

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

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

**WASHINGTON, DC 20549**

**FORM 6-K**

**REPORT OF FOREIGN PRIVATE ISSUER PURSUANT TO RULE**  
**13a-16 or 15d-16 UNDER THE SECURITIES EXCHANGE ACT OF 1934**

**For the month of December, 2008**

**Commission file number: 001-32635**

**BIRKS & MAYORS INC.**

**(Translation of Registrant's name into English)**

**1240 Phillips Square**

**Montreal Québec**

**Canada**

**H3B 3H4**

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(Address of principal executive office)

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

Form 20-F       Form 40-F

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

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

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

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

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

Yes       No

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

**EXPLANATORY NOTE:**

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

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

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

**DOCUMENTS SUBMITTED HEREWITH:**

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

**SIGNATURES**

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

BIRKS & MAYORS INC.  
(Registrant)

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

Date: December 22, 2008

**EXHIBIT INDEX**

**Exhibit**

**Number      Description**

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

**MAYOR S JEWELERS, INC.,**

as the US Borrower

**BIRKS & MAYORS INC.,**

as the Canadian Borrower

Collectively, the Borrowers

**AND THEIR SUBSIDIARIES PARTY HERETO,**

as Guarantors

**AMENDED AND RESTATED REVOLVING CREDIT AND SECURITY AGREEMENT**

Dated as of December 17, 2008

**CERTAIN FINANCIAL INSTITUTIONS,**

as Lenders,

**BANK OF AMERICA, N.A.,**

as Administrative Agent

and

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

as Canadian Agent

**BANC OF AMERICA SECURITIES, LLC,**

as Sole Lead Arranger and Sole Book Manager

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Exhibit C	Form of Canadian Revolver Note
Exhibit D	Form of Assignment and Assumption Agreement
Exhibit E	Form of Compliance Certificate
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**AMENDED AND RESTATED REVOLVING CREDIT AND SECURITY AGREEMENT**

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

**RECITALS:**

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

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

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

**SECTION 1. DEFINITIONS; RULES OF CONSTRUCTION**

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

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

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

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

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

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

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

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

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

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

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

Agents collectively, the Administrative Agent and the Canadian Agent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

Bankruptcy Code Title 11 of the United States Code.

Base Rate for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus<sup>d</sup> 1/2 of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its prime rate, and (c) Adjusted LIBOR for an Interest Period of 1-month beginning on such day plus 100 basis points. The prime rate is a rate set by Bank of America based upon various factors including Bank of America's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in the prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

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

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

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

Birks Birks & Mayors Inc., a Canadian corporation.

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

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

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

Borrower and Borrowers as defined in the preamble hereto.

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

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

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

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

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

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

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

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

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

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

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

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

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

Canadian Borrower as defined in the preamble hereto.

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

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

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

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

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

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

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

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

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

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

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

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

**Canadian Obligations** all Obligations of the Canadian Loan Parties.

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

**Canadian Prime Rate** on any day, the rate per annum equal to the higher of (a) the rate of interest quoted by Bank of America-Canada Branch for commercial demand loans made by it in Canada in Canadian Dollars and (b) the Canadian BA Rate for an Interest Period of 1-month beginning on such day plus 100 basis points. The Canadian Prime Rate is a rate set by Bank of America-Canada Branch based upon various factors including Bank of America-Canada Branch's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in the Canadian Prime Rate announced by the Canadian Agent shall take effect at the opening of business on the day specified by the Canadian Agent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Chattel Paper** as defined in the UCC.

**Claims** as defined in **Section 14.2**.

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

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

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

**Collateral Value Report** as defined in Section 10.1.1.

**Commercial Tort Claim** as defined in the UCC.

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Document as defined in the UCC.

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

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

Dollars or \$ lawful money of the United States.

