Table of Contents

# UNITED STATES
# SECURITIES AND EXCHANGE COMMISSION
## WASHINGTON, DC 20549

# FORM 8-K

## CURRENT REPORT
## Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

**Date of report (Date of earliest event reported): June 28, 2011 (June 23, 2011)**

# GENESCO INC.

(Exact Name of Registrant as Specified in Charter)

| **Tennessee** | **1-3083** | **62-0211340** |
|---|---|---|
| (State or Other Jurisdiction of Incorporation) | (Commission File Number) | (I.R.S. Employer Identification No.) |

| **1415 Murfreesboro Road Nashville, Tennessee** | **37217-2895** |
|---|---|
| (Address of Principal Executive Offices) | (Zip Code) |

**(615) 367-7000**

(Registrant's Telephone Number, Including Area Code)

**Not Applicable**

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

o Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**TABLE OF CONTENTS**

**ITEM 1.01. ENTRY INTO A MATERIAL DEFINITIVE AGREEMENT.**

Second Amended and Restated Credit Facility

On June 23, 2011, Genesco Inc. (the "Company") entered into a First Amendment (the "Amendment") to Second Amended and Restated Credit Agreement (the "Credit Facility") dated January 21, 2011 by and among the Company, certain subsidiaries of the Company party thereto, as other borrowers, the lenders party thereto and Bank of America, N.A., as administrative agent and collateral agent. The Credit Facility was amended to permit the Schuh acquisition (described in Item 2.02 below). The other material terms of the Amendment are as follows:

*Availability*

The aggregate principal amount available under the Credit Facility was increased from $300.0 million to $375.0 million. In addition, the Company's option to further increase the availability under the Credit Facility was reduced from $150.0 million to $75.0 million. The Credit Facility was also amended to put in place a $30.0 million A-1 Tranche on a "first out, last in" basis. The A-1 Tranche provides for an additional 10% availability of eligible inventory (declining to a 7.5% advance rate after one year and then to a 5% advance rate after two years) plus an additional 5% availability of eligible wholesale receivables (other than wholesale receivables of the Lids Team Sports business) (declining to a 2.5% advance rate after one year and then 0.0% after two years) plus an additional 5% of eligible credit card and debit card receivables less applicable reserves.

*Collateral*

In addition to the security previously granted to the lenders pursuant to the Credit Facility, the Company has pledged 65% of its interest in Genesco (UK) Limited (described below).

*Interest and Fees*

The Company's borrowings under the A-1 Tranche bear interest at varying rates that, at the Company's option, can be based on LIBOR or the Base Rate (as defined) *plus* in each case an Applicable Margin (as defined and based on average Excess Availability during the prior quarter).

*Covenants*

The Amendment also permits the Company to incur up to $250.0 million of senior debt provided that certain terms and conditions are met.

The foregoing description of the Amendment does not purport to be complete and is qualified in its entirety by reference to the Amendment, which is attached hereto as Exhibit 10.1.

U.K. Credit Facility

In connection with the Schuh acquisition (described in Item 2.02 below), Schuh entered into an amended and restated Senior Term Facilities Agreement and Working Capital Facility Letter (collectively, the "UK Credit Facility") which provides for terms loans of up to £29.5 million (a £15.5 million A term loan and £14.0 million B term loan) and a working capital facility of £5.0 million. The A term loan bears interest at LIBOR plus 2.50% per annum. The B term loan bears interest at LIBOR plus 3.75% per annum. The working capital facility bears interest at the Base Rate (as defined) plus 2.25% per annum.

The UK Credit Facility contains certain covenants at the Schuh level including a minimum interest coverage covenant initially set at 4.25x and increasing to 4.50x in January 2012 and thereafter, a maximum leverage covenant initially set at 2.75x declining over time at various rates to 2.25x beginning in July 2012 and a minimum cash flow coverage of 1.10x.

The UK Credit Facility is secured by a pledge of all the assets of Schuh (defined below) and its subsidiaries.

The foregoing description of the UK Credit Facility does not purport to be complete and is qualified in its entirety by reference to the UK Credit Facility which is attached as Exhibit 10.2.

**ITEM 2.02. COMPLETION OF ACQUISITION OR DISPOSITIONS OF ASSETS.**

On June 23, 2011, the Company, through its newly-formed, wholly-owned subsidiary Genesco (UK) Limited ("Genesco UK"), consummated the acquisition of all the outstanding shares of Schuh Group Limited ("Schuh"), a specialty retailer of casual and athletic footwear in accordance with the terms of a Sale and Purchase Agreement dated as of June 23, 2011 (the "Agreement") among Genesco, Genesco UK, Schuh and certain individuals listed on Schedule 1 thereof.

Pursuant to the terms and conditions of the Agreement, the Company acquired Schuh for £100.0 million, subject to closing adjustments, less £29.5 million of debt assumed and the amount of the retention note and escrow described below. In addition, the Company agreed to pay deferred purchase price of £25 million pursuant to a seller note, of which £15 million is payable on the third anniversary of the closing and £10 million is payable on the fourth anniversary of the closing subject to the payees' not having terminated their employment with Schuh under specified circumstances. The Company has also issued a £5 million retention note to the selling shareholders which may be used to satisfy indemnification obligations owing to the Company. The balance of the retention note which has not been used to satisfy indemnification obligations will be paid to the selling shareholders on June 23, 2013. An additional £1 million is being held in escrow to satisfy any final working capital adjustment. The Company has also agreed to implement a management bonus plan for certain members of Schuh management which will pay up to £25 million in cash bonuses in 2015 if Schuh has achieved specified performance targets. The selling shareholders will also be entitled to receive the amount of tax benefits potentially available to Schuh in connection with the transaction, if and when such benefits are actually received.

The Company funded the acquisition and associated expenses with borrowings under the Credit Facility and from cash on hand.

The foregoing description does not purport to be complete and is qualified in its entirety by reference to the Agreement and Loan Note Instrument which are attached hereto as Exhibit 2.1 and Exhibit 2.2.

**ITEM 2.03. CREATION OF A DIRECT FINANCIAL OBLIGATION OR AN OBLIGATION UNDER AN OFF-BALANCE SHEET ARRANGEMENT OF A REGISTRANT.**

The information under Item 1.01 above is incorporated by reference hereunder.

**ITEM 7.01 REGULATION FD DISCLOSURE.**

A copy of the Company's press release, dated June 23, 2011, announcing the consummation of the Schuh acquisition is furnished with this Current Report as Exhibit 99.1.

**ITEM 9.01 FINANCIAL STATEMENTS AND EXHIBITS**.

(a) and (b) *Financial Statements of Businesses Acquired and Pro Forma Financial Information.*

The Company has not included financial statements of the acquired business for the periods specified in Rule 3-05(b) of Regulation S-X or *the pro forma* financial information required pursuant to Article 11 of Regulation S-X. All such financial statements and *pro forma* financial information will be filed by the Company in an amendment to this Current Report on Form 8-K as promptly as practicable but in any event within 71 calendar days after the date that this Current Report on Form 8-K must have been filed.

(d) Exhibits

| Exhibit Number | Description |
|---|---|
| 2.1 | Sale and Purchase Agreement, dated as of June 23, 2011, by and among Genesco Inc., Schuh Group Limited, Genesco (UK) Limited and the persons listed on Schedule 1 thereto. (Pursuant to Item 601(b)(2) of Regulation S-K, the schedules and exhibits from this agreement are omitted, but will be provided supplementally to the Commission upon request.) |
| 2.2 | £25 million Loan Note Instrument of Genesco (UK) Limited dated June 23, 2011. |
| 10.1 | First Amendment to Second Amended and Restated Credit Agreement, dated June 23, 2011, by and among Genesco Inc., |

| Exhibit Number | Description |
| --- | --- |
| | certain subsidiaries of Genesco Inc. party thereto, as Other Domestic Borrowers and GCO Canada Inc., the lenders party thereto and Bank of America, N.A., as Administrative Agent and Collateral Agent. |
| 10.2 | Amendment and Restatement Agreement including Amended and Restated Senior Term Facilities Agreement dated June 23, 2011, among Schuh Group Limited and Lloyds TSB Bank PLC. |
| 99.1 | Press Release dated June 23, 2011. |

Table of Contents

**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 hereunto duly authorized.

GENESCO INC.

Date: June 28, 2011

By: /s/ Roger G. Sisson
Name: Roger G. Sisson
Title: Senior Vice President, Secretary and General Counsel

## EXHIBIT INDEX

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| 10.2 | Amendment and Restatement Agreement including Amended and Restated Senior Term Facilities Agreement dated June 23, 2011, among Schuh Group Limited and Lloyds TSB Bank PLC. |
| 99.1 | Press Release dated June 23, 2011. |

**Exhibit 2.1**

DATED 23 June 2011

**SALE AND PURCHASE AGREEMENT**
**relating to**
**the issued share capital of**
**SCHUH GROUP LIMITED**

5 New Street Square, London EC4A 3TW
Tel +44 (0)20 7300 7000
Fax +44 (0)20 7300 7100
DX 41 London
www.taylorwessing.com

TaylorWessing

## Index

**THIS AGREEMENT** is made on 23 June 2011

**BETWEEN**

(1) **THE PERSONS** whose names and addresses are set out in schedule 1;

(2) **SCHUH GROUP LIMITED** whose registered office is at 1 Neilson Square, Deans Industrial Estate, Livingston, West Lothian EH54 8RQ, further details of which are set out in part A of schedule 2 (the "**Company**");

(3) **GENESCO (UK) LIMITED** (registered in England and Wales with number 7667223) whose registered office is at 5 New Street Square, London EC4A 3TW (the "**Buyer**"); and

(4) **GENESCO INC,** of 1415 Murfreesboro Road PO Box 731 Nashville, Tennessee, 37202-0731 ("**Genesco**").

**INTRODUCTION**

The Sellers have agreed to sell (in the proportions set opposite their names in schedule 1) and the Buyer has agreed to buy all of the issued share capital of Schuh Group Limited which is a private company limited by shares incorporated in Scotland, further details of which are set out in part A of schedule 2.

**AGREED TERMS**

**1. Definitions and interpretation**

1.1 *Definitions*

In this agreement:

"**1985 Act**" means the Companies Act 1985;

"**ACAS Code of Practice**" means a code of practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 which relates exclusively or primarily to the resolution of disputes;

"**accounting period**" means an accounting period determined in accordance with Chapter 2 of Part 2 of the CTA 2009;

"**Accounting Requirements**" means in relation to the Accounts, the accounting requirements of the Companies Act and all applicable IFRSs or (if permitted by law in relation to the Accounts), UK GAAP;

"**Accounts**" means the audited (and, where relevant, consolidated) accounts of the Company and each of the Subsidiary Undertakings for the financial year ended on the Accounts Date including the auditors' and directors' reports, the audited balance sheets as at the Accounts Date, the audited profit and loss accounts for that year and the notes to them;

"**Accounts Date**" means 27 March 2011

"**Acquisition**" means the acquisition by the Buyer of the Sale Shares pursuant to the terms of this agreement;

"**Advisers**" in relation to a person means professional advisers advising that person, including (unless the context requires otherwise) partners or members in or directors of (as the case may be) such advisers and employees of such advisers;

"**Applicable Law**" means any law (including common law or other binding law), statute, regulation, code, ordinance, rule, judgment, order, decree or directive or any determination by or requirement or recommendation of a Competent Authority or interpretation or administration of any of the foregoing by a Competent Authority;

"**Approval**" means an approval, permit, authority, consent or licence;

"**Approved Options**" means certain options granted as options approved by HMRC as set out in part B of schedule 1;

"**Associate**" means in relation to a person:

(a) a person who is his associate and the question of whether a person is an associate of another shall be determined in accordance with section 435 of the Insolvency Act 1986; and (whether or not an associate as so defined);

(b) any Group Undertaking (as defined in section 1161 of the Companies Act) of that person;

"**Available Tax Benefit Amount**" bears the meaning attributed thereto in the B Loan Note Instrument;

"**B Loan Note Instrument**" means the instrument in agreed form constituting the B Loan Notes;

"**B Loan Notes**" means the loan notes constituted by the B Loan Note Instrument to be issued by the Buyer in favour of the Principal Shareholders;

"**Business Day**" means a day other than a Saturday, Sunday or public holiday in England or Scotland;

"**Buyer's Solicitors**" means Taylor Wessing LLP of 5 New Street Square, London EC4A 3TW;

"**CAA 2001**" means the Capital Allowances Act 2001;

"**Cash Bonus**" means the payment of the sum of £17,515,689 to Employees;

"**Claim**" includes a claim, action, proceeding or demand;

"**Companies Act**" means the Companies Act 2006;

"**Competent Authority**" means any national, state or local governmental authority, any governmental, quasi-governmental, judicial, public or administrative agency, authority or body, any court of competent jurisdiction, the New York Stock Exchange, any Recognised Investment Exchange, the Panel on Takeovers and Mergers, and any local, national or supranational agency, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) acting within their powers and having jurisdiction over this agreement or any of the parties;

“**Completion**” means completion of the sale and purchase of the Sale Shares in accordance with the parties’ obligations under clause 6;

“**Completion Date**” means the date for Completion specified in clause 6.1;

“**Computer Contracts**” means all contracts or written arrangements relating to the Computer System (including licences, agreements for support, maintenance, disaster recovery, security and bureau services provided to or by any Group Company);

“**Computer Data**” means the computer-readable information or data owned or used by any Group Company and stored in electronic form;

“**Computer Hardware**” means the computer hardware, firmware, equipment and ancillary equipment (other than Computer Software and Computer Data) owned or used by any Group Company and all related manuals and documentation;

“**Computer Software**” means the computer programs owned or used by any Group Company and all related manuals and documentation;

“**Computer System**” means the Computer Hardware, Computer Data and Computer Software;

“**Confidential Information**” has the meaning given in clause 10;

“**Consideration**” has the meaning given to it in clause 3.1;

“**Consideration Loan Note Instrument**” means the instrument in the agreed form constituting the Consideration Loan Notes;

“**Consideration Loan Notes**” means the guaranteed secured loan notes 2014-2015 constituted by the Loan Note Instrument to be issued by the Buyer in favour of the Principal Shareholders on Completion;

“**Consideration Loan Note Security**” means the second charge to be provided by the Company in the agreed form to the Principal Shareholders by way of security for the Consideration Loan Notes.

“**Consultant**” means a consultant, independent contractor or other individual engaged by a Group Company under a contract for service not being an Employee;

“**Contributor**” means a person who has contributed and/or is contributing to the design and/or development of any element of the Proprietary Software;

“**Corporation Tax Deduction**” means the UK Corporation Tax Deduction and the Irish Corporation Tax Deduction as the case may be;

“**CTA 2009**” means the Corporation Tax Act 2009;

“**CTA 2010**” means the Corporation Tax Act 2010;

“**Data Protection Legislation**” means any data protection and privacy legislation applicable to a Group Company’s business including, in the United Kingdom, the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003;

“**Director**” means a director of a Group Company;

"**Disclosed**" means fairly disclosed to the Buyer in the Disclosure Letter with sufficient explanation and detail to allow a reasonable purchaser to identify the nature and scope of the matter disclosed;

"**Disclosure Letter**" means the letter of the same date as this agreement from the Warrantors to the Buyer executed and delivered immediately before the signing of this agreement;

"**Dispute Resolution Regulations**" means the Employment Act 2002 (Dispute Resolution) Regulations 2004;

"**EBT**" means the Schuh Employee Benefit Trust;

"**Employee**" means an employee, contract worker, part-time employee, temporary employee or home worker of a Group Company;

"**Encumbrance**" includes a mortgage, charge, lien, pledge, right of pre-emption, option, covenant, restriction, lease, trust, order, decree, title defect or any other security interest or conflicting claim of ownership or right to use or any other third party right;

"**Environmental Law**" means every applicable law, regulation, code of practice and other similar control and advice made or issued by national or local government or by any other regulatory body and every regulation and directive made by the legislative organs of the European Union relating to the protection of the environment (including the prevention of pollution of land, water or air due to the release, escape or other emission of any substance including radioactive substances or the production, transport, storage, treatment, recycling or disposal of waste or the making of noise);

**"Excluded Matters"** means (i) the exercise of the Options (ii) the appointment of the beneficial interest of Shares in the Company on or prior to the date hereof by the EBT; and/or (iii) the payment of the Cash Bonus;

"**Executive Bonus**" means the sum not exceeding £5,061,008 calculated and paid in accordance with the Executive Bonus Scheme;

"**Executive Bonus Scheme**" means the agreed form document setting out the arrangements relating to the Executive Bonus;

"**Exercise Form**" means the agreed form document pursuant to which the Optionholders will exercise their Options (being Options which have not lapsed or otherwise been waived) immediately prior to and with effect from Completion and pursuant to which the Optionholders will, inter alia, instruct the Buyer to pay to the Company the amounts prescribed in clause 6.4(b);

"**finally determined**" means, in relation to any Claim (including any Claim against the Warrantors under the Tax Deed), that part of the Claim as is:

(a) agreed in writing by both parties;

(b) any tax assessed on the Company which relates to a pre-Completion period for which a claim has been or will be made under the Tax Deed, save where the matter is subject to a dispute in accordance with clause 7 of the Tax Deed provided that the Warrantors have complied with their obligations under clause 7.2 of the Tax Deed; or

(c) the subject of a final judgment of a court of competent jurisdiction or award of a competent arbitral tribunal, not being:

(i) a judgment or award which is the subject of an ongoing appeal or review by a court of competent jurisdiction; or

(ii) a judgment or award in respect of which the time permitted for lodging an appeal or a reference for review by a court of competent jurisdiction has yet to expire;

"**financial year**" shall be construed in accordance with section 390 of the Companies Act;

"**Goods**" means goods supplied, exported or offered for sale at any time in the 24 months up to the Completion Date by or on behalf of a Group Company;

"**Group**" or **Group Companies**" means the Company and the Subsidiary Undertakings and "**Group Company**" means any of them;

"**Group Intellectual Property**" means all Intellectual Property owned or exploited by any Group Company;

"**Group Member**" means at any relevant time, in relation to any undertaking, a "group undertaking" (as defined in section 1161 of the Companies Act) of that undertaking and "**Member of its Group**", in relation to any undertaking, means any group undertaking as so defined of that undertaking;

"**Group Personal Pension Scheme**" means the group personal pension scheme in which certain employees of the Company and of the Subsidiary Undertakings participate which is provided by AVIVA;

"**Genesco Minutes**" means the certified true copy minutes of a meeting of Genesco's board of directors approving the signature by Genesco of this agreement and the Consideration Loan Note Instrument, the B Loan Note Instrument and the Retention Loan Note Instrument;

"**ICTA 1988**" means the Income and Corporation Taxes Act 1988;

"**IFRSs**" means:

(a) every applicable International Financial Reporting Standard issued by the International Accounting Standards Board;

(b) every applicable International Accounting Standard; and

(c) every applicable Interpretation.

"**IHTA 1984**" means the Inheritance Tax Act 1984;

"**Indebtedness**" means all indebtedness owing by any Group Company including, for the avoidance of doubt, all amounts owing under the Lloyds Facilities, other than:

(a) normal trading debts to suppliers;

(b) finance lease indebtedness; and

(c) any liability to Taxation;

"**Independent Accountant**" means an independent Chartered Accountant or firm of Chartered Accountants to be agreed upon between Management and the Buyer or, in default of agreement, to be nominated by the President for the time being of the Institute of Chartered Accountants;

"**Insolvency Event**" in relation to a person, means any of the following:

(a) that person ceasing or threatening to cease to carry on business or being deemed to be unable to pay its debts within the meaning of section 123 Insolvency Act 1986 (provided that, for the purposes of this agreement, the reference to £750 in section 123(1) of that Act shall be construed as a reference to £10,000) or admitting that it is unable to pay its debts as they fall due;

(b) that person giving notice to any of its creditors that it has suspended or is about to suspend payment of any of its debts or commencing negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;

(c) a meeting of that person's creditors being convened or held;

(d) an arrangement or composition with or for the benefit of its creditors (including a voluntary arrangement as defined in the Insolvency Act 1986) being entered into or proposed by or in relation to that person;

(e) a moratorium coming into force in respect of that person in accordance with paragraph 8.1 of Schedule A1 to the Insolvency Act 1986 or that person applying to the court for an interim order under section 253 of the Insolvency Act 1986;

(f) a receiver or administrative receiver taking possession of or being appointed over or a mortgagee, chargee or other encumbrancer taking possession of the whole or any part of the assets of that person;

(g) any distress, execution or other process being levied or enforced (and not being discharged within seven days) on any asset of that person;

(h) that person or its directors or the holder of a qualifying floating charge (as defined in Schedule B1 to the Insolvency Act 1986) giving notice of his, their or its intention to appoint an administrator in accordance with paragraphs 18 or 26 of Schedule B1 to the Insolvency Act 1986;

(i) that person or its directors or any of its creditors or the holder of a qualifying floating charge (as defined in Schedule B1 to the Insolvency Act 1986) making an application to the court for the appointment of an administrator;

(j) an administrator being appointed of that person under paragraphs 14 or 22 of Schedule B1 to the Insolvency Act 1986 or otherwise;

(k) a petition being presented (and not being discharged within 14 days) or a resolution being passed or an order being made for the administration or the winding-up, bankruptcy or dissolution of that person or that person being struck off the register of companies; or

(l) the happening in relation to that person of an event analogous to any of the above in any jurisdiction;

"**Intellectual Property**" means patents, utility models, petty patents, trade and service marks, design rights, trade names, service names, business names, copyrights, rights

in the nature of copyright, resale rights, database rights, domain names, know-how, rights in trade secrets and confidential information, rights protecting reputation and goodwill, rights in unfair competition and all other intellectual property rights and analogous rights as may exist anywhere in the world for the full term of the rights concerned together with all reversions, revivals, extensions and renewals of such rights (whether registered or not); all registrations and pending registrations relating to any such rights, the benefit of any pending applications for any such registrations and the right to apply for registrations of such rights; and all rights of action, powers or benefits belonging or accrued in relation to such rights (including the right to sue for and recover damages for past infringements);

"**Irish Corporation Tax Deduction**" means the deduction for corporation tax purposes available and which has been claimed by any Group Company tax resident in Ireland in any tax computation submitted on or after 23 June 2011 which arises solely in respect of and in consequence of the payment of the Cash Bonus by Schuh (R.O.I.) Limited;

"**ITEPA 2003**" means the Income Tax (Earnings and Pensions) Act 2003;

"**Intellectual Property Agreements**" means all written agreements, contracts, permissions, undertakings and understandings which relate to any of the Group Intellectual Property, including:

(a) those pursuant to which any Group Company is permitted to use any Intellectual Property ("**Licences-In**");

(b) those pursuant to which any Group Company permits a third party to use any Intellectual Property ("**Licences-Out**"); and

(c) those which restrict the use of any Group Intellectual Property (including any delimitation or co-existence agreement or agreement limiting use by territory, field, person or as to time); and

(d) all confidentiality and non-disclosure agreements to which any Group Company is a party or beneficiary;

"**Interpretation**" means an explanation of the application of International Financial Reporting Standards to particular transactions, arrangements or circumstances issued by the International Financial Reporting Interpretations Committee of the International Accounting Standards Board;

"**LIBOR**" means:

(a) the applicable Screen Rate; or

(b) (if no Screen Rate is available for one month) the arithmetic mean of the rates (rounded upwards to four decimal places) as quoted to leading banks in the London interbank market,

as of 11.00 a.m. on the relevant day for the offering of deposits in Sterling for one month;

"**Licences-In**" has the meaning given to it in paragraph (a) of the definition of Intellectual Property Agreements;

"**Licences-Out**" has the meaning given to it in paragraph (b) of the definition of Intellectual Property Agreements;

"**Life Assurance Scheme**" means the Schuh Limited Group Death in Service Plan deed and appended rules dated 20th November 2000;

"**Lloyds**" means Lloyds TSB Bank plc with registered number 00002065 and having its registered office at 24 Gresham Street, London EC2V 7HN;

"**Lloyds Facilities**" means the credit facilities made available to the Company and certain of the Group Companies by Lloyds pursuant to a senior term facilities agreement between, among others, the Company and Lloyds dated 10 November 2010;

"**Loss**" means any loss, damage, liability, fine, penalty, charge and any other cost and expense reasonably and properly incurred including any costs of recovery on a full indemnity basis;

"**Management**" means Kenny Ball, David Spencer, Phil Whittle, Sean McKee, Rob Bridle, Mark Doherty and David Reid and "**Manager**" means any one of them;

"**Management Accounts**" means the management accounts of the Group Companies comprising the balance sheet as at the Management Accounts Date and the profit and loss account for the two periods commencing on the day immediately following the Accounts Date and ending on the Management Accounts Date;

"**Management Accounts Date**" means 22 May 2011;

"**Management Bonus**" means the sum not exceeding £25,000,000 calculated and paid in accordance with the Management Bonus Scheme;

"**Management Bonus Scheme**" means the agreed form document setting out the arrangements relating to the Management Bonus;

"**Material Contract**" means any agreement or arrangement of the kind listed in paragraph 4.5(a) in part 4 of the Warranties;

"**Material Supplier**" means a Supplier with whom any Group Company has purchased goods or services for an amount in excess of £500,000 during the 24 month period ending on the Completion Date;

"**OEM Agreement**" means an agreement under which one party agrees to manufacture products for and to test, deliver and/or provide support and training to another party in respect of products to be resold by that other party or any similar agreement or arrangement;

"**Official Dealing Rate**" means the yearly rate of interest announced by the Monetary Policy Committee of the Bank of England (and from time to time in force) as the official dealing rate, being the rate at which the Bank of England is willing to enter into transactions for providing short term liquidity in the money markets;

"**Options**" means the respective rights to acquire Ordinary Shares granted to each Optionholder being the Approved Options and the Unapproved Options;

"**Optionholders**" means those persons set out in part B of schedule 1;

"**Optionholder Letters**" means the letter in the form set out in Schedule 6 from the Company to each Optionholder in relation to his or her Options and enclosing the Exercise Form and, the Optionholder Transfers;

“**Optionholder Transfers**” means the documents of transfer in the agreed from transferring the Sale Shares held by the Optionholders to the Buyer;

“**Ordinary Shares**” means ordinary shares of £1 each in the Company;

“**Outstanding Notes**” means the outstanding loan notes issued by the Company to Lyn Ferguson, Thomas Lynch, Stuart Ferguson and Ruth Lynch of an aggregate principal amount of £9,200,000;

“**Pension Schemes**” means the Group Personal Pension Scheme, the Personal Retirement Savings Account Pension and the Self Invested Personal Pension Plans;

“**Personal Retirement Savings Account Pension**” means the personal retirement savings account pension in which certain employees of Schuh (ROI) Limited participate;

“**Principal Shareholders**” or “**Principal Sellers**” means Colin Temple and Mark Crutchley and “**Principal Shareholder**” or “**Principal Seller**” means any one of them;

“**Prohibited Area**” means the United Kingdom and Eire;

“**Prohibited Business**” means the business of designing, distributing and/or retailing shoes, other footwear and/or footwear related items as carried on by a Group Company during the 24 month period ending on the Completion Date;

“**Proprietary Software**” means all the software and documentation which has been developed by or on behalf of the Company or any Group Member in connection with the business, including that identified or described in part D of schedule 5 and all Supporting Documentation;

“**Real Property**” means all the properties short particulars of which are set out in schedule 7;

“**Recognised Investment Exchange**” has the meaning given in section 285 of the Financial Services and Markets Act 2000 (such exchanges being at the date of this agreement, EDX London Ltd, ICE Futures Europe, LIFFE Administration and Management, London Stock Exchange plc (including, without limitation, in its capacity as operator and regulator of AIM), PLUS Stock Exchange Plc and The London Metal Exchange Limited);

**“Relevant Borrowings”** means all amounts outstanding under the Lloyds Facilities;

“**Retention Loan Note Instrument**” means the instrument in the agreed form constituting the Retention Loan Notes;

“**Retention Loan Notes**” means the loan notes constituted by the Retention Loan Note Instrument and to be issued by the Buyer in favour of the Principal Shareholders on Completion;

**“Sales Adviser”** means any person working as a sales assistant in any of the Group’s retail outlets;

“**Sale Shares**” means all of the issued share capital of the Company comprising (a) all issued Ordinary Shares and (b) all Ordinary Shares subject to Options, to be issued immediately prior to and conditional upon Completion to the Optionholders (to the extent that those Options have not been waived or lapsed);

"**Screen Rate**" means, in relation to LIBOR, the British Bankers' Association Interest Settlement Rate for the relevant period displayed on the appropriate page of the Reuters screen. If the agreed page is replaced or service ceases to be available, the Buyer and the Sellers' Agent may specify another page or service displaying the appropriate rate;

"**Self Invested Personal Pension Plans**" means the self invested personal pension plans for directors provided by SIPP Centre;

"**Sellers**" means each of the Shareholders and "**Seller**" means any one of them;

"**Sellers' Agent**" means the person appointed to act as agent for the Sellers in accordance with clauses 17.10, 17.11 and 17.12 and references in schedule 11 to the parties shall mean the Sellers' Agent and the Buyer;

"**Seller's Associate**" means an Associate of a Seller other than a Group Company;

"**Sellers' Solicitors**" means Morton Fraser LLP of Quartermile Two, 2 Lister Square, Edinburgh EH3 9GL;

"**Shareholders**" means those person set out in part A of schedule 1;

"**Subsidiary Undertakings**" means the subsidiary undertakings (as defined in section 1162 of the Companies Act) of the Company details of which are set out in part B of schedule 2;

"**Supplier**" means a supplier to (other than utilities in respect of the supply of services in the ordinary and normal course of their business to their general body of customers) or sub-contractor of any Group Company in connection with the Prohibited Business with whom any Group Company has traded during the 24 months immediately ending on the Completion Date;

"**Supporting Documentation**" means all documentation, software and recorded information and data (whether in paper or electronic form or recorded on physical media) embodying the know-how and/or relating to the Proprietary Software including notebooks, written specifications, technical manuals, source code, flowcharts, technical design documents and diagrams;

"**Tax**" or "**Taxation**" has the meaning given to it in the Tax Deed;

"**Taxation Authority**" has the meaning given to it in the Tax Deed;

"**Tax Deed**" means the tax deed between the Warrantors and the Buyer in agreed form;

"**Tax Warranties**" means the warranties set out in paragraph 10 of Schedule 8 and "**Tax Warranty**" means any one of them;

"**TCGA 1992**" means the Taxation of Chargeable Gains Act 1992;

"**TIOPA 2010**" means the Taxation (International and Other Provisions) Act 2010;

"**TMA 1970**" means the Taxes Management Act 1970;

"**Transaction Document**" means any of this agreement, the Tax Deed and any other document entered into on or within 7 days after the date of this agreement in connection with it;

"**UK Corporation Tax Deduction**" means the deduction for corporation tax purposes available and which has been claimed by any Group Company tax resident in the UK in any tax computation submitted or resubmitted on or after 23 June 2011 which arises solely in respect of and in consequence of:-

(a) the exercise of the Options by any Employees and for which tax relief is claimed pursuant to Part 12 of the Corporation Tax Act 2009;

(b) the acquisition of shares in the Company by the Employees by reason of the appointment of the beneficial interest in such shares to them by the trustee of the EBT and for which tax relief is claimed pursuant to Part 12 of the Corporation Tax Act 2009;

(c) the payment of the Cash Bonus by Schuh Limited;

"**UK GAAP**" means accounting principles, standards and practices generally accepted from time to time in the United Kingdom and approved by the United Kingdom Accounting Standards Board;

"**Unapproved Options**" means certain options held by certain of the sellers as set out in column (5) of part B of Schedule 1;

"**VAT**" means Value Added Tax chargeable under the VATA 1994 or under any legislation replacing it or under any legislation which the VATA replaced and further means Value Added Tax at the rate in force when the relevant supply is made and any tax of a similar nature which is introduced in substitution for or as an addition to such tax from time to time and any penalties or fines in relation to them;

"**VATA 1994**" means the Value Added Tax Act 1994;

"**Warranties**" means the warranties set out in schedule 8 and "**Warranty**" means any one of them; and

"**Warrantors**" means in respect of the warranties set out in paragraphs 1.1(a) and (b) and 1.2 of schedule 8, the Sellers and in all other respects the Principal Shareholders.

1.1 *Interpretation*

In this agreement:

(a) reference to:

(i) any statute or statutory provision includes a reference:

(A) to that statute or statutory provision as from time to time consolidated, modified, re-enacted (with or without modification) or replaced by any statute or statutory provision; and

(B) any subordinate legislation made under the relevant statutory provision,

except to the extent that the effect of referring to any such consolidation, modification or re-enactment coming into force after the date of this agreement would be to increase or extend the liability of a party under this agreement;

(ii) the singular includes the plural and vice versa and any gender includes other genders;

(iii) the "**introduction**" or to a "**clause**" or "**schedule**" is a reference to the Introduction or the relevant clause or schedule of or to this agreement;

(iv) a person includes all forms of legal entity including an individual, company, body corporate (wherever incorporated or carrying on business), unincorporated association, governmental entity and a partnership and, in relation to a party who is an individual, his legal personal representative(s);

(v) a document "**in agreed form**" is to a document in the form agreed by and initialled by or on behalf of each party for the purposes of identification;

(vi) a party or the parties means a party or the parties to this agreement and includes his successors and permitted assigns and for this purpose "**permitted assigns**" includes:

- in relation to a right of a party — any person to whom that right may have been assigned except to the extent that the assignment of that right would be in breach of the provisions of this or any other agreement or deed or prohibited by law; and
- in relation to an obligation of a party — any person to whom that obligation may have been assigned with the written agreement of the party to whom the obligation is owed,

provided that notwithstanding any succession, assignment or transfer, no party shall be relieved from any obligation arising under this agreement except:

- by operation of law;
- as expressly provided in this agreement; or
- with the written agreement of the party to whom the obligation is owed;

(vii) "**writing**" and "**written**" includes typing, printing, lithography, photography and other modes of representing or reproducing words in a legible and non transitory form; and

(viii) "**this agreement**" includes this agreement as amended or supplemented from time to time;

(b) the words "**include**", "**including**" and "**in particular**" are to be construed as being by way of illustration or emphasis only and are not to be construed so as to limit the generality of any words preceding them;

(c) the words "**other**" and "**otherwise**" are not to be construed as being limited by any words preceding them;

(d) the word "**property**" includes choses in action and other intangible property;

(e) the table of contents and the headings to clauses and schedules are to be ignored in construing this agreement;

(f) the words, "**parent undertaking**", "**subsidiary undertaking**" and "**undertaking**" have the meanings given to them in sections 1162 and 1161 of the Companies Act;

(g) if a period of time is specified and dates from a given day or the day of an act or event, it shall (unless otherwise stated in clause 12 (*Notices and other communications*)) be calculated excluding that day and a reference to a time of day is unless otherwise specifically stated a reference to the time in England save in relation to clause 12.3 where the time is a reference to the time in the place of receipt;

(h) if a party must do something on a given day (other than service of a communication in accordance with clause 12 (*Notices and other communications*), they must do it by 5:30 p.m. on that day (unless this agreement expressly states otherwise). If they do the thing after 5:30 p.m. on a day, they are treated as not having done it until the next Business Day;

(i) where a party (the "**Obligor**") agrees with another (the "**Obligee**") to use its "best endeavours" to do any thing, the full extent of the Obligor's obligation is to take those reasonable steps which a prudent and conscientious person would take to do that thing when acting in the interests of the Obligee whether or not such steps may be contrary to the interests of the Obligor having regard to:

(i) the costs of taking such steps; and

(ii) whether such costs are proportionate to the object to be achieved;

(j) where in this agreement a party (the "**Obligor**") agrees with another (the "**Obligee**") to use its "reasonable endeavours" to do any thing, the full extent of the Obligor's obligation is to take those reasonable steps which a prudent and conscientious person would take to do that thing when acting in the interests of the Obligee but without being required to take any steps which may be contrary to the interests of the Obligor or to incur any material costs or divert staff or resources from other activities to a material extent; and

(k) a reference to any English legal term for any action, remedy, procedure, judicial proceeding, legal document, legal status, or legal concept is, in respect of any jurisdiction other than England and Wales, deemed to include what most nearly approximates in that jurisdiction to the English legal term.

1.2 The schedules form part of this agreement as if set out in full in this agreement and a reference to "**this agreement**" includes a reference to the schedules.

**2. Sale and purchase**

2.1 Each Shareholder shall sell with full title guarantee and free from all Encumbrances the number of Sale Shares set opposite his name in part A of schedule 1 and the Buyer shall buy the Sale Shares.

2.2 The Sale Shares shall be sold with all rights to dividends and other distributions declared after the date of this agreement in respect of the Sale Shares and all other rights and advantages belonging to or accruing on the Sale Shares on or after that date.

2.3 If any Seller fails to comply with his obligation to transfer his Sale Shares on Completion, the Buyer shall not be obliged to complete the purchase of the other Sale

Shares but may nevertheless elect to complete the purchase of the other Sale Shares without prejudice to its rights against the defaulting Seller.

2.4 Each Seller irrevocably waives all pre-emption rights which he may have under the Company's articles of association or any other agreement relating to the Sale Shares or otherwise so as to enable the sale of the Sale Shares to the Buyer to proceed free of pre-emption rights.

**3. Consideration**

3.1 The total consideration payable by the Buyer to the Sellers for the sale of the Sale Shares shall be an amount of £79,046,151 adjusted in accordance with schedule 11 (the "**Consideration**").

3.2 Subject to clause 3.4 the Consideration shall be satisfied as follows:

(a) as to £44,648,881 on Completion by transfer to the account of the Sellers' Solicitors at Clydesdale Bank plc Bank, sort code 82-45-05, account number 80385001; and

(b) as to £25,000,000 by the issue of the Consideration Loan Notes in equal proportions to the Principal Shareholders.

(c) as to £3,397,270 by the issue of the B Loan Notes in equal proportions to the Principal Sellers.

(d) as to £1,000,000 to be paid into the Escrow Account (as defined in schedule 10) on Completion and held in accordance with the provisions of schedule 10.

(e) as to £5,000,000 by the issue of the Retention Loan Notes in equal proportions to the Principal Shareholders.

3.3 The cash consideration to which each Seller is (subject to the provisions of schedule 11) entitled are the amounts set out opposite his or her name in schedule 1.

3.4 Any adjustment to the Consideration shall be paid in accordance with the provisions of schedule 11.

3.5 Each party agrees to provide all information and assistance reasonably requested by any other party or its solicitors to enable the party making the request or its solicitors to comply with the Money Laundering Regulations 2007.

**4. Warranties and Indemnity**

4.1 Each Seller warrants and represents in relation to his own Sale Shares and himself as set out in Part 1 of Schedule 8 and the Warrantors hereby warrant and represent to the Buyer in the knowledge that the Buyer is entering into this agreement in reliance on the accuracy of the Warranties, that the Warranties are true and accurate.

4.2 If there is a breach of any Warranty then, in respect of each breach and without prejudice to the right of the Buyer to claim damages or exercise any other right or remedy, the Warrantors hereby indemnify the Buyer against such breach and agree to pay the Buyer on demand:

(a) such sum as would, if paid to the relevant Group Company, put it in the position which would (after payment of any Taxation payable in respect of the receipt of the sum) have existed if there had been no breach;

or (at the option of the Buyer (to be exercisable separately in respect of each breach) as an alternative (and not in addition) to making a Claim under clause 4.2(a));

(b) a sum equal to the difference between the value of Sale Shares at the date on which the Warranty was given (after taking into account that the fact or matter giving rise to the breach was not as warranted) and the value which the Sale Shares would have had at that date if the fact or matter giving rise to the breach had been as warranted.

plus in either case all Losses incurred by the Buyer and any Group Company in connection with the breach.

4.3 Each Warranty shall be construed as an independent warranty and (except as otherwise provided in clause 4) shall not be limited by reference to or inference from any other term of any Transaction Document or any other Warranty.

