or any ERISA Affiliate or an administrator of any Plan files with participants, beneficiaries or the PBGC a notice of intent to terminate any such Plan, a copy of any such notice, (iii) the receipt of notice by any Loan Party or any ERISA Affiliate or an administrator of any Plan from the PBGC of the PBGC's intention to terminate any Plan or to appoint a trustee to administer any such Plan, a copy of such notice, (iv) the request by any Lender of copies of each annual report that is filed on Treasury Form 5500 with respect to any Plan, together with certified financial statements (if any) for the Plan and any actuarial statements on Schedule B to such Form 5500, (v) any Loan Party or any ERISA Affiliate knows or has reason to know of any event or condition which could reasonably be expected to constitute grounds under the provisions of Section 4042 of ERISA for the termination of (or the appointment of a trustee to administer) any Plan, an explanation of such event or condition, (vi) the receipt by any Loan Party or any ERISA Affiliate of an assessment of withdrawal liability under Section 4201 of ERISA from a Multiemployer Plan, a copy of such assessment, (vii) any Loan Party or any ERISA Affiliate knows or has reason to know of any event or condition which would reasonably be expected to cause any one of them to incur a liability under Section 4062, 4063, 4064 or 4069 of ERISA or Section 412(n) or 4971 of the Code, an explanation of such event or condition, or (viii) any Loan Party or any ERISA Affiliate knows or has reason to know that an application is to be, or has been, made to the Secretary of the Treasury for a waiver of the minimum funding standard under the provisions of Section 412 of the Code, a copy of such application, and in each case described in clauses (i) through (iii) and (v) through (vii) together with a statement signed by an officer setting forth details as to such Reportable Event, notice, event or condition and the action which such Loan Party and any ERISA Affiliate proposes to take with respect thereto.

6.21 Post-Closing Matters.

(a) Within 60 days of the Closing Date (or such longer period as may be agreed to by the Administrative Agent in its sole discretion), the Borrowers shall deliver to the Collateral Agent: (i) an American Land Title Association/American Congress on Surveying and Mapping form survey, for which all necessary fees (where applicable) have been paid, certified to the Collateral Agent and the issuer of the Mortgage Policy in a manner reasonably satisfactory to the Collateral Agent by a land surveyor duly registered and licensed in the State of Alabama and reasonably acceptable to the Collateral Agent, showing all buildings and other improvements, the location of any easements, parking spaces, rights of way, building set-back lines and other dimensional regulations and the absence of encroachments, either by such improvements or on to such property, and other defects, other than encroachments and other defects reasonably acceptable to the Collateral Agent; (ii) an endorsement to the Mortgage Policy deleting the survey exception; (iii) comprehensive, same as survey, access, address/location and contiguity endorsements to the Mortgage Policy; and (iv) evidence that all other actions that the Collateral Agent may deem necessary or desirable in order to create a valid and subsisting Lien on the Alabama Property described in the Mortgage, subject only to Permitted Encumbrances having priority by operation of applicable Law, has been taken. Until such time as the Borrowers deliver the items described in this Section 6.21(a), the Administrative Agent is under no obligation to include the Alabama Property in the Borrowing Base.

(b) Within 60 days of the Closing Date, a fully paid (or, as to which, evidence of the payment of the applicable premium has been provided to the Collateral Agent) American Land Title Association Lender's Extended Coverage title insurance policy or marked-up title commitment having the effect of a policy of title insurance (the "Mortgage Policy") in form and substance, with endorsements and in an amount acceptable to the Collateral Agent, issued by Stewart Title Guaranty Company, insuring the Mortgage to be a valid and subsisting Lien on the property described therein, free and clear of all defects (including, but not limited to, mechanics' and materialmen's Liens) and encumbrances, excepting only Permitted Encumbrances and other Liens permitted under the Loan Documents, and providing for such other affirmative insurance (including endorsements for future advances under the Loan Documents and for zoning of the applicable property) and such coinsurance and direct access reinsurance as the Collateral Agent may deem necessary or desirable. Until such time as the Borrowers deliver the items described in this Section 6.21(b), the Administrative Agent is under no obligation to include the Alabama Property in the Borrowing Base.

(c) Within 30 days of the Closing Date (or such longer period as may be agreed to by the Administrative Agent in its sole discretion), the Borrowers shall deliver to the Administrative Agent a Blocked Account Agreement with Wachovia Bank, National Association with respect to account #203024911266. In the event that the Borrowers are unable to deliver the foregoing Blocked Account Agreement within the timeframe set forth herein or make other arrangements acceptable to the Administrative Agent, the Administrative Agent may, in its sole discretion, require the Borrowers to move the applicable Blocked Account to Wells Fargo Bank, N.A. or another depository

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institution that is willing to execute and deliver a Blocked Account Agreement in form and substance reasonably satisfactory to the Administrative Agent.

(d) Within 30 days of the Closing Date (or such longer period as may be agreed to by the Administrative Agent in its sole discretion), the Borrowers shall deliver to the Administrative Agent a Blocked Account Agreement with Wells Fargo Bank, N.A. with respect to account #13038997.

ARTICLE VII.
NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, no Loan Party shall, nor shall it permit any Subsidiary to, directly or indirectly:

7.01 Liens. Create, incur, assume or suffer to exist any 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 that names any Loan Party or any Subsidiary thereof as debtor; sign or suffer to exist any security agreement authorizing any Person thereunder to file such financing statement; sell any of its property or assets subject to an understanding or agreement (contingent or otherwise) to repurchase such property or assets with recourse to it or any of its Subsidiaries; or assign or otherwise transfer any accounts or other rights to receive income, other than, as to all of the above, Permitted Encumbrances.

7.02 Investments. Have outstanding, make, acquire or hold any Investment (or become contractually committed to do so), directly or indirectly, or incur any liabilities (including contingent obligations) for or in connection with any Investment, except Permitted Investments.

7.03 Indebtedness. Create, incur, assume, guarantee, suffer to exist or otherwise become or remain liable with respect to, any Indebtedness, except Permitted Indebtedness.

7.04 Fundamental Changes. (a) Merge, amalgamate, dissolve, liquidate, wind up, consolidate with or into another Person, reorganize, enter into a plan of reorganization, recapitalization or reclassify its Equity Interests (or agree to do any of the foregoing) or (b) suspend or go out of a substantial portion of its or their business or any material line of business, except that, so long as no Default shall have occurred and be continuing prior to or immediately after giving effect to any action described below or would result therefrom:

(a) any Subsidiary may merge, consolidate or amalgamate with (i) a Loan Party, provided that the Loan Party shall be the continuing or surviving Person, or (ii) any one or more other Subsidiaries, provided further that when any wholly-owned Subsidiary is merging with another Subsidiary, the wholly-owned Subsidiary shall be the continuing or surviving Person;

(b) any CFC that is not a Loan Party may merge into any CFC that is not a Loan Party; and

(c) the Borrowers shall be permitted to liquidate or dissolve Twin Brook at any time upon prior written notice to the Administrative Agent, provided that before, or within three (3) Business Days after, the liquidation or dissolution of Twin Brook, Twin Brook shall have contributed all of its assets to the Lead Borrower and the Lead Borrower shall have caused the former assets of Twin Brook, including, without limitation, the equity interests in Services Company, to be pledged to the Collateral Agent for the benefit of the Credit Parties. In the event of any liquidation or dissolution of Twin Brook in accordance with the preceding sentence, Twin Brook will automatically cease to be a Guarantor hereunder.

7.05 Dispositions. Make any Disposition or enter into any agreement to make any Disposition, except Permitted Dispositions.

7.06 Restricted Payments. Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that, so long as no Default shall have occurred and be continuing prior to or immediately after giving effect to any action described below or would result therefrom:

(a) each Subsidiary of a Loan Party may make Restricted Payments to any Loan Party;

(b) the Loan Parties and each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person;

(c) the Lead Borrower may repurchase up to $10,000,000 of its capital stock in any Fiscal Year so long as there has been at least $50,000,000 of Excess Availability as of the end of each of the three months preceding such repurchase, and on such date, after taking into account the repurchase of such stock; and

(d) the Loan Parties may issue and sell Equity Interests provided that (i) (A) with respect to any Equity Interests, all dividends in respect of which are to be paid (and all other payments in respect of which are to be made) shall be in additional shares of such Equity Interests, in lieu of cash, (B) such Equity Interests shall not be subject to redemption other than redemption at the option of the Loan Party issuing such Equity Interests, and (C) all payments in respect of such Equity Interests are expressly subordinated to the Obligations, and (ii) no Loan Party shall issue any additional Equity Interests in a Subsidiary.

7.07 Payments and Prepayments of Indebtedness.

(a) Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner any Indebtedness (other than the Note Obligations), or make any payment in violation of any subordination terms of any Subordinated Indebtedness, except (i) as long as no Event of Default shall have occurred and be continuing or would arise therefrom, regularly scheduled or mandatory repayments or redemptions of Permitted Indebtedness (other than the Note Obligations), (ii) refinancings and refundings of such Indebtedness permitted pursuant to Section 7.03,

and (iii) as long as the Payment Conditions are satisfied, other repayments or prepayments of Permitted Indebtedness (other than the Note Obligations) in an aggregate amount not to exceed $10,000,000.00 in any Fiscal Year.

(b) Make any payment in respect of the Note Obligations, except (i) regularly scheduled payments of interest on the Note Obligations, Excess Cash Flow (as such term is defined in the Note Purchase Agreement) payments as set forth in Section 3.2.4.4 of the Note Purchase Agreement and fees and expenses permitted under the Note Purchase Agreement, in each case to the extent permitted to be paid pursuant to the terms of Section 2.5 of the Intercreditor Agreement, (ii) refinancings or refundings of the Note Obligations permitted pursuant to Section 7.03, (iii) as long as the Payment Conditions are satisfied, other repayments or prepayments of the Note Obligations in an aggregate amount not to exceed $20,000,000.00 in any Fiscal Year, and (iv) as long as (A) the Payment Conditions are satisfied and (B) no proceeds of any Credit Extension are being used to finance all or any portion of such repayment or prepayment, other repayments or prepayments of the Note Obligations in an aggregate amount in excess of $20,000,000.00 in any Fiscal Year.

7.08 Change in Nature of Business. Engage in any line of business substantially different from the business (or any business substantially related or incidental thereto) conducted by the Loan Parties and their Subsidiaries on the date hereof.

7.09 Transactions with Affiliates. Enter into, renew, extend or be a party to any transaction of any kind with any Affiliate of any Loan Party, except for: (a) transactions that are in the ordinary course of business, upon fair and reasonable terms, that are fully disclosed to the Administrative Agent, and that are no less favorable to the Loan Parties than would be obtainable by the Loan Parties at the time in a comparable arm's length transaction with a Person other than an Affiliate; (b) payment of insurance premiums to Twin Brook in an aggregate amount not to exceed $750,000 in any Fiscal Year; (c) transactions between the Lead Borrower and Services Company in the ordinary course of business; (d) intercompany loans and advances or other intercompany Indebtedness permitted pursuant to clauses (b), (c), (e) and (j) of the definition of Permitted Indebtedness; and (e) intercompany Investments permitted pursuant to clauses (g), (h), (i) and (m) of the definition of Permitted Investments.

7.10 Burdensome Agreements. Enter into or permit to exist any Contractual Obligation (other than the Note Documents, this Agreement or any other Loan Document) that (a) limits the ability (i) of any Subsidiary to make Restricted Payments or other distributions to any Loan Party or to otherwise transfer property to or invest in a Loan Party, (ii) of any Subsidiary to Guarantee the Obligations, (iii) of any Subsidiary to make or repay loans to a Loan Party, or (iv) of the Loan Parties or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person in favor of the Collateral Agent; provided, however, that this clause (iv) shall not prohibit any negative pledge incurred or provided in favor of any holder of Indebtedness permitted under Section 7.01 solely to the extent any such negative pledge relates to the property financed by or the subject of such Indebtedness; or (b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person.

7.11 Use of Proceeds. Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund Indebtedness originally incurred for such purpose.

7.12 Amendment of Material Documents. Amend, modify or waive any of a Loan Party's rights under (a) its Organization Documents or (b) any Material Contract or Material Indebtedness (other than on account of any refinancing thereof otherwise permitted hereunder), in each case to the extent that such amendment, modification or waiver would be reasonably likely to have a Material Adverse Effect.

7.13 Corporate Name; Fiscal Year.

(a) Change the Fiscal Year of any Loan Party, or the accounting policies or reporting practices of the Loan Parties, except as required by GAAP.

(b) Change its name as it appears in official filings in the state of its incorporation or other organization (b) change its chief executive office, principal place of business, corporate offices or warehouses or locations at which any material portion of the Collateral is held or stored, or the location of its records concerning the Collateral, (c) change the type of entity that it is, (d) change its organization identification number, if any, issued by its state of incorporation or other organization, or (e) change its state of incorporation or organization, in each case without at least thirty (30) days prior written notice to the Collateral Agent and after the Collateral Agent's written acknowledgment, which acknowledgment shall not be unreasonably withheld or delayed, that any reasonable action requested by the Collateral Agent in connection therewith, including to continue the perfection of any Liens in favor of the Collateral Agent, in any Collateral, has been completed or taken, and provided that any such new location of any Loan Party or Domestic Subsidiary shall be in the continental United States.

7.14 Blocked Accounts; Credit Card Processors.

(a) Open new Blocked Accounts unless the Loan Parties shall have delivered to the Collateral Agent appropriate Blocked Account Agreements consistent with the provisions of Section 6.13 and otherwise satisfactory to the Collateral Agent.

(b) Enter into new agreements with credit card processors other than the ones expressly contemplated herein or in Section 6.13 hereof unless the Loan Parties shall have delivered to the Collateral Agent appropriate Credit Card Notifications consistent with the provisions of Section 6.13 and otherwise satisfactory to the Collateral Agent.

7.15 Consignments. Consign any Inventory or sell any Inventory on bill and hold, sale or return, sale on approval, or other conditional terms of sale.

7.16 Antilayering. Other than the Note Obligations, the Loan Parties will not, and will not permit any of their Subsidiaries to, incur or in any fashion become or remain liable with respect to any Indebtedness of the Loan Parties or any Subsidiary which, by its terms, is

subordinated to any other Indebtedness of such Loan Party or such Subsidiary and which is not expressly subordinated to the Obligations on terms satisfactory to the Administrative Agent.

7.17 Capital Expenditures. Make Capital Expenditures in each of the following Fiscal Years in excess of the applicable amount set forth below:

Fiscal Year Ending On or About	**Maximum Capital Expenditures**
January 31, 2009	$ 86,000,000
January 31, 2010	$ 85,000,000
January 31, 2011	$ 122,000,000
January 31, 2012	$ 134,000,000

January 31, 2013	$	133,000,000

provided, however, that the Required Lenders may, in the exercise of their reasonable business judgment, increase any of the amounts set forth in the foregoing grid. When making any determination whether to increase the foregoing amounts, the Required Lenders may consider, among other things, the actual financial results of the Loan Parties.

Any unutilized Capital Expenditures in any given Fiscal Year may be carried forward as an increase to the subsequent year's Capital Expenditure covenant (without giving effect to any prior carryover). By way of example, if in the Fiscal Year ending on or about January 31, 2009 (the "2008 Fiscal Year"), the Loan Parties only make Capital Expenditures of $81,000,000, $5,000,000 of unutilized Capital Expenditures may be carried forward as an increase to the Capital Expenditure covenant for the Fiscal Year ending on or about January 31, 2010 (the "2009 Fiscal Year"). Therefore, in the 2009 Fiscal Year ending, the Loan Parties may make Capital Expenditures of up to $90,000,000. If the Loan Parties only make Capital Expenditures of $82,000,000 in the 2009 Fiscal Year, $3,000,000 of unutilized Capital Expenditures may be carried forward to the Fiscal Year ending on or about January 31, 2011 (the "2010 Fiscal Year") (as this is the amount of the unutilized Capital Expenditures under the original Capital Expenditures covenant for the 2009 Fiscal Year). If, on the other hand, the Loan Parties make Capital Expenditures of $87,000,000 in the 2009 Fiscal Year, they may not carry forward $3,000,000 of unutilized Capital Expenditures to the 2010 Fiscal Year (as this amount exceeds the original Capital Expenditures covenant for the 2009 Fiscal Year and represents a portion of the carryover from the 2008 Fiscal Year). In other words, in the above example, if the Loan Parties do not make Capital Expenditures of $90,000,000 in the 2009 Fiscal Year, they may only carry forward to the 2010 Fiscal Year the difference (if a positive number) between the original Capital Expenditures covenant for the 2009 Fiscal Year and the amount of Capital Expenditures actually made by the Loan Parties during the 2009 Fiscal Year.

7.18 Foreign Transfers. Permit the Loan Parties located within the United States to make or receive intercompany transfers outside the ordinary course of business to or from their Affiliates in Canada, Asia and/or Puerto Rico, except that, so long as (a) no Default shall have

occurred and be continuing prior to or immediately after giving effect to any transfer described below or would result therefrom and (b) prior to, and on a projected pro forma basis for the six months immediately following, and after giving effect to, any transfer described below, Excess Availability will be greater than or equal to $50,000,000:

(a) the Loan Parties located within the United States may (i) make intercompany transfers outside the ordinary course of business of not more than $5,000,000 per Fiscal Year in the aggregate to their Affiliates in Canada, (ii) make intercompany transfers outside the ordinary course of business of not more than $5,000,000 per Fiscal Year to their Affiliates in Asia, and (iii) make intercompany transfers outside the ordinary course of business of not more than $2,500,000 per Fiscal Year to their Affiliates in Puerto Rico; and

(b) the Loan Parties located within the United States may (i) receive as intercompany transfers outside the ordinary course of business from their Affiliates in Canada not more than $5,000,000 per Fiscal Year, (ii) receive as intercompany transfers outside the ordinary course of business from their Affiliates in Asia not more than $5,000,000 per Fiscal Year, and (iii) receive as intercompany transfers outside the ordinary course of business from their Affiliates in Puerto Rico not more than $5,000,000 per Fiscal Year.

An additional $5,000,000 may be transferred under each of Sections 7.18(b)(i), 7.18(b)(ii) and 7.18(b)(iii), and the amount so transferred may be used to prepay the Note Obligations, provided that the Loan Parties have satisfied the requirements set forth in clauses (iii) or (iv), as applicable, of Section 7.07(b).

ARTICLE VIII.
EVENTS OF DEFAULT AND REMEDIES

8.01 Events of Default. Any of the following shall constitute an Event of Default:

(a) Non-Payment. The Borrowers or any other Loan Party fails to pay when and as required to be paid herein, (i) any amount of principal of any Loan or any L/C Obligation, or deposit any funds as Cash Collateral in respect of L/C Obligations, or (ii) any interest on any Loan or on any L/C Obligation, or any fee due hereunder, or (iii) any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants.

(i) Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of Sections 6.03, 6.05, 6.07, 6.10, 6.11, 6.12, 6.13 or 6.14 or Article VII of this Agreement or in Section 5.01 of the Security Agreement; or

(ii) Any Loan Party fails to perform or observe any term, covenant or agreement contained in Section 6.02(c) of this Agreement and such failure continues for five (5) days; or

(iii) Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of Sections 6.01, 6.02(a) or 6.02(b) of this Agreement and such failure continues for fifteen (15) days; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days; or

(d) Material Impairment. Any material impairment of the prospect of repayment of any portion of the Obligations owing to the Credit Parties or a material impairment of the value or priority of the Credit Parties' security interests in the Collateral; or

(e) Representations and Warranties in the Credit Agreement. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in

connection herewith or therewith (including, without limitation, any Borrowing Base Certificate) shall be incorrect or misleading in any material respect when made or deemed made; or

(f) Material Indebtedness; Swap Contracts. (i) Any Loan Party or any Subsidiary thereof (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Material Indebtedness (other than Indebtedness hereunder, Indebtedness under the Note Purchase Facility and Indebtedness under Swap Contracts) or Guarantee having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than $3,000,000, or (B) fails to observe or perform any other agreement or condition relating to any Material Indebtedness (other than Indebtedness hereunder, Indebtedness under the Note Purchase Facility and Indebtedness under Swap Contracts) or Guarantee having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than $3,000,000, or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which a Loan Party or any Subsidiary thereof is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which a Loan Party or any Subsidiary thereof

is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by the Loan Party or such Subsidiary as a result thereof is greater than $3,000,000; or

(g) Insolvency Proceedings, Etc. Any Loan Party or any of its Subsidiaries institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or a proceeding shall be commenced or a petition filed, without the application or consent of such Person, seeking or requesting the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed and the appointment continues undischarged, undismissed or unstayed for 45 calendar days (provided, however, that, during the pendency of such period, the Credit Parties shall be relieved of their obligation to extend credit hereunder), or an order or decree approving or ordering any of the foregoing shall be entered; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material portion of its property is instituted without the consent of such Person and continues undismissed or unstayed for 45 calendar days (provided, however, that, during the pendency of such period, the Credit Parties shall be relieved of their obligation to extend credit hereunder), or an order for relief is entered in any such proceeding; or

(h) Inability to Pay Debts; Attachment. (i) Any Loan Party or any Subsidiary thereof becomes unable or admits in writing its inability or fails generally to pay its debts as they become due in the ordinary course of business, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material portion of the property of any such Person; or

(i) Judgments. (i) There is entered against any Loan Party or any Subsidiary thereof one or more judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding $3,000,000 (to the extent not covered by independent third-party insurance as to which the insurer is rated at least “A” by A.M. Best Company, has been notified of the potential claim and does not dispute coverage) which become Liens or encumbrances upon any material portion of any Borrower’s properties or assets, and all such judgments or orders shall not have been vacated, discharged, stayed or bonded pending appeal within thirty (30) days from the entry thereof, or (ii) an action or proceeding is brought against any Borrower which is reasonably likely to be decided adversely to such Borrower, and such adverse decision would materially impair the prospect of repayment of the Obligations or materially impair the value or priority of the Credit Parties’ security interests in the Collateral; or

(j) Liens. A notice of Lien, levy, or assessment is filed of record with respect to any of any Borrower’s properties or assets by the United States Government, or any department, agency, or instrumentality thereof, or by any state, county, municipal, or governmental agency, or any taxes or debts owing at any time hereafter to any one or more of such entities becomes a Lien, whether choate or otherwise, upon any of any Borrower’s properties or assets and the same is not paid on the payment date thereof; or

(k) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any Loan Party under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of $3,000,000, or (ii) a Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of $100,000; or

(l) Invalidity of Loan Documents. (i) Any provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any provision of any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document or seeks to avoid, limit or otherwise adversely affect any Lien purported to be created under any Security Document; or (ii) any Lien purported to be created under any Security Document shall cease to be (except as permitted pursuant to the terms hereof or thereof), or shall be asserted by any Loan Party or any other Person not to be, a valid and perfected Lien on any Collateral, with the priority required by the applicable Security Document; or

(m) Change of Control. There occurs any Change of Control; or

(n) Cessation of Business. Except as otherwise expressly permitted hereunder, any Loan Party shall take any action to suspend the operation of its business in the ordinary course, liquidate all or substantially all of its assets or Store locations, or employ an agent or other third party to conduct a program of closings, liquidations or "Going-Out-Of-Business" sales of any material portion of its business; or

(o) Loss of Collateral. There occurs any uninsured loss to any material portion of the Collateral; or

(p) Indictment. The indictment or institution of any legal process or proceeding against, any Loan Party or any Subsidiary thereof, under any federal, state, municipal, and other criminal statute, rule, regulation, order, or other requirement having the force of law for a felony; or

(q) Guaranty. The termination or attempted termination of any Facility Guaranty (other than as expressly permitted hereunder); or

(r) Subordination. (i) The subordination provisions of the documents evidencing or governing any Subordinated Indebtedness (the "Subordinated Provisions") shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the applicable Subordinated Indebtedness; or (ii) any Borrower or any other Loan Party shall, directly or indirectly, (A) make any

payment on account of any Subordinated Indebtedness that has been contractually subordinated in right of payment to the payment of the Obligations, except to the extent that such payment is permitted by the terms of the subordination provisions applicable to such Subordinated Indebtedness or (B) disavow or contest in any manner (x) the effectiveness, validity or enforceability of any of the Subordination Provisions, (y) that the Subordination Provisions exist for the benefit of the Credit Parties, or (z) that all payments of principal of or premium and interest on the applicable Subordinated Indebtedness, or realized from the liquidation of any property of any Loan Party, shall be subject to any of the Subordination Provisions; or

(s) Cross-Default. Any "Event of Default" occurs and is continuing under the Note Documents.

8.02 Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Administrative Agent may, or, at the request of the Required Lenders shall, take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Loan Parties;

(c) require that the Loan Parties Cash Collateralize the L/C Obligations; and

(d) whether or not the maturity of the Obligations shall have been accelerated pursuant hereto, may (and at the direction of the Required Lenders, shall) proceed to protect, enforce and exercise all rights and remedies of the Credit Parties under this Agreement, any of the other Loan Documents or applicable Law, including, but not limited to, 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 Credit Parties;

provided, however, that upon the entry of an order for relief with respect to any Loan Party or any Subsidiary thereof under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Loan Parties to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

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.

8.03 Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), subject to the terms of the Intercreditor Agreement, any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations (excluding the Other Liabilities) constituting fees, indemnities, Credit Party Expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and the Collateral Agent and amounts payable under Article III) payable to the Administrative Agent and the Collateral Agent, each in its capacity as such;

Second, to payment of that portion of the Obligations (excluding the Other Liabilities) constituting indemnities, Credit Party Expenses, and other amounts (other than principal, interest and fees) payable to the Lenders and the L/C Issuer (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuer and amounts payable under Article III), ratably among them in proportion to the amounts described in this clause Second payable to them;

Third, to the extent not previously reimbursed by the Lenders, to payment to the Lenders of that portion of the Obligations constituting principal and accrued and unpaid interest on any Permitted Overadvances, ratably among the Lenders in proportion to the amounts described in this clause Third payable to them;

Fourth, to the extent that Swing Line Loans have not been refinanced by a Committed Loan, payment to the Swing Line Lender of that portion of the Obligations constituting accrued and unpaid interest on the Swing Line Loans;

Fifth, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Committed Loans, L/C Borrowings and other Obligations, and fees (including Letter of Credit Fees but excluding any Early Termination Fees), ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Fifth payable to them;

Sixth, to the extent that Swing Line Loans have not been refinanced by a Committed Loan, to payment to the Swing Line Lender of that portion of the Obligations constituting unpaid principal of the Swing Line Loans;

Seventh, to payment of that portion of the Obligations constituting unpaid principal of the Committed Loans and L/C Borrowings, ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Seventh held by them;

Eighth, to the Administrative Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit;

Ninth, to payment of all other Obligations (including, without limitation, the cash collateralization of unliquidated indemnification obligations as provided in Section 10.04, but excluding any Other Liabilities), ratably among the Credit Parties in proportion to the respective amounts described in this clause Ninth held by them;

Tenth, to payment of that portion of the Obligations arising from Cash Management Services to the extent secured under the Security Documents, ratably among the Credit Parties in proportion to the respective amounts described in this clause Tenth held by them;

Eleventh, to payment of all other Obligations arising from Bank Products to the extent secured under the Security Documents, ratably among the Credit Parties in proportion to the respective amounts described in this clause Eleventh held by them; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Loan Parties or as otherwise required by Law.

Subject to Section 2.03(c), amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Eighth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

ARTICLE IX.
ADMINISTRATIVE AND COLLATERAL AGENT

9.01 Appointment and Authority.

(a) Each of the Lenders and the L/C Issuer hereby irrevocably appoints Wells Fargo Retail Finance, LLC to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuer, and no Loan Party or any Subsidiary thereof shall have rights as a third party beneficiary of any of such provisions.

(b) Each of the Lenders (in its capacities as a Lender), Swing Line Lender and the L/C Issuer hereby irrevocably appoints Wells Fargo Retail Finance, LLC as Collateral Agent and authorizes the Collateral Agent to act as the agent of such Lender and the L/C Issuer 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 discretion as are reasonably incidental thereto. In this connection, the Collateral Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact

appointed by the Collateral Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Collateral Agent), shall be entitled to the benefits of all provisions of this Article IX and Article X (including Section 10.04(b)), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents, as if set forth in full herein with respect thereto.

9.02 Rights as a Lender. The Persons serving as the Agents hereunder shall have the same rights and powers in their capacity as a Lender as any other Lender and may exercise the same as though they were not the Administrative Agent or the Collateral Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent or the Collateral Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Loan Parties or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent or the Collateral Agent hereunder and without any duty to account therefor to the Lenders.

9.03 Exculpatory Provisions. The Agents 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, the Agents:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not 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 the Administrative Agent or the Collateral Agent, as applicable, 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 no Agent shall be required to take any action that, in its respective opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Loan Document or applicable law; and

(c) 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 relating to the Loan Parties or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent, the Collateral Agent or any of its Affiliates in any capacity.

No Agent shall be liable for any action taken or not taken by it (i) with the Consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as such Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a final and non-appealable judgment of a

court of competent jurisdiction. The Agents shall not be deemed to have knowledge of any Default unless and until notice describing such Default is given to such Agent by the Loan Parties, a Lender or the L/C Issuer.

The Agents 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, (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 Agents.

9.04 Reliance by Agents. Each 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, but not limited to, any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. Each Agent also may rely upon any statement made to it orally or by telephone and believed 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 a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless the Administrative Agent shall have received written notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. Each Agent may consult with legal counsel (who may be counsel for any Loan Party), 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.

9.05 Delegation of Duties. Each Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by such Agent. Each Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Agents and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as such Agent.

9.06 Resignation of Agents. Either Agent may at any time give written notice of its resignation to the Lenders, the L/C Issuer and the Lead Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Lead Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within

30 days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders and the L/C Issuer, appoint a successor Administrative Agent or Collateral Agent, as applicable, meeting the qualifications set forth above; provided that if the Administrative Agent or the Collateral Agent shall notify the Lead Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any Collateral held by the Collateral Agent on behalf of the Lenders or the L/C Issuer under any of the Loan Documents, the retiring Collateral Agent shall continue to hold such collateral security until such time as a successor Collateral Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Administrative Agent or Collateral Agent, as applicable, hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Lead Borrower and such successor. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Administrative Agent or Collateral Agent hereunder.

Any resignation by Wells Fargo Retail Finance, LLC as Administrative Agent pursuant to this Section shall also constitute the resignation of Wells Fargo Retail Finance, LLC as Swing Line Lender and Wells Fargo Bank as L/C Issuer. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer and

Swing Line Lender, (b) the retiring L/C Issuer and Swing Line Lender shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents, and (c) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring L/C Issuer to effectively assume the obligations of the retiring L/C Issuer with respect to such Letters of Credit.

9.07 Non-Reliance on Administrative Agent and Other Lenders. Each Lender and the L/C Issuer acknowledges that it has, independently and without reliance upon the Agents or 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 and decision to enter into this Agreement. Each Lender and the L/C Issuer also acknowledges that it will, independently and without reliance upon the Agents or 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 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. Except

as provided in Section 9.11, the Agents shall not have any duty or responsibility to provide any Credit Party 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.

9.08 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C 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 Loan Parties) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuer, the Administrative Agent and the other Credit Parties (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer, the Administrative Agent, such Credit Parties and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer the Administrative Agent and such Credit Parties under Sections 2.03(h), 2.09 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the L/C Issuer 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 L/C Issuer, 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 Sections 2.09 and 10.04.

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 the L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or the L/C Issuer or to authorize the Administrative Agent to vote in respect of the claim of any Lender or the L/C Issuer in any such proceeding.

9.09 Collateral and Guaranty Matters. The Credit Parties irrevocably authorize the Agents, at their option and in their discretion,

(a) to release any Lien on any property granted to or held by the Collateral Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than contingent indemnification obligations for which no claim has been asserted) and the expiration or termination of all Letters of Credit, (ii) that is sold or to be sold as part of or in connection with any sale permitted

hereunder or under any other Loan Document, or (iii) if approved, authorized or ratified in writing by the Required Lenders in accordance with Section 10.01;

(b) to subordinate any Lien on any property granted to or held by the Collateral Agent under any Loan Document to the holder of any Lien on such property that is permitted by clause (h) of the definition of Permitted Encumbrances; and

(c) to release any Guarantor from its obligations under the Facility Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder.

Upon request by 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, or to release any Guarantor from its obligations under the Facility Guaranty pursuant to this Section 9.09. In each case as specified in this Section 9.09, the Agents will, at the Loan Parties' expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Facility Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.09.

9.10 Notice of Transfer. The Agents may deem and treat a Lender party to this Agreement as the owner of such Lender's portion of the Obligations for all purposes, unless and until, and except to the extent, an Assignment and Acceptance shall have become effective as set forth in Section 10.06.

9.11 Reports and Financial Statements. By signing this Agreement, each Lender:

(a) agrees to furnish the Administrative Agent on the first day of each month with a summary of all Other Liabilities due or to become due to such Lender;

(b) is deemed to have requested that the Administrative Agent furnish such Lender, promptly after they become available, copies of all financial statements and Borrowing Base Certificates required to be delivered by the Lead Borrower hereunder and all commercial finance examinations and appraisals of the Collateral received by the Agents (collectively, the "Reports");

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

(d) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that the Agents or any other party performing any audit or examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties' books and records, as well as on representations of the Loan Parties' personnel;

(e) agrees to keep all Reports confidential in accordance with the provisions of Section 10.07 hereof; and

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

9.12 Agency for Perfection. Each Lender hereby appoints each other Lender as agent for the purpose of perfecting Liens for the benefit of the Agents and the Lenders, in assets which, in accordance with Article 9 of the UCC or any other Applicable Law of the United States can be perfected only by possession. Should any Lender (other than the Agents) obtain possession of any such Collateral, such Lender shall notify the Agents thereof, and, promptly upon the Collateral Agent's request therefor shall deliver such Collateral to the Collateral Agent or otherwise deal with such Collateral in accordance with the Collateral Agent's instructions.

9.13 Indemnification of Agents. The Lenders agree to indemnify the Agents (to the extent not reimbursed by the Loan Parties and without limiting the obligations of Loan Parties hereunder), ratably according to their respective pro rata shares, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against any Agent in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted to be taken by any Agent in connection therewith; provided, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Agent's gross negligence or willful misconduct as determined by a final and nonappealable judgment of a court of competent jurisdiction.

9.14 Relation among Lenders. The Lenders are not partners or co-venturers, and no Lender shall be liable for the acts or omissions of, or (except as otherwise set forth herein in case of the Agents) authorized to act for, any other Lender.

9.15 Defaulting Lenders. Notwithstanding anything contained in Sections 2.05, 2.06, 8.03 or any other provision hereof, any Defaulting Lender shall be deemed to have assigned any and all payments due to it from the Loan Parties, whether on account of outstanding Loans, interest, fees or otherwise, to the remaining non-defaulting Lenders for application to, and reduction of, their proportionate shares of all outstanding Obligations until, as a result of application of such assigned payments the Lenders' respective Applicable Percentages of all outstanding Obligations shall have returned to those in effect immediately prior to such delinquency and without giving effect to the nonpayment causing such delinquency. The Defaulting Lender's rights to payments as set forth above shall be restored only upon the payment by the Defaulting Lender of its Applicable Percentage of any Obligations, any

participation obligation, or expenses as to which it is delinquent, together with interest thereon at the Default Rate from the date when originally due until the date upon which any such amounts are actually paid.

ARTICLE X.
MISCELLANEOUS

10.01 Amendments, Etc. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no Consent to any departure by any Loan Party therefrom, shall be effective unless in writing signed by the Administrative Agent, with the Consent of the Required Lenders, and the Lead Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or Consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(a) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written Consent of such Lender;

(b) postpone any date fixed by this Agreement or any other Loan Document for (i) any payment or mandatory prepayment of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any of the other Loan Documents without the written Consent of each Lender entitled to such payment, or (ii) any scheduled or mandatory reduction of the Aggregate Commitments hereunder or under any other Loan Document without the written Consent of each Lender;

(c) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (iv) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document, without the written Consent

of each Lender entitled to such amount; provided, however, that only the Consent of the Required Lenders shall be necessary (i) to amend the definition of "Default Rate" or to waive any obligation of the Borrowers to pay interest or Letter of Credit Fees at the Default Rate;

(d) change Section 2.13 or Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written Consent of each Lender;

(e) change any provision of this Section or the definition of "Required Lenders", or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written Consent of each Lender;

(f) except as expressly permitted hereunder or under any other Loan Document, release, or limit the liability of, any Loan Party without the written Consent of each Lender;

(g) increase the Aggregate Commitments without the written Consent of each Lender;

(h) except for Permitted Dispositions, release all or substantially all of the Collateral from the Liens of the Security Documents without the written Consent of each Lender;

(i) change the definition of the term "Borrowing Base" or any component definition thereof if as a result thereof the amounts available to be borrowed by the Borrowers would be increased without the written Consent of each Lender, provided that the foregoing shall not limit the discretion of the Administrative Agent to change, establish or eliminate any Reserves;

(j) modify the definition of Permitted Overadvance so as to increase the amount thereof or, except as provided in such definition, the time period for a Permitted Overadvance without the written Consent of each Lender; and

(k) except as expressly permitted herein or in any other Loan Document, subordinate the Obligations hereunder or the Liens granted hereunder or under the other Loan Documents, to any other Indebtedness or Lien, as the case may be without the written Consent of each Lender;

and, provided further, that (i) no amendment, waiver or Consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or Consent shall, unless in writing and signed by the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Swing Line Lender under this Agreement; (iii) no amendment, waiver or Consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; and (iv) no amendment, waiver or Consent shall, unless in writing and signed by the Collateral Agent in addition to the Lenders required above, affect the rights or duties of the Collateral Agent under this Agreement or any other Loan Document. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or Consent hereunder, except that the Commitment of such Lender may not be increased or extended without the consent of such Lender.