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

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

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

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

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

**US Borrower, Henry U.S. and**

**Mayor s Florida**

**Eligible Inventory Category**

Basic Diamonds  
 Fashion Diamonds  
 Colored Stones  
 Pearls  
 Gold Jewelry  
 Estate Jewelry  
 Rolex Watches  
 Cartier Watches  
 Other Watches  
 Giftware  
 Loose Stones  
 Parts

**Canadian Borrower**

**Eligible Inventory Category**

Watches and Clocks  
 Fine Jewelry  
 Bridal  
 Giftware  
 Loose Stones  
 Silver  
 Gold  
 Service

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

- (a) Accounts that have been outstanding for more than five (5) Business Days from the date of sale;
- (b) Accounts with respect to which a Borrower, Henry U.S. or Mayor s Florida, as applicable, does not have good, valid and marketable title thereto, free and clear of any Lien (other than Permitted Liens);
- (c) Accounts that are not subject to a first priority Lien in favor of the Administrative Agent or the Canadian Agent, as applicable, for its benefit and the ratable benefit of the Secured Parties;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Existing Credit Agreement** as defined in the preamble hereto.

**Existing Lenders** as defined in the preamble hereto.

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

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

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

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

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

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

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

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

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

FLSA the Fair Labor Standards Act of 1938.

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

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

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

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

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

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

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

Goods as defined in the UCC.

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

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

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



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

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

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

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

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

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

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

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

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

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

Instrument as defined in the UCC.

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

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

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

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

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

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

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

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

**Investment Property** as defined in the UCC.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Letter of Credit Subline \$30,000,000.

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

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

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

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

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

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

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

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

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

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

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

Loan Party each Borrower and each Guarantor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OSHA the Occupational Safety and Hazard Act of 1970.

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

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

Participant as defined in **Section 13.5**.

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

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

Payment Intangible as defined in the UCC.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

**Register** as defined in **Section 13.4**.

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

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

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

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

**Report** as defined in **Section 12.2.3**.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Sarbanes-Oxley** the Sarbanes-Oxley Act of 2002.

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

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

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

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

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

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

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

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

Software as defined in the UCC.

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

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

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

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

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

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

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

Supporting Obligation as defined in the UCC.

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

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

Swingline Loan Subline \$10,000,000.

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

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

Term Loan Agent GB Merchant Partners, LLC.

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

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

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

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

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

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

Termination Date December 17, 2011.

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

**US Borrower** as defined in the preamble hereto.

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

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

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

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

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

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

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

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

US Obligations all Obligations of the US Loan Parties.

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

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

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

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

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

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

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

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

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

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

**1.5. Times of Day.** Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

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

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

## SECTION 2. CREDIT FACILITIES

### 2.1. Commitments.

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

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

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

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

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

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

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

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

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

## **2.2. Reduction or Termination of Commitments.**

### **2.2.1. Reduction or Termination of US Revolver Commitments.**

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

**2.2.4. Mandatory Prepayments.**

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

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

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

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

**2.3. Letter of Credit Facility.**

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

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

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

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

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

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

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

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

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

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

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

**2.3.2. Reimbursement; Participations.**

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

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

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

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

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

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

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

**2.4. Increase in Commitments.**

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

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

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

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

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

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

### **SECTION 3. INTEREST, FEES AND CHARGES**

#### **3.1. Interest.**

##### **3.1.1. Rates and Payment of Interest.**

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

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

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



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

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

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

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

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

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

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

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

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

**3.2. Fees.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **SECTION 4. LOAN ADMINISTRATION**

##### **4.1. Manner of Borrowing and Funding Loans.**

###### **4.1.1. Notice of Borrowing.**

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

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

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

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

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

**4.1.3. Swingline Loans; Settlement.**

(a) In reliance upon the agreements of:

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



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

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

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

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

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

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

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

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

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

## SECTION 5. PAYMENTS

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

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

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

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

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

**5.5. Allocation of Payments.**

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

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

- (b) second, to all amounts owing to the Administrative Agent on Swingline Loans advanced to the US Borrower, US Revolver Overadvances or Protective Advances advanced to the US Borrower;
- (c) third, to all Obligations constituting fees owing to the US Lenders in their capacity as the US Lenders (excluding amounts relating to Bank Products);
- (d) fourth, to all Obligations constituting interest on US Revolver Loans (excluding amounts relating to Bank Products);
- (e) fifth, pro rata to all Obligations constituting principal of US Revolver Loans (excluding amounts relating to Bank Products) and to all amounts owing to any Issuing Bank on US LC Obligations;
- (f) sixth, to all other Obligations owing to the US Lenders in their capacity as the US Lenders (excluding Bank Product Debt);
- (g) seventh, to the Obligations pursuant to clauses (a) through (f) of **Section 5.5.2** below;
- (h) eighth, to all costs and expenses, including Extraordinary Expenses constituting Obligations relating to the Tranche A-1 Loans, owing to the Administrative Agent;
- (i) ninth, to all Obligations constituting fees owing to the Tranche A-1 Lenders in their capacity as the Tranche A-1 Lenders (excluding amounts relating to Bank Products);
- (j) tenth, to all Obligations constituting interest on Tranche A-1 Loans (excluding amounts relating to Bank Products);
- (k) eleventh, to all Obligations constituting principal of Tranche A-1 Loans (excluding amounts relating to Bank Products);
- (l) twelfth, to all other Obligations owing to the Tranche A-1 Lenders in their capacity as the Tranche A-1 Lenders (excluding amounts relating to Bank Products);
- (m) thirteenth, to Bank Product Debt constituting Obligations owing to the Lenders and their Affiliates for which a Bank Product Reserve has been established; and
- (n) fourteenth, to Bank Product Debt constituting Obligations owing to the Lenders and their Affiliates for which a Bank Product Reserve has not been established.

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

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

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

- (a) first, to all costs and expenses, including Extraordinary Expenses constituting Canadian Obligations, owing to the Canadian Agent;
- (b) second, to all amounts owing to the Canadian Agent on Swingline Loans advanced to the Canadian Borrower, Canadian Revolver Overadvances or Protective Advances advanced to the Canadian Borrower;
- (c) third, to all Obligations constituting fees owing to the Canadian Lenders in their capacity as the Canadian Lenders (excluding amounts relating to Bank Products);
- (d) fourth, to all Obligations constituting interest on the Canadian Revolver Loans (excluding amounts relating to Bank Products);
- (e) fifth, pro rata to all Obligations constituting principal of the Canadian Revolver Loans (excluding amounts relating to Bank Products) and to all amounts owing to any Issuing Bank on Canadian LC Obligations;
- (f) sixth, to all other Obligations owing to the Canadian Lenders in their capacity as the Canadian Lenders (excluding amounts relating to Bank Products); and
- (g) seventh, to the Obligations pursuant to clauses (a) through (n) of **Section 5.5.1** above (other than in respect of clause (g) of such **Section 5.5.1**).

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

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

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

- (b) second, to all amounts owing to the Agents on Swingline Loans, US Revolver Overadvances, Canadian Revolver Overadvances or Protective Advances;
- (c) third, to all Obligations constituting fees owing to the Revolver Lenders in their capacity as the Revolver Lenders (excluding amounts relating to Bank Products);
- (d) fourth, to all Obligations constituting interest on Revolver Loans (excluding amounts relating to Bank Products);
- (e) fifth, to all Obligations constituting principal of Revolver Loans (excluding amounts relating to Bank Products), to all amounts owing to the Issuing Banks on US LC Obligations and Canadian LC Obligations and to provide Cash Collateral for outstanding Letters of Credit;
- (f) sixth, to all other Obligations owing to the Revolver Lenders in their capacity as the Revolver Lenders (other than Bank Product Debt);
- (g) seventh, to all costs and expenses, including Extraordinary Expenses constituting Obligations relating to the Tranche A-1 Loans, owing to the Administrative Agent;
- (h) eighth, to all Obligations constituting fees owing to the Tranche A-1 Lenders in their capacity as the Tranche A-1 Lenders (excluding amounts relating to Bank Products);
- (i) ninth, to all Obligations constituting interest on Tranche A-1 Loans (excluding amounts relating to Bank Products);
- (j) tenth, to all Obligations constituting principal of Tranche A-1 Loans (excluding amounts relating to Bank Products);
- (k) eleventh, to all other Obligations owing to the Tranche A-1 Lenders in their capacity as the Tranche A-1 Lenders (excluding amounts relating to Bank Products);
- (l) twelfth, to Bank Product Debt constituting Obligations owing to the Lenders and their Affiliates for which a Bank Product Reserve has been established;
- (m) thirteenth, to Bank Product Debt constituting Obligations owing to the Lenders and their Affiliates for which a Bank Product Reserve has not been established; and
- (n) fourteenth, to all other Obligations.