4.4 Payments made by the Warrantors to the Buyer whether in cash or by way of set off against any amount outstanding under the Consideration Loan Notes, the Retention Loan Notes or the B Loan Notes or otherwise in connection with this agreement (including without limitation any amounts for which the Buyer has a right of set-off under clause 4.12 of this agreement) shall so far as possible be treated by the parties as a reduction in the consideration for the Sale Shares.

4.5 Where a Warranty is qualified by the expression “so far as the Warrantors are aware” or a similar expression, each Warrantor shall be deemed to have the awareness of matters that are within the knowledge of the other Warrantor and each of the Managers and (except where the contrary is expressly stated) to have such additional awareness as the Warrantors would have if they had made all reasonable enquiry.

4.6 Each Warrantor undertakes to the Buyer and to each Group Company that he will waive any right which he may have and not make any Claim in respect of any misrepresentation, inaccuracy or omission in or from any information or advice supplied by a Group Company or its officers, Employees, Consultants or Advisers in connection with the entering into of this agreement, the giving of the Warranties and the preparation of the Disclosure Letter.

4.7 The Buyer warrants that it does not actually know of any matter in respect of which (having regard to its state of actual knowledge at Completion) it expects to bring a Claim under the Warranties.

4.8 The Warrantors shall indemnify the Buyer against and shall pay to the Buyer an amount equal to the amount which if paid to the Company or any relevant Group Company would indemnify the Company or that Group Company against all Losses arising in respect of:

(a) any Claim against a Group Company or the Buyer by any broker, finder, financial adviser or other person retained by any Seller or a Group Company in connection with the transactions effected by this agreement;

(b) any Claim brought by a shareholder or former shareholder of any Group Company in relation to any sale of shares in the Company or a Group Company on or prior to the date of this agreement (other than pursuant to this

agreement) including, without limitation, as to the price or other terms on which such shares were sold; and

(c) any claim, threatened claim or dispute against any Group Company by any Employee for any bonus payment which such Employee alleges was to be paid out in 2011.

4.9 All sums payable by the Warrantors under this agreement shall be paid free of all deductions or withholdings unless the deduction or withholding is required by law, in which event the Warrantors shall pay such additional amount as shall be required to ensure that the net amount received by the Buyer will equal the sum which would have been received by it had no deduction or withholding been required to be made.

4.10 If any amount due or paid by the Warrantors in respect of any breach of, or indemnity contained in, this agreement will be or has been subject to Taxation in the hands of the Buyer, the Buyer may demand from the Warrantors such sum (after taking into account any Taxation payable in respect of it) as will ensure that the Buyer receives and retains a net sum equal to the sum which it would have received had the payment not been subject to Taxation. Any sum payable under this clause 4.10 shall be paid within five Business Days of demand or, at the option of the Buyer, may be set off by the Buyer against the Loan Notes in accordance with clause 4.12.

4.11 If any amount owing from either the Buyer to the Warrantors or the Warrantors to the Buyer under this agreement is not paid when due it shall bear interest both before and after any judgment at a yearly rate of 3 per cent above the Official Dealing Rate from time to time.

4.12 If there is any Claim for any breach of any of the Warranties or a Claim under the Tax Deed or under clause 4.8 or clause 9, the Buyer shall have the right to set off any sum finally determined to be payable by the Warrantors in respect of any loss suffered by the Buyer or any Group Company in respect of such breach of the Warranties or the Tax Deed against any unpaid part of the Consideration for the Sale Shares and/or against the Consideration Loan Notes and/or against the Retention Loan Notes and/or the B Loan Notes provided that, prior to setting any such sum off against any unpaid part of the Consideration for the Sale Shares and/or against the Consideration Loan Notes and/or against the B Loan Notes, the Buyer will first set any such sum off against the Retention Loan Notes. If as at the date on which any payment is due to be made by the Buyer to the Warrantors in respect of any unpaid part of the Consideration for the Sale Shares and/or under the Consideration Loan Notes and/or under the Retention Loan Notes and/or under the B Loan Notes there are any Claims which have been intimated but not finally determined, the Buyer may continue to withhold payment of an amount equivalent to the amount reasonably claimed pending such Claim being finally determined and to the extent that such Claim is finally determined in the Warrantor's favour the Buyer shall pay to the Warrantors interest (in addition to any interest payable to the Warrantors under the relevant Loan Note or this agreement save where otherwise provided in such Loan Note or this agreement) on the amount withheld at a rate of 5% over LIBOR from the due date for payment until payment in full compounded monthly.

4.13 The Principal Sellers undertake and warrant to the Buyer that the Group Companies shall be entitled to the Available Tax Benefit Amount of at least £3,397,270. If the aggregate Available Tax Benefit Amount is less than the sum of £3,397,270 as determined on the last Redemption Date in accordance with the B Loan Note Instrument, the Principal Sellers shall jointly and severally covenant to pay to the Buyer an amount which is equal to the amount by which the aggregate Available Tax Benefit Amount is less than £3,397,270.

4.14 If there is any Claim under clause 4.13 the Buyer's sole remedy shall be to set off such sum determined in accordance with clause 4.13 against the B Loan Notes and such breach shall not otherwise give rise to any right of the Buyer against the Principal Sellers nor to any right to withhold performance of any obligation owed to them on the part of the Buyer howsoever arising other than to withhold performance of the obligation to make payment of the B Loan Notes to the extent specified in this clause 4.14.

4.15 The right of set off in clause 4.14 is without prejudice to any other right which the Buyer may have against the Principal Shareholders or Management, whether under the terms of this agreement or otherwise.

**5. Limitations**

*Limitations not to apply*

5.1 The limitations set out in this clause 5 shall not apply to a Claim under this agreement or under the Tax Deed against the Warrantors:

(a) which is (or the delay in discovery of which is) the consequence of fraud, or dishonesty on the part of the Warrantors or their agents or Advisers; or

(b) which is the result of a breach of a Warranty in part 1 or part 2 of schedule 8; or

(c) which is the result of a Claim under clause 2.2 of the Tax Deed.

*Time limits*

5.2 Subject to clause 5.9, the rights of the Buyer in respect of any Claim for breach of a Warranty (other than a Warranty in part 8 (Pensions) or part 10 (Tax) of schedule 8) shall only be enforceable if the Buyer gives written notice to the Warrantors (giving so far as practicable the amount and details of the Claim) on or before the second anniversary of Completion.

5.3 Subject to clause 5.9 the rights of the Buyer in respect of any Claim made under the Tax Deed or in respect of any Claim for breach of a Warranty in part 8 (Pensions) or part 10 (Tax) of schedule 8 shall only be enforceable if the Buyer gives written notice to the Warrantors (giving so far as practicable the amount and details of the Claim) on or before the seventh anniversary of Completion.

*Threshold*

5.4 The Warrantors shall not be liable in respect of any Claim under the Warranties, under clause 4.8 or under clause 9 unless the total cumulative liability of the Warrantors in respect of all such Claims exceeds £1,000,000 (in which event the Warrantors shall be liable for the whole of such liability and not merely for the excess).

*Maximum Claims*

5.5 Where there have been breaches of the Warranties or Claims have arisen under the Tax Deed, then (subject to clause 5.1) the Buyer shall not be entitled to recover under the Warranties and the Tax Deed in respect of such breaches or Claims more than £42,800,000 plus such additional amounts as are paid or become payable under the B Loan Notes, and/or the Retention Loan Notes and/or the Consideration Loan Notes subject to an aggregate cap of £50,000,000.

*Double Claims*

5.6 The Buyer shall not be entitled to recover from the Warrantors under the Warranties and the Tax Deed more than once in respect of the same damage suffered, and accordingly the Warrantors shall not be liable in respect of any breach of the Warranties to the extent that the loss is or has been included in a Claim under the Tax Deed to the extent that it has been satisfied, nor shall the Warrantors be liable in respect of a Claim under the Tax Deed to the extent that the loss is or has been included in a Claim for breach of the Warranties to the extent that it has been satisfied.

*Contingent liabilities*

The time limits in clauses 5.2 and 5.3 shall not limit any Claim in respect of a liability which is contingent or unascertained where written notice of the Claim (giving so far as practicable the amount and details of the Claim) is given to the Warrantors before the expiry of the relevant periods specified in those clauses.

*Disclosure Letter*

5.7 Subject to the provisions of clause 5.8, the Warrantors shall be under no liability under the Warranties in respect of any matter to the extent that the matter or circumstance giving rise to such liability was Disclosed.

5.8 The provisions of clause 5.7 are qualified as follows:

(a) only the disclosures in Part 10 — Tax of the Disclosure Letter (to the extent Disclosed) shall be treated as having been Disclosed against the Warranties in part 10 (Tax) of schedule 8;

(b) only the disclosures in Part 8 — Pensions of the Disclosure Letter (to the extent Disclosed) shall be treated as having been Disclosed against the Warranties in part 8 (Pensions) of schedule 8; and

(c) nothing in the Disclosure Letter shall limit the Warrantors' liability under the Warranties in part 1 or part 2 of schedule 8 or the Tax Deed.

*Time Limits for Making Claims*

5.9 Any Claim for breach of a Warranty in respect of which notice shall have been given in accordance with clause 5.2 or 5.3 (as the case may be) shall be deemed to have been withdrawn and lapsed (not having been previously satisfied settled or withdrawn) if proceedings in respect of such Claim have not been issued and served on the Warrantors not later than the expiry of the period of 12 months after the date of such notice.

*Recovery from Third Parties*

5.10 Where the Buyer is entitled to recover from some third party (including without limitation the Group's insurers) any sum in respect of any matter giving rise to a Claim under the Warranties then the Buyer shall, at the Warrantors' expense, procure that reasonable steps are taken to enforce such recovery and if any sum is so recovered then either the amount payable by the Warrantors in respect of that Claim shall be reduced by an amount equal to the sum so recovered (less the reasonable costs and expenses of recovering it and any Tax payable by the Buyer as a result of its receipt) or (if an amount shall already have been paid by any of the Warrantors in respect of that Claim) there shall be repaid to the Warrantors an amount equal to the amount so recovered (less the reasonable costs and expenses of its recovery and any Tax payable by the Buyer as a result of its receipt) or (if less) the amount of such payment

provided that the Buyer shall not be required to take steps to enforce such recovery if to do so would, in the reasonable opinion of the Buyer, be materially adverse to the business of any Group Company.

*Further Limitations*

5.11 The Warrantors shall have no liability (or such liability shall be reduced) in respect of any Claim under any of the Warranties (other than the Tax Warranties):-

(a) if and to the extent that provision or reserve for or in respect of the liability or other matter giving rise to such Claim has been made in the Accounts or the Completion Accounts;

(b) if and to the extent that such Claim occurs or is increased as a result of any change in legislation after the date of this agreement (or any legislation not in force at the date of this agreement) which takes effect retrospectively, or the withdrawal after the date of this agreement of any published concession or published general practice previously made by HM Revenue and Customs or other applicable Taxation Authority;

(c) if and to the extent that such Claim is attributable to any voluntary act or omission of the Company or the Buyer in relation to the Company carried out after Completion otherwise than in the ordinary course of business unless such act:-

(i) was carried out pursuant to a legally binding obligation of the Company entered into on or before Completion; or

(ii) was carried out with the written consent or at the request of the Warrantors; and

(d) if and to the extent such Claim would not have arisen but for any change after Completion in the bases on which the Accounts were prepared unless such policies or practices adopted in the preparation of the Accounts are changed to comply with UK GAAP or because of a change in UK GAAP announced and coming into force after the Completion Date.

*Limiting Loss*

5.12 In the event that a breach of Warranty (other than a Tax Warranty) has occurred and the Buyer is or becomes aware that the circumstances constituting the breach of Warranty are continuing such that the loss accruing to the Buyer from that breach of Warranty is increasing then the Buyer shall, if it is within its control to do so, take reasonable steps to prevent the breach from continuing and take normal prudent commercial steps to limit its loss as a consequence of such breach (but without being required to pay any sum the subject of or arising by virtue of the breach of Warranty or any related interest, penalty or similar financial cost).

*Third Party Claims*

5.13

(a) The Buyer shall inform, or shall procure that the Company or the relevant Subsidiary Undertaking shall inform, the Warrantors in writing of any claim against the Company or the relevant Subsidiary Undertaking by any third party ("**Third Party Claim"**) which comes to the notice of the Buyer, the Company or the relevant Subsidiary Undertaking and which Third Party Claim is likely to result in the Buyer bringing a Claim (a "**Relevant Claim**") under the Warranties

(other than the Tax Warranties) in relation to the Third Party Claim and in the Warrantors being liable in respect of such Relevant Claim within seven days from the day on which such Third Party Claim comes to the notice of the Buyer, the Company or relevant Subsidiary Undertaking.

(b) Subject to the Buyer being indemnified and secured to its reasonable satisfaction the Buyer shall, and shall procure that the Company and any of its Subsidiary Undertakings shall consult with the Warrantors as to the conduct of such Third Party Claim and shall obtain the prior consent of the Warrantors to the settlement of such Third Party Claim, such consent not to be unreasonably withheld or delayed and for this purpose it shall be unreasonable to withhold or delay consent where to do so would be likely to be materially prejudicial to the business of the Group or any Group Company.

**6. Completion**

6.1 The sale and purchase of the Sale Shares shall be completed on the date hereof at the offices of the Sellers' Solicitors (or at any other date or place agreed by the parties in writing).

6.2 On Completion the Sellers shall deliver or shall procure that the Company shall deliver to the Buyer:

(a) completed and signed transfers of the Sale Shares to the Buyer or as it directs and the related share certificates or lost share certificate indemnities in a form acceptable to the Buyer;

(b) if required by the Buyer, any document necessary in order to enable the Buyer or its nominees to be registered as the holder of the Sale Shares free from Encumbrances;

(c) the statutory books of each Group Company complete and accurate up to Completion and any company seal(s), certificates of incorporation, certificates of incorporation on change of name and all unused share certificates of each Group Company and all cheque books of each Group Company;

(d) letters of resignation in agreed form from Alexander Thomas Alexander and Terence Racionzer as director of each Group Company;

(e) the resignation of the auditors of each Group Company and a statement under section 519 of the Companies Act that none of the circumstances mentioned in that section exist and that there are no fees or other payments due to them from the relevant Group Company;

(f) the Tax Deed signed by the Warrantors;

(g) the Disclosure Letter;

(h) in so far as in its possession, the title deeds and documents relating to the Real Property and in relation to those deeds and documents relating to the Real Property not within their or its possession the Sellers confirm that such deeds and documents are held to the order of the Company; and

(i) revised service agreements in agreed form between the Company and each of the Principal Shareholders.

6.3 On Completion the Warrantors shall procure the holding of meetings of the directors of each Group Company to do such of the following things as are applicable to it:

(a) approve (subject to stamping) the transfers referred to in clause 6.2(a) and 6.2(i) above;

(b) appoint the persons nominated by the Buyer as directors and the secretary (if any);

(c) note the resignations referred to in clauses 6.2(d) and 6.2(e);

(d) approve the documents referred to in clauses, 6.2(a) and 6.2.(i)and authorise one or more of the directors referred to in clause 6.3(b) to execute them on behalf of the relevant Group Company;

(e) appoint Ernst & Young as the new auditors;

(f) change the accounting reference date to 31 January 2012;

(g) cancel the existing bank mandates and replace them with new mandates as requested by the Buyer; and

(h) pass any other resolutions reasonably requested by the Buyer.

6.4 On Completion the Buyer shall:

(a) pay £34,391,779 in respect of the Consideration by electronic funds transfer in the manner specified in clause 3.2(a) which payment shall constitute a good discharge for the Buyer of its obligations to pay that amount;

(b) pay £522,481 to the Company on behalf of Optionholders representing the aggregate amounts in satisfaction of (i) the aggregate exercise monies due (being £228,400) and (ii) £294,081.59 in respect of Tax (including employee national insurance contributions and PAYE) pursuant to the undertakings and authorisations provided by the Optionholders in the Exercise Forms and each of the Optionholders agrees that the amount so payable in respect of any Optionholder (other than employer's national insurance contributions) shall be deducted from the cash amount otherwise payable to that Optionholder for his/her Ordinary Shares and the Buyer agrees to procure that the Company shall pay to the relevant Taxation Authority such amounts due in respect of Tax;

(c) procure that on or shortly after Completion £9,200,000 is paid by the Company together with interest accrued thereon to the holders of the Outstanding Notes (subject to any required deduction of Tax) and the Principal Sellers confirm such payment shall discharge in full such Outstanding Notes;

(d) pay £17,515,689 to the Company in respect of the Cash Bonus and the Buyer shall procure that the sum of £17,515,689 is paid out in respect of the Cash Bonus to the Employees as the Sellers' Agent may direct subject to deduction of Tax as required (which the Company shall pay to the relevant Taxation Authority as and when required);

(e) pay £3,397,270 to the Company in respect of the employer's National Insurance and PSRI payable in relation to (i) the Cash Bonus; (ii) the appointment by the EBT of the beneficial ownership of 1,928 shares on or shortly before Completion; and (iii) the exercise of the Options by the

Optionholders and that the Company pays £3,397,270 to the relevant Taxation Authority as and when required in respect of the employer's National Insurance and PSRI payable in relation to the matters listed in (i). (ii) and (iii) above;

(f) pay £1,000,000 into the Escrow Account in accordance with clause 3.2(d).

(g) pay to the Sellers' Solicitors £9,734,620 being the amount of the Consideration to be distributed to each Optionholder after taking account of the amounts to be withheld from such Optionholder pursuant to clause 6.4(b) above;

(h) pay £2,681,700 to the Company in respect of the swap cancellation costs and £570,000 to the Company in respect of accrued interest on the borrowings from Lloyds Bank plc and on the Outstanding Notes;

(i) procure that the Company:-

(i) adopts and maintains in force through the period during which any sum is payable thereunder the Management Bonus Scheme and pays the Management Bonus (if any) in accordance with its terms;

(ii) adopts and maintains in force through the period during which any sum is payable thereunder the Executive Bonus Scheme and pays the Executive Bonus (if any) in accordance with its terms and

(j) deliver to the Sellers or to the Sellers' Solicitors (whose receipt shall be a sufficient discharge):

(i) a counterpart of the Tax Deed executed by the Buyer;

(ii) a certified copy of the minutes of the board of directors of the Buyer and any shareholder resolutions which are required authorising the execution and performance by the Buyer of its obligations under this agreement and the Tax Deed;

(iii) the Consideration Loan Notes and a certified copy of the executed Consideration Loan Note Instrument and the Consideration Loan Note Security;

(iv) the Retention Loan Notes and a certified copy of the Retention Loan Note Instrument;

(v) the B Loan Notes and a certified copy of the B Loan Note Instrument; and

(vi) the Genesco Minutes and an opinion letter in the agreed form setting out certain details in respect of Genesco, including its ability to enter into this agreement and the Consideration Loan Note Instrument.

6.5 The parties hereto agree and comply with the terms of the Management Bonus Scheme.

**7. Post-Completion**

7.1 The Sellers shall and shall procure that any other necessary party shall execute all such documents and deeds and do all such acts and things as the Buyer may from time to time reasonably require to transfer to the Buyer the legal and beneficial ownership of the Sale Shares.

7.2 Each Seller agrees that for so long as any Sale Shares remain registered in his name he will:

(a) not exercise any of his rights as a member of the Company or appoint any other person to exercise such rights;

(b) hold on trust for and pay or deliver to the Buyer any distributions or notices, documents or other communications which may be received after the date of this agreement by that Seller in his capacity as a member of the Company from the Company or any third party; and

(c) on request by the Buyer ratify all documents executed and acts done by the Buyer as his attorney.

*Registrations*

7.3 As soon as reasonably practicable after the date of this agreement, the Sellers shall procure (at the Company's expense) that the leases of the Trafford Centre, Eldon Square and Liffey Valley are registered at the Land Registry and the lease of O'Connell Street shall be registered in the Registry of Deeds. The Sellers shall keep the Buyer informed of the progress towards achieving registration and, in particular, shall send the Buyer copies of any correspondence with the relevant Land Registry.

**8. Non-competition**

*Restrictions*

8.1 Each of the Principal Shareholders and the Managers undertakes with the Buyer that after Completion he will not either himself or by an agent and either on his own account or by or in association with or for the benefit of any other person directly or indirectly without the consent of the Buyer:

(a) for the period stated in column (a) of schedule 9 opposite his name:

(i) take up or hold or seek to take up or hold any office in or with any business which is engaged in the Prohibited Business within the Prohibited Area;

(ii) take up or hold any post or position which enables that Principal Shareholder or Manager to exercise whether personally or by an agent and whether on his own account or in association with or for the benefit of any other person a controlling influence over any business which is engaged in the Prohibited Business within the Prohibited Area; or

(iii) take up or hold any employment or consultancy with any person which is engaged in the Prohibited Business within the Prohibited Area,

which results or would result in that Principal Shareholder or Manager being engaged in business activities which are in competition with the Prohibited Business as carried on by any Group Company;

(b) for the period stated in column (b) of schedule 9 opposite his name and within the Prohibited Area either personally or by an agent and either on his own account or by or in association with any other person or otherwise directly or indirectly engage or seek to engage in any capacity in the Prohibited Business except that he may hold as an investment not more than 3% of the issued

share capital of a company listed or quoted on a market operated by a Recognised Investment Exchange;

(c) for the period stated in column (d) of schedule 9 opposite his name and within the Prohibited Area canvass, solicit, approach or seek out or cause to be canvassed, solicited, approached or sought out or by any other means endeavour to entice away from any Group Company any Material Supplier for orders or instructions in respect of any goods or services provided to any Group Company in the course of the Prohibited Business and with whom any Group Company has transacted the Prohibited Business as a customer;

(d) for the period stated in column (e) of schedule 9 opposite his name solicit or seek to entice away from any Group Company, or aid or assist any other person or persons in employing or otherwise retaining the services of anyone who is employed by any Group Company or who is a Consultant at Completion and who is at Completion employed or engaged in:

(i) research, development, engineering or production;

(ii) sales, marketing or distribution; or

(iii) establishing or maintaining relationships or dealings with Suppliers,

otherwise than in a junior administrative or secretarial capacity;

(e) employ or otherwise retain the services of any of such person as is mentioned in clause 8.1(d) otherwise than in a junior administrative or secretarial capacity; or

(f) use or display any name, trade or service marks, trade or service names, domain names or logos used by any Group Company or any confusingly similar names, marks, domain names, or logos.

8.2 The undertakings on the part of each of the Managers contained in paragraphs (a) to (e) of clause 8.1 above shall apply for the periods specified therein both (i) during his employment by a Group Company; and (ii) for any remaining part of those periods where the relevant Manager has ceased employment with the Group as a consequence of:-

(a) his resignation (other than on grounds of ill health or permanent incapacity); or

(b) his being lawfully dismissed by the relevant Group Company as a result of gross misconduct or incompetence in the performance of his duties or in other circumstances in which he may be lawfully summarily dismissed.

In any other circumstance, the period in the case of sub clauses (a) and (b) of clause 8.1 shall be during his employment by a Group Company and for 6 months from the date on which the relevant Manager ceases to be employed by the relevant Group Company and in the case of sub clauses (c) to (e) shall be during his employment by a Group Company and for three months from that date of cessation.

8.3 Subject to clause 8.7 each Principal Shareholder and Manager undertakes to the Buyer that at all times he will not either him or by an agent and either on its own account or by or in association with or for the benefit of any other person directly or indirectly represent itself to be connected with or interested in the Prohibited Business.

8.4 Each Principal Shareholder and Manager undertakes that he will not at any time whilst any Group Company uses, or has any right to use, any of the names set out below,

directly or indirectly, use in connection with any trade or business which competes with or is similar to that of any Group Company:

(a) the names of Schuh, Red or Dead or any name resembling them or capable of confusion with them; or

(b) the name Schuh in connection with any business involved in the design, sale or distribution of shoes or footwear.

8.5 Each Principal Shareholder and Manager acknowledges that the undertakings in clauses 8.1 and 8.2 are reasonable; are integral to the terms on which the Buyer has agreed to purchase the Sale Shares and necessary for the implementation of the purchase; and that each of them is to be construed and take effect independently of the others.

8.6 If a breach of clauses 8.1, 8.2 or 8.4 occurs, the Principal Shareholders, Management and the Buyer agree that damages alone are likely not to be sufficient compensation and that injunctive relief is reasonable and is likely to be essential to safeguard the interests of the Buyer and of any Group Company and that injunctive relief (in addition to any other equitable remedies) may (subject to the discretion of the courts) be obtained.

8.7 No Principal Shareholder or Manager shall be treated as committing a breach or violation of the provisions of clauses 8.1(a), (b) or (e) or clause 8.2 solely when properly acting as a director, Consultant or Employee of the Company.

**9. Dilapidations**

9.1 The Warrantors shall indemnify the Buyer against and shall pay to the Buyer an amount equal to the amount by which any dilapidation liability of any Group Company in respect of withdrawal by that Group Company at the end of its present lease from the Group's Real Properties at 23-25 Castle Street. Norwich and 20 Whitefriargate, Hull is finally determined to exceed, in aggregate, £160,000.

9.2 The Warrantors shall:-

(a) have the exclusive right to decide in good faith and in the best interests of the Company whether or not the Company should vacate the premises at Norwich and Hull at the end of the current leases; and

(b) have the exclusive right (at the cost of the Company in so far as the steps taken by the Warrantors are those normally taken by a prudent tenant to resist dilapidations liability, including the appointment of an agent) to conduct any claim by the landlord in respect of such dilapidations and the Company will delegate to the Warrantors the conduct of that claim with freedom to negotiate and agree any such claim as they think fit subject always to notifying the outcome of any such negotiation to the Buyer.

9.3 Subject to the foregoing the Limitations set out in clause 5 shall apply to the terms of this clause as if the Claim hereunder is a Claim for breach of Warranty.

**10. Confidentiality**

10.1 Except for any information of the kind referred to in clause 10.2(e) which relates to matters other than any Group Company, all obligations of confidence owed by the

Buyer to the Sellers in connection with this agreement or any negotiations leading to it shall (without prejudice to any previously accrued rights) cease on Completion.

10.2 Subject to clauses 10.1 and 10.3, each party undertakes to and shall keep confidential any information which is obtained by it which:

(a) relates to the negotiation of this agreement or any document referred to in this agreement;

(b) relates to the provisions or the subject matter of this agreement or of any document referred to in this agreement;

(c) in the case of a Seller, relates to the Buyer or any Member of its Group (as such group is constituted immediately before Completion);

(d) in the case of a Seller, is confidential information which he has acquired about the Company and/or any other Group Company; and

(e) in the case of the Buyer, relates to the Sellers,

(collectively, "**Confidential Information**").

10.3 Clause 10.1 does not apply to information to the extent that:

(a) either party (or its Advisers or Associates) is required to disclose it by any Applicable Law or by a Competent Authority;

(b) it is contained in any announcement or publication in agreed form;

(c) it enters the public domain other than as a result of the unauthorised disclosure by a party or any of its Associates or its or their Advisers;

(d) it is in the possession of either party or of any of its Associates or its or their Advisers free from any restriction as to its use or disclosure having been obtained otherwise than from the other party for the purposes of this agreement;

(e) a party has disclosed it to any of its Associates or its or their Advisers who need to know such information for the purposes of advising in relation to or furthering the provisions of this agreement and who are aware of the obligations of confidentiality and agree to keep the information confidential and not to use any Confidential Information for any purpose other than the purpose for which it was disclosed.

10.4 No information to which clause 10.3 applies may (subject to clause 10.5) be disclosed by a party unless that party has:

(a) given, where practicable, at least 2 Business Days' written notice to the non-disclosing party of such proposed disclosure;

(b) consulted with the non-disclosing party; and

(c) agreed with the non-disclosing party the content of the disclosure.

10.5 The non-disclosing party may not request amendments under clause 10.4 or otherwise limit disclosure under clause 10.4 in a manner which would prevent the disclosing party from complying with the requirements referred to in clause 10.3(a).

**11. Competition Act 1998**

If a Seller receives a notice under Schedule 1, paragraph 4(2) of the Competition Act 1998 relating to any Group Company or this agreement or any agreement or concerted practice of which it forms part, he shall immediately send a copy of it to the Buyer. The Sellers and the Buyer shall co-operate in good faith to enable the Buyer to respond fully and completely to any such notice within 10 Business Days of receipt.

**12. Notices and other Communications**

12.1 Where this agreement provides for the giving of notice or the making of any other communication, such notice or communication shall not (unless otherwise expressly provided) be effective unless given or made in writing in English in accordance with the following provisions of this clause.

12.2 Any notice or communication to be given or made under or in connection with this agreement may be:

(a) delivered or sent by post to:

| | |
|---|---|
| the Buyer | the address set out on page 1 of this agreement |
| the Sellers (or any of them) | F.A.O Mark Crutchley<br>3 Hermitage Terrace<br>Edinburgh EH10 4RP |

(such addresses being referred to below as the "Postal Address" of the relevant party); or

(b) sent by email, to:

| | |
|---|---|
| the Buyer | F.A.O. Roger Sisson<br>RSISSON@genesco.com |
| the Sellers (or any of them) | F.A.O Mark Crutchley<br>Mark@Schuh.co.uk |

and shall be marked in the case of the Buyer for the attention of Roger Sisson and in the case of the Sellers, for the attention of the Sellers' Agent.

12.3 Any notice or other communication so delivered or sent shall (subject to the provisions of clause 12.4(c)) be deemed to have been served at the time when it arrives at the address to which it is delivered or sent except that if that time is between 5.30 p.m. on a Relevant Day and 9.00 a.m. on the next Relevant Day it shall be deemed to have been served at 9.00 a.m. on the second of such Relevant Days.

12.4 Where any party has given notice to the others of any different address or number to be used for the purposes of this clause then such different address or number shall be substituted for that shown above.

For the purposes of this clause:

(a) "**Relevant Day**" means any day other than a Saturday, Sunday or a day which is a public holiday at the Postal Address of the receiving party;

(b) any reference to a time is to the time at the Postal Address of the receiving party; and

(c) reference to an electronic communication being received shall, in the case of a party which is a corporate body or partnership, mean receipt at a server located in any office of the corporate body or partnership and, in the case of a party who is an individual, shall mean receipt on equipment owned (or used for reading electronic communications) by the individual which receipt shall, notwithstanding the provisions of clause 12.3, and in the absence of evidence of earlier receipt, be deemed to have occurred 24 hours after sending.

**13. Third party rights**

13.1 The obligations of confidentiality in paragraphs (a), (b), (c) and (d) of clause 10.2 are assumed for the benefit of each Group Company. Each Group Company may rely on and enforce the obligations of confidentiality accepted by the Sellers.

13.2 Any person to whom the Warranties or any other rights of the Buyer under this agreement are assigned under clause 13.6 may rely on and enforce the Warranties and any such rights.

13.3 Save for assignees pursuant to clauses 13.2 and 13.6 and subject to 13.5 third parties may only enforce the rights and obligations referred to in clauses 13.1 and 13.2 with the written consent of the Buyer.

13.4 The Sellers and the Buyer may by agreement in writing rescind or vary the provisions of this agreement without the consent of any third party and, accordingly, section 2(1) of the Contracts (Rights of Third Parties) Act 1999 shall not apply.

13.5 Except:

(a) as provided in clauses 13.1 and 13.2; and

(b) for any indemnity expressed to be given in favour of or any obligation expressed to be owed to any Group Company,

no term of this agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party.

13.6 The Buyer may assign or grant any Encumbrance or security interest over any of its rights under this agreement or any document referred to in it (including without limitation a right under the Warranties or the Tax Deed)

(a) in favour of any bank or provider of finance to the Buyer or an Associate of the Buyer and/or

(b) after the second anniversary of Completion (but not before) to any person to whom the Buyer sells any Sale Shares provided that no assignee shall be entitled to greater damages or other compensation than that to which the Buyer would have been entitled had it not assigned the benefit of such right.

**14. Entire agreement**

14.1 The Transaction Documents constitute the entire agreement between the parties about the subject matter of this agreement and supersede all earlier understandings and

agreements between any of the parties and all earlier representations by any party about such subject matter.

14.2 The parties have not entered into the Transaction Documents in reliance upon any representation, warranty or promise and no such representation or warranty or any other term is to be implied in them whether by virtue of any usage or course of dealing or otherwise except as expressly set out in them.

14.3 If a party has given any representation, warranty or promise then, (except to the extent that it has been set out in the Transaction Documents) the party to whom it is given waives any rights or remedies which it may have in respect of it.

14.4 This clause shall not exclude the liability of a party for fraud or fraudulent misrepresentation or concealment or any resulting right to rescind any of the Transaction Documents.

**15. Guarantee**

15.1 In consideration of the Sellers agreeing to sell the Sale Shares on the terms of this agreement the Guarantor unconditionally and irrevocably guarantees to the Sellers (and in the case of the Management Bonus, the Management Team) (together the **"Indemnified Parties"**):

(a) the payment by the Buyer when due of any amount payable under this agreement; and

(b) the due and punctual performance and observance by the Buyer of its obligations, commitments, undertakings and indemnities under or pursuant to this agreement,

as if the Guarantor were the principal obligor under this agreement and not merely a surety.

15.2 The guarantee set out in Clause 15.1 is a continuing guarantee and shall remain in full force and effect until all the obligations and liabilities of the Buyer guaranteed by this Clause 15 have been discharged in full. This guarantee is in addition to and without prejudice to and not in substitution for any rights or security which the Indemnified Parties may now or hereafter have or hold for the performance and observance of the obligations guaranteed by the Guarantor.

15.3 The Guarantor acknowledges that its liability under this Clause 15 shall not be discharged or affected in any way by time or any other indulgence or concession being granted by any of the Indemnified Parties other than as expressed to be for the benefit of the Guarantor.

15.4 The Guarantor will indemnify the Indemnified Parties against all losses, proceedings, claims, liabilities, costs and expenses suffered or incurred by the Indemnified Parties as a result of the Buyer failing to discharge its obligations and liabilities in accordance with the terms and conditions of this agreement. Nothing herein shall require the Guarantor to pay amounts if and to the extent that the Buyer is entitled to set off a claim or other sum under this agreement (including without limitation under clause 4.12 hereof)

15.5 If and whenever the Buyer defaults in the performance of any obligation under this agreement the Guarantor will immediately upon demand perform it or procure the performance of it subject always to any rights of set off permitted to the Buyer under or pursuant to this agreement so that the same benefits shall be conferred on the

Indemnified Parties as it would have received if it had been duly performed and satisfied by the Buyer.

15.6 The Indemnified Parties will be entitled to enforce the Guarantor's obligations without making any demand on or taking proceedings against the Buyer and will not be required before enforcing the Guarantor's obligations to pursue any other right, remedy or security which it may have.

15.7 As a separate and independent stipulation the Guarantor agrees that any obligation of the Buyer which may not be enforceable against or recoverable from the Buyer by reason of any legal limitation, disability or incapacity on or of the Buyer will nevertheless be enforceable against and recoverable from the Guarantor as though the Guarantor were the sole or principal obligor and shall be performed by the Guarantor on demand if then due for performance by the Buyer subject always to any rights of set off permitted to the Buyer under or pursuant to this agreement.

15.8 Subject to Clause 15.9 where any payment is made by the Guarantor under this Clause 15 and that sum is subject to a charge to Taxation in the hands of the recipient (and the recipient is a Seller or Warrantor) by reason only that the payment is made by the Guarantor rather then by the Buyer (other than (i) Taxation attributable to a payment being properly treated as an adjustment to the Consideration paid by the Buyer for the Company or (ii) Taxation which would be payable had the payment been received from the Buyer) the sum payable under this clause 15 shall be increased to such sum as will ensure that after payment of such Taxation (and after giving credit for any tax relief available to the recipient in respect of the matter giving rise to the payment) the recipient shall be left with a sum equal to the sum that it would have retained after Taxation had the recipient actually received a payment from the Buyer in accordance with the terms of this agreement.

15.9 The parties to the agreement undertake that they shall take all reasonable steps to ensure that any payment made by the Guarantor is not subject to a greater amount of Taxation to the recipient (where the recipient is a Seller or Warrantor) than would have been the case if any payment had been made by the Buyer including having any payment due from the Guarantor paid first to the Buyer and then to the Indemnified Parties or procuring that the Buyer makes such payments to the Indemnified Parties so far as such arrangements are not otherwise prejudicial to the Buyer or the Indemnified Parties.

**16. Powers of Attorney**

16.1 Each of the Sellers by his/her execution of this agreement appoints the Buyer to be his/her Attorney from and after Completion granting to the Buyer full power on his or her behalf to exercise all voting rights, execute and deliver all documents and deeds and do all acts and things which the Buyer would be entitled to exercise, execute, deliver and do if the Buyer was registered as the holder of the Sale Shares of that Seller including in particular, but without prejudice to the foregoing generality, power as the Buyer in its absolute discretion thinks fit and to the exclusion of that Seller:

(a) to execute a form of proxy in favour of such person or persons as the Buyer may think fit to attend and vote as that Seller's proxy at any general meeting of the members, or separate class meeting of any class of members, of the Company in respect of such Sale Shares in such manner as the Buyer may decide;

(b) to consent to the convening and holding of any such meeting and the passing of the resolutions to be submitted at any such meeting on short notice;

(c) to settle the terms of such resolutions;

(d) to receive, complete, execute and deliver in the name and on behalf of each Seller all such shareholder consents, authorisations, waivers and written resolutions as the Seller may be entitled to do by reason of being the registered holder of the Sale Shares;

(e) generally to procure that the Buyer or its nominees are duly registered as the holders of all the Sale Shares,

16.2 Each Seller further agrees that for so long as any Sale Shares remain registered in his name he will:

(a) not exercise any of his rights as a member of the Company or appoint any other person to exercise such rights;

(b) hold on trust for and pay or deliver to the Buyer any distributions or notices, documents or other communications which may be received after the date of this agreement by that Seller in his capacity as a member of the Company from the Company or any third party; and

(c) on request by the Buyer ratify all documents executed and acts done by the Buyer as his attorney.

16.3 Each of the Sellers hereby ratifies and confirms and hereby undertakes to ratify and confirm all and whatsoever the Buyer shall lawfully do or cause to be done in pursuance of the power of attorney granted by this Clause 16.

16.4 Each of the Sellers hereby declares that the power of attorney granted by this Clause 16 shall be irrevocable until the later of the date of registration of the transfer of the Sale Shares sold by the Sellers in the books of the Company and the expiry of the period of six months from the Completion Date.

**17. Miscellaneous**

17.1 The Buyer and the Sellers shall bear their own costs incurred in relation to the negotiation and preparation of this agreement and matters incidental to this agreement. The Sellers confirm that no costs have been incurred by the Company up to and including Completion in relation to the negotiation and preparation of this agreement and matters incidental to this agreement.

17.2 This agreement shall so far as it remains to be performed after Completion continue in force notwithstanding Completion and the rights of the Buyer in respect of any Transaction Document shall not be affected by Completion.

17.3 No waiver by a party of any requirement of this agreement or any right which he has under it shall be valid unless such waiver is in writing signed by him.

17.4 No omission to exercise, or delay by the Buyer in exercising, any right under this agreement shall operate as a waiver of such right nor shall any single or partial exercise of any right preclude the exercise of any other right.

17.5 The Buyer may release or compromise the liability of, or institute proceedings or obtain judgment against, a Seller under this agreement, or grant to a Seller time or other indulgence without affecting the liability of any other Seller under this agreement or the Buyer’s rights against any other party.

17.6 The rights conferred on the Buyer in this agreement are cumulative and in addition to all other rights available to the Buyer.

17.7 This agreement may consist of any number of duplicates each executed by at least one party, each of which when so executed and delivered shall be an original, but all the duplicates shall together constitute one instrument.

17.8 If a term of this agreement shall be held to be illegal, invalid or unenforceable it shall to that extent be deemed not to form part of this agreement, but the enforceability of the remainder of this agreement shall not be affected.