If any Lender does not Consent (a "Non-Consenting Lender") to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the Consent of each Lender and that has been approved by the Required Lenders, the Lead Borrower may replace such Non-Consenting Lender in accordance with Section 10.13; provided that such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by the Lead Borrower to be made pursuant to this paragraph).

10.02 Notices; Effectiveness; Electronic Communications.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Loan Parties, the Agents, the L/C Issuer or the Swing Line Lender, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire.

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 telecopier shall be deemed to have been given when sent (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 subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the L/C Issuer 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 the L/C Issuer pursuant to Article II if such Lender or the L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Lead 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.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) Change of Address, Etc. Each of the Loan Parties, the Agents, the L/C Issuer and the Swing Line Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for noticesand other communications hereunder by notice to the Lead Borrower, the Agents, the L/C Issuer and the Swing Line Lender. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(d) Reliance by Agents, L/C Issuer and Lenders. The Agents, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices and Swing Line Loan Notices) purportedly given by or on behalf of the Loan Parties even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Loan Parties shall indemnify the Agents, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Loan Parties. All telephonic notices to and other telephonic communications with the Agents may be recorded by the Agents, and each of the parties hereto hereby consents to such recording.

10.03 No Waiver; Cumulative Remedies. No failure by any Credit Party to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges provided herein and in the other Loan Documents are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether any Credit Party may have had notice or knowledge of such Default at the time.

10.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrowers shall pay all Credit Party Expenses.

(b) Indemnification by the Loan Parties. The Loan Parties shall indemnify the Agents (and any sub-agent thereof), each other Credit Party, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrowers or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any

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other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Agents (and any sub-agents thereof) and their Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Loan Party or any of its Subsidiaries, or any Environmental Liability related in any way to any Loan Party or any of its Subsidiaries, (iv) any claims of, or amounts paid by any Credit Party to, a Blocked Account Bank or other Person which has entered into a control agreement with any Credit Party hereunder, or (v) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Borrower or any other Loan Party or any of the Loan Parties' directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto, in all cases, whether or not caused by or arising, in whole or in part, out of the comparative, contributory or sole negligence of the Indemnitee; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or any of its Related Parties or (y) result from a claim brought by a Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrowers or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction.

(c) Reimbursement by Lenders. To the extent that the Loan Parties for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it, each Lender severally agrees to pay to the Agents (or any such sub-agent), the L/C Issuer or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Agents (or any such sub-agent) or the L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for the Agents (or any such sub-agent) or L/C Issuer in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(c).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law, the Loan Parties shall not assert, and hereby waive, 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 Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) Survival. The agreements in this Section shall survive the resignation of any Agent and the L/C Issuer, the assignment of any Commitment or Loan by any Lender, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

10.05 Payments Set Aside. To the extent that any payment by or on behalf of the Loan Parties is made to any Credit Party, or any Credit Party exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Credit Party in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the L/C Issuer severally agrees to pay to the Agents upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Agents, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the L/C Issuer under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

10.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder or under any other Loan Document without the prior written Consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of Section 10.06(b), (ii) by way of participation in accordance with the provisions of subsection Section 10.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.06(f) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their

respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Credit Parties) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Loans (including for purposes of this Section 10.06(b), participations in L/C Obligations and Swing Line Loans) at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $5,000,000 unless the Administrative Agent consents (such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned, except that this clause (ii) shall not apply to the Swing Line Lender's rights and obligations in respect of Swing Line Loans;

(iii) Required Consents. The following consents shall be required for the assignments described below in this Section 10.06(b)(iii):

(A) the consent of the Lead Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment, (2) such assignment is in connection with any merger, consolidation, sale, transfer or other

disposition of all or any substantial portion of the business or loan portfolio of the assigning Lender, or (3) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; and

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required unless (1) such assignment is in connection with any merger, consolidation, sale, transfer or other disposition of all or any substantial portion of the business or loan portfolio of the assigning Lender, or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund;

(C) the consent of the L/C Issuer (such consent not to be unreasonably withheld or delayed) shall be required for any assignment that increases the obligation of the assignee to participate in exposure under one or more Letters of Credit (whether or not then outstanding); and

(D) the consent of the Swing Line Lender (such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of the assignment of any Commitment.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of $5,000; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, the Borrowers (at their expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.06(d).

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrowers, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the

names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans and L/C Obligations 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 Loan Parties, 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 Lead Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, with the written consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) and, unless an Event of Default has occurred and is continuing, the Lead Borrower (such consent not to be unreasonably withheld or delayed), sell participations to any Person (other than a natural person or the Loan Parties or any of the Loan Parties' Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swing Line 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 Loan Parties, the Agents, the Lenders and the L/C Issuer shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any Participant shall agree in writing to comply with all confidentiality obligations set forth in Section 10.07 as if such Participant was a Lender hereunder.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that affects such Participant. Subject to subsection (e) of this Section, the Loan Parties agree that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.06(b). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, provided that such Participant agrees to be subject to Section 2.13 as though it were a Lender.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Lead Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the Lead Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Loan Parties, to comply with Section 3.01(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

(h) Resignation as L/C Issuer or Swing Line Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time any Lender acting as L/C Issuer and/or Swing Line Lender assigns all of its Commitment and Loans pursuant to subsection (b) above, (i) such Lender may, upon 30 days' notice to the Lead Borrower and the Lenders, resign as L/C Issuer, if applicable, and/or (ii) such Lender may, upon 30 days' notice to the Lead Borrower, resign as Swing Line Lender, if applicable. In the event of any such resignation as L/C Issuer or Swing Line Lender, the Lead Borrower shall be entitled to appoint from among the Lenders a successor L/C Issuer or Swing Line Lender hereunder; provided, however, that no failure by the Lead Borrower to appoint any such successor shall affect the resignation of such Lender as L/C Issuer and/or Swing Line Lender, as the case may be. If any Lender resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). If any Lender resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c). Upon the appointment of a successor L/C Issuer and/or Swing Line Lender, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swing Line Lender, as the case may be, and (b) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the resigning L/C Issuer to effectively assume the obligations of the resigning L/C Issuer with respect to such Letters of Credit.

10.07 Treatment of Certain Information; Confidentiality. Each of the Credit Parties agrees to maintain the confidentiality of the Information (as defined below), except that

Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and representatives in connection with, or as a result of, the performance by such Credit Party or its Affiliates of their respective obligations under this Agreement or any other Loan Document or any agreement or instrument contemplated hereby or thereby or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Agents (and any sub-agents thereof) and their Related Parties only, the administration of this Agreement and the other Loan Documents (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to any Loan Party and its obligations, (g) with the consent of the Lead Borrower or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to any Credit Party or any of their respective Affiliates on a nonconfidential basis from a source other than the Loan Parties.

For purposes of this Section, "Information" means all information received from the Loan Parties or any Subsidiary thereof relating to the Loan Parties or any Subsidiary thereof or their respective businesses, other than any such information that is available to any Credit Party on a nonconfidential basis prior to disclosure by the Loan Parties or any Subsidiary thereof. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Credit Parties acknowledges that (a) the Information may include material non-public information concerning the Loan Parties or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including Federal and state securities Laws.

10.08 Right of Setoff. If an Event of Default shall have occurred and be continuing or if any Lender shall have been served with a trustee process or similar attachment relating to property of a Loan Party, each Lender, the L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent or the Required Lenders, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the L/C Issuer or any such Affiliate to or for the credit or the account of the Borrowers or any other Loan Party against any and all of the Obligations now or

hereafter existing under this Agreement or any other Loan Document to such Lender or the L/C Issuer, irrespective of whether or not such Lender or the L/C Issuer shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrowers or such Loan Party

may be contingent or unmatured or are owed to a branch or office of such Lender or the L/C Issuer different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender, the L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective Affiliates may have. Each Lender and the L/C Issuer (through the Administrative Agent) agrees to notify the Lead Borrower and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

10.09 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrowers. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

10.10 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be as effective as delivery of a manually executed counterpart of this Agreement.

10.11 Survival. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Credit Parties, regardless of any investigation made by any Credit Party or on their behalf and notwithstanding that any Credit Party may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding. Further, the provisions of Sections 3.01, 3.04, 3.05 and 10.05 and Article IX shall survive and remain in full force and effect regardless of the repayment of the Obligations, the expiration or

termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof. In connection with the termination of this Agreement and the release and termination of the security interests in the Collateral, the Agents may require such indemnities and collateral security as they shall reasonably deem necessary or appropriate to protect the Credit Parties against (x) loss on account of credits previously applied to the Obligations that may subsequently be reversed or revoked, and (y) any obligations that may thereafter arise with respect to the Other Liabilities.

10.12 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10.13 Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrowers 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, and consents required by, Section 10.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrowers shall have paid to the Administrative Agent the assignment fee specified in Section 10.06(b);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter; and

(d) such assignment does not conflict with applicable Laws.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

10.14 Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL 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 OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ANY CREDIT PARTY HERETO MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE LOAN PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT

THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(e) ACTIONS COMMENCED BY LOAN PARTIES. EACH LOAN PARTY AGREES THAT ANY ACTION COMMENCED BY ANY LOAN PARTY ASSERTING ANY CLAIM OR COUNTERCLAIM ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT SOLELY IN A COURT OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY OR ANY FEDERAL COURT SITTING THEREIN AS THE ADMINISTRATIVE AGENT MAY ELECT IN ITS SOLE DISCRETION AND CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS WITH RESPECT TO ANY SUCH ACTION.

10.15 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON 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 BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

10.16 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby, the Loan Parties each acknowledge and agree that: (i) the credit facility provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Loan Parties, on the one hand, and the Credit Parties, on the other hand, and each of the Loan Parties is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (ii) in connection with the process leading to such transaction, the each Credit Party is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Loan Parties or any of their respective Affiliates, stockholders, creditors or employees or any other Person; (iii) none of the Credit Parties has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Loan Parties with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether any of the Credit Parties has advised or is currently advising any Loan Party or any of its Affiliates on other matters) and none of the Credit Parties has any obligation to any Loan Party or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in

the other Loan Documents; (iv) the Credit Parties and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and none of the Credit Parties has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) the Credit Parties have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. Each of the Loan Parties hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against each of the Credit Parties with respect to any breach or alleged breach of agency or fiduciary duty.

10.17 USA PATRIOT Act Notice. Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Loan Parties that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "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 Act. Each Loan Party is in compliance, in all material respects, with the Patriot Act. No part of the proceeds of the Loans will be used by the Loan Parties, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for

political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

10.18 Time of the Essence. Time is of the essence of the Loan Documents.

10.19 Press Releases. Each Credit Party executing this Agreement agrees that neither it nor its Affiliates will in the future issue any press releases or other public disclosure using the name of Administrative Agent or its Affiliates or referring to this Agreement or the other Loan Documents without at least two (2) Business Days' prior notice to Administrative Agent and without the prior written consent of Administrative Agent unless (and only to the extent that) such Credit Party or Affiliate is required to do so under Applicable Law and then, in any event, such Credit Party or Affiliate will consult with Administrative Agent before issuing such press release or other public disclosure. Each Loan Party consents to the publication by Administrative Agent or any Lender of advertising material relating to the financing transactions contemplated by this Agreement using any Loan Party's name, product photographs, logo or trademark. Administrative Agent or such Lender shall provide a draft reasonably in advance of any advertising material to the Lead Borrower for review and comment prior to the publication thereof. Administrative Agent reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

10.20 Additional Waivers.

(a) The Obligations are the joint and several obligation of each Loan Party. To the fullest extent permitted by Applicable Law, the obligations of each Loan Party

shall not be affected by (i) the failure of any Credit Party to assert any claim or demand or to enforce or exercise any right or remedy against any other Loan Party under the provisions of this Agreement, any other Loan Document or otherwise, (ii) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, this Agreement or any other Loan Document, or (iii) the failure to perfect any security interest in, or the release of, any of the Collateral or other security held by or on behalf of the Collateral Agent or any other Credit Party.

(b) The obligations of each Loan Party shall not be subject to any reduction, limitation, impairment or termination for any reason (other than the indefeasible payment in full in cash of the Obligations after the termination of the Commitments), including any claim of waiver, release, surrender, alteration or compromise of any of the Obligations, and shall not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any of the Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of each Loan Party hereunder shall not be discharged or impaired or otherwise affected by the failure of any Agent or any other Credit Party to assert any claim or demand or to enforce any remedy under this Agreement, any other Loan Document or any other agreement, by any waiver or modification of any provision of any thereof, any default, failure or delay, willful or otherwise, in the performance of any of the Obligations, or by any other act or omission that may or might in any manner or to any extent vary the risk of any Loan Party or that would otherwise operate as a discharge of any Loan Party as a matter of law or equity (other than the indefeasible payment in full in cash of all the Obligations after the termination of the Commitments).

(c) 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 the indefeasible payment in full in cash of all the Obligations and the termination of the Commitments. After the occurrence and during the continuance of an Event of Default, the Collateral Agent and the other Credit Parties may, at their election, foreclose on any security held by one or more of them by one or more judicial or nonjudicial sales, accept an assignment of any such security in lieu of foreclosure, compromise or adjust any part of the Obligations, make any other accommodation with any other 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 all the Obligations have been indefeasibly paid in full in cash and the Commitments have been terminated. 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.

(d) Each Borrower is obligated to repay the Obligations as joint and several obligors under this Agreement. Upon payment by any Loan Party of any Obligations, all rights of such Loan Party against any other Loan Party arising as a result thereof by way

of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subordinate and junior in right of payment to the prior indefeasible payment in full in cash of all the Obligations and the date that the Commitments have been terminated. In addition, any indebtedness of any Loan Party now or hereafter held by any other Loan Party is hereby subordinated in right of payment to the prior indefeasible payment in full of the Obligations and no Loan Party will demand, sue for or otherwise attempt to collect any such indebtedness. If any amount shall erroneously be paid to any Loan Party on account of (i) such subrogation, contribution, reimbursement, indemnity or similar right or (ii) any such indebtedness of any Loan Party, such amount shall be held in trust for the benefit of the Credit Parties and shall forthwith be paid to the Administrative Agent to be credited against the payment of the Obligations, whether matured or unmatured, in accordance with the terms of this Agreement and the other Loan Documents. Subject to the foregoing, to the extent that any Borrower shall, under this Agreement as a joint and several obligor, repay any of the Obligations constituting Revolving Loans made to another Borrower hereunder or other Obligations incurred directly and primarily by any other Borrower (an "Accommodation Payment"), then the Borrower making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed by, each of the other Borrowers in an amount, for each of such other Borrowers, equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Borrower's Allocable Amount and the denominator of which is the sum of the Allocable Amounts of all of the Borrowers. As of any date of determination, the "Allocable Amount" of each Borrower shall be equal to the maximum amount of liability for Accommodation Payments which could be asserted against such Borrower hereunder without (a) rendering such Borrower "insolvent" within the meaning of Section 101 (31) of the Bankruptcy Code, Section 2 of the Uniform Fraudulent Transfer Act ("UFTA") or Section 2 of the Uniform Fraudulent Conveyance Act ("UFCA"), (b) leaving such Borrower with unreasonably small capital or assets, within the meaning of Section 548 of the Bankruptcy Code, Section 4 of the UFTA, or Section 5 of the UFCA,

or (c) leaving such Borrower unable to pay its debts as they become due within the meaning of Section 548 of the Bankruptcy Code or Section 4 of the UFTA, or Section 5 of the UFCA.

10.21 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

10.22 Foreign Asset Control Regulations. Neither of the advance of the Loans nor the use of the proceeds of any thereof will violate the Trading With the Enemy Act (50 U.S.C. § 1 et seq., as amended) (the "Trading With the Enemy Act") or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) (the "Foreign Assets Control Regulations") or any enabling legislation or executive order relating thereto (which for the avoidance of doubt shall include, but shall not be limited to (a) Executive Order 13224 of September 21, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the "Executive Order") and (b) the Uniting and Strengthening America by

Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56)). Furthermore, none of the Borrowers or their Affiliates (a) is or will become a "blocked person" as described in the Executive Order, the Trading With the Enemy Act or the Foreign Assets Control Regulations or (b) engages or will engage in any dealings or transactions, or be otherwise associated, with any such "blocked person" or in any manner violative of any such order

10.23 Attachments. The exhibits, schedules and annexes attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail.

10.24 Intercreditor Agreement. Notwithstanding anything herein to the contrary, the exercise of any right or remedy by the Collateral Agent pursuant to this Agreement is subject to the provisions of the Intercreditor Agreement. In the event of any conflict between the terms of the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement shall govern and control.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

THE CHILDREN'S PLACE RETAIL STORES, INC., as Lead Borrower and as a Borrower

By: ______________________________
Name: Susan J. Riley
Title: Executive Vice President, Finance & Administration

THE CHILDREN'S PLACE SERVICES COMPANY LLC, as a Borrower

By: ______________________________
Name: Susan J. Riley
Title: Executive Vice President, Finance & Administration

THE CHILDRENSPLACE.COM, INC., as a Guarantor

By: ______________________________
Name: Adrienne Urban
Title: Assistant Treasurer

THE CHILDREN'S PLACE (VIRGINIA), LLC, as a Guarantor

By: ______________________________
Name: Susan J. Riley
Title: Senior Vice President and Treasurer

THE CHILDREN'S PLACE CANADA HOLDINGS, INC., as a Guarantor

By: ______________________________
Name: Susan J. Riley
Title: Senior Vice President and Treasurer

TWIN BROOK INSURANCE COMPANY, INC., as a Guarantor

By: ______________________________
Name: Susan J. Riley
Title: Senior Vice President and Treasurer

WELLS FARGO RETAIL FINANCE, LLC, as Administrative Agent, as Collateral Agent, as Swing Line Lender and as a Lender

By: ______________________________
Name: Michele L. Ayou
Title: Vice President

BANK OF AMERICA, N.A., as a Lender

By: ______________________________
Name: ______________________________
Title: ______________________________

HSBC BUSINESS CREDIT (USA) INC., as a Lender

By: ______________________________
Name: ______________________________
Title: ______________________________

JPMORGAN CHASE BANK, N.A., as a Lender

By: ______________________________
Name: ______________________________
Title: ______________________________

Exhibit 10.9

Note Purchase Agreement dated as of July 31, 2008 among the Company, as issuer, and certain of its subsidiaries as guarantors, The Note Purchasers, Sankaty Advisors, LLC, as collateral agent and Crystal Capital Fund Management, L.P. as syndication agent

EXECUTION

NOTE PURCHASE AGREEMENT

dated as of July 31, 2008

among

THE CHILDREN'S PLACE RETAIL STORES, INC., as Issuer

and

THE GUARANTORS LISTED HEREIN,

THE NOTE PURCHASERS LISTED HEREIN,

SANKATY ADVISORS, LLC, as Collateral Agent

and

CRYSTAL CAPITAL FUND MANAGEMENT, L.P., as Syndication Agent

$85,000,000 IN AGGREGATE PRINCIPAL AMOUNT
OF SENIOR SECURED SECOND LIEN NOTES DUE JULY 31, 2013

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A	Form of Senior Secured Second Lien Note
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C	Form of Security Agreement

NOTE PURCHASE AGREEMENT

This NOTE PURCHASE AGREEMENT (this "Agreement") is dated as of July , 2008 and is entered into by and among The Children's Place Retail Stores, Inc. (the "Issuer"), a corporation incorporated under the laws of Delaware, as issuer, the parties listed as Guarantors on the signature pages hereto (the Guarantors and the Issuer being referred to collectively as the "Note Parties", and each such Person a "Note Party"), Sankaty Advisors, LLC as Collateral Agent for the Note Purchasers, Crystal Capital Fund Management, L.P. as Syndication Agent for the Note Purchasers, and each Note Purchaser listed on Schedule I attached hereto (collectively, the "Note Purchasers").

RECITALS

WHEREAS, the Issuer will issue to the Note Purchasers Senior Secured Second Lien Notes (the "Notes") in the aggregate original principal amount of $85,000,000 in the form attached as Exhibit A hereto in order to finance the working capital, capital expenditures, certain obligations owed by the Issuer to third parties as a result of the Hoop bankruptcy, the repayment of the outstanding balance under the Issuer's Existing Credit Agreement, and for general corporate purposes and fees and expenses in relation to the Issuer's business.

WHEREAS, on or around the date hereof, the Issuer will enter into a revolving credit agreement with Wells Fargo Retail Finance, LLC, the borrowings in respect of which are also to be used in order to finance the working capital, capital expenditures, certain obligations owed by the Issuer to third parties as a result of the Hoop bankruptcy, and for general corporate purposes and fees and expenses in relation to the Issuer's business.

WHEREAS, pursuant to certain collateral documents dated on or around the date hereof, the Note Parties will grant in favor of the Collateral Agent, for the benefit of each of the Note Purchasers, liens in respect of the collateral described in the Collateral Documents, to secure the Note Parties' obligations in respect of the Notes .

WHEREAS, in order to, among other things, govern the priority of the liens held by the Revolving Agent and the Collateral Agent, the Revolving Agent and the Collateral Agent will enter into that certain Intercreditor Agreement (as amended, modified or supplemented from time to time, the "Intercreditor Agreement"), in substantially the form attached as Exhibit B.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Note Parties and the Note Purchasers agree as follows:

SECTION 1. DEFINITIONS.

1.1 Certain Defined Terms; Rules of Construction. Capitalized terms used in this Agreement have the meanings set forth in Annex I hereto. Except as otherwise explicitly specified to the contrary or unless the context clearly requires otherwise, (a) the capitalized term "Section" refers to sections of this Agreement, (b) the capitalized term "Exhibit" refers to exhibits to this Agreement, (c) the capitalized term "Schedules" refers to schedules to this Agreement, (d) references to a particular Section include all subsections thereof, (e) the word "including" shall be construed as "including without limitation", (f) references to a particular statute or regulation include all rules and regulations thereunder and any successor statute, regulation or rules, in each

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case as from time to time in effect, (g) references to a particular Person or entity include such Person's or entity's successors and assigns to the extent not prohibited by this Agreement, (h) references to "$", "cash", "dollars" or similar references means United States dollars, paid in cash or other immediately available funds. References to "the date hereof" mean the date first set forth above and (i) any reference in this Agreement to any agreement, instrument, or document shall include all alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements, thereto and thereof, as applicable (subject to any restrictions on such alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth herein).

1.2 Accounting Terms. Unless otherwise specifically provided herein, any accounting term used in the Agreement shall have the meaning customarily given such term in accordance with GAAP, and all financial computations hereunder shall be computed in accordance with GAAP consistently applied using the Issuer's historical accounting practices. That certain items or computations are explicitly modified by the phrase "in accordance with GAAP" shall in no way be construed to limit the foregoing. If any "Accounting Changes" (as defined below) occur and such changes result in a change in the calculation of the financial covenants, standards or terms used in the Agreement or any other Note Document, then the Issuer and the Note Purchasers agree to enter into negotiations in order to amend such provisions of the Agreement so as to equitably reflect such Accounting Changes with the desired result that the criteria for evaluating the financial condition of the Issuer and its Subsidiaries shall be the same after such Accounting Changes as if such Accounting

Changes had not been made; provided, however, that the agreement of the Required Purchasers to any required amendments of such provisions shall be sufficient to bind all of the Note Purchasers. "Accounting Changes" means (i) changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board or the American Institute of Certified Public Accountants (or successor thereto or any agency with similar functions), (ii) changes in accounting principles concurred in by the Issuer's certified public accountants; and (iii) purchase accounting adjustments under FASB 141 or 142 and EITF 88-16, and the application of the accounting principles set forth in FASB 109, including the establishment of reserves pursuant thereto and any subsequent reversal (in whole or in part) of such reserves. All such adjustments resulting from expenditures made subsequent to the Closing Date (including capitalization of costs and expenses or payment of pre-Closing Date liabilities) shall be treated as expenses in the period the expenditures are made and deducted as part of the calculation of EBITDA in such period. If the Issuer and the Required Purchasers agree upon the required amendments, then after appropriate amendments have been executed and the underlying Accounting Change with respect thereto has been implemented, any reference to GAAP contained in the Agreement or in any other Note Document shall, only to the extent of such Accounting Change, refer to GAAP, consistently applied after giving effect to the implementation of such Accounting Change. If the Issuer and the Required Purchasers cannot agree upon the required amendments within 30 days following the date of implementation of any Accounting Change, then all financial statements delivered and all calculations of financial covenants and other standards and terms in accordance with the Agreement and the other Note Documents shall be prepared, delivered and made without regard to the underlying Accounting Change.

SECTION 2. PURCHASE AND SALE OF THE NOTES.

2.1 Purchase and Sale of the Notes. Subject to the terms and conditions of this Agreement and on the basis of the representations and warranties set forth herein, the Issuer hereby agrees to sell to each Note Purchaser, and each such Note Purchaser agrees to purchase from the

Issuer, at the Closing, a Note in the original principal amount and purchase price set forth on Schedule I.

2.2 The Closing. The purchase and sale of the Notes will occur at a closing (the "Closing") to be held on July , 2008, at 10:00 a.m. (New York time), at the offices of Gibson, Dunn & Crutcher LLP, 200 Park Ave., New York, NY 10166, or at such other date, time and/or location as may be agreed upon by the parties hereto.

2.3 Payment of Purchase Price. At the Closing, against payment by the Note Purchasers by wire transfer of immediately available funds in the purchase price set forth on Schedule I, the Issuer will deliver Notes registered in the names of the Note Purchasers in the principal amounts set forth on Schedule I.

2.4 Use of Proceeds. The proceeds of the sale by the Issuer of the Notes hereunder shall be used solely to provide financing for working capital; Capital Expenditures; expenses related to the Disney Store Termination Agreements; certain obligations owed by the Issuer to third parties as a result of the Hoop bankruptcy in an aggregate amount not to exceed $20,000,000 (net of receipts from Disney), as more fully described on Schedule 2.4 attached hereto; the repayment of the outstanding balance under the Issuer's Existing Credit Agreement; and general corporate purposes and fees and expenses.

SECTION 3. TERMS OF THE NOTES

3.1 Interest on the Notes. The Notes shall bear interest at a rate equal to the respective Applicable Rate for such Notes on the unpaid principal amount thereof (and on any interest or other amount owing hereunder that is not paid when due, to the extent permitted by applicable law) from and including the Closing Date (or as applicable, a Supplemental Closing Date) until the principal amount shall have been paid in full. During the pendency of any Event of Default, the interest rate on the Notes shall be increased by 2% per annum over the then Applicable Rate.

3.1.1. Interest Payment Dates. All accrued interest on the Notes shall be payable, in arrears, in cash, on the last Business Day of each month (each an "Interest Payment Date").

3.1.2. Calculation of Interest. Interest on the Notes shall be computed on the basis of the actual number of days elapsed over a 360-day year. In computing such interest, the date or dates of the making of the Notes shall be included and the date of payment shall be excluded.

3.2 Payment of Notes.

3.2.1. Payment at Maturity. The entire principal amount of the Notes then outstanding, any accrued and unpaid interest on the Notes and all other Note Obligations (except for contingent obligations for which no demand has been made) shall be due and payable on, and shall be paid in full in cash on, the Maturity Date of the Notes. The Issuer understands and acknowledges that it is obligated for the entire principal amount of the Notes issued by it, any accrued and unpaid interest on such Notes and all other Note Obligations.

3.2.2. Voluntary Prepayments. The Notes may be prepaid at the Issuer's option, at any time, and from time to time, in whole or in part (in a minimum amount and in

increments of $1,000,000, or such lesser amount as is then outstanding), on 5 Business Days' prior notice to the respective Note Purchasers whose Notes are to be prepaid; provided, that any such voluntary prepayment of Notes shall include the Applicable Premium on the amount so prepaid.

3.2.3. Offer to Repurchase Upon a Change of Control.

3.2.3.1. Condition to Issuer Action. Not later than 5 Business Days prior to a Change of Control, the Issuer shall give to each holder of Notes written notice containing and constituting an offer to prepay Notes as described in Section 3.2.3.2, accompanied by the certificate described in Section 3.2.3.5.

3.2.3.2. Offer to Prepay Notes. Any offer to prepay Notes contemplated by Section 3.2.3.1 or Sections 3.2.4.1 through 3.2.4.3 shall be an offer by the Issuer to prepay, in accordance with and subject to this Section 3.2.3 the Notes (and in the case of Section 3.2.3.1, all, and not less than all, of the Notes) of the Issuer held by each holder (in this case only, "*holder*" in respect of any Note registered in the name of a nominee for a disclosed beneficial owner shall mean such beneficial owner) on the date specified in such offer (the "Proposed Prepayment Date") that is not less than 30 days and not more than 60 days after the date of such offer (if the Proposed Prepayment Date shall not be specified in such offer, the Proposed Prepayment Date shall be the first Business Day which is at least 45 days after the date of such offer).

3.2.3.3. Acceptance; Rejection. A holder of Notes may accept the offer to prepay made pursuant to this Section 3.2.3 by causing a notice of such acceptance to be delivered to the Issuer at least 10 days prior to the Proposed Prepayment Date.

3.2.3.4. Prepayment. Prepayment of the Notes to be prepaid pursuant to this Section 3.2.3 shall be at 100% of the principal amount of such Notes, together with interest on such Notes accrued to the date of prepayment *plus* the Applicable Premium if any. All prepayments pursuant to this Section 3.2.3 are subject to the terms and conditions set forth in the Intercreditor Agreement and Section 3.2.4.5 and shall only be required to be made to the extent expressly permitted to be made pursuant to the terms and conditions of the Intercreditor Agreement. The Issuer shall give the Collateral Agent prior written notice of making a mandatory prepayment pursuant to Section 2.05(d) of the Revolving Loan Agreement.

3.2.3.5. Officer's Certificate. Each offer of the Issuer to prepay Notes pursuant to this Section 3.2.3 shall be accompanied by a certificate, executed by a senior financial officer of the Issuer and dated the date of such offer, specifying: (i) the Proposed Prepayment Date; (ii) that such offer is made pursuant to this Section 3.2.3 (or 3.2.4.1 through 3.2.4.3 as applicable); (iii) the principal amount of each Note offered to be prepaid (which shall be 100% of the principal amount of such Note); (iv) the interest that would be due on each Note offered to be prepaid, accrued to the Proposed Prepayment Date; (v) the amount of the Applicable Premium, if any (vi) that the conditions of this Section 3.2.3 have been fulfilled; and (vii) in reasonable detail, the nature and date of the Change of Control, if applicable.

3.2.4. Other Mandatory Prepayments.

3.2.4.1. Promptly upon the receipt by any Note Party of the proceeds of any voluntary or involuntary Disposition by any Note Party of property or assets (including casualty losses or condemnations but excluding Dispositions which qualify as Permitted Dispositions;

provided, however, that to the extent that Permitted Dispositions (other than under clause (a), (c) or (d) of the definition of Permitted Dispositions), exceed $4,000,000 per Fiscal Year, then any such amount in excess of $4,000,000 per Fiscal Year shall not constitute Permitted Dispositions for the purposes of this Section 3.2.4), the Issuer shall make an offer to prepay the outstanding principal amount of the Note Obligations in accordance with Sections 3.2.3.2 through 3.2.3.5 (including, without limitation, to the payment of the Applicable Premium on the amount so prepaid) in an amount equal to 100% of the Net Cash Proceeds (including condemnation awards and payments in lieu thereof) received by such Person in connection with such Dispositions; provided that, so long as (A) no Default or Event of Default shall have occurred and is continuing, (B) the Issuer shall have given the Collateral Agent prior written notice of the Issuer's intention to apply such monies to the costs of replacement of the properties or assets that are the subject of such Disposition and (C) the Note Parties complete such replacement, purchase, or construction within 180 days after the initial receipt of such monies, the Note Parties shall have the option to apply up to $5,000,000 per Fiscal Year (not to exceed $15,000,000 in the aggregate for all Fiscal Years without consent of the Required Purchasers and in no event shall such amount include Net Cash Proceeds from any sale and lease-back by any Note Party) of such monies to the costs of replacement of the property or assets that are the subject of such Disposition unless and to the extent that such applicable period shall have expired without such replacement, purchase or construction being made or completed, in which case, any such amounts shall be paid to the Collateral Agent and applied in accordance with Section 3.2.3.4. Nothing contained in this Section 3.2.4.1 shall permit any Note Party to Dispose of any property or assets other than in accordance with Section 8.5.

3.2.4.2. Promptly upon the receipt by any Note Party of any Extraordinary Receipts, the Issuer shall offer to prepay the outstanding principal amount of the Note Obligations in accordance with Sections 3.2.3.2 through 3.2.3.5 in an amount equal to 100% of the Net Cash Proceeds of such Extraordinary Receipts.

3.2.4.3. Promptly upon the issuance or incurrence by any Note Party of any Indebtedness (other than Indebtedness permitted under Section 8.3), or any equity issuance by a Note Party, the Issuer shall offer to prepay the outstanding principal amount of the Note Obligations in accordance with Sections 3.2.3.2 through 3.2.3.5 (including, without limitation, to the payment of the Applicable Premium on the amount so prepaid) in an amount equal to 100% of the Net Cash Proceeds received by such Person in connection with such issuance or incurrence. The provisions of this Section 3.2.4.3 shall not be deemed to be implied consent to any such issuance or incurrence otherwise prohibited by the terms and conditions of this Agreement.

3.2.4.4. Within 10 days of the earlier of (A) delivery to the Note Purchasers of a certificate of a Responsible Officer of the Issuer containing the calculations for Excess Cash Flow for any measurement period ending on or after January 31, 2009, or (B) (i) delivery to the Note Purchasers of audited annual financial statements pursuant to Section 7.2.1, commencing with the delivery to the Note Purchasers of financial statements for Fiscal Year ended January 31, 2009 or, (ii) if such financial statements are not delivered to Note Purchasers on the date such reports are required to be delivered pursuant to Section 7.2.1, the date such reports are required to be delivered to the Note Purchasers pursuant to Section 7.2.1, the Note Parties shall prepay the outstanding principal amount of the Note Obligations in accordance with Section 3.3 in an amount equal to (X) with respect to such payment due in respect of Fiscal Year ended January 31, 2009, 50% of the aggregate Excess Cash Flow of the Note Parties for the Fiscal Year ending on January 31, 2009 and (Y) with respect to each payment due in respect of each Fiscal Year thereafter, 50% of the Excess Cash Flow of the Note Parties for such Fiscal Year; provided, that, the Note Parties shall be

permitted to prepay an additional amount equal to 25% of the Excess Cash Flow of the Note Parties for each such Fiscal Year in clause (A) and (B), which prepayment, for the avoidance of doubt, shall not require the payment of any Applicable Premium.

3.2.4.5. All prepayments pursuant to this Section 3.2.4 are subject to the terms and conditions set forth in the Intercreditor Agreement and shall only be required to be made to the extent expressly permitted to be made pursuant to the terms and conditions of the Intercreditor

Agreement. The Issuer shall give the Collateral Agent prior written notice of making a mandatory prepayment pursuant to Section 2.05(d) of the Revolving Loan Agreement.

3.2.4.6. AHYDO. Notwithstanding anything to the contrary contained in Section 3 above, if (1) the Notes remain outstanding after the fifth anniversary of the initial issuance thereof and (2) the aggregate amount of the accrued but unpaid interest on the Notes (including interest paid in kind and any amounts treated as interest for U.S. federal income tax purposes, such as "original issue discount") as of any Testing Date occurring after such fifth anniversary exceeds an amount equal to the Maximum Accrual, then all such accrued but unpaid interest on the Notes (including any amounts treated as interest for federal income tax purposes, such as "original issue discount") as of such time in excess of an amount equal to the Maximum Accrual shall be paid in cash by the Issuer (or its successors) to the holders thereof before the end of such Testing Date, it being the intent of the parties hereto that the deductibility of interest under the Notes shall not be limited or deferred by reason of Section 163(i) of the Code. For these purposes, the "Maximum Accrual" is an amount equal to the product of such Notes' issue price (as defined in Code Sections 1273(b) and 1274(a)) and their yield to maturity, and a "Testing Date" is any Interest Payment Date and the date on which any "accrual period" (within the meaning of Section 1272(a)(5) of the Code) closes.

3.3 Prepayment Procedures.

3.3.1. If fewer than all of the Notes are to be paid or prepaid, the Issuer shall pay or prepay the Notes on a pro rata basis.