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

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

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

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

**5.7. Loan Account: Account Stated.**

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

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



**5.8. Taxes.**

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

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

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

**5.8.4. [Reserved]**

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

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

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

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

- (a) except as expressly provided in this Agreement, each repayment of a Loan or a part thereof shall be made in the currency in which such Loan is denominated at the time of that repayment;
- (b) each payment of interest shall be made in the currency in which such principal or other sum in respect of which such interest is payable, is denominated;
- (c) each payment of any Letter of Credit Fees payable by the US Borrower (and any other fees payable by the US Borrower under **Section 3.2.2**), Unused Fees payable by the US Borrower and all other amounts due hereunder (unless the provisions of the Agreement require otherwise) shall be in Dollars;
- (d) each (i) payment of any Letter of Credit Fees payable by the Canadian Borrower in respect of Letters of Credit denominated in Canadian Dollars (and any other fees payable by the Canadian Borrower under **Section 3.2.2** in respect thereof) shall be in Canadian Dollars and (ii) payment of any Letter of Credit Fees payable by the Canadian Borrower in respect of Letters of Credit denominated in Dollars (and any other fees payable by the Canadian Borrower under **Section 3.2.2** in respect thereof) shall be in Dollars;
- (e) each payment in respect of costs, expenses and indemnities shall be made in the currency in which the same were incurred; and
- (f) any amount expressed to be payable in Canadian Dollars shall be paid in Canadian Dollars.