17.9 Any liability of the Warrantors arising under or in connection with this agreement or the Tax Deed shall be joint and several.

17.10 Each Seller irrevocably appoints Mark Crutchley as his agent to negotiate, determine and agree the Completion Accounts and any adjustments to the Consideration, the amount of the Management Bonus and to negotiate and settle any dispute with the Buyer as to amount or otherwise arising in connection with this agreement.

17.11 The Sellers' Agent may on behalf of any Seller:

(a) give or receive any notice or consent or make any agreement; or

(b) take any other action,

(c) which the Sellers may give, receive, make or take under or in connection with any Transaction Document.

17.12 The Principal Shareholders acting together with a majority of the Managers may appoint a replacement Sellers' Agent from time to time by giving not less than 10 Business Days' notice of the name and address of such replacement Sellers' Agent to the Buyer provided such replacement Sellers' Agent is resident in the United Kingdom and is one of the Principal Shareholders or one of the Managers.

**18. Governing law**

18.1 The governing law of this agreement, and of any claim, dispute or issue arising out of or in connection with this agreement or its subject matter (including non-contractual claims), shall be that of England and Wales.

18.2 The Sellers irrevocably appoint the Sellers' Solicitors of St Martin's House, 16 St Martin's le Grand, London EC1A 4EN Fax No 020 7397 8400 as their agent to receive on their behalf in England or Wales service of any proceedings under clause 18.1 above. Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by the Sellers) and shall be valid until such time as the Sellers have received prior written notice that such agent has ceased to act as agent. If for any reason such agent ceases to be able to act as agent or no longer has an address in England or Wales, the Sellers shall forthwith appoint a substitute acceptable to the Buyer and deliver to the Buyer the new agent's name, address and fax number within England and Wales.

**19. Jurisdiction**

19.1 The courts of England and Wales shall have jurisdiction to settle any claim, dispute or issue between the parties whether arising out of or in connection with this agreement or its subject matter, or otherwise (including non-contractual claims). In the case of a

dispute which is the subject of a claim by the Buyer, such jurisdiction shall be non-exclusive. In the case of a dispute which is the subject of a claim by a Seller, such jurisdiction shall be non-exclusive. The parties to this agreement irrevocably submit to such jurisdiction and waive any objection to it, on the ground of inconvenient forum or otherwise. No party shall oppose the recognition or enforcement of a judgment, order or decision of those courts in respect of any such claim or dispute by the courts of any state which, under the laws and rules applicable in that state, are competent or able to grant such recognition or enforcement.

In witness whereof this agreement has been executed as a deed on the date shown at the beginning.

## SCHEDULE 8

## Warranties

**1. Part 1 — Title and Authorisation**

1.1 *Title and matters affecting the Sale Shares and shares in Subsidiary Undertakings*

(a) Each Seller is the sole legal and beneficial owner of the number of Sale Shares listed against its name in schedule 1.

(b) No Seller is a minor, bankrupt, person of unsound mind or otherwise under any legal disability.

(c) The Sale Shares constitute the whole of the issued share capital of the Company.

(d) All the issued shares in each Group Company are fully paid or credited as fully paid.

(e) No person has any present, future or contingent right to call for the allotment, conversion, or transfer of or to be entered in the register of members as the holder of any share or loan capital of any Group Company and there is no Encumbrance on the Sale Shares or any shares in any Group Company or any arrangements or obligations to create any Encumbrances. No claim has been made by any person that they are entitled to any such right or have the benefit of any such Encumbrance.

(f) No claim has been made by any person to be entitled to any right referred to in Warranty 1.1(e) above or the right to have an Encumbrance on the Sale Shares or any shares in any Group Company created in his favour.

(g) Except under the employee incentive schemes which have been Disclosed, there is no share option scheme or other agreement or arrangement which obliges any Group Company to issue shares or to buy back or redeem any issued shares.

(h) The details of each Group Company set out in schedule 2 are correct. The Company is the sole legal and beneficial owner of all the issued shares in Schuh (Holdings) Limited and Schuh Corporate Trustee Limited. Schuh (Holdings) Limited is the sole legal and beneficial owner of all the issues shares in each of Schuh Limited and Schuh (ROI) Limited.

1.2 *Authorisation*

(a) Each Seller has power to enter into and to perform its obligations under each Transaction Document to which he is party which will, when executed, constitute binding obligations on him in accordance with its terms.

(b) The execution and delivery of, and the performance by each Seller of his obligations under, each Transaction Document to which it is party:

(i) does not require the consent of any third party; and

(ii) will not result in a breach of or entitle any third party to terminate or avoid any agreement, arrangement, order, judgment or decree of any court or any governmental agency to which he is a party or by which it or any of its assets is bound or from which he benefits.

1.3 *Financial Services and Markets Act 2000 ("FSMA").*

No Seller has communicated with any other Seller in relation to the sale of the Sale Shares in breach of section 21 of FSMA or engaged in any regulated activity in breach of section 19 of FSMA.

1.4 *Indebtedness*

Other than remuneration not exceeding £100,000 or outstanding expenses not exceeding £15,000 which are due to be reimbursed, there is no outstanding indebtedness owing at Completion from any Group Company to any Seller or to any such Seller's Associate or vice versa nor any security granted by any Group company to any Seller or any Associate of any Seller.

**2. Part 2 — Constitution**

2.1 *Constitution and overseas assets*

(a) An accurate copy of the certificate of incorporation and articles of association (and each certificate of incorporation on change of name) of each Group Company (having embodied in it or annexed to it a copy of each resolution or agreement referred to in section 29(1) of the Companies Act) is attached to the Disclosure Letter*. Such documents contain full details of the rights and restrictions attached to the share capital of each Group Company, and all such resolutions have been properly passed as resolutions of that Group Company and duly filed with the Registrar of Companies.

* *Attach list*

*N.B. (see note on last page for details on how to remove the marginal notes)*

(b) In respect of each Group Company, there are no restrictions on the exercise of the powers of the Directors or unusual requirements as to quorum or the manner of holding of board meetings.

(c) Each Group Company has the power to hold board meetings by telephone conference call.

(d) Other than in the Republic of Ireland, no Group Company has assets outside the United Kingdom nor does it have a branch, agency or place of business or any permanent establishment (as that expression is defined in the relevant double taxation relief orders) outside the United Kingdom.

2.2 *Books and registers*

(a) The register of members and statutory books of each Group Company contain accurate records of the members of that Group Company and all the other information which they are required to contain under the Companies Act. All returns, particulars, resolutions and other documents required to be delivered by any Group Company to the Registrar of Companies under the 1985 Act or the Companies Act have been duly delivered and no fines or penalties are outstanding.

(b) No Group Company has received any notice of any application nor are the Warrantors aware of any intended application for the rectification of its register of members.

2.3 *Directors, share capital and loan capital*

(a) The only Directors of each Group Company are the persons whose names are listed in respect of it in schedule 2 and no Group Company has any alternate, de facto or shadow directors nor any observer or other person entitled or accustomed to attend at or receive notice of board meetings or have any say or right to vote at board meetings.

(b) No Group Company has provided any financial assistance in breach of section 151 et seq of the 1985 Act or section 677 et seq of the Companies Act.

(c) No Group Company has redeemed or purchased or agreed to redeem or purchase any of its share capital or passed any resolutions authorising any such redemption or purchase or entered into or agreed to enter into any contract relating to shares in that Group Company that does not amount to a contract to purchase the shares but under which that Group Company may (subject to any conditions) become entitled or obliged to purchase those shares or passed any resolutions approving any such contract or made any capitalisation of reserves.

(d) No Group Company has any outstanding loan capital.

(e) No share in the capital of any Group Company has been issued for a consideration other than cash.

(f) No share in the capital of any Group Company has been issued or transferred except in accordance with its articles of association (and, if the share was issued or transferred before 1 October 2009, its memorandum of association).

(g) Other than in respect of their shares in the Company as set out in schedule 1, no Director or secretary (if any) of any Group Company is interested in the share capital of any Group Company.

(h) The Company has no interest in the shares or other securities of any company which is not a Subsidiary Undertaking and no interest in any business other than that of the Company or a Subsidiary Undertaking and has not agreed to acquire any such shares, securities or interest or held any such shares, securities or interest at any time.

**3. Part 3 — Accounting and Financial**

3.1 *The Accounts*

(a) A copy of the Accounts is attached to the Disclosure Letter*.

* *Attach Accounts*

(b) The Accounts and the audited consolidated accounts of the Group Companies for each of the three years immediately preceding its financial year ended on the Accounts Date were prepared in accordance with all applicable Accounting Requirements at the date of this agreement and give a true and fair view of the assets, liabilities and state of affairs of each of the Group Companies and of the Group Companies as a group at the Accounts Date and of the profits or losses for the period concerned.

(c) The Accounts of each Group Company were prepared on a basis consistent with that adopted in preparing the audited consolidated accounts of that Group Company for the previous three financial years.

(d) In the Accounts and in the audited consolidated accounts of the Group Companies for the three immediately preceding financial years:

(i) fixed assets have been depreciated on a consistent basis in accordance with FRS 15; and

(ii) the stock in trade of the Group Companies has been treated in accordance with SSAP 9 and no change has been made in the basis of valuation of stock within the last three years.

(e) In the Accounts all redundant, obsolete and slow moving stock in trade has been written off or written down if appropriate at the Accounts Date.

(f) No amount included in the Accounts in respect of any asset, whether fixed or current, exceeds its purchase price or its production cost or (in the case of current assets) its net realisable value as at the Accounts Date.

(g) The name and address of the auditors of each Group Company is set out in the Disclosure Letter*.

* *Include details*

3.2 *The Management Accounts*

(a) A copy of the Management Accounts is attached to the Disclosure Letter*.

* *Attach copy*

(b) The Management Accounts have been prepared with due care and attention in accordance with accounting principles used by each Group Company in the course of preparing management accounts for that Group Company during the two year period ending on the date of this agreement and on a basis consistent with that used in preparing the Accounts.

(c) The Management Accounts are not misleading and having regard to the purpose for which they are prepared give a fair view of the assets and liabilities and profits of the Group for the period to which they relate.

3.3 *Exceptional and extraordinary items*

The profits of the Group Companies for the accounting period ended on the Accounts Date as shown in the Accounts and in the audited consolidated accounts for three immediately preceding financial years (and for the period between the Accounts Date and the Management Accounts Date as shown by the Management Accounts) and the trend of profits shown has not (except as disclosed in such accounts) been affected by changes or inconsistencies in accounting policies or practices, by the inclusion of non-recurring items of income or expenditure, by transactions of an abnormal or an unusual nature or which have been entered into otherwise than on normal commercial terms.

3.4 *Books and records*

(a) All the accounts, books and ledgers and financial and other records of each Group Company (including all invoices) have been properly kept (in accordance with sections 221 and 222 of the 1985 Act in respect of financial years beginning before 6 April 2008 and sections 386 to 389 of the Companies Act in respect of subsequent financial years, where relevant) and are within that company's possession and control and all transactions relating to its business have been duly and correctly recorded in them.

(b) The original documents of title relating to the assets of any Group Company and the originals of all written agreements, deeds and other instruments entered into by any Group Company are in its possession and control.

(c) No Group Company has any of its records, systems, controls, data or information, recorded, stored, maintained, operated or otherwise wholly or partly dependent on or held by any means (including any electronic, mechanical or photographic process whether computerised or not) which (including all means of access) are not under the exclusive ownership and direct control of that Group Company.

3.5 *Bank accounts, Indebtedness and Encumbrances*

(a) In respect of each Group Company:

(i) a list of all its bank, building society, investment and deposit accounts and of the credit or debit balances on them at the Business Day before the date of this agreement is attached to the Disclosure Letter*;

* *Attach list*

(ii) the amount borrowed by it does not exceed any limitation on its borrowing contained in its articles of association or in any debenture or other deed or document binding on it;

(iii) it has not received demand for repayment of any borrowing or indebtedness in the nature of borrowing which is repayable on demand, and there has not occurred any event which would entitle (or which with the giving of notice and/or the lapse of time and/or a relevant determination would entitle) any person to require early repayment of any borrowing or indebtedness in the nature of borrowing;

(iv) it has no bank overdraft facilities, acceptance credits or other financial facilities outstanding or available to it;

(v) it has not entered into nor is it negotiating to enter into any debt factoring, discounting or inventory finance arrangement;

(vi) it has not or engaged in any off balance sheet financing or any financing of a type which would not require to be shown or reflected in the Accounts, had such arrangement or financing been entered into on or before the Accounts Date; and

(vii) it has not entered into nor is it negotiating to enter into any currency and/or interest rate swap agreement, asset swap, future rate or forward rate agreement, interest cap, collar and/or floor agreement or other currency exchange or interest rate protection transaction or combination of them or any option or any similar arrangement.

(b) All Encumbrances created by or in favour of any Group Company which are required to be registered in accordance with the provisions of the Companies Act (or were required by the 1985 Act) or in any other relevant jurisdiction have been so registered and comply with all necessary formalities as to registration or otherwise in that jurisdiction; and the registered particulars of Encumbrances created by or in favour of any Group Company are complete and accurate.

3.6 *Liabilities, debts, and solvency*

(a) No Group Company has liabilities (including contingent or disputed debts) except liabilities which have arisen in the ordinary and usual course of day-to-day trading since the Management Accounts Date.

(b) No sum shown in the Management Accounts, in respect of debtors is represented by debts which at the Management Accounts Date were more than 30 days overdue for payment.

(c) All debts owed to any Group Company at the date of this agreement will realise their full value and be good and collectable within 30 days of their due date for payment, and none of such debts is subject to any counterclaim or set-off. For this purpose a debt shall not be regarded as realising its full value to the extent that it is received in circumstances in which such receipt is or may be void, voidable or otherwise liable to be reclaimed or set aside.

(d) No Group Company is owed any sums other than debts incurred in the ordinary course of trading.

(e) No event has occurred causing, or which on intervention or notice by any third party may cause, any floating charge created by any Group Company to crystallise or any charge created by it to become enforceable, nor has any crystallisation occurred or is any such enforcement in process.

(f) No Insolvency Event has occurred in relation to any Group Company.

(g) No Group Company has been a party to any transaction with any third party which, in the event of such third party going into liquidation or an administration order or a bankruptcy order being made in relation to it or to him, would constitute a transaction at an undervalue, a preference, an invalid floating charge or an extortionate credit transaction or part of a general assignment of debts, under sections 238 to 245 and sections 339 to 344 of the Insolvency Act 1986.

(h) No person who is or has at any time within the last three years been a Director or officer of any Group Company has at any material time been subject to any disqualification order under the Companies Act or under any other legislation relating to the disqualification of directors and officers, or was the subject of any investigation or proceedings capable of leading to a disqualification order being made.

3.7 *Grants*

(a) No Group Company has applied for or received any investment grant, building grant, grant under the Local Employment Acts 1970 or 1972 or under any Industry Act or any other governmental grant or allowance or loan subsidy or financial assistance.

(b) No circumstances have arisen or could arise as a consequence of events occurring on or before the date of this agreement (including the execution or completion of this agreement) as a result of which:

(i) any grant, subsidy, allowance or assistance received by any Group Company is liable to be repaid; or

(ii) any grant, allowance subsidy or assistance for which any Group Company has made application will not be paid or will be reduced.

**4. Part 4 — General Commercial**

4.1 Not Used

4.2 *Assets*

(a) Each Group Company is the sole legal and beneficial owner of the assets used in its business or held at the Real Property at any time during the period of three months before the date of this agreement free from any Escrow of title arrangement or other Encumbrance.

(b) In relation to any assets held by any Group Company under any hire, hire purchase, conditional or credit sale, leasing or Escrow of title agreement or otherwise belonging to a third party, no event has occurred which entitles, or which on intervention or notice by the third party may entitle, the third party to repossess the assets concerned or to terminate the agreement or any licence in respect of it.

(c) There is attached to the Disclosure Letter* a schedule of fixed assets, including vehicles and equipment owned by each Group Company.

* *Attach schedule*

(d) There is attached to the Disclosure Letter* a schedule of fixed assets, including vehicles and equipment used or possessed but not owned by any Group Company specifying separately any asset used by the Group Company which is provided to it by any officer, shareholder, Employee or any Associate of any of them.

* *Attach schedule*

(e) There are no assets not owned or leased by any Group Company which it requires in order to carry on its business in the manner, extent and places it has been carried on in the two years preceding the date of this agreement.

(f) In respect of the vehicles, furniture and equipment and other assets owned and/or used by any Group Company:

(i) each item is:

(A) in the possession and control of that Group Company;

(B) in good repair and condition having regard to their carrying values in the accounting records of that Group Company;

(C) regularly maintained in accordance with applicable technical standards, safety regulations and the provisions of any applicable agreement;

(D) fully serviceable; and

(E) listed in the asset register of that Group Company as attached to the Disclosure Letter*;

* *Attach register*

(ii) no item is:

(A) surplus to requirements;

(B) as far as the Warrantors are aware when subject to normal usage a risk to health or safety or otherwise dangerous,;

(C) other than in respect of shop re-fit commitments amounting in aggregate to not more than £1,500,000 in the next 12 months expected to require replacements or additions costing more than £100,000 in total for all such items within six months from Completion; or

(D) has been adversely affected by fire.

(g) Maintenance contracts are in force for all the assets of each Group Company which it is normal or prudent to have maintained by independent or specialist contractors and for all assets which any Group Company is obliged to maintain or repair under any agreement.

(h) No Group Company has entered into any leasing or hiring agreement, hire purchase agreement, conditional sale or credit sale agreement, agreement for payment on deferred terms or any similar agreement or arrangement in respect of any of its assets.

(i) No Group Company is in breach of any of the provisions of any agreement or arrangement of a type described in Warranty 4.2(h).

(j) So far as the Warrantors are aware (without having made any specific enquiry), no Group Company has done or omitted to do any act or thing which has prejudiced or affected, or might materially prejudice or affect, its goodwill.

4.3 *Goods*

(a) The value attributed to stock in the Accounts does not exceed the lower of cost and net realisable value at the Accounts Date. The value attributed to stock in the Management Accounts does not exceed the lower of cost and net realisable value at the Management Accounts Date.

(b) The Group Companies' level of stock is reasonably considered by the Warrantors to be reasonable having regard to current and anticipated demand.

(c) There is no Encumbrance over any of the material assets of the Group Company and there is no dispute directly or indirectly relating to any assets.

(d) All necessary Approvals have been obtained for the use or supply by a Group Company of the Goods.

(e) No Group Company manufactures any Goods or engages or has engaged any manufacturer to produce goods for it.

(f) No Goods sold or delivered by any Group Company failed to comply with the terms of sale, or with any relevant statutory provisions.

(g) The Group has complied with all applicable laws, regulations and codes in selling, supplying or advertising the Goods including without limitation in the UK the Consumer Protection from Unfair Trading Regulations 2008, The Business Protection from Misleading Marketing Regulations 2008, the UK Code of Non-Broadcast Advertising Sales Promotion and Direct Marketing and the UK Code of Broadcast Advertising.

(h) All Goods which are required to comply with (CE) marking requirements do so comply and are marked as so complying in accordance with the relevant legislative requirements and each relevant technical file is complete, accurate, up to date and in the relevant Group Company's possession.

(i) No Group Company has made any statement as to the performance or quality of the Goods which is misleading, inaccurate or cannot be substantiated or has received any complaint from any regulatory body, customer or other person that its advertising is misleading or deceptive or may cause confusion.

(j) A copy of each form of standard terms of contract or business used by each Group Company during the past six years is attached to the Disclosure Letter*. Except as provided in such standard terms or as implied by law no Group Company has given any guarantee or warranty or made any representation or assumed any liability or obligation in respect of the Goods which would apply after the Goods have been sold or supplied by that Group Company.

* *Attach copies*

4.4 *Change of control*

There is no agreement or arrangement whether or not in writing to which any Group Company is a party which, on the execution of this agreement or on Completion or as a result of the performance of this agreement will or may result in:

(a) any third party being relieved of any obligation or becoming entitled to exercise any right (including a right of termination or any right of pre-emption or other option); or

(b) the Group Company being in default under any agreement or arrangement or losing any benefit, right or licence which it currently enjoys; or

a liability or obligation of the Group Company being created or increased.

4.5 *Material contracts*

(a) There is no agreement or arrangement whether or not in writing to which any Group Company is a party:

(i) which was entered into otherwise than at arm's length;

(ii) under which that Group Company gives any guarantee, performance or other bond, indemnity, letter of comfort or similar commitment (whether or not legally binding) in relation to, or stands surety for, the obligations of any third party;

(iii) under which any person has (otherwise than in the ordinary and usual course of trading) incurred any financial indebtedness or liability (actual or contingent) to the Group Company or vice versa or has given any performance bond or other bond in relation to any of the obligations of the Group Company;

(iv) which establishes any joint venture, cooperation agreement or arrangement, consortium or profit or loss sharing agreement or arrangement;

(v) which involves future capital expenditure by the Group Company exceeding £50,000;

(vi) which will result in the Group Company becoming liable for any finder's fee, brokerage or other commission in connection with this agreement;

(vii) to which the provisions of section 182 of the Companies Act (directors to disclose interest in existing transactions or arrangements) apply or

would apply if prior declaration had not been made under section 177 of the Companies Act;

(viii) to which any of the following provisions of the Companies Act apply: section 190 (substantial property transactions: requirement of members' approval) and/or sections 197 (loans to directors: requirement of members' approval) to 203 (related arrangements: requirement of members' approval) (inclusive);

(ix) under which the Group Company remains subject to any actual liability which is not provided for or noted in the Accounts or the Management Accounts or which remains subject to a contingent liability which is likely to be crystallised relating to any company, business or undertaking which it has disposed of;

(x) which is a power of attorney given by the Group Company or which gives any other authority which would enable any person to enter into any contract or commitment on behalf of the Group Company;

(xi) which is any agency, distributorship, marketing, purchasing, licensing, management or administration (including the management or administering of the affairs of any company, firm, association or business organisation) agreement or arrangement or is an OEM Agreement;

(xii) which involves payment by reference to fluctuations in the index of retail prices, or any other index, or in the rate of exchange of any currency or any interest rate;

(xiii) which is an unusual or abnormal contract having regard to the nature, scope and extent of the Group Company's business or the manner in which it has been carried on in the two years ended on the date of this agreement;

(xiv) which has more than three months left to run and which the Group Company cannot terminate by three months' notice or less without payment of compensation or damages;

(xv) which the Group Company needs to remain in force in order that it can carry on its business in substantially the same manner as it is carried on at the date of this agreement but will terminate or can be terminated by another party in the 12 month period following Completion;

(xvi) which upon completion of the Group Company's obligations will or is likely to result in a loss to the Group Company which is not fully provided for in the Accounts or the Management Accounts or which will not make a normal margin of profit or which involves an abnormal degree of risk or which cannot readily be fulfilled or performed by the Group Company on time;

(xvii) where the consideration receivable by the Group Company is not cash;

(xviii) which, following Completion, would purport to bind the Buyer (or require the Group Company to procure compliance by the Buyer);

(xix) under which the Group Company is subject to any liability (contingent or otherwise and including any liability to a third party under the

Contracts (Rights of Third Parties) Act 1999) not fully provided for in the Accounts or the Management Accounts;

(xx) which is a hire-purchase, hiring, conditional sale, credit sale or similar arrangement;

(xxi) which relates to the acquisition or disposal of companies, businesses or fixed assets by the Group Company either during the last six years or under which the Group Company or any other party has outstanding obligations;

(xxii) which is an option or similar agreement or arrangement affecting any assets owned or used by the Group Company; or

(xxiii) which restricts the freedom of the Group Company to provide or take goods and services to or from any person.

(b) There are attached to the Disclosure Letter* complete copies of all agreements entered into by each Group Company otherwise than on the standard terms of business of that Group Company for the development, manufacture, assembly, supply, maintenance, distribution, marketing and sale of Goods by that Group Company.

* *Attach copies*

(c) The Warrantors have Disclosed all bids, tenders or other negotiations or offers which are capable of resulting or likely to result in any Group Company entering into any agreement or arrangement of a kind described in Warranty 4.5(a) or 4.5(b).

4.6 *Other agreements and arrangements*

(a) There are no *:

* *Attach copies*

subsisting agreements or arrangements regulating prices.

(b) There are attached to the Disclosure Letter;

(i) details of all warranties/guarantees provided by any Group Company in relation to the Goods provided by it;

(ii) a list of all material subcontractors of each Group Company and details of all material sub-contracting arrangements; and

(iii) a list of all manufacturers for each Group Company and details of the agreements and arrangements with each such manufacturer.

(c) No agreement or arrangement to which any Group Company is a party is invalid as against the relevant Group Company or ultra vires the relevant Group Company nor, so far as the Warrantors are aware, is any such agreement or arrangement invalid as against or ultra vires the other party thereto and the Warrantors have had not notice of any rescission, breach, avoidance or repudiation of any agreement or arrangement to which any Group Company is a party.

(d) No Group Company has assigned or sublet any of its rights nor is it in default under any material agreement or arrangement to which it is a party and so far as the Warrantors are aware there are no circumstances likely to give rise to any such default, and so far as the Warrantors are aware no other party to any

such agreement or arrangement is in default under it and there are no circumstances expected to give rise to any such default.

(e) There are no oral agreements which, if they had been reduced to writing, would be of a kind which the Warrantors warrant pursuant to this paragraph 4.6 to have been listed in or attached (in copy form) to the Disclosure Letter*.

* *Attach list or copies*

4.7 *Major customers, clients and suppliers*

(a) No supplier to any Group Company nor any distributor or franchisee has ceased or has indicated an intention to cease trading or dealing with that Group Company nor, so far as the Warrantors are aware (without having made any specific enquiry), is anticipated to do so or to suffer an Insolvency Event or to make any substantial reduction in its trading or dealing with the Group Company.

(b) So far as the Warrantors are aware (without having made any specific enquiry) the attitude or actions of customers, suppliers, clients, Employees distributors, franchisees and other persons with regard to any Group Company will not be prejudicially affected by the signing of any Transaction Document or the matters or transactions effected by it.

(c) There is attached to the Disclosure Letter a list of the suppliers accounting for 5% or more of all sales to the Group Companies for the period ending on the Accounts Date.

(d) The total amount of all sales of any Group Companies obtained or made to customers (including any Associate of such customers) in the United States does not exceed US$66,000,000.

4.8 *Regulatory matters — General*

(a) Each Group Company has been granted, and there are now in force all necessary Approvals for the sale, export or supply of the Goods and the proper carrying on of its business in the places and in the manner in which such business is now carried on.

(b) Each application for Approval has been made in a timely manner and has been complete, accurate and granted without condition or exception and has not been withdrawn or modified. To the extent that any application has not been granted in full there are no facts known or which on reasonable enquiry would be known to any Group Company which would indicate or suggest that any other application may fail to be granted in full.

(c) Nothing has been done or omitted to be done whereby any person or regulatory body may be able to seek cancellation, rectification or any other modification of any regulatory Approval in any jurisdiction in which any such Approval has been granted or sought.

(d) The Approvals referred to in Warranty 4.8(a) are not subject to any unusual or onerous conditions and each Group Company has complied with all conditions attached to such Approvals. No Group Company has received any notice of any investigations, proceedings, enquiries, communications or other circumstances which indicate that any such Approvals may be revoked, cancelled, suspended, modified or not renewed.

(e) Each Group Company has at all times carried on its business and affairs in accordance with its memorandum and articles of association and all applicable

laws and regulations of the United Kingdom, Ireland or any other jurisdiction applicable to it.

(f) The business carried on by the Group has no involvement, whether as a buyer or supplier, in goods or services which involve or are alleged to involve the exploitation of low paid workers through poor pay, terms or employment conditions.

(g) Wherever possible, the Group Companies sources its Goods from sources which promote good ethical, environmental and sustainability practices.

(h) No Group Company carries on or purports to carry on any regulated activity in contravention of section 19 of the Financial Services and Markets Act 2000.

(i) No governmental, administrative or regulatory authority has served a notice on any Group Company in respect of any of its assets or activities and, so far as the Warrantors are aware, there are no circumstances likely to give rise to the service of such a notice.

(j) No Group Company has received notice of any investigations or enquiries by, or on behalf of, any governmental, administrative or regulatory authority in respect of any of the affairs of any Group Company.

(k) No Group Company has paid any commission or made any payment whether to secure business or otherwise to any person, firm or company which in the hands of such person, firm or company would in accordance with the relevant law be regarded as illegal or improper.

(l) No Director, officer, agent, Employee or other person acting on behalf of any Group Company has been party to the use of any assets of the Group Company for unlawful contributions, gifts, entertainment or other unlawful expenses relating to any activity, including any political activity, or to the establishment or maintenance of any unlawful or unrecorded fund of monies or other assets, or to the making of any false or fictitious entries in the books or records of the Group Company, or to the making of any unlawful payment.

(m) Each Group Company has complied with all the requirements of the Health and Safety at Work etc Act 1974 and all other statutory requirements relating to the health and safety of its Employees.

4.9 *Regulatory matters — Competition, merger control and regulatory*

(a) No Group Company is or has been a party to any:

(i) agreement, arrangement, concerted practice or other practice; or

(ii) merger, acquisition or joint venture,

which:

(iii) contravenes or contravened;

(iv) is or was invalidated by;

(v) requires or required notification or registration under;

(vi) satisfies or satisfied the criteria for review or investigation under; or

(vii) has been the subject of notification or registration under,

any competition, anti-trust, merger control, regulatory, monopoly, fair trading or similar legislation.

(b) No Group Company nor any Employee, Consultant or Director has received any process, notice or communication (formal or informal) by or on behalf of any authority having jurisdiction in competition, anti-trust, merger control, regulatory, monopoly, fair trading, or similar matters (any such body or person being referred to below as a "**Competition Authority**") in respect of any matter, whether or not the Group Company is or was a party to or is or was involved in such matter and no Group Company nor any Employee, Consultant or Director has received any indication (from whatever source) that any such process, notice or communication might be issued or that any person might make or has made a complaint to a Competition Authority against any Group Company or any Employee, Consultant or Director.

(c) No Group Company nor any Employee, Consultant or Director has made any complaint or provided any information or made any application for leniency or for a no-action letter to any Competition Authority in respect of any matter, whether or not the Group Company is or was a party to or is or was involved in such matter and no circumstances exist or have existed which may give rise to the Group Company or, so far as the Warrantors are aware, any Employee, Consultant or Director making any such complaint or providing any such information or making any application for leniency or for a no-action letter.

(d) No Director has been or is the subject of a Competition Disqualification Order within the meaning of section 204 of the Enterprise Act 2002 or has given any Competition Disqualification Undertaking within the meaning of section 9B(2) of the Company Directors Disqualification Act 1986 and no such Director is or has been the subject of an investigation, process notice or communication which may result in such an Order being made or undertaking being offered.

(e) No Employee, Consultant, or Director is or at any material time was guilty of an offence under section 188 of the Enterprise Act 2002 (the "**Cartel Offence**") or of any attempt, conspiracy or incitement to commit the cartel offence or of aiding, or abetting a person to commit the Cartel Offence.

(f) No Employee, Consultant or Director has been convicted of the Cartel Offence nor has been the subject of any investigation, process, notice or communication relating to the Cartel Offence.

(g) No Group Company is nor has been in receipt of any state aid within the meaning of Article 107 of the Treaty on the functioning of the European Union or Article 61 of the Agreement on the European Economic Area.

(h) Neither the Goods, nor any part, component or sub assembly incorporated in the Goods, nor any other part, component or sub assembly imported or used by any Group Company is or has been the subject of:

(i) any anti-dumping investigation or anti-dumping duty or any undertaking or agreement in respect of them and no Group Company is aware of any circumstances which may give rise to any such investigation or matter;

(ii) registration on importation into the European Community; or

(iii) any import quota or other restriction or any investigation or enquiry under the trade policy instruments of the European Community.

(i) No Group Company has entered into or agreed or is presently negotiating any agreement or engaged in any tendering procedure which is or was subject to advertising or other requirements under the EC public or utilities procurement rules or any national rules implementing them which has not been advertised or where any relevant requirement has not been complied with.

4.10 *Transactions with Seller's Associates and Directors*

(a) There are no:

(i) loans or quasi loans (as defined in the Companies Act) or credit transactions (as so defined) made by any Group Company to any Seller, Seller's Associate, Director or Associate of a Director;

(ii) debts owing to any Group Company from any Seller, Seller's Associate, Director or Associate of a Director.

(b) There are no mortgages, charges, guarantees or other security arrangements entered into by any Group Company in respect of any obligations of any Seller, Seller's Associate, Director or Associate of a Director.

(c) There are no existing contracts, transactions or arrangements to which any Group Company is a party or under which it may be liable and in which any Seller, Seller's Associate, Director or Associate of a Director is interested whether directly or indirectly, and no Group Company has been a party to any such contracts, transactions or arrangements during the three years preceding the date of this agreement.

(d) No Warrantor or Manager is at the date of this agreement either individually or with any other person or persons engaged or concerned or interested (and whether by a holding of shares or otherwise) in any other business which is of a similar nature to or competitive with that carried on by any Group Company.

(e) There are no formal or informal arrangements (whether or not legally binding) in force or to come into force between any Group Company and any Seller, Seller's Associate, Director or Associate of a Director.

(f) No Group Company depends in any material respect on the use of any property, right or asset owned by, or facilities or services provided by, any Seller (other than services provided as an Employee), any Seller's Associate, Director or Associate of a Director.

4.11 *Insurance*

(a) Details of the Company's insurance polices are set out in the Disclosure Letter. All premiums due in respect of the insurance policies Disclosed have been paid and the next renewal date for each is a date at least 30 days after the date of Completion. All the insurance polices Disclosed are currently in force, and nothing has been done or omitted to be done which could make any policy of insurance void or voidable, or which is likely to result in an increase in premium. No such insurance policy is subject to any special or unusual terms or restrictions or to the payment of any premium in excess of the normal rate.

* *Include list*

(b) No claim is outstanding or is likely to be made under any of such insurance polices and, so far as the Warrantors are aware, no circumstances exist which are likely to give rise to any claim.

(c) No Employee, workman or any other third party has suffered any illness, accident or injury for which any Group Company may be liable and which is not fully covered by insurance.

4.12 *Claims, Disputes, Notifications and Investigations*

(a) No Group Company nor any pension schemes of any Group Company is a party (whether as claimant or defendant or otherwise) to any claim, litigation, arbitration, prosecution or other legal or quasi legal proceedings or enquiry and no Group Company has been engaged in any such claim, proceedings or enquiry during the three years before the date of this agreement and there are no claims or actions (whether criminal or civil) pending, threatened or anticipated by or against any of the Group Companies or any Director, Employee or Consultant.

(b) No Group Company is in dispute with any of its suppliers as to the quality of Goods or as to late delivery or sums owed or otherwise involving amounts in excess of £10,000.

(c) No Group Company is aware that any Goods sold or provided by it are defective or have or may have caused or contributed to any damage to property or personal injury and there is no dispute between any Group Company and any of its customers, licensees, suppliers or franchisees.

(d) No Group Company has received any notice or other intimation that any of the Goods infringe any relevant United Kingdom or European Communities regulations relating to safety or to manufacture, distribution, sale or use of goods or that any Goods supplied outside the United Kingdom infringes any similar regulations in the country of sale.

(e) No Group Company has received any notice of any complaints, claims, disputes, investigations, disciplinary proceedings or other facts or circumstances likely to lead to any claim, action, proceeding, suit, litigation, prosecution, investigation, enquiry or arbitration involving any Group Company.

(f) No Group Company has unpaid liability in respect of any bill or account received more than 30 days before the date of this agreement.

(g) There are no unfulfilled or unsatisfied judgments or court orders outstanding against any Group Company or which may affect any of them.

(h) No distress, distraint, charging order, garnishee order, execution or other process which a court or a similar body may use to enforce payment of a debt has been levied or applied for in respect of any asset of any Group Company.

4.13 *Membership of trade associations etc*

The Disclosure Letter* lists any trade association or professional body of which any Group Company is a member and of the fees and other charges payable in respect of such membership.

* *Include list*

4.14 *Conduct of business since the Accounts Date*

(a) Since the Accounts Date:

(i) no dividend or other distribution (within the meaning of that expression as contained in section 1000 or section 1064 of the CTA 2010 (formerly section 209 or 210 or 418 of ICTA 1988)) has been declared, paid or made by any Group Company;

(ii) each Group Company has carried on its business as a going concern in its ordinary and usual course without any interruption or change in its nature, scope or manner;

(iii) no Group Company has disposed of or parted with possession of any of its assets or entered into any transaction or assumed or incurred any liabilities or made any payment except in the ordinary and usual course of trading and at arm's length;

(iv) no Group Company has written off any debt, no debt has been released by any Group Company on terms that the debtor pays less than the book value of its debt, and no debt owing to any Group Company has proved to any extent to be irrecoverable;

(v) no Group Company has entered into any contract involving expenditure on capital account or the purchase of any capital equipment or other items of a capital nature;

(vi) the profits of any Group Company have not been affected by changes or inconsistencies in accounting treatment, by any non-recurring items of income or expenditure, by transactions of an abnormal or unusual nature or which have been entered into otherwise than on normal commercial terms;

(vii) the business of any Group Company has not been materially or adversely affected by the loss of any customer which in either of the two financial years immediately preceding the Accounts Date accounted for 5 per cent or more of its turnover;

(viii) no business of any Group Company has been materially adversely affected by the loss of any source of supply which:

(A) in either of the two financial years immediately preceding the Accounts Date accounted for 5 per cent or more of total amount paid by that Group Company in such period for Goods or Goods supplied to that Group Company; or

(B) is otherwise material to the business of any Group Company;

(ix) there has been no material adverse change in the financial position or turnover of any Group Company;

(x) no contract or commitment (whether in respect of capital expenditure or otherwise) has been entered into by any Group Company on terms which will allow for less than full recovery of costs, overheads and profit or which is of a long term or unusual nature, or which involves or could involve an obligation of a material nature or magnitude; and for this purpose a long term contract or commitment is one which will not be performed in accordance with its terms within three months after the date it was entered into or undertaken or which is incapable of termination by that Group Company on three months' notice or less;

(xi) no Group Company has acquired or disposed of or agreed to acquire or dispose of any business or any material asset or assumed or acquired any material liability (including any contingent liability) otherwise than in the ordinary and usual course of business;

(xii) no Group Company has disposed of or agreed to dispose of any asset for a consideration payable by instalments where any instalment remains unpaid;

(xiii) all payments of money received by each Group Company have been credited to its accounts with its bankers;

(xiv) each Group Company has paid its creditors in accordance with the same policy as that adopted throughout the financial year ended on the Accounts Date;

(xv) there has not been any material change in the level of borrowing or in the working capital requirements of any Group Company;

(xvi) there has not been any unusual increase or decrease in the level of the stock or work in progress of any Group Company; and

(xvii) no provision in the accounting records has been released.

**5. Part 5 — Intellectual property and data protection**

5.1 *Ownership, title and adequacy of intellectual property rights*

(a) In respect of all material Group Intellectual Property other than that which is the subject of the Licences-In:

(i) it is listed in schedule 3;

(ii) one or more of the Group Companies is (or are together) the sole legal and beneficial owner of it;

(iii) it is valid and enforceable and nothing has been done, omitted to be done or permitted by any Group Company whereby any of it has ceased or might cease to be valid and enforceable;

(iv) insofar as it is registered or the subject of an application for a registration:

(A) accurate material particulars of it are set out in parts A, B, C, D and E of schedule 3;

(B) all relevant registrations and applications have been made by, or are in the name of, a Group Company;

(C) all application, publication, registration, renewal and other official fees relating to its administration have been duly paid by or on the due dates for payment;

(D) the Warrantors are not aware of any facts which would indicate or suggest that such applications or any of them may fail in any respect to be granted in full; and

(v) accurate particulars of any of it which is material, unregistered and not the subject of an application for registration are set out in part F of schedule 3.