3.3.2. Upon surrender of a Note that is paid or prepaid in part, the Issuer shall, at the request of the applicable Note Purchaser, promptly execute and deliver to the holder (at the expense of the Issuer) a new Note equal in principal amount to the unpaid portion of the Note surrendered.

3.3.3. Each Note Purchaser agrees that before disposing of the Note held by it, or any part thereof (other than by granting participations therein), such Note Purchaser will make a notation thereon of all principal payments previously made thereon and of the date to which interest thereon has been paid and will notify the Issuer of the name and address of the transferee of that Note; provided, that the failure to make (or any error in the making of) a notation of the payments made under such Note or to notify the Issuer of the name and address of a transferee shall not limit or otherwise affect the obligation of the Issuer hereunder or under such Note.

3.3.4. All payments or prepayments (whether voluntary or mandatory) shall include the payment of accrued and unpaid interest to, but not including, the date of such prepayment on the principal amount of the Notes so prepaid.

3.3.5. All prepayments pursuant to this Section 3.3 are subject to the terms and conditions set forth in the Intercreditor Agreement and shall only be required to be made to the extent expressly permitted to be made pursuant to the terms and conditions of the Intercreditor Agreement. The Issuer shall give the Collateral Agent prior written notice of making a mandatory prepayment pursuant to Section 2.05(d) of the Revolving Loan Agreement.

3.4 Taxes.

3.4.1. Subject to Section 3.3.4, any and all payments by the Issuer hereunder or with respect to any Note or Note Guarantee shall be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings in any such case imposed by the United States or any political subdivision thereof, excluding taxes imposed or based on the recipient Note Purchaser's overall net income, and franchise or capital taxes imposed on it in lieu of net income taxes (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities in respect of payments hereunder or under the Notes being hereinafter referred to as "Taxes"). If the Issuer or any Guarantor shall be required by law to deduct any Taxes from or in respect of any sum payable hereunder or under any Note to any Note Purchaser, (i) the sum payable shall be increased as may be reasonably necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 3.4) such Note Purchaser receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Issuer or Guarantor shall make such deductions and (iii) the Issuer or Guarantor shall remit the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law. Within 30 days after the date of any payment of Taxes, the Issuer or Guarantor shall furnish to such Note Purchaser the original or certified copy of a receipt evidencing payment thereof.

3.4.2. In addition, the Issuer and the Guarantors agrees to pay any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies which arise from any payment made hereunder or from the execution, delivery or registration of, performance under, or otherwise with respect to, this Agreement or the Notes (hereinafter referred to as "Other Taxes").

3.4.3. Each Note Purchaser of Notes organized under the laws of a jurisdiction outside the United States, prior to its receipt of any payment on the Notes, shall provide the Issuer with (i) Internal Revenue Service Form W-8ECI, W-8BEN, W-8EXP or W-8IMY, as appropriate, or any successor form prescribed by the Internal Revenue Service, certifying that such Note Purchaser is entitled to benefits under an income tax treaty to which the United States is a party, which exempts the recipient from United States withholding tax on payments of interest or certifying that the income receivable pursuant to this Agreement is effectively connected with the conduct of a trade or business in the United States, (ii) Internal Revenue Service Form W-8 or W-9, as appropriate, or any successor form prescribed by the Internal Revenue Service, and (iii) any other form or certificate required by any taxing authority (including any certificate required by Sections 871(h) and 881(c) of the Code), certifying that such Note Purchaser is entitled to an exemption from United States withholding tax on interest payments made pursuant to this Agreement.

3.4.4. For any period with respect to which a Note Purchaser has failed to provide the Issuer with the appropriate form pursuant to Section 3.4.3, such Note Purchaser shall not be entitled to any additional amounts or indemnification under this Section 3.4 with respect to Taxes imposed by the United States; provided, however, that should a Note Purchaser which is otherwise

exempt from Taxes become subject to Taxes because of its failure to deliver a form required hereunder, the Issuer shall take such steps as such Note Purchaser shall reasonably request to assist such Note Purchaser to recover such Taxes.

3.4.5. The Issuer and the Guarantors will indemnify each Note Purchaser for the full amount of Taxes or Other Taxes as provided in Sections 3.4.1 and 3.4.2 (to the extent not previously paid under Section 3.4.1 or 3.4.2 above) imposed on such Note Purchaser and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto. Payment in respect of any such indemnification shall be made within 30 days from the date such Note Purchaser makes written demand therefor.

3.4.6. In the event that the Issuer or a Guarantor makes an additional payment under Section 3.4.1, 3.4.2 or 3.4.5 for the account of any Note Purchaser and such Note Purchaser, in its sole opinion and absolute discretion, determines that it has finally and irrevocably received or been granted a credit against, or relief or remission from, or repayment of, any tax paid or payable by it in respect of or calculated with reference to the deduction or withholding giving rise to such additional payment, such Note Purchaser shall, to the extent that it determines that it can do so without prejudice to the retention of the amount of such credit, relief, remission or repayment, pay to the Issuer or Guarantor, as applicable, such amount as such Note Purchaser shall, in its sole opinion, have determined is attributable to such deduction or withholding and will leave such Note Purchaser (after such payment) in no worse position than it would have been had the Issuer or Guarantor not been required to make such deduction or withholding. Nothing contained herein shall (i) interfere with the right of a Note Purchaser to arrange its tax affairs in whatever manner it thinks fit or (ii) oblige any Note Purchaser to claim any tax credit or to disclose any information relating to its tax affairs or any computations in respect thereof or (iii) require any Note Purchaser to take or refrain from taking any action that would prejudice its ability to benefit from any other credits, reliefs, remissions or repayments to which it may be entitled.

3.4.7. Without prejudice to the survival of any other agreement hereunder, the agreements and obligations contained in this Section 3.4 shall survive the payment in full of principal and interest under the Notes.

3.5 Manner and Time of Payment.

3.5.1. All payments with respect to any Notes shall be made pro rata to the Note Purchasers without defense, set off or counterclaim in same day funds and shall be made by wire transfer to the Note Purchasers' respective accounts designated in Schedule II hereto (or such other account or address or to the attention of such other Person as the applicable Note Purchaser shall have specified by prior written notice to the Issuer) so as to be actually received not later than 3:00 p.m. (Boston time) on the date such payment is due; provided that funds received by such Note Purchasers after 3:00 p.m. (Boston time) shall be deemed to have been paid on the next succeeding Business Day.

3.5.2. Whenever any payment to be made hereunder or under the Notes shall be stated to be due on a day which is not a Business Day, the payment shall be made on the next succeeding Business Day and such additional period shall be included in the computation of the payment of interest hereunder or under the Notes.

SECTION 4. REPRESENTATIONS AND WARRANTIES OF NOTE PURCHASERS.

In order to induce the Issuer to enter into this Agreement, each Note Purchaser individually (but not on behalf of any other Note Purchaser) represents and warrants for the benefit of the other Note Purchasers and the Issuer that, as of the Closing Date:

4.1 Legal Capacity; Due Authorization. Such Note Purchaser has full legal capacity, power and authority to execute and deliver this Agreement and to perform its obligations hereunder and that this Agreement has been duly executed and delivered by such Note Purchaser and is the legal, valid and binding obligation of such Note Purchaser enforceable against it in accordance with the terms hereof.

4.2 Restrictions on Transfer. Such Note Purchaser has been advised that the Notes have not been registered under the Securities Act or any state securities laws and, therefore, cannot be resold unless they are registered under the Securities Act and applicable state securities laws or unless an exemption from such registration requirements is available, and that the Notes may have to be held by such Note Purchaser for an indefinite period of time. Such Note Purchaser is aware that the Issuer is not under any obligation to effect any such registration with respect to the Notes or to file for or comply with any exemption from registration. Such Note Purchaser is purchasing the Notes to be acquired by such Note Purchaser hereunder for its own account and not with a view to, or for resale in connection with, the distribution thereof in violation of the Securities Act; provided, however, that except as provided in Section 10 of this Agreement, the disposition of such Note Purchaser's property shall at all times be and remain in its control and sole discretion.

4.3 Accredited Investor, etc. Such Note Purchaser has such knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of such investment, is able to incur a complete loss of such investment and to bear the economic risk of such investment for an indefinite period of time. Such Note Purchaser (i) is an "accredited investor" as that term is defined in Regulation D under the Securities Act and (ii) has been represented by counsel in the purchase of the Notes to be purchased by it and is aware of the limitations of state and federal securities laws with respect to the disposition of the Notes. Such Note Purchaser acknowledges that such Note Purchaser has had an opportunity to examine the financial and business affairs of the Issuer and the Note Parties and an opportunity to ask questions of and receive answers from the Issuer's and the Note Parties' management.

4.4 No Advertisement. There has been no advertisement by such Note Purchaser of the Notes in printed public media, radio, television or telecommunications, including electronic display (for the avoidance of doubt, after the Closing Date the Note Purchasers may advertise entering into the transactions contemplated by this Agreement).

SECTION 5. REPRESENTATIONS AND WARRANTIES OF THE NOTE PARTIES.

In order to induce each Note Purchaser to enter into this Agreement and to purchase the Notes to be purchased by such Note Purchaser hereunder, each Note Party represents and warrants to the Collateral Agent and each Note Purchaser that:

5.1 Existence, Qualification and Power. Each Note Party and each Subsidiary thereof: (a) is a corporation, limited liability company, partnership or limited partnership, duly organized or formed, validly existing and, where applicable, in good standing under the Laws of the jurisdiction

of its incorporation or organization; (b) has all requisite power and authority and all requisite governmental licenses, permits, authorizations, consents and approvals to (i) own or lease its assets and carry on its business as currently conducted or as proposed to be conducted and (ii) execute, deliver and perform its obligations under the Note Documents to which it is a party; and (c) is duly qualified and is licensed and, where applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. Schedule 5.1 annexed hereto sets forth, as of the Closing Date, each Note Party's name as it appears in official filings in its state of incorporation or organization and the name under which each Note Party conducts its business (if different), its state of incorporation or organization, organization type, organization number, if any, issued by its state of incorporation or organization, its federal employer identification number and the address of its chief executive office and principal place of business.

5.2 Authorization; No Contravention. The execution, delivery and performance by each Note Party of each Note Document to which such Person is, or is to be, a party has been duly authorized by all necessary corporate or other organizational action and does not and will not: (a) contravene the terms of any of such Person's Governing Documents; (b) conflict in any material respect with, or result in any breach, termination, or contravention of, or constitute a default under, or require any payment to be made under (i) any Material Contract or any Material Indebtedness to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries, (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject, or (iii) any governmental licenses, permits, authorizations, consents and approvals, except in each case referred to in this clause (b), to the extent that any such conflict, breach, termination, contravention or default could not reasonably be expected to have a Material Adverse Effect; (c) result in or require the creation of any Lien upon any asset of any Note Party (other than Liens in favor of the Collateral Agent under the Collateral Documents); or (d) violate any Law.

5.3 Governmental Authorization; Other Consents. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Note Party of this Agreement or any other Note Document, except for (a) the perfection or maintenance of the Liens created under the Collateral Documents (having the priority set forth in the Intercreditor Agreement), or (b) such as have been obtained or made and are in full force and effect.

5.4 Binding Effect. This Agreement has been, and each other Note Document, when delivered, will have been, duly executed and delivered by each Note Party that is party thereto. This Agreement constitutes, and each other Note Document when so delivered will constitute, a legal, valid and binding obligation of such Note Party, enforceable against each Note Party that is party thereto in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

5.5 Financial Statements; No Material Adverse Effect.

5.5.1. The audited consolidated, balance sheet of the Note Parties and their Subsidiaries as at February 2, 2008, and the audited statements of income and related cash flows of

each such Persons for the Fiscal Year then ended (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of the Issuer and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all Material Indebtedness and other liabilities, direct or contingent, of the Issuer and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

5.5.2. The unaudited Consolidated balance sheet of the Issuer and its Subsidiaries dated May, 2008, and the related Consolidated statements of income or operations, Shareholders' Equity and cash flows for the Fiscal Month ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present the financial condition of the Issuer and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

5.5.3. Projections for the Note Parties and their Subsidiaries for the five year period ended on or around January 31, 2012 (the "Projections"). The Projections are based upon estimates and assumptions stated therein, all of which the Issuer believes to be reasonable and fair in light of reasonably foreseeable business conditions and current facts known to the Issuer and, as of the Closing Date, reflects the Issuer's good faith and reasonable estimate of the future financial performance of the Note Parties and of the other information projected therein for the period set forth therein, it being recognized by the Note Purchasers that such projections as they relate to future events are not to be viewed as fact and that actual results during the period or periods covered by such Projections may differ from the projected results set forth therein.

5.5.4. Since February 2, 2008, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

5.6 Litigation. Except as otherwise set forth in Schedule 5.6, there are no actions, suits, judgments, proceedings, claims or disputes pending or, to the knowledge of the Note Parties after due and diligent investigation, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against any Note Party or any of its Subsidiaries or against any of its properties or revenues that (a) purport to affect or pertain to this Agreement or any other Note Document, or any of the transactions contemplated hereby, or (b) either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.7 No Default. No Note Party or any Subsidiary is in default under or with respect to, or party to, any Material Contract or any Material Indebtedness. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Note Document.

5.8 Ownership of Property; Liens; Lease Agreements.

5.8.1. Each of the Note Parties and each Subsidiary thereof has good record and marketable title in fee simple to all real property owned by such Person necessary or used in the

ordinary conduct of its business, free and clear of all Liens, other than Permitted Encumbrances. Each of the Note Parties and each Subsidiary thereof has valid leasehold interests in at least 95% of all the real property leased by such Person necessary or used in the ordinary conduct of its business, free and clear of all Liens, other than Permitted Encumbrances and, as to the remaining 5% of such leased property, there are no defaults under such leasehold interests, except for such defaults that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each of the Note Parties and each Subsidiary has good and marketable title to or a valid leasehold interest in all personal property and assets necessary or used in to the ordinary conduct of its business (excluding Intellectual Property) as currently conducted or as proposed to be conducted, free and clear of all Liens, other than Permitted Encumbrances, except for such defects in title and leasehold interests as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each of the Note Parties and each Subsidiary has good and marketable title to, valid leasehold interests in, or valid licenses to use, all Intellectual Property necessary or used in the ordinary conduct of its business as currently conducted or as proposed to be conducted, free and clear of all Liens, other than Permitted Encumbrances

5.8.2. Schedule 5.8.2(1) sets forth the address (including street address, county and state) of all Real Estate that is owned by the Note Parties, together with a list of the holders of any mortgage or other Lien thereon as of the Closing Date. Each Note Party and each of its Subsidiaries has good, marketable and insurable fee simple title to the real property owned by such Note Party or such Subsidiary, free and clear of all Liens, other than Permitted Encumbrances, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Schedule 5.8.2(2) sets forth the address (including street address, county and state) of all Leases of the Note Parties, together with a list of the lessor and its contact information with respect to each such Lease as of the Closing Date. At least 95% of the aggregate number of Leases are in full force and effect as of the Closing Date and the Note Parties are not in default of the terms of such Leases. There is no current litigation, threatened litigation or material disputes in respect of any of the Leases; except, in each case, as could not reasonably be expected to have a Material Adverse Effect. None of the Leases are part of a master lease agreement.

5.8.3. Schedule 5.8.3 sets forth a complete and accurate list of all Liens on the property or assets of each Note Party and each of its Subsidiaries, showing as of the date hereof the lienholder thereof, the property or assets of such Note Party or such Subsidiary subject thereto and for each Lien that secures Indebtedness in excess of $1,000,000, the principal amount of the obligations secured thereby. The property of each Note Party and each of its Subsidiaries is subject to no Liens, other than Liens set forth on Schedule 5.8.3, and Permitted Encumbrances; provided, that, the aggregate amount of Indebtedness secured by the Liens set forth on Schedule 5.8.3 shall not exceed $3,000,000.

5.8.4. Schedule 5.8.4 sets forth a complete and accurate list of all Investments held by any Note Party or any Subsidiary of a Note Party on the date hereof, showing as of the date hereof the amount, obligor or issuer and maturity, if any, thereof.

5.8.5. Schedule 5.8.5 sets forth a complete and accurate list of all Indebtedness of each Note Party or any Subsidiary of a Note Party as of the Closing Date, showing as of the Closing Date the amount, obligor or issuer and maturity thereof and Schedule T-1 sets forth a complete and accurate list of all letters of credit of the Note Parties. As of the Closing Date, after giving effect to the transactions contemplated hereby, the Note Parties have no Indebtedness except for the Note Obligations, the Indebtedness set forth on Schedule 5.8.5 and Permitted Indebtedness.

5.9 Environmental Compliance.

5.9.1. No Note Party or any Subsidiary thereof (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability, except in each case, as could not, individually or in the aggregate be expected to have a Material Adverse Effect.

5.9.2. Except as otherwise set forth in Schedule 5.9, to the knowledge of the Note Parties, none of the properties currently or formerly owned or operated by any Note Party or any Subsidiary thereof is listed or proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list or is adjacent to any such property; there are no and never have been any underground or above-ground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed on any property currently owned or operated by any Note Party or any Subsidiary thereof or, to the best of the knowledge of the Note Parties, on any property formerly owned or operated by any Note Party or Subsidiary thereof; there is no asbestos or asbestos-containing material on any property currently owned or operated by any Note Party or Subsidiary thereof; and Hazardous Materials have not been released, discharged or disposed of on any property currently or formerly owned or operated by any Note Party or any Subsidiary thereof.

5.9.3. Except as otherwise set forth on Schedule 5.9, no Note Party or any Subsidiary thereof is undertaking, and no Note Party or any Subsidiary thereof has completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and all Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any property currently or formerly owned or operated by any Note Party or any Subsidiary thereof have been disposed of in a manner not reasonably expected to result in material liability to any Note Party or any Subsidiary thereof.

5.10 Insurance. The properties of the Note Parties and their Subsidiaries are insured with financially sound and reputable insurance companies which are not Affiliates of the Note Parties, in such amounts, with such deductibles and covering such risks (including, without limitation, workmen's compensation, public liability, business interruption and property damage insurance) as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Note Parties or the applicable Subsidiary operates. Schedule 5.10 sets forth a description of all insurance maintained by or on behalf of the Note Parties as of the Closing Date. Each insurance policy listed on Schedule 5.10 is in full force and effect and all premiums in respect thereof that are due and payable have been paid.

5.11 Taxes. The Note Parties and their Subsidiaries have filed all Federal, state and other material tax returns and reports required to be filed, and have paid all Federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties,

income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings being diligently conducted, for which adequate reserves have been provided in accordance with GAAP, as to which Taxes no Lien has been filed and which

contest effectively suspends the collection of the contested obligation and the enforcement of any Lien securing such obligation. There is no proposed tax assessment against any Note Party or any Subsidiary that would, if made, have a Material Adverse Effect. No Note Party or any Subsidiary thereof is a party to any tax sharing agreement.

5.12 ERISA Compliance.

5.12.1. Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state Laws. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service or an application for such a letter is currently being processed by the Internal Revenue Service with respect thereto and, to the best knowledge of the Issuer, nothing has occurred which would prevent, or cause the loss of, such qualification. The Note Parties and each ERISA Affiliate have made all required contributions to each Plan subject to Section 412 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Plan. No Lien imposed under the Code or ERISA exists or, to the knowledge of the Issuer, is likely to arise on account of any Plan.

5.12.2. There are no pending or, to the best knowledge of the Issuer, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan. To the best knowledge of the Issuer, there has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan.

5.12.3. Except as could not reasonably be expected to have a Material Adverse Effect, individually or in the aggregate: (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability; (iii) neither any Note Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) neither any Note Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) neither any Note Party nor any ERISA Affiliate has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA.

5.13 Subsidiaries; Equity Interests. The Note Parties have no Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.13, which Schedule sets forth the legal name, jurisdiction of incorporation or formation and authorized Equity Interests of each such Subsidiary, listed by class, and setting forth the number and percentage of the outstanding Equity Interests of each such class owned directly or indirectly by the applicable Note Party. All of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and non-assessable and are owned by a Note Party (or a Subsidiary of a Note Party) in the amounts specified on Part (a) of Schedule 5.13, free and clear of all Liens except for those created under the Security Documents and the Collateral Documents. The Note Parties have no equity investments in any other corporation or entity other than those specifically disclosed in Part (b) of Schedule 5.13. Part (c) of Schedule 5.13 is a complete and accurate description of the authorized Equity Interests of each Note Party, by class, and a description of the number of shares of each such class that are issued and outstanding. All of the outstanding Equity Interests in the Note Parties have been validly issued, and are fully paid and non-assessable and, other than with respect to the Issuer, are owned in the amounts specified on Part (c) of Schedule 5.13, free and clear of all Liens except for those created under the

Security Documents and the Collateral Documents. Except as set forth in Schedule 5.13, there are no subscriptions, options, warrants, or calls relating to any shares of any Note Party's Equity Interests, including any right of conversion or exchange under any outstanding security or other instrument. No Note Party is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of its Equity Interests or any security convertible into or exchangeable for any of its Equity Interests. The copies of the Governing Documents of each Note Party and each amendment thereto provided pursuant to Section 6.3 are true and correct copies of each such document, each of which is valid and in full force and effect.

5.14 Margin Regulations; Investment Company Act.

5.14.1. No Note Party is engaged or will be engaged, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock. None of the proceeds from the sale of the Notes shall be used directly or indirectly for the purpose of purchasing or carrying any margin stock, for the purpose of reducing or retiring any Indebtedness that was originally incurred to purchase or carry any margin stock or for any other purpose that might cause any of the sale of the Notes to be considered a "purpose credit" within the meaning of Regulations T, U, or X issued by the FRB.

5.14.2. None of the Note Parties, any Person Controlling any Note Party, or any Subsidiary is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

5.15 Disclosure. Each Note Party has disclosed to the Collateral Agent and the Note Purchasers all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other information furnished (whether in writing or orally) by or on behalf of any Note Party to the Collateral Agent or any Note Purchasers in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Note Document (in each case, as modified or supplemented by other information so furnished), contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Note Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

5.16 Compliance with Laws. Each of the Note Parties and each Subsidiary is in compliance in all respects with the requirements of all applicable Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of

Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

5.17 Intellectual Property; Licenses, Etc. Each Note Party owns, or holds licenses in, all Intellectual Property, trade names, patent rights and other authorizations that are necessary to the conduct of its business as currently conducted and as proposed to be conducted, and attached hereto

as Schedule 5.17 is a true, correct, and complete listing of all material patents, patent applications, trademarks, trademark applications, copyrights, and copyright registrations as to which a Note Party is the owner or is an exclusive licensee. To the best knowledge of the Issuer after reasonable inquiry, (i) there is no action, proceeding, claim or complaint pending or, threatened in writing to be brought against any Note Party which might jeopardize any of such Person's interest in any of the foregoing licenses, patents, copyrights, trademarks, trade names, designs or applications, except those which are not, in the aggregate, material to the Note Parties' financial condition, results of operations or business and (ii) no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by any Note Party or any Subsidiary infringes upon any rights held by any other Person.

5.18 Labor Matters. There are no strikes, lockouts, slowdowns or other material labor disputes against any Note Party or any Subsidiary thereof pending or, to the knowledge of any Note Party, threatened which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 5.18(1), the hours worked by and payments made to employees of the Note Parties comply with the Fair Labor Standards Act and any other applicable federal, state, local or foreign Law dealing with such matters, except for any noncompliance which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 5.18(2), no Note Party or any of its Subsidiaries has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act or similar state Law. All payments due from any Note Party and its Subsidiaries, or for which any claim may be made against any Note Party, on account of wages and employee health and welfare insurance and other benefits, have been paid or properly accrued in accordance with GAAP as a liability on the books of such Note Party. Except as set forth on Schedule 5.18(3), no Note Party or any Subsidiary is a party to or bound by (i) any collective bargaining agreement, or (ii) management agreement, employment agreement, bonus, restricted stock, stock option, or stock appreciation plan or agreement or any similar plan, agreement or arrangement, in each case in this clause (ii), imposing commitments on such Note Party or Subsidiary under such agreement in excess of $3,000,000 per year. There are no representation proceedings pending or, to any Note Party's knowledge, threatened to be filed with the National Labor Relations Board, and no labor organization or group of employees of any Note Party or any Subsidiary has made a pending demand for recognition. There are no complaints, unfair labor practice charges, grievances, arbitrations, unfair employment practices charges or any other claims or complaints against any Note Party or any Subsidiary pending or, to the knowledge of any Note 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 Note Party or any of its Subsidiaries which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. The consummation of the transactions contemplated by the Note 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 Note Party or any of its Subsidiaries is bound. Each Note Party and its Subsidiaries are in material compliance with all requirements pursuant to employment standards, labor relations, health and safety, workers compensation and human rights laws, immigration laws and other applicable employment legislation. To the knowledge of the Note Parties, no officer or director of any Note Party who is party to an employment agreement with such Note Party is in violation of any term of any employment contract or proprietary information agreement with such Note Party; and to the knowledge of the Note Parties, the execution of the employment agreements and the continued employment by the Note Parties of the such persons, will not result in any such violation.

Schedule 5.18(4) sets forth the names and titles of each officer and director of each Note Party who is party to an employment agreement.

5.19 Collateral Documents. The Collateral Documents are effective to create in favor of the Collateral Agent for the benefit of the Note Purchasers a legal, valid and enforceable security interest in the Collateral, and the Collateral Documents constitute, or will upon the filing of financing statements and/or the obtaining of "control", in each case with respect to the relevant Collateral as required under the applicable Uniform Commercial Code, the creation of a fully perfected Lien on, and security interest in, all right, title and interest of the Note Parties thereunder in such Collateral, in each case prior and superior in right to any other Person, except for (a) with respect to the Revolving Lenders Priority Collateral (as defined in the Intercreditor Agreement) only, Liens securing the obligations of the Issuer with respect to the Revolving Loan Documents, and (b) other Permitted Encumbrances having priority under applicable Law.

5.20 Solvency. After giving effect to the transactions contemplated by this Agreement, each Note Party on a Consolidated basis are Solvent. No transfer of property has been or will be made by any Note Party and no obligation has been or will be incurred by any Note Party in connection with the transactions contemplated by this Agreement or the other Note Documents with the intent to hinder, delay, or defraud either present or future creditors of any Note Party.

5.21 Deposit Accounts; Credit Card Arrangements.

5.21.1. Annexed hereto as Schedule 5.21.1 is a list of all DDAs maintained by the Note Parties as of the Closing Date, which Schedule includes, with respect to each DDA (i) the name and address of the depository; (ii) the account number(s) maintained with such depository; (iii) a contact person at such depository, and (iv) the identification of each blocked account bank.

5.21.2. Annexed hereto as Schedule 5.21.2 is a list describing all arrangements as of the Closing Date to which any Note Party is a party with respect to the processing and/or payment to such Note Party of the proceeds of any credit card charges for sales made by such Note Party.

5.22 Brokers. Other than those set forth on Schedule 5.22, no broker or finder brought about the obtaining, making or closing of the Notes or transactions contemplated by the Note Documents, and no Note Party or Affiliate thereof has any obligation to any Person in respect of any finder's or brokerage fees in connection therewith. Each Note Party hereby jointly and severally indemnifies each Credit Party against, and agrees that such Person will hold each such Credit Party harmless from, any claim, demand or liability, including reasonable attorneys' fees, for any broker's, finder's or placement fee or commission incurred by such indemnifying party or the Issuer or its Affiliates or a representative of such Person.

5.23 Customer and Trade Relations. There exists no actual or, to the knowledge of any Note Party, threatened, termination or cancellation of, or any material adverse modification or change in the business relationship of any Note Party with any customer or supplier which represents over 5% of annual purchase or supply commitments of the Note Parties.

5.24 Material Contracts. No Note Party is in default under any contract, lease or commitment to which such Person is a party or by which such Person is bound, under contracts, leases or commitments which are not, individually or in the aggregate, material to such Person's financial condition, results of operations or business. Set forth on Schedule 5.24 is a description of

all Material Contracts of the Note Parties, showing the parties and principal subject matter thereof and amendments and modifications thereto; provided, however, that the Issuer may amend Schedule 5.24 to add additional Material Contracts so long as such amendment occurs by written notice to the Collateral Agent not less than 5 days after the date on which such Note Party enters into such Material Contract after the Closing Date. Except for matters which, either individually or in the aggregate, could not reasonably be expected to either result in a Material Adverse Effect or expose the Note Parties to liabilities greater than $5,000,000, each Material Contract (other than those that have expired at the end of their normal terms) (a) is in full force and effect and is binding upon and enforceable against the applicable Note Party or its Subsidiaries and, to the best of the Issuer's knowledge, each other Person that is a party thereto in accordance with its terms, (b) is not in default due to the action or inaction of any Note Party or its Subsidiaries and (c) the consummation of the financing arrangements contemplated hereunder, will not constitute or create a default or create a right of termination under any Material Contract.

5.25 Casualty. Neither the businesses nor the properties of any Note Party or any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.26 Anti-Terrorism Laws.

5.26.1. General Anti-Terrorism Laws. To the knowledge of the Note Parties, after reasonable inquiry, none of the Note Parties nor any direct or indirect investor in any Note Party (other than the Note Purchasers or any direct or indirect investors in the Note Purchasers), is in violation of any Anti-Terrorism Law or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

5.26.2. Blocked Persons. To the knowledge of the Note Parties, after reasonable inquiry, none of the Note Parties nor any direct or indirect investor in any Note Party (other than the Note Purchasers or any direct or indirect investors in the Note Purchasers), or their respective agents acting or benefiting in any capacity in connection with the transactions hereunder, is any of the following (each a "Blocked Person"):

5.26.2.1. a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224;

5.26.2.2. a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224;

5.26.2.3. a Person or entity with which any Note Purchaser is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

5.26.2.4. a Person or entity that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order No. 13224;

5.26.2.5. a Person or entity that is named as a "specially designated national" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list; or

5.26.2.6. a person or entity who is affiliated or associated with a person or entity listed above.

5.26.3. Executive Order No. 13224. To the best knowledge of the Note Parties, after reasonable inquiry, none of the Note Parties nor, to the knowledge of the Note Parties, any of its or their agents acting in any capacity in connection with the transactions hereunder (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order No. 13224.

5.27 Valid Issuance of the Notes. The Notes, when issued, sold and delivered in accordance with the terms hereof for the consideration expressed herein, will be duly and validly authorized and issued and free of restrictions on transfer, other than restrictions imposed under this Agreement and applicable securities laws. Based in part upon the representations of the Note Purchasers in Section 4, the Notes will be issued in compliance with all United States securities laws.

5.28 Private Placement. Assuming the truth and accuracy of the Note Purchasers' representations set forth in Section 4.3 of this Agreement, the initial offer, sale and issuance of the Notes to the Note Purchasers as contemplated by this Agreement is exempt from the prospectus and registration requirements of the Securities Act. Neither the Issuer nor any authorized agent acting on its behalf of it will take any action hereafter that would cause the loss of such exemption.

5.29 Transition Services Agreement. No changes have been made to the Transition Services Agreement or the Asset Purchase Agreement.

5.30 New Headquarters. All liabilities relating to the New Headquarters have been fully disclosed to the Note Purchasers and it is reasonably expected that future liability will not exceed $2,000,000. For the avoidance of doubt, Capital Expenditures incurred after the Closing Date shall not be considered liabilities for purposes of this Section 5.30.

5.31 Stock Options. All liabilities relating to the Stock Options have been fully disclosed to the Note Purchasers.

5.32 License Agreements. The Note Parties (as applicable) are in compliance with the terms and conditions of the License Agreements and there is no current litigation, threatened litigation or material disputes in respect of any of the License Agreements.

5.33 Hoop Expenses. Schedule 5.33 correctly sets forth the cash costs actually incurred by the Note Parties and an estimate of reasonable projected cash costs of the Note Parties relating to the Hoop bankruptcy proceedings and the Hoop Sale.

5.34 Product Recall. There has been no material product recall of any of the products of the Note Parties.

SECTION 6. CLOSING CONDITIONS.

The obligation of each Note Purchaser to purchase and pay for the Notes provided for hereunder is subject to the satisfaction or waiver by the Note Purchasers of the following conditions, each as of the Closing Date:

6.1 Representations and Warranties; No Default. All representations and warranties of the Note Parties contained in this Agreement shall be true and correct in all material respects, and there shall exist no Default or Event of Default under any of the Note Documents or any other material agreement to which any Note Party is a party as of the Closing Date, after giving effect to the transactions contemplated hereby.

6.2 Use of Proceeds. The proceeds from the issuance of the Notes shall be used for the purposes set forth in Section 2.4.

6.3 Delivery of Documents. The Note Purchasers shall have received the following items, each of which shall be in form and substance reasonably satisfactory to the Note Purchasers and, unless otherwise noted, dated the Closing Date:

6.3.1. Duly executed copies of this Agreement, the other Note Documents to which any Note Party is a party, and the Notes issued in the names of the respective Note Purchasers as set forth on Schedule I.

6.3.2. Duly executed copies of the release agreement, settlement agreement, settlement order and other documents related to the termination of the Issuer's agreements with the Disney Store, including any modifications or amendments thereof (the "Disney Store Termination Agreements"), which shall each be in a form acceptable to the Note Purchasers in their sole discretion.

6.3.3. Duly executed copies of the Revolving Loan Documents.

6.3.4. Resolutions of the board of directors or other equivalent governing body of each Note Party, approving the transactions contemplated by this Agreement and each other Note Document to which such Note Party is a party, and approving and authorizing the execution, delivery and performance of this Agreement and each of the other Note Documents to which it is a party and approving and authorizing, as applicable, the issuance and sale of the Notes, the execution, delivery and payment of the Notes, in each case, certified as of the Closing Date by such party's Secretary or an Assistant Secretary or other equivalent officer as being in full force and effect without modification or amendment.

6.3.5. A certificate of the Secretary or an Assistant Secretary or other equivalent officer of each Note Party, dated the Closing Date, as to the incumbency and signature of the officers of each Note Party executing this Agreement, any certificate or other documents to be delivered by it pursuant hereto, together with evidence of the incumbency of such Secretary or Assistant Secretary or other equivalent officer;

6.3.6. A copy of a certificate of the Secretary of State, Registrar or similar Governmental Authority of the jurisdiction of organization of each Note Party, dated as of a recent

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date prior to the Closing Date, and certifying that (i) if applicable, each Note Party has paid all franchise taxes due as of the date of such certificate, and (ii) each Note Party is duly organized and (to the extent applicable in its jurisdiction of organization) in good standing under the laws of the jurisdiction of its organization.

6.3.7. A certificate of each Note Party signed on its behalf by an officer or manager duly authorized, dated the Closing Date (the statements made in which certificate shall be true on and as of such date) listing all Governing Documents of such Persons, including any amendments thereto, certifying that (i) such copies are true and correct copies of the (A) Governing Documents and all amendments thereto, (B) its bylaws as in effect on the Closing Date (which shall be reasonably satisfactory to the Note Purchasers in all respects), (C) a good standing certificate with respect to such Person issued by the Secretary of State of the jurisdiction of its organization, (ii) there has not been any proceeding for the dissolution or liquidation of such Person, (iii) the representations and warranties of the Note Parties contained in this Agreement are true in all respects as of the Closing Date (except to the extent that such representation or warranty expressly relates to an earlier date and except for representations and warranties that are not qualified by materiality, which are true in all material respects), (iv) no event has occurred and is continuing or would result from the transactions contemplated under this Agreements, that constitutes a Default or an Event of Default, (v) the Note Parties on a consolidated basis are Solvent, (vi) such Person is in compliance with all terms of this Agreement as of the Closing Date (except for representations and warranties in Section 5 that are not qualified by materiality, which are true in all material respects), (vii) the conditions specified in Section 6 have been fulfilled in all respects (except as expressly waived in writing by the Collateral Agent) and (viii) such Person is duly qualified and in good standing as a foreign corporation in each state or other jurisdiction and has filed all annual reports required to be filed to the date of such certificate, except to the extent such failure to be duly qualified and in good standing as a foreign corporation could not reasonably, individually or in the aggregate, be expected to have a Material Adverse Effect.

6.3.8. [Reserved]

6.3.9. A favorable opinion of Gibson, Dunn & Crutcher LLP, special counsel to the Note Parties, addressed to the Note Purchasers covering such matters as are typical to financings and such other matters as the Note Purchasers shall reasonably request, and in form and substance satisfactory to the Note Purchasers.

6.3.10. A favorable opinion of Stroock & Stroock & Lavan LLP, special counsel to the Note Parties, addressed to the Note Purchasers covering such matters as are typical to financings and such other matters as the Note Purchasers shall reasonably request, and in form and substance satisfactory to the Note Purchasers.

6.3.11. [Reserved]

6.3.12. A favorable opinion of McGuireWoods LLP, Virginia counsel to the Note Parties, addressed to the Note Purchasers covering such matters as the Note Purchasers shall reasonably request, and in form and substance satisfactory to the Note Purchasers.

6.3.13. The Note Purchasers shall have received a copy of the Projections, and such are in form and substance satisfactory to the Note Purchasers.

6.3.14. The Note Purchasers shall have received written instructions from the Issuer directing the application of proceeds of the Notes made pursuant to this Agreement.