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

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

## SECTION 6. CONDITIONS PRECEDENT

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

- (a) Notes shall have been executed by the Borrowers and delivered to each Lender that requests issuance of a Note. Each other Loan Document shall have been duly executed and delivered to the Administrative Agent by each of the signatories thereto, and each Loan Party shall be in compliance with all terms thereof.
- (b) The Agents shall be satisfied that the Security Documents shall be effective to create in favor of the Applicable Agent a legal, valid and enforceable first priority security interest in and Lien upon the Collateral and shall have received (i) evidence that all filings, recordings, deliveries of instruments and other actions necessary or desirable in the commercially reasonable opinion of the Agents to protect and preserve such security interests shall have been duly effected, (ii) UCC, PPSA and Lien searches (and the equivalent thereof in all applicable foreign jurisdictions) and other evidence reasonably satisfactory to the Agents that such Liens are the only Liens upon the Collateral, except Permitted Liens, (iii) evidence that the payment (or evidence of provision for payment) of all filing and recording fees and taxes due and payable in respect thereof has been made in form and substance reasonably satisfactory to the Administrative Agent, (iv) all Lien Waivers and Lien Priority Agreements necessary or desirable in the reasonable opinion of the Administrative Agent, and (v) a completed and fully executed information certificate with respect to each Loan Party substantially in the form of **Exhibit G** hereto.
- (c) The Administrative Agent shall have received executed copies of the Term Loan Documents, the Brinkhaus Subordinated Debt Documents, the Rhode Island Debt Documents, the Quebec Subordinated Debt Documents, the Rolex Documents and the Management Agreement, certified by a Senior Officer of the Borrowers as complete and correct (with such certification to be in such Person's capacity as a Senior Officer of the Borrowers and not in such Person's individual capacity), and the Administrative Agent shall be satisfied with the terms and conditions and provisions thereof, which documents shall be in full force and effect and without amendment except attached thereto.
- (d) (i) Each Applicable Agent shall have received duly executed Deposit Account Control Agreements with respect to each Deposit Account of the Borrowers constituting a Concentration Account (other than in respect of the accounts maintained at Royal Bank of Canada and Bank of Montreal) or into which credit card receivables are deposited, each in form and substance, and with financial institutions, satisfactory to the Administrative Agent; and (ii) the Canadian Agent shall have received duly executed estoppel letters with respect to consignment filings on record in any province in Canada.
- (e) The Administrative Agent shall have received a certificate, in form and substance reasonably satisfactory to it, from a Senior Officer of each Borrower (with such certification to be in such Person's capacity as a Senior Officer of such Borrower and not in such Person's individual capacity) certifying that:
  - (i) after giving effect to the Loans and transactions hereunder and under the Term Loan Documents, (A) each Loan Party is Solvent; (B) no Default or Event of Default exists; (C) the representations and warranties set forth in **Section 9** are true and correct in all material respects; and (D) each Loan Party has complied in all material respects with all agreements and conditions to be satisfied by it under the Loan Documents;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## SECTION 7. COLLATERAL SECURITY AND GUARANTEES

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

- (a) all Accounts;
- (b) all Chattel Paper, including electronic chattel paper;
- (c) all Commercial Tort Claims, including, without limitation those Commercial Tort Claims identified on **Schedule 7.1** (as such Schedule may be updated by the Administrative Agent from time to time);
- (d) all Deposit Accounts;
- (e) all Documents;
- (f) all General Intangibles, including Payment Intangibles, Software and Intellectual Property;
- (g) all Goods, including Inventory, Equipment and Fixtures;
- (h) all Instruments;
- (i) all Investment Property;
- (j) all Letter-of-Credit Rights;
- (k) all Supporting Obligations;
- (l) all monies, whether or not in the possession or under the control of an Agent, a Lender, or a bailee or Affiliate of an Agent or a Lender, including any Cash Collateral;
- (m) all accessions to, substitutions for, and all replacements, products, and cash and non-cash proceeds of the foregoing, including proceeds of and unearned premiums with respect to insurance policies, and claims against any Person for loss, damage or destruction of any Collateral; and

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

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

**7.2.1. Bank Accounts.**

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

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

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

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



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

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

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

**7.3. Lien on Real Estate.**

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

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

**7.4. Other Collateral.**

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

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

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

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

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

**7.7.1. Guarantees.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**7.7.3. Effectiveness; Enforcement.** The guarantee of the Canadian Borrower hereunder shall be effective and shall be deemed to be made with respect to each Loan made to and each Letter of Credit issued for the account of the US Borrower as of the time it is made, issued or accepted, as applicable. The guarantee of the US Borrower hereunder shall be effective and shall be deemed to be made with respect to each Loan made to and each Letter of Credit issued for the account of the Canadian Borrower as of the time it is made, issued or accepted, as applicable. No invalidity, irregularity or unenforceability by reason of any Insolvency Proceeding, or any law or order of any government or agency thereof purporting to reduce, amend or otherwise affect any liability of any Loan Party, and no defect in or insufficiency or want of powers of any Loan Party or irregular or improperly recorded exercise thereof, shall impair, affect, be a defense to or claim against either guarantee. Each guarantee hereunder is a continuing guarantee and shall (a) survive any termination of this Agreement, and (b) remain in full force and effect until Full Payment of the Obligations to which such guarantee relates. The guarantee of the Canadian Borrower under this Agreement is made for the benefit of the Agents, the Issuing Banks and the Lenders and their