(b) The Group Intellectual Property comprises all the Intellectual Property which each Group Company requires as at the date of this agreement in order to carry on the business and deal with the assets of each Group Company in the manner and places it has been carried on and dealt with up to the date of this agreement.

5.2 *Completeness of listed information*

(a) A complete and accurate list of all:

(i) Licences-In which are material to the business of the Company or any of its Subsidiary Undertakings is set out in part A of schedule 4; and

(ii) other Intellectual Property Agreements which are material to the business of the Company or any of its Subsidiary Undertakings is set out in parts B and C of schedule 4.

(b) Complete and accurate copies of all Intellectual Property Agreements have been Disclosed.

5.3 *Encumbrances and restrictions*

(a) None of the Group Intellectual Property:

(i) is subject to any Encumbrance;

(ii) is subject to any other agreement restricting its use by any Group Company (including any delimitation or co-existence agreement or agreement limiting use by territory, field, persons or as to time), other than as expressly set out in the Intellectual Property Agreements as Disclosed; or

(iii) will be restricted as to its exploitation, or will be lost, terminated, or rendered liable to a right of termination, assignment or licence to a third party, by virtue of the execution of this agreement or the transaction effected by this agreement.

5.4 *Infringements, oppositions, claims etc.*

For the purposes of Warranties 5.4(a), 5.4(b), and 5.4(c), to “infringe” in relation to Intellectual Property includes to use, work under or reproduce in whole or in part, without the licence of the owner, pass off, misuse or misappropriate Intellectual Property (including by way of parallel trade) or to compete unfairly (or to procure or permit any such acts by others), and “infringed” and “infringement” have corresponding meanings.

(a) No activity of any Group Company, nor of any licensee of any Group Company, as carried on now and in the six years before the date of this agreement has infringed, does infringe or is likely to infringe any Intellectual Property of any third party, nor any right of publicity, privacy or personality or other analogous right of any third party.

(b) No Group Company has, within the last six years, received any notice of any and there are no pending allegations, notifications, applications, or Claims:

(i) by a third party that the business or activities of any Group Company, or of any licensee of any Group Company, infringed or infringes any Intellectual Property of any third party; or

(ii) for invalidity, revocation, opposition, cancellation, compensation or otherwise in respect of the Group Intellectual Property,

and the Warrantors are not aware of any facts or circumstances which could give rise to such allegation, notification, application or Claim.

(c) There have not in the last six years been any, and there are no pending or anticipated allegations, notifications, applications or Claims by any Group Company or by a licensee of any Group Company:

(i) against a third party alleging infringement of the Group Intellectual Property; or

(ii) for invalidity, revocation, opposition, cancellation, compensation or otherwise in respect of the Intellectual Property of any third party,

and the Warrantors are not aware of any facts or circumstances which could give rise to any such allegation, notification, application or Claim.

(d) There are no circumstances which:

(i) entitle or could entitle a third party to a licence, permission or consent to exploit or assignment of or in respect of any Group Intellectual Property; or

(ii) entitle or could entitle a third party to call for or exercise a right to use or work under any Group Intellectual Property.

5.5 *Intellectual Property Agreements*

(a) The Intellectual Property Agreements which are listed in parts B and C of schedule 4 are all the material Intellectual Property Agreements of the types described by the titles of those parts and are valid and binding and none of them will be breached, lost, terminated, rendered liable to any right of termination or assignment or their terms amended by virtue of the execution of this agreement or the transaction effected by the Transaction Documents.

(b) So far as the Warrantors are aware no party to an Intellectual Property Agreement is in breach of its terms and no allegation, notification or application has been made or dispute or Claim has been notified to any Group Company in relation to any Intellectual Property Agreement, and so far as the Warrantors are aware there are no facts or circumstances which are likely to give rise to such an allegation, notification, application, dispute or Claim.

(c) There are no royalties, licence fees, other fees or consideration (including non-monetary consideration) payable by any Group Company in connection with any Group Intellectual Property other than:

(i) the application, publication, registration, renewal and other official fees relating to the administration of the Group Intellectual Property; and

(ii) those expressly set out in the Licences-In listed in part A of schedule 4.

5.6 *Confidential information*

(a) To the extent that information of a confidential nature (including know-how, trade secrets and customer lists) is or has been used or exploited by any Group Company, such information has been kept confidential (except for any of it which has come into the public domain lawfully and not through a breach of confidence) and has not been disclosed to any third party, except under the terms of confidentiality agreements listed in part C of schedule 4 or subject to any confidentiality undertakings or provisions given by any Group Company in any other agreement.

5.7 *Data protection*

(a) Each Group Company has fully complied at all material times and currently fully complies with Data Protection Legislation including:

(i) the data protection principles (as defined under the Data Protection Act 1998);

(ii) the requirements relating to registration and/or notification of processing of personal data;

(iii) all subject information requests from data subjects; and

(iv) where necessary, the obtaining of consent to direct marketing activity.

(b) No Group Company has received any notice or complaint from any individual or regulatory authority alleging non-compliance with Data Protection Legislation (including any prohibition or restriction on the transfer of data between any two jurisdictions) or claiming compensation for or an injunction in respect of non-compliance with Data Protection Legislation.

**6. Part 6 — The Computer System and Computer Contracts**

6.1 *Computer System*

(a) Accurate particulars of all material Computer Hardware and all material Computer Software are set out in parts A and B of schedule 5 respectively.

(b) Other than elements of the Computer System expressly leased or licensed to a Group Company under the Computer Contracts listed in part C of schedule 5:

(i) one or more Group Companies are the legal and beneficial owner free from Encumbrances of the Computer System and no other person has any claims or rights in respect of any element of the Computer System; and

(ii) the Computer System is not wholly or partly dependent on any facilities which are not under the exclusive ownership or control of a Group Company.

(c) The Computer System:

(i) has been and is being properly and regularly maintained and replaced and has the benefit of appropriate maintenance and support agreements;

(ii) has the capacity and is of a suitable technical specification necessary to fulfil the present and reasonably foreseeable requirements of the business of the Group Companies; and

(iii) comprises all computer hardware, firmware, software manuals, supporting materials and accessories which are necessary to enable the Group Companies to carry on business in the same manner and to the same extent as it has been carried on in the two years preceding the date of this agreement.

(d) The rights of the Group Companies to use the Computer System will not be affected by the execution of this agreement or the transaction effected by this agreement.

(e) The Group Companies have in place adequate back-up, disaster recovery and other systems and procedures (details of which have been Disclosed) to enable its business to continue without material adverse change in the event of a failure of the Computer System.

(f) No part of the Computer System has materially failed to function at any time during the two years prior to the date of this agreement and the Computer System operates in accordance with its applicable specifications.

(g) There are no royalties, licence fees or other fees payable in connection with the use of any part of the Computer System other than as expressly set out in the Computer Contracts listed in part C of schedule 5.

6.2 *Computer Contracts*

(a) A complete and accurate list of all material Computer Contracts is set out in part C of schedule 5 and complete copies of all material Computer Contracts have been Disclosed.

(b) The warranties set out in Warranty 5.5 above apply in respect of the Computer Contracts as if references to the Intellectual Property Agreements were references to the Computer Contracts.

6.3 *Proprietary Software*

(a) One or more Group Companies are the sole legal and beneficial owner, free of Encumbrances, of all the Group Intellectual Property in and to the Proprietary Software and all the Group Intellectual Property in and to the Proprietary Software is valid, subsisting and enforceable.

(b) All Contributors involved in, and other persons who have provided services to the Company relating to, the development of the Proprietary Software have executed appropriate valid and enforceable agreements with the relevant Group Company by which all Group Intellectual Property in their work relating to the Proprietary Software belong solely to one or more Group Companies or, in the case of Contributors who at all material times were and/or are employees of a Group Company, all their work in relation to the Proprietary Software was carried out in the course of their normal duties and in the United Kingdom.

(c) There are no royalties, licence fees, other fees or consideration (including non-monetary consideration) payable by any Group Company in connection with any Proprietary Software.

(d) The Proprietary Software has not suffered any material failure in functionality or performance in the two years preceding the date of this agreement.

(e) So far as the Warrantors are aware, in relation to any source code for the Proprietary Software (including that of all previous releases and versions):

(i) no person (other than a Group Company and its current and duly authorised officers and employees) has, or has had, any source code in its possession;

(ii) there are no escrow agreements in force under which any third party may become entitled to such use or possession; and

(iii) no person is entitled to require such an escrow agreement to be entered into by any Group Company.

(iv) possession of a complete copy of the source code for each item of the Proprietary Software is held by a Group Company.

**7. Part 7 — Employment and Pensions**

7.1 *Terms and Conditions of Employment*

(a) In respect of each current Employee, there is attached to the Disclosure Letter a spreadsheet giving full and accurate particulars of their full names, job titles, and salary and for all Employees, save for any Sales Advisors, there is included in that spreadsheet full and accurate particulars for each individual of dates of commencement of employment, ages, notice periods, job location, standard hours of work, salaries and other remuneration (including bonus and commission and other incentive payments) and all other terms and conditions of employment or appointment including any terms and conditions contained in any employee handbook or manual. In respect of Sales Advisors, a copy of the standard terms and conditions on which such Sales Advisors are employed is attached to the Disclosure Letter. In respect of Directors, copies of their service contracts are attached to the Disclosure Letter.

(b) In respect of each Consultant (if any) engaged by a Group Company, there is attached to the Disclosure Letter a spreadsheet giving full and accurate particulars of their full names, job titles, dates of engagement, ages, notice periods and fees together with particulars of confidentiality obligations, directorships and business interests held, other benefits including cars, mobile phones and private health insurance, and all other terms and conditions of engagement.

(c) Save in respect of any Sales Advisor positions, there are no outstanding offers of employment or engagement made to any person by any Group Company and there is no one who has accepted an offer of employment or engagement made by any Group Company but who has not yet taken up that employment or engagement.

(d) Except as otherwise disclosed, all service and employment agreements entered into by any Group Company and in force at the date of this agreement may be terminated by not more than three months' notice and without payment of compensation or damages (other than any payments arising under statute or payment for unfair dismissal or, for the avoidance of doubt, any payment made in lieu of notice). All consultancy agreements entered into by any Group

Company may be terminated by not more than three months' notice without giving rise to any claim for damages or compensation.

(e) All agreements entered into by each Group Company with agencies or other organisations to engage temporary or permanent workers will terminate prior to Completion with no liability on any Group Company to make any payment or provide any compensation as a consequence.

(f) No current Director, Employee or Consultant:

(i) has given or received notice terminating his office or employment or engagement or altering its terms, and no such person will be entitled as a result of the entering into of this agreement to give notice of termination or claim for any payment or benefit or treat himself as being released from any obligation nor so far as each Warrantor is aware (without having made specific enquiry) are there any facts which suggest that any current Director, Employee or Consultant is likely to leave his office or employment or engagement otherwise than through normal retirement within the 12 months following Completion;

(ii) is on sick leave which (as the date of this agreement) has continued for more than 14 consecutive days;

(iii) is on maternity, paternity, parental or adoption leave;

(iv) is on a fixed term contract; or

(v) either has made an application to work flexibly or is so doing.

(g) No amounts due by any Group Company to, or in respect of the current Directors, Consultants or Employees (including PAYE and national insurance and pension contributions) are in arrears or unpaid.

(h) There are no outstanding bonuses due to be paid to any Employee.

(i) None of the current Employees has any accrued rights to holiday pay or pay in lieu of holidays which have not been provided for in full in the Management Accounts.

(j) There are attached to the Disclosure Letter copies of the following documents (which includes the provision only of pro-forma documents for non-Directors):

(i) services agreements, contracts of employment or offer letters for all current Employees and all Directors;

(ii) any letters of employment confirming individual variations to standard terms and conditions of employment with any Group Company;

(iii) any staff handbook or written employment policies for each Group Company;

(iv) any confidentiality agreements entered into by Employees with any Group Company; and

(v) any consultancy agreements with any Group Company.

7.2 *Variations of Terms and Conditions of Employment*

(a) Since the Accounts Date, save in respect of any Sales Advisor:

(i) no change has been made in the rate or basis of remuneration, fees or the pension or other benefits paid to or provided for any current Director, Consultant or Employee and no changes are due to be considered; and

(ii) no change has been made in any other terms of employment or the engagement of any current Director, Consultant or Employee as set out in the Disclosure Letter or is due to be considered other than may be contemplated by the Buyer.

(b) No Group Company has entered into any agreement or given any assurance (whether legally binding or not) or so far as the Warrantors are aware created any expectation regarding any future variation in any contract of employment or consultancy agreement or any other agreement imposing an obligation on any Group Company or so far as the Warrantors are aware (without having made specific enquiry) any expectation by any of its current Directors, Employees or Consultants that it will increase the basis or rates of remuneration or payment or the provision of other benefits to or on behalf of any of its Directors, Employees or Consultants at any future date.

7.3 *Employee Incentive Arrangements*

(a) There have been Disclosed each of the following which are now or have at any time within the 18 months immediately preceding the date of this agreement been operated by any Group Company or which any Group Company is under any obligation (whether or not legally binding) to provide at any future date:

(i) any scheme or arrangement whereby its current or former Directors or Employees or their relevant relatives or dependents may acquire shares or options to acquire shares of any class in any Group Company;

(ii) any employee trust under which current or former Employees their relatives or dependents are the beneficiaries or are entitled to receive any benefits;

(iii) any cash bonus scheme or other employee incentive arrangements not involving the issue of shares; or

(iv) any arrangement by which any commission or remuneration of any kind payable or due to any of its current Directors or Employees may be calculated by reference to the turnover, profits or sales of any Group Company.

(b) In relation to any share schemes or arrangements of the kind referred to in paragraph 7.3(a) above and referred to in the Disclosure Letter:

(i) copies of all documents governing such share schemes have been attached to the Disclosure Letter;

(ii) such share schemes have at all times been operating in accordance with their governing rules or terms and all applicable laws;

(iii) all documents relating to such share schemes which are required to be filed with any regulatory authority have been so filed, and all regulatory requirements relating to such share schemes have been complied with;

(iv) all tax clearances and approvals necessary or desirable to obtain favourable tax treatment for the operator of such share schemes or their participants have been obtained and have not been withdrawn, and so far as the Warrantors are aware no act or omission has occurred which has or would prejudice any such tax clearance or approval; and

(v) no Group Company has received any notice from any current or former Employee or relation or dependent or other participants in any such share schemes of any claim against any of the Sellers or any Group Company.

7.4 *Collective Agreements, Industrial Payments and Disputes*

(a) No Group Company is liable to pay any industrial levy nor has it any outstanding undischarged liability to pay any governmental or regulatory authority in any jurisdiction any Taxation contribution or other impost arising in connection with the employment or engagement by the Group Company of any current or former Employees, Directors or Consultants other than, in the UK, PAYE in respect of Employees and Directors and VAT in respect of Consultants registered for VAT.

(b) No Group Company has received an application for recognition nor entered into any union membership, security of employment, redundancy, recognition or other collective agreement (whether legally binding or not) with a trade union (whether recognised or unrecognised), association of trade unions, works council, staff association or other organisation or body of Employees, nor has any Group Company done any act which might be construed as recognition, nor has any Group Company in respect of any Employee entered into any agreement with any trade union or other employee body representing employees concerning the introduction of new equipment or technology.

(c) No Group Company operates any industrial training programme, youth opportunities scheme or any similar programmes or schemes.

(d) No Group Company is involved in, or has been involved in the last five years in, any industrial or trade dispute regarding a claim of material importance and the Warrantors are not aware of any facts which might indicate that there may be any such dispute.

7.5 *Disciplinary, Grievance and Termination of Employment Matters*

(a) No disciplinary action resulting in the issuing of a final written warning or dismissal pursuant to the Dispute Resolution Regulations, an ACAS Code of Practice or otherwise has been taken against any current or former Employee and no grievance or complaint of sex, race, disability, age, sexual orientation or religion or belief discrimination has been raised by any current or former Employee pursuant to the Dispute Resolution Regulations, an ACAS Code of Practice or otherwise in the two years ending on the date of this agreement.

(b) The Warrantors are not aware of any fact or matter affecting any Employee which might reasonably be considered grounds for dismissal.

(c) So far as the Warrantors are aware no current or former Director, Employee or Consultant has any claim against any Group Company for loss of office or

arising out of the termination of his office, employment or consultancy or in respect of any accident or injury or otherwise and there is no event which would or might give rise to any such claim.

(d) No Group Company is paying compensation or other payment to any former Employee (or next of kin).

(e) No liability has been or may be incurred by any Group Company in the past three years for breach of any contract of service or for services (including consultancy services), for redundancy payments, protective awards or for compensation for wrongful dismissal, unfair dismissal or for failure to comply with any order for the reinstatement or re-engagement of any Employee or Consultant or for any other liability accruing from the actual or proposed termination or variation of any contract of employment or for services (including consultancy services) or arising from the sale of the Sale Shares in accordance with this agreement.

(f) There is no person previously employed by any Group Company who now has or may have a right to return to his work or a right to be reinstated by that Group Company under the provisions of the Employment Rights Act 1996 or equivalent legislation in Ireland.

(g) The Disclosure Letter lists all Employees (excluding Sales Advisors) and Consultants whose employment or consultancy was terminated by any Group Company in the 12 months ending on the date of this agreement, the reason for termination and any payments made to the Employees or Consultants on or in connection with termination.

7.6 *Group Company Payments*

(a) No gratuitous payment has been made or promised by any Group Company:

(i) in respect of or contingent on the sale of the Sale Shares; or

(ii) in connection with the actual or proposed termination, suspension or variation of any contract of employment or engagement of any current or former Director, Consultant or Employee.

(b) All monies paid or goods or services provided or made available (including by way of the provision of a credit card) by any Group Company either as principal or surety to any of its Directors or Employees whether as an emolument or as reimbursement or otherwise have been properly incurred by that Group Company so as to be deductible in computing its taxable profits and have been declared to the HM Revenue & Customs.

7.7 *General Matters*

(a) Save for any payments or benefits due to Directors or Employees under the terms of their current contracts of employment or service agreements, no Group Company is under any present, future or contingent liability to provide any goods, services, accommodation or benefit (whether as remuneration or otherwise) to any of its current or former Directors or Employees, or to any Seller's Associate.

(b) No Group Company has made any loans or quasi loans (as defined in the Companies Act) to or entered into any credit transaction (as so defined) with any of its Directors or Employees.

(c) Each Director or Employee who is subject to UK or Irish immigration control will have a valid immigration status at Completion, entitling him to be employed full time by the applicable Group Company for at least three months following Completion and is employed in accordance with the terms of his immigration status. A full copy of the relevant passport and immigration approval documents for each such person is attached to the Disclosure Letter.

(d) Each person has been or is employed by a Group Company who did not or does not have leave to enter or remain in the United Kingdom or Ireland or otherwise in breach of section 8 of the Asylum and Immigration Act 1996 or sections 15-21 of the Immigration, Asylum and Nationality Act 2006 (as applicable) or equivalent legislation in Ireland.

(e) Each Group Company has in relation to each of its Directors and Employees (and so far as relevant to each of its former Directors and Employees) complied with all obligations imposed on it by Article 141 of the Treaty of Rome, the Trade Union and Labour Relations (Consolidation) Act 1992, the Employment Rights Act 1996 and all other statutes, regulations, codes of conduct and practices relevant to the relations between the Group Company and its Directors and Employees and the Group Company has maintained adequate and suitable records regarding their service.

(f) Within the period of one year preceding the date of this agreement the Company has not been a party to any relevant transfer as defined in the Regulations nor has the Company failed to comply with any duty to inform and consult any appropriate representative under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (the "**Regulations"**) or failed to comply with its duty under Regulation 11 of the Regulations or other equivalent regulations in Ireland.

(g) The Disclosure Letter* lists the names of each officer of each Group Company (if any) who left the Group Company during the three years up to and including the date of this agreement, the date on which such officer left and reasons for such officer ceasing to be associated with the Group Company.

7.8 *Redundancy*

(a) In connection with the termination of his employment, no Employee would be entitled to any redundancy payment or other contractual termination of employment payment (save for a contractual or statutory notice payment) other than the basic statutory redundancy payment as calculated in terms of section 162 of the Employment Rights Act 1996 or to include in the calculation of his continuous employment any employment by any other person before his employment by any Group Company.

(b) In the 12 months' period ending with the date of this Agreement, no Group Company has given notice of any redundancies to the Secretary of State or started consultations with any appropriate representative under the provisions of Part IV of the Trade Union and Labour (Consolidation) Act 1992, nor has any Group Company failed to comply with any obligation under that statute or equivalent statute in Ireland.

(c) The particulars of any redundancy policies and formula set out in the Disclosure Letter are true, complete and accurate.

**8. Part 8 — Pensions**

8.1 Save for the Pension Schemes and the Life Assurance Scheme there is no scheme, agreement, arrangement, practice, or proposal (in each case whether formal or informal) in relation to which the Company or any of the Subsidiary Undertakings has incurred, will incur or may be expected to incur any liability or responsibility (including, without limitation, any liability for contributions or expenses or for any shortfall in funding, or any liability as trustee or responsibility in respect of any discretionary power) for or in relation to the provision of:

(a) any pension, lump sum, gratuity or other like benefit payable on retirement, death or withdrawal from service for, in respect of or by reference to any present or former director, officer, employee of or person who has at any time agreed to provide services to the Company or the Subsidiary Undertakings;

(b) any benefits to be given by reason of disability or sickness for, in respect of or by reference to any such person;

and no undertakings or assurances have been given or implied by the Company or the Subsidiary Undertakings as to the introduction, continuation, increase or improvement of any such benefits.

8.2 Full and accurate details of each of the Pension Schemes and their members have been given to the Buyer including, without limitation, the rates and amounts of all contributions currently payable by the Company and the Subsidiary Undertakings in respect of the Pension Schemes.

8.3 All contributions, expenses, premiums and other amounts due to be paid to each of the Pensions Schemes by or on behalf of the Company and the Subsidiary Undertakings have been deducted and paid to the relevant provider. There are no contributions or premiums in relation to the Pension Schemes which are currently outstanding.

8.4 So far as the Warrantors are aware, the Company and the Subsidiary Undertakings have at all times complied with all of their obligations to, under and in respect of the Pension Schemes, and each of the Pension Schemes has been operated and administered in accordance with the terms of its governing documentation, all legal obligations, and the requirements of all regulatory bodies, including, without limitation, HM Revenue & Customs.

8.5 The Company and the Subsidiary Undertakings (save for Schuh (ROI) Limited) have at all times complied with Part 1 of the Welfare Reform and Pensions Act 1999 and the Stakeholder Pension Schemes Regulations 2000.

8.6 The Group Personal Pension Scheme and the Self Invested Personal Pension Plans are registered pension schemes within the meaning of Part 4 of the Finance Act 2004 and the Warrantors are not aware of any reason why such registered pension scheme status may or could be withdrawn.

8.7 No current or former Employee of the Company or the Subsidiary Undertakings has been employed by the Company or the relevant Subsidiary Undertaking as a result of a transfer of an undertaking or part of an undertaking to which the Transfer of Undertakings (Protection of Employment) Regulations 1981 or 2006 applied.

8.8 No Group Company has received any notice of any disputes, actions, claims, complaints or investigations (including, without limitation, complaints to the Pensions Ombudsman or to the Pensions Regulator) outstanding, pending or threatened against the Pension Schemes or against the Company or the Subsidiary Undertakings in

respect of any act, event, omission or other matter arising out of or in connection with the Pension Schemes.

8.9 The Company and the Subsidiary Undertakings do not participate in any defined benefit pension scheme and have not at any time been connected with or an associate of a company which participates in a defined benefit pension scheme.

8.10 Full and accurate details of the Life Assurance Scheme and its members have been given to the Buyer.

**9. Part 9 — Real Property**

9.1 *Title*

(a) The Real Property comprises all the real property owned, occupied or otherwise used for the business of the Group Companies.

(b) Each Group company is the legal and beneficial owner of the Real Property set opposite its name in schedule 7.

(c) Each Group Company is in physical possession and actual occupation of the Real Property set opposite its name in schedule 7 on an exclusive basis and no right of occupation or enjoyment has been acquired or is in the course of being acquired by any third party or has been granted or agreed to be granted to any third party.

(d) The Warrantors have Disclosed copies of all title deeds relating to the Real Property, all of which have been properly stamped (where appropriate) or where required, stamp duty land tax has been paid and, where necessary, have been duly registered and the documents of title to be delivered to the Buyer on Completion will consist of original documents.

(e) No Group Company has entered into a contract or other arrangement (whether written or oral) for the sale of any Real Property and there is no intention to enter into any such contract or arrangement.

(f) In respect of the Real Property at Norwich and Belfast, so far as the Warrantors are aware such Real Property enjoys access and egress over roads which have been adopted by the appropriate highway authority and are maintainable at the public expense.

9.2 *Encumbrances*

(a) The Real Property is free from any mortgage, debenture, charge, rent charge, liability to maintain roadways, lien or other encumbrance securing the repayment of monies or other obligation or liability of any Group Company or of any other person.

(b) The Real Property is free of any tenancy, subtenancy, licence or other arrangement entitling a person other than the Group Company which owns it to occupy any part of it.

(c) The Real Property is not subject to any outgoings, other than general rates, water rates and insurance premiums and, in the case of leasehold real property, rent and service charges.

(d) Where any such matters as are referred to in the last four Warranties (9.2(a) to (d) inclusive) have been Disclosed, the obligations and liabilities imposed and arising under them have been fully observed and performed, and any payments in respect of them which are due and payable have been duly paid.

(e) No notice relating to the use and enjoyment of the Real Property has been received or given or, so far as the Warrantors are aware (without having made specific enquiry), is likely to be received or given in any circumstances.

(f) There are no outstanding actions, disputes, claims or demands between any Group Company and any third party affecting the Real Property or any neighbouring property or any boundary walls and fences, or with respect to any easement, right or means of access to the Real Property.

9.3 *Planning Matters*

(a) The Real Property is not being used nor is it intended or required by any Group Company to be used other than for the permitted use applicable to it for the purposes of the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Consequential Provisions) Act 1990, the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004 and the orders and regulations made under them and all legislation of a like nature (the "**Planning Acts**"). The permissions, consents, approvals and licences authorising such use are unconditional, permanent and not personal to the relevant Group Company.

(b) Planning permission has been obtained, or is deemed to have been granted, for the purposes of the Planning Acts with respect to all existing development on the Real Property, and no such permission has been suspended or called in or is subject to judicial review, and no application for planning permission is awaiting decision.

(c) Building regulation consents have been obtained with respect to all development, alterations and improvements to the Real Property.

(d) Compliance is being and has been made with all planning permissions, orders, and regulations issued under the Planning Acts and all building regulation consents and bye-laws in force with respect to the Real Property.

(e) Compliance is being and has been made with respect to the Real Property with all agreements made under section 106 of the Town and Country Planning Act 1990, section 38 of the Highways Act 1980 and s104 Water Industry Act 1991.

(f) All development charges, monetary claims and liabilities affecting the Real Property under the Planning Acts or any other such legislation have been discharged, and no such liability, contingent or otherwise, is outstanding.

(g) All planning consents and permissions affecting the Real Property are either unconditional or are subject only to conditions which are neither unusual, personal nor temporary and which have been satisfied or fully observed and performed up to the date of this agreement.

(h) There is no outstanding statutory or informal notice under the Planning Acts relating to the Real Property or to any business carried on there or to its use, and there is no outstanding monetary claim or liability, contingent or otherwise, in respect of the Real Property under the Planning Acts.

9.4 *Statutory Obligations*

(a) In respect of the Real Property compliance has been made with all statutory and bye-law requirements and all European Community regulations, directives and decisions whether implemented in the United Kingdom or not and international conventions whether ratified or not and all guidance from the European Community and its national, state and local government bodies or agencies.

(b) There is no outstanding and unobserved or unperformed obligation with respect to the Real Property necessary to comply with the requirements (whether formal or informal) of any competent authority exercising statutory or delegated powers.

(c) There are not in force or required to be in force any licences whether under the Licensing Act 2003 or otherwise which apply to the Real Property.

(d) So far as the Warrantors are aware no part of any land building or other structure comprised in the Real Property contains any pollutants, contaminants, wastes, petroleum, petroleum products, dangerous, hazardous or toxic substances and materials and in particular (but without limitation) substances prescribed in schedules 4, 5 and 6 of the Environmental Protection Prescribed (Processes and Substances) Regulations 1991 as amended.

9.5 *Condition of the Real Property*

(a) The Real Property complies with current fire regulations affecting the Real Property.

(b) A fire risk assessment has been carried out in respect of each of the Real Property and there has been no change in the Real Property or occupants since such assessment was carried out.

(c) All asbestos certificates or reports required to be obtained and maintained by the Group Company in respect of the Real Property are in the possession of a Group Company and remain valid and current and all works required to be carried out by any such certificate or report have been duly carried out.

9.6 *Leasehold Property*

(a) The relevant Group Company has paid the rents reserved by and observed and performed the covenants on the part of the tenant and the conditions contained in each of the leases (which expression includes underleases) under which the Real Property is held and the last demand (or receipt for rent if issued) was unqualified. Each such lease is valid and in force and no Group Company occupies the Real Property by virtue of a holding over arrangement.

(b) All licences, consents and approvals required from the landlords and any superior landlords under any leases of the Real Property have been obtained and the covenants on the part of the tenant contained in such licences, consents and approvals have been duly performed and observed.

(c) There are no outstanding or undetermined rent reviews under any of the leases of the Real Property.

(d) There is not outstanding, unobserved or unperformed any obligation necessary to comply with any notice or other requirement given by or on behalf of the landlord under any lease of the Real Property.

(e) There are no restrictions in any leases of the Real Property which prevent it from being used for its present uses.

(f) The relevant Group Company has not (nor has anyone on its behalf) expressly or impliedly waived any breach by any tenant or other person of any covenant, agreement, restriction, stipulation or obligation relating to the Real Property or any part of it or which the Real Property or any part of it has the benefit of.

(g) There have been and are no disputes with any landlord and, so far as the Warrantors are aware (without having made any specific enquiry) there are not likely to be any such disputes.

9.7 *Underlettings*

(a) The Real Property is held subject to and with the benefit of the respective tenancies and subtenancies (if any) particulars of which are set out in schedule 7 and there are no other tenancies or subtenancies of the Real Property.

(b) The Warrantors are not aware of any material or persistent breaches of covenant by any tenant or subtenant of the Real Property including the covenants to pay rent and service charge.

(c) The Real Property has not been sublet under a subtenancy which is being continued beyond its contractual expiry date under Part II of the Landlord and Tenant Act 1954.

(d) All principal rent and additional rent has been paid by each lessee, tenant, licensee or occupier of the Real Property as and when it became due and no principal rent has been commuted, waived, or paid in advance of the due date for payment.

(e) No Group Company has made any collateral assurances, undertakings or concessions to any leases, tenancies, licences or agreements to which the Real Property is subject.

(f) No premium or principal rent has been taken from or accepted from or agreed with any lessee, tenant, licensee or occupier of the Real Property beyond what is legally permitted.

(g) Any consents required for the grant of any lease, tenancy, licence or agreement to which the Real Property is subject have been obtained and placed with the documents of title along with evidence of the registration of the grant where required.

9.8 *Guarantees*

Except in relation to the Real Property there is no actual or contingent liability of any Group Company arising directly or indirectly out of any agreement, lease, underlease, tenancy, conveyance, transfer, licence or any other deed or document relating to real property or to any estate or interest in real property entered into by any Group Company including (without limitation) any actual or contingent liability arising directly or indirectly out of:

(a) any estate or interest held by any Group Company as original lessee or underlessee;

(b) any guarantee given by any Group Company in relation to a lease or underlease; or

(c) any other covenant made by any Group Company in favour of any lessor or head lessor.

9.9 *Notices, complaints and waivers*

(a) No notices, complaints or requirements have been issued or made by any competent authority or undertaking exercising statutory or delegated powers in respect of the Real Property or the user applicable to it or any machinery, plant or equipment on the Real Property, and the Warrantors are not aware (without having made any specific enquiry) of any matter which could lead to any such notice, or complaint or requirement being issued or made.

9.10 *Replies to Enquiries*

All written replies made by or on behalf of the Sellers and/or the Sellers' Solicitors to pre-contract enquiries raised by or on behalf of the Buyer in relation to real property (including (without limitation) any replies to the Buyer's request for information) and which are attached to the Disclosure Letter are true and accurate in all material respects.

**10. Taxation**

10.1 *Reserve for Taxation in the Accounts*

The Accounts reserve or provide in full for all Taxation for which each Group Company was liable or able to be made liable in respect of all periods up to the Accounts Date in accordance with generally accepted accountancy principles. Proper provision has been made and shown in the Accounts for deferred taxation in accordance with generally accepted accountancy principles.

10.2 *Returns, records and payment of Taxation*

(a) All returns, notices, accounts, statements, computations, information, assessments and registrations which should be or should have been made or provided by each Group Company for any Taxation purpose have been made or provided within applicable time limits and on a proper basis and were at the time and remain accurate and complete and none of them is or is likely to be the subject of any material dispute with HM Revenue & Customs or any other Taxation Authority.

(b) Each Group Company has operated accounting arrangements and maintained accounting records that enable each Group Company's Taxation liabilities to be calculated accurately in all material respects.

(c) Each Group Company has preserved records required for the delivery of correct and complete returns as required by Schedule 18 of the Finance Act 1998 or the computation of any Taxation (including without limitation any tax arising on the disposal or deemed disposal of any asset and records required for VAT and PAYE purposes).

(d) All Taxation for which any Group Company has been liable or for which any Group Company has been liable to account has been duly paid and no Group Company has incurred and there are no circumstances by reason of which any Group Company is likely to incur any liability to interest or penalties in respect of

such Taxation, whether charged by virtue of the provisions of Schedule 18 to the Finance Act 1998, the TMA 1970 or the VATA 1994 or otherwise.

(e) Full and accurate particulars of all payments made and all repayments claimed by any Group Company since the Accounts Date pursuant to the Corporation Tax (Instalment Payments) Regulations 1998 are set out in the Disclosure Letter, and the computation of each such payment or claim for repayment took proper account of all relevant estimates and other information available to any Group Company at the time when such payment was made or, at the time when such claim for repayment was submitted to HM Revenue and Customs.

(f) No Group Company has entered into a Managed Payment Plan within the provisions of sections 59G-H of the TMA 1970 (formerly section 111 of the Finance Act 2009).

(g) No Group Company is a qualifying company within the meaning of Schedule 46 to the Finance Act 2009.

(h) Each Group Company has duly and punctually deducted, withheld, or collected for payment (as appropriate), all Taxation which it has become liable or entitled to deduct, withhold or collect for payment and has duly accounted for all such Taxation to the relevant Tax Authority.

(i) No Group Company has received from any Tax Authority, any payment to which it was not entitled and no Group Company has received any Tax assessment in which its Tax liability was understated.

(j) No Group Company is liable to pay, reimburse or indemnify any person (including a Tax Authority) an amount in respect of a Taxation liability (other than in respect of VAT), which is the primary liability of any other person and which arose as a result of a transaction, event, act, or omission occurring or deemed to arise or occur (whether wholly or partly) prior to Completion.

(k) There are no material or unusual arrangements, permissions, dispensations, concessions, agreements or undertakings, between any Group Company and HM Revenue and Customs or any foreign Tax Authority regarding or affecting the Taxation treatment of any Group Company.

(l) No Group Company has within the last 12 months received any notice or enquiry or suffered any enquiry, investigation, audit or visit by HM Revenue and Customs, the Department of Social Services or any other Taxation Authority, and so far as the Warrantors are aware no such enquiry, investigation, audit or visit is planned or in prospect for the next 12 months.

10.3 *Distributions and other payments*

(a) So far as the Warrantors are aware, no Group Company has at any time after 6 April 1965:

(i) made (and will not be deemed to have made) any distribution within the meaning of section 1000 of the CTA 2010 (formerly sections 209 and 210 of the ICTA 1988) except dividends properly authorised and shown in its accounts nor is any Group Company bound to make any such distribution;

(ii) repaid or agreed to repay or redeemed or agreed to redeem or purchased or agreed to purchase or granted an option under which it

may become liable to purchase any shares of any class of its issued share capital; or

(iii) capitalised or agreed to capitalise in the form of shares or debentures any profits or reserves of any class or description or otherwise issued or agreed to issue any share capital other than for the receipt of new consideration (within the meaning of Chapter 2, Part 23 of the CTA 2010 (formerly Part VI of the ICTA 1988)) or passed or agreed to pass any resolution to do so.

(b) No securities (within the meaning of Chapter 2, Part 23 of the CTA 2010 (formerly Part VI of the ICTA 1988)) issued by any Group Company and remaining in issue at the date of this agreement were issued in such circumstances that any interest or other distribution out of assets in respect thereof, falls to be treated as a distribution under section 1000 (1)(D) or (E) or (F) (formerly 209(2)(d), or (e) of the ICTA 1988), nor has any Group Company agreed to issue securities (within that meaning) in such circumstances.

(c) No rents, annual payments, expenses, charges or other sums of an income nature, paid or payable by any Group Company are or may be wholly or partially disallowable as deductions, management expenses or charges in computing taxable profits for Taxation purposes.

(d) No Group Company has since 1 July 2009 received any dividend or other income distribution which was not exempt under the provisions of Chapter 2 or 3 of Part 9A of the CTA 2009.

(e) No Group Company has received any capital distribution to which the provisions of section 189 (*Capital distribution of chargeable gains: recovery of tax from shareholder*) of the TCGA 1992 could apply.

10.4 *Loan relationships*

(a) All interest, discounts and premiums payable by a Group Company in respect of its loan relationships (within the meaning of Part 5 of the CTA 2009) are capable of being brought into account by that Group Company as a debit for the purposes of that Part at the time, and to the extent that such debits are recognised in the statutory accounts of that Group Company.

(b) No Group Company is party to any debtor relationship (within the meaning of section 302(6) of the CTA 2009) to which:

(i) Chapter 8 of Part 5 (*late interest*) of the CTA 2009;

(ii) section 444, section 447, section 452 or section 455 (*Transactions not at arm's length etc*) of the CTA 2009 apply or may apply; or

(iii) which relates to any deeply discounted security (within the meaning of Chapter 8 of Part 4 of the Income Tax (Trading and Other Income Act) 2005) to which sections 406-412 (*connected companies and close companies*) of the CTA 2009 could apply.

(c) No Group Company is a party to any loan relationship where as a consequence of any arrangement or related transaction (as defined in section 304 of the CTA 2009), the provisions relating to impaired debt as set out in Part 5 of the CTA 2009 apply or may apply.

(d) No Group Company has entered into any loan relationship which is for an unallowable purpose as described in section 442 of the CTA 2009.

10.5 *Capital allowances*

(a) No event has occurred since the Accounts Date (otherwise than in the ordinary course of business) whereby any balancing charge may fall to be made against, or any disposal value may fall to be brought into account by any Group Company under the CAA 2001 (or any legislation relating to any capital allowances).

(b) All capital expenditure (including expenditure on research and development) incurred by any Group Company on or before the Accounts Date and in respect of which claims for capital allowances have or will be made, has qualified and will continue to qualify as qualifying expenditure for capital allowances purposes and all capital expenditure incurred since the Accounts Date or to be incurred under a contract made before Completion Date by any Group Company is qualifying expenditure for capital allowances purposes.

(c) No Group Company has made any claim for capital allowances in respect of any asset which is leased to or from or hired to or from that Group Company and no election affecting any Group Company has been made or agreed to be made under section 177 (*Equipment lessor*) or section 183 (*Incoming lessee where lessor entitled to allowances*) of the CAA 2001 in respect of any such asset.

(d) No Group Company has been a lessee under a lease to which the provisions of Schedule 12 (*Finance leases and loans*) to the Finance Act 1997 apply or could apply.

(e) No Group Company owns or leases a long life asset (as defined by section 91 of the CAA 2001) in respect of which any claim for capital allowances would be subject to the provisions of section 92 (*Long-life asset expenditure*) or section 101 to 104 (*Rules applying to long-life asset expenditure*) of the CAA 2001.