6.3.15. All corporate and other proceedings, and all documents, instruments and other legal matters in connection with the Transactions shall be reasonably satisfactory in form and substance to the Note Purchasers and their counsel.

6.3.16. A letter from the Note Parties to their independent auditors authorizing the independent certified public accountants of the Note Parties to communicate with the Collateral Agent.

6.3.17. Certificate of insurance for each Note Party, copies of the property, casualty, liability and business interruption insurance policies for each Note Party (if any) and copies of liability insurance policies for each Note Party (if any) as required pursuant to <u>Section 7.9</u>.

6.3.18. Each applicable Note Party shall have duly authorized, executed and delivered such other certificates, instruments, agreements and other documents and papers reasonably requested by the Note Purchasers in connection with the transactions contemplated hereby in form and substance satisfactory to such Note Purchasers.

6.3.19. A duly executed intellectual property security agreement dated the Closing Date and signed by each Note Party which owns licenses, trademarks, or copyrights, in form and substance reasonably satisfactory to the Purchasers, together with all instruments, documents and agreements executed pursuant thereto.

6.3.20. As soon as practicable and not later than 30 days after the closing date, the Issuer shall make commercially reasonable efforts to obtain a duly executed landlord consent from each landlord that executed such a consent in favor of the Revolving Agent permitting the Collateral Agent to remove the personal property of the Note Parties from each relevant location owned by such landlord, reasonably satisfactory in form and substance to the Collateral Agent, in its sole discretion.

6.4 <u>Corporate/Capital Structure</u>. The Note Purchasers shall be satisfied with the ownership, corporate and legal structure and capitalization of the Note Parties, including, without limitation, the terms and conditions of any Capital Stock, options, warrants or other securities issued by the Note Parties and any agreements related thereto.

6.5 <u>Authorizations, Consents and Approvals</u>. Each Note Party shall have received any and all necessary authorizations, consents and approvals and shall have made any and all filings and shall have satisfied all applicable waiting periods necessary in connection with the consummation of the Transactions and the other transactions contemplated by this Agreement and the other Note Documents.

6.6 <u>No Material Adverse Effect</u>. Nothing shall have occurred (and the Note Purchasers shall not be aware of any facts or conditions not previously known) which the Note Purchasers shall, in their sole discretion, determine has or could be reasonably expected to have, a Material Adverse Effect. There shall not have occurred any fact, circumstance, change, effect or occurrence or event of default that has a Material Adverse Effect.

6.7 <u>Litigation</u>. There shall exist no action, suit, investigation, litigation or proceeding affecting the Note Parties or any of its properties pending or, to any Note Parties' knowledge threatened, before any court, governmental agency or arbitrator that, in the determination of the Note Purchasers, (i) purports to affect the legality, validity or enforceability of this Agreement, the Notes, or any other Note Document or the transactions contemplated hereby and thereby or (ii) purports to restrain, enjoin or otherwise prohibit or impose material adverse limitations on the consummation of the Transactions. No order, judgment or decree of any court, arbitrator or governmental body shall enjoin or restrain the Note Purchasers from acquiring the Notes or from making the loans evidenced by the Notes.

6.8 <u>Disclosure</u>. All factual information furnished by or on behalf of the Note Parties and their parent companies in writing to the Note Purchasers or the Collateral Agent (including this Agreement and any exhibits, schedules or certificates made or delivered in connection herewith (other than any proposed budgets and projections)), taken as a whole, are true and correct in all material respects as of the date on which they were dated or certified and do not omit to state a material fact necessary to make the statements herein or therein, when taken as a whole, not misleading in any material respect, in light of the circumstances under which they were made, which has not been corrected or amended prior to the execution of this Agreement.

6.9 Due Diligence. The Note Purchasers shall have completed their business, legal, and collateral due diligence, including but not limited to (a) a review of any Material Contracts, (b) a review of an appraisal of the Issuer's intellectual property reflecting a net orderly liquidation value of $40,000,000, in each case, the results of which, shall be satisfactory to Note Purchasers in their sole discretion;

6.10 Hoop Bankruptcy. The Note Purchasers shall be satisfied with the terms and implementation of the bankruptcy proceeding of Hoop and, in particular, with any amounts to be funded by the Issuer and with any retained liability of the Issuer;

6.11 Transition Services Agreement and HOOP Sale. The Note Purchasers shall, in their sole discretion, be satisfied with the terms of the Transition Services Agreement and the Hoop Sale;

6.12 New Headquarters. The Note Parties shall have fully disclosed to the Note Purchasers all liabilities relating to the New Headquarters and the Note Purchasers shall be satisfied, in their sole discretion, that no other liabilities exist or are expected to arise in respect of same;

6.13 Stock Options. The Note Parties shall have fully disclosed to the Note Purchasers all liabilities relating to the Stock Options and all such liabilities could not reasonably be expected to have a Material Adverse Effect;

6.14 Other Fees and Expenses. On the Closing Date, all reasonable expenses of the Note Purchasers (including, without limitation, reasonable legal fees and expenses) incurred in connection with the negotiation and execution of this Agreement and the other Note Documents shall have been paid by the Issuer.

6.15 Ancillary Documents. Each applicable Note Party shall have delivered to the Collateral Agent any side letters or agreements relating to the Transactions not previously disclosed to the Collateral Agent between the Note Parties or their Affiliates and any of the Revolving

Lenders, any Affiliates of the foregoing or any other third party (other than any fee letters relating to the fees payable under the Revolving Loan Debt).

6.16 Senior Credit. All of the closing conditions set forth in the Revolving Loan Agreement shall have been satisfied (other than the consummation of the purchase and sale of the Notes) and the transactions contemplated thereby have been consummated concurrently with the consummation of the purchase of the Notes. The terms, commitment amount and availability at closing of the Revolving Loan Debt shall be in form and substance satisfactory to the Note Purchasers.

6.17 Closing Date Total Leverage Ratio. The Note Parties and their Subsidiaries shall have a Closing Date Total Leverage Ratio (as defined in Schedule 7.16(b)) that is not greater than 2.5 to 1.00.

6.18 Existing Indebtedness. After giving effect to the transactions contemplated by this Agreement, none of the Note Parties shall have outstanding any Indebtedness, other than the Note Obligations, the Indebtedness set forth on Schedule 5.8.5 and Permitted Indebtedness.

6.19 Perfection of Security. Each Note Party shall have duly authorized, executed, acknowledged and delivered such security agreements, notices, memoranda of intellectual property security interests and other instruments as the Note Purchasers may have reasonably requested, and shall have authorized the filing of financing statements, all in order to perfect the Liens purported or required pursuant to this Agreement, the Security Agreement or any other Note Document to be created in the Collateral and hereby agrees to pay or shall have paid all filing or recording fees or taxes required to be paid in connection with the filing, registration or recordation thereof, including any recording, mortgage, documentary, transfer or intangible taxes.

6.20 Monitoring Fee. The Collateral Agent shall have received the Monitoring Fee payable on the Closing Date.

SECTION 7. AFFIRMATIVE COVENANTS

Until payment in full of the Note Obligations, the Note Parties shall, and (except in the case of the covenants set forth in Sections 7.2, 7.3, and 7.5) cause each Subsidiary to:

7.1 Payment of Note Obligations. Subject to the terms and conditions of the Intercreditor Agreement, duly and punctually pay the principal, interest and any other amounts owing under this Agreement and the Notes when due under the terms of this Agreement, and each Note Party will observe and comply with all other requirements applicable to it pursuant to this Agreement and the other Note Documents.

7.2 Financial Statements. Deliver to the Collateral Agent, in form and detail satisfactory to the Collateral Agent:

7.2.1. as soon as available, but in any event within ninety (90) days after the end of each Fiscal Year of the Issuer (commencing with the Fiscal Year ending in January 2009), a Consolidated and consolidating balance sheet of the Issuer and its Subsidiaries as at the end of such Fiscal Year, the related Consolidated and consolidating statements of income or operations and Shareholders' Equity and the related Consolidated statement of cash flows (with consolidating

reconciliation of cash from the balance sheet to the statement of cash flows that is reasonably acceptable to the Collateral Agent) for such Fiscal Year, setting forth in each case in, but only with respect to the Consolidated statements, comparative form the figures for (i) the previous Fiscal Year and (ii) such period set forth in the projections delivered pursuant to Section 7.2.3, all in reasonable detail and prepared in accordance with GAAP, such Consolidated, and where relevant consolidating statements to be audited and accompanied by (a) a report and unqualified opinion of BDO Seidman, LLP or another public accounting firm of nationally recognized standing reasonably acceptable to the Collateral Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit or any qualification which relates to the treatment or classification of any item and which, as a condition to the removal of such qualification,

would require an adjustment to such item, the effect of which would cause any noncompliance with the provisions of Section 7.16; (b) an opinion of such public accounting firm independently assessing the Note Parties' internal controls over financial reporting in accordance with Item 308 of SEC Regulation S-K, PCAOB Auditing Standard No. 2, and Section 404 of Sarbanes-Oxley expressing a conclusion that contains no statement that there is a material weakness in such internal controls, except for such material weaknesses as to which the Collateral Agent does not object and (c) as to statements not covered by an audit, certification by a Responsible Officer of the Issuer to the effect that such statements are fairly stated in all material respects when considered in relation to the Consolidated and consolidating financial statements of the Issuer and its Subsidiaries;

7.2.2. as soon as available, but in any event within thirty (30) days after the end of each Fiscal Month of each Fiscal Year of the Issuer (except with respect to the last Fiscal Month of each Fiscal Quarter, with respect to which the applicable period for delivery shall be forty-five (45) days rather than thirty (30) days), a Consolidated and consolidating balance sheet of the Issuer and its Subsidiaries as at the end of such Fiscal Month, the related Consolidated and consolidating statements of income or operations (and with respect to the last Fiscal Month of each Fiscal Quarter, Shareholders' Equity) and the related Consolidated statement of cash flows (with consolidating reconciliation of cash from the balance sheet to the statement of cash flows that is reasonably acceptable to the Collateral Agent) for such Fiscal Month, and for the portion of the Fiscal Year then ended, setting forth in each case in, but only with respect to the Consolidated statements, comparative form the figures for (i) such period set forth in the projections delivered pursuant to Section 7.2.3 hereof, (ii) the corresponding Fiscal Month of the previous Fiscal Year, and (iii) the corresponding portion of the previous Fiscal Year, all in reasonable detail, such Consolidated, and where relevant consolidating statements to be certified by a Responsible Officer of the Issuer as fairly presenting the financial condition, results of operations and cash flows of the Issuer and its Subsidiaries as of the end of such Fiscal Month in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes;

7.2.3. as soon as available, but in any event (i) on or before January 31st of each Fiscal Year of the Issuer, a preliminary month-by-month business plan for the following Fiscal Year prepared by management of the Issuer and reviewed by the board of directors of the Issuer, and (ii) on or before March 1st of each Fiscal Year of the Issuer, a final month-by-month business plan for such Fiscal Year prepared by management of the Issuer (which final business plan shall be approved by the board of directors of the Issuer by March 31st of such Fiscal Year), in each case the form of which shall be substantially similar to the business plan for the Fiscal Year ended on or about January 31, 2009 and the substance of which shall be reasonably satisfactory to the Collateral Agent, for such Fiscal Year; provided that, if the Issuer delivers a business plan that is not reasonably

satisfactory to the Collateral Agent, but that otherwise complies with this Section 7.2.3, this Section 7.2.3 shall be deemed to be satisfied to the extent that the Issuer delivers a business plan reasonably satisfactory to the Collateral Agent on or before March 31 of such Fiscal Year.

7.3 Certificates; Other Information. Deliver to the Collateral Agent, in form and detail satisfactory to the Collateral Agent:

7.3.1. concurrently with the delivery of the financial statements referred to in Section 7.2.1, a certificate of its public accounting firm, to the extent permitted by its internal policies, certifying such financial statements and stating that, in making the examination necessary for their certification of such financial statements, such public accounting firm has not obtained any knowledge of the existence of any Event of Default under Section 9 or, if any such Event of Default shall exist, stating the nature and status of such event;

7.3.2. concurrently with the delivery of the financial statements referred to in Section 7.2.2, (i) a duly completed Compliance Certificate signed by a Responsible Officer of the Issuer, which shall include a certification as to the amount, if any, of rent under any Leases and any Taxes that have not been timely paid, and (ii) a copy of management's analysis with respect to such financial statements, which analysis shall be consistent with the analysis previously provided by the Issuer under the Existing Credit Agreement. In the event of any change in generally accepted accounting principles used in the preparation of such financial statements, the Issuer shall also provide a statement of reconciliation conforming such financial statements to GAAP;

7.3.3. concurrently with the filing thereof (or upon the request of the Collateral Agent or its auditors, appraisers, accountants, consultants or other representatives), copies of each of the Issuer's federal income tax returns, and any amendments thereto;

7.3.4. promptly upon receipt, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Note Party by its public accounting firm in connection with the accounts or books of the Note Parties or any Subsidiary, or any audit of any of them, in each case to the extent permitted by the policies of its public accounting firm at such time;

7.3.5. promptly after the same are available, copies of each annual report, proxy or financial statement, or other document, report or communication sent to the stockholders of the Note Parties, and copies of all annual, regular, periodic and special reports and registration statements which any Note Party may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934 or with any national securities exchange, and in any case not otherwise required to be delivered to the Collateral Agent pursuant hereto;

7.3.6. the financial and collateral reports described on Schedule 7.3 hereto, at the times set forth in such Schedule;

7.3.7. promptly after the furnishing thereof, (i) copies of any statement or report furnished to any holder of debt securities of any Note Party or any Subsidiary thereof pursuant to the terms of any indenture, loan or credit or similar agreement and (ii) copies of all notices and other communications received or delivered by a Note Party with respect to the Revolving Loan Documents (i) which indicate a breach or default of any such document, or (ii) which constitute a notice under Section 6.03 (Notices) of the Revolving Loan Agreement (to the extent not otherwise

already provided to the Collateral Agent), in each case not otherwise required to be furnished to the Note Purchasers pursuant to Section 7.2 or any other clause of this Section 7.3;

7.3.8. as soon as available, but in any event within 30 days after the end of each Fiscal Year of the Note Parties (or upon the request of the Collateral Agent or its auditors, appraisers, accountants, consultants or other representatives), (i) a certificate executed by an authorized officer of the Issuer certifying the existence and adequacy of the property and casualty insurance program carried by the Note Parties and their Subsidiaries, and (ii) a

written summary of said program identifying the name of each insurer, the number of each policy and expiration date of each policy, the amounts and types of each coverage, and a list of exclusions and deductibles for each policy;

7.3.9. promptly, and in any event within five Business Days after receipt thereof by any Note Party or any Subsidiary thereof, copies of each notice or other correspondence received from any Governmental Authority (including, without limitation, the SEC (or comparable agency in any applicable non-U.S. jurisdiction)) concerning any proceeding with, or investigation or possible investigation or other inquiry by such Governmental Authority regarding financial or other operational results of any Note Party or any Subsidiary thereof or any other matter which, if adversely determined, could reasonably be expected to have a Material Adverse Effect;

7.3.10. as soon as available and in any event within 90 days after the end of each Fiscal Year, computations by the Note Parties demonstrating, as of the end of such Fiscal Year, compliance with Sections 7.16, inclusive, and setting forth the amount of the available basket under Section 3.2.4.1 and computations supporting adjustments to or use of the same during such period;

7.3.11. (i) as soon as available and in any event within 45 days after the end of each Fiscal Quarter, computations by the Issuer demonstrating, as of the end of such quarter, compliance with Section 7.16 (such computation including, during such time period, any asset sales under Section 8.5 or the application Net Cash Proceeds), and setting forth the amount of the available basket under Section 3.2.4.1 and computations supporting any adjustments to or use of the same during such period and (ii) as soon as available and in any event with 30 days after the end of each of the Fiscal Months ending November 30 and December 31, computations by the Issuer demonstrating, as of the end of such Fiscal Month, compliance with Section 3.1 of Schedule 7.16;

7.3.12. on the first Wednesday of each Fiscal Month (or, if such day is not a Business Day, on the next succeeding Business Day), a copy of the most recently prepared borrowing base certificate in the form delivered pursuant to Section 6.02(c) of the Revolving Loan Agreement;

7.3.13. within 30 days after the end of each Fiscal Month, a report setting forth the monthly sales figures on a store-by-store basis for such Fiscal Month and, as to each store, a year-over-year comparison percentage with respect to the relevant portion of the previous Fiscal Year, and (y) within 45 days after the end of each Fiscal Quarter, a report setting forth the quarterly contributions analysis broken down on a store-by-store basis;

7.3.14. upon request by any Note Purchaser, a report of revenue derived from the Licensing Agreements;

7.3.15. copies of any physical inventories conducted under Section 6.15 of the Revolving Loan Agreement;

7.3.16. upon request by any Note Purchaser, copies of any reports delivered to the Revolving Lenders pursuant to the Revolving Loan Agreement; and

7.3.17. promptly, such additional information regarding the business affairs, financial condition or operations of any Note Party or any Subsidiary, or compliance with the terms of the Note Documents, as the Collateral Agent or any Note Purchaser may from time to time reasonably request.

Financial statements required to be delivered pursuant to Section 7.3.5 (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Issuer posts such documents, or provides a link thereto on the Issuer's website on the Internet at the website address listed in Section 13.7; or (ii) on which such documents are posted on the Issuer's behalf on EDGAR or another Internet or intranet website, if any, to which each Note Purchaser and the Collateral Agent have access (whether a commercial, third-party website or whether sponsored by the Collateral Agent); provided that: (i) the Issuer shall deliver paper copies of such documents to the Collateral Agent or any Note Purchaser that requests the Issuer to deliver such paper copies until a written request to cease delivering paper copies is given by the Collateral Agent or such Note Purchaser and (ii) the Issuer shall notify the Collateral Agent and each Note Purchaser (by facsimile or electronic mail) of the posting of any such documents and provide to the Collateral Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Notwithstanding anything contained herein, in every instance, the Issuer shall be required to provide paper copies of the Compliance Certificates required by Section 7.3.2 to the Collateral Agent. The Collateral 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 Note Parties with any such request for delivery, and each Note Purchaser shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

7.4 Other Information; Audit. From time to time at reasonable intervals upon request of the Collateral Agent, furnish to the Collateral Agent and such Note Purchaser such other information regarding the business, assets, financial condition, or income of the Note Parties (i) as the Collateral Agent may reasonably request, including copies of all tax returns, licenses, agreements, leases and instruments to which any of the Note Parties is party, and (ii) copies of any information delivered to the Revolving Agent as furnished to under Section 6.14 (Information Regarding the Collateral) of the Revolving Loan Agreement.

7.5 Notices. Promptly notify the Collateral Agent:

7.5.1. of the occurrence of any Default or Event of Default;

7.5.2. of (x) any litigation or any administrative or arbitration proceeding which creates a material risk of resulting, after giving effect to any applicable insurance, in the payment by the Note Parties and their Subsidiaries of more than $1,000,000, (y) any undischarged or unpaid judgments or decrees in excess of $2,500,000, singly or in the aggregate, or (z) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including (i) breach or non-performance of, any default under, or termination of, a Material Contract or with respect to Material Indebtedness of any Note Party or any Subsidiary thereof; (ii) any dispute, litigation, investigation, proceeding or suspension between any Note Party or any Subsidiary thereof and any Governmental Authority; or (iii) the commencement of, or any material development in, any

litigation or any administrative or arbitration proceeding affecting any Note Party or any Subsidiary thereof, including pursuant to any applicable Environmental Laws;

7.5.3. of any undischarged or unpaid judgments or decrees in excess of $3,000,000, individually or in the aggregate;

7.5.4. of the occurrence of any ERISA Event;

7.5.5. of any material change in accounting policies or financial reporting practices by any Note Party or any Subsidiary thereof;

7.5.6. of any change in any Note Party's senior executive officers;

7.5.7. of the discharge by any Note Party of its present public accounting firm or any withdrawal or resignation by such public accounting firm;

7.5.8. of any collective bargaining agreement or other labor contract to which a Note Party becomes a party, the application for the certification of a collective bargaining agent, or any labor negotiations or strikes;

7.5.9. of the filing of any Lien for unpaid Taxes against any Note Party;

7.5.10. of any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any interest in a material portion of the Collateral under power of eminent domain or by condemnation or similar proceeding or if any material portion of the Collateral is damaged or destroyed; and

7.5.11. of any failure by any Note Party to pay rent at (i) ten percent (10%) or more of such Note Party's locations or (ii) any of such Note Party's locations if such failure continues for more than ten (10) days following the day on which such rent first came due and such failure would be reasonably likely to result in a Material Adverse Effect.

Each notice pursuant to this Section 7.5 shall be accompanied by a statement of a Responsible Officer of the Issuer setting forth details of the occurrence referred to therein and stating what action the Issuer has taken and proposes to take with respect thereto. Each notice pursuant to Section 7.5.1 shall describe with particularity any and all provisions of this Agreement and any other Note Document that have been breached.

7.6 Payment of Liabilities. Pay and discharge in full as the same shall become due and payable, all its obligations and liabilities, including (i) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, (ii) all lawful claims (including, without limitation, claims for labor, materials and supplies and claims of landlords, warehousemen, customs brokers, and carriers) which, if unpaid, would by law become a Lien upon its property (other than a Permitted Encumbrance), and (iii) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness, except, in each case, where (a) the validity or amount thereof (other than payroll taxes or taxes that are the subject of a United States federal tax lien) is being contested in good faith by appropriate proceedings diligently conducted, (b) such Note Party has set aside on its books adequate reserves with respect thereto in accordance with GAAP, (c) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such

obligation, and (d) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect. The Issuer will, upon request, furnish the Collateral Agent with proof satisfactory to the Collateral Agent indicating that the applicable Person has made the payments or deposits described in clause (i), (ii) and (iii) above. Each Note Party shall, and shall cause each of its Subsidiaries to, pay in conformity with its customary practice all accounts payable incident to the operations of such Person not referred to in this Section 7.6, above.

7.7 Preservation of Existence, Etc. Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization or formation except in a transaction permitted by Section 8.4 or 8.5.

7.8 Maintenance of Properties.

7.8.1. Keep its properties in such repair, working order and condition, and shall from time to time make such repairs, replacements, additions and improvements thereto, as are reasonably necessary for the efficient operation of its business and shall comply at all times in all material respects with all material franchises, licenses and leases to which it is party so as to prevent any loss or forfeiture thereof or thereunder, except where (i) compliance is at the time being contested in good faith by appropriate proceedings and (ii) failure to comply with the provisions being contested has not resulted, and which, in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

7.8.2. Take all reasonable actions to possess and maintain all Intellectual Property material to the conduct of their respective businesses and own all right, title and interest in and to, or have a valid license for, all such Intellectual Property. No Note Party nor any of its Subsidiaries shall take any action, or fail to take any action, that could reasonably be expected to (i) result in the invalidity, abandonment, misuse, lapse, or unenforceability of Intellectual Property which is material to the conduct of the business of the Note Parties or (ii) knowingly infringe upon or misappropriate any rights of other Persons.

7.8.3. Do all things reasonably necessary in order to comply with all Environmental Laws at any Real Property or otherwise in connection with their operations noncompliance with which could reasonably be expected to cause a Material Adverse Effect, and obtain all permits and other governmental authorizations for their operations under applicable Environmental Laws other than such permits and other authorizations the failure of which to obtain could not, individually or in the aggregate, reasonably be expected to cause a Material Adverse Effect.

7.9 Maintenance of Insurance.

7.9.1. Maintain with financially sound and reputable insurance companies reasonably acceptable to the Collateral Agent and not Affiliates of the Note Parties, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business and operating in the same or similar locations or as is required by applicable Law, of such types and in such amounts

as are customarily carried under similar circumstances by such other Persons and as are reasonably acceptable to the Collateral Agent. None of the Note Purchasers, or their agents or employees shall be liable for any loss or damage insured by the insurance policies required to be maintained under this Section 7.9. Each Note Party shall look solely to its insurance companies or any other parties other than the Note Purchasers for

the recovery of such loss or damage and such insurance companies shall have no rights of subrogation against the Note Purchasers or its agents or employees. If, however, the insurance policies do not provide waiver of subrogation rights against such parties, as required above, then the Note Parties hereby agree, to the extent permitted by law, to waive their right of recovery, if any, against the Note Purchasers and their agents and employees. The designation of any form, type or amount of insurance coverage by any Note Purchaser under this Section 7.9 shall in no event be deemed a representation, warranty or advice by such Note Purchaser that such insurance is adequate for the purposes of the business of the Note Parties or the protection of their properties.

7.9.2. Fire and extended coverage policies maintained with respect to any Collateral shall be endorsed or otherwise amended to include (i) a non-contributing mortgage clause (regarding improvements to real property) and lenders' loss payable clause (regarding personal property), in form and substance satisfactory to the Collateral Agent, which endorsements or amendments shall provide that the insurer shall pay all proceeds otherwise payable to the Note Parties under the policies directly to the Collateral Agent, (ii) a provision to the effect that none of the Note Parties, Credit Parties or any other Person shall be a co-insurer and (iii) such other provisions as the Collateral Agent may reasonably require from time to time to protect the interests of the Credit Parties. Commercial general liability policies shall be endorsed to name the Collateral Agent as an additional insured. Business interruption policies shall name the Collateral Agent as a loss payee and shall be endorsed or amended to include (i) a provision that, from and after the Closing Date, the insurer shall pay all proceeds otherwise payable to the Note Parties under the policies directly to the Collateral Agent, (ii) a provision to the effect that none of the Note Parties, the Collateral Agent or any other party shall be a co-insurer and (iii) such other provisions as the Collateral Agent may reasonably require from time to time to protect the interests of the Credit Parties. Each such policy referred to in this Section 7.9.2 shall also provide that it shall not be canceled, modified or not renewed (i) by reason of nonpayment of premium, except upon not less than ten (10) days' prior written notice thereof by the insurer to the Collateral Agent (giving the Collateral Agent the right to cure defaults in the payment of premiums) or (ii) for any other reason, except upon not less than thirty (30) days' prior written notice thereof by the insurer to the Collateral Agent. The Issuer shall deliver to the Collateral 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 Collateral Agent, including an insurance binder) together with evidence satisfactory to the Collateral Agent of payment of the premium therefor.

7.9.3. Permit any representatives that are designated by the Collateral Agent to inspect the insurance policies maintained by or on behalf of the Note Parties and to inspect books and records related thereto and any properties covered thereby. The Note Purchasers shall pay the reasonable fees and expenses of any representatives retained by the Collateral Agent to conduct any such inspection.

7.10 Compliance with Laws. Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves have been set aside and maintained by the Note Parties in accordance with GAAP; (b) such contest effectively suspends enforcement of the contested Laws, and (c) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

7.11 Books and Records; Accountants.

7.11.1. (i) Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Note Parties or such Subsidiary, as the case may be; and (ii) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over the Note Parties or such Subsidiary, as the case may be.

7.11.2. At all times retain BDO Seidman, LLP or another public accounting firm which is reasonably satisfactory to the Collateral Agent and instruct such public accounting firm in writing to cooperate with, and be available to, the Collateral Agent or its representatives to discuss the Note Parties' financial performance, financial condition, operating results, controls, and such other matters, within the scope of the retention of such public accounting firm, as may be raised by the Collateral Agent; provided that the Issuer shall be entitled to participate in any such meetings or discussions. The Issuer hereby irrevocably authorizes and directs all auditors, accountants, or other third parties to deliver to the Collateral Agent, at the Issuer's expense, copies of the Issuer's financial statements, papers related thereto, and other accounting records of any nature in their possession, and to disclose to the Collateral Agent any information they may have regarding the Collateral or the financial condition of the Issuer, in each case to the extent permitted by the policies of its public accounting firm or other third party at such time; provided that the Issuer shall be entitled to be provided with copies of any such financial statements, papers, accounting records or disclosures contemporaneously therewith.

7.12 Inspection Rights; Appraisal Rights.

7.12.1. Permit representatives and independent contractors of the Collateral Agent to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and public accounting firm, all at the expense of the Note Parties and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Issuer; provided, however, that when an Event of Default has occurred and is continuing, the Collateral Agent (or any of its representatives or independent contractors) may do any of the foregoing at the expense of the Note Parties at any time during normal business hours and without advance notice.

7.12.2. Upon the request of the Collateral Agent, provide copies of any appraisals, commercial finance examinations and other evaluations conducted by the Revolving Agent to the Collateral Agent. The Collateral Agent may, in its discretion, at the expense of the Note Parties undertake up to one Intellectual Property appraisal per Fiscal Year and an additional two Intellectual Property appraisals over the term of the Note Obligations. Notwithstanding anything to the contrary contained herein, the Collateral Agent may cause additional inventory appraisals, commercial finance

examinations, and Intellectual Property appraisals to be undertaken (i) as it in its reasonable discretion deems necessary or appropriate, at its own expense, or (ii) if required by applicable Law or if a Default or Event of Default shall have occurred and be continuing, at the expense of the Note Parties.

7.13 Use of Proceeds. Use the proceeds of the Notes only for the purposes set forth in Section 2.4.

7.14 Formation of Subsidiaries.

7.14.1. At the time that any Note Party forms any direct or indirect Subsidiary or acquires any direct or indirect Subsidiary after the Closing Date in accordance with Section 8.2, (a) cause such new Subsidiary (other than a Subsidiary that is a CFC) to provide to the Collateral Agent a joinder to this Agreement as a Guarantor and to the Security Agreement, in form and substance satisfactory to the Collateral Agent, (b) cause the direct parent of each such Subsidiary (if not the Issuer, as applicable) to pledge all of its equity interests in such Subsidiary pursuant to the Security Agreement and to cause each such Subsidiary to pledge its assets pursuant to the Security Agreement; and (c) provide to the Collateral Agent all other documentation, including one or more opinions of counsel satisfactory to the Collateral Agent, which in its opinion is appropriate with respect to the execution and delivery of the applicable documentation referred to above; provided, that, with respect to clauses (a), (b) and (c), any newly acquired or formed Subsidiary that is a CFC shall only pledge up to 65% of its voting Equity Interests and 100% of its non-voting Equity Interests. Any document, agreement, or instrument executed or issued pursuant to this Section 7.14 shall be a Note Document.

7.14.2. From and after the Closing, take such action as is reasonably required by the Collateral Agent to grant or perfect a Security Interest in any assets of such Note Party. Such Lien in favor of the Collateral Agent shall be senior and prior in right to all other Persons, except as otherwise provided in Section 8.3 or the Intercreditor Agreement.

7.15 Information Regarding the Collateral.

7.15.1. Furnish to the Collateral Agent at least thirty (30) days prior written notice of any change in: (i) any Note Party's name or in any trade name used to identify it in the conduct of its business or in the ownership of its properties; (ii) the location of any Note Party's chief executive office, its principal place of business, any office in which it maintains books or records relating to Collateral owned by it or any office or facility at which Collateral owned by it is located (including the establishment of any such new office or facility); (iii) any Note Party's organizational structure or jurisdiction of incorporation or formation; or (iv) any Note Party's Federal Taxpayer Identification Number or organizational identification number assigned to it by its state of organization. The Note Parties agree not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the UCC or otherwise that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected first priority security interest in all the Collateral for its own benefit and the benefit of the other Credit Parties.

7.15.2. From time to time as may be reasonably requested by the Collateral Agent, and not less than one time per Fiscal Year, the Issuer shall supplement each Schedule hereto, or any representation herein or in any other Note Document, with respect to any matter arising after the Closing Date that, if existing or occurring on the Closing Date, would have been required to be set forth or described in such Schedule or as an exception to such representation or that is necessary to correct any information in such Schedule or representation which has been rendered inaccurate thereby (and, in the case of any supplements to any Schedule, such Schedule shall be appropriately marked to show the changes made therein). Notwithstanding the foregoing, no supplement or revision to any Schedule or representation shall be deemed the Credit Parties' consent to the matters reflected in such updated Schedules or revised representations nor permit the Note Parties to undertake any actions otherwise prohibited hereunder or fail to undertake any action required

hereunder from the restrictions and requirements in existence prior to the delivery of such updated Schedules or such revision of a representation; nor shall any such supplement or revision to any Schedule or representation be deemed the Credit Parties' waiver of any Default resulting from the matters disclosed therein.

7.16 Financial Covenants. The Note Parties will comply with the covenants set forth on Schedule 7.16.

7.17 Physical Inventories. Cause the Collateral Agent to receive copies of the results of any physical inventory required or requested by the Revolving Agent along with any related additional information provided to the Revolving Agent in connection with the physical inventories.

7.18 Environmental Laws. (a) Conduct its operations and keep and maintain its Real Estate in material compliance with all Environmental Laws; (b) obtain and renew all environmental permits appropriate or necessary for its operations and properties; and (c) implement any and all investigation, remediation, removal and response actions that are necessary to maintain the value and marketability of the Real Estate or to otherwise comply with Environmental Laws pertaining to the presence, generation, treatment, storage, use, disposal, transportation or release of any Hazardous Materials on, at, in, under, above, to, from or about any of its Real Estate, provided, however, that neither a Note Party nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and adequate reserves have been set aside and are being maintained by the Note Parties with respect to such circumstances in accordance with GAAP.

7.19 Further Assurances.

7.19.1. Execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements and other documents), that may be required under any applicable Law, or which any Agent may request, to effectuate the transactions contemplated by the Note Documents or to grant, preserve, protect or perfect the Liens created or intended to be created by the Collateral Documents or the validity or priority of any such Lien, all at the expense of the Note Parties. The Note Parties also agree to provide to the Collateral Agent, from time to time upon request, evidence satisfactory to the Collateral Agent as to the perfection and priority of the Liens created or intended to be created by the Collateral Documents.

7.19.2. If any material assets are acquired by any Note Party after the Closing Date (other than assets constituting Collateral under the Security Agreement that become subject to the Lien of the Security Agreement upon acquisition thereof), notify the Collateral Agent, and the Note Parties

will cause such assets to be subjected to a Lien securing the Note Obligations and will take such actions as shall be necessary or shall be requested by any Agent to grant and perfect such Liens, including actions described in Section 7.19.1, all at the expense of the Note Parties. In no event shall compliance with this Section 7.19 waive or be deemed a waiver or Consent to any transaction giving rise to the need to comply with this Section 7.19 if such transaction was not otherwise expressly permitted by this Agreement.

7.20 Compliance with Terms of Leaseholds. Except as otherwise expressly permitted hereunder (including, without limitation, in connection with Store closings permitted pursuant to clause (b) of the definition of Permitted Dispositions), make all payments and otherwise perform all

obligations in respect of all Leases of real property to which any Note Party or any of its Subsidiaries is a party, keep such Leases in full force and effect and not allow such Leases to lapse or be terminated or any rights to renew such leases to be forfeited or cancelled, notify the Collateral Agent of any default by any party with respect to such Leases and cooperate with the Collateral Agent in all respects to cure any such default, and cause each of its Subsidiaries to do so, except, in any case, where the failure to do so, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

7.21 Material Contracts. Perform and observe all the terms and provisions of each Material Contract to be performed or observed by it, maintain each such Material Contract in full force and effect, enforce each such Material Contract in accordance with its terms, take all such action to such end as may be from time to time requested by the Collateral Agent and, upon request of the Collateral Agent, make to each other party to each such Material Contract such demands and requests for information and reports or for action as any Note Party or any of its Subsidiaries is entitled to make under such Material Contract, and cause each of its Subsidiaries to do so, except, in any case, where the failure to do so, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

7.22 ERISA.

7.22.1. Comply in all material respects with the applicable provisions of ERISA or any other applicable federal, state, provincial, local or foreign law dealing with such matters, except where the failure to comply could reasonably be expected to result in a claim or liability against any Note Party or its Affiliates of $3,000,000 or more.

7.22.2. Pay and discharge promptly any liability imposed upon it pursuant to the provisions of Title IV of ERISA; provided, however, that neither any Note Party nor any ERISA Affiliate or any other Subsidiary of the Note Parties shall be required to pay any such liability if (i) the amount, applicability or validity thereof shall be diligently contested in good faith by appropriate proceedings, and (ii) such Person shall have set aside on its books reserves, in the opinion of the independent certified public accountants of such Person, adequate with respect thereto.

7.22.3. Deliver to the Collateral Agent, promptly, and in any event within 20 days, after (i) the occurrence of any Reportable Event in respect of a Plan, a copy of the materials that are filed with the PBGC, (ii) any Note Party or any ERISA Affiliate or an administrator of any Plan files with participants, beneficiaries or the PBGC a notice of intent to terminate any such Plan, a copy of any such notice, (iii) the receipt of notice by any Note Party or any ERISA Affiliate or an administrator of any Plan from the PBGC of the PBGC's intention to terminate any Plan or to appoint a trustee to administer any such Plan, a copy of such notice, (iv) the request by any Note Purchaser of copies of each annual report that is filed on Treasury Form 5500 with respect to any Plan, together with certified financial statements (if any) for the Plan and any actuarial statements on Schedule B to such Form 5500, (v) any Note Party or any ERISA Affiliate knows or has reason to know of any event or condition which could reasonably be expected to constitute grounds under the provisions of Section 4042 of ERISA for the termination of (or the appointment of a trustee to administer) any Plan, an explanation of such event or condition, (vi) the receipt by any Note Party or any ERISA Affiliate of an assessment of withdrawal liability under Section 4201 of ERISA from a Multiemployer Plan, a copy of such assessment, (vii) any Note Party or any ERISA Affiliate knows or has reason to know of any event or condition which would reasonably be expected to cause any one of them to incur a liability under Section 4062, 4063, 4064 or 4069 of ERISA or Section 412(n)

or 4971 of the Code, an explanation of such event or condition, or (viii) any Note Party or any ERISA Affiliate knows or has reason to know that an application is to be, or has been, made to the Secretary of the Treasury for a waiver of the minimum funding standard under the provisions of Section 412 of the Code, a copy of such application, and in each case described in clauses (i) through (iii) and (v) through (vii) together with a statement signed by an officer setting forth details as to such Reportable Event, notice, event or condition and the action which such Note Party and any ERISA Affiliate proposes to take with respect thereto.

7.23 Monitoring Fee. Pay to the Collateral Agent the Monitoring Fee when it is due and payable.

7.24 Senior Debt Document Terms. To the extent that the Revolving Loan Documents are amended, enter into an amendment to amend this Agreement to the extent expressly permitted by the Intercreditor Agreement.

7.25 Post-Closing Matters.

7.25.1. Concurrently with delivery to the Revolving Agent, the Issuer shall deliver to the Collateral Agent: (i) a copy of the American Land Title Association/American Congress on Surveying and Mapping form survey provided to the Revolving Agent; (ii) an endorsement to the mortgage title policy deleting the survey exception; (iii) evidence that all other actions that the Collateral Agent may deem necessary or desirable in order to create valid and subsisting Liens on the Alabama Property described in the mortgage prior in right to all other Liens except the Lien in favor of the Revolving Agent and Permitted Encumbrances having priority by operation of law has been taken and (iv) a fully paid (or, as to which, evidence of the payment of the applicable premium has been provided to the Collateral Agent) American Land Title Association Lender's Extended Coverage title insurance policy or marked-up title commitment having the effect of a policy of title insurance in form and substance, with endorsements and in an amount acceptable to the Collateral Agent, issued by Stewart Title Guaranty Company, insuring the mortgage to be a valid and subsisting Lien on the property described therein, free and clear of all defects (including, but not limited to, mechanics' and materialmen's Liens) and encumbrances, excepting only Permitted Encumbrances and other Liens permitted under the Note Documents, and providing for such other affirmative insurance (including endorsements for future advances under the Note Documents and for zoning of the applicable property) and such coinsurance and direct access reinsurance as the Collateral Agent may deem necessary or desirable.

SECTION 8. NEGATIVE COVENANTS

Until payment in full of the Note Obligations, no Note Party shall, nor shall it permit any Subsidiary to, directly or indirectly:

8.1 Liens. Create, incur, assume or suffer to exist any 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 that names any Note Party or any Subsidiary thereof as debtor; sign or suffer to exist any security agreement authorizing any Person thereunder to file such financing statement; sell any of its property or assets subject to an understanding or agreement (contingent or otherwise) to repurchase such property or assets with recourse to it or any of its Subsidiaries; or assign or otherwise transfer any accounts or other rights to receive income, other than, as to all of the above, Permitted Encumbrances.

8.2 Investments. Have outstanding, acquire or hold any Investment (or become contractually committed to do so), directly or indirectly, or incur any liabilities (including contingent obligations) for or in connection with any Investment, except Permitted Investments.

8.3 Indebtedness. Create, incur, assume, guarantee, suffer to exist or otherwise become or remain liable with respect to, any Indebtedness, except Permitted Indebtedness.

8.4 Fundamental Changes. (a) Merge, amalgamate, dissolve, liquidate, wind up, consolidate with or into another Person, reorganize, enter into a plan of reorganization, recapitalization or reclassify its Equity Interests (or agree to do any of the foregoing) or (b) suspend or go out of a substantial portion of its or their business or any material line of business, except that, so long as no Default shall have occurred and be continuing prior to or immediately after giving effect to any action described below or would result therefrom:

8.4.1. any Subsidiary may merge, consolidate or amalgamate with (i) a Note Party, provided that the Note Party shall be the continuing or surviving Person, or (ii) any one or more other Subsidiaries, provided further that when any wholly-owned Subsidiary is merging with another Subsidiary, the wholly-owned Subsidiary shall be the continuing or surviving Person;

8.4.2. the Issuer may merge, consolidate or amalgamate with another Note Party, provided that the Issuer shall be the surviving entity of any such merger, consolidation or amalgamation;

8.4.3. any CFC that is not a Note Party may merge into any CFC that is not a Note Party; and

8.4.4. the Issuer shall be permitted to liquidate or dissolve Twin Brook at any time upon prior written notice to the Collateral Agent, provided that before, or within three (3) Business Days after, the liquidation or dissolution of Twin Brook, Twin Brook shall have contributed all of its assets to the Issuer and the Issuer shall have caused the former assets of Twin Brook, including, without limitation, the equity interests in Services Company, to be pledged to the Collateral Agent for the benefit of the Note Purchasers. In the event of any liquidation or dissolution of Twin Brook in accordance with the preceding sentence, Twin Brook will automatically cease to be a Guarantor hereunder.

8.5 Dispositions. Make any Disposition or enter into any agreement to make any Disposition, except Permitted Dispositions.

8.6 Restricted Payments. Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that, so long as no Default shall have occurred and be continuing prior to or immediately after giving effect to any action described below or would result therefrom:

8.6.1. each Subsidiary of a Note Party may make Restricted Payments to any Note Party, provided, that, during the occurrence and continuation of an Event of Default under this Agreement or the Revolving Loan Agreement, any dividend payments made by any Subsidiary of a Note Party whose Equity Interests are the Note Purchasers Priority Collateral shall be paid directly to the Collateral Agent;

8.6.2. the Note Parties and each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person;

8.6.3. the Issuer may repurchase up to $10,000,000 of its Capital Stock in any Fiscal Year and $40,000,000 in the aggregate so long as (i) the Leverage Ratio, both immediately before and after giving effect to such repurchase, is less than 1.75:1.00, (ii) no Event of Default or Default shall have occurred and be continuing or would arise therefrom and (iii) there has been at least $50,000,000 of Excess Availability as of the end of each of the three months preceding such repurchase, and on such date, after taking into account the repurchase of such stock; provided, that, the Issuer may not repurchase any of its Capital Stock for six months following the Closing Date; and

8.6.4. the Note Parties may issue and sell Equity Interests provided that (i) (A) with respect to any Equity Interests, all dividends in respect of which are to be paid (and all other payments in respect of which are to be made) shall be in additional shares of such Equity Interests, in lieu of cash, (B) such Equity Interests shall not be subject to redemption other than redemption at the option of the Note Party issuing such Equity Interests, and (C) all payments in respect of such Equity Interests are expressly subordinated to the Note Obligations, and (ii) no Note Party shall issue any additional Equity Interests in a Subsidiary.

8.7 Payments and Prepayments of Indebtedness. Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner any Indebtedness (other than the Revolving Obligations and the Note Obligations), or make any payment in violation of any subordination terms of any Subordinated Indebtedness, except (i) as long as no Event of Default shall have occurred and be continuing or would arise therefrom, regularly scheduled or mandatory repayments or redemptions of Permitted Indebtedness (other than the Revolving Obligations and the Note Obligations), (ii) Permitted Refinancing Indebtedness and (iii) as long as the Payment Conditions are satisfied, other repayments or prepayments of Permitted Indebtedness in an aggregate amount not to exceed $10,000,000 in any Fiscal Year.

8.8 Change in Nature of Business. Engage in (a) any line of business substantially different from the business conducted by the Note Parties and their Subsidiaries on the date hereof, or (b) any type of activity reasonably likely to devalue the Issuer's business or brand name, except as could not reasonably be expected to have a Material Adverse Effect.

8.9 Transactions with Affiliates. Enter into, renew, extend or be a party to any transaction of any kind with any Affiliate of any Note Party, except for: (a) transactions that are in the ordinary course of business, upon fair and reasonable terms, that are fully disclosed to the Collateral Agent, and that are no less favorable to the Note Parties than would be obtainable by the Note Parties at the time in a comparable arm's length transaction with a Person other than an Affiliate; (b) payment of insurance premiums to Twin Brook in an aggregate amount not to exceed $750,000 in any Fiscal Year; (c) transactions between the Issuer and Services Company in the ordinary course of business; (d) intercompany loans and advances or other intercompany Indebtedness permitted pursuant to clauses (b), (c), (e) and (j) of the definition of Permitted Indebtedness; and (e) intercompany Investments permitted pursuant to clauses (g), (h), (i) and (m) of the definition of Permitted Investments.

8.10 Burdensome Agreements. Enter into or permit to exist any Contractual Obligation (other than the Revolving Loan Documents, this Agreement or any other Note Document) that

(a) limits the ability (i) of any Subsidiary to make Restricted Payments or other distributions to any Note Party or to otherwise transfer property to or invest in a Note Party, (ii) of any Subsidiary to Guarantee the Note Obligations, (iii) of any Subsidiary to make or repay loans to a Note Party, or (iv) of the Note Parties or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person in favor of the Collateral Agent; provided, however, that this clause (iv) shall not prohibit any negative pledge incurred or provided in favor of any holder of Indebtedness permitted under Section 8.3 solely to the extent any such negative pledge relates to the property financed by or the subject of such Indebtedness; or (b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person.

8.11 Use of Proceeds. Use the proceeds from the sale of the Notes, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund Indebtedness originally incurred for such purpose.

8.12 Amendment of Material Documents. Amend, modify or waive any of a Note Party's rights under (a) its Governing Documents or (b) any Material Contract or Material Indebtedness (other than on account of any refinancing thereof otherwise permitted hereunder), in each case to the extent that such amendment, modification or waiver would be reasonably likely to have a Material Adverse Effect.

8.13 Corporate Name; Fiscal Year.

8.13.1. Change the Fiscal Year of any Note Party, or the accounting policies or reporting practices of the Note Parties, except as required by GAAP.

8.13.2. Change its name as it appears in official filings in the state of its incorporation or other organization (b) change its chief executive office, principal place of business, corporate offices or warehouses or locations at which any material portion of the Collateral is held or stored, or the location of its records concerning the Collateral, (c) change the type of entity that it is, (d) change its organization identification number, if any, issued by its state of incorporation or other organization, or (e) change its state of incorporation or organization, in each case without at least thirty (30) days prior written notice to the Collateral Agent and after the Collateral Agent's written acknowledgment, which acknowledgment shall not be unreasonably withheld or delayed, that any reasonable action requested by the Collateral Agent in connection therewith, including to continue the perfection of any Liens in favor of the Collateral Agent, in any Collateral, has been completed or taken, and provided that any such new location of any Note Party or Domestic Subsidiary shall be in the continental United States.

8.14 Consignments. Consign any Inventory or sell any Inventory on bill and hold, sale or return, sale on approval, or other conditional terms of sale.

8.15 Antilayering. Other than the Note Obligations, the Note Parties will not, and will not permit any of their Subsidiaries to, incur or in any fashion become or remain liable with respect to any Indebtedness of the Note Parties or any Subsidiary which, by its terms, is subordinated to any other Indebtedness of such Note Party or such Subsidiary and which is not expressly subordinated to the Note Obligations on terms satisfactory to the Required Purchasers.

8.16 Capital Expenditures. Make Capital Expenditures in the Fiscal Year (i) ending on or about January 31, 2009 in excess of $86,200,000.00, and (ii) in excess of the Capital Expenditure grid, as follows:

Fiscal Year ending January 31	**EBITDA Target**	**Maximum Capital Expenditures if EBITDA is less than the EBITDA Target**	**Maximum Capital Expenditures if EBITDA exceeds the EBITDA Target**
2010	$ 172,800,000	$ 75,000,000	$ 85,000,000
2011	$ 194,400,000	$ 102,000,000	$ 122,000,000
2012	$ 239,490,000	$ 112,000,000	$ 134,000,000
2013	$ 239,200,000	$ 111,000,000	$ 133,000,000

provided, however, that the Required Purchasers may, in the exercise of their reasonable business judgment, increase any of the amounts set forth in the foregoing grid. When making any determination whether to increase the foregoing amounts, the Required Purchasers may consider, among other things, the actual financial results of the Note Parties.

8.17 Change of Control. Cause, permit, or suffer any Change of Control.

8.18 No Amendment To Transition Services Agreement. Make any material amendments to the Transition Services Agreement (other than the extension of such agreement) unless any such amendments are reasonably satisfactory to the Required Purchasers.

8.19 New Headquarters. Incur any liability in respect of the New Headquarters is excess of $2,000,000, excluding liability disclosed to the Note Purchasers prior to the Closing Date.

8.20 Stock Options. Incur any liabilities in respect of the Stock Options which would cause a Material Adverse Effect.

8.21 Licensing. Without the consent of the Required Purchasers, license more than $5,000,000 of the Intellectual Property of the Note Parties at less than fair market value to other parties.

8.22 Leases. Be in material default under more than 5% of the Leases.

8.23 Hoop Expenses. Permit the costs actually incurred by the Note Parties and the projected costs of the Note Parties relating to the Hoop bankruptcy proceedings and the Hoop Sale to exceed the amounts scheduled on Schedule 5.33.

8.24 Foreign Transfers. Permit the Note Parties located within the United States to (A) (i) make intercompany transfers outside the ordinary course of more than $10,000,000 per Fiscal Year in the aggregate to their affiliates in Canada, (ii) make intercompany transfers outside the ordinary course of business of more than $10,000,000 per Fiscal Year to their affiliates in Asia, or (iii) make

intercompany transfers outside the ordinary course of business of more than $5,000,000 per Fiscal Year to their affiliates in Puerto Rico or (B) (i) receive as intercompany transfers outside the ordinary course from their affiliates in Canada more than $5,000,000 per Fiscal Year, (ii) receive as intercompany transfers from their affiliates in Asia more than $5,000,000 per Fiscal Year, or (iii) receive as intercompany transfers from their affiliates in Puerto Rico more than $5,000,000 per Fiscal Year. An additional $5,000,000 may be transferred under each of Sections 8.24(A)(i), 8.24 (A)(ii), 8.24 (A)(iii), 8.24 (B)(i), 8.24 (B)(ii) and 8.24 (B)(iii) so long as the amount transferred is used to prepay the Note Obligations in accordance with Section 3.2.2.

SECTION 9. EVENTS OF DEFAULT.

If one or more of the following events (herein referred to as "Events of Default") shall occur and be continuing:

9.1 Payment Default. If the Issuer fails to pay when due and payable, or when declared due and payable, (a) all or any portion of its Note Obligations consisting of interest, fees, or charges due the Note Purchasers or the Collateral Agent, reimbursement of, or other amounts (other than any portion thereof constituting principal) constituting Note Obligations, and such failure continues for a period of 3 Business Days, or (b) all or any portion of the principal of its Note Obligations; or

9.2 Certain Covenants.

9.2.1. Any Note Party shall default in the performance or observance of any covenant contained in any of Sections 3.2.3, 3.2.4, 7.5, 7.7, 7.9, 7.11 through 7.15 and 8 hereof; or

9.2.2. Any Note Party fails to perform or observe any covenant or other agreement contained in any of Section 7 (other than Section 7.6 and those specified in Section 9.2.1 above) of this Agreement and such failure continues for a period of 10 days after the earlier of (i) the date on which such failure shall first become known to any officer of any Note Party or (ii) written notice thereof is given to the Issuer by the Collateral Agent.

9.3 Reporting Default. Failure by any Note Party to (i) furnish financial information within 15 days of when due or when requested, or (ii) permit the inspection of its books or records, in each case, when required pursuant to the terms of this Agreement; or

9.4 Other Defaults. Any Note Party shall default in the performance or observance of any covenant, agreement or condition of this Agreement (other than those described or referred to in any other paragraph of this Section) or any other Note Document and such default shall continue unremedied for more than 20 days after the first to occur of (i) a Note Party obtaining actual knowledge of such default or (ii) receipt by a Note Party of written notice of such default from the Required Purchasers.

9.5 Attachments. If any material portion of any Note Party's or any of its Subsidiaries' assets are attached, seized, subjected to a writ or distress warrant, or are levied upon, or come into the possession of any third Person and the same are not discharged before the earlier of 30 days after the date it first arises or 5 days prior to the date on which such property or asset is subject to forfeiture by such Note Party or its Subsidiary, as applicable; or

9.6 Insolvency Proceeding, etc.

9.6.1. If an Insolvency Proceeding is commenced by any Note Party or any of their Subsidiaries; or

9.6.2. If an Insolvency Proceeding is commenced against any Note Party or any of its Subsidiaries, and any of the following events occur: (a) such Note Party or any of its Subsidiaries, as applicable, consents to the institution of such Insolvency Proceeding against it, (b) the petition commencing the Insolvency Proceeding is not timely controverted, (c) the petition commencing the Insolvency Proceeding is not dismissed within 60 calendar days of the date of the filing thereof, (d) an interim trustee, receiver, receiver-manager or other custodian or is appointed to take possession of all or

any substantial portion of the properties or assets of, or to operate all or any substantial portion of the business of, any Note Party or any of its Subsidiaries, as applicable, or (e) an order for relief shall have been issued or entered therein; or

9.6.3. If any Note Party or any of its Subsidiaries is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of its business affairs; or

9.6.4. Any Note Party or any of its Subsidiaries shall admit in writing its inability, or be generally unable, to pay its debts as they become due or cease operations of its present business; or

9.7 Judgments. If one or more judgments, orders, or awards involving an aggregate amount of $3,000,000 or more (except to the extent fully covered by insurance pursuant to which the insurer has accepted liability therefor in writing) shall be entered or filed against any Note Party or any of its Subsidiaries with respect to any of their respective assets, and the same is not released, discharged, bonded against, or stayed pending appeal before the earlier of 30 days after the date it first arises or 5 days prior to the date on which such asset is subject to being forfeited by the applicable Note Party or its Subsidiary; or

9.8 Payment Default on Other Indebtedness. If there is (i) any "Event of Default" (or any similar term) as defined in the Revolving Loan Documents, or (ii) a default or event of default in one or more agreements to which any Note Party or any of its Subsidiaries is a party with one or more third Persons relative to Indebtedness of any such Note Party or its Subsidiary (other than the Revolving Loan Debt) involving an aggregate amount of $1,500,000 or more, and with respect to this clause (ii) such default (x) occurs at or prior to the final maturity of the obligations thereunder, or (y) results in a right by such third Person(s), irrespective of whether exercised, to accelerate the maturity of the obligations of the Note Party or its Subsidiary thereunder; or

9.9 Breach of Representations or Warranties. If any warranty, representation, statement, or Record made herein or in any other Note Document or delivered to the Collateral Agent or any Note Purchaser in connection with this Agreement or any other Note Document proves to be untrue in any material respect (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of the date of issuance or making or deemed making thereof; or

9.10 Guaranty. If the obligation of any Guarantor under the Note Guarantee is limited or terminated by operation of law or by such Guarantor, or any such Guarantor becomes the subject of an Insolvency Proceeding; or

9.11 Enforceability of Note Documents. Any provision of any Note Document shall at any time for any reason be declared to be null and void, or the validity or enforceability thereof shall be contested by any Note Party, or a proceeding shall be commenced by any Note Party, or by any Governmental Authority having jurisdiction over any Note Party, seeking to establish the invalidity or unenforceability thereof, or any Note Party shall deny that it has any liability or obligation purported to be created under any Note Document; or

9.12 Material Adverse Effect. A Material Adverse Effect occurs and is continuing; or

9.13 Governmental Action. (i) Any Governmental Authority shall (A) revoke, terminate, suspend or adversely modify any license, permit, patent, trademark, tradename or design of any Note Parties or any of its Subsidiaries, the continuation of which is material to the continuation the business of the Note Parties and their Subsidiaries taken as a whole or (B) commence proceedings to suspend, revoke, terminate or adversely modify any such license, permit, trademark, tradename or patent and such proceedings shall not be dismissed or discharged within 60 days, or (C) schedule or conduct a hearing on the renewal of any license, permit, trademark, tradename or patent necessary for the continuation of such Person's business and the staff of such Governmental Authority issues a report recommending the termination, revocation, suspension or material, adverse modification of such license, permit, trademark, tradename or patent; (ii) any agreement which is necessary or material to the operation of the Issuer's business shall be revoked or terminated and not replaced by a substitute acceptable to the Required Purchasers within 30 days after the date of such revocation or termination, and, with respect to both clauses (i) and (ii), such revocation, proceedings or termination and non-replacement would reasonably be expected to have a Material Adverse Effect; or

9.14 Employee Plans. An event or condition specified in Sections 5.12 or 7.22 hereof shall occur or exist with respect to any Plan and, as a result of such event or condition, together with all other such events or conditions, the Issuer or any member of the Controlled Group shall incur, or in the reasonable opinion of the Collateral Agent be reasonably likely to incur, a liability to a Plan, or the PBGC (or both) which, in the reasonable judgment of the Collateral Agent, would have a Material Adverse Effect; or

9.15 Business Interruption. The operations of the Note Parties at any material Real Property location are interrupted at any time for a period of 10 consecutive days, unless either (i) such business interruption is not reasonably likely to have a Material Adverse Effect on any Note Party, or (ii) the Note Parties shall (x) be entitled to receive for such period of interruption, proceeds of business interruption insurance sufficient to assure that their per diem cash needs during such period is at least equal to their average per diem cash needs for the consecutive three month period immediately preceding the initial date of interruption (or, at the Note Parties' election, any other consecutive three month period preceding the initial date of interruption and commencing subsequent to the Closing Date as then designated by the Note Parties) and (y) receive such proceeds in the amount described in clause (x) preceding not later than 30 days (with an additional 30 days in the event the proof of loss takes longer to obtain than the initial 30 days) following the initial date of any such interruption; provided, however, that notwithstanding the provisions of clauses (x) and (y) of this Section 9.15, an Event of Default shall be deemed to have occurred if (A) any of the Note Parties shall have ceased material operations for a period of 5 consecutive business days or (B) the Note Parties have received more than $10,000,000 in proceeds of business interruption insurance in the aggregate; or

9.16 Restatements. At any time after the Closing Date, the Notes Parties materially and adversely restate any financial statement for any period prior to the Closing Date other than as a result of a change in GAAP or its application.

THEN, (i) upon the occurrence of any Bankruptcy Default, the unpaid principal amount of all Notes, together with accrued interest thereon, and, as liquidated damages and not as a penalty, an amount equal to the Applicable Premium then in effect, shall automatically become immediately due and payable, without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by the Issuer and the other Note Parties,

and (ii) upon the occurrence of any other Event of Default, the Required Purchasers may, upon written notice to the Issuer, declare the Notes to be due and payable, whereupon the principal amount of all Notes, together with accrued interest thereon, and, as liquidated damages and not as a penalty, an amount equal to the Applicable Premium then in effect, shall automatically become immediately due and payable, such without any other notice of any kind, and without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by the Issuer and the other Note Parties; provided, however, that if the principal of, premium, if any, and interest on the Notes due otherwise than by such declaration plus any expenses due and payable hereunder have been paid in full, and any and all Defaults (other than the nonpayment of principal and interest on the Notes that shall have become due by such declaration) shall have been remedied or waived, the Required Purchasers may waive all Defaults and rescind and annul any such declaration and consequences.

SECTION 10. RESTRICTIONS ON TRANSFER; LEGENDS.

10.1 Assignments.

10.1.1. Subject to Section 10.1.1.1, each Note Purchaser may at any time sell, assign, transfer, pledge or negotiate all or any part of its Notes without the consent of any Note Party; provided that such transfer of the Notes is in compliance with applicable United States federal and state securities laws.

10.1.1.1. So long as no Event of Default shall have occurred and be continuing, (a) assignments will be limited to persons engaged in lending or purchasing and holding loans and securities in the ordinary course of business, and (b) no Note Purchaser may sell, assign, transfer or negotiate all or any part of its Notes without the Issuer’s consent, such consent not to be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, no consent shall be required to effect a sale, assignment, transfer or pledge of a Note to (i) any Affiliate of such Note Purchaser, (ii) with respect to any Note Purchaser which is a fund that invests in loans and/or investments, any other such fund managed by the same investment advisor as such Note Purchaser or by an Affiliate of such Note Purchaser or such advisor (a “Related Fund”), (iii) any other Note Purchaser hereunder, or (iv) or any Person to whom a Note Purchaser assigns its rights and obligations under this Agreement as part of an assignment and transfer of such Note Purchaser’s rights in and to a material portion of such Note Purchaser ‘s portfolio of asset based credit facilities.

10.1.2. The Collateral Agent shall keep at its principal office, or the principal office of its counsel, a register in which it shall provide for the registration of the Notes and the transfer of the same shall be provided. Failure to make any recordation, or any error in such recordation, shall not affect any of the Note Obligations. Upon surrender for registration of transfer of any Notes in accordance with Section 10.1 at the principal office of the Issuer, the Issuer shall, at its expense, promptly execute and deliver one or more new Notes, as applicable, of like tenor and of

a like principal amount, registered in the name of such transferee or transferees and, in the case of a transfer in part, a new Note in the appropriate amount registered in the names of such transferor. While the Notes are “restricted securities” within the meaning of Rule 144(a)(3) under the Securities Act, the Issuer shall provide the Note Purchasers with the information specified in, and meeting the requirements of Rule 144A(d)(4) under the Securities Act in connection with any proposed transfer.

10.2 Restrictive Legend.

10.2.1. Each Note shall bear a legend in substantially the following form:

“THIS NOTE WAS ISSUED IN A PRIVATE PLACEMENT, WITHOUT REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED OR ANY OTHER APPLICABLE SECURITIES LAWS (COLLECTIVELY, THE “SECURITIES LAWS”), AND MAY NOT BE SOLD, ASSIGNED, PLEDGED OR OTHERWISE TRANSFERRED (I) IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES LAWS COVERING THE TRANSFER OR PURSUANT TO AN EXEMPTION FROM REGISTRATION AND (II) EXCEPT IN COMPLIANCE WITH SECTION 10.1 OF THAT CERTAIN NOTE PURCHASE AGREEMENT DATED AS OF JULY 31, 2008 AMONG THE ISSUER, THE NOTE PURCHASERS (AS DEFINED THEREIN) AND THE GUARANTORS PARTY THERETO.”

10.3 Termination of Restrictions. The restrictions imposed by Section 10.2 hereof upon the transferability of the Notes shall cease and terminate as to any particular Notes when, in the opinion of Ropes & Gray LLP, or other counsel reasonably acceptable to the Issuer, such restrictions are no longer required in order to assure compliance with applicable securities laws. Whenever such restrictions shall cease and terminate as to any Notes, the holder thereof shall be entitled to receive from the Issuer, without expense, replacement Notes not bearing the applicable legend set forth in Section 10.2 hereof.

SECTION 11. GUARANTEE.

11.1 Guarantee of Note Obligations.

11.1.1. Each Guarantor, jointly and severally, unconditionally and irrevocably guarantees that the Note Obligations of the Issuer will be performed and paid in full in cash when due and payable, whether at the stated or accelerated maturity thereof or otherwise, this Note Guarantee being a guarantee of payment and not of collectibility and being absolute and in no way conditional or contingent (the “Guaranteed Obligation”). In the event any part of the Note Obligations shall not have been so paid in full when due and payable, each Guarantor will, promptly upon notice by the Collateral Agent or, without notice, promptly upon the occurrence of a Bankruptcy Default with respect to any Note Party, pay or cause to be paid to the Collateral Agent for the account of each Note Purchaser in accordance with the Note Purchasers’ proportionate share of such Note Obligations which are then due and payable and unpaid. The obligations of each Guarantor hereunder shall not be affected by the invalidity, unenforceability or irrecoverability of any of the Note Obligations as against the Issuer, any other Note Party, any other Guarantor thereof or any other Person. For purposes hereof, the Note Obligations shall be due and payable when and as the same shall be due and payable under the terms of this Agreement or any other Note Document

notwithstanding the fact that the collection or enforcement thereof against the Issuer may be stayed or enjoined under the Bankruptcy Code or other applicable law.

11.1.2. The liability of each Guarantor hereunder shall be absolute and unconditional irrespective of:

11.1.2.1. any lack of validity or enforceability of the Notes, this Agreement or any other agreement between the Issuer and the Note Purchasers relating to the advance of monies to the Issuer or any other agreement or instrument relating thereto;

11.1.2.2. any change in the time, manner or place of payment of, amount of credit available to the Issuer under, or in any other term of, or any other amendment or waiver of or any consent to departure from, any agreement between the Issuer and the Note Purchasers relating to the advance of monies to the Issuer;

11.1.2.3. any change in the name, objects, partnership interest, Capital Stock, partnership agreement, or certificate or articles of incorporation or by-laws or any other constituent documents of the Issuer and any of the Guarantors or the Issuer or any of the Guarantors being amalgamated with another corporation (in which case this Note Guarantee shall apply to the Guaranteed Obligations of the resulting corporation and, where the Issuer has been amalgamated with another corporation, the term "Issuer" shall include such resulting corporation);

11.1.2.4. any equities between the Note Purchasers, the Guarantor or the Issuer or any defense, opposition of any nature whatsoever or right of set-off, compensation, abatement, combination of accounts or cross-claim that the Guarantor or the Issuer may have;

11.1.2.5. any act or omission on the part of the Note Purchasers that would prevent subrogation operating in favor of the Guarantor; and

11.1.2.6. to the extent permitted by applicable law, any other circumstances which might otherwise constitute a defense available to, or a discharge of, the Issuer in respect of the Note Obligations or of any Guarantor in respect of its guarantee, it being the intent of each Guarantor that liability to the Note Purchasers, under this Note Guarantee shall be absolute and unconditional under any and all circumstances and shall not be discharged except by payment in full of the Note Obligations and the Guaranteed Obligations.

11.1.3. The Note Purchasers shall not be concerned to see or enquire into the powers of the Issuer or any of its respective directors, officers, managers or other agents, acting or purporting to act on its behalf, and monies, advances, renewals or credits in fact borrowed or obtained from the Note Purchasers in professed exercise of such powers shall be deemed to form part of the debts and liabilities hereby guaranteed, notwithstanding that such borrowing or obtaining of monies, advances, renewals or credits shall be in excess of the powers of the Issuer or of its directors, officers, managers or other agents aforesaid, or be in any way irregular, defective or informal. This Note Guarantee shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Note Obligations or Guaranteed Obligations is rescinded or must otherwise be returned by the Note Purchasers upon the insolvency, bankruptcy or reorganization of the Issuer or otherwise, all as though such payment had not been made.

11.1.4. Without limiting the generality of this Section 11.1.4, none of the Guaranteed Obligations shall be limited, lessened or released, nor shall this Note Guarantee be discharged, by the recovery of any judgment against the Issuer or any other Person, by any voluntary or involuntary liquidation, dissolution, winding-up, merger or amalgamation of the Issuer, a Guarantor or any other person, by any sale or other disposition of all or substantially all of the assets of the Issuer, or by any judicial or extra-judicial receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, moratorium, arrangement, composition with creditors or other proceedings affecting the Issuer, a Guarantor or any other Person. If at any time the Note Purchasers have the right to accelerate the payment of monies owed under the Notes, and such acceleration is prevented by reason of the pendency against the Issuer of a case or proceeding under the Bankruptcy Code, the Guarantors agree that, for purposes of this Note Guarantee such payment shall be deemed to have been accelerated in accordance with the terms hereof, and the Guarantors shall forthwith pay or cause to be paid the full amount of principal of and interest so owing and any other amounts guaranteed hereunder without further notice or demand. This is a guarantee of payment, not a deficiency guarantee. The guarantees provided for in this Section 11 are subject to the terms and conditions of the Intercreditor Agreement.

11.2 Continuing Obligation. Each Guarantor acknowledges that the Note Purchasers have entered into this Agreement (and, to the extent that the Note Purchasers or the Collateral Agent may enter into any future Note Document, will have entered into such agreement) in reliance on this Note Guarantee, the Note Guarantee being a continuing irrevocable agreement, and such Guarantor agrees that its guarantee may not be revoked in whole or in part. The obligations of the Guarantors hereunder shall terminate when all of the Note Obligations have been paid in full in cash and discharged; provided, however, that:

11.2.1. if a claim is made upon the Note Purchasers at any time for repayment or recovery of any amounts or any property received by the Note Purchasers from any source on account of any of the Note Obligations and the Note Purchasers repay or return any amounts or property so received (including interest thereon to the extent required to be paid by the Note Purchasers), or

11.2.2. if the Note Purchasers become liable for any part of such claim by reason of (i) any judgment or order of any court or administrative authority having competent jurisdiction, or (ii) any settlement or compromise of any such claim, then the Guarantors shall remain liable under this Agreement for the amounts so repaid or property so returned or the amounts for which the Note Purchasers become liable (such amounts being deemed part of the Guaranteed Obligations) to the same extent as if such amounts or property had never been received by the Note Purchasers, notwithstanding any termination hereof or the cancellation of any instrument or agreement evidencing any of the Note Obligations. Not later than five (5) days after receipt of notice from the Collateral Agent, the Guarantors shall pay to the Collateral Agent, for the benefit of the Note Purchasers, an amount equal to the amount of such repayment or return for which the Note Purchasers have so become liable. Payments hereunder by a Guarantor may be required by the Collateral Agent on any number of occasions.

11.2.3. The obligations and liabilities of the Guarantors hereunder shall not be released, discharged, limited or in any way affected by anything done, suffered or permitted by the Note Purchasers in connection with any monies advanced by the Note Purchasers to the Issuer or any security therefor, including any loss of or in respect of any security received by the Note Purchasers

from the Issuer or others. It is agreed that the Note Purchasers, without releasing, discharging, limiting or otherwise affecting in whole or in part the Guarantors' obligations and liabilities hereunder, may, without limiting the generality of the foregoing:

11.2.3.1. grant time, renewals, extensions, indulgences, releases and discharges to the Issuer;

11.2.3.2. take or abstain from taking securities or collateral from the Issuer or from perfecting securities or collateral of the Issuer;

11.2.3.3. release, discharge, compromise or otherwise deal with (with or without consideration) any and all collateral, mortgages or other security given by the Issuer or any third party with respect to the obligations or matters contemplated by this Agreement;

11.2.3.4. do, or omit to do, anything to enforce the payment or performance of any of the Note Obligations or the Guaranteed Obligations or take or abstain from taking security from the Issuer or any other person or to perfect or abstain from perfecting any security interest;

11.2.3.5. vary, compromise, exchange, renew, discharge, release, discharge, subordinate, postpone, abandon or otherwise deal with any of the Note Obligations or the Guaranteed Obligations or any security interest;

11.2.3.6. deal with or allow any creditor of the Issuer or the Guarantors or any of them or any other Person to deal with goods or property constituting collateral subject to any security interest;

11.2.3.7. accept compromises from the Issuer;

11.2.3.8. apply all monies at any time received from the Issuer or from securities upon such part of the Note Obligations in compliance with the Note Documents as the Note Purchasers may see fit or change any such application in whole or in part from time to time as the Note Purchasers may see fit; or

11.2.3.9. otherwise deal with the Issuer, each other Guarantor and all other Persons and securities in compliance with the Note Documents as the Note Purchasers may see fit.

11.2.4. The Note Purchasers shall not be bound or obliged to exhaust their recourse against the Issuer or any other Guarantor or any other persons or any securities, mortgage or collateral they may hold or take any other action (other than make demand) before being entitled to payment from a Guarantor hereunder.

11.2.5. Any account settled by or between the Note Purchasers and the Issuer with respect to the Notes shall be accepted by the Guarantors as conclusive evidence that the balance or amount thereby appearing due to the Note Purchasers is so due.

11.3 Waivers with Respect to Note Obligations. Except to the extent expressly required by this Agreement or any other Note Document, each Guarantor waives, to the fullest extent permitted by the provisions of applicable law, all of the following (including all defenses, counterclaims and other rights of any nature based upon any of the following):

11.3.1. presentment, demand for payment and protest of nonpayment of any of the Note Obligations, and notice of protest, dishonor or nonperformance;

11.3.2. notice of acceptance of this Note Guarantee and notice that the Notes have been sold by the Issuer hereunder in reliance on such Guarantor's guarantee of the Note Obligations;

11.3.3. notice of any Default or of any inability to enforce performance of the obligations of the Issuer or any other Person with respect to any Note Document or notice of any acceleration of maturity of any Note Obligations;

11.3.4. demand for performance or observance of, and any enforcement of any provision of this Agreement, the Note Obligations or any other Note Document or any pursuit or exhaustion of rights or remedies with respect to any collateral or against the Issuer or any other Person in respect of the Note Obligations or any requirement of diligence or promptness on the part of Collateral Agent or any Note Purchaser in connection with any of the foregoing;

11.3.5. any act or omission on the part of any Note Purchaser which may impair or prejudice the rights of such Guarantor, including rights to obtain subrogation, exoneration, contribution, indemnification or any other reimbursement from the Issuer or any other Person, or otherwise operate as a deemed release or discharge;

11.3.6. failure or delay to perfect or continue the perfection of any Security Interest in any Collateral or any other action which harms or impairs the value of, or any failure to preserve or protect the value of, any Collateral;

11.3.7. any statute of limitations or any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than the obligation of the principal;

11.3.8. any "single action" or "antideficiency" law which would otherwise prevent any Note Purchaser from bringing any action, including any claim for a deficiency, against such Guarantor before or after the Collateral Agent or the Note Purchasers' commencement or completion of any foreclosure action, whether judicially, by exercise of power of sale or otherwise, or any other law which would otherwise require any election of remedies by the Collateral Agent or any Note Purchaser;

11.3.9. all demands and notices of every kind with respect to the foregoing; and

11.3.10. to the extent not referred to above, all defenses (other than payment) which the Issuer may now or hereafter have to the payment of the Note Obligations, together with all suretyship defenses, which could otherwise be asserted by such Guarantor.