(f) No asset, expenditure on which any Group Company has qualified for a capital allowance under Part 3 *(Industrial building allowances*) of the CAA 2001, has at any time since that expenditure was incurred been used otherwise than as an industrial building or structure for the purposes of that Part.

(g) No Group Company has claimed any research and development tax relief or research and development tax credit under the Finance Act 2000 or the Finance Act 2002 or Part 13 of the CTA 2009 (or any other legislation relating to reliefs or credits for research and development).

(h) No Group Company has made any election under section 83 (*Short-life assets*) of the CAA 2001 nor is taken to have made such an election under section 89(4) (*Disposal to connected person*) of the CAA 2001.

(i) No Group Company has incurred any expenditure which qualifies for allowances under Part 3A (*Business premises renovation allowance*) of the CAA 2001.

10.6 *Chargeable gains*

(a) The book value shown or adopted for the purpose of the Accounts as the value of each of the assets of each Group Company on the disposal of which a chargeable gain or allowable loss could arise, does not exceed the amount

which on a disposal of such asset at the date of this agreement would be deductible under section 38 of the TCGA 1992.

(b) The Disclosure Letter sets out full and accurate particulars of any claims or elections made by any Group Company under any provision that would affect the amount of the chargeable gain or allowable loss that would but for such claim arise on a disposal of any of its assets.

(c) No election under section 35(5) of the TCGA 1992 has been made in relation to any Group Company.

(d) No Group Company has at any time within the last seven years:

(i) disposed of or acquired any asset in circumstances such that the provisions of section 17 or 19 of the TCGA 1992 could apply to that disposal or acquisition;

(ii) given or agreed to give any consideration for any holding of shares or securities to which section 128(2)(b) of the TCGA 1992 could apply; or

(iii) owned any shares on a disposal of which section 125(2) or (3) of the TCGA 1992 could apply or has received an asset by way of gift as mentioned in section 282 of the TCGA 1992.

(e) No Group Company has been a party to or otherwise involved in any transaction to which sections 29-34 (*Value shifting*) of the TCGA 1992 have been or could be applied.

(f) No chargeable gain will accrue to any Group Company on the disposal of any debt owed to it.

(g) There has been no reorganisation, amalgamation, or other transaction within the meaning of sections 126 to 140D (inclusive) (*Reorganisation of Share Capital, Conversion of Securities etc.)* of the TCGA 1992 involving any Group Company.

10.7 *Capital losses*

(a) No Group Company is entitled to any capital loss to which the provisions of section 18(3) of the TCGA 1992 are applicable.

(b) No capital loss has accrued to any Group Company that is a loss within the meaning of either section 8 or section 16A of the TCGA 1992.

(c) No Group Company has been a party to any transaction to which the provisions of section 176 or section 177 of the TCGA 1992 have been or could be applied.

10.8 *Intangible fixed assets*

(a) Each Group Company has drawn up its accounts in accordance with generally accepted accounting practice and had brought into account for Taxation purposes debits under section 728 and section 729 of the CTA 2009.

(b) Since the Accounts Date:

(i) no Group Company owns an asset which has ceased to be a chargeable intangible asset in the circumstances described in section 859 of the CTA 2009;

(ii) no Group Company has realised or acquired an intangible fixed asset for the purposes of Part 8 of the CTA 2009; and

(iii) no circumstances have arisen which have required, or will require, a credit to be brought into account by any Group Company on a revaluation of an intangible fixed asset.

10.9 *Close companies*

(a) No Group Company is or has at any time since 31 March 1989 been a close investment-holding company as defined in section 34 of the CTA 2010 (formerly section 13A of the ICTA 1988).

(b) No distribution within section 1064 of the CTA 2010 (formerly section 418 of the ICTA 1988) has been made by any Group Company within the last seven years.

(c) No loan or advance made by or assigned to any Group Company falling within the provisions of sections 455, 459, and 460 of the CTA 2010 (formerly section 419 of the ICTA 1988 (as extended by section 422 thereof)) is outstanding or has been waived since the Accounts Date.

10.10 *Group relief*

(a) The Disclosure Letter sets out full and accurate details of every agreement that any Group Company has within the last seven years entered into for the claim or surrender of any group relief under the provisions of Part 5 (Group relief) of the CTA 2010 (formerly section 402-413 (inclusive) of the ICTA 1988), of advance corporation tax under the provisions of section 240 of, or Schedule 13A to, the ICTA 1988 or of a tax refund under section 963 of the CTA 2010 (formerly section 102 of the Finance Act 1989).

(b) Except as expressly provided for in the Accounts, no Group Company is and will not be under any obligation to make nor has any entitlement to receive in respect of the period ending on or before the Accounts Date any payment for:

(i) group relief (as defined in section 183 of the CTA 2010 (formerly section 402(6) of the ICTA 1988));

(ii) the surrender of the benefit of any amount of advance corporation tax, any repayment of such a payment; or

(iii) the surrender of a tax refund under section 963 of the CTA 2010 (formerly section 102 of the Finance Act 1989).

10.11 *Groups of companies*

(a) Neither the execution nor completion of this agreement, nor any other event since the Accounts Date, will result in any chargeable asset being deemed to have been disposed of and reacquired by any Group Company for Taxation purposes under:

(i) section 179 of the TGCA 1992;

(ii) section 345 or section 346 of the CTA 2009;

(iii) section 630-632 of the CTA 2009; or

(iv) section 780 or section 785 of the CTA 2009.

(b) No Group Company has at any time within the period of seven years ending with the date of this agreement:

(i) transferred any asset or liability other than trading stock (including any transfer by way of share exchange within section 135 of the TCGA 1992) to any other Group Company which at the time of the disposal was a member of the same group (as defined in section 170 of the TCGA 1992); or

(ii) where the asset is an intangible fixed asset, a member of the same group (as defined in Chapter 8 of Part 8 of the CTA 2009).

(c) No elections have been made by any Group Company under section 171A of the TCGA 1992 and no elections have been made under:

(i) section 179A (*Reallocation within group of gain or loss accruing under section 179*) of the TCGA 1992;

(ii) section 792 (*Re-allocation of degrouping charge within group*) of the CTA 2009; or

(iii) paragraph 16 of Schedule 26 (*Integral features: Saving for intra-group transfers*) to the Finance Act 2008,

which affect any of the Group Companies.

(d) No Group Company is or ever has been party to any arrangements pursuant to paragraph 79 of Schedule 7 to the TIOPA 2010 (formerly section 36 (*group payment arrangements*) of the Finance Act 1998).

10.12 *Company residence, Overseas interests and Treasury consent*

(a) Each Group Company has been resident at all times since its incorporation solely in the jurisdiction of its incorporation and is not and has never been treated for any Taxation purpose as resident (or dual-resident) in any other jurisdiction(s).

(b) No Group Company has at any time since incorporation had a branch, agency or permanent establishment outside the jurisdiction of its incorporation.

(c) No Group Company is nor has been within the last seven years:

(i) a dual-resident company within the meaning of section 109(1) of the CTA 2010 (formerly section 404(4) of the ICTA 1988); or

(ii) been involved in any transaction to which section 109 of the CTA 2010 (formerly section 404 (*Limitation of group relief in relation to certain dual-resident companies*) of the ICTA 1988) may apply or any other provision (including any exclusion from a provision) relating to dual resident investing companies as there defined could apply.

(d) No Group Company has carried out or caused or permitted to be carried out any of the transactions:

(i) specified at the relevant time in section 765(1) of the ICTA 1988 or, in relation to transactions occurring on or after 1 July 2009, as set out in section 37 and Schedule 17 to the Finance Act 2009, otherwise than:

(A) with the prior consent of HM Treasury; or

(B) without having duly provided the required information to HM Revenue and Customs (as appropriate), and (in the case of a special as opposed to general consent) full particulars of which are contained in the Disclosure Letter; or

(ii) specified at the relevant time in section 765A of the ICTA 1988 without having duly provided the required information to HM Revenue and Customs.

(e) No Group Company has ceased to be resident in the United Kingdom other than in pursuance of a Treasury consent under section 765 of the ICTA 1988, without previously satisfying the requirements of paragraph 54, Schedule 7 of the TIOPA 2010 (formerly section 130(2) and 130(3) (*Provisions for securing payment by company of outstanding tax*) of the Finance Act 1988). So far as the Warrantors are aware, there are no circumstances by reason of which any Group Company could be liable to a penalty under paragraph 54, Schedule 7 of the TIOPA 2010 (formerly section 131 of the Finance Act 1988).

(f) No company (not being a Group Company) has ceased or will cease to be resident in the United Kingdom in circumstances such that a notice might be served on any Group Company under paragraph 54, Schedule 7 of the TIOPA 2010 (formerly section 132 of the Finance Act 1988).

(g) No Group Company has nor in the past seven years has had any interest in a controlled foreign company (as defined in Chapter IV of Part XVII of the ICTA 1988) or any material interest in an offshore fund (as defined in Part 1 of Schedule 22 to the Finance Act 2009).

(h) There has not accrued any gain in respect of which any Group Company may be liable to corporation tax on chargeable gains by virtue of the provisions of section 13 (*Attribution of gains to members of non-resident companies*) of the TCGA 1992 or section 87 (*Attribution of gains to beneficiaries*) of the TCGA 1992.

(i) No Group Company has either received or become entitled to any:

(i) income which is unremittable income within the meaning of section 1274 of the CTA 2009;

(ii) accrued gain to which the provisions of section 279 of the TCGA 1992 could apply; and

no Group Company has made any transfer to which section 723 of the ICTA 1988 or section 668 or section 669 of the ITA 2007 could apply.

(j) No Group Company has or is assessable to tax under section 969 — 970 of the CTA 2010 (formerly section 150 of the Finance Act 2003) or section 971 of the ITA 2007.

10.13 *Liabilities under Covenants and Guarantees*

No Group Company has liability to make any payment pursuant to an indemnity, guarantee or covenant entered into before Completion under which any Group Company has agreed to meet or pay a sum equivalent to or by reference to another person's liability to tax.

10.14 *Tax avoidance*

No Group Company has been a party to, or been involved in, any schemes or arrangements designed wholly or partly for the purposes of avoiding or deferring any Taxation liability, or in relation to which any disclosure has been, or will be, required to be made to any Taxation Authority.

10.15 *Tax clearances*

(a) No Group Company has been a party to a transaction in respect of which a consent, clearance or claim for relief from any Tax Authority was required other than transactions in respect of which:

(i) the relevant Tax Authority consent, clearance or grant of relief was obtained after accurate disclosure of all material facts;

(ii) the transaction was carried out as described in the application for consent, clearance or relief (if appropriate); and

(iii) details of the consent, clearance or grant of relief have been set out in the Disclosure Letter.

(b) No Group Company has been a party to any transaction in respect of which any consent, clearance or claim for relief is required to be or could be made and in respect of which the time for making an application for such consent, clearance or claim expires on or after Completion.

10.16 *Transfer pricing*

No transaction or arrangement involving any Group Company has taken place or is in existence which is such that any of the provisions of Part 4 of the TIOPA 2010 (formerly section 770A of or Schedule 28AA to, the ICTA 1988) or Chapter 13 of Part 8 of the CTA 2009 has been or could be applied to it.

10.17 *Stamp duty, stamp duty reserve tax and stamp duty land tax*

(a) Each Group Company has duly paid all stamp duty and all stamp duty reserve tax for which it is or has at any time been liable and no Group Company is liable to pay any penalty, interest or fine in respect of stamp duty or stamp duty reserve tax or to forfeiture of any relief from any such duty, penalty, interest or fine.

(b) Each Group Company has duly filed all land transaction returns required by law to be filed and has paid all stamp duty land tax properly due in respect of such land transactions.

(c) There is no chargeable interest (as defined under section 48 of the Finance Act 2003) acquired or held by any Group Company in respect of which the Sellers are aware, or ought reasonably to be aware, that an additional land transaction return will be required to be filed with a Taxation Authority and/or a payment of stamp duty land tax made on or after the date of this agreement.

(d) Neither entering into this agreement nor performance of this agreement nor any other event since the Accounts Date will result in the withdrawal of a stamp duty or stamp duty land tax relief which will affect any Group Company.

(e) No Group Company has since the Accounts Date incurred any liability to or been accountable for any stamp duty reserve tax and there has been no

conditional agreement within section 87(1) of the Finance Act 1986 which could lead to any Group Company incurring such liability or becoming so accountable.

(f) The Sale Shares are not chargeable securities within the meaning of section 99 of the Finance Act 1986.

10.18 *Value Added Tax*

(a) Each Group Company is duly registered for VAT purposes and its registration is not nor has been subject to any conditions imposed or agreed with HM Revenue & Customs and no Group Company is (nor are there any circumstances by virtue of which it may become), under a duty to make monthly payments on account under the Value Added Tax (Payments on Account) Order 1993.

(b) No Group Company is or has been treated for VAT purposes as a member of any group of companies (other than a group comprising the Group Companies alone). No direction has been given under paragraph 1 of Schedule 9A to the VATA 1994 either to any Group Company or in circumstances where any Group Company may be liable for any VAT assessed as a consequence of the issue of that direction.

(c) Each Group Company has complied with all statutory provisions, rules, regulations, orders and directions concerning VAT, promptly submitted accurate returns and each Group Company maintains full and accurate VAT records, invoices and other requisite documents. No Group Company has:

(i) been subject to any interest, forfeiture, surcharge or penalty;

(ii) given any notice under sections 59, 59A or 64 of the VATA 1994;

(iii) given a warning within section 76(2) of the VATA 1994; or

(iv) been required to give security under paragraph 4 of Schedule 11 to the VATA 1994.

(d) No act or transaction has been effected in consequence of which any Group Company is or may be held liable for any VAT under sections 47, 48, 55 or section 29 of the VATA 1994 and no direction as to valuation affecting any Group Company has been given under paragraph 1, 1A or 2 of Schedule 6 or paragraph 1 of Schedule 7 to the VATA 1994.

(e) No Group Company is or was partially exempt in its current or preceding VAT year and there are no circumstances by reason of which any Group Company might not be entitled to credit for all VAT chargeable on supplies received and imports and acquisitions made (or agreed or deemed to be received or made) by it since the beginning of its earliest VAT year to include a period since the Accounts Date. There are no circumstances by reason of which either regulation 107 or 108 of the Value Added Tax Regulations 1995 might apply (or have since the Accounts date applied) to any Group Company.

(f) No option to tax has been made or agreed to be made under Schedule 10 to VATA 1994 by any Group Company.

(g) No real estate election (within the meaning given in paragraph 21 of Schedule 10 to the VATA 1994) has been made by any Group Company or by any member of any group for VAT purposes of which any Group Company is (or was) a member.

(h) No Group Company is bound or has agreed to become bound by any lease, tenancy or licence in the case of which, under its terms or by statute, a Group Company is or could become liable to pay an amount in respect of VAT chargeable as a result of the making of an option to tax under Schedule 10 to the VATA 1994.

(i) There are no past or present circumstances by reason of which any Group Company is or could become liable to VAT before amendment by the Value Added Tax (Buildings and Land) Order S.I 2008 1146, under paragraph 1 or paragraph 5 of Schedule 10 to the VATA 1994 or (after amendment) under Part 2 of Schedule 10 to the VATA 1994 or under the Value Added (Self-supply of Construction Services) Order 1989.

(j) So far as the Warrantors are aware, no Group Company has any outstanding entitlement to make any claim for repayment supplement or recovery of overpaid VAT under sections 78 or under 79 of the VATA 1994 (*Interest, in the case of official error and repayment supplements*). So far as the Warrantors are aware, there are no circumstances by virtue of which an assessment under section 78A of the VATA 1994 (*Assessment for interest overpayments*) has been or could be made on any Group Company.

(k) In the case of each capital item (if any), within the meaning of Part XV of the Value Added Tax Regulations 1995 (Part XV) in relation to which, a liability under Part XV has arisen or could in future arise on any Group Company, the Disclosure Letter sets out:

  (i) full and accurate particulars of past adjustments under Part XV; and

  (ii) full and accurate particulars of all matters to date which could be relevant in determining future adjustments under Part XV.

(l) Full and accurate particulars are set out in the Disclosure Letter of all claims which have been or could have been made by any Group Company under section 36 of the VATA 1994 and, so far as the Warrantors are aware, there are no existing circumstances by virtue of which any refund of VAT obtained or claimed may be required to be repaid. So far as the Warrantors are aware, there are no circumstances by virtue of which there could be a clawback of input tax from any Group Company under section 36(4A) or section 26A of the VATA 1994.

(m) In relation to the cross-border VAT changes which took effect on 1 January 2010 under the provisions of section 76 to 78 of and Schedule 36 to the Finance Act 2009:

  (i) each Group Company has a record of the VAT registration number of all EU business customers and has provided its own VAT registration number to all its suppliers who are resident in an EU Member State;

  (ii) the accounting system of no Group Company requires any modifications in order to produce promptly and accurately the information required for completion of the EC Sales Lists;

  (iii) no Group Company supplies or purchases cross-border services the VAT treatment of which will be affected by the changes in the place of supply rules; and

  (iv) no repayments of VAT have been claimed by any Group Company in the 12 months ending on Completion from the Tax Authority of any EU

Member State other than the UK, and as at Completion no Group Company will have any outstanding entitlement to make such a claim.

(n) No Group Company has had a requirement to make a disclosure under Schedule 11A to the VATA 1994.

10.19 *Securities and shares held by employees*

(a) In respect of each acquisition of securities within Chapter 2 of Part 7 (*Restricted Securities*) of the ITEPA 2003 an election has been made by each Group Company with the current or former employee or director under section 431 (*Election for full or partial disapplication of this Chapter*) of the ITEPA 2003 in respect of all securities using the correct forms prescribed by HM Revenue & Customs and within the applicable limits. There is set out in the Disclosure Letter full details of any liability to employment Taxes which have arisen or may arise as a result of that election.

(b) None of the securities held or to be held by employees or directors of any Group Company (or arrangement in relation to such securities) will give rise to a charge under any of the following provisions:

(i) Chapter 3 of Part 7 of the ITEPA 2003 in relation to convertible securities;

(ii) Chapter 3A of Part 7 of the ITEPA 2003 in relation to securities with artificially depressed values;

(iii) Chapter 3B of Part 7 of the ITEPA 2003 in relation to securities with artificially enhanced values;

(iv) Chapter 3C of Part 7 of the ITEPA 2003 in relation to securities acquired for less than market value;

(v) Chapter 3D of Part 7 of the ITEPA 2003 in relation to the disposal of securities for more than market value; and

(vi) Chapter 4 of Part 7 of the ITEPA 2003 in relation to post-acquisition benefits from securities.

(c) All schemes established by any Group Company which are approved by HM Revenue & Customs under the following provisions are set out in the Disclosure Letter:

(i) Schedule 2 of the ITEPA 2003 (approved Share Incentive Plan);

(ii) Schedule 3 of the ITEPA 2003 (approved SAYE option scheme); and

(iii) Schedule 4 of the ITEPA 2003 (approved CSOP scheme).

(d) There are no subsisting options granted by any Group Company under Schedule 5 (EMI options) of the ITEPA 2003.

(e) Each approved securities option granted by any Group Company are in compliance with the requirement of the relevant legislation and the scheme rules.

(f) No securities held by employees or directors of a Group Company were acquired prior to 16 April 2003 and therefore none will be treated as “only

conditional" under section 424 of the ITEPA 2003 (as originally enacted prior to the Finance Act 2003).

(g) No Group Company is or has been a party to any agreement under which any person other than by reason of his employment has a right to acquire securities in itself or any other company.

(h) No Group Company has established, lent or contributed to:

(i) a qualifying employees' share ownership trust as defined in Schedule 5 (*Employee Share Ownership Trusts*) of the Finance Act 1989; or

(ii) any other trust empowered to acquire by subscription, purchase or otherwise, any shares in any company.

(i) Each Group Company has obtained full corporation tax relief under sections 1006—1035 of the CTA 2009 for each and every:

(i) acquisition of shares in that Group Company; and

(ii) exercise of an option to acquire shares in that Group Company; and

so far as the Warrantors are aware, the corporation tax relief will not be reduced or restricted in any way.

(j) No restriction under sections 1290—1297 of the CTA 2009 has or so far as the Warrantors are aware, could apply to any corporation tax deduction claimed or to be claimed for any accounting periods which have commenced on or before Completion by a Group Company in respect of any employee benefit contributions made or to be made.

(k) Each Group Company has entered into an arrangement under paragraphs 3A or 3B of Schedule 1 to the SSCBA 1992 (*Supplementary provisions relating to contributions of Class 1, 1A, 2 and 3*) in respect of every securities option granted by reason of employment with any Group Company and all such arrangements are set out in the Disclosure Letter.

(l) Each Group Company has established all necessary mechanisms for the retrieval of, collection and payment of Secondary Class 1 National Insurance Contributions in accordance with such arrangements authorised by paragraph 3B of Schedule 1 to the SSCBA 1992 (*Supplementary provisions relating to contributions of Class 1, 1A, 2 and 3*).

10.20 *Employees*

(a) No Group Company is under any obligation to pay nor has it since the Accounts Date paid or agreed to pay any compensation for loss of office or any gratuitous payment not fully deductible in computing its income for the purposes of corporation tax.

(b) Since the Accounts Date, no Group Company has paid a contribution under a registered pension scheme for which it would not obtain relief under section 196 of the Finance Act 2004 and, if a contribution to a registered pension scheme has been paid since the Accounts Date, section 196A of the Finance Act 2004 does not apply to restrict the extent to which the contributions attract relief.

10.21 *Customs Duties*

(a) No Group Company has any arrangement or authorisation in place under the Council Regulation EEC Number 2913/92 or Community Customs Code and Commissions Regulation EEC Number 2454/93 in relation to any relief from customs duty.

(b) No Group Company holds any authorisation from HM Revenue & Customs to import goods upon which the customs duty has not been paid at importation or upon which there may be a clawback of duty paid.

10.22 *Inheritance tax*

(a) No Group Company is liable and there are no circumstances in existence as a result of which it may become liable, to be assessed to inheritance tax or any other Taxation as doner or donee of any gift, or transferor or transferee of value and there are no other circumstances by reason of which any liability in respect of inheritance tax has arisen or could arise to any Group Company.

(b) There are no circumstances under which any power within section 212 of the IHTA 1984 could be exercised in relation to, and there is no HMRC charge within the meaning of section 237 of the IHTA 1984 attaching to or over, any shares or securities in or assets of any Group Company and there are no circumstances which could lead to any such charge arising in the future.

(c) There has been no alteration of the share capital of any Group Company within section 98 of the IHTA 1984 (*Effect of alteration of share capital, etc*).

## SCHEDULE 9

### Non-competition Period

| Seller | (a) Office/employment in the Prohibited Business | (b) Engage in the Prohibited Business | (c) Dealing in competing goods and services | (d) Soliciting Suppliers | (e) Soliciting employees | (f) Holding out |
|---|---|---|---|---|---|---|
| Colin Temple | 3 years | 3 years | 3 years | 3 years | 3 years | 3 years |
| Mark Crutchley | 3 years | 3 years | 3 years | 3 years | 3 years | 3 years |
| Kenny Ball | 3 years | 3 years | 3 years | 3 years | 3 years | 3 years |
| David Spencer | 3 years | 3 years | 3 years | 3 years | 3 years | 3 years |
| Phil Whittle | 3 years | 3 years | 3 years | 3 years | 3 years | 3 years |
| Sean McKee | 3 years | 3 years | 3 years | 3 years | 3 years | 3 years |
| Rob Bridle | 3 years | 3 years | 3 years | 3 years | 3 years | 3 years |
| Mark Doherty | 3 years | 3 years | 3 years | 3 years | 3 years | 3 years |
| David Reid | 3 years | 3 years | 3 years | 3 years | 3 years | 3 years |

**SIGNED as a deed** by )
**COLIN TEMPLE** )
in the presence of: )

**SIGNED as a deed** by )
**MARK CRUTCHLEY** )
in the presence of: )

**SIGNED as a deed** by )
**KENNY BALL** )
in the presence of: )

**SIGNED as a deed** by )
**DAVID SPENCER** )
in the presence of: )

**SIGNED as a deed** by )
**ROZ SPENCER** )
in the presence of: )

**SIGNED as a deed** by )
**DAVID REID** )
in the presence of: )

**SIGNED as a deed** by )
**PHIL WHITTLE** )
in the presence of: )

**SIGNED as a deed** by )
**SEAN McKEE** )
in the presence of: )

**SIGNED as a deed** by )
**ROB BRIDLE** )
in the presence of: )

**SIGNED as a deed** by )
**MARK DOHERTY** )
in the presence of: )

**SIGNED as a deed** by )
on behalf of **SCHUH GROUP** )
**LIMITED** in the presence of: )

**SIGNED as a deed** by )
on behalf of **GENESCO (UK)** )
**LIMITED** in the presence of: )

**SIGNED as a deed** by )
on behalf of **GENESCO INC** )
in the presence of: )

**SIGNED as a deed** by )
on behalf of **THE SCHUH TRUST** )
in the presence of: )

**SIGNED as a deed** by )
on behalf of **SCHUH CORPORATE** )
**TRUSTEE LIMITED AS TRUSTEE** )
**OF THE SCHUH EMPLOYEE** )
**BENEFIT TRUST** )
in the presence of: )

**Exhibit 2.2**

GENESCO (UK) LIMITED

LOAN NOTE INSTRUMENT

constituting

£25,000,000 GUARANTEED
SECURED LOAN NOTES 2014-2015

2011
KB1/AEB/SC337X115

MORTON FRASER
SOLICITORS

CONTENTS

**THIS DEED** is dated 23 June 2011

**Parties**

**(1)** **GENESCO (UK) LIMITED** incorporated and registered in England and Wales with company number 7667223 whose registered office is at 5 New Street Square, London EC4A 3TW (the **"Company"**).

**(2)** **GENESCO INC.** a US corporation incorporated and registered in the State of Tennessee with its principal executive office at Genesco Park, 1415 Murfreesboro Road, Nashville, Tennessee (the **"Guarantor"**).

**(3)** **COLIN TEMPLE**, residing at Albany House, 80 Rose Street, Dunfermline, Fife KY12 0RE and **MARK CRUTCHLEY**, residing at 3 Hermitage Terrace, Edinburgh, Midlothian EH10 4RP (the **"Original Noteholders"**).

Background

The Company has, by resolution of its board of directors passed on 23 June 2011, resolved to create £25,000,000 guaranteed secured loan notes 2014-2015 (the **"Consideration Loan Notes"**) to be constituted in the manner set out below and to be issued to the Original Noteholders by way of consideration pursuant to the Share Purchase Agreement.

Agreed terms

1 **Definitions and interpretation**

1.1 The definitions and rules of interpretation in this clause apply in this instrument.

**"Articles"** means the articles of association from time to time of the Company.

"**Bad Leaver**" means an Original Noteholder who ceases to be an employee of the Company or any member of the Group (whether or not his contract of employment is validly terminated) so that he is no longer an employee of the Company or any such member of the Group or of a Company within the Buyer's group of companies and such cessation is a consequence of:

(a) his resignation (other than in a Permitted Circumstance); or

(b) his being dismissed by the Company or the relevant member of the Group for a Relevant Reason in circumstances in which the Company or such other member of the Group is not liable to pay him Compensation other than Compensation payable only as a consequence of a procedural irregularity relating to that dismissal.

For the avoidance of doubt an Original Noteholder is not a Bad Leaver in circumstances which include but are not limited to:

(i) if he ceases employment as a result of his death; or

(ii) if he is dismissed by reason of his being absent from work due to ill health (including but not limited to dismissal under clause 9.4 of his contract of employment); or;

(iii) where the Company or the relevant member of the Group dismisses the Original Noteholder on grounds of redundancy or in circumstances in which he has been unfairly dismissed (other than where such dismissal is unfair as a consequence only of a procedural irregularity relating to the dismissal); or

(iv) where the Company or the relevant member of the Group dismisses the Original Noteholder in breach of the Original Noteholder's contract of employment.

In this definition any reference to the date of cessation of employment shall be the earlier of (1) date upon which the Principal Shareholder gives or is given notice of termination of his contract of employment or (2) the date upon which he repudiates his contract of employment or (3) the date he is no longer required to perform his duties under his employment contract in respect of the Company or the relevant Group Company.

**"Business Day"** means any day (except Saturdays and Sundays) when clearing banks are open for business in London and Edinburgh.

**"Cash"** means, at any time, cash in hand or at bank or amounts on deposit (which, for the avoidance of any doubt, includes any cash held by way of cash cover for any reason) which are freely transferable and freely convertible and accessible by a member of the Schuh Group within seven days together with (without double counting) cash in transit and in any such case is not subject to any lien, charge or other encumbrance.

**"Certificates"** means the certificates in respect of Notes issued in accordance with Clause 5 of this instrument.

**"Change of Control"** means (i) in relation to any company other than the Guarantor the acquisition by a person other than the Guarantor or another company within the Guarantor's Group of a Controlling Interest in that Company; and (ii) in relation to the Guarantor means the acquisition by any person of a Controlling Interest in the Guarantor.

**"Controlling Interest"** means an interest within the meaning of sections 450, 451 and 1124 of the Corporation Tax Act 2010 in shares in a company conferring in aggregate 50% or more of the total voting rights conferred by all the issued shares in the company.

**"Companies Acts"** means the Companies Act 1985 and the Companies Act 2006 as amended and in force.

**"Compensation"** means compensation payable to the Original Noteholder for the cessation of his employment other than any payment in lieu of notice.

**"Conditions"** means the conditions referred to in clause 2 and set out in Schedule 2.

**"Directors"** means the board of directors of the Company from time to time, or a duly authorised committee of that board.

**"Final Redemption Date"** means 23 June 2015.

**"Final Redemption Notes"** means £25,000,000 less (a) any Notes redeemed pursuant to clauses 3.1 and 3.2; and (b) any Notes to which there is no longer any entitlement to payment whether pursuant to clause 6 or clause 8 hereof or otherwise.

"**Financial Indebtedness**" means any indebtedness for or in respect of:

(a) moneys borrowed and debit balances at banks or other financial institutions;

(b) any acceptance under any acceptance credit or bill discounting facility (or dematerialised equivalent);

(c) any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of finance leases;

(e) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of that transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that transaction, that amount) shall be taken into account);

(f) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;

(g) any amount raised by the issue of redeemable shares which are redeemable (other than at the option of the issuer) before the Final Redemption Date;

(h) any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind entering into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (ii) the agreement is in respect of the supply of assets or services and payment is due more than 90 days after the date of supply;

(i) any amount raised under any other transaction classified as borrowings for the purposes of the accounts of the relevant member of the Group; and

(j) the amount of any liability in respect of any guarantee for any of the items referred to in paragraphs (a) to (j) above,

to the extent that indebtedness is secured and ranks ahead of the liability of any member of the Group whether as principal or guarantor under these Notes.

**"First Redemption Date"** means 23 June 2014.

**"First Redemption Notes"** means £15,000,000 less (a) any Notes redeemed pursuant to clause 3.1; and (b) any Notes to which there is no longer any entitlement to payment whether pursuant to clause 6 or clause 8 or otherwise.

**"Group"** means the Company and any Subsidiary of the Company from time to time and **"member of the Group"** shall be construed accordingly.

**"Intercreditor Agreement"** means a ranking agreement among the Company, the members of the Group, Lloyds Banking Group plc and the Original Noteholders dated on or around the date of this instrument regulating, inter alia, the ranking of the Security.

**"Notes"** means the principal amount of £25,000,000 guaranteed secured loan notes 2014 — 2015 of the Company constituted by this instrument, and references to any Notes as **"outstanding"** mean that they are in issue, unredeemed and uncancelled.

**"Noteholders"** means the several persons from time to time entered in the Register as the holders of the Notes, and any references to "**a holder's Notes"** mean Notes in respect of which he is so registered.

**"Official Dealing Rate"** means the yearly rate of interest announced by the Monetary Policy Committee of the Bank of England (and from time to time in force)

as the official dealing rate, being the rate at which the Bank of England is willing to enter into transactions for providing short term liquidity in the money markets.

**"Permitted Circumstance"** means:-

(i) permanent or long term incapacity of the Original Noteholder due to ill health; or

(ii) death or permanent or long term ill health of a child or of the spouse or long term co-habitee of the Original Noteholder resulting in that spouse or long term co-habitee's incapacity; or

in each case such permanent or long term ill health being certified by a medical practitioner agreed upon between the Original Noteholder and the Company or failing such agreement appointed on the application of the Original Noteholder or the Company by the chairperson (or other senior office nominated by such chairperson) for the time being of the Royal College of General Practitioners; or

(iii) resignation where the employee has been constructively dismissed by the Company as established by a court or an Employment Tribunal and from which no appeal can be made or the time for making any such appeal has expired without an appeal being lodged.

**"Register"** means the register of the Notes (provisions relating to which are set out in Schedule 3).

**"Relevant Reason"** means:-

(i) the making of a bankruptcy order against the Original Noteholder;

(ii) the conviction of the Original Noteholder by a court from which there is no appeal (or in respect of which the period for making an appeal has expired without any such appeal being lodged) of a criminal offence resulting in a custodial sentence or the conclusion of court proceedings from which there is no appeal (or in respect of which the period for making an appeal has expired without any such appeal being lodged) brought by a Group Company against the Original Noteholder in respect of civil or criminal fraud in which proceedings the relevant Group Company is successful; or

(iii) wilful and persistent failure to carry out his duties as an employee which failure has a material impact on the business of the Group.

**"Schuh Group"** means Schuh Group Limed, Schuh (Holdings) Limited, Schuh Limited and Schuh (R.O.I) Limited;

**"Security"** means (a) a cross guarantee granted by Schuh Limited and Schuh (R.O.I.) Limited; (b) a floating charge over the whole of its assets and undertaking and standard security over the heritable property at Livingston from Schuh Limited; and (c) a mortgage debenture over the whole of the assets and undertaking of Schuh (R.O.I.) Limited all in an agreed form ranking only behind Lloyds Banking Group plc pursuant to the Intercreditor Agreement.

**"Share Purchase Agreement"** means the Share Purchase Agreement among inter alia the Company and the Original Noteholders dated on or around the date of this instrument.

**"Subsidiary"** means a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006.

**"Total Net Debt"** means at any time, the aggregate amount of all obligations of members of the Schuh Group for or in respect of Financial Indebtedness at that time less Cash being secured obligations ranking prior and in preference to the debt due under the Notes.

1.2 Any phrase introduced by the terms **including**, **include** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.3 The schedules to this instrument form part of (and are incorporated into) this instrument.

1.4 A **person** includes a corporate or unincorporated body.

1.5 Words in the singular include the plural and in the plural include the singular.

1.6 A reference to a clause, condition or a schedule is (unless expressly stated otherwise) a reference to a clause of, condition in or schedule to, this instrument.

1.7 Clause, condition and schedule headings do not affect the interpretation of this instrument.

1.8 A reference to one gender includes a reference to the other gender.

1.9 For the purposes of paragraph (ii) of the definition of **"Relevant Reason"**:

1.9.1 if criminal charges have been laid against or are being prosecuted against the relevant Original Noteholder at the First Redemption Date or the Final Redemption Date the Company shall not be obliged to redeem the Consideration Loan Notes which would otherwise have been redeemable on that date unless and until proceedings relating to such charges have been dropped or concluded without there being a Relevant Reason as referred to in paragraph (ii) of the definition of that term. If the Original Noteholder is convicted as referred to in that paragraph (ii) after the First Redemption Date or the Final Redemption Date in respect of charges (and/or proceedings) commenced before the relevant date he shall be deemed to have been a Bad Leaver on or before that date notwithstanding that the Relevant Reason may not have occurred until after such date; and

1.9.2 if proceedings for fraud have been brought against the relevant Original Noteholder at the First Redemption Date or the Final Redemption Date the Company shall not be obliged to redeem the Consideration Loan Notes which would otherwise have been redeemable on that date unless and until such proceedings have been discontinued or concluded without there being a Relevant Reason as referred to in paragraph (ii) of the definition of that term. If in such proceedings judgement is given or verdict is given against the Original Noteholder as referred to in that paragraph (ii) after the First Redemption Date or the Final Redemption Date in respect of proceedings commenced before the relevant date he shall be deemed to have been a Bad Leaver on or before that date notwithstanding that the Relevant Reason may not have occurred until after such date.

2 **Constitution of the Notes**

2.1 The principal amount of the Notes constituted by this instrument is limited to £25,000,000. The Notes may be issued in denominations of any amount and shall be transferable in whole or (in amounts and integral multiples of £1,000) in part, as provided in paragraph 2 of Schedule 32.

2.2 This instrument shall operate for the benefit of all Noteholders, each of whom may sue for the performance or observance of its provisions in his own right so far as his holding of Notes is concerned, and for all persons claiming through or under them. The Company shall comply with the terms of the Notes and the Conditions, and the Notes shall be held subject to the Conditions. The Conditions and Schedules shall be deemed to be incorporated in this instrument and shall be binding on the Company, the Noteholders and all persons claiming through or under them.

2.3 Save in accordance with clause 2.4 no interest shall be payable by the Company to the Noteholders.

2.4 If the Company fails to pay to the Noteholders any amount of the outstanding Notes on the due date for payment (including at any time after the Notes have become immediately due for redemption under clause 3.4 below) but excluding any amount properly withheld pursuant to clause 4.12 of the Share Purchase Agreement the Company will pay to the Noteholders interest on the full amount of the Notes outstanding at 10 % per annum above the Official Dealing Rate (which shall be inclusive of any interest payable under clause 4.12 of the Share Purchase Agreement) from the due date until payment in full such interest to be paid monthly and, if not paid, compounded monthly.

2.5 The obligation to redeem the Notes and make payment of any other sums under this instrument shall be secured by the Security.

2.6 Notes may be issued by the Directors only to the Original Noteholders pursuant to the Share Purchase Agreement. When issued, and while they are outstanding, the Notes shall rank pari passu, equally and rateably as between themselves, without discrimination or preference and as a guaranteed and secured obligation of the Company in accordance with this instrument and the Intercreditor Agreement.

2.7 No application shall be made to any investment exchange (whether in Great Britain or elsewhere) for permission to deal in, or for an official or other listing or quotation, in respect of the Notes.

3 **Redemption of Notes**

3.1 The Company may at any time after 23 December 2011 on giving the Noteholders not less than 3 months' notice specifying the Redemption Date and intended amount of the proposed redemption redeem all or part of those Notes.

3.2 The Company shall, automatically and without any need for notice on the part of the Noteholders, redeem the First Redemption Notes on the First Redemption Date.

3.3 The Company shall, automatically and without any need for notice on the part of the Noteholders, redeem the Final Redemption Notes on the Final Redemption Date.

3.4 Notwithstanding any other provisions of this instrument but subject to clause 6, each Noteholder shall be entitled to demand immediate redemption of his outstanding Notes at par in any of the following events:

3.4.1 the Company fails to pay within 2 days of the due date any principal payable on repayment of any of his Notes; or

3.4.2 the Company defaults for more than 21 days (after notification to the Company of any such default has been received from any Noteholder) in the performance of, observance of or compliance with any of its other undertakings contained in this instrument; or

3.4.3 an order is made or an effective resolution is passed for the winding up of the Company or the Guarantor (other than a solvent winding up for

the purposes of amalgamation or reconstruction), or the Company or the Guarantor stops or threatens to stop payment of its debts, or the Company or the Guarantor ceases or threatens to cease to carry on its business; or

3.4.4 an administrator of the Company or the Guarantor is appointed, or documents are filed with the Court for the appointment of an administrator, or notice is given of an intention to appoint an administrator by the Company or the Guarantor, the Directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986); or

3.4.5 a receiver, administrative receiver or similar official is appointed in respect of the whole or a substantial part of the undertaking and assets of the Company or the Guarantor; or

3.4.6 any distress or execution (or other similar process) is levied upon or enforced against all or a substantial part of the assets or property of the Company or the Guarantor and is not fully paid out or discharged within 30 days; or

3.4.7 any process or event with an effect analogous to any of those referred to in clause 3.4.3 to clause 3.4.6 (inclusive) happens to the Company or the Guarantor in any jurisdiction; or

3.4.8 Total Net Debt exceeds £50,000,000 at any time; or

3.4.9 there occurs (without the prior written consent of the holders of 75% by nominal value of the Notes) any Change of Control of the Guarantor.