Each Guarantor represents that it has obtained the advice of counsel as to the extent to which suretyship and other defenses may be available to it with respect to its obligations hereunder in the absence of the waivers contained in this Section 11.3.

No delay or omission on the part of any of the Collateral Agent or any of the Note Purchasers in exercising any right under any Note Document or under any other guarantee of the Note Obligations shall operate as a waiver or relinquishment of such right. No action which the Collateral Agent or

the Note Purchasers or any Note Party or any of its Subsidiaries may take or refrain from taking with respect to the Note Obligations shall affect the provisions of this Agreement or the obligations of each Guarantor hereunder. None of the Note Purchasers' or the Collateral Agent's rights shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of any of the Note Parties or any of their Subsidiaries, or by any noncompliance by any Note Party or of its Subsidiaries with any Note Document, regardless of any knowledge thereof which the Collateral Agent or any Note Purchaser may have or otherwise be charged with.

11.4 Note Purchasers' Power to Waive, etc. Notwithstanding anything to the contrary herein, with respect to this Section 11, each Guarantor grants to the Collateral Agent and each of the Note Purchasers full power in their discretion, without notice to or consent of such Guarantor, such notice and consent being expressly waived to the fullest extent permitted by applicable law, and without in any way affecting the liability of such Guarantor under its guarantee hereunder:

11.4.1. To waive compliance with, and any Default under, and to consent to any amendment to or modification or termination of any provision of, or to give any waiver in respect of, this Agreement, any other Note Document, the Collateral, the Note Obligations or any guarantee thereof (each as from time to time in effect);

11.4.2. To grant any renewals extensions of the Note Obligations (for any duration), and any other indulgence with respect thereto, and to effect any total or partial release (by operation of law or otherwise), discharge, compromise or settlement with respect of the Note Obligations, whether or not rights against such Guarantor under this Agreement are reserved in connection therewith;

11.4.3. To take security in any form for the Note Obligations, and to consent to the addition to or the substitution, exchange, release or other disposition of, or to deal in any other manner with, any part of any property contained in the Collateral whether or not the property, if any, received upon the exercise of such power shall be of a character or value the same as or different from the character or value of any property disposed of, and to obtain, modify or release any present or future guarantees of the Note Obligations and to proceed against any of the Collateral or such guarantees in any order;

11.4.4. To collect or liquidate or realize upon any of the Note Obligations or the Collateral in any manner or to refrain from collecting or liquidating or realizing upon any of the Note Obligations; and

11.4.5. To extend additional credit, if any, under this Agreement, any other Note Document or otherwise in such amount as the Note Purchasers may determine, including increasing the amount of credit and the interest rate and fees with respect thereto, even though the condition of the Note Parties (financial or otherwise, on an individual or Consolidated basis) may have deteriorated since the date hereof.

11.5 Information Regarding the Issuer, etc. Each Guarantor has made such investigation as it deems desirable of the risks undertaken by it in entering into this Agreement and is fully satisfied that it understands all such risks. Each Guarantor waives any obligation which may now or hereafter exist on the part of the Collateral Agent or any Note Purchaser to inform it of the risks being undertaken by entering into this Agreement or of any changes in such risks and, from and after the date hereof, each Guarantor undertakes to keep itself informed of such risks and any

changes therein. Each Guarantor expressly waives any duty which may now or hereafter exist on the part of the Collateral Agent or any Note Purchaser to disclose to such Guarantor any matter related to the business of the Note Parties and their Subsidiaries, operations, character, collateral, credit, condition (financial or otherwise), income or prospects of the Issuer and its Affiliates or its properties or management, whether now or hereafter known by the Collateral Agent or any Note Purchaser. Each Guarantor represents, warrants and agrees that it assumes sole responsibility for obtaining from the Issuer all information concerning this Agreement and all other Note Documents and all other information as to the Issuer and its Affiliates or its properties or management as such Guarantor deems necessary or desirable.

11.6 Certain Guarantor Representations. Each Guarantor represents that:

11.6.1. giving this Note Guarantee is in its best corporate interest and commercial benefit and does not exceed its financial means and capabilities;

11.6.2. it is in its best interest and in pursuit of the purposes for which it was organized as an integral part of the business conducted and proposed to be conducted by the Note Parties and their Subsidiaries, and reasonably necessary and convenient in connection with the conduct of the business conducted and proposed to be conducted by them, to induce the Note Purchasers to enter into this Agreement and to purchase the Notes from the Issuer by making the Note Guarantee contemplated by this Section 11;

11.6.3. the proceeds from the sale of the Notes will directly or indirectly inure to its benefit;

11.6.4. by virtue of the foregoing it is receiving directly or indirectly at least reasonably equivalent value from the Note Purchasers for its Guaranteed Obligation;

11.6.5. it will not be rendered insolvent or left with unreasonably small assets with which to conduct its business as a result of entering into this Agreement (considering, among other things, its rights of contribution against other Note Parties);

11.6.6. after giving effect to the transactions contemplated by this Agreement and the other Note Documents and considering, among other things, its rights of contribution against other Note Parties, it will (directly or indirectly) have assets having a fair saleable value in the ordinary course in excess of its total obligations to all Persons (taking into account, as applicable, rights of contribution, subrogation and indemnity with regard to obligations shared by others); and

11.6.7. it has been advised by the Collateral Agent that the Note Purchasers are unwilling to enter into this Agreement unless the Note Guarantee provided for by this Section 11 is given by it.

11.7 Subrogation. Each Guarantor agrees that, until the Note Obligations are paid in full, it will not exercise any right of reimbursement, subrogation, contribution, offset or other claims against any Note Party or any of its Subsidiaries arising by contract or operation of law in connection with any payment made or required to be made by such Guarantor under this Agreement or any other Note Document; provided, that the Note Parties hereby waive any such right of reimbursement, subrogation, contribution, offset or other claim. After the payment in full of the Note Obligations, each Guarantor shall be entitled to exercise against any Note Party or any of their

Subsidiaries all such rights of reimbursement, subrogation, contribution and offset, and all such other claims, to the fullest extent permitted by law.

11.8 Subordination.

11.8.1. Each Note Party covenants and agrees that the payment of any Indebtedness and all obligations and liabilities owing by any Note Party in favor of any other Note Party, whether now existing or hereafter incurred (collectively, the "Intercompany Obligations") is subordinated, to the extent and in the manner provided in this Section 11.8, to the prior payment in full of all Note Obligations owed or hereafter owing to the Note Purchasers by the Note Parties and is so subordinated as a claim against such Person or any of its assets, whether such claim be in the ordinary course of business or in the event of voluntary or involuntary liquidation, dissolution, insolvency or bankruptcy, so that no payment with respect to any such Indebtedness, claim or liability will be made or received while any Event of Default exists and that such subordination is for the benefit of the Note Purchasers.

11.8.2. Each Note Party hereby (i) authorizes the Note Purchasers to demand specific performance of the terms of this Section 11.8 at any time when any Note Party shall have failed to comply with any provisions of this Section 11.8 which are applicable to it and (ii) irrevocably waives any defense based on the adequacy of a remedy at law, which might be asserted as a bar to such remedy of specific performance.

11.8.3. Upon any distribution of assets of any Note Party in any dissolution, winding up, liquidation or reorganization (whether in bankruptcy, insolvency or receivership proceedings or upon an assignment for the benefit of creditors or otherwise):

11.8.3.1. The Note Purchasers shall first be entitled to receive payment in full in cash of the Note Obligations before any Note Party is entitled to receive any payment on account of the Intercompany Obligations; provided that prior to the occurrence of an Event of Default, any Note Party may make payments to any other Note Party on account of Intercompany Indebtedness.

11.8.3.2. Any payment or distribution of assets of any Note Party of any kind or character, whether in cash, property or securities, to which any other Note Party would be entitled except for the provisions of this Section 11.8, shall be paid by the liquidating trustee or agent or other Person making such payment or distribution directly to the Note Purchasers in the manner set forth herein, to the extent necessary to make payment in full of all Note Obligations remaining unpaid after giving effect to any concurrent payment or distribution or provisions therefor to the Note Purchasers.

11.8.3.3. In the event that notwithstanding the foregoing provisions of this Section 11.8 any payment or distribution of assets of any Note Party of any kind or character, whether in cash, property or securities, shall be received by any other Note Party on account of any Intercompany Obligations before all Note Obligations are paid in full, such payment or distribution shall be received and held in trust for and shall be paid over to the Collateral Agent for itself and the Note Purchasers for application to the payment of the Note Obligations until all of the Note Obligations shall have been paid in full, after giving effect to any concurrent payment or distribution or provision therefor to the Note Purchasers.

11.8.3.4. No right of any Note Purchaser or any other present or future holders of the Note Obligations to enforce subordination as provided herein shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of any Note Party or by any act or failure to act, in good faith, by any Note Party, or by any noncompliance by any Note Party with the terms of the Intercompany Obligations, regardless of any knowledge thereof which any Note Purchaser may have or be otherwise charged with.

11.9 Limitation on Guaranty.

11.9.1. In any action or proceeding with respect to any Guarantor involving any state corporate law, the Bankruptcy Code of the United States or any other Debtor Relief Law, if the obligations of such Guarantor under this Note Guarantee would otherwise be held or determined to be void, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under this Note Guarantee, then, notwithstanding any other provision hereof to the contrary, the amount of such liability shall, without any further action by such Guarantor, any Note Party, the Collateral Agent or any other Person, be automatically limited and reduced to the highest amount which is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding. Any term or provision of this Note Guarantee to the contrary notwithstanding, the maximum aggregate amount of the obligations guaranteed or incurred hereunder by any Guarantor shall not exceed (i) the maximum amount that can be hereby guaranteed and incurred without rendering this Note Guarantee, as it relates to such Guarantor, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer or similar laws or (ii) the maximum amount which can be guaranteed by such Guarantor under applicable law, including applicable state and federal laws relating to insolvency of debtors.

SECTION 12. COLLATERAL AGENT.

12.1 Collateral Agent's Authority to Act, etc. Each of the Note Purchasers appoints and authorizes Sankaty Advisors, LLC to act for the Note Purchasers as the Collateral Agent in connection with and on the terms set forth in the Note Documents. If Note Purchasers affiliated with the Collateral Agent hold less than 20% of the outstanding Note Obligations, then the Required Purchasers may designate a successor Collateral Agent and the term "Collateral Agent" shall for all purposes of this Agreement and the Note Documents thereafter mean such successor. All action in connection with the enforcement of, or the exercise of any remedies under the Note Documents shall be taken in the manner set forth therein. Each of the Note Purchasers authorizes the Collateral Agent to (i) execute and deliver the Note Documents on behalf of such Note Purchaser and accept delivery thereof on its behalf from any Note Party, (ii) take such action on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to the Agent under such Note Documents and (iii) exercise such powers as are reasonably incidental thereto.

12.2 Collateral Agent's Resignation. The Collateral Agent may resign at any time by giving at least 60 days' prior written notice of its intention to do so to each of the Note Purchasers and the Issuer and upon the appointment by the Required Purchasers of a successor Collateral Agent reasonably satisfactory to the Issuer. If no successor Collateral Agent shall have been so appointed and shall have accepted such appointment within 45 days after the retiring Collateral Agent's giving of such notice of resignation, then the retiring Collateral Agent may appoint a successor Collateral Agent which shall be a bank or a trust company organized under the laws of the United States of America or any state thereof and having a combined capital, surplus and undivided profit of at least $500,000,000 (so long as no Default exists) with the consent of the Issuer, which shall not be

unreasonably withheld; provided, however, that any successor Collateral Agent appointed under this sentence may be removed upon the written request of the Required Purchasers, which request shall also appoint a successor Collateral Agent (so long as no Default exists) reasonably satisfactory to the Issuer. Upon the appointment of a new Collateral Agent hereunder, the term "Collateral Agent" shall for all purposes of this Agreement and the Note Documents thereafter mean such successor. After any retiring Collateral Agent's resignation hereunder as Collateral Agent, or the removal hereunder of any successor Collateral Agent, the provisions of this Agreement and the other Note Documents shall continue to inure to the benefit of such retiring or removed Collateral Agent as to any actions taken or omitted to be taken by it while it was Collateral Agent under this Agreement and the other Note Documents.

12.3 Concerning the Collateral Agent.

12.3.1. Action in Good Faith, etc. The Collateral Agent and its officers, directors, employees and agents shall be under no liability to any of the Note Purchasers or to any future holder of any Notes for any action or failure to act taken or suffered in good faith, and any action or failure to act in accordance with an opinion of its counsel shall conclusively be deemed to be in good faith. The Collateral Agent shall in all cases be entitled to rely, and shall be fully protected in relying, on instructions given to the Collateral Agent by the Required Purchasers. The Collateral Agent may execute releases and other collateral termination documents with respect to assets disposed of by the Note Parties as permitted by this Agreement.

12.3.2. No Implied Duties, etc. The Collateral Agent shall have and may exercise such powers as are specifically delegated to the Collateral Agent under this Agreement or any other Note Document together with all other powers incidental thereto. The Collateral Agent shall have no implied duties to any Person or any obligation to take any action under this Agreement or any other Note Document except for action specifically provided for in this Agreement or any other Note Document to be taken by the Collateral Agent.

12.3.3. Validity, etc. The Collateral Agent shall not be responsible to any Note Purchaser or any future holder of any Notes (a) for the legality, validity, enforceability or effectiveness of this Agreement or any other Note Document, or (b) for any recitals, reports, representations, warranties or statements contained in or made in connection with this Agreement or any other Note Document.

12.3.4. Compliance. The Collateral Agent shall not be obligated to ascertain or inquire as to the performance or observance of any of the terms of this Agreement or any other Note Document.

12.3.5. Employment of Collateral Agent and Counsel. The Collateral Agent may execute any of its duties as Collateral Agent under this Agreement or any other Note Document by or through employees, agents and attorneys in fact and shall not be responsible to any of the Note Purchasers, the Issuer or any other Note Party for the default or misconduct of any such agents or attorneys in fact selected by the Collateral Agent acting in good faith. The Collateral Agent shall be entitled to advice of counsel concerning all matters pertaining to the agency hereby created and its duties hereunder or under any other Note Document.

12.3.6. Reliance on Documents and Counsel. The Collateral Agent shall be entitled to rely, and shall be fully protected in relying, upon any affidavit, certificate, cablegram,

consent, instrument, letter, notice, order, document, statement, facsimile, telegram, telex or teletype message or writing reasonably believed in good faith by the Collateral Agent to be genuine and correct and to have been signed, sent or made by the Person in question, including any telephonic or oral statement made by such Person, and, with respect to legal matters, upon an opinion or the advice of counsel selected by the Collateral Agent.

12.3.7. Collateral Agent's Reimbursement. Each of the Note Purchasers severally agrees to reimburse the Collateral Agent, pro rata in accordance with such Note Purchaser's percentage interest (determined based on the ratio of the aggregate principal amount of the Notes held by such Note Purchaser to the aggregate amount of all outstanding Notes), for any reasonable expenses not reimbursed by the Issuer (without limiting the obligation of the Issuer to make such reimbursement): (a) for which the Collateral Agent is entitled to reimbursement by the Issuer under this Agreement or any other Note Document, and (b) after the occurrence and during the continuance of a Default, for any other reasonable expenses incurred by the Collateral Agent on the Note Purchasers' behalf in connection with the enforcement of the Note Purchasers' rights under this Agreement or any other Note Document; provided, however, that the Collateral Agent shall not be reimbursed for any such expenses arising as a result of its gross negligence or willful misconduct.

12.4 Indemnification. The Note Purchasers shall severally indemnify the Collateral Agent and its officers, directors, employees, agents, attorneys, accountants, consultants and controlling Persons (to the extent not reimbursed by the Note Parties and without limiting the obligation of the Note

Parties to do so), pro rata in accordance with their respective percentage interests (as determined in accordance with Section 12.3.7), from and against any and all liabilities, obligations, damages, penalties, actions, judgments, suits, losses (including accrued and unpaid Collateral Agent's fees), costs, expenses or disbursements of any kind whatsoever which may at any time be imposed on, incurred by or asserted against the Collateral Agent or such Persons relating to or arising out of this Agreement, any Note Document, the transactions contemplated hereby or thereby, or any action taken or omitted by the Collateral Agent in connection with any of the foregoing; provided, however, that the foregoing shall not extend to actions or omissions which are determined in a final, nonappealable judgment by a court of competent jurisdiction to have been taken by the Collateral Agent with gross negligence or willful misconduct.

12.5 Assumption of Collateral Agent's Rights. Notwithstanding anything herein or in any Note Document to the contrary, if at any time no Person constitutes the Collateral Agent hereunder or the Collateral Agent fails to act upon written directions from the Required Purchasers, the Required Purchasers shall be entitled to exercise any power, right or privilege granted to the Collateral Agent under this Agreement or any other Note Document and in so acting the Note Purchasers shall have the same rights, privileges, indemnities and protections provided to the Collateral Agent under this Agreement or any other Note Document.

SECTION 13. MISCELLANEOUS.

13.1 Expenses. Whether or not the transactions contemplated hereby shall be consummated, the Issuer agrees to promptly pay (i) all the actual and reasonable costs and expenses incurred by the Collateral Agent and the Note Purchasers in the preparation of this Agreement and the other Note Documents and (ii) all reasonable out-of-pocket costs and expenses of the Collateral Agent and the Note Purchasers (including fees, expenses and disbursements of their outside counsel, Ropes & Gray LLP) relating to the negotiation, preparation and execution of the Note Documents, review of other documents (including due diligence review) in connection with the transactions

contemplated hereby, and any amendments and waivers hereto or thereto, and the Closing. In addition, the Issuer agrees to promptly pay in full after the occurrence of an Event of Default, all costs and expenses (including, without limitation, reasonable fees and disbursements of counsel) incurred by the Collateral Agent or the Note Purchasers in enforcing any obligations of or in collecting any payments due hereunder or under the Notes by reason of such Event of Default or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a workout, or any insolvency or bankruptcy proceedings; provided that, in such event, the Note Purchasers and the Collateral Agent shall be only entitled to payment of the fees, expenses and disbursements of a single outside counsel and other professionals, such to be designated by the Required Purchasers.

13.2 Indemnity. In addition to the payment of expenses pursuant to Section 13.1, whether or not the transactions contemplated hereby shall be consummated, each Note Party (as "Indemnitor") agrees to indemnify, pay and hold the Note Purchasers, the Collateral Agent and the officers, directors, employees, agents, and Affiliates of the Note Purchasers and the Collateral Agent (collectively called the "Indemnitees") harmless from and against any and all other liabilities, costs, expenses, obligations, losses, damages, penalties, actions, judgments, suits, claims and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of one counsel for such Indemnitees) in connection with any investigative, administrative or judicial proceeding commenced or threatened (excluding claims among Indemnitees and, with the exception of claims arising out of otherwise indemnifiable matters (e.g., actions to enforce the indemnification rights provided hereunder), and excluding claims between the Issuer and an Indemnitee), whether or not such Indemnitee shall be designated a party thereto, which may be imposed on, incurred by, or asserted against that Indemnitee, in any manner relating to or arising out of this Agreement, the Notes, the Note Documents or the other documents related to the transactions contemplated hereby (including, without limitation, the existence or exercise of any security rights with respect to the Collateral in accordance with the Collateral Documents), the Note Purchasers' agreement to purchase the Notes or the use or intended use of the proceeds of any of the proceeds thereof to the Issuer (the "Indemnified Liabilities"); provided, that the Indemnitor shall not have any obligation to an Indemnitee hereunder with respect to an Indemnified Liability to the extent that such Indemnified Liability arises from the gross negligence or willful misconduct of that Indemnitee or its Related Parties as mutually agreed between the Indemnitee and the Indemnitors or as determined by a final, non-appealable judgment of a court of competent jurisdiction. Each Indemnitee shall give the Indemnitor prompt written notice of any claim that might give rise to Indemnified Liabilities setting forth a description of those elements of such claim of which such Indemnitee has knowledge; provided, that any failure to give such notice shall not affect the obligations of the Indemnitor unless (and then solely to the extent) such Indemnitor is prejudiced thereby. The Indemnitor shall have the right at any time during which such claim is pending to select counsel to defend and control the defense thereof and settle any claims for which it is responsible for indemnification hereunder (provided that the Indemnitor will not settle any such claim without (i) the appropriate Indemnitee's prior written consent, which consent shall not be unreasonably withheld or (ii) obtaining an unconditional release of the appropriate Indemnitee from all claims arising out of or in any way relating to the circumstances involving such claim) so long as in any such event the Indemnitor shall have stated in writing delivered to the Indemnitee that, as between the Indemnitor and the Indemnitee, the Indemnitor is responsible to the Indemnitee with respect to such claim to the extent and subject to the limitations set forth herein; provided, that the Indemnitor shall not be entitled to control the defense of any claim in the event that in the reasonable opinion of counsel for the Indemnitee, there are one or more material defenses available to the Indemnitee which are not available to the Indemnitor; provided further, that with respect to

any claim as to which the Indemnitee is controlling the defense, the Indemnitor will not be liable to any Indemnitee for any settlement of any claim pursuant to this Section 13.2 that is effected without its prior written consent, which consent shall not be unreasonably withheld. To the extent that the undertaking to indemnify, pay and hold harmless set forth in this Section 13.2 may be unenforceable because it is violative of any law or public policy, the Issuer shall contribute the maximum portion which it is permitted to pay and satisfy under applicable law, to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnitees or any of them.

13.3 [INTENTIONALLY OMITTED]

13.4 Intercreditor Agreement. Each of the Note Purchasers hereby agrees with the Collateral Agent to be bound by the terms and provisions of the Intercreditor Agreement, as if such Note Purchaser were a signatory thereto and hereby instructs the Collateral Agent to enter into the Intercreditor Agreement when such agreement is executed and delivered by all parties thereto. In the event of any conflict between this Agreement and the Intercreditor Agreement, the parties hereto hereby agree that the Intercreditor Agreement shall govern.

13.5 Amendments and Waivers. Subject to Section 7.24, no amendment, modification, termination or waiver of any provision of the Note Documents, shall in any event be effective without the written consent of the Required Purchasers and the Issuer; provided, however, that no amendment, modification, waiver or consent shall, unless in writing and signed by each Note Purchaser affected thereby, do any of the following: (a) extend the maturity or time of, or right to receive, payment of principal of, or premium, if any, or interest on, any Notes (other than as a result of waiving a prepayment required under Sections 3.2.2 or 3.2.3 or 3.2.4 or a Default or Event of Default giving rise to a right of acceleration, which shall each be by written consent of the Required Purchasers); or (b) reduce the rate of interest or the principal amount of any of the Notes or increase the relative amount of interest which the Issuer may pay through capitalizing the same; or (c) impair or affect the right of any Note Purchaser to institute suit for enforcement of any such payment to which such Note Purchaser is entitled pursuant to this Agreement; or (d) alter the percentage of Note Purchasers necessary to modify or take action under this Agreement; (e) release any Collateral except as provided in the Collateral Documents; (f) amend the definition of "Required Purchasers" hereunder or (g) amend this Section 13.5. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on the Issuer in any case shall entitle such Person to any further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 13.5 shall be binding upon each holder of the Notes at the time outstanding and each future holder thereof.

13.6 Independence of Covenants. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or be otherwise within the limitation of, another covenant shall not avoid the occurrence of an Event of Default or Default if such action is taken or condition exists.

13.7 Notices. All notices, demands or other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and delivered personally or sent via a nationally recognized overnight courier. Such notices, demands and other communications will be delivered or sent to the address indicated below:

If to the Issuer or any other Note Party:

Issuer:

The Children's Place Retail Stores, Inc.
915 Secaucus Road
Secaucus, New Jersey 07094
Attn: Chief Financial Officer
Fax No.: (201) 558-2837

With a copy to:

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, New York 10166
Attn: Aaron Adams
Fax No.: (212) 351-2494

Guarantors:

The Children's Place Services Company, LLC
The Children's Place (Virginia), LLC
The Children's Place Canada Holdings, Inc.
thechildren'splace.com, inc.
Twin Brook Insurance Company, Inc.
915 Secaucus Road
Secaucus, New Jersey 07094
Attn: General Counsel
Fax No.: (201) 558-2840

With a copy to:

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, New York 10166
Attn: Aaron Adams
Fax No.: (212) 351-2494

If to Note Purchasers or to the Collateral Agent:

c/o Sankaty Advisors, LLC
111 Huntington Avenue
Boston, Massachusetts 02199
Telephone: (617) 516-2000
Facsimile: (617) 516-2710
Attention: James Athanasoulas

with a copy to:

Ropes & Gray LLP
One International Place
Boston, Massachusetts 02110
Telephone: (617) 951-7483
Facsimile: (617) 951-7050
Attention: Alyson Allen, Esq.

and

Ropes & Gray LLP
1211 Avenue of the Americas
New York, New York 10036
Telephone: (212) 841-0665
Facsimile: (646) 728-1598
Attention: Marc E. Hirschfield, Esq.

or such other address or to the attention of such other Person as the recipient party shall have specified by prior written notice to the sending party; provided that the failure to deliver copies of notice as indicated above shall not affect the validity of such notice. Any such communication shall be deemed to have been received when actually delivered or refused.

13.8 Survival of Warranties and Certain Agreements.

13.8.1. Any liability of any Note Party for any breach of, or inaccuracy in, the representations and warranties made by it herein shall survive the execution and delivery of this Agreement, the sale and delivery of the Notes hereunder and shall continue until the repayment of the Notes and the Note Obligations in full; provided, that if all or any part of such payment is set aside, such Note Party shall remain liable for any breach of, or inaccuracy in, the representations and warranties made by it herein as if no such payment had been made.

13.8.2. Any liability of any Note Party for any breach of or default in the performance of the agreements made by it herein shall survive the execution and delivery of this Agreement, the sale and delivery of the Notes hereunder and shall continue until the repayment of the Notes and the Note Obligations; provided, that if all or part of such payment is set aside, such Person shall remain liable for any breach of or default in the performance of such agreements.

13.8.3. Notwithstanding anything in this Agreement or implied by law to the contrary, the agreements of the Note Parties set forth in Sections 13.1 and 13.2 shall survive the payment of the Notes, and the termination of this Agreement.

13.9 Failure or Indulgence Not Waiver; Remedies Cumulative. No failure or delay on the part of any Note Purchaser in the exercise of any power, right or privilege hereunder or under the Notes shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege. All rights and remedies existing under this Agreement or the Notes are cumulative to and not exclusive of, any rights or remedies otherwise available.

13.10 Severability. If and to the extent that any provision in this Agreement or the Notes shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions of this Agreement, the Notes or of the other obligations of any Note Party under any of such provisions, or of such provision or obligation in any other jurisdiction, or of such provision to the extent not invalid, illegal or unenforceable shall not in any way be affected or impaired thereby.

13.11 Heading. Section and subsection headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

13.12 Applicable Law. This Agreement shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of New York.

13.13 Successors and Assigns; Subsequent Holders. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and the successors and assigns of the Note Purchasers. The terms and provisions of this Agreement and all certificates delivered pursuant hereto shall inure to the benefit of any assignee or transferee of the Notes, to the extent the assignment is permitted hereunder, and in the event of such transfer or assignment, the rights and privileges herein conferred upon the Note Purchasers shall automatically extend to and be vested in such transferee or assignee, all subject to the terms and conditions hereof. The respective rights or any interest therein or hereunder of a Note Party may not be assigned without the written consent of the Required Purchasers. Any assignee shall execute a joinder to this Agreement.

13.14 **CONSENT TO JURISDICTION AND SERVICE OF PROCESS. ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY NOTE PARTY WITH RESPECT TO THIS AGREEMENT OR ANY OTHER NOTE DOCUMENTS MAY BE BROUGHT IN ANY COURT OF COMPETENT JURISDICTION IN THE STATE OF NEW YORK IN NEW YORK COUNTY, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH NOTE PARTY ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS, AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS AGREEMENT SUBJECT, HOWEVER, TO RIGHTS OF APPEAL. EACH NOTE PARTY HEREBY AGREES THAT SERVICE UPON IT IN THE MANNER PROVIDED FOR THE GIVING OF NOTICES IN SECTION 13.7 SHALL CONSTITUTE SUFFICIENT NOTICE. NOTHING HEREIN SHALL AFFECT THE RIGHT TO SERVE PROCESS IN**

ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT OF ANY NOTE PURCHASER TO BRING PROCEEDINGS AGAINST THE ISSUER IN THE COURTS OF ANY OTHER JURISDICTION.

13.15 **WAIVER OF JURY TRIAL. THE PARTIES HERETO HEREBY WAIVE, TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, TRIAL BY JURY IN ANY LITIGATION IN ANY COURT WITH RESPECT TO, IN CONNECTION WITH, OR ARISING OUT OF THIS AGREEMENT OR ANY OTHER NOTE DOCUMENT OR THE VALIDITY, PROTECTION, INTERPRETATION, COLLECTION OR ENFORCEMENT THEREOF. NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, NO CLAIM MAY BE MADE BY ANY NOTE PARTY AGAINST**

ANY NOTE PURCHASER FOR ANY LOST PROFITS OR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES IN RESPECT OF ANY BREACH OR WRONGFUL CONDUCT (OTHER THAN WILLFUL MISCONDUCT CONSTITUTING ACTUAL FRAUD) IN CONNECTION WITH, ARISING OUT OF OR IN ANY WAY RELATED TO THE TRANSACTIONS CONTEMPLATED HEREUNDER OR UNDER THE OTHER NOTE DOCUMENTS, OR ANY ACT, OMISSION OR EVENT OCCURRING IN CONNECTION THEREWITH. EACH NOTE PARTY HEREBY WAIVES, RELEASES AND AGREES NOT TO SUE UPON ANY SUCH CLAIM FOR ANY SUCH DAMAGES. EACH NOTE PARTY AGREES THAT THIS SECTION 13.15 IS A SPECIFIC AND MATERIAL ASPECT OF THIS AGREEMENT AND ACKNOWLEDGES THAT THE NOTE PURCHASERS WOULD NOT EXTEND TO THE ISSUER ANY MONIES HEREUNDER IF THIS SECTION 13.15 WERE NOT PART OF THIS AGREEMENT.

13.16 Counterparts; Effectiveness. This Agreement and any amendments, waivers, consents or supplements may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto, and when written or telephonic notification of such execution and authorization of delivery thereof has been received by the Note Parties and the Note Purchasers.

13.17 Confidentiality. The Collateral Agent and each Note Purchaser agrees to keep confidential (and to cause their respective officers, directors, employees, agents and representatives to keep confidential) all information, materials and documents concerning the business of the Note Parties and their Subsidiaries furnished to such Note Purchaser by the Note Parties or any of their Subsidiaries or on its behalf pursuant to this Agreement (the "Information"). Notwithstanding the foregoing, the Collateral Agent and any Note Purchaser shall be permitted to disclose Information (i) to its officers, managers, directors, employees, agents and representatives provided that such Information shall remain confidential; (ii) to the extent required by applicable laws and regulations or by any subpoena or similar legal process, or to the extent requested by any governmental agency or authority; (iii) to the extent such Information (A) becomes publicly available other than as a result of a breach of this Agreement, (B) becomes available to such Note Purchaser on a non-confidential basis from a source other than the Note Parties or any of their Subsidiaries or (C) was available to the Note Purchaser on a non-confidential basis prior to its disclosure to the Note Purchaser by the Note Parties or any of their Subsidiaries; (iv) to the extent any Note Party or any of its Subsidiaries shall have consented to such disclosure in writing; (v) in connection with the assignment of any Notes, provided that the recipient of Information agrees to maintain the confidentiality of the Information; or (vi) to its respective investors or lenders in connection with any regular or otherwise required reporting performed by such Note Purchaser to any such Persons. The Collateral Agent and any Note Purchaser may (and each employee, representative or agent or advisors of the Collateral Agent or any Note Purchaser), to the extent necessary to prevent the transaction from being described as a "confidential transaction" under Treasury Regulation section 1.6011-4(b)(3), disclose the tax treatment and tax structure of the transaction and any related tax strategies.

13.18 USA PATRIOT ACT. Each Note Purchaser subject to the USA PATRIOT ACT (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act") hereby notifies the Note Parties that pursuant to the requirements of the Act, it may be required to obtain, verify and record information that identifies the Note Parties, which information includes the name and address of the Note Parties and other information that will allow such Note Purchaser to identify the Note Parties

in accordance with the Act. The Note Parties hereby agree to provide any such information upon request, and to the disclosure of such information pursuant to the requirements of the Act and notwithstanding any other provision hereof.

13.19 Entirety. This Agreement and the other Note Documents embody the entire agreement among the parties and supersede all prior agreements and understandings, if any, relating to the subject matter hereof and thereof.

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

THE ISSUER:

THE CHILDREN'S PLACE RETAIL STORES, INC.

By: ______________________________

Name: Susan J. Riley
Title: Executive Vice President, Finance & Administration

[Signatures continue on following page]

GUARANTORS:

THE CHILDREN'S PLACE SERVICES COMPANY, LLC

By: ______________________________
Name: Susan J. Riley
Title: Executive Vice President, Finance & Administration

TWIN BROOK INSURANCE COMPANY, INC.
By: ______________________________
Name: Susan J. Riley
Title: Senior Vice President and Treasurer

THECHILDRENSPLACE.COM, INC.

By: ______________________________
Name: Adrienne Urban
Title: Assistant Treasurer

THE CHILDREN'S PLACE CANADA HOLDINGS, INC.
By: ______________________________
Name: Susan J. Riley
Title: Senior Vice President and Treasurer

THE CHILDREN'S PLACE (VIRGINIA), LLC

By: ______________________________
Name: Susan J. Riley
Title: Senior Vice President and Treasurer

[Signatures continue on following page]

NOTE PURCHASERS:

SANKATY CREDIT OPPORTUNITIES III, L.P.

By: ______________________________
Name: Stuart E. Davies
Title: Managing Director

SANKATY CREDIT OPPORTUNITIES IV, L.P.

By: ______________________________
Name: Stuart E. Davies
Title: Managing Director

RGIP, LLC

By: ______________________________
Name:
Title: Managing Member

CRYSTAL CAPITAL FUND, L.P.

By: Crystal Capital GP, LLC, its General Partner

By: ______________________________
Name:
Title:

CRYSTAL CAPITAL ONSHORE WAREHOUSE LLC

As duly authorized: Crystal Capital Fund Management, L.P., as designated manager

By: Crystal Capital Fund Management GP, LLC, its General Partner

By: ______________________________
Name:
Title:

1903 ONSHORE FUNDING, LLC

By: GB Merchant Partners, LLC, its Investment Manager

By: ______________________________
Name:
Title:

BANK OF AMERICA, N.A.

By: ______________________________
Name: Peter Sherman
Title: Managing Director

COLLATERAL AGENT:

SANKATY ADVISORS, LLC

By: ______________________________
Name: Stuart E. Davies
Title: Managing Director

SYNDICATION AGENT:

CRYSTAL CAPITAL FUND MANAGEMENT, L.P.

By: Crystal Capital Fund Management GP, LLC, its General Partner

By: ______________________________
Name:
Title:

SCHEDULE I

ALLOCATION OF THE NOTES AMONG THE NOTE PURCHASERS

Note Purchaser	Cash Fee	OID	Funded Amount of Total Issuance ($)	Principal Amount of Total Issuance ($)

Sankaty Credit Opportunities III, L.P.	None	$ 368,156.25	$ 16,956,843.75	$ 17,325,000.00
Sankaty Credit Opportunities IV, L.P.	None	$ 368,156.25	$ 16,956,843.75	$ 17,325,000.00
RGIP, LLC	None	$ 7,437.50	$ 342,562.50	$ 350,000.00
Crystal Capital Fund, L.P.	$ 212,500.00	None	$ 9,787,500.00	$ 10,000,000
Crystal Capital Onshore Warehouse LLC	$ 159,375.00	None	$ 7,340,625.00	$ 7,500,000
1903 Onshore Funding, LLC	$ 308,125.00	None	$ 14,191,875.00	$ 14,500,00.00
Bank of America, N.A.	$ 382,500.00	None	$ 17,617,500.00	$ 18,000,000.00
Total	$ 1,062,500.00	$ 743,750.00	$ 83,000,000.00	$ 85,000,000

ADDRESSES OF THE NOTE PURCHASERS

Sankaty Credit Opportunities III, L.P.
111 Huntington Avenue
Boston, MA 02199
Attention: James Athanasoulas
Fax (617) 516-2710

Sankaty Credit Opportunities IV, L.P.
111 Huntington Avenue
Boston, MA 02199
Attention: James Athanasoulas
Fax (617) 516-2710

RGIP, LLC
Ropes & Gray LLP
One International Place
Boston, MA 02110
Attention: Erik Johnston
Fax: (617) 951-7050
Email: erik.johnston@ropesgray.com

Crystal Capital Fund, L.P.
Two International Place
Boston, MA 02110
Attention: Evren Ozargun
Telephone: (617) 428-8700
Fax: (617) 428-8701
E-mail: eozargun@crystalcapital.com

Crystal Capital Onshore Warehouse LLC
c/o Crystal Capital Fund Management, L.P.
Two International Place
Boston, MA 02110
Attention: Evren Ozargun
Telephone: (617) 428-8700
Fax: (617) 428-8701
E-mail: eozargun@crystalcapital.com

1903 Onshore Funding, LLC
c/o GB Merchant Partners, LLP
101 Huntington Avenue, 10th Floor
Boston, MA 02199
Attention: Wendy Landon
Tel: (617) 422-6596
Email: wlandon@gordonbrothers.com

Bank of America, N.A.
Independence Center
101 North Tryon Street, 15th Floor
NC1-001-15-01
Charlotte, North Carolina 28255
Attention: Servicing Team TLC004
Tel: (704) 386-4550

Fax: (704) 409-0154
E-mail address: cs-dailywork@bankofamerica.com

with, in each case, copies to:

Ropes & Gray LLP
One International Place
Boston, Massachusetts 02110
Phone: (617) 951-7483
Fax: (617) 951-7050
Attention: Alyson Allen

and

Ropes & Gray LLP
1211 Avenue of the Americas
New York, New York 10036
Telephone: (212) 841-0665
Facsimile: (646) 728-1598
Attention: Marc E. Hirschfield, Esq.

SCHEDULE II

WIRE INSTRUCTIONS OF THE NOTE PURCHASERS

Sankaty Credit Opportunities III, L.P.
Bank: HSBC Bank USA, N.A.
ABA Number: 021001088
Account Name: Sankaty Credit Opportunities III LP Operating
Account Number: 090330170
SWIFT Code: MRMDUS33

Sankaty Credit Opportunities IV, L.P.
Bank: HSBC Bank USA, N.A.
ABA Number: 021001088
Account Name: Sankaty Credit Opportunities IV LP Operating
Account Number: 090 340 116
SWIFT Code: MRMDUS33

RGIP, LLC
Bank: Bank of America
ABA Number: 0260 0959 3
Account Name: RGIP, LLC
Account Number: 000051280897
Reference: Children's Place

Crystal Capital Fund, L.P.
Bank: Citibank, N.A.
666 Fifth Avenue
New York, NY 10043
ABA Number: 021 000 089
Account Name: Crystal Capital Fund, L.P.
Account Number: 9936788449
Reference: Children's Place

Crystal Capital Onshore Warehouse LLC
Bank: US Bank NA
One Federal Street, Third Floor
Boston, MA 02110
ABA Number: 091000022
Account Name: Crystal Capital Onshore Warehouse
Account Number: 104790063903
Reference: Children's Place

1903 Onshore Funding, LLC
Bank: Bank of America
ABA Number: 026-009-593
Account Name: 1903 Onshore Funding, LLC
Account Number: 4602287049
Reference: The Children's Place

Bank of America, N.A.
Bank: Bank of America, N.A.
ABA Number: 026-009-593
Account Name: Credit Services
Account Number: 1366210627300
Attention: Servicing Team TLC004
Reference: The Children's Place

ANNEX I

DEFINITIONS TO NOTE PURCHASE AGREEMENT

"Account" means an account (as that term is defined in the Uniform Commercial Code).

"Accounting Change" has the meaning set forth in Section 1.2.

"Acquisition" means, with respect to any Person (a) an Investment in, or a purchase of a Controlling interest in, the Equity Interests of any other Person, (b) a purchase or other acquisition of all or substantially all of the assets or properties of, another Person or of any business unit of another Person, (c) any merger or consolidation of such Person with any other Person or other transaction or series of transactions resulting in the acquisition of all or substantially all of the assets, or a Controlling interest in the Equity Interests, of any Person, or (d) any acquisition by such Person of any group of Store locations comprising more than five percent (5%) of the number of Stores operated by the acquiring Person as of the date of such acquisition, in each case acquired in any transaction or group of transactions which are part of a common plan.

"Affiliate" of any Person means (a) any Person which, directly or indirectly, is in control of, is controlled by, or is under common control with such Person, or (b) any Person who is a director or executive officer (i) of such Person, (ii) of any Subsidiary of such Person or (iii) of any Person described in clause (a) above. For purposes of this definition, control of a Person means the power, direct or indirect, (x) to vote 15% or more of the securities having ordinary voting power for the election of directors of such Person, or (y) to direct or cause the direction of the management and policies of such Person whether by contract or otherwise. Any reference to the Affiliates of any Note Party herein or in any Note Document shall not include Hoop, unless explicitly stated otherwise.

"Agreement" has the meaning set forth in the preamble.

"Alabama Property" means the land, together with the buildings, structures, parking areas, and other improvements thereon, owned by The Children's Place Services Company, LLC, a Delaware limited liability company and located at 1377 Airport Road, Fort Payne, Alabama.

"Anti-Terrorism Laws" means any laws relating to terrorism or money laundering, including Executive Order No. 13224, the USA Patriot Act, the laws comprising or implementing the Bank Secrecy Act, and the laws administered by the United States Treasury Department's Office of Foreign Asset Control (as any of the foregoing laws may from time to time be amended, renewed, extended, or replaced).

"Applicable Premium" means the premium to be due and payable in connection with any acceleration or a prepayment of the Notes pursuant to this Agreement (excluding any scheduled amortization payments and payments of Excess Cash Flows under Section 3.2.4.4 and payments of Extraordinary Receipts under Section 3.2.4.2). With respect to the Notes, each such prepayment premium shall be equal, with respect to any such acceleration or prepayment made or first required to be made during any period set forth in the table below, to the percentage set forth beside such period in such table of the aggregate principal amount of the Notes then prepaid or required to be prepaid:

Period	Applicable Premium
July 31, 2008 through July 30, 2009	2%
July 31, 2009 through July 30, 2010	1.5%
Subsequent to July 31, 2010	0%

"Applicable Rate" means the rate of interest to be paid on the unpaid principal amount of the Notes from and after the Closing Date. For the period from and after the Closing Date, the Applicable Rate shall be a rate equal to LIBOR plus the applicable margin as set forth below (the "Applicable Margin"). The Applicable Margin shall be (i) for the period from the Closing Date until the date the first calculations are required to be delivered pursuant to Section 7.3.11, calculated on the following leverage based grid, where the Closing Date Total Leverage Ratio equals "x", and (ii) thereafter, calculated on a leverage based grid as follows, where the Leverage Ratio as set forth in the computations delivered pursuant to Section 7.3.11 for the most recent Trailing Twelve Month Period equals "x" and is calculated as of the end of the most recent Fiscal Month for which financial reports have been delivered pursuant to the Agreement; provided, however, that in the event any financial reports have not been timely delivered pursuant to the terms of the Agreement, the Leverage Ratio for such Trailing Twelve Month Period shall be presumed to be ≥ 2: 1.

Leverage Ratio	Applicable Margin
x ≥ 2 : 1	9.75%
2 : 1 > x ≥ 1.5 : 1.0	9.0%
x < 1.5 : 1.0	8.5%

"Asset Purchase Agreement" means the Asset Purchase Agreement, dated as of April 3, 2008, among T2 Acquisition, LLC, T1 WDC Inc., The Children's Place Services Company, LLC, Hoop Retail Stores, LLC and Hoop Canada, Inc.

"Bankruptcy Code" means Title 11 of the United States Code, as now or hereafter in effect, or any successor thereto.

"Bankruptcy Default" means any Event of Default referred to in Section 9.6.

"Blocked Person" has the meaning set forth in Section 5.26.2.

"Borrowing Base" has the meaning ascribed to it in the Revolving Loan Agreement.

"Business Day" means any day that is not a Saturday, Sunday, or other day on which banks are authorized or required to close in the state of New York.

"Capital Expenditures" means, with respect to any Person for any period, the aggregate of all expenditures by such Person and its Subsidiaries during such period that are capital expenditures as determined in accordance with GAAP, whether such expenditures are paid in cash or financed.

"Capital Stock" means all shares, interests, participations, rights to purchase, options, warrants, general or limited partnership interests, or limited liability company interests or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or equivalent entity, whether voting or nonvoting, including common stock, preferred stock or any other "equity security" (as such term is defined in Rule 3a11-1 of the Rules and Regulations promulgated by the Securities and Exchange Commission (17 C.F.R. § 240.3a11-1) under the Securities and Exchange Act of 1934, as the same shall be from time to time be amended, renewed, extended or replaced).

"Capitalized Lease" means any lease which is required to be capitalized on the balance sheet of the lessee in accordance with GAAP.

"Capitalized Lease Obligation" means that portion of the obligations under a Capital Lease that is required to be capitalized in accordance with GAAP.

"Cash Equivalents" means (a) marketable direct obligations issued by, or unconditionally guaranteed by the United States or issued by any agency thereof and backed by the full faith and credit of the United States and maturing within 1 year from the date of acquisition thereof, (b) marketable direct obligations issued by any state of the United States or any political subdivision of any such state, or any public instrumentality thereof maturing within 1 year from the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from either Standard & Poor's Rating Group ("S&P") or Moody's Investors Service, Inc. ("Moody's"), (c) commercial paper maturing no more than 270 days from the date of creation thereof and, at the time of acquisition, having a rating of at least A-1 from S&P or at least P-1 from Moody's, (d) certificates of deposit or bankers' acceptances maturing within 1 year from the date of acquisition thereof issued by any bank organized under the laws of the United States or any state thereof, in each case, having at the date of acquisition thereof combined capital and surplus of not less than $250,000,000, (e) Deposit Accounts maintained with (i) any bank that satisfies the criteria described in clause (d) above, or (ii) any other bank organized under the laws of the United States so long as the amount maintained with any such other bank is less than or equal to $100,000 and is insured by the Federal Deposit Insurance Corporation, and (f) Investments in money market funds substantially all of whose assets are invested in the types of assets described in clauses (a) through (e) above.

"CFC" means a Person that is a controlled foreign corporation under Section 957 of the Code.

"Change of Control", in respect of the Issuer, means any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than the existing shareholders of the Issuer set forth on Schedule 1.02 or a "person" or "group" Controlled by one of the existing shareholders of the Issuer set forth on Schedule 1.02, becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have "beneficial ownership" of all securities that such "person" or "group" has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an "option right")), directly or indirectly, of 25% or more of the Equity Interests of the Issuer entitled to vote for members of the board of directors or equivalent governing body of the Issuer on a fully-diluted basis (and taking into

account all such Equity Interests that such "person" or "group" has the right to acquire pursuant to any option right);

"Closing" has the meaning set forth in Section 2.2.

"Closing Date" means the date on which the Notes are issued and sold pursuant to the Agreement.

"Closing Date EBITDA" has the meaning set forth in Schedule 7.16.

"Closing Date Total Leverage Ratio" has the meaning set forth in Schedule 7.16.

"Code" means the United States Internal Revenue Code of 1986, together with all rules and regulations issued thereunder, as now and hereafter in effect, as codified at 26 U.S.C. §1 et seq or any successor provision thereto.

"Collateral" means all collateral on which a lien is granted or purported to be granted pursuant to any Collateral Document.

"Collateral Documents" means, collectively, the Security Agreement, the IP Security Agreement and any other document pursuant to which any Note Party and any Guarantor grants security for the Note Obligations.

"Collateral Agent" means Sankaty Advisors, LLC, in its capacity as Collateral Agent under the Note Documents or any successor thereto.

"Consolidated", when used with reference to any term, means that term as applied to the accounts of the Issuer (or other specified Person) and all of its Subsidiaries (or other specified group of Persons), or such of its Subsidiaries as may be specified, consolidated (or combined), in accordance with GAAP and with appropriate deductions for minority interests in Subsidiaries.

Contractual Obligation" means, as to any Person, any provision of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

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

"Controlled Group" means all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control which, together with any Note Party, are treated as a single employer under Section 414 of the Code.

"DDA" means each checking or other demand deposit account maintained by any of the Note Parties. All funds in each DDA shall be conclusively presumed to be Collateral and proceeds of Collateral and the Note Purchasers and the Collateral Agent shall have no duty to inquire as to the source of the amounts on deposit in any DDA.

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

"Default" means any event, act, condition or default which with notice or lapse of time, or both, would constitute an Event of Default.

"Disney Store Termination Agreements" has the meaning set forth in Section 6.3.2.

"Disposition" or "Dispose" means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction and any sale, transfer, license or other disposition of (whether in one transaction or in a series of transactions) all or substantially all of its assets to or in favor of any Person) of any property (including, without limitation, any Equity Interests) by any Person (or the granting of any option or other right to do any of the foregoing), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

"Documents" means the Note Documents, the Revolving Loan Documents, the Governing Documents, and all documents, certificates and agreements delivered with respect thereto, in each case, together with any schedules, exhibits, appendices or other attachments thereto.

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

"EBITDA" has the meaning set forth in Schedule 7.16.

"Environmental Laws" means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

"Environmental Liabilities" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities) of any Borrower, any other Note Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Environmental Lien" means any Lien in favor of any Governmental Authority for Environmental Liabilities.

"Equipment" means and includes all of the Issuer's goods (other than Inventory) whether now owned or hereafter acquired and wherever located including, without limitation, all

equipment, machinery, apparatus, motor vehicles, fittings, furniture, furnishings, fixtures, parts, accessories and all replacements and substitutions therefor or accessions thereto.

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

"ERISA" means the Employee Retirement Income Security Act of 1974 as the same may be amended from time to time.

"ERISA Affiliate" means any trade or business (whether or not incorporated) under common control with the Issuer within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

"ERISA Event" means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by the Issuer or any ERISA Affiliate from a Pension 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 that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Issuer or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; or (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Issuer or any ERISA Affiliate.

"Events of Default" has the meaning set forth in Section 9.

"Excess Availability" has the meaning ascribed to it in the Revolving Loan Agreement.

"Excess Cash Flow" means, with respect to a specified fiscal period and determined with respect to the Note Parties on a consolidated basis in accordance with GAAP and without duplication of any amounts constituting Extraordinary Receipts used to prepay the Note Obligations, (a) EBITDA for the fiscal year then ended, minus (b) the sum of (i) voluntary and mandatory prepayments of the Notes in accordance with Section 3.2, (ii) the cash portion of Interest Expense paid during such fiscal period (including cash payments of future capitalized interest), (iii) the cash portion of taxes paid during such period, (iv) the cash portion of Capital Expenditures during such period, (v) cash payments made under Capitalized Leases, (vi) plus or minus changes in working capital for such Fiscal Period with adjustments for the accounting of outstanding checks as accounts payable, (vii) changes in Canadian and Asian cash balances due to

operations in the ordinary course, (viii) the cash portion of payments made relating to Hoop to the extent excluded from EBITDA, (ix) the cash portion of one time charges related to the Issuers restructuring announced on March 20, 2008 to the extent excluded from EBITDA, (x) the cash portion of non-reoccuring charges related to the severance of certain senior management to the extent excluded from EBITDA, (xi) legal and other professional advisory closing fees associates with the Note Documents and the Revolving Loan Documents to the extent excluded from EBITDA, (xii) legal and other professional advisory fees incurred in the Fiscal Year ending January 31, 2009 associated with the development of strategic alternatives to the extent excluded from EBITDA, and (xiii) the cash portion of all other non-reoccurring charges/gains to the extent excluded from EBITDA.

"Exchange Act" means the Securities Exchange Act of 1934, as amended (and any successor statute).

"Existing Credit Agreement" means that certain Fifth Amended and Restated Loan and Security Agreement, dated as of June 28, 2007, by and between, among others, the Issuer, Services Company, the financial institutions party thereto from time to time as lenders, and Wells Fargo Retail Finance, LLC, as Agent, as amended and in effect as of the Closing Date.

"Extraordinary Receipts" means any cash received by the Note Parties with respect to (a) tax refunds, (b) pension plan reversions, (c) proceeds of insurance (including key man life insurance and, unless the Collateral Agent provides its prior written consent otherwise, business interruption insurance, but excluding any casualty insurance), (d) judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action, (e) indemnity payments, (f) any purchase price adjustment received in connection with any purchase agreement (other than relating to ordinary purchases of goods and services in the ordinary course of business) and (g) at any time that an Event of Default shall exist and be continuing and at the sole discretion of the Collateral Agent, any other cash received by the Note Parties not in the ordinary course of business; provided that with respect to the receipts described in clauses (a) through (f) of this definition, only such receipts in excess of $2,000,000 in the aggregate over the life of the Note Obligations shall be deemed an "Extraordinary Receipt"; provided further that any individual receipt described in clauses (a) through (f) of this definition that does not exceed $100,000 shall not be deemed an "Extraordinary Receipt" and for the avoidance of doubt, shall not be included in the aggregate amount received under clauses (a) through (f) of this definition.

"Fiscal Quarter" has the meaning set forth in Schedule 7.16.

"Fiscal Month" means any fiscal month of any Fiscal Year, which month shall generally end on the Saturday closest to the last day of each calendar month in accordance with the fiscal accounting calendar of the Note Parties.

"Fiscal Year" has the meaning set forth in Schedule 7.16.

"FRB" means the Board of Governors of the Federal Reserve System of the United States.

"GAAP" means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting

Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession), which are applicable to the circumstances as of the date of determination.

"Governing Documents" means, with respect to any Person, such Person's articles and by-laws of a corporation, operating agreement, if a limited liability company or unlimited liability company, and limited partnership agreement and certificate of limited partnership, of a limited partnership, and other similar governing documents, with respect to any other entity.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, and any corporation or other entity owned or controlled, through stock or capital ownership or otherwise, by any of the foregoing.

"Guarantee" means as to any Person, any obligation of such Person guaranteeing, providing comfort or otherwise supporting any Indebtedness, lease, dividend, or other obligation ("primary obligation") of any other Person (the "primary obligor") in any manner, including any obligation or arrangement of such Person to (a) purchase or repurchase any such primary obligation, (b) advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency or any balance sheet condition of the primary obligor, (c) purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, (d) protect the beneficiary of such arrangement from loss (other than product warranties given in the ordinary course of business) or (e) indemnify the owner of such primary obligation against loss in respect thereof. The amount of any Guarantee at any time shall be deemed to be an amount equal to the lesser at such time of (x) the stated or determinable amount of the primary obligation in respect of which such Guarantee is incurred and (y) the maximum amount for which such Person may be liable pursuant to the terms of the instrument embodying such Guarantee, or, if not stated or determinable, the maximum reasonably anticipated liability (assuming full performance) in respect thereof.

"Guaranteed Obligations" shall have the meaning assigned to such term in Section 11.1.

"Guarantors" means each of the parties listed as Guarantors on the signature pages to this Agreement and each Person that subsequently becomes a party to this Agreement and is required to act as a Guarantor under this Agreement.

"Hazardous Materials" means (a) substances that are defined or listed in, or otherwise classified pursuant to, any applicable laws or regulations (including Environmental Laws) as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, reproductive toxicity, or "EP toxicity", (b) oil, petroleum, or petroleum derived substances, natural gas, natural gas liquids, synthetic gas, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources, (c) any flammable substances or explosives or any radioactive materials, and (d) asbestos in any form or electrical equipment that contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million.

"Hedge Agreement" means any and all agreements, or documents now existing or hereafter entered into by a Person that provide for an interest rate, credit, commodity or equity swap, cap, floor, collar, forward foreign exchange transaction, currency swap, cross currency rate swap, currency option, or any combination of, or option with respect to, these or similar transactions, for the purpose of hedging such Person's exposure to fluctuations in interest or exchange rates, loan, credit exchange, security, or currency valuations or commodity prices.

"Hedge Termination Value" means, in respect of any one or more Hedge Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Hedge Agreements, (a) for any date on or after the date such Hedge Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Hedge Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Hedge Agreements (which may include a Note Purchaser or any Affiliate of a Note Purchaser).

"Hoop" means each Subsidiary of the Issuer which comprises the Disney store business previously conducted by the Issuer.

"Hoop Sale" means the sale of certain assets of Hoop and certain other assets used in the Hoop business pursuant to the Asset Purchase Agreement.

"Indebtedness" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP;

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments;

(c) net obligations of such Person under any Hedge Agreement;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and, in each case, payable in accordance with customary trade practices);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all obligations in respect of Capital Lease Obligations of such Person, but excluding any obligations of such Person in respect of operating leases;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any

other Person, or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Hedge Agreement on any date shall be deemed to be the Hedge Termination Value thereof as of such date.

"Indemnified Liabilities" has the meaning set forth in Section 13.2.

"Indemnitees" has the meaning set forth in Section 13.2.

"Indemnitor" has the meaning set forth in Section 13.2.

"Information" has the meaning set forth in Section 13.17.

"Insolvency Proceeding" means any proceeding commenced by or against any Person under any provision of the Bankruptcy Code or under any other bankruptcy or insolvency law, assignment for the benefit of creditors, formal or informal moratoria, composition, extension generally with creditors, or proceeding seeking reorganization, arrangement, or other similar relief.

"Intellectual Property" means any and all licenses, patents, copyrights, trademarks, designs and the goodwill associated with such trademarks.

"Intercompany Obligations" has the meaning set forth in Section 11.8.1.

"Intercreditor Agreement" has the meaning set forth in the Recitals.

"Interest Expense" has the meaning set forth in Schedule 7.16.

"Interest Payment Date" has the meaning set forth in Section 3.1.1.

"Interest Period" means the period from and including the Closing Date and ending on the date one, two, three or six months thereafter, as selected by a Issuer by written notice to the Collateral Agent, no less than three days prior to the commencement of the Interest Period, and each succeeding period elected by the Issuer in this manner; provided that:

(a) if the Issuer fails to elect an Interest Period by written notice to the Collateral Agent by the date that is three days prior to the commencement of an Interest Period, such Interest Period will automatically end one month after its commencement;

(b) 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;

(c) 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

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

"Internal Revenue Service" means the Internal Revenue Service of the United States government.

"Inventory" means and includes, as to any Person, all of such Person's now owned or hereafter acquired goods, merchandise and other personal property, wherever located, to be furnished under any consignment arrangement, contract of service or held for sale or lease, all raw materials, work in process, finished goods and materials and supplies of any kind, nature or description which are or might be used or consumed in such Person's business or used in selling or furnishing such goods, merchandise and other personal property, and all documents of title or other documents representing them.

"Investment" means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person, or (c) any Acquisition, or (d) any other investment of money or capital in order to obtain a profitable return. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment..

"IP Security Agreement" means that certain Intellectual Property Agreement, dated the date hereof, by and between the Note Parties and the Collateral Agent for the benefit of the Note Purchasers, as amended, modified or supplemented from time to time in accordance with the terms thereof.

"Issuer" has the meaning set forth in the preamble.

"Lease" means any agreement, whether written or oral, no matter how styled or structured, pursuant to which a Note Party is entitled to the use or occupancy of any space in a structure, land, improvements or premises for any period of time.

"Letters of Credit" means each of the Letters of Credit set forth in Schedule T-1.

"LIBOR" means for any Interest Period the greater of (x) 3.00% per annum or (y):

(a) the rate per annum equal to the rate determined by the Note Purchasers to be the offered rate that appears on the page of the Telerate screen (or any successor thereto) that displays an average British Bankers Association Interest Settlement Rate for deposits in Dollars (for delivery on the first day of

such Interest Period) with a term equivalent to such Interest Period, determined as of approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period, or

(b) if the rate referenced in the preceding clause (a) does not appear on such page or service or such page or service shall not be available, the rate per annum equal to the rate determined by the Note Purchasers to be the offered rate on such other page or other service that displays an average British Bankers Association Interest Settlement Rate for deposits in Dollars (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period, determined as of approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period.

"License Agreements" means any licensing agreements entered into between any of the Note Parties or their Subsidiaries and any Person.

"Lien" means any mortgage, deed of trust, pledge, hypothecation, assignment, charge, deposit arrangement, encumbrance, easement, lien (statutory or other), security interest, or other security arrangement and any other preference, priority, or preferential arrangement of any kind or nature whatsoever, including any conditional sale contract or other title retention agreement, the interest of a lessor under a Capital Lease and any synthetic or other financing lease having substantially the same economic effect as any of the foregoing, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code or any comparable law.

"Material Adverse Effect" means, excluding the filing for bankruptcy and the implementation of the bankruptcy proceeding of Hoop, since any specified date or from the circumstances existing immediately prior to the happening of any specified event, a material adverse change in (a) the business, assets, financial condition or properties of (i) the Issuer and its Subsidiaries taken as a whole or (ii) all of the Note Parties taken as a whole, (b) the ability of (i) the Issuer or (ii) all of the Note Parties taken as a whole, to perform their obligations under this Agreement or the other Note Documents, or (c) the ability of any Guarantor to perform any of its material obligations under any guarantee of the Notes, or (d) the rights and remedies of the Note Purchasers under the Agreement or the other Note Documents; provided, that where no date is specified, the measurement date shall be from and after February 2, 2008.

"Material Contract" means, with respect to any Person, (i) each contract or agreement to which such Person or any of its Subsidiaries is a party involving aggregate consideration payable to or by such Person or such Subsidiary of $5,000,000 or more (other than (A) purchase orders in the ordinary course of the business of such Person or such Subsidiary, (B) contracts that by their terms may be terminated by such Person or Subsidiary in the ordinary course of its business upon less than 60 days notice without penalty or premium and (C) employment contracts with aggregate consideration less than $1,000,000), (ii) any material License Agreements, and (iii) each other contract or agreement which if terminated prior to the term set forth therein, such termination could reasonably be expected to have a Material Adverse Effect.

"Material Indebtedness" means Indebtedness of the Note Parties under the Revolving Loan Agreement and other Indebtedness (other than the Note Obligations) of the Note Parties in an aggregate principal amount exceeding $1,500,000. For purposes of determining the amount of Material Indebtedness at any time, the amount of the obligations in respect of any Hedge Agreement at such time shall be calculated at the Hedge Termination Value thereof.

"Maturity Date" means July 31, 2013.

"Monitoring Fee" means a $50,000 fee payable to the Collateral Agent on the Closing Date and on each anniversary of the Closing Date with such fee being fully earned when paid.

"Moody's" has the meaning specified therefor in the definition of Cash Equivalents.

"Multiemployer Plan" means a multiemployer plan, as defined in Section 4001(a)(3) of ERISA, to which Note Parties or any member of the Controlled Group may have any liability.

"Net Cash Proceeds" means:

(a) with respect to any sale or disposition by a Note Party, the amount of cash proceeds received (directly or indirectly) from time to time (whether as initial consideration or through the payment of deferred consideration) by or on behalf of a Note Party in connection therewith after deducting therefrom only (i) the amount of any Indebtedness secured by any Permitted Encumbrance on any asset (other than (A) the Revolving Loan Debt and (B) Indebtedness assumed by the purchaser of such asset) which is required to be, and is, repaid in connection with such sale or disposition, (ii) all fees, commissions, and expenses related thereto and required to be paid by a Note Party in connection with such sale or disposition and (iii) taxes paid or payable to any taxing authorities by a Note Party in connection with such sale or disposition, in each case to the extent, but only to the extent, that the amounts so deducted are, at the time of receipt of such cash, actually paid or payable to a Person that is not an Affiliate of a Note Party and are properly attributable to such transaction;

(b) with respect to the issuance or incurrence of any Indebtedness by a Note Party or any of its Subsidiaries, or the issuance by a Note Party or any of its Subsidiaries of any shares of its Capital Stock, the aggregate amount of cash received (directly or indirectly) from time to time (whether as initial consideration or through the payment or disposition of deferred consideration) by or on behalf of a Note Party or any of its Subsidiaries in connection with such issuance or incurrence, after deducting therefrom only (i) all fees, commissions, and expenses related thereto and required to be paid by a Note Party or any of its Subsidiaries in connection with such issuance or incurrence and (ii) taxes paid or payable to any taxing authorities by a Note Party or any of its Subsidiaries in connection with such issuance or incurrence, in each case to the extent, but only to the extent, that the amounts so deducted are, at the time of receipt of such cash, actually paid or payable to a Person that is not an Affiliate of a Note Party or any of its Subsidiaries, and are properly attributable to such transaction; and

(c) with respect to any Extraordinary Receipts received by a Note Party, the amount of cash proceeds received (directly or indirectly) from time to time (whether as initial consideration or through the payment of deferred consideration) by or on behalf of a Note Party, in connection therewith after deducting therefrom only (i) all fees, commissions, and expenses related thereto and required to be paid by a Note Party in connection with such Extraordinary Receipts and (ii) taxes paid or payable to any taxing authorities by a Note Party in connection with such Extraordinary Receipts, in each case to

the extent, but only to the extent, that the amounts so deducted are, at the time of receipt of such cash, actually paid or payable to a Person that is not an Affiliate of a Note Party, and are properly attributable to such Extraordinary Receipts.

"New Headquarters" means the office located at Two Emerson Lane, Secaucus, NJ 07094.

"Note" and "Notes" has the meaning set forth in the recitals to the Agreement and shall mean and include any Notes issued pursuant to Section 10.1 of the Agreement, and shall further mean any include any amendments, modifications or refinancings thereof, including any such that increase the principal amount thereof.

"Note Documents" means the Agreement, the Collateral Documents, the Intercreditor Agreement, the Notes and each of the documents, instruments and other agreements evidencing, guaranteeing or governing or otherwise relating to the incurrence by the Issuer of, the Note Obligations, as in effect on the Closing Date and as the same may be entered into, amended, restated, modified or supplemented from time to time in accordance with the terms of the Intercreditor Agreement.

"Note Guarantee" means the Guarantee issued pursuant to Section 11 by the Guarantors.

"Note Obligations" means any and all obligations of the Issuer under this Agreement with respect to the Notes and under the Notes, including, without limitation, the obligation to pay principal, premium, if any, interest, expenses, reasonable attorneys' fees and disbursements, indemnities and other amounts payable thereunder or in connection therewith or related thereto, in each case to the extent provided for under this Agreement or the other Note Documents.

"Note Parties" has the meaning set forth in the preamble.

"Note Purchasers" has the meaning set forth in the preamble to the Agreement, and means and includes the Note Purchasers and any assignees of the Notes pursuant to Section 10.1 of the Agreement. "Note Purchaser" means any of the Note Purchasers, individually.

"Note Purchasers Priority Collateral" has the meaning given that term in the Intercreditor Agreement.

"Other Taxes" has the meaning set forth in Section 3.4.2.

"Payment Conditions" means, at the time of determination with respect to any specified transaction or payment, that (a) no Default or Event of Default has occurred and is continuing or would arise as a result of entering into such transaction or making such payment, and (b) at least five (5) days prior to entering into such transaction or making such payment, the Issuer shall have provided to the Collateral Agent a certificate signed by a Responsible Officer of the Issuer, in form and substance reasonably satisfactory to the Collateral Agent, certifying that (i) prior to, and on a pro forma basis for the six months immediately following, and after giving effect to (provided that if the aggregate amount of such payment in any Fiscal Year is less than or equal to $10,000,000, such pro forma test shall not be required), such transaction or payment, Excess Availability will be greater than or equal to $50,000,000, (ii) the Note Parties, on a Consolidated basis, are, and will continue to be, Solvent after giving effect to such transaction or payment, and (iii) the Leverage Ratio immediately before and after such transaction or payment is less than 1.75:1:00.

"PBGC" means the Pension Benefit Guaranty Corporation or any successor entity.

"Pension Plan" means any "employee pension benefit plan" (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by the Issuer or any ERISA Affiliate or to which the Issuer or

any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five plan years.

"Permitted Acquisition" means an Acquisition in which all of the following conditions are satisfied:

(a) No Default or Event of Default has occurred and is continuing or immediately following such Acquisition or after taking into account the pro forma financials, would result from the consummation of such Acquisition;

(b) Such Acquisition shall have been approved by the Board of Directors of the Person (or similar governing body if such Person is not a corporation) which is the subject of such Acquisition and such Person shall not have announced that it will oppose such Acquisition or shall not have commenced any action which alleges that such Acquisition shall violate applicable Law;

(c) The Issuer shall have furnished the Note Purchasers with thirty (30) days' prior written notice of such intended Acquisition and shall have furnished the Note Purchasers with a current draft of the acquisition documents (and final copies thereof as and when executed), a summary of any due diligence undertaken by the Note Parties in connection with such Acquisition, appropriate financial statements of the Person which is the subject of such Acquisition, pro forma projected financial statements for the twelve (12) month period following such Acquisition after giving effect to such Acquisition (including balance sheets, cash flows and income statements by month for the acquired Person, individually, and on a Consolidated basis with all Note Parties), and such other information as the Note Purchasers may reasonably require, all of which shall be reasonably satisfactory to the Note Purchasers;

(d) Either (i) the legal structure of the Acquisition shall be acceptable to the Note Purchasers in their discretion, or (ii) the Note Parties shall have provided the Note Purchasers with a solvency opinion from an unaffiliated third party valuation firm reasonably satisfactory to the Note Purchasers;

(e) After giving effect to the Acquisition, if the Acquisition is an Acquisition of the Equity Interests, a Note Party shall acquire and own, directly or indirectly, a majority of the Equity Interests in the Person being acquired and shall Control a majority of any voting interests or shall otherwise Control the governance of the Person being acquired;

(g) Any assets acquired shall be utilized in, and if the Acquisition involves a merger, consolidation or stock acquisition, the Person which is the subject of such Acquisition shall be engaged in, the same or substantially the same line of business engaged in by the Issuer under this Agreement;

(h) If the Person which is the subject of such Acquisition will be maintained as a Subsidiary of a Note Party, or if the assets acquired in an acquisition will be transferred to a Subsidiary which is not then a Note Party, such Subsidiary (unless a CFC, in which case such Subsidiary will not be required to be a Guarantor) shall have been joined as a Guarantor, and the Collateral Agent shall have received a security interest in such

Subsidiary's Intellectual Property and/or mortgage interest in such Subsidiary's Equity Interests, Inventory, Accounts (subject only to Permitted Encumbrances having priority by operation of law) and other property of the same nature as constitutes collateral under the Collateral Documents; subject only to Permitted Encumbrances having priority by operation of law and the Lien in favor of the Revolving Lenders;

(i) Prior to, and on a pro forma basis for the twelve months immediately following, and after giving effect to, such Acquisition, Excess Availability will be greater than or equal to $50,000,000;

(j) The Leverage Ratio, both immediately before and after giving effect to such Acquisition, is less than 2:00:1:00; otherwise the Required Purchasers have provided their written consent to such merger, amalgamation, consolidation, transfer, sale or acquisition; and

(k) no Permitted Acquisitions shall exceed $100,000,000 in any Fiscal Year.