3.5 All Notes repaid or purchased pursuant to any of the provisions of this instrument shall be automatically and immediately cancelled and shall not be reissued.

4 **Undertakings**

From and after the date of this instrument, and so long as any amount is payable by the Company in respect of the Notes, the Company undertakes:-

4.1 to duly perform and observe its obligations under this instrument so that the provisions of this instrument shall operate for the benefit of all Noteholders;

4.2 not to incur or permit any member of the Group to incur any Financial Indebtedness which would cause Total Net Debt to exceed £50,000,000;

4.3 other than in respect of Total Net Debt not exceeding £50,000,000, not to create or issue or allow to come into or continue in being any mortgage or charge upon any part of its or of any member of the Group's property and assets or uncalled capital which ranks prior to the Security; and

4.4 not to make (and to procure that no member of the Group will make) any loan or advance other than to a member of the Group or in the ordinary course of business.

5 **Certificates**

The Certificates shall be executed by the Company in any manner authorised by the Companies Acts and shall be in the form or substantially the form set out in Schedule 1. Each shall refer to this instrument and bear a denoting number and have the Conditions endorsed on it or attached to it.

6 **Bad Leaver Provisions**

6.1 Notwithstanding any other provision hereof, if an Original Noteholder becomes a Bad Leaver:-

6.1.1 and the date of cessation of his employment falls prior to the First Redemption Date, then that Original Noteholder (and any Noteholder holding Notes as a consequence of transfer of Notes to him by that Original Noteholder) shall not be entitled to any payment under this Loan Note Instrument and shall, at the discretion and direction of the Company, agree to any transfer of this Loan Note Instrument (in so far is it relates only to him) and his Notes to any such person as the Company shall direct for a consideration of £1.00; or

6.1.2 and the date of cessation of his employment falls between the First Redemption Date and the Final Redemption Date, then that Original Noteholder (and any Noteholder holding Notes as a consequence of transfer of Notes to him by that Original Noteholder) shall not be entitled to any payment for the balance of those Notes due for redemption after the First Redemption Date and shall, at the discretion and direction of the Company, agree to any transfer of this Loan Note Instrument (in so far is it relates only to him) to any such person as the Company shall direct for a consideration of £1.00.

6.2 For the avoidance of doubt, if an Original Noteholder becomes a Bad Leaver after the First Redemption Date, clause 6.1 will not affect his entitlement (or the entitlement of any Noteholder to whom he has transferred Notes) to redeem Notes as at the First Repayment Date, even if, as at the date he becomes a Bad Leaver, the Company has still not redeemed those Notes but subject to clause 8.1.

7 **This instrument**

7.1 No modification or variation of this instrument shall be made without the prior written approval of all of the Noteholders:

7.2 The Company shall at all times allow any holder of outstanding Notes to inspect a copy of this instrument during normal business hours on reasonable notice and (provided the Company's reasonable expenses in doing so are paid) shall on request supply any Noteholder as soon as reasonably practicable with a copy of this instrument.

8 **Set-off**

8.1 Notwithstanding any other provision hereof, the Company may (to the extent and in the circumstances specified in the Share Purchase Agreement) set off against amounts it is due to pay under the Notes (whether to the Original Noteholder or a transferee) any amount payable by the Original Noteholders as a Seller or Warrantor under the Share Purchase Agreement (including without limitation, any amounts that can be set off under clause 4.12 of the Share Purchase Agreement).

8.2 Subject to clause 8.1, every Noteholder shall be recognised by the Company as entitled to his Notes free from any equity, defence, set-off or cross-claim on the part of the Company against the original, or any intermediate, holder of his Notes.

9 **Meetings**

Any meeting of Noteholders shall be convened, conducted and held in all respects as nearly as possible in the same way as is provided in the Articles for general meetings of the Company.

10 **Guarantee**

10.1 The Guarantor unconditionally and irrevocably guarantees to each of the Noteholders for the time being that if, for any reason whatsoever, any sum due to the Noteholders in terms of this instrument is not paid in full by the Company on the due date it shall (subject to the limitations set out in this guarantee), on demand in writing by such Noteholder, pay to him such sum as shall be equal to the amount in respect of which such default has been made.

10.2 Upon payment in full by the Guarantor of all sums due under this instrument, such Notes shall be deemed to have been transferred to the Guarantor.

10.3 The Guarantor shall be liable as if it were a principal debtor for all moneys payable pursuant to this instrument (notwithstanding that, as between the Company and the Guarantor, the Guarantor is a surety only) and shall not be exonerated or discharged from liability under this guarantee:

10.3.1 by time or indulgence being given to, or any arrangement or alteration of terms being made with, the Company; or

10.3.2 subject to compliance with the provisions of paragraph 2 of Schedule 3, by any transfer by the holders of the Notes (or any of them); or

10.3.3 by the liquidation, whether voluntary or compulsory, of the Company or by the appointment of an administrative receiver or an administrator in relation to the Company or its assets; or

10.3.4 by any act, omission, matter or thing whatsoever whereby the Guarantor, as surety only, would or might have been so exonerated or discharged; or

10.3.5 by any exercise by the Noteholders of any of the powers conferred upon them by, and in accordance with the provisions of this instrument.

10.4 Each of the covenants and guarantees contained in this clause 10 shall be a continuing covenant and guarantee binding on the Guarantor, and shall remain in operation until all sums due in respect of the Notes have been fully paid or satisfied[ or, if earlier, until the Guarantor has no liability under this instrument in respect of any Note. Nothing herein shall require the Guarantor to pay amounts if and to the extent that the Company is entitled to set off a claim or other sum under the Share Purchase Agreement (including without limitation, under clause 4.12 thereof) against the Notes.

10.5 This clause 10 shall be deemed to contain, as a separate and independent stipulation, a provision to the effect that any sums of money which may not be recoverable from the Guarantor by virtue of a guarantee (whether by reason of any legal limitation, disability, incapacity or any other fact or circumstance and whether known to the Noteholders or not) shall nevertheless be recoverable from the Guarantor by way of indemnity.

10.6 Subject to clause 10.9, each Noteholder shall be entitled to determine from time to time when to enforce this guarantee as regards his outstanding Notes and may from time to time make any arrangements or compromise with the Guarantor in relation to the guarantee given by this clause 10 which such Noteholder may think expedient and/or in his own interest.

10.7 Any payment to be made by the Guarantor under this instrument shall (subject to clause 10.4) be made without regard to any lien, right of set-off, counterclaim or other analogous right to which the Guarantor may be, or claim to be, entitled against any Noteholder.

10.8 Payment by the Guarantor to any Noteholder made in accordance with this clause 10 shall be deemed a valid payment for all purposes of this clause 10 and shall discharge the Guarantor from its liability under this clause 10 to the extent of the payment, and the Guarantor shall not be concerned to see to the application of any such payment.

10.9 In relation to any demand made by a Noteholder for payment by the Guarantor pursuant to this clause 10 such demand shall be in writing, shall be accompanied by the relevant Certificate(s) and shall state:

10.9.1 the full name and registered address of such Noteholder and the amount of principal which is claimed;

10.9.2 that none of the Notes in respect of which such demand is made has been cancelled, redeemed or repurchased by the Company;

10.9.3 that the sum demanded is due and payable by the Company without any entitlement to set off by the Company against the sum demanded, that all conditions and demands prerequisite to the Company's obligations in relation to those Notes have been fulfilled and made, that any grace period relating to those obligations has elapsed and that the Company has failed to pay the sum demanded;

10.9.4 the date on which payment of the principal in respect of which the demand is made should have been made to the Noteholder by the Company; and

10.9.5 the bank account details of a bank in the United Kingdom to which payment by the Guarantor is to be credited.

10.10 The Guarantor may rely on any demand or other document or information appearing on its face to be genuine and correct, and to have been signed or communicated by the person by whom it purports to be signed or communicated. The Guarantor shall not be liable for the consequences of such reliance and shall have no obligation to verify that the facts or matters stated in any such demand, document or information are true and correct.

11 **Third party rights**

This instrument and the Notes are enforceable under the Contracts (Rights of Third Parties) Act 1999 by any Noteholder, but not by any other third party.

12 **Governing law and jurisdiction**

12.1 This instrument and the Notes and any dispute or claim arising out of or in connection with any of them or their subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the law of England and Wales.

12.2 The parties to this instrument irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this instrument or any Note or their subject matter or formation (including non-contractual disputes or claims).

12.3 This instrument has been executed as a deed and is delivered and takes effect on the date at the beginning of it.

**Schedule 1**

**The Certificate**

No [CERTIFICATE NUMBER]

GENESCO (UK) LIMITED (the **"Company"**)

Issue of £25,000,000 guaranteed secured loan notes 2014-2015.

Issued pursuant to a resolution of [a duly appointed committee of] the board of directors of the Company passed on • June 2011.

This is to certify that • [is OR are] the registered holder[s] of £[AMOUNT] of the above-mentioned guaranteed secured and loan notes 2014-2015 constituted by an instrument between the Company and Genesco Inc as Guarantor and Colin Temple and Mark Crutchley as Original Noteholders dated [DATE] (the **"Instrument"**). Such Notes are issued with the benefit of, and subject to, the provisions contained in the Instrument and the Conditions endorsed on this certificate.

Payments of principal on the Notes represented by this certificate are irrevocably and unconditionally guaranteed by the Guarantor, which has authorised the issue of this certificate.

The Notes represented by this certificate and any dispute or claim arising out of or in connection with any of them or their subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the law of England and Wales.

This certificate has been executed as a deed and is delivered and takes effect on its date of issue being • June 2011.

Executed as a deed by GENESCO (UK) LIMITED acting by a director and , [a director OR its secretary]

_____

•

Director

_____

•

[Director or Secretary]

Please note:

1 The Notes are transferable and repayable in whole or in part (in amounts and integral multiples of £1,000).

2 No transfer of all or any part of the Notes represented by this certificate shall be registered unless it is accompanied by this certificate, which must be surrendered before any transfer (whether for all or some only of the Notes) can be registered and a new certificate or certificates issued in exchange.

3 The definitions and rules of interpretation in the Instrument apply in this certificate.

## Schedule 2

## The Conditions

1 Interest

If the Company fails to pay any Noteholder any amount due on his Notes on the date on which such amount is expressed to be due and payable pursuant to these Conditions, the Company shall (without prejudice to all other rights and remedies of the Noteholder in respect of such failure) pay to that Noteholder default interest at a rate which is 10% per annum above the Official Dealing Rate (which is inclusive of any interest payable pursuant to clause 4.12 of the Share Purchase Agreement) on such overdue amount from the date of such failure up to the date of actual payment (after as well as before judgment), such interest to be paid monthly and, if not paid, compounded monthly.

2 Redemption

2.1 The Notes shall be redeemed in accordance with clause 3 of the Instrument.

2.2 If on any of the dates for redemption in clause 2.1, there is more than one Noteholder, the quantity of Notes to be so redeemed shall be divided between each Noteholder pro rata to their respective holdings of Notes.

2.3 The Company may at any time purchase the Notes by private agreement, by tender (available to all Noteholders alike) or by any other means at any price.

2.4 All Notes redeemed or purchased by the Company in accordance with these Conditions shall be cancelled and the Company shall not be at liberty to keep them subsisting for the purposes of reissue, to reissue them or to issue any other Notes in their place.

2.5 In the case of redemption of part only of a Noteholder's Notes, the relevant Certificate(s) shall be either endorsed with a memorandum of the nominal amount of the Notes so redeemed and the date of such redemption, or cancelled and (without charge) replaced by a fresh Certificate for the balance of the principal moneys not then repayable.

3 Foreign currency election

3.1 Subject to paragraphs 3.2, 3.3 and 3.4, a Noteholder may elect that the principal amount of the Notes shall be redeemed in US dollars. To be effective, the election must be submitted by the Noteholder in writing to the Company no less than 28 days and no more than 6 months before the redemption of all or any part of the Notes held by the Noteholder. In each case the Company shall, on the relevant redemption date, pay to the Noteholder an amount in US dollars obtained by converting the principal amount outstanding of such Notes into US dollars (at the spot rate for the purchase of US dollars with sterling prevailing at the date 30 days before the redemption date).

3.2 If the amount payable in US dollars under this paragraph 3 would otherwise exceed the amount in US dollars obtained by converting 100.5% of the sterling principal amount outstanding of such Notes into US dollars at the spot rate for the purchase of US dollars with sterling at 12.00 am on the redemption date, the latter amount shall be substituted therefor.

3.3 If the amount payable in US dollars under this paragraph 3 would otherwise be less than the amount in US dollars obtained by converting 99.5% of the sterling principal amount outstanding of such Notes into US dollars at the spot rate for the purchase of US dollars with sterling at 12.00 am on the redemption date, the latter amount shall be substituted therefor.

3.4 The Company shall determine the spot rate in good faith for the purpose of this paragraph 3.4.

4 Payments

4.1 Any principal or interest payable in respect of the Notes by the Company shall be paid in cleared funds in Sterling by not later than 2.00pm on the due date by means of electronic transfer to such account as the Noteholder shall notify to the Company from time to time or by cheque sent to the Noteholder at its address appearing in the Register. In the case of joint Noteholders the Company may make any payments to the Noteholder whose name appears first in the Register or such address as is notified to the Company from time to time.

4.2 Subject to clause 8.1 of the Instrument, all payments to be made by the Company hereunder to a Noteholder shall be made in full without set-off or counterclaim and free and clear of any without any deduction whatsoever save as required by law.

4.3 If the date when any payment hereunder is due to be made is not a Business Day, such payment shall be postponed to the next Business Day.

5 Miscellaneous

5.1 So long as the Notes remain in issue, the Company shall send to each Noteholder a copy of every notice, circular, accounts or other document required by law to be sent by the Company generally to the holders of its ordinary share capital at the same time as they are sent to such shareholders.

5.2 No delay or omission by any Noteholder or the Company in exercising any right or remedy under this Instrument or the Notes shall impair that right or remedy or operate as or be taken to be a waiver of it, nor shall any single partial or defective exercise by any Noteholder or the Company of any such right or remedy preclude any other or further exercise under this Instrument of the Notes of that or any other right or remedy. The remedies provided in this Instrument and the Notes are cumulative and are not exclusive of any remedies provided by law.

5.3 The provisions of this Instrument and all rights pursuant to the notes shall subsist for the benefit of successors and assignees of each Noteholder.

5.4 This Instrument may be amended by deed executed by the Company, provided that such deed is duly countersigned by each Noteholder. Any such deed shall be annexed to this Instrument.

**Schedule 3**

**The Register**

1 The Register

1.1 The Company shall keep the Register at its registered office or (subject to the provisions of section 743 of the Companies Act 2006) at the offices of the registrar of the Company in one or more books and enter in the Register:

1.1.1 the issue and all transfers and changes of ownership of the Notes, including the names and addresses of the Noteholders for the time being of the Notes;

1.1.2 the amount of the Notes held by every registered holder and the principal moneys paid up on them;

1.1.3 the first date or dates of issue of the Notes and the date on which the name of every such registered holder is entered in respect of the Notes standing in his name; and

1.1.4 the serial number of each Certificate issued and the date of its issue.

1.2 Any change of name or address on the part of any Noteholder shall be promptly notified to the Company and, on receipt, the Register shall be altered accordingly. The Noteholders or any of them and any person authorised in writing by any of them shall be at liberty at all reasonable times during office hours to inspect the Register and to take copies of it or of extracts from it.

1.3 The Company shall recognise the registered holder of any Notes as the absolute owner of them and shall not be bound to take notice or see to the execution of any trust (whether express, implied or constructive) to which any Note may be subject. The receipt by the Noteholder for the time being of any Notes, or (in the case of joint Noteholders) the receipt by any of them, of the interest from time to time accruing due in respect of the Notes, or of any other moneys payable in respect of them, shall be a good discharge to the Company notwithstanding any notice it may have (whether express or otherwise) of the right, title, interest or claim of any other person to or in such Notes, interest or moneys.

2 Transfers and transmission

2.1 Subject to paragraphs 2.2 to 2.7 (inclusive) below the Notes may not be transferred and the Original Noteholders and any person becoming entitled to them pursuant to paragraph 2.6 below shall be the only persons recognised by the Company as entitled to the Notes.

2.2 An Original Noteholder may at any time after 23 June 2011 with the prior written consent of the Company (such consent not to be unreasonably withheld or a decision thereon delayed), transfer all or any of the Notes held by him to (a) a privileged relation: or (b) to trustees to be held upon a family trust of such Original Noteholder. For the purposes of this clause:

2.2.1 **“privileged relation”** in relation in relation to an Original Noteholder means the spouse (or widow) of that Original Noteholder and the Original Noteholder’s lineal descendants and, for the purposes aforesaid a stepchild or adopted child or illegitimate child of any member shall be deemed to be a lineal descendent of such Original Noteholder; and

2.2.2 **"family trust"** means in relation to an Original Member a trust (whether arising under a settlement, declaration of trust testamentary disposition of on an intestacy) which does not permit any of the settled property or the income therefore to be applied otherwise than for the benefit of the Original Noteholder and/or a privileged relation of that Original Noteholder.

If and whenever any Notes cease to be held upon a family trust, then the trustees and any privileged relation to whom the Notes were transferred by an Original Noteholder shall forthwith re-transfer the Notes to the Original Noteholder, and should they fail to do so the Company shall be appointed their attorney with full power and authority on their behalf to execute and deliver to the Company a transfer of the Notes.

2.3 Transfers pursuant to 2.1 shall be effected by a document in writing in the usual or common form. Every such document must be signed by the transferor who shall be deemed to remain the owner of the Notes until the name of the transferee is entered in the Register in respect of those Notes.

2.4 Every document of transfer must be sent to or left at the registered office for registration accompanied by the Certificate for the Notes to be transferred and such other evidence as the directors or other officers of the Company authorised to deal with the transfers may require to prove the title of the transferor or his right to transfer the Notes. If the instrument of transfer is executed by some other person on behalf of the Noteholder the authority of that person to do so must be provided.

2.5 The Company shall procure that any person becoming entitled to acquire the benefit attaching to any Notes in consequence of the death or bankruptcy of any Noteholder shall, upon producing appropriate evidence of such entitlement, be registered as the holder of such Notes or, subject to the preceding conditions as to transfer, may transfer such Notes, whereupon such person or the relevant transferee shall assume all rights and obligations of the relevant previous Noteholder in respect of such Notes.

2.6 No transfer of any Notes under this Instrument will be recognised or given effect to by the Company and no person other than an Original Noteholder will be registered as the holder of any Notes until the Company is satisfied that (1) the transferor and transferee (or other person to be so registered) have complied with any applicable requirements of the Intercreditor Agreement, whereby any such transfer may only be effected in compliance with that Agreement if the transferee enters into any deed of adherence or similar document in terms of which the transferee (or other person to be so registered) becomes bound by the provisions of the Intercreditor Agreement in place of or in addition to the transferor; and (2) the transferee has agreed specifically that its holding of the Notes is subject to the provisions of clauses 6 and 8.1 of this Instrument.

2.7 For the avoidance of doubt the transfer by the Original Noteholder of any Notes shall not limit or affect the ability of the Company to exercise its rights under clause 6 or 8.1 as against any transferee.

3 Notices

3.1 Any notice may be given to any Noteholder by sending it by first-class post in a pre-paid letter addressed to such Noteholder at his registered address. In the case of joint Noteholders, a notice given to the Noteholder whose name stands first on the Register in respect of such Notes shall be sufficient notice to all the joint Noteholders.

3.2 Any notice given by post shall be deemed to have been served on the day following the day on which it was posted, and in proving such service, it shall be sufficient to

prove that the envelope containing the notice was properly addressed, stamped and posted.

3.3 A person entitled to any Notes in consequence of the death, bankruptcy or liquidation of a Noteholder, or otherwise by operation of law, shall be entitled, on producing to the Company such evidence as the Company may reasonably require to show his title to the Notes, and on giving the Company an address within the United Kingdom for the service of notices, to have served upon or delivered to him at such address any notice or document to which the Noteholder would have been entitled, and such service or delivery shall for all purposes be deemed a sufficient service or delivery of such notice or document on all persons interested (whether jointly with or as claiming through or under him) in such Notes. Otherwise, any notice or document delivered or sent by post to, or left at the address of, any Noteholder in pursuance of these provisions shall, notwithstanding that such Noteholder be then dead, bankrupt or in liquidation, and whether or not the Company has notice of his death, bankruptcy or liquidation, be deemed to have been duly served or delivered in respect of any Notes registered in the name of such Noteholder as sole or first-named joint holder.

Executed as a deed GENESCO (UK) LIMITED acting by , a director, in the presence of:

SIGNATURE OF DIRECTOR

Witness _____

Director

Full Name _____

Address _____

_____

Executed as a deed by Genesco Inc. acting by , a director, in the presence of:

SIGNATURE OF DIRECTOR

Witness _____

Director

Full Name _____

Address _____

_____

**Exhibit 10.1**

***Execution Version***

FIRST AMENDMENT TO SECOND AMENDED AND RESTATED CREDIT AGREEMENT

FIRST AMENDMENT TO SECOND AMENDED AND RESTATED CREDIT AGREEMENT (this "Amendment") dated as of June 23, 2011 between

GENESCO INC., a Tennessee corporation (the "Lead Borrower"),

the Other Borrowers party hereto (together with the Lead Borrower, the "Borrowers"),

the Lenders party hereto, and

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

in consideration of the mutual covenants herein contained and benefits to be derived herefrom.

W I T N E S S E T H:

WHEREAS, the Borrowers, the Lenders, the Administrative Agent, the Collateral Agent and the Canadian Agent have entered into a certain Second Amended and Restated Credit Agreement dated as of January 21, 2011 (the "Credit Agreement"); and

WHEREAS, the Lead Borrower has (i) informed the Administrative Agent that it has formed two Subsidiaries under the laws of the United Kingdom to consummate the acquisition of substantially all of the equity interests of Schuh Group Limited, a company organized under the laws of Scotland, (ii) requested that the Lenders consent to the making of certain Investments by the Lead Borrower in such Subsidiaries and the Guarantee by the Lead Borrower of certain Indebtedness of such Subsidiaries in connection with such acquisition (collectively, the "Transactions"), and (iii) requested certain other modifications to the Credit Agreement, including, without limitation, an increase to the Domestic Commitments and the addition of certain Tranche A-1 Commitments; and

WHEREAS, the Borrowers, the Lenders, the Administrative Agent, the Collateral Agent and the Canadian Agent have agreed to amend the Credit Agreement to, among other things, provide for the Transactions as set forth herein.

NOW THEREFORE, in consideration of the mutual promises and agreements herein contained, the parties hereto hereby agree as follows:

1. Incorporation of Terms and Conditions of Credit Agreement. All of the terms and conditions of the Credit Agreement (including, without limitation, all definitions set forth therein) are specifically incorporated herein by reference. All capitalized terms not otherwise defined herein shall have the same meaning as in the Credit Agreement, as applicable.

2. Representations and Warranties. Each Credit Party hereby represents and warrants that after giving effect to this Amendment, (i) no Default or Event of Default exists under the Credit Agreement or under any other Loan Document, and (ii) all representations and warranties contained in Section 3 of the Credit Agreement and in the other Loan Documents are true and correct in all material respects (except in the case of any representation and warranty qualified by materiality, which is true and correct in all respects) as of the date hereof, 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 (except in the case of any representation and warranty qualified by materiality, which is true and correct in all respects) as of such earlier date.

3. Ratification of Loan Documents. The Credit Agreement, as hereby amended, and all other Loan Documents, are hereby ratified and re-affirmed in all respects and shall continue in full force and effect.

4. Amendment to Credit Agreement.

   a. Composite Credit Agreement. The Credit Agreement (other than the Schedules and Exhibits thereto) is hereby amended in its entirety to reflect the modifications identified in the document annexed hereto as Annex A.

   b. Exhibit A-1. Exhibit A-1 (Form of Assignment and Acceptance (Tranche A-1)) is hereby added to the Credit Agreement in the form attached to this Amendment as Exhibit A-1.

   c. Exhibit B-4. Exhibit B-4 (Form of Tranche A-1 Note) is hereby added to the Credit Agreement in the form attached to this Amendment as Exhibit B-4.

   d. Amendment to Schedule 1.1. Schedule 1.1 (Lenders and Commitments) to the Credit Agreement is hereby deleted in its entirety and replaced with Schedule 1.1 attached to this Amendment.

   e. Amendment to Schedule 3.6. Schedule 3.6 (Disclosures) to the Credit Agreement is hereby deleted in its entirety and replaced with Schedule 3.6 attached to this Amendment.

5. Conditions to Effectiveness. This Amendment shall not be effective until each of the following conditions precedent has been fulfilled to the satisfaction of the Administrative Agent:

   a. This Amendment shall have been duly executed and delivered by the Credit Parties and the Lenders. The Administrative Agent shall have received a fully executed original hereof.

b. All action on the part of the Credit Parties necessary for the valid execution, delivery and performance by the Credit Parties of this Amendment shall have been duly and effectively taken.

c. After giving effect to this Amendment, no Default or Event of Default shall have occurred and be continuing.

d. The Credit Parties shall have paid to the Administrative Agent the fees set forth in that certain supplemental fee letter dated as of even date herewith among the Credit Parties and the Administrative Agent.

e. The Transactions shall be consummated contemporaneously herewith and after giving effect to the Investment by the Borrower in UK Acquisition and UK LP on the First Amendment Effective Date, the Payment Conditions shall have been satisfied.

6. Binding Effect. The terms and provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their heirs, representatives, successors and assigns.

7. Expenses. The Credit Parties shall reimburse the Administrative Agent for all expenses incurred in connection herewith, including, without limitation, reasonable attorneys' fees to the extent provided in the Credit Agreement.

8. Multiple Counterparts. This Amendment may be executed in multiple counterparts, each of which shall constitute an original and together which shall constitute but one and the same instrument.

9. Governing Law. THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, INCLUDING SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

IN WITNESS WHEREOF, this Amendment has been duly executed and delivered by each of the parties hereto as a sealed instrument as of the date first above written.

DOMESTIC BORROWERS:

GENESCO INC.
as Lead Borrower

By _____
Name:
Title:

GENESCO BRANDS, INC.
as a Domestic Borrower

By _____
Name:
Title:

HAT WORLD CORPORATION
as a Domestic Borrower

By _____
Name:
Title:

HAT WORLD, INC.
as a Domestic Borrower

By _____
Name:
Title:

FLAGG BROS. OF PUERTO RICO, INC.
as a Domestic Borrower

By _____
Name:
Title:

KEUKA FOOTWEAR, INC.
as a Domestic Borrower

By _____
Name:
Title:

CANADIAN BORROWER:

GCO CANADA INC.
as Canadian Borrower

By _____
Name:
Title:

**BANK OF AMERICA, N.A.**, as Administrative Agent, Collateral Agent, Canadian Agent and as a Lender

By: _____
Name: _____
Title: _____

[SIGNATURE BLOCKS OF OTHER REQUIRED LENDERS]

**Annex A**

**Second Amended and Restated Credit Agreement**

[See Attached]

**Execution Version**

SECOND AMENDED AND RESTATED CREDIT AGREEMENT
dated as of
January 21, 2011

among

GENESCO INC.
a Domestic Borrower and the Lead Borrower,
GENESCO BRANDS, INC., HAT WORLD CORPORATION,
HAT WORLD, INC., FLAGG BROS. OF PUERTO RICO, INC.,
KEUKA FOOTWEAR, INC.
as the Other Domestic Borrowers,

GCO CANADA INC.
as the Canadian Borrower

The LENDERS Party Hereto,

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

BANK OF AMERICA, N.A. (ACTING THROUGH ITS CANADA BRANCH)
as Canadian Agent

WELLS FARGO CAPITAL FINANCE, LLC
U.S. BANK NATIONAL ASSOCIATION
and
SUNTRUST BANK
as Co-Syndication Agents,

PNC BANK, NATIONAL ASSOCIATION
as Documentation Agent,

and

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED
as Sole Lead Arranger

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED
WELLS FARGO CAPITAL FINANCE, LLC
U.S. BANK NATIONAL ASSOCIATION
and
SUNTRUST ROBINSON HUMPHREY, INC.,
as Joint Bookrunners

**TABLE OF CONTENTS**

**EXHIBITS**

| | |
|---|---|
| A | Form of Assignment and Acceptance (Tranche A) |
| A-1 | Form of Assignment and Acceptance (Tranche A-1) |
| B-1 | Form of Canadian Revolving Note |
| B-2 | Form of Domestic Revolving Note |
| B-3 | Form of Swingline Note |
| B-4 | Form of Tranche A-1 Note |
| C | Form of Effective Date Guaranty |
| D | Form of Borrowing Base Certificate |
| E | Form of Compliance Certificate |
| F | Closing Agenda |
| G | Form of DDA Notification |

**SCHEDULES**

This SECOND AMENDED AND RESTATED CREDIT AGREEMENT is dated as of January 21, 2011 (this **"Agreement"**) among GENESCO INC., a corporation organized under the laws of the State of Tennessee having a place of business at Genesco Park, 1415 Murfreesboro Road, P.O. Box 731, Nashville, TN 37202-0731, as a Domestic Borrower and the Lead Borrower (as hereinafter defined); the Other Domestic Borrowers (as defined below); GCO CANADA INC., as the Canadian Borrower; the LENDERS party hereto; BANK OF AMERICA, N.A., a national banking association having a place of business at 100 Federal Street, Boston, Massachusetts 02110, as Administrative Agent for the Lenders and as Collateral Agent for the Secured Parties (as each such term is hereinafter defined); BANK OF AMERICA, N.A. (ACTING THROUGH ITS CANADA BRANCH), as Canadian Agent; and WELLS FARGO CAPITAL FINANCE, LLC, U.S. BANK NATIONAL ASSOCIATION and SUNTRUST BANK, as Co-Syndication Agents; and PNC BANK, NATIONAL ASSOCIATION, as Documentation Agent.

W I T N E S S E T H:

WHEREAS, the Borrowers have requested that the Lenders make available to the Domestic Borrowers, as co-borrowers, a revolving credit facility (including a letter of credit sub-facility) in an initial maximum amount not to exceed $300,000,000, the proceeds of which, in each case, shall be used by the Borrowers for purposes permitted under, and otherwise in accordance with and subject to the terms of, this Agreement;

WHEREAS, the Other Borrowers are direct or indirect wholly-owned Subsidiaries of the Lead Borrower, and together with the Lead Borrower are related entities that collectively constitute an integrated business;

WHEREAS, each Borrower is sufficiently dependent upon the others and the Borrowers are related in such a way that any advance made hereunder to any Borrower will benefit all of the Borrowers as a result of their related operations and identity of interests;

WHEREAS, the Domestic Borrowers have requested that the Agents and Lenders treat them as co-borrowers hereunder, jointly and severally responsible for the obligations of each other;

WHEREAS, each Lender is willing to agree (severally and not jointly) to make such loans and provide such financial accommodations to the Borrowers on a pro rata basis according to its Commitment on the terms and conditions set forth herein, and Bank of America, N.A. is willing to act as Administrative Agent and Collateral Agent for the Lenders on the terms and conditions set forth herein and in the other Loan Documents;

WHEREAS, each Canadian Lender is willing to agree (severally and not jointly) to make such loans and provide such financial accommodations to the Canadian Borrower according to its Canadian Commitment on the terms and conditions set forth herein, and Bank of America, N.A. (acting through its Canada Branch) is willing to act as Canadian Agent for the Lenders on the terms and conditions set forth herein and in the other Loan Documents;

WHEREAS, prior to the date of this Agreement, the Lead Borrower, on the one hand, and Bank of America, N.A., as Administrative Agent thereunder, and the Lenders on the other hand, previously entered into an Amended and Restated Credit Agreement dated as of December 1, 2006 (as amended and in effect, the "**Existing Credit Agreement**"), pursuant to which the Lenders provided the Lead Borrower and certain of the Other Domestic Borrowers with certain financial accommodations;

WHEREAS, in accordance with SECTION 9.2 of the Existing Credit Agreement, the Borrowers, the Lenders, and the Agents desire to amend and restate the Existing Credit Agreement as provided herein.

NOW, THEREFORE, in consideration of the mutual conditions and agreements set forth in this Agreement, and for good and valuable consideration, the receipt of which is hereby acknowledged, the undersigned hereby agree that the Existing Credit Agreement shall be amended and restated in its entirety to read as follows (it being agreed that this Agreement shall not be deemed to evidence or result in a novation or repayment and reborrowing of the Obligations under the Existing Credit Agreement):

**1. DEFINITIONS.**

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

"**Accelerated Borrowing Base Delivery Event**" means either (i) the occurrence and continuance of any Event of Default, or (ii) the failure of the Borrowers to maintain Excess Availability at least equal to the greater of $35,000,000 or fifteen percent (15%) of the Loan Cap. For purposes of this Agreement, the occurrence of an Accelerated Borrowing Base Delivery Event shall be deemed continuing (i) so long as such Event of Default has not been waived, and/or (ii) if the Accelerated Borrowing Base Delivery Event arises as a result of the Borrowers' failure to achieve Excess Availability as required hereunder, until Excess Availability has exceeded the greater of $35,000,000 or fifteen percent (15%) of the Loan Cap for thirty (30) consecutive calendar days. The termination of an Accelerated Borrowing Base Delivery Event as provided herein shall in no way limit, waive or delay the occurrence of a subsequent Accelerated Borrowing Base Delivery Event in the event that the conditions set forth in this definition again arise.

**"Account Control Agreements"** shall mean agency agreements with banks or other institutions maintaining a checking or other demand deposit account, lockbox account or investment account of any Borrower (excluding store-level deposit accounts), including without limitation any DDA into which the proceeds of any other DDA are regularly swept on a daily basis, establishing control (as defined in the UCC) of such account by the Collateral Agent and whereby the bank maintaining such account agrees, upon the occurrence and during the continuance of a Cash Dominion Event, to comply only with instructions originated by the Collateral Agent without the further consent of any Credit Party, each of which agreements shall be in form and substance reasonably satisfactory to the Administrative Agent.

**"Account Debtor"** shall mean any Person who is obligated under an Account.

**"Account Debtor List"** has the meaning provided therefor in Section 2.21(m).

"**Account Reserves**" means such reserves as may be established from time to time by the Administrative Agent in the Administrative Agent's Permitted Discretion (after consultation with the Lead Borrower (whose consent to any Account Reserve shall not be required)) with respect to the collectability of any Eligible Wholesale Receivable or any Eligible Credit Card and Debit Card Receivable, including, without limitation, Dilution Reserves. Account Reserves shall be established and calculated in a manner and methodology consistent with the Administrative Agent's practices as of the Effective Date with other similarly situated borrowers.

**"Accounts"** shall mean **"accounts"** as defined in the UCC and in the PPSA, (or to the extent governed by the *Civil Code of Québec*, defined as all "claims" for the purposes of the *Civil Code of Québec*), and also all accounts, accounts receivable, and rights to payment (whether or not earned by performance): (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of; (ii) for services rendered or to be rendered; (iii) arising out of a policy of insurance issued or to be issued; (iv) arising out of a secondary obligation incurred or to be incurred; or (v) arising out of the use of a debit, credit or charge card or information contained on or used with that card.

"**ACH**" shall mean automated clearing house transfers.

"**Act**" has the meaning provided therefor in Section 9.21.

"**Additional Commitment Lender**" has the meaning provided therefor in Section 2.1(c).

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

"**Adjustment Date**" means the first day of each Fiscal Quarter, commencing with the first Fiscal Quarter occurring after the expiration of three months following the Effective Date.

**"Administrative Agent"** means Bank of America, in its capacity as administrative agent for the Lenders hereunder.

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

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

**"Affiliate"** means, with respect to a specified Person, (i) any director or officer of that Person, (ii) any other Person Controlling, Controlled by or under direct or indirect common Control with that Person (and if that Person is an individual, any member of the immediate family (including parents, siblings, spouse, children, stepchildren, nephews, nieces and grandchildren) of such individual and any trust whose principal beneficiary is such individual or one or more members of such immediate family and any Person who is Controlled by any such member or trust), (iii) any other Person directly or indirectly holding 15% or more of any class of the capital stock or other equity interests (including options, warrants, convertible securities and similar rights) of that Person, and (iv) any other Person 15% or more of any class of whose capital stock or other equity interests (including options, warrants, convertible securities and similar rights) is held directly or indirectly by that Person.

**"Agents"** shall mean collectively, the Administrative Agent, the Canadian Agent and the Collateral Agent.

**"Agreement"** means this Credit Agreement, as modified, amended, supplemented or restated and in effect from time to time.

**"Applicable Fiscal Period"** means the period of twelve (12) Fiscal Months ended as of the end of the last Fiscal Month.

**"Applicable Law"** means as to any Person: (i) all statutes, rules, regulations, orders, or other requirements having the force of law and (ii) all court orders and injunctions, and/or similar rulings, in each instance ((i) and (ii)) of or by any Governmental Authority, that are applicable to such Person or any property of such Person.

"**Applicable Lenders** " means the Required Lenders, the Required Supermajority Lenders, all affected Lenders, or all Lenders, as the context may require.

**"Applicable Margin "** means the rates for Prime Rate Loans, U.S. Index Rate Loans, BA Equivalent Loans, LIBO Loans and Tranche A-1 LIBO Loans set forth below:

| Level | Average Daily Availability | Applicable Margin for LIBO Loans and BA Equivalent Loans | Applicable Margin for Tranche A-1 LIBO Loans | Applicable Margin for Domestic Prime Rate Loans, U.S. Index Rate Loans and Canadian Prime Rate Loans | Applicable Margin for Domestic Tranche A-1 Prime Rate Loans |
|---|---|---|---|---|---|
| I | Greater than or equal to 60% of the Loan Cap | 2.25 % | 3.75 % | 1.25 % | 2.75 % |
| II | Greater than or equal to 30% of the Loan Cap but less than 60% of the Loan Cap | 2.50 % | 4.00 % | 1.50 % | 3.00 % |
| III | Less than 30% of the Loan Cap | 2.75 % | 4.25 % | 1.75 % | 3.25 % |

From and after the First Amendment Effective Date until the ~~first~~ third Adjustment Date ~~occurring after the expiration of three months~~ following the First Amendment Effective Date (but, in any event, until February 1, 2012), the Applicable Margin shall be established at the percentages set forth in Level ~~II~~ III of the pricing grid set forth above. From and after such first Adjustment Date following the First Amendment Effective Date and on each Adjustment Date thereafter, the Applicable Margin shall be determined from the pricing grid set forth above based upon the Average Daily Availability for the most recent Fiscal Quarter ended immediately preceding such Adjustment Date; provided, however, that notwithstanding anything to the contrary set forth herein, upon the occurrence of an Event of Default, the Administrative Agent may, and at the direction of the Required Lenders shall, immediately increase the Applicable Margin to that set forth in Level III (even if the Average Daily Availability requirements for a different Level have been met) and interest shall accrue at the rate of interest set forth in Section 2.10; provided further if any Borrowing Base Certificate is at any time restated or otherwise revised or if the information set forth in any Borrowing Base Certificate otherwise proves to be false or incorrect such that the Applicable Margin would have been higher than was otherwise in effect during any period, without constituting a waiver of any Default or Event of Default arising as a result thereof, interest due under this Agreement shall be immediately recalculated at such higher rate for any applicable periods and shall be due and payable on demand.