"Permitted Disposition" means any of the following:

(a) Dispositions of Inventory in the ordinary course of business, including liquidations or other Dispositions of Inventory in connection with Store closings in the ordinary course of business; provided, that, the aggregate total of any Dispositions of Inventory in connection with Store closings under this clause (a) shall not exceed $10,000,000 in any Fiscal Year;

(b) bulk sales or other Dispositions of the Inventory of a Note Party not in the ordinary course of business in connection with Store closings, at arm's length, provided, that such Store closures and related Inventory Dispositions shall not exceed (i) in any Fiscal Year of the Issuer and its Subsidiaries, five percent (5%) of the number of the Note Parties' Stores as of the beginning of such Fiscal Year (net of new Store openings) and (ii) in the aggregate from and after the Closing Date, ten percent (10%) of the number of the Note Parties' Stores in existence as of the Closing Date (net of new Store openings), provided further that all sales of Inventory in connection with Store closings shall be in accordance with liquidation agreements and with professional liquidators reasonably acceptable to the Collateral Agent; provided further that all Net Cash Proceeds received in connection therewith are applied to the Obligations if then required in accordance with Section 2.05 of the Revolving Loan Agreement;

(c) non-exclusive licenses of Intellectual Property of a Note Party or any of its Subsidiaries in the ordinary course of business; provided, that, the aggregate total over the life of the Note Obligations of any Dispositions under this clause (c) shall not exceed $2,000,000;

(d) licenses for the conduct of licensed departments within the Note Parties' Stores in the ordinary course of business; provided that, if requested by the Collateral Agent, the Collateral Agent shall have entered into an intercreditor agreement with the Person operating such licensed department on terms and conditions reasonably satisfactory to the Required Purchasers;

(e) (i) Dispositions of Equipment in the ordinary course of business that is substantially worn, damaged, obsolete or, in the judgment of a Note Party, no longer useful or necessary in its business or that of any Subsidiary and is not replaced with similar property having at least equivalent value and (ii) other Dispositions of Equipment having a fair market value not to exceed $500,000 in the aggregate in any Fiscal Year;

(f) sales, transfers and Dispositions among the Note Parties or by any Subsidiary to a Note Party, including, without limitation, distributions or transfers of some or all of the assets of Twin Brook to the Issuer, provided that before, or within three (3) Business Days after, any such distribution or transfer, the Issuer shall have caused the former assets of Twin Brook so distributed to be pledged to the Collateral Agent for the benefit of the Note Purchasers;

(g) sales, transfers and Dispositions of or by any Subsidiary which is not a Note Party to another Subsidiary that is not a Note Party; and

(h) as long as no Default or Event of Default shall have occurred and be continuing or would arise therefrom, the Alabama Sale-Leaseback Transaction; provided that (i) such sale is made for fair market value, (ii) the Net Cash Proceeds paid in cash are in an amount at least equal to the greater of the amounts advanced, or available to be advanced, against the Alabama Property under the Borrowing Base, (iii) subject to the Intercreditor Agreement, all Net Cash Proceeds received in connection with any such transaction are applied to the Obligations, and (iv) the Collateral Agent shall have received a Collateral Access Agreement from the purchaser of the Alabama Property;

provided, however, to the extent the Intercreditor Agreement restricts the ability of the Note Parties to apply the Net Cash Proceeds from any foregoing asset dispositions to the Note Obligations and the asset disposition is of property not included in the Borrowing Base, other than to the extent the asset disposition is a Replaced Asset Disposition, the amount of the Net Cash Proceeds from such asset disposition shall at all times thereafter result in a permanent reduction of the Borrowing Base in an amount equal to the amount of the Net Cash Proceeds. For purposes of this paragraph, "Replaced Asset Disposition" shall mean a Disposition in which the Net Cash Proceeds are used to replace the Disposed assets with

similar assets having a fair market value at least as great as the Disposed assets, provided that to the extent such Net Cash Proceeds from such Dispositions exceed $5,000,000 in the aggregate, such Dispositions above $5,000,000 may be approved as a "Replaced Asset Disposition" by the Required Purchasers in their discretion.

"Permitted Encumbrances" means:

(a) Liens imposed by law for Taxes that are not yet due or are being contested in compliance with Section 7.6;

(b) Carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by applicable Law, arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested in compliance with Section 7.6;

(c) Pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations, other than any Lien imposed by ERISA;

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

(e) Liens in respect of judgments that would not constitute an Event of Default hereunder;

(f) Easements, covenants, conditions, restrictions, building code laws, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or materially interfere with the ordinary conduct of business of a Note Party and such other minor title defects or survey matters that are disclosed by current surveys that, in each case, do not materially interfere with the current use of the real property;

(g) Liens existing on the date hereof and listed on Schedule 5.8.3 and any renewals or extensions thereof, provided that (i) the property covered thereby is not changed, (ii) the amount secured or benefited thereby is not increased, (iii) the direct or any contingent obligor with respect thereto is not changed, and (iv) any renewal or extension of the obligations secured or benefited thereby is otherwise permitted hereunder;

(h) Liens on fixed or capital assets acquired by any Note Party which are permitted under clause (c) of the definition of Permitted Indebtedness so long as (i) the Indebtedness secured thereby does not exceed the cost of acquisition of such fixed or capital assets and (ii) such Liens shall not extend to any other property or assets of the Note Parties;

(i) Liens in favor the Collateral Agent;

(j) Landlords' and lessors' Liens in respect of rent not in default;

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

(l) Liens arising solely by virtue of any statutory or common law provisions relating to banker's liens, liens in favor of securities intermediaries, rights of setoff or similar rights and remedies as to deposit accounts or securities accounts or other funds maintained with depository institutions or securities intermediaries;

(m) Liens arising from precautionary UCC filings regarding "true" operating leases or, to the extent permitted under the Note Documents, the consignment of goods to a Note Party;

(n) Liens on the Collateral securing the Obligations having the priority set forth in the Intercreditor Agreement; and

(o) Liens in favor of customs and revenues authorities imposed by applicable Law arising in the ordinary course of business in connection with the importation of goods and securing obligations (i) that are not overdue by more than thirty (30) days, or (ii)(A) that are being contested in good faith by appropriate proceedings, (B) the applicable Note Party or Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (C) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation;

provided, however, that, except as provided in any one or more of clauses (a) through (o) above, the term "Permitted Encumbrances" shall not include any Lien securing obligations for borrowed money.

"Permitted Indebtedness" means:

(a) Indebtedness outstanding on the date hereof and listed on Schedule 5.8.5 and any Permitted Refinancing Indebtedness in respect thereof;

(b) Indebtedness of any Note Party to any other Note Party; provided that such Indebtedness shall (i) be evidenced by such documentation as the Required Purchasers may reasonably require, (ii) constitute "Collateral" under this Agreement and the Security Documents, (iii) be on terms (including subordination terms) reasonably acceptable to the Required Purchasers;

(c) transfers permitted by Section 8.24 and intercompany Indebtedness incurred in the ordinary course between the Note Parties located within the United States on the one hand and their Affiliates in Puerto, Rico, Canada and Asia on the other hand;

(d) Without duplication of Indebtedness described in clause (f) of this definition, Purchase Money Indebtedness of any Note Party to finance the acquisition of any fixed or capital assets, including the Alabama Capital Lease and other Capital Lease Obligations, and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and any Permitted Refinancing Indebtedness in respect thereof; provided, however, that the aggregate principal amount of Indebtedness permitted by this clause (d) and clause (g) shall not exceed $5,000,000 at any time outstanding; provided that, if requested by the Required Purchasers, the Note Parties shall cause the holders of such Indebtedness incurred after the Closing Date to enter into a Collateral Access Agreement; for the purposes of this clause (d), "Alabama Capital Lease" means a capital lease for the inventory handling system of the Note Parties located at the Alabama Property.

(e) any liability or obligation of the Issuer to any Affiliate of the Issuer, and any liability or obligation of any Affiliate of the Issuer to any other Affiliate of the Issuer, to reimburse or share the costs of any services or third party expenses in accordance with the terms of any intercompany cost-sharing agreement or arrangement, provided that no Default or Event of Default shall have occurred and be continuing or would arise therefrom;

(f) Subordinated Indebtedness; provided, that, (i) the terms of such Subordinated Indebtedness are satisfactory to the Required Purchasers in its sole determination and (ii) an intercreditor agreement is executed in connection with such Subordinated Indebtedness with the Required Purchasers;

(g) Indebtedness incurred in connection with the Alabama Sale-Leaseback Transaction up to $2,500,000, provided that (i) such sale is made for fair market value, (ii) the Net Cash Proceeds paid in cash are in an amount at least equal to the greater of the amounts advanced or available to be advanced against the Alabama Property under the Borrowing Base, (iii) all Net Cash Proceeds received in connection with any such Indebtedness are applied to the Obligations, and (iv) the Collateral Agent shall have received a Collateral Access Agreement from the purchaser of the Alabama Property;

(h) the Note Obligations;

(i) Indebtedness under the Revolving Loan Agreement (including Guarantees of the Issuer or any Guarantor in respect of such Indebtedness), and any Permitted Refinancing Indebtedness in respect thereof;

(j) Indebtedness owed by any Canadian Subsidiary to the Issuer;

(k) Guarantees of the Issuer in respect of the obligations of Hoop under those certain leases described on Schedule 5.33; and

(l) [Reserved]

(m) Indebtedness permitted under the definition of "Permitted Investments" Clauses (g), (h), (i), (k) and (m); and

(n) other unsecured Indebtedness at any time outstanding in an aggregate principal amount not to exceed $12,500,000 in the aggregate and $3,000,000 to any one party.

"Permitted Investments" means:

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof having maturities of not more than 360 days from the date of acquisition thereof; provided that the full faith and credit of the United States of America is pledged in support thereof;

(b) commercial paper issued by any Person organized under the laws of any state of the United States of America and rated at least "Prime-1" (or the then equivalent grade) by Moody's or at least "A-1" (or the then equivalent grade) by S&P, in each case with maturities of not more than 180 days from the date of acquisition thereof;

(c) time deposits with, or insured certificates of deposit or bankers' acceptances of, any commercial bank that (i) (A) is a lender under the Revolving Loan Documents or (B) is organized under the laws of the United States of America, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States of America, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (c) of this definition and (iii) has combined capital and surplus of at least $1,000,000,000, in each case with maturities of not more than 180 days from the date of acquisition thereof;

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

(e) Investments, classified in accordance with GAAP as current assets of the Note Parties, in any money market fund, mutual fund, or other investment companies that are registered under the Investment Company Act of 1940, as amended, which are administered by financial

institutions that have the highest rating obtainable from either Moody's or S&P, and which invest solely in one or more of the types of securities described in clauses (a) through (d) above;

(f) Investments existing on the Closing Date, and set forth on Schedule 5.8.4, but not any increase in the amount thereof or any other modification of the terms thereof;

(g) (i) Investments by any Note Party and its Subsidiaries in their respective Subsidiaries outstanding on the date hereof, (ii) additional Investments by any Note Party and its Subsidiaries in any other Note Party (provided that the Issuer shall be permitted to make additional Investments in Twin Brook in an aggregate amount not to exceed $750,000 in any Fiscal Year), and (iii) additional Investments by any Note Party in Subsidiaries that are not Note Parties not to exceed $1,000,000 in the aggregate in any Fiscal Year;

(h) so long as no Event of Default shall have occurred and be continuing, or would result therefrom, the Issuer may make loans and advances to its Subsidiaries in an aggregate amount not to exceed $5,000,000 at any time outstanding;

(i) intercompany loans and advances or other intercompany Indebtedness permitted pursuant to clauses (b), (c) and (e) of the definition of Permitted Indebtedness;

(j) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(k) Guarantees constituting Permitted Indebtedness;

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

(m) so long as no Event of Default shall have occurred and be continuing, or would result therefrom, (i) loans and advances to officers, directors and employees of the Note Parties and Subsidiaries in the ordinary course of business for travel, entertainment, relocation and analogous business purposes, and (ii) other loans and advances to officers, directors and employees of the Note Parties and Subsidiaries in an aggregate amount not to exceed $6,000,000 at any time outstanding; and

(n) Investments constituting Permitted Acquisitions;

"Permitted Protest" means the right of any Note Party or its Subsidiaries to protest any Lien, taxes (other than payroll taxes or taxes that are the subject of a deemed trust, lien or other charge in favor of a Government Authority), or rental payment, provided that (a) a reserve with respect to such obligation is established on such Person's books and records in such amount as is required under GAAP, (b) any such protest is instituted promptly and prosecuted diligently by such Person in good faith and (c) each Note Party shall, and shall cause each of its Subsidiaries to, pay or bond, or cause to be paid or bonded, all such taxes, assessments, charges or other governmental claims immediately upon the commencement of proceedings to foreclose any Lien which may have attached as security therefor (except to the extent such proceedings have been dismissed or stayed).

"Permitted Purchase Money Indebtedness" means, as of any date of determination, Purchase Money Indebtedness in an aggregate principal amount outstanding at any one time not in excess of $5,000,000.

"Permitted Refinancing Indebtedness" means, with respect to any Person, any refinancing, refunding, renewal or extension of any Indebtedness of such Person (or any successor of such Person); provided that with respect to the Revolving Loans or any other Indebtedness having an individual principal amount over $1,000,000 (i) the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder, and the direct or contingent obligor with respect thereto is not changed as a result of or in connection with such refinancing, refunding, renewal or extension, (ii) the result of such extension, renewal or replacement shall not be an earlier maturity date or decreased weighted average life of such Indebtedness, (iii) the terms relating to principal amount, amortization, maturity, and collateral (if any), and other material terms taken as a whole, of any such refinancing, refunding, renewing or extending Indebtedness, and of any agreement entered into and of any instrument issued in connection therewith, are no less favorable in any material respect to the Note

Parties or the Note Purchasers than the terms of any agreement or instrument governing the Indebtedness being refinanced, refunded, renewed or extended and the interest rate applicable to any such refinancing, refunding, renewing or extending Indebtedness is not increased, and (iv) if the Indebtedness being refinanced, refunded, renewed or extended is Subordinated Indebtedness, such refinancing, refunding, renewal or extension is subordinated in right of payment to the Note Obligations on terms at least as favorable, taken as a whole, to the Note Purchasers as those contained in the documentation governing the Subordinated Indebtedness being refinanced, refunded, renewed or extended, and (B) contains covenants and events of default that are not more restrictive taken as a whole than the covenants and events of default contained in the documentation governing the Indebtedness being refinanced.

"Person" means any entity, whether of natural or legal constitution, including any individual, corporation, partnership, joint venture, limited liability company, unlimited liability company, trust, estate, unincorporated organization, government or any agency or political subdivision thereof.

"Plan" means any "employee benefit plan" (as such term is defined in Section 3(3) of ERISA) established by the Issuer or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any ERISA Affiliate.

"Projections" has the meaning set forth in Section 5.5.3.

"Proposed Prepayment Date" has the meaning set forth in Section 3.2.3.2.

"Purchase Money Indebtedness" means Indebtedness (other than the Revolving Loan Debt but including Capitalized Lease Obligations), incurred at the time of, or within 20 days after, the acquisition of any fixed assets for the purpose of financing all or any part of the acquisition cost thereof.

"Real Property" means the right, title and interest in and to all owned and leased premises of the Note Parties and each of their Subsidiaries.

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Related Party" means any of the current stockholders, directors, officers or beneficial owners of any of the Note Parties or any of their Subsidiaries or Affiliates, and their spouses, siblings and descendants and trusts for the benefit of any of the current stockholders, directors, officers or beneficial owners, their spouses, siblings and descendants.

"Reportable Event" has the meaning set forth in ERISA § 4043, other than events for which the 30 day notice has been waived.

"Required Purchasers" means the Note Purchasers holding at least 51% of the outstanding Note Obligations, which group must include at least two Note Purchasers and which must include any Note Purchaser holding at least 25% of the outstanding Note Obligations (it being understood and agreed that Note Purchasers that are Affiliates or Related Fund shall constitute one Note Purchaser for the purpose of this provision).

"Responsible Officer" means the chief executive officer, president, chief financial officer or treasurer of a Note Party or any of the other individuals designated in writing to the Collateral Agent by an existing Responsible Officer of a Note 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 Note Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Note Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Note Party.

"Restricted Payment" means, any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of any Person or any of its Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to such Person's stockholders, partners or members (or the equivalent of any thereof), or any option, warrant or other right to acquire any such dividend or other distribution or payment. Without limiting the foregoing, "Restricted Payments" with respect to any Person shall also include all payments made by such Person with any proceeds of a dissolution or liquidation of such Person.

"Revolving Agent" has the meaning set forth in the Intercreditor Agreement.

"Revolving Lender" has the meaning set forth in the Intercreditor Agreement.

"Revolving Loan Agreement" has the meaning set forth in the Intercreditor Agreement.

"Revolving Loan Debt" means the "Revolving Loan Debt" as defined in the Intercreditor Agreement.

"Revolving Loan Documents" has the meaning set forth in the Intercreditor Agreement.

"Revolving Obligations" has the meaning ascribed to the defined term "Obligations" in the Revolving Loan Agreement.

"S&P" has the meaning specified therefor in the definition of Cash Equivalents.

"Securities Act" means the United States Securities Act of 1933, as amended and any successor statute.

"Security Agreement" means the Security Agreement, substantially in the form of Exhibit C to the Agreement, between the Note Parties and the Collateral Agent, for the benefit of the Note Purchasers, as amended, modified or supplemented from time to time.

"Security Documents" has the meaning specified therefor in the Revolving Loan Agreement.

"Security Interests" means the security interests in the Collateral granted under the Collateral Documents to secure the Note Obligations.

"Services Company" means The Children's Place Services Company, LLC, a Delaware limited liability company.

"Solvent" means, as to any Person at any time, that (a) the fair value of the Property of such Person is greater than the amount of such Person's liabilities (including disputed, contingent and unliquidated liabilities) as such value is established and liabilities evaluated for purposes of Section 101(32)(A) of the Bankruptcy Code and, in the alternative, for purposes of the Uniform Fraudulent Transfer Act; (b) the present fair saleable value (on a going concern basis) of the Property of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured; (c) such Person is able to realize upon its Property and generally pay its debts and other liabilities (including disputed, contingent and unliquidated liabilities) as they mature in the normal course of business; (d) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to generally pay as such debts and liabilities mature; and (e) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's Property would constitute unreasonably small capital.

"Stock Options" means (i) the stock option investigation, (ii) related material weakness in internal controls over financial reporting related to stock option grants, (iii) resolution of tax consequences and corrective action related to discounted stock options, (iv) the related restatement to Issuer's prior period financial statements to reflect additional stock based compensation expenses relating to stock option grants made in each year from the Fiscal Year ended January 31, 1998 through the first Fiscal Quarter of Fiscal Year 2006, all of which was disclosed in the Issuers's Annual Report on Form 10-K for the fifty-three weeks ended February 3, 2007.

"Store" means any retail store (which may include any real property, fixtures, equipment, inventory and other property related thereto) operated, or to be operated, by any Note Party.

"Subordinated Indebtedness" means Indebtedness which is expressly subordinated in right of payment to the prior payment in full of the Revolving Obligations and Note Obligations and which is in form and on terms approved in writing by the Required Purchasers.

"Subsidiary" means, with respect to any Person, (a) any corporation of which an aggregate of more than 50% of the outstanding Capital Stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, Stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, owned legally or beneficially by such Person or one or more Subsidiaries of such Person, or with respect to which any such Person has the right to vote or designate the vote of more than 50% or more of such Capital Stock whether by proxy, agreement, operation of law or otherwise, and (b) any partnership or limited liability company in which such Person and/or one or more Subsidiaries of such Person shall have an interest (whether in the form of voting or participation in profits or capital contribution) of more than 50% or of which any such Person is a general partner or managing member or may exercise the powers of a general partner whether directly or indirectly, and (c) any other Person (other than a corporation, limited liability company or partnership) in which such Person, a Subsidiary of such Person or such Person and one or more Subsidiaries of such Person, directly or indirectly, at the date of determination thereof, has (a) at least a majority ownership interest or (b) the power to elect or direct the election of a majority of the directors or other

governing body of such Person. Any reference to the Subsidiaries of the Issuer herein or in any Note Document shall not include Hoop, unless explicitly stated otherwise.

"Syndication Agent" means Crystal Capital Fund Management, L.P., in its capacity as Syndication Agent under the Note Documents or any successor thereto.

"Taxes" has the meaning set forth in Section 3.4.1.

"Transactions" means the transactions contemplated by the Revolving Loan Documents and the Note Documents.

"Transition Services Agreement" means the agreement so entitled dated as of April 30, 2008 among The Children's Place Services Company, LLC, T2 Acquisition, LLC and the other parties named therein.

"Twin Brook" means Twin Brook Insurance Company, Inc., a New York captive insurance company.

"Unfunded Pension Liability" means the excess of a Pension Plan's benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan's assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year.

"Uniform Commercial Code" means the Uniform Commercial Code of the State of New York, or any successor statutes.

"USA Patriot Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56, as the same has been, or shall hereafter be, renewed, extended, amended or replaced.

SCHEDULE 7.16

FINANCIAL COVENANTS

Section 1. Closing Date Total Leverage Ratio.

1.1. For purposes of this Schedule 7.16 and the Agreement:

"Closing Date EBITDA" means, trailing twelve month EBITDA as of May 31, 2008, as set forth in Schedule 7.16(a).

"Closing Date Total Leverage Ratio" means the Leverage Ratio as of May 31, 2008, as set forth in Schedule 7.16(b).

Section 2.

2.1. Minimum EBITDA. The Note Parties and their Subsidiaries shall maintain EBITDA, measured for each Trailing Twelve Month Period, of not less than the following amount indicated below as of the end of each Fiscal Quarter ending on:

Fiscal Quarters Ended	EBITDA
August 2, 2008	$ 80,015,000

November 1, 2008	$ 103,329,000
January 31, 2009	$ 111,521,000
Thereafter	$ 115,000,000

2.2. "EBITDA" has the meaning set forth in Section 3.2 of this Schedule 7.16.

Section 3. Maximum Total Leverage Ratio.

3.1 The Note Parties and their Subsidiaries shall maintain a Leverage Ratio, measured for each Trailing Twelve Month Period, of not greater than the following amount indicated below as of November 30 and December 31 of each Fiscal Year and as of the end of each Fiscal Quarter ending on:

Fiscal Quarters Ended	Ratio
August 2, 2008	2.50:1.00
November 1, 2008	2.50:1.00
January 31, 2009	2.50:1.00
Thereafter	2.50:1.00

3.2 For purposes of this Schedule 7.16 and the Agreement:

(i) "EBITDA" means, for any period, for the Issuer and its Subsidiaries excluding Hoop, an amount determined on a Consolidated basis, substantially in accordance with GAAP and the Issuer's past practices, equal to Issuer's Consolidated net income, excluding Hoop, plus the sum, without duplication and to the extent included in the calculation of Consolidated net income, of the following amounts with respect to the Issuer and its Subsidiaries excluding Hoop for such period:

(a) Consolidated interest expense, net of consolidated interest income, and other fees and charges associated with Permitted Indebtedness, including (i) accrued interest on the Revolving Loan Debt and accrued interest, adjusted to reflect the actual amount paid or received by such Persons under any interest rate swaps in place with respect to the Notes at such time, on the Notes; monthly re-occurring fees; fees and other expenses that are capitalized or amortized; fees associated with amending, restating or terminating the Existing Credit Agreement (as defined in the Revolving Loan Agreement) and the L/C Demand Facility;

(b) income, franchise or similar taxes;

(c) total depreciation expense;

(d) total amortization expense, including amortization of intangibles (including, but not limited to, goodwill);

(e) non ordinary expenses, net of revenues related to the divestiture of Hoop or otherwise received from Walt Disney Corporation and its Affiliates in accordance with the Transition Services Agreement to the extent such revenues are included in the Issuer's Consolidated net income, including but not limited to (i) legal, financial advisory, broker and other professional fees associated with the divestiture of Hoop; (ii) any impairment or other non reoccurring charges related specially to the valuation of Hoop; (iii) to the extent not included in the Issuer's Projections, non allocated expenses associated with the operation of Hoop; (iv) other non re-occurring charges associated with Hoop, including contributions made by the Issuer to Hoop and payments owed but not paid to the Issuer by Hoop for services provided by the Issuer; and (v) payments made by the Issuer on behalf of Hoop which were not reimbursed by Hoop and would have normally been made by Hoop or made by the Issuer and reimbursed by Hoop in the ordinary course; provided that the cash charges added back to Consolidated net income under this clause (e) over the term of this Agreement shall be limited to $35 million for the Fiscal Year ending on or around January 31, 2009 and $5 million for the Fiscal Year ending on or around January 31, 2010;

(f) one time charges such as severance and other related costs associated with the Issuer's downsizing and restructuring announced on March 20, 2008 up to $3 million in the aggregate unless otherwise approved by the Required Purchasers;

(g) impairment and other non re-occurring charges related to the exit of the Issuer's New Headquarters as set forth on Schedule 7.16(g) not to exceed $20.7 million;

(h) non re-occurring charges related to the Issuer's stock option investigation as set forth on Schedule 7.16(h) not to exceed $11.6 million to the extent such charges were included in the Issuer's Projections;

(i) non re-occurring charges related to the severance of certain senior management disclosed to the Note Purchasers to the extent such charges were included in the Issuer's Projections up to $3 million in any Fiscal Year unless otherwise approved by the Required Purchasers (including, for the avoidance of doubt, the $4.7 million for the Fiscal Year ending January 2008 set forth on the Projections);

(j) other non re-occurring cash charges not to exceed $25 million over the term of this Agreement and $5 million in any measurement period unless otherwise approved by the Required Purchasers; provided, that, a corresponding decrease in cash gains shall be reflected for any charge under this clause (j).

(k) non cash, non re-occurring charges or losses and extraordinary charges, as determined in accordance with GAAP up to $5 million in the aggregate unless otherwise approved by the Required Purchasers; provided, that, a corresponding decrease in non-cash gains shall be reflected for any change under this clause (k).

(l) employee compensation paid in Equity Interests issued by the Issuer or its Subsidiaries excluding Hoop;

(m) legal and other professional advisory and closing fees associated with the Note Documents and the Revolving Loan Documents up to $[5] million in the aggregate unless otherwise approved by the Required Purchasers; and

(n) legal and other professional advisory fees incurred in 2007 and 2008 associated with the development of strategic alternatives up to $5 million in the aggregate unless otherwise approved by the Required Purchasers.

(ii) "Leverage Ratio" means for the Issuer and its Subsidiaries excluding Hoop the ratio of (x) the sum of (A) the outstanding balance with respect to the Notes as of the measurement date, (B) for the Fiscal Year ending January 2009, the trailing twelve month average of the (i) ending monthly balance of outstanding revolving loans under the Existing Credit Agreement and the Revolving Loan Agreement as of the measurement date, less (ii) the outstanding amount under the Notes on the Closing Date for any months occurring prior to the Closing Date that are included in any trailing twelve month period, provided that to the extent the result of such calculation is less than zero the amount will be deemed to be zero, (C) for the Fiscal Year ending January 2009, the average monthly outstanding commercial letters of credit issued under the Existing Credit Agreement, the L/C Demand Facility and the Revolving Loan Agreement

as of the measurement date, and (D) for the Fiscal Year ending January 2009, the average monthly outstanding standby letters of credit issued under the Existing Credit Agreement, the L/C Demand Facility and the Revolving Loan Agreement as of the measurement date to (y) the trailing twelve month EBITDA as of the measurement date. Such year to date calculations will be trailing twelve month calculations beginning with the end of February 2009.

(iii) "Fiscal Quarter" means the applicable fiscal quarter of a Fiscal Year.

(iv) "Fiscal Year" means any Note Parties' Fiscal Year for financial accounting purposes, beginning on or about February 1st and ending on or about January 31st.

(v) "Trailing Twelve Month" means the twelve (12) calendar month period immediately preceding the date of calculation.

Section 4. Minimum Fixed Charge Coverage Ratio.

4.1 The Note Parties shall maintain a Fixed Charge Coverage Ratio, measured for each Trailing Twelve Month Period, of not less than 1.50:1.00 as of the end of the Fiscal Quarter ending on November 1, 2008 and 2.00:1.00 as of the end of each Fiscal Quarter thereafter.

4.2 For purposes of this Schedule 7.16 and the Agreement:

(i) "Fixed Charge Coverage Ratio" means for the Issuer and its Subsidiaries excluding Hoop for the trailing twelve month period most recently ended the ratio of (x) EBITDA less the sum of (A) Capital Expenditures, plus (B) the cash portion of state and federal income, franchise and similar taxes, to (y) Consolidated cash interest expense, adjusted to reflect the actual amount paid or received by such Persons under any interest rate swaps in place with respect to the Notes at such time.

(ii) "Income Tax Expense" means the cash portion of expenditures for federal and state income taxes determined in accordance with GAAP.

(iii) "Interest Expense" means (A) for the period before the twelve (12) month anniversary of the Closing Date, expenditures for interest determined in accordance with GAAP calculated on an annualized basis based upon the time period from the Closing Date to the date of calculation, and thereafter, (B) expenditures for interest determined in accordance with GAAP for the twelve (12) calendar month period immediately preceding the date of calculation.

Section 5. Calculation of Financial Covenants.

(i) The Note Purchasers may calculate the Note Parties' EBITDA and the other specified amounts under this Schedule 7.16 (and under the other financial covenants contained in the Agreement) on the basis of information then available to the Note Purchasers, which calculation(s) will be binding on the Note Parties; *however*, the Note Purchasers will give notice to the Note Parties of the Note Purchasers' computations made pursuant to this Section 6 and an

opportunity to provide the Note Purchasers with any additional or contrary information. The Note Parties must provide any additional (or contrary) information within 15 Business Days after the Note Purchasers gives notice to the Note Parties of the Note Purchasers' computations.

(ii) The Financial Covenants will be based on the Consolidated financial performance of the Note Parties and all their Subsidiaries in accordance with the Agreement.

Section 6. Definitions. Capitalized terms used, but not defined, in this Schedule 7.16 have the meanings given to them in the Agreement.

SCHEDULE 7.3

A monthly report of new Store openings (including an estimate of associated costs) and closings.

Certificate of Principal Executive Officer pursuant to
Rule 13a-14(a)/Rule 15d-14(a) under the Securities Exchange Act of 1934.

I, Charles Crovitz, certify that:

1. I have reviewed this quarterly report on Form 10-Q of The Children’s Place Retail Stores, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under my supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and

5. The registrant’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the Audit Committee of the registrant’s Board of Directors (or persons performing equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

Date: September 9, 2008

By: /S/ CHARLES CROVITZ
CHARLES CROVITZ
Interim Chief Executive Officer
(A Principal Executive Officer)

EXHIBIT 31.2

Certificate of Principal Executive Officer and Principal Financial Officer pursuant to Rule 13a-14(a)/Rule 15d-14(a) under the Securities Exchange Act of 1934.

I, Susan Riley, certify that:

1. I have reviewed this quarterly report on Form 10-Q of The Children's Place Retail Stores, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under my supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the Audit Committee of the registrant's Board of Directors (or persons performing equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: September 9, 2008

By: /S/ SUSAN RILEY
SUSAN RILEY
Executive Vice President, Finance and Administration
(A Principal Executive Officer and Principal Financial Officer)

Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

I, Charles Crovitz, Interim Chief Executive Officer of The Children's Place Retail Stores, Inc. (the "Company"), pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, do hereby certify that to my knowledge:

1. The quarterly report of the Company on Form 10-Q for the period ended August 2, 2008 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

2. The information contained in such quarterly report fairly presents, in all material respects, the financial condition and results of operations of the Company.

IN WITNESS WHEREOF, I have executed this Certification this 9th day of September, 2008.

By: /S/ CHARLES CROVITZ
CHARLES CROVITZ
Interim Chief Executive Officer
(A Principal Executive Officer)

I, Susan Riley, Executive Vice President, Finance and Administration of The Children's Place Retail Stores, Inc. (the "Company"), pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, do hereby certify that to my knowledge:

1. The quarterly report of the Company on Form 10-Q for the period ended August 2, 2008 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

2. The information contained in such quarterly report fairly presents, in all material respects, the financial condition and results of operations of the Company.

IN WITNESS WHEREOF, I have executed this Certification this 9th day of September, 2008.

By: /S/ SUSAN RILEY
SUSAN RILEY
Executive Vice President, Finance and Administration
(A Principal Executive Officer and
Principal Financial Officer)

The foregoing certification is being furnished solely pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code) and is not being filed as part of the Quarterly Report on Form 10-Q of The Children's Place Retail Stores, Inc. for the quarter ended August 2, 2008 or as a separate disclosure document.

EXHIBIT 99.1

THE CHILDREN'S
PLACE

FOR IMMEDIATE RELEASE

THE CHILDREN'S PLACE RETAIL STORES, INC. REPORTS JUNE SALES

Secaucus, New Jersey – July 10, 2008 – The Children's Place Retail Stores, Inc. (Nasdaq: PLCE) today announced sales of $123.0 million for the five-week period ended July 5, 2008, a 23% increase compared to sales of $99.7 million for the five-week period ended July 7, 2007. Comparable store sales increased 16% compared to a 4% decrease last year. During June 2008, the Company closed two stores.

	June		Year-to-Date	
	2008	2007	2008	2007
Total Sales:				
- In Millions	$ 123.0	$ 99.7	$ 632.6	$ 547.5
- Change vs. Year Ago	+23%	+1%	+16%	+10%
Comparable Store Sales:				
- Change vs. Year Ago	+16%	(4)%	+8%	+2%

In conjunction with today's June sales release, you are invited to listen to the Company's pre-recorded monthly sales call, which will be available beginning at 7:30 a.m. Eastern Time today through Thursday, July 17, 2008. To access the call, please dial (402) 220-0681 or you may listen through the Investor Relations section of the Company's website, www.childrensplace.com.

The Children's Place Retail Stores, Inc. is a leading specialty retailer of children's merchandise. The Company designs, contracts to manufacture and sells high-quality, value-priced merchandise under the proprietary "The Children's Place" brand name. As of July 5, 2008, the Company owned and operated 903 stores and its online store at www.childrensplace.com.

This press release (and above referenced call) may contain certain forward-looking statements regarding future circumstances. These forward-looking statements are based upon the Company's current expectations and assumptions and are subject to various risks and uncertainties that could cause actual results to differ materially. Some of these risks and uncertainties are described in the Company's filings with the Securities and Exchange Commission, including in the "Risk Factors" section of its report on Form 10-K. The following risks and uncertainties could cause actual results, events and performance to differ materially: the risk that the Company may not be able to access, if necessary, additional sources of liquidity or obtain financing on commercially reasonable terms or at all, the risk that the Company will be unsuccessful in gauging fashion trends and changing consumer preferences, the risk resulting from the highly competitive nature of the Company's business and its dependence on consumer spending patterns, which may be affected by the downturn in the economy, and risks and uncertainties relating to other elements of the Company's strategic review. Readers (or listeners on the call) are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date they were made. The Company undertakes no obligation to release publicly any revisions to these forward-looking statements that may be made to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events. The inclusion of any statement in this release does not constitute an admission by the Company or any other person that the events or circumstances described in such statement are material.

CONTACT: The Children's Place Retail Stores, Inc.
Jane Singer, Investor Relations, (201) 453-6955

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915 Secaucus Road • Secaucus • NJ 07094 • 201 558 2400

EXHIBIT 99.2

THE CHILDREN'S PLACE

FOR IMMEDIATE RELEASE

THE CHILDREN'S PLACE RETAIL STORES, INC. REPORTS JULY AND SECOND QUARTER 2008 SALES

Secaucus, New Jersey – August 7, 2008 – The Children's Place Retail Stores, Inc. (Nasdaq: PLCE) today announced sales of $105.6 million for the four-week period ended August 2, 2008, a 7% increase compared to sales of $99.0 million for the four-week period ended August 4, 2007. Comparable store sales for July were flat compared to a 3% decrease in July 2007. For the second quarter ended August 2, 2008, total sales increased 16% to $338.0 million. Comparable store sales for the second quarter increased 9% compared to a 1% decrease for the second quarter of 2007.

The Company closed one store during July and four stores during the second quarter of 2008.

	July		2nd Quarter		Year-to-Date	
	2008	2007	2008	2007	2008	2007
Total Sales:						
- In Millions	$ 105.6	$ 99.0	$ 338.0	$ 290.5	$ 738.2	$ 646.5
- Change vs. Year Ago	+7%	+8%	+16%	+8%	+14%	+9%
Comparable Store Sales:	0%	(3)%	+9%	(1)%	+7%	+1%
- Change vs. Year Ago						

In conjunction with today's July sales release, you are invited to listen to the Company's pre-recorded monthly sales call, which will be available beginning at 7:30 a.m. Eastern Time today through Thursday, August 14, 2008. To access the call, please dial 1-800-839-5685 or you may listen through the Investor Relations section of the Company's website, www.childrensplace.com.

The Company plans to report second quarter earnings results on Thursday, August 21, 2008. The Company will host a conference call that day which will be broadcast live via webcast at 10:00 a.m. Eastern Time. Interested parties are invited to listen to the call by dialing 1-800-862-9098 and providing the Conference ID, PLCE. The call will also be webcast live and can be accessed via the Company's web site, www.childrensplace.com. A replay of the call will be available approximately one hour after the conclusion of the call, until midnight on August 28, 2008. To access the replay, please dial 1-800-753-6121 or you may listen to the audio archive on the Company's website.

-more-

PLCE – July and Second Quarter 2008 Sales

The Children's Place Retail Stores, Inc. is a leading specialty retailer of children's merchandise. The Company designs, contracts to manufacture and sells high-quality, value-priced merchandise under the proprietary "The Children's Place" brand name. As of August 2, 2008, the Company owned and operated 902 stores and its online store at www.childrensplace.com.

This press release (and above referenced calls) may contain certain forward-looking statements regarding future circumstances. These forward-looking statements are based upon the Company's current expectations and assumptions and are subject to various risks and uncertainties that could cause actual results to differ materially. Some of these risks and uncertainties are described in the Company's filings with the Securities and Exchange Commission, including in the "Risk Factors" section of its report on Form 10-K. The following risks and uncertainties could cause actual results, events and performance to differ materially: the risk that the Company will be unsuccessful in gauging fashion trends and changing consumer preferences, the risk resulting from the highly competitive nature of the Company's business and its dependence on consumer spending patterns, which may be affected by the downturn in the economy, and risks and uncertainties relating to other elements of the Company's strategic review. Readers (or listeners on the calls) are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date they were made. The Company undertakes no obligation to release publicly any revisions to these forward-looking statements that may be made to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events. The inclusion of any statement in this release does not constitute an admission by the Company or any other person that the events or circumstances described in such statement are material.

CONTACT: The Children's Place Retail Stores, Inc.
Jane Singer, Vice President, Investor Relations, (201) 453-6955

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