"**Appraised Value** " means with respect to Eligible Inventory, the appraised orderly liquidation value, net of costs and expenses to be incurred in connection with any such liquidation, which value is

expressed as a percentage of Cost of Eligible Inventory as set forth in the inventory stock ledger of the Borrower Consolidated Group, which value shall be determined from time to time by the most recent appraisal undertaken by an independent appraiser engaged by the Administrative Agent.

"**Approved Fund**" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender, (c) an entity or an Affiliate of an entity that administers or manages a Lender, or (d) the same investment advisor or an advisor under common control with such Lender, Affiliate or advisor, as applicable.

**"Assignment and Acceptance"** means an assignment and acceptance entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.6), and accepted by the Administrative Agent, in the form of Exhibit A or A-1 or any other form approved by the Administrative Agent.

"**Audited Financial Statements**" means the audited consolidated balance sheet of the Borrower Consolidated Group for the Fiscal Year ended January 30, 2010, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such Fiscal Year of the Borrower Consolidated Group, including the notes thereto.

**"Availability Reserves"** means such reserves (but without duplication of any Account Reserves or Inventory Reserves or any factors included in the determination of the Appraised Value of Eligible Inventory) as the Administrative Agent from time to time determines in the Administrative Agent's Permitted Discretion (after consultation with the Lead Borrower (whose consent to any Availability Reserve shall not be required)) as being appropriate (a) to reflect the impediments to the Agents' ability to realize upon the Collateral, (b) to reflect claims and liabilities that the Administrative Agent determines will need to be satisfied in connection with the realization upon the Collateral, or (c) to reflect that a Default or an Event of Default then exists. Without limiting the generality of the foregoing, Availability Reserves may include (but are not limited to) reserves based on (i) rent (A) on account of past due rent, (B) for leased distribution center locations as to which the Administrative Agent has not received a Collateral Access Agreement from the applicable landlord, and (C) for locations for which the landlord has been granted a Lien on the assets of any Person included in the Borrower Consolidated Group or in those states in which the landlord has a statutory landlord's Lien; (ii) Customer Credit Liabilities; (iii)outstanding taxes and other governmental charges, including, without limitation, ad valorem, real estate, personal property, sales, claims of the PBGC and other taxes or claims which might have priority over the interests of the Collateral Agent or the Canadian Agent in the Collateral; (iv) customs duties, and other costs to release Inventory which is being imported into the United States or Canada; (v) salaries, wages and benefits due to employees of any Credit Party, provided that Availability Reserves under this clause (v) will not be imposed except during the continuance of a Cash Dominion Event; (vi) customer deposits; (vii) reserves for reasonably anticipated changes in the Appraised Value of Eligible Inventory between appraisals resulting from any significant or material decrease in comparable store sales trends, gross margins, any significant changes in Inventory mix, store operating expense structure or markdown activity, or any other factor that could reasonably be expected to result in a decrease to Appraised Value of Eligible Inventory, provided that if the Administrative Agent notifies the Lead Borrower of its intention to impose such an Availability Reserve, the Lead Borrower may, at its expense, engage an appraiser reasonably satisfactory to the Administrative Agent, to conduct an updated Inventory appraisal and, upon the Administrative Agent's receipt and satisfactory review of the results of such appraisal, the previously imposed Availability Reserve under this clause (vii) will be terminated (without limiting the Administrative Agent's right to re-establish such an Availability Reserve under this clause (vii) if circumstances so warrant); (viii) warehousemen's or bailee's charges and other Permitted Encumbrances which may have priority over the interests of the Collateral Agent or the Canadian Agent in the Collateral; (ix) amounts due to vendors on account of consigned goods; (x) the Agents' estimate of Canadian Priority Payable Reserves; (xi) Cash Management Reserves; and (xii)

Bank Products Reserves. Availability Reserves shall be established and calculated in a manner and methodology consistent with the Administrative Agent's practices as of the Effective Date with other similarly situated borrowers.

"**Average Daily Availability**" shall mean, in respect of any Adjustment Date, the average daily Excess Availability for the immediately preceding Fiscal Quarter.

"**BA Equivalent Loan**" means any Canadian Loan in CD$ bearing interest at a rate determined by reference to the BA Rate in accordance with the provisions of Article II.

"**BA Equivalent Loan Borrowing**" means any Borrowing comprised of BA Equivalent Loans.

"**BA Rate**" means, for the Interest Period applicable to a BA Equivalent Loan, the rate of interest per annum equal to the annual rates applicable to CD$ bankers' acceptances having an identical or comparable term as the proposed BA Equivalent 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. (Toronto time) on such day (or, if such day is not a Business Day, as of 10:00 A.M. (Toronto 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 1/100 of 1%) as of 10:00 A.M. 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 CD$ 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.

**"Bank of America"** shall mean Bank of America, N.A., a national banking association.

"**Bank of America-Canada Branch**" means Bank of America, N.A. (acting through its Canada branch), a banking corporation carrying on business under the *Bank Act* (Canada).

"**Bank of America Concentration Account**" has the meaning provided therefor in Section 2.21(d).

"**Bank of Canada Overnight Rate**" means, on any date of determination, the rate of interest charged by the Bank of Canada on one-day Canadian dollar loans to financial institutions, for such date.

"**Bank Product Reserves**" means such reserves as the Administrative Agent from time to time determine in its Permitted Discretion as being appropriate to reflect the anticipated liabilities and obligations of the Credit Parties with respect to Bank Products then provided or outstanding.

"**Bank Products**" means any services or facilities provided to any Credit Party by the Administrative Agent, the Canadian Agent, any Lender, or any of their respective Affiliates, including, without limitation, on account of (a) Hedging Agreements, (b) purchase cards, (c) foreign exchange facilities, and (d) leasing, but excluding Cash Management Services.

"**Banker's Acceptance**" means a time draft or bill of exchange or other deferred payment obligation relating to a Commercial Letter of Credit which has been accepted by the Issuing Bank.

"**Bankruptcy Code**" shall mean the Federal Bankruptcy Reform Act of 1978 (11 U.S.C. §101, et seq.), as amended and in effect from time to time, and the regulations issued from time to time thereunder.

"**Base Rate**" means for any day a fluctuating rate per annum equal to the highest of (a) the Domestic Prime Rate; (b) the Federal Funds Effective Rate for such day, plus 0.50%; and (c) the LIBO Rate for a 30 day interest period as determined on such day, plus 1.0%.

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

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

**"Borrower Consolidated Group"** shall mean the Lead Borrower and its Subsidiaries.

"**Borrower Materials**" has the meaning specified in Section 5.1.

**"Borrowers"** means, individually and collectively, the Lead Borrower, the Other Borrowers and any other Person who subsequently becomes a Borrower hereunder.

**"Borrowing"** shall mean (a) a Canadian Borrowing or a Domestic Borrowing, as applicable, or (b) the incurrence of a Swingline Loan.

**"Borrowing Base Certificate"** has the meaning assigned to such term in Section 5.1(f).

**"Borrowing Request**" means a request by the Lead Borrower on behalf of the Borrowers for a Borrowing in accordance with Section 2.3.

**"Breakage Costs"** shall have the meaning set forth in Section 2.19(b).

**"Business Day"** means any day that is not a Saturday, Sunday or other day on which commercial banks in Charlotte, North Carolina or New York, New York are authorized or required by law to remain closed, or are in fact closed in the state where the Administrative Agent's Office is located, provided that, when used in connection with a LIBO Loan or a Tranche A-1 LIBO Loan, the term **"Business Day"** shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market and provided further that when used in connection with any Loan by a Canadian Lender, the term "Business Day" shall also exclude any day on which banks are authorized or required by law to be closed in Toronto, Ontario, Canada.

"**Canadian Agent**" means Bank of America-Canada Branch, for its own benefit and the benefit of the other Canadian Secured Parties, or any successor Canadian Agent.

"**Canadian Agent's Office**" means the Canadian Agent's address and, as appropriate, account as set forth on the signature page hereto, or such other address or account as the Canadian Agent may from time to time notify the Canadian Borrower and the Canadian Lenders.

"**Canadian Availability**" means, as of any date of determination thereof, the result, if a positive number, of:

(a) the Canadian Loan Cap

minus

(b) the Canadian Credit Extensions on such date.

In calculating Canadian Availability at any time and for any purpose under this Agreement, any amount calculated or referenced in Dollars shall also refer to the Equivalent CD$ Amount.

"**Canadian Borrower**" means GCO Canada Inc., a corporation organized under the federal laws of Canada.

"**Canadian Borrowing**" means a borrowing consisting of simultaneous Canadian Loans of the same Type and, in the case of BA Equivalent Loans or LIBO Loans, having the same Interest Period made by each of the Canadian Lenders pursuant to Section 2.3.

**"Canadian Borrowing Base"** means, at any time of calculation, an Equivalent CD$ Amount in Dollars equal to:

(a) the product of (i)the Inventory Advance Rate multiplied by (ii) the Appraised Value of Eligible Inventory of the Canadian Borrower multiplied by (iii)(A) the Cost of Eligible Inventory of the Canadian Borrower, minus (B) Inventory Reserves related to Eligible Inventory of the Canadian Borrower;

plus

(b) the product of (i) eighty-five percent (85%) multiplied by (ii)(A) the then Eligible Wholesale Receivables of the Canadian Borrower (other than Eligible Wholesale Receivables consisting of Lids Team Sports Receivables of the Canadian Borrower), minus (B) Account Reserves related to such Eligible Wholesale Receivables of the Canadian Borrower;

plus

(c) the lesser of (i) the product of fifty percent (50%) multiplied by (A) the then Eligible Wholesale Receivables consisting of Lids Team Sports Receivables of the Canadian Borrower, minus (B) Account Reserves related to such Eligible Wholesale Receivables of the Canadian Borrower, or (ii) the Lid Team Sports Cap;

plus

(d) the product of (i) ninety percent (90%) multiplied by (ii)(A) the then Eligible Credit Card and Debit Card Receivables of the Canadian Borrower, minus (B) Account Reserves related to Eligible Credit Card and Debit Card Receivables of the Canadian Borrower;

minus

(e) without duplication, the then amount of all Availability Reserves established with respect to matters affecting the Canadian Borrower.

"**Canadian Commitment Percentage**" means the Commitment Percentages of the Canadian Lenders.

"**Canadian Commitments**" means, as to each Canadian Lender, its obligation to (a) make Canadian Loans to the Canadian Borrower pursuant to Section 2.1 and (b) purchase participations in Canadian Letter of Credit Outstandings, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Canadian Lender's name on Schedule 1.1 or in the Assignment

and Acceptance pursuant to which such Canadian Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"**Canadian Credit Extensions**" as of any day, shall be equal to the sum of (a) the principal balance of all Canadian Loans then outstanding, and (b) the then amount of the Canadian Letter of Credit Outstandings.

"**Canadian Credit Parties**" means, collectively, the Canadian Borrower and each Material Subsidiary that is or becomes a guarantor of the Canadian Liabilities. "**Canadian Credit Party**" means any one of such Persons.

"**Canadian Dollars**" and "**CD$**" refer to lawful money of Canada.

"**Canadian Lenders**" means Bank of America-Canada Branch and any other Person having Canadian Commitments from time to time or at any time. A Person may be a Canadian Lender only if it is a financial institution that is listed on Schedule I, II or III of the *Bank Act* (Canada), has received an approval to have a financial establishment in Canada pursuant to Section 522.21 of the *Bank Act* (Canada) or is not a foreign bank for purposes of the Bank Act (Canada), and if such financial institution is not resident in Canada and is not deemed to be resident in Canada for purposes of the *Income Tax Act* (Canada), then such financial institution deals at arm's length with each Canadian Credit Party for purposes of the *Income Tax Act* (Canada).

"**Canadian Letter of Credit**" means each Letter of Credit issued hereunder for the account of the Canadian Borrower.

"**Canadian Letter of Credit Outstandings**" shall mean, at any time, the sum of (a) with respect to Canadian Letters of Credit outstanding at such time, the aggregate maximum amount that then is or at any time thereafter may become available for drawing or payment thereunder plus (b) all amounts theretofore drawn or paid under Canadian Letters of Credit for which the Issuing Bank has not then been reimbursed.

"**Canadian Letter of Credit Sublimit**" means an amount equal to $5,000,000. The Canadian Letter of Credit Sublimit is part of, and not in addition to, the Canadian Total Commitments. A permanent reduction of the Canadian Total Commitments shall not require a corresponding pro rata reduction in the Canadian Letter of Credit Sublimit; provided, however, that if the Canadian Total Commitments are reduced to an amount less than the Canadian Letter of Credit Sublimit, then the Canadian Letter of Credit Sublimit shall be reduced to an amount equal to (or, at Canadian Borrower's option, less than) the Canadian Total Commitments.

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

"**Canadian Loan**" means an extension of credit by a Canadian Lender to the Canadian Borrower (to the extent based on Canadian Availability) under Article II.

"**Canadian Loan Cap**" means, at any time of determination, the lesser of (a) the Canadian Total Commitments and (b) the Canadian Borrowing Base.

"**Canadian Note**" means a promissory note made by the Canadian Borrower in favor of a Canadian Lender evidencing Canadian Loans made by such Canadian Lender, substantially in the form of Exhibit B-1.

"**Canadian Pension Plan**" means any pension plan that is subject to the *Pension Benefits Act* (Ontario) or similar legislation of another Canadian province or territory and the *Income Tax Act* (Canada) and that is either (a) maintained or sponsored by any Canadian Credit Party or any Canadian Subsidiary for employees, or (b) maintained pursuant to a collective bargaining agreement, or other arrangement under which more than one employer makes contributions and to which any Canadian Credit Party or any Canadian Subsidiary is making or accruing an obligation to make contributions or has within the preceding five years made or accrued such contributions.

"**Canadian Prime Rate**" means, for any day, the greater of (i) the fluctuating rate of interest per annum equal to the rate of interest in effect for such day as publicly announced from time to time by Bank of America-Canada Branch as its reference rate of interest for loans made in CD$ and designated as its "prime" rate being 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, provided that in the event that the Bank of America-Canada Branch (including any successor or assignor) does not at any time publicly announce a prime rate, such rate shall be the "prime rate" publicly announced by a Schedule 1 chartered bank in Canada selected by the Canadian Agent, (ii) the Bank of Canada Overnight Rate, plus 0.50%, and (iii) the BA Rate for a one month Interest Period as determined on such day, plus 1.0%. Any change in the prime rate announced by the Bank of America-Canada Branch shall take effect at the opening of business on the day specified in the public announcement of such change. Each interest rate based on the Canadian Prime Rate hereunder, shall be adjusted simultaneously with any change in the Canadian Prime Rate.

"**Canadian Prime Rate Loan**" means a Canadian Loan in CD$ that bears interest based on the Canadian Prime Rate.

"**Canadian Priority Payable Reserves**" means, at any time, without duplication, the obligations, liabilities and indebtedness at such time which have, or could in any proceeding have, a trust, deemed trust, right of garnishment, right of distress, charge or statutory Lien imposed to provide for payment or Liens ranking or capable of ranking senior to or *pari passu* with Liens securing the Canadian Liabilities on any of the Collateral under federal, provincial, state, county, territorial, municipal, or local law including, to the extent that there is such a trust, statutory Liens or Liens in respect of the specified item that has or is capable of having such rank, claims for unremitted and accelerated rents, utilities, taxes (including sales taxes, value added taxes, amounts deducted or withheld or not paid and remitted when due under the *Income Tax Act* (Canada), excise taxes, goods and services taxes ("GST") and harmonized sales taxes ("HST") payable pursuant to Part IX of the *Excise Tax Act* (Canada) or similar taxes under provincial or territorial law), the claims of a clerk, servant, travelling salesperson, labourer or worker (whether full-time or part-time) who is owed wages (including any amounts protected by the *Wage Earner Protection Program Act* (Canada)), salaries, commissions, disbursements, compensation or other amounts (such as union dues payable on behalf of employees) by the Credit Parties (but only to the extent that the claims of such parties may rank or be capable of ranking senior to or pari passu with Liens securing the Obligations on any of the Collateral), vacation pay, severance pay, employee source deductions, workers' compensation obligations, government royalties or pension fund obligations (including claims in respect of, and all amounts currently or past due and not contributed, remitted or paid to, or pursuant to, any Canadian Pension Plan, the *Pension Benefits Act* (Ontario) or any similar law) (but only to the extent ranking or capable of ranking senior to or *pari*

*passu* with Liens securing the Obligations on any of the Collateral),together with the aggregate value, determined in accordance with GAAP, of all Eligible Inventory which may be or may become subject to a right of a supplier to recover possession thereof or to exercise rights of revendication with respect thereto under any federal, provincial, state, county, municipal, territorial or local law, where such supplier's right may have priority over Liens securing the Obligations including Eligible Inventory subject to a right of a supplier to repossess goods pursuant to Section 81.1 of the BIA or the Civil Code of Québec.

"**Canadian Secured Party**" or "**Canadian Secured Parties**" has the meaning assigned to such term in the General Security Agreement dated as of the Effective Date among the Canadian Credit Parties and the Collateral Agent.

"**Canadian Security Documents**" means (a) the General Security Agreement dated as of the Effective Date among the respective Canadian Credit Parties and the Collateral Agent for the benefit of the Canadian Secured Parties, (b) the deed of hypothec charging the universality of moveable property granted by the Canadian Credit Parties in favor of the Collateral Agent, and (c)and each other security agreement or other instrument or document executed and delivered by any Canadian Credit Party to the Collateral Agent pursuant to this Agreement or any other Loan Document granting a Lien on assets of any Canadian Credit Party for the benefit of the Canadian Secured Parties, as security for the Canadian Liabilities.

"**Canadian Subsidiary**" means any Subsidiary that is organized under the laws of Canada or any province or territory thereof.

"**Canadian Total Commitments**" means the aggregate of the Canadian Commitments of all Canadian Lenders. On the Effective Date, the Canadian Total Commitments are $8,000,000.

**"Capital Expenditures"** of any Person means, for any period, to the extent treated as a capital expenditure in accordance with GAAP, any expenditure for fixed assets (both tangible and intangible), including assets being constructed (whether or not completed), leasehold improvements, installment purchases of machinery and equipment, acquisitions of real estate and other similar expenditures including without duplication, expenditures in or from any construction-in-progress account of any of the Credit Parties, provided that "Capital Expenditures" shall not include any portion of the purchase price of a Permitted Acquisition which is allocated to property, plant or equipment acquired as part of such Permitted Acquisition.

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

**"Cash Collateral Account"** shall mean an interest-bearing account established by the Domestic Borrowers with the Collateral Agent under the sole and exclusive dominion and control of the Collateral Agent designated as the "**Genesco Inc. Cash Collateral Account**", and, in the case of the Canadian Borrower, an interest-bearing account established by the Canadian Borrower with the Canadian Agent at Bank of America-Canada branch under the sole and exclusive dominion and control of the Canadian Agent designated as the "**GCO Canada Cash Collateral Account**".

"**Cash Collateralize**" means, as of any date, the deposit by the Borrowers in the Cash Collateral Account of an amount in cash equal to 102% of the Letter of Credit Outstandings plus any accrued and unpaid interest thereon.

**"Cash Dominion Event"** means either (i) the occurrence and continuance of any Event of Default, or (ii) the failure of the Borrowers to maintain Excess Availability in an amount equal to the greater of (A) fifteen percent (15%) of the Loan Cap, or (B) $35,000,000. For purposes of this Agreement, the occurrence of a Cash Dominion Event shall be deemed continuing (i) so long as such Event of Default has not been waived, and/or (ii) if the Cash Dominion Event arises as a result of the Borrowers' failure to achieve Excess Availability as required hereunder, until Excess Availability has exceeded the greater of $45,000,000 or 15% of the Loan Cap for forty-five (45) consecutive days, in which case a Cash Dominion Event shall no longer be deemed to be continuing for purposes of this Agreement; *provided that* a Cash Dominion Event shall be deemed continuing for a twelve month period (even if an Event of Default is no longer continuing and/or Excess Availability exceeds the greater of $45,000,000 or 15% of the Loan Cap for forty-five (45) consecutive days) after a Cash Dominion Event has occurred and been discontinued on two (2) occasions in any twelve month period. The termination of a Cash Dominion Event as provided herein shall in no way limit, waive or delay the occurrence of a subsequent Cash Dominion Event in the event that the conditions set forth in this definition again arise.

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

"**Cash Management Services**" means any one or more of the following types of services or facilities provided to any Credit Party by the Administrative Agent, the Canadian Agent or any Lender or any of their respective Affiliates: (a) ACH transactions, (b) cash management services, including, without limitation, controlled disbursement services, treasury, depository, overdraft, and electronic funds transfer services, (c) credit card processing services, and (d) credit or debit cards.

**"Cash Receipts"** has the meaning provided therefor in Section 2.21(d).

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

**"Change in Control"** means, at any time, (a) occupation of a majority of the seats (other than vacant seats) on the board of directors of the Lead Borrower by Persons who were neither (i) nominated by the board of directors of the Lead Borrower nor (ii) appointed by directors so nominated; or (b) any person or group (as such terms are used in the Securities and Exchange Act of 1934, as amended), is or becomes the beneficial owner (within the meaning of Rule 13d-3 and 13d-5 of the Securities and Exchange Act of 1934, as amended) directly or indirectly of fifty percent (50%) or more of the total voting power of the Voting Stock of the Lead Borrower on a fully diluted basis, whether as a result of the issuance, sale or distribution of securities of the Lead Borrower, any merger or consolidation to which the Lead Borrower is a party, or otherwise, (c) except as otherwise permitted pursuant to this Agreement, the failure of the Lead Borrower to own, directly or indirectly, at least eighty percent (80%) of the Voting Stock or ownership interest, as applicable, of all of the Borrower Consolidated Group (other than with respect to Genesco Partners Joint Venture, for which such percentage shall be sixty-five percent (65%) and SIOPA Sports of America, LLC and SIOPA Clubhouse Stores, LLC and their successors or assigns, for which such percentage shall be 50%), or (d) there occurs a "Change in Control" (or any comparable term) under and as determined in any document governing Material Indebtedness of any Credit Party.

**"Change in Law"** means (a) the adoption of any law, rule or regulation after the date of this Agreement (or, in the case of any Person which becomes a Lender or Participant thereafter, the date on which such Person becomes a Lender or Participant), (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement (or, in

the case of any Person which becomes a Lender or Participant thereafter, the date on which such Person becomes a Lender or Participant) or (c) compliance by any Lender or the Issuing Bank (or, for purposes of Section 2.23, by any lending office of such Lender or by such Lender's or the Issuing Bank's holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement (or, in the case of any Person which becomes a Lender or Participant thereafter, the date on which such Person becomes a Lender or Participant); provided however, for purposes of this Agreement, the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, guidelines or directives in connection therewith are deemed to have gone into effect and been adopted after the Effective Date.

**"Charges"** has the meaning provided therefor in Section 9.14.

**"Chattel Paper"** has the meaning ascribed to such term in the UCC or in the PPSA, as applicable.

**"Closing Date"** means December 1, 2006.

"**Co-Syndication Agents**" means Wells Fargo Capital Finance, LLC, U.S. Bank National Association and SunTrust Bank.

**"Code"** means the Internal Revenue Code of 1986 and the rules and regulations promulgated thereunder, as amended from time to time.

**"Collateral"** means any and all **"Collateral"** as defined in any applicable Security Document.

"**Collateral Access Agreement**" means an agreement reasonably satisfactory in form and substance to the Collateral Agent executed by (a) a bailee or other Person in possession of Collateral, and (b) any landlord of Real Estate leased by any Credit Party, pursuant to which such Person (i) acknowledges the Collateral Agent's or Canadian Agent's Lien on the Collateral, (ii) releases or subordinates such Person's Liens in the Collateral held by such Person or located on such Real Estate, (iii) provides the Collateral Agent or the Canadian Agent, as applicable, with access to the Collateral held by such bailee or other Person or located in or on such Real Estate, (iv) as to any landlord, provides the Collateral Agent or the Canadian Agent, as applicable, with a reasonable time to sell and dispose of the Collateral from such Real Estate, and (v) makes such other agreements with the Collateral Agent and the Canadian Agent as the Agents may reasonably require. Any Collateral Access Agreement executed and delivered to, and accepted by, the Collateral Agent will be deemed to satisfy the requirements set forth in this definition. The Collateral Access Agreements obtained in connection with the Existing Credit Agreement will be deemed to be effective Collateral Access Agreements for the purposes contained herein.

**"Collateral Agent"** means Bank of America, in its capacity as collateral agent under the Security Documents.

**"Collateral Control Agreement"** means a tri-party agreement in form and substance satisfactory to the Collateral Agent, in its Permitted Discretion, among the Collateral Agent, a Borrower and a customs broker, freight forwarder or other carrier, in which the customs broker, freight forwarder or other carrier acknowledges that it has control over and holds the documents evidencing ownership of the subject Inventory for the benefit of the Collateral Agent and agrees, upon notice from the Collateral Agent following the occurrence and during the continuance of an Event of Default, to hold and dispose of the subject Inventory solely as directed by the Collateral Agent.

"**Combined Borrowing Base**" means the sum of (i) the Domestic Borrowing Base ~~and, as long as Canadian~~, (ii) as long as Canadian Commitments remain outstanding, the Canadian Borrowing Base, and (iii) as long as Tranche A-1 Commitments remain outstanding, the ~~Canadian~~ Tranche A-1 Borrowing Base.

**"Commercial Letter of Credit"** means any Letter of Credit issued for the purpose of providing the primary payment mechanism in connection with the purchase of any materials, goods or services by a member of the Borrower Consolidated Group in the ordinary course of business of such Borrower.

**"Commitment"** shall mean, with respect to each Lender, the Canadian Commitment, the Domestic Commitment and the ~~Domestic~~ Tranche A-1 Commitment of such Lender hereunder.

**"Commitment Fee"** has the meaning provided therefor in Section 2.12(a).

"**Commitment Fee Rate**" means (a) if the average daily Credit Extensions for the preceding Fiscal Quarter are greater than or equal to 50% of the Total Commitments, 0.375% per annum, or (ii) if the average daily Credit Extensions for the preceding Fiscal Quarter are less than 50% of the Total Commitments, 0.50% per annum.

**"Commitment Increase"** has the meaning provided therefor in Section 2.1(c).

**"Commitment Increase Date"** has the meaning provided therefor in Section 2.1(d).

**"Commitment Percentage"** shall mean, with respect to (a) any Domestic Lender (other than a Tranche A-1 Lender) at any time, the percentage (carried out to the ninth decimal place) of the Domestic Total Commitments represented by such Domestic Lender's Domestic Commitment at such time, (b) any Tranche A-1 Lender at any time, the percentage (carried out to the ninth decimal place) of the Tranche A-1 Commitments represented by such Tranche A-1 Lender's Tranche A-1 Commitment at such time, (c) any Canadian Lender at any time, the percentage (carried out to the ninth decimal place) of the Canadian Total Commitments represented by such Canadian Lender's Canadian Commitment at such time, and (~~c~~d) any Lender at any time, the percentage (carried out to the ninth decimal place) of the Total Commitments represented by such Lender's Commitment at such time. If the Domestic Commitments, Tranche A-1 Commitments and/or Canadian Commitments of each Lender to make Loans and the obligation of the Issuing Bank to issue Letters of Credit have been terminated pursuant to Section 2.15 or Section 7.1 or if the Total Commitments have expired, then the Commitment Percentage of each Lender shall be determined based on the Commitment Percentage of such Lender most recently in effect, giving effect to any subsequent assignments. The initial Commitment Percentage of each Lender is set forth opposite the name of such Lender on Schedule 1.1 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, or as may subsequently be set forth in the Register from time to time, and as such Commitments may be reduced from time to time pursuant to Section 2.15 hereof or increased from time to time pursuant to Section 2.1(c) hereof.

**"Concentration Accounts"** means collectively, the Bank of America Concentration Account and any concentration account established by the Canadian Borrower at Bank of America-Canada Branch, together with any and all other concentration accounts opened by any of the Credit Parties and consented to, in writing, by the Administrative Agent.

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

**"Consolidated EBITDA"** of any Person means, for any Applicable Fiscal Period, the following for such Person for such period: (i) Consolidated Net Income, plus (ii) depreciation, amortization and all other non-cash charges that were deducted in the calculation of Consolidated Net Income for such period, plus (iii) provisions for income taxes that were deducted in the calculation of Consolidated Net Income for such period, plus (iv) Consolidated Interest Expense for such period, plus (v) extraordinary non-cash losses for such period to the extent such losses have not been and are not expected to become cash losses in a later fiscal period, ~~minus (vi~~plus (vi) payments on account of the Schuh Earnout that were deducted in the calculation of Consolidated Net Income for such period, plus (vii) payments on account of the Schuh Seller Notes that were deducted in the calculation of Consolidated Net Income for such period, minus (viii) federal, state, local and, to the extent not included in the calculation of taxes under clause (iii) above, foreign, income tax credits, minus (~~viii~~ix) all non-cash items (including, without limitation, all extraordinary non-cash gains) increasing Consolidated Net Income.

**"Consolidated Interest Expense"** means, for any Person for any period, total interest and all amortization of debt discount and expense (including that attributable to Capital Lease Obligations in accordance with GAAP) of such Person on a Consolidated basis with respect to all outstanding Indebtedness of such Person calculated in accordance with GAAP.

**"Consolidated Net Income"** means, for any Person for any period, the net income (or loss) of such Person on a Consolidated basis for such period taken as a single accounting period determined in conformity with GAAP, provided that there shall be excluded (i) the income (or loss) of any Person that is not a Subsidiary in which any other Person (other than the Lead Borrower or any of its Subsidiaries) has a joint interest, except to the extent of the amount of dividends or other distributions actually paid to the Lead Borrower or any of its Subsidiaries by such Person during such period, and (ii) the income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of the Lead Borrower or any of its Subsidiaries or is merged into or consolidated with the Lead Borrower or any of its Subsidiaries or that Person's assets are acquired by the Lead Borrower or any of its Subsidiaries.

"**Consolidated Net Worth**" means, with respect to any Person, the difference between its Consolidated total assets and its Consolidated total liabilities, all as determined in accordance with GAAP.

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

**"Controlled Account Banks"** shall mean the banks or other depository institutions with whom the Borrowers have entered into Account Control Agreements.

**"Controlled Accounts"** shall mean each deposit account, lockbox account or investment account of the Borrowers that is the subject of an Account Control Agreement.

"**Cost**" means the cost of Inventory, based upon the Borrowers' method of accounting as in effect on the Effective Date, as such calculated cost is reflected in the Borrowers' stock ledger or perpetual inventory records (and without giving effect to any inventory reserves maintained in the Borrowers' general ledger).

"**Covenant Compliance Event**" means that Excess Availability at any time is less than the greater of $27,500,000 or 12.5% of the Loan Cap. For purposes hereof, the occurrence of a Covenant Compliance Event shall be deemed continuing until Excess Availability has exceeded the greater of $27,500,000 or 12.5% of the Loan Cap for forty-five (45) consecutive days, in which case a Covenant Compliance Event shall no longer be deemed to be continuing for purposes of this Agreement. The termination of a Covenant

Compliance Event as provided herein shall in no way limit, waive or delay the occurrence of a subsequent Covenant Compliance Event in the event that the conditions set forth in this definition again arise.

**"Credit Card Notifications"** has the meaning provided therefor in Section 2.21(a).

**"Credit Extensions"** shall mean, collectively, the Canadian Credit Extensions and the Domestic Credit Extensions.

**"Credit Parties"** shall mean, collectively, the Canadian Credit Parties and the Domestic Credit Parties (each, individually, a "**Credit Party**").

**"Customer Credit Liabilities"** means, at any time, the aggregate face value at such time of (a) outstanding gift certificates and gift cards of the Borrowers entitling the holder thereof to use all or a portion of the certificate to pay all or a portion of the purchase price for any Inventory, including, without limitation, discount cards, and (b) outstanding merchandise credits of the Borrowers.

**"DDA"** means any checking or other demand deposit account maintained by any Borrower. All funds in each DDA shall be conclusively presumed to be Collateral and proceeds of Collateral and the Agents and the Lenders shall have no duty to inquire as to the source of the amounts on deposit in any DDA.

**"DDA List"** has the meaning provided therefor in Section 2.21(a).

**"DDA Notification"** has the meaning provided therefor in Section 2.21(a).

" **Debtor Relief Law**" shall mean, collectively, (i) the Bankruptcy Code, (ii) the BIA, the *Companies' Creditors Arrangement Act* (Canada) and the *Winding-up and Restructuring Act* (Canada), and (iii) all other applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief laws of the United States, Canada, or other applicable jurisdictions from time to time in effect affecting the rights of creditors generally, in each case as amended from time to time.

**"Default"** means any event or condition that constitutes an Event of Default or that upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

**"Delinquent Lender"** has the meaning given that term in Section 8.14.

**"Delinquent Lender's Future Commitment"** has the meaning given that term in Section 8.14.

"**Deteriorating Lender**" means any Delinquent Lender or any Lender as to which (a) the Issuing Bank or the Swingline Lender has a good faith belief that such Lender has defaulted in fulfilling its obligations under one or more other syndicated credit facilities, or (b) a Person that Controls such Lender has been deemed insolvent or become the subject of a bankruptcy, insolvency or similar proceeding.

"**Determination Date**" shall mean the date upon which each of the following has occurred:

(a) The Canadian Commitments, Tranche A-1 Commitments and/or the Domestic Commitments have been terminated by the Required Lenders (or are deemed terminated) upon the occurrence of an Event of Default; and

(b) The Obligations and/or the Canadian Liabilities have been declared to be due and payable (or have become automatically due and payable) and have not been paid in accordance with the terms of this Agreement.

"**Dilution Reserve**" means, for any period, the excess of (a) that percentage reasonably determined by the Administrative Agent by dividing (i) the amount of charge-offs and other account adjustments of Eligible Wholesale Receivables and returns of goods purchased from the Borrowers during such period which had, at the time of sale, resulted in the creation of an Eligible Wholesale Receivable, by (ii) the amount of sales (exclusive of sales and other similar taxes) of the Borrowers during such period over (b) five percent (5%) (but in no event shall the Dilution Reserve be less than zero).

"**Disqualified Stock**" means any capital stock or other equity interest that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder thereof), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is 91 days after the date on which the Loans mature. Notwithstanding the preceding sentence, any equity interest that would constitute Disqualified Stock solely because the holders thereof have the right to require a Credit Party to repurchase such equity interest upon the occurrence of a change of control or an asset sale shall not constitute Disqualified Stock. The amount of Disqualified Stock deemed to be outstanding at any time for purposes of this Agreement will be the maximum amount that the Borrowers and their Subsidiaries may become obligated to pay upon maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Stock or portion thereof, plus accrued dividends.

"**Documentation Agent**" means PNC Bank, National Association.

**"Dollars"** or **"$"** refers to lawful money of the United States of America.

"**Domestic Availability**" means, as of any date of determination thereof, the result, if a positive number, of:

(a) the Domestic Loan Cap

minus

(b) the Domestic Credit Extensions on such date.

**"Domestic Borrowers"** means the Lead Borrower and the Other Domestic Borrowers.

"**Domestic Borrowing**" means a borrowing consisting of simultaneous Domestic Loans or Tranche A-1 Loans of the same Type and, in the case of LIBO ~~Rate~~ Loans or Tranche A-1 LIBO Loans, having the same Interest Period made by each of the Domestic Lenders pursuant to Section 2.3.

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

(a) the product of (i) the Inventory Advance Rate multiplied by (ii) the Appraised Value of Eligible Inventory of the Domestic Borrowers multiplied by (iii)(A) the Cost of Eligible Inventory of the Domestic Borrowers, minus (B) Inventory Reserves related to Eligible Inventory of the Domestic Borrowers;

plus

(b) the product of (i) eighty-five percent (85%) multiplied by (ii)(A) the then Eligible Wholesale Receivables of the Domestic Borrowers (other than Eligible Wholesale Receivables consisting of Lids Team Sports Receivables of the Domestic Borrowers), minus (B) Account Reserves related to such Eligible Wholesale Receivables of the Domestic Borrowers;

plus

(c) the lesser of (i) the product of fifty percent (50%) multiplied by (A) the then Eligible Wholesale Receivables consisting of Lids Team Sports Receivables of the Domestic Borrowers, minus (B) Account Reserves related to such Eligible Wholesale Receivables of the Domestic Borrowers, or (ii) the Lid Team Sports Cap;

plus

(d) the product of (i) ninety percent (90%) multiplied by (ii)(A) the then Eligible Credit Card and Debit Card Receivables of the Domestic Borrowers, minus (B) Account Reserves related to Eligible Credit Card and Debit Card Receivables of the Domestic Borrowers;

minus

(e) without duplication, the then amount of all Availability Reserves established with respect to matters affecting the Domestic Borrowers.

"**Domestic Commitment Percentage**" means the Commitment Percentages (other than the Tranche A-1 Commitment Percentages) of the Domestic Lenders.

"**Domestic Commitments**" means, as to each Domestic Lender, its obligation to (a) make Domestic Loans to the Domestic Borrowers pursuant to Section 2.1 and (b) purchase participations in Domestic Letter of Credit Outstandings, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Domestic Lender's name on Schedule 1.1 or in the Assignment and Acceptance pursuant to which such Domestic Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"**Domestic Credit Extensions**" as of any day, shall be equal to the sum of (a) the principal balance of all Domestic Loans then outstanding, and (b) the then amount of the Domestic Letter of Credit Outstandings.

"**Domestic Credit Parties**" means, collectively, the Domestic Borrowers and each Material Domestic Subsidiary that is or becomes a guarantor of the Obligations. "**Domestic Credit Party**" means any one of such Persons.

"**Domestic Lenders**" means the Lenders (including Tranche A-1 Lenders) having Domestic Commitments and/or Tranche A-1 Commitments from time to time or at any time.

"**Domestic Letter of Credit**" means each Letter of Credit issued hereunder for the account of a Domestic Borrower.

"**Domestic Letter of Credit Outstandings**" shall mean, at any time, the sum of (a) with respect to Domestic Letters of Credit outstanding at such time, the aggregate maximum amount that then is or at any time thereafter may become available for drawing or payment thereunder plus (b) all amounts theretofore drawn or paid under Domestic Letters of Credit for which the Issuing Bank has not then been reimbursed.

"**Domestic Letter of Credit Sublimit**" means an amount equal to $70,000,000. The Domestic Letter of Credit Sublimit is part of, and not in addition to, the Domestic Total Commitments. A permanent reduction of the Domestic Total Commitments shall not require a corresponding pro rata reduction in the Domestic Letter of Credit Sublimit; provided, however, that if the Domestic Total Commitments are reduced to an amount less than the Domestic Letter of Credit Sublimit, then the Domestic Letter of Credit Sublimit shall be reduced to an amount equal to (or, at the Lead Borrower's option, less than) the Domestic Total Commitments.

"**Domestic Loan**" means an extension of credit (other than a Tranche A-1 Loan) by a Domestic Lender to the Domestic Borrowers (to the extent based on Domestic Availability) under Article II.

"**Domestic Loan Cap**" means, at any time of determination, the lesser of (a) the Domestic Total Commitments, minus the then outstanding principal balance of the Canadian Credit Extensions, and (b) the Domestic Borrowing Base.

"**Domestic Note**" means a promissory note made by the Domestic Borrowers in favor of a Domestic Lender evidencing Domestic Loans made by such Domestic Lender, substantially in the form of Exhibit B-2.

"**Domestic Obligations**" means all Obligations other than Canadian Liabilities.

**"Domestic Prime Rate"** shall mean, for any day, the annual rate of interest then most recently announced by Bank of America at its head office in Charlotte, North Carolina as its **"prime rate"**. The Domestic Prime Rate is a reference rate and does not necessarily represent the lowest or best rate being charged to any customer. Any change in the Domestic Prime Rate due to a change in Bank of America's prime rate shall be effective on the effective date of such change in Bank of America's prime rate.

**"Domestic Prime Rate Loan"** shall mean any Loan (other than a Tranche A-1 Loan) bearing interest at a rate determined by reference to the Base Rate in accordance with the provisions of Section 2.3.

"**Domestic Secured Party**" or "**Domestic Secured Parties**" has the meaning assigned to such term in the Security Agreement.

**"Domestic Subsidiary"** means any Subsidiary other than a Foreign Subsidiary.

"**Domestic Total Commitments**" means the aggregate of the Domestic Commitments of all Domestic Lenders. On the First Amendment Effective Date, the Domestic Total Commitments are ~~$300,000,000.~~ 375,000,000.

**"Domestic Tranche A-1 Prime Rate Loan"** shall mean any Tranche A-1 Loan bearing interest at a rate determined by reference to the Base Rate in accordance with the provisions of Section 2.3.

**"Effective Date"** means the date on which the conditions specified in Section 4.1 are satisfied (or waived by the Agents).

"**Effective Date Guaranty**" means the Guaranty executed by the Domestic Borrowers in favor of the Canadian Secured Parties substantially in the form of Exhibit C hereto.

"**Eligible Assignee**" means (a) a Lender or any of its Affiliates; (b) a bank, insurance company, or company engaged in the business of making commercial loans, which Person, together with its Affiliates, has a combined capital and surplus in excess of $250,000,000; (c) an Approved Fund; (d) any Person to

whom a Lender assigns its rights and obligations under this Agreement as part of an assignment and transfer of such Lender's rights in and to a material portion of such Lender's portfolio of asset based credit facilities, and (e) any other Person (other than a natural person) approved by the Administrative Agent, such approval not to be unreasonably withheld or delayed; provided that notwithstanding the foregoing, (i) "Eligible Assignee" shall not include a Credit Party or any of the Credit Parties' Affiliates or Subsidiaries, and (ii) an Eligible Assignee who is assigned a Canadian Commitment shall meet the criteria set forth in the definition of "Canadian Lender".

**"Eligible Credit Card and Debit Card Receivables"** means Accounts due to a Borrower on a non-recourse basis from Visa, MasterCard, American Express Company, Discover, and other major credit card or debit card processors, in each case acceptable to the Administrative Agent in its Permitted Discretion, as arise in the ordinary course of business, that have been earned by performance and are deemed by the Administrative Agent in its Permitted Discretion to be eligible for inclusion in the calculation of the Domestic Borrowing Base, Tranche A-1 Borrowing Base or the Canadian Borrowing Base, as applicable. Without limiting the foregoing, unless the Administrative Agent otherwise agrees, none of the following shall be deemed to be Eligible Credit Card and Debit 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 does not have good and valid title, free and clear of any Lien (other than Liens granted to the Collateral Agent for its own benefit and the ratable benefit of the other applicable Secured Parties and Permitted Encumbrances for which the Administrative Agent may, in its Permitted Discretion, establish adequate Reserves pursuant to Section 2.2);

(c) Accounts that are not subject to a first priority security interest in favor of the Collateral Agent for its own benefit and the ratable benefit of the other applicable Secured Parties (it being the intent that chargebacks in the ordinary course by the credit card and debit card processors, and Permitted Encumbrances for which the Administrative Agent may, in its Permitted Discretion, establish adequate Reserves pursuant to Section 2.2, shall not be deemed violative of this clause);

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

(e) Accounts which are acquired in a Permitted Acquisition unless and until the Administrative Agent has completed a commercial finance examination of such Accounts, establishes an advance rate and reserves (if applicable) therefor, and otherwise agrees that such Accounts shall be deemed Eligible Credit Card and Debit Card Receivables; or

(f) Accounts which the Administrative Agent determines in its Permitted Discretion to be uncertain of collection.

**"Eligible Hat World Inventory"** shall mean, as of the date of determination thereof, without duplication of other Eligible Inventory, Inventory which is to be sold through the Hat World operations of the Borrowers and which would otherwise constitute Eligible Inventory.

**"Eligible Inventory**" shall mean, as of the date of determination thereof (without duplication), (a) Eligible Hat World Inventory, (b) Eligible Johnston & Murphy Inventory, (c) Eligible Journeys Inventory, (d) Eligible Keuka Inventory, (e) Eligible Wholesale Inventory, (f) Eligible Underground Station Inventory, and (e) other items of Inventory of the Borrowers that are finished goods, merchantable and

readily saleable to the public in the ordinary course deemed by the Administrative Agent in its Permitted Discretion to be eligible for inclusion in the calculation of the Domestic Borrowing Base, Tranche A-1 Borrowing Base or the Canadian Borrowing Base, as applicable. Without limiting the foregoing, unless otherwise approved in writing by the Administrative Agent, none of the following shall be deemed to be Eligible Inventory:

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

(b) Inventory that is not located at a warehouse facility or store that is owned or leased by a Borrower (it being understood that any Inventory that is in transit between a warehouse facility and a store or between stores that are owned or leased by one or more Borrowers will not be rendered "ineligible" by the application of this clause (b));

(c) Inventory that represents (i) goods damaged, defective or otherwise unmerchantable, or (ii) goods returned to the vendor;

(d) Inventory that is not located in the United States of America (including Puerto Rico, but excluding other territories and possessions of the United States of America) or Canada;

(e) Inventory that is not subject to a perfected first priority security interest in favor of the Collateral Agent for the benefit of the applicable Secured Parties (it being the intent that Permitted Encumbrances for which the Administrative Agent, in its Permitted Discretion, has established adequate Reserves pursuant to Section 2.2 shall not be deemed violative of this clause);

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

(g) Inventory as to which insurance in compliance with the provisions of Section 5.7 hereof is not in effect;

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

(i) Inventory which is acquired in a Permitted Acquisition or which is owned by a Borrower created after the Effective Date (except to the extent that such Inventory has been acquired by such Borrower from another Borrower and otherwise constitutes Eligible Inventory) unless and until the Administrative Agent has completed an appraisal of such Inventory and establishes an Inventory Advance Rate and Inventory Reserves (if applicable) therefor;

(j) Inventory that is located (i) in a distribution center or warehouse leased by a Borrower described on Schedule 1.2 hereto unless in each case, the applicable lessor has delivered to the Collateral Agent or the Canadian Agent a Collateral Access Agreement; or (ii) in any other leased distribution center or warehouse in which Inventory having a Cost of at least $5,000,000 is maintained, unless in each case, the applicable lessor has delivered to the Collateral Agent or the Canadian Agent a Collateral Access Agreement within 90 days after the Effective Date (unless the Administrative Agent establishes an Availability Reserve for rent in such amounts as it deems appropriate from time to time in its Permitted Discretion);

(k) Inventory that is (i) located at location #1493 of the Borrowers or (ii) owned by any joint venture of the Borrowers; or

(l) Inventory that is subject to any licensing, patent, royalty, trademark, trade name or copyright agreement with any third party from which any Borrower or any of its Subsidiaries has received written notice to limit, restrict or terminate (in whole or in part) the right of the Borrowers or any of their Subsidiaries to Dispose of any Inventory which is the subject of such agreement; provided that if any such licensing, patent, royalty, trademark, trade name or copyright agreement permits the Borrowers (or the Borrowers are otherwise permitted) to Dispose of the Inventory which is the subject thereof after receipt of such written notice (the "**Sell-off Period**"), then, so long as the Collateral Agent would not be precluded from Disposing of such Inventory in a Liquidation, such Inventory shall continue to constitute Eligible Inventory during the Sell-off Period (as long it would not otherwise be excluded under this definition), but the Inventory Advance Rate for such Inventory shall reduce by 2.5% each week until such Inventory is Disposed of.

**"Eligible Johnston & Murphy Inventory"** shall mean, as of the date of determination thereof, without duplication of other Eligible Inventory, Inventory which is sold through the Johnston & Murphy operations of the Borrowers and which would otherwise constitute Eligible Inventory.

**"Eligible Journeys Inventory"** shall mean, as of the date of determination thereof, without duplication of other Eligible Inventory, Inventory which is sold through the Journeys operations of the Borrowers and which would otherwise constitute Eligible Inventory.

**"Eligible Keuka Inventory"** shall mean, as of the date of determination thereof, without duplication of other Eligible Inventory, Inventory which is to be sold by Keuka Footwear, Inc. and which would otherwise constitute Eligible Inventory.

**"Eligible Underground Station Inventory"** shall mean, as of the date of determination thereof, without duplication of other Eligible Inventory, Inventory which is to be sold through the Underground Station operations of the Borrowers and which would otherwise constitute Eligible Inventory.

**"Eligible Wholesale Inventory"** shall mean, without duplication of other Eligible Inventory, Inventory which is sold at wholesale through the licensed brands operations, the Team Sports wholesale operations, and/or the Johnston & Murphy wholesale operations of the Borrowers and which would otherwise constitute Eligible Inventory.

**"Eligible Wholesale Receivables"** shall mean each Account acceptable to the Administrative Agent in its Permitted Discretion, as arises in the ordinary course of business from the sale of finished goods inventory or rendering of services by the Borrowers to wholesale customers, that have been earned by performance and are deemed by the Administrative Agent in its Permitted Discretion to be eligible for inclusion in the calculation of the Domestic Borrowing Base, Tranche A-1 Borrowing Base or the Canadian Borrowing Base, as applicable. Without limiting the foregoing, unless the Administrative Agent otherwise agrees, no Account shall be deemed to be an Eligible Wholesale Receivable if:

(a) it is not subject to a valid perfected first priority security interest in favor of the Collateral Agent for the benefit of the applicable Secured Parties, subject to no other Lien other than Permitted Encumbrances for which the Administrative Agent, in its Permitted Discretion, has established adequate Reserves pursuant to Section 2.2;

(b) it is not evidenced by an invoice, statement or other documentary evidence reasonably satisfactory to the Administrative Agent;

(c) it arises out of services rendered or sales to, or out of any other transaction between, among or with, one or more Affiliates or employees of Borrowers;

(d) it remains unpaid for longer than the earlier of (i) sixty-one (61) calendar days after the original due date, or (ii) ninety-one (91) calendar days after the date of sale;

(e) it is owed by an Account Debtor and/or its Affiliates with respect to which more than 50% of the aggregate balance of all Accounts owing from such Account Debtor and/or its Affiliates remain unpaid for longer than the earlier of (i) sixty-one (61) calendar days after the original due date, or (ii) ninety-one (91) calendar days after the date of sale;

(f) with respect to all Accounts owed by any particular Account Debtor and/or its Affiliates, 50% or more of all such Accounts are deemed not to be Eligible Wholesale Receivables by the Administrative Agent in its Permitted Discretion (which percentage may, in the Administrative Agent's Permitted Discretion, be increased or decreased);

(g) all Accounts owed by the corresponding Account Debtor and/or its Affiliates together exceed twenty percent (20%) (such percentage or any higher percentage now or hereafter established by the Administrative Agent in its Permitted Discretion for any particular Account Debtor, a "**Concentration Limit**") of the net collectible dollar value of all Accounts at any one time (but the portion of the Accounts not in excess of the applicable percentages may be deemed Eligible Wholesale Receivables, in the Administrative Agent's Permitted Discretion);

(h) any covenant, agreement, representation or warranty contained in any Loan Document with respect to such Account has been breached and remains uncured;

(i) the Account Debtor for such Account has commenced a voluntary case under any Debtor Relief Law or has made an assignment for the benefit of creditors, or a decree or order for relief has been entered by a court having jurisdiction in respect of such Account Debtor in an involuntary case under any Debtor Relief Law, or any other petition or application for relief under any Debtor Relief Law has been filed against such Account Debtor, or such Account Debtor has failed, suspended business or ceased to be solvent, called a meeting of its creditors, or has consented to or suffered a receiver, trustee, liquidator or custodian to be appointed for it or for all or a significant portion of its assets or affairs;

(j) it arises from the sale of property or services rendered to one or more Account Debtors outside the continental United States or Canada or that have their principal place of business or chief executive offices outside the continental United States or Canada;

(k) it represents the sale of goods to an Account Debtor on a bill-and-hold, guaranteed sale, sale-and-return, sale on approval, consignment or other repurchase or return basis or is evidenced by Chattel Paper or an Instrument of any kind not delivered to the Collateral Agent or the Canadian Agent or has been reduced to judgment;

(l) the applicable Account Debtor for such Account is any Governmental Authority (except with respect to Lids Team Sports Receivables, the term "Governmental Authority" shall refer solely to the United States of America), unless (i) if an Account due from the United States of America, rights to payment of such Account have been assigned to Agent, for the benefit of itself and Lenders, pursuant to the

Assignment of Claims Act of 1940, as amended (31 U.S.C. Section 3727, *et seq*. and 41 U.S.C. Section 15, *et seq*.),or otherwise, or (ii) if an Account due from the federal government of Canada or a political subdivision thereof, or any province or territory, or any municipality or department or agency or instrumentality thereof, then the provisions of the *Financial Administration Act* (Canada) or any applicable provincial, territorial or municipal law of similar purpose and effect restricting the assignment thereof have been complied with, and, in each case, all applicable statutes or regulations respecting the assignment of government Accounts have been complied with;

(m) it is subject to an offset, credit (including any resource or other income credit or offset), deduction, defense, discount, chargeback, freight claim, allowance, adjustment, dispute or counterclaim, or is contingent in any respect or for any reason (but only to the extent of such offset, credit, deduction, defense, discount, chargeback, freight claim, allowance, adjustment, dispute or counterclaim or contingency);

(n) there is an agreement with an Account Debtor for any deduction from such Account, except for discounts or allowances made in the ordinary course of business for prompt payment, all of which discounts or allowances are reflected in the calculation of the face value of each invoice related thereto, such that only the discounted amount of such Account after giving effect to such discounts and allowances shall be considered an Eligible Wholesale Receivable;

(o) any return, rejection or repossession of goods or services related to it has occurred;

(p) it is not payable to a Borrower;

(q) the applicable Borrower has agreed to accept or has accepted any non-cash payment for such Account;

(r) it constitutes a re-billing of an amount previously billed or double billing (i.e., counted twice);

(s) it constitutes a billing for a sample for which there is no written invoice or similar agreement evidencing the Account Debtor’s agreement to pay such Account;

(t) with respect to any Account arising from the sale of goods, the goods have not been shipped to the Account Debtor or its designee;

(u) with respect to any Account arising from the performance of services, the services have not been actually performed or the services were undertaken in violation of any law;

(v) the applicable Account Debtor for such Account is located in the States of New Jersey, Minnesota, or West Virginia (or any other state that requires a creditor to file a business activity report or similar document in order to bring suit or otherwise enforce its remedies against such Account Debtor in the courts or through any judicial process of such state),unless the requisite Borrower has qualified to do business in New Jersey, Minnesota, West Virginia, or such other states, or has filed a business activities report with the applicable division of taxation, the department of revenue, or with such other state offices, as appropriate, for the then-current year, or is exempt from such filing requirement;

(w) it is an Account subject to a debit memo issued by any Borrower;

(x) such Account does not arise from the actual and bona fide sale and delivery of goods by a Borrower or rendition of services by a Borrower in the ordinary course of its business which transactions are completed in accordance with the terms and provisions contained in any documents related thereto;

(y) it is an Account subject to a surety bond, guaranty, indemnity or other similar arrangement;

(z) it is an Account owed by an Account Debtor that is subject to legal process by a Borrower or against which a Borrower has asserted a mechanics' or other similar lien or that is subject to collection by a Borrower;

(aa) it is an Account (i) owing from any Person that is also a supplier to or creditor of a Borrower or (ii) representing any manufacturer's or supplier's credits, discounts, incentive plans or similar arrangements entitling a Borrower to discounts on future purchase therefrom;

(bb) it is an Account evidenced by a promissory note or other instrument; or

(cc) it fails to meet such other specifications and requirements which may from time to time be established by the Administrative Agent on a prospective basis or is not otherwise satisfactory to the Administrative Agent, as determined in the Administrative Agent's Permitted Discretion.

**"Environmental Laws "** means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by or with any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, or handling, treatment, storage, disposal, Release or threatened Release of any Hazardous Material.

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

"**Equivalent CD$ Amount** " means, on any date, the rate at which Canadian Dollars may be exchanged into Dollars, determined by reference to the Bank of Canada noon rate as published on the Reuters Screen BOFC on the immediately preceding Business Day. In the event that such rate does not appear on such Reuters page, "Equivalent CD$ Amount" shall mean, on any date, the amount of Dollars into which an amount of Canadian Dollars may be converted or the amount of Canadian Dollars into which an amount of Dollars may be converted, in either case, at, in the case of the Canadian Borrower, the Canadian Agent's spot buying rate in Toronto as at approximately 12:00 noon (Toronto time) on such date and, in the case of a Domestic Borrower, the Administrative Agent's spot buying rate in New York as at approximately 12:00 noon (New York City time) on the immediately preceding Business Day.

**"ERISA "** means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

**"ERISA Affiliate"** means any trade or business (whether or not incorporated) that, together with any Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

**"ERISA Event"** means (a) any **"reportable event"**, as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30 day notice period is waived); (b) the existence with respect to any Plan of an **"accumulated funding deficiency"** (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by a Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by a Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by a Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan (which is subject to Section 4063 of ERISA) or Multiemployer Plan; or (g) the receipt by a Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from a Borrower or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

**"Event of Default"** has the meaning assigned to such term in Section 7.1. An **"Event of Default"** shall be deemed to have occurred and to be continuing in accordance with the provisions of Section 7.2 hereof.

**"Excess Availability"** means, as of any date of determination, the excess, if any, of (a) the Loan Cap, over (b) the Total Outstandings.

"**Excluded DDA** " means all DDAs maintained by any Credit Party in the ordinary course of business and actually used solely (i) for payroll and payroll taxes and other trust funds, (ii) for sales taxes or other taxes, (iii) to fund a reserve account pursuant to a processing agreement entered into in the ordinary course of business with a credit card or debit card processor or check processor, or (iv) after the occurrence and during the continuation of a Cash Dominion Event, to fund chargebacks, fees, fines, penalties and other charges due and owing to credit card or debit card processors or check processors arising in the ordinary course of business with respect to the processing of credit card or debit card charges or checks.

**"Excluded Taxes "** means, with respect to any Agent, any Lender, the Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of the Borrowers hereunder, (a) income, franchise or similar taxes imposed on (or measured by) its gross or net income as a result of a present of former connection between such Agent, such Lender or the Issuing Bank and the jurisdiction of the Governmental Authority imposing such tax or any political subdivision or taxing authority thereof or therein (other than any such connection arising solely from such Agent, such Lender or the Issuing Bank having executed, delivered or performed its obligations or received a payment under, or enforced, this Agreement or any other Loan Document), (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which any Borrower is located (c) in the case of a Foreign Lender (other than a Canadian Lender) any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office) or is attributable to such Foreign Lender's failure to comply with Section 2.26, except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the Borrowers with respect to such withholding tax pursuant to Section 2.26, and (d) in the case of a Canadian Lender (other than the original Canadian Lenders hereunder), any withholding tax that is imposed on amounts payable to such Canadian Lender at the time such Canadian Lender becomes a party to this Agreement (or designates a new Lending Office) or is attributable to such Canadian Lender's failure or inability (other than as a result of a Change in Law) to comply with Section 2.26, except to the extent that such Canadian Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive

additional amounts from the Canadian Borrower with respect to such withholding tax pursuant to Section 2.26.

**"Existing Credit Agreement"** shall mean the Amended and Restated Credit Agreement dated as of December 1, 2006, as amended, by and among the Lead Borrower and certain of the Other Domestic Borrowers, on the one hand, and Bank of America, N.A and other lenders identified therein, on the other hand.

**"Existing Financing Agreements"** shall mean the "Loan Documents", as defined in the Existing Credit Agreement.

**"Existing Letters of Credit"** means each of the letters of credit listed on Schedule 2.6(j) hereto.

"**Extraordinary Receipt**" means any cash received by or paid to or for the account of any Person not in the ordinary course of business, including, without limitation, tax refunds, pension plan reversions, indemnity payments and any purchase price adjustments.

**"Facility Guaranty"** means any Guaranty made by the Guarantors in favor of the applicable Secured Parties, in form reasonably satisfactory to the Administrative Agent.

**"Federal Funds Effective Rate"** means, for any day, the per annum rate equal to the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

**"Fee Letter"** means the letter between the Borrowers and the Administrative Agent dated as of November 1, 2010, as such letter may from time to time be amended.

**"Financial Officer"** means, with respect to any Borrower, the chief financial officer, controller, assistant controller, treasurer, or assistant treasurer of such Borrower. Any document delivered hereunder that is signed by a Financial Officer of a Borrower shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Borrower and such Financial Officer shall be conclusively presumed to have acted on behalf of such Borrower.

"**First Amendment Effective Date**" means June 23, 2011.

"**Fiscal Month**" means any four or five week fiscal period of any Fiscal Year in accordance with the fiscal accounting calendar of the Credit Parties.

"**Fiscal Quarter**" means any thirteen week fiscal period of any Fiscal Year in accordance with the fiscal accounting calendar of the Credit Parties.

"**Fiscal Year**" means any period of four consecutive Fiscal Quarters ending on the Saturday closest to January 31 of any calendar year.

**"Fixed Charge Coverage Ratio"**means, as of the last day of any Fiscal Month, for the Lead Borrower on a Consolidated basis for the Applicable Fiscal Period then ended, the ratio of (a) an amount equal to Consolidated EBITDA less Capital Expenditures and Taxes paid in cash, in each case for such

period, to (b) Fixed Charges for such period. Consolidated EBITDA, Capital Expenditures, Taxes and Fixed Charges shall be calculated without regard to (i) those items attributable to any Person prior to the date it becomes a Domestic Subsidiary of the Lead Borrower or any of its other Domestic Subsidiaries or is merged into or consolidated with the Lead Borrower or any of its Domestic Subsidiaries or that Person's assets are acquired by the Lead Borrower or any of its Domestic Subsidiaries and (ii) any Subsidiaries other than Domestic Subsidiaries.

**"Fixed Charges"** means, with respect to any Person, the sum of (a) Consolidated Interest Expense paid in cash ~~and~~ (b) scheduled principal payments on any Indebtedness for such period (excluding the Obligations but including Capital Lease Obligations), and (c) without duplication of the foregoing, and for purposes of calculating the Fixed Charge Coverage Ratio pursuant to Section 6.11 only, payments on account of the Schuh Earnout and the Schuh Seller Notes.

**"Foreign Lender "** means any Lender that is organized under the laws of a jurisdiction other than the United States of America or any State thereof or the District of Columbia.

**"Foreign Subsidiary"** means any Subsidiary that is organized under the laws of a jurisdiction other than the United States of America or any State thereof or the District of Columbia.

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

**"GAAP"** means accounting principles which are (a) consistent with those promulgated or adopted by the Financial Accounting Standards Board and its predecessors (or successors) in effect and applicable to that accounting period in respect of which reference to GAAP is being made, and (b) consistently applied with past financial statements of the Credit Parties adopting the same principles provided that, with respect to Foreign Subsidiaries organized under the laws of Canada, or any province or territory thereof, unless GAAP is being applied, "GAAP" shall mean principles which are consistent with those promulgated or adopted by the Canadian Institute of Chartered Accountants and its predecessors (or successors) in effect and applicable to the accounting period in respect of which reference to GAAP is being made.

**"Genesco Partners Joint Venture"** means that certain Joint Venture between and among the Lead Borrower and Hat World, Inc., on the one hand, and Corliss Stone—Littles, LLC, a Delaware limited liability company, on the other hand, pursuant to that certain Joint Venture Agreement dated as of October 2, 2006.

**"Governmental Authority"** means the government of the United States of America, Canada, any other nation or any political subdivision thereof, whether state or local, provincial, territorial or municipal and any agency, authority, instrumentality, regulatory body, court, tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

**"Guarantee"** of or by any Person (the **"guarantor"**) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the **"primary obligor"**) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (b) to purchase or lease property, securities or services for the primary purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such

Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation, provided that the term **"Guarantee"** shall not include endorsements for collection or deposit in the ordinary course of business.

"**Guarantor**" means (i)each Material Domestic Subsidiary of the Lead Borrower that shall be required to execute and deliver a Facility Guaranty of the Obligations pursuant to Section 5.14, and (ii)each Material Subsidiary of the Canadian Borrower that shall be required to execute and deliver a Facility Guaranty of the Canadian Liabilities pursuant to Section 5.14.

**"Hazardous Materials "** means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes, and all other substances or wastes of any nature regulated pursuant to any Environmental Law, including any material listed as a hazardous substance under Section 101(14) of CERCLA.

**"Hedging Agreement "** means any interest rate protection agreement, interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, foreign currency exchange agreement, commodity price protection agreement, or other interest or currency exchange rate or commodity price hedging arrangement designed to hedge against fluctuations in interest rates or foreign exchange rates.

**"Indebtedness "** of any Person means, without duplication, (a) all obligations of such Person for borrowed money (including any obligations of such Person that are without recourse to the credit of such Person), (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (f) all Guarantees by such Person of Indebtedness of others, (g) all Capital Lease Obligations of such Person, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (i) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances, (j) to the extent not otherwise included, all net obligations of such Person under Hedging Agreements, (k) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of Disqualified Stock, and (l) the principal and interest portions of all rental obligations of such Person under any Synthetic Lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing where such transaction is considered borrowed money indebtedness for tax purposes but is classified as an operating lease in accordance with GAAP. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

**"Indemnified Taxes "** means Taxes other than Excluded Taxes.

**"Indemnitee"** has the meaning provided therefor in Section 9.4(b).

**"Instrument "** has the meaning ascribed to such term in the UCC.

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

**"Interest Payment Date"** means (a) with respect to any Domestic Prime Rate Loan (including a Swingline Loan), Canadian Prime Rate Loan, Domestic Tranche A-1 Prime Rate Loan or U.S. Index Rate Loan, the first day of each calendar month, and (b) with respect to any LIBO Loan, Tranche A-1 LIBO Loan or BA Rate Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part, and, in addition, if such LIBO Loan, Tranche A-1 LIBO Loan or BA Rate Loan has an Interest Period of greater than 90 days, on the last day of the third month of such Interest Period.

**"Interest Period"** means, with respect to any LIBO Borrowing or BA Equivalent Loan Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three or six months thereafter, as the Lead Borrower or Canadian Borrower may elect by notice to the Administrative Agent in accordance with the provisions of this Agreement, provided that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, and (b) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month during which such Interest Period ends) shall end on the last Business Day of the calendar month during which such Interest Period ends, (c) any Interest Period which would otherwise end after the Termination Date shall end on the Termination Date, and (d) notwithstanding the provisions of clause (c), no Interest Period shall have a duration of less than one month, and if any Interest Period applicable to a LIBO Borrowing or BA Equivalent Loan Borrowing would be for a shorter period, such Interest Period shall not be available hereunder. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

**"Inventory"** has the meaning assigned to such term in the Security Agreement.

**"Inventory Advance Rate"** means 90% or, in the case of Inventory acquired in a Permitted Acquisition, such rate as the Administrative Agent shall establish, in its Permitted Discretion, after completion of an appraisal on such Inventory, provided that such rate shall not exceed 90%.

**"Inventory Reserves"** means such reserves as may be established from time to time by the Administrative Agent in the Administrative Agent's Permitted Discretion (after consultation with the Lead Borrower (whose consent to any Inventory Reserve shall not be required)) with respect to the determination of the saleability, at retail, of the Eligible Inventory or which reflect such other factors as affect the Appraised Value of the Eligible Inventory. Without limiting the generality of the foregoing, Inventory Reserves may include (but are not limited to) reserves based on (i) obsolescence; (ii) seasonality; (iii)

Shrink; (iv) imbalance; (v) change in Inventory character; (vi) change in Inventory composition; (vii) change in Inventory mix; (viii)markdowns (both permanent and point of sale); and (ix)retail mark-ons and markups inconsistent with prior period practice and performance; industry standards; current business plans; or advertising calendar and planned advertising events. Inventory Reserves shall be established and calculated in a manner and methodology consistent with the Administrative Agent's practices as of the Effective Date with other similarly situated borrowers.

**"Investment"** has the meaning provided therefore in Section 6.4.

**"Investment Accounts"** means all accounts maintained by any of the Credit Parties for Investments as of the Effective Date and thereafter opened by any of the Credit Parties and consented to by the Administrative Agent.

**"ISP"** means, with respect to any Letter of Credit, the "International Standby Practices 1998 " published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance).

**"Issuing Bank"** means, with respect to Domestic Letters of Credit, Bank of America and, with respect to Canadian Letters of Credit, Bank of America-Canada Branch; provided that if such Issuing Bank is unable to issue any Letter of Credit as a result of the provisions of Section 2.6(b)(ii) hereof, the Lead Borrower may appoint one other Lender who agrees to accept such appointment to act as Issuing Bank hereunder. The Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of the Issuing Bank, in which case the term **"Issuing Bank"** shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

**"Joinder Agreement"** shall mean an agreement in form and substance acceptable to the Administrative Agent in its Permitted Discretion, pursuant to which, among other things, a Person becomes a party to, and bound by, the terms of this Agreement and/or other Loan Documents in the same capacity and to the same extent as either a Borrower or a Guarantor, as the Administrative Agent may determine.

**"L/C Disbursement"** means a payment made by the Issuing Bank pursuant to a Letter of Credit.

**"Lead Arranger"** means Merrill Lynch, Pierce, Fenner & Smith Incorporated.

**"Lead Borrower"** means Genesco Inc. and any replacement that the Borrowers appoint to act as Lead Borrower upon the consent of the Administrative Agent, which consent shall not be unreasonably withheld.

**"Lease**" means any agreement, whether written or oral, no matter how styled or structured, pursuant to which a Credit Party is entitled to the use or occupancy of any real property for any period of time.

**"Lenders"** shall mean the Persons identified on Schedule 1.1 and each assignee that becomes a party to this Agreement as set forth in Section 9.6(b).

**"Letter of Credit"** shall mean a Standby Letter of Credit, Commercial Letter of Credit or Banker's Acceptance that is (i) issued pursuant to this Agreement for the account of any Borrower or any Guarantor, (ii) issued in connection with the purchase of Inventory by any Borrower or any Guarantor or for any other purpose that is reasonably acceptable to the Administrative Agent, and (iii) in form and substance reasonably satisfactory to the Issuing Bank. The term "Letter of Credit " shall include, without limitation, all Existing Letters of Credit and all Banker's Acceptances.

**"Letter of Credit Fees"** shall mean the fees payable in respect of Letters of Credit pursuant to Section 2.13.

**"Letter of Credit Outstandings"** shall mean, collectively, Canadian Letter of Credit Outstandings and Domestic Letter of Credit Outstandings. For purposes of computing the amounts available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.6. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn.

**"LIBO Borrowing"** shall mean a Borrowing comprised of LIBO Loans or Tranche A-1 LIBO Loans.

**"LIBO Loan"** shall mean any Loan bearing interest at a rate determined by reference to the Adjusted LIBO Rate in accordance with the provisions of Section 2.3.

**"LIBO Rate"** means for any Interest Period with respect to a LIBO Loan or Tranche A-1 LIBO Loan, the rate per annum equal to the British Bankers Association LIBOR Rate ( "BBA LIBOR"), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period. If such rate is not available at such time for any reason, then the "LIBO Rate" for such Interest Period shall be the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the LIBO Loan or Tranche A-1 LIBO Loan being made, continued or converted by Bank of America and with a term equivalent to such Interest Period would be offered by Bank of America's London Branch to major banks in the London interbank eurodollar market at their request at approximately 11:00 a.m. (London time) two Business Days prior to the commencement of such Interest Period.

**"Lids Team Sports Cap"** means an amount not to exceed five percent (5%) of the Canadian Borrowing Base ~~or~~, the Domestic Borrowing Base or the Tranche A-1 Borrowing Base, as applicable.

**"Lids Team Sports Receivables"** means wholesale Accounts due from any Person or Governmental Authority (other than the United States of America) arising from the sale at wholesale through the Team Sports wholesale operations of the Borrower Consolidated Group.

**"Lien"** means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

**"Liquidation"** means the exercise by any Agent of those rights and remedies accorded to such Agent under the Loan Documents and Applicable Law as a creditor of the Borrowers with respect to the realization on the Collateral, including (after the occurrence and during the continuation of an Event of Default) the conduct by the Borrowers acting with the consent of the Administrative Agent, of any public, private or "going-out-of-business", "store closing" or other similar sale or any other disposition of the

Collateral for the purpose of liquidating the Collateral. Derivations of the word "Liquidation" (such as "Liquidate") are used with like meaning in this Agreement.

**"Liquidation Percentage"** means, for any Lender, a fraction, the numerator of which is the sum of such Lender's Domestic Commitment, Tranche A-1 Commitment and Canadian Commitment on the Determination Date and the denominator of which is the Total Commitments of all Lenders on the Determination Date.

**"Loan"** means a Revolving Loan or a Swingline Loan, as applicable.

**"Loan Account"** has the meaning assigned to such term in Section 2.20(a).

**"Loan Cap"** means, at any time of determination, the lesser of (a) the Total Commitments or (b) the Combined Borrowing Base.

**"Loan Documents"** means this Agreement, the Notes, the Letters of Credit, the Fee Letter, all Borrowing Base Certificates, the Account Control Agreements, the DDA Notifications, the Credit Card Notifications, the Security Documents, the Perfection Certificate, the Effective Date Guaranty, the Facility Guaranty, and any other instrument or agreement now or hereafter executed and delivered in connection herewith or therewith, each as amended and in effect from time to time.

**"Margin Stock"** has the meaning assigned to such term in Regulation U.

**"Material Adverse Effect"** means a material adverse effect on (a) the business, operations, property, assets, condition, financial or otherwise, of the Credit Parties, taken as a whole (b) the ability of the Credit Parties, taken as a whole, to perform any material obligation or to pay any Obligations under this Agreement or any of the other Loan Documents, or (c) the validity or enforceability of this Agreement or any of the other Loan Documents or any of the material rights or remedies of the Administrative Agent, the Collateral Agent, the Canadian Agent or the Lenders hereunder or thereunder.

**"Material Domestic Subsidiary"** means, as of any date of determination, any Domestic Subsidiary (a) the total tangible assets (after intercompany eliminations) of which, as determined in accordance with GAAP, exceeds five percent (5%) of the Consolidated total tangible assets of the Lead Borrower (after intercompany eliminations) measured as of the end of the most recently ended Fiscal Quarter with respect to which the Administrative Agent has received financial statements required to be delivered pursuant to Sections 5.1(a) and 5.1(b), as applicable, or (b) which represents more than ten percent (10%) of Consolidated Net Income of the Lead Borrower for the previous twelve Fiscal Months ending as of the last day of such Fiscal Quarter. "Material Domestic Subsidiary " shall include, without limitation, any Subsidiary whose principal assets are one or more Material Domestic Subsidiaries.

**"Material Foreign Subsidiary"** means each Foreign Subsidiary which is a direct Subsidiary of a Borrower which, as of the last day of any Fiscal Quarter, satisfied any one or more of the following tests:

(a) such Foreign Subsidiary's total tangible assets (after intercompany eliminations), as determined in accordance with GAAP, exceeds 10% of Consolidated total tangible assets of the Lead Borrower; or

(b) such Foreign Subsidiary's Consolidated Net Income for the previous twelve months ending as of the last day of such Fiscal Quarter exceeds 10% of Consolidated Net Income of the Lead Borrower for the previous twelve months ending as of the last day of such Fiscal Quarter; or

(c) such Foreign Subsidiary's Consolidated Net Worth exceeds 10% of the Consolidated Net Worth of the Lead Borrower.

**"Material Indebtedness"** means Indebtedness (other than the Loans and Letters of Credit) of any one or more of the Borrowers in an aggregate principal amount exceeding $20,000,000.

**"Material Subsidiary"** means a Material Domestic Subsidiary or a Material Foreign Subsidiary. A Material Subsidiary may include, at the sole option of Lead Borrower, any Subsidiary designated by Borrower to be a "Material Subsidiary" by written notice to Administrative Agent and compliance with the requirements of Section 5.14. Additionally, Lead Borrower may designate any Material Subsidiary which does not constitute a Material Domestic Subsidiary or a Material Foreign Subsidiary under the respective definitions thereof as no longer constituting a Material Subsidiary and a Material Domestic Subsidiary or Material Foreign Subsidiary, as the case may be.

**"Maturity Date"** means January 21, 2016.

**"Maximum Rate"** has the meaning provided therefor in Section 9.14.

**"Minority Lenders"** has the meaning provided therefor in Section 9.3(c).

**"Moody's"** means Moody's Investors Service, Inc.

**"Multiemployer Plan"** means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

**"Net Proceeds"** means, with respect to any Prepayment Event, the excess, if any, of (i) the sum of cash and cash equivalents received in connection with such transaction (including any cash or cash equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount, interest, prepayment penalties or fees with respect to any Indebtedness that is secured by the applicable asset by a Lien permitted hereunder which is senior to the Collateral Agent's Lien or Canadian Agent's Lien, as applicable, on such asset and that is required to be repaid (or to establish an escrow for the future repayment thereof) in connection with such transaction (other than Indebtedness under the Loan Documents), (B) the reasonable and customary out-of-pocket expenses incurred by such Borrower or such Subsidiary in connection with such transaction (including, without limitation, appraisals, and brokerage, legal, title and recording or transfer tax expenses and commissions) paid by such Borrower to third parties (other than Affiliates) and (C) the amount of taxes paid (or reasonably estimated to be payable) and the amount of any reserves established to fund contingent liabilities reasonably estimated to be payable; provided that unless the amounts described in this clause (C) are funded and deposited into a segregated account to be used solely for the payment of such taxes or liabilities, the Administrative Agent may, in its Permitted Discretion, establish an Availability Reserve in an amount equal to such taxes and liabilities.

**"Noncompliance Notice"** has the meaning provided therefor in Section 2.5(b).

**"Notes"** shall mean, collectively, the Canadian Notes, the Domestic Notes, the Tranche A–1 Notes and the Swingline Note.

**"Obligations"** means (a) the principal of, and interest (including all interest that accrues after the commencement of any case or proceeding by or against any Borrower under any federal, state or provincial bankruptcy, insolvency, receivership or similar law, whether or not allowed in such case or proceeding) on the Loans, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise, (b) the obligations of the Borrowers under this Agreement in respect of any Letter

of Credit, when and as due, including payments in respect of reimbursement of disbursements, interest thereon and obligations to provide cash collateral, (c) all other monetary obligations, including fees, costs, expenses and indemnities, whether primary, secondary, direct, contingent, fixed or otherwise, of the Borrowers to the Secured Parties under this Agreement and the other Loan Documents (including all such amounts that accrue or are incurred after the commencement of any case or proceeding by or against any Borrower under any federal, state or provincial bankruptcy, insolvency, receivership or similar law, whether or not allowed in such case or proceeding), (d) all covenants, agreements, obligations and liabilities of the Borrowers under or pursuant to this Agreement and the other Loan Documents, and (e) the payment and performance under any transaction of a Borrower with any Lender or any of its Affiliates that arises out of (i) any Cash Management Services, or (ii)any Bank Products provided by any such Person. Without limiting the foregoing, the term "Obligations" includes all Canadian Liabilities.

**"Other Borrowers"** means the Other Domestic Borrowers and the Canadian Borrower.

**"Other Canadian Liabilities"** means any obligation of the Canadian Borrower arising on account of clause (e) of the definition of "Obligations".

**"Other Domestic Borrowers"** means Genesco Brands, Inc., a Delaware corporation; Hat World Corporation, a Delaware corporation; Hat World, Inc., a Minnesota corporation; Flagg Bros. of Puerto Rico, Inc., a Delaware corporation; Keuka Footwear, Inc., a Delaware corporation, and any other Material Domestic Subsidiary that is not a Guarantor.

**"Other Domestic Liabilities"** means any obligation of the Domestic Credit Parties arising on account of clause (e) of the definition of "Obligations".

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

**"Overadvance"** means, at any time of calculation, a circumstance in which the Credit Extensions plus the outstanding amount of the Tranche A-1 Loans exceed the Loan Cap.

**"Participant"** has the meaning provided therefore in Section 9.6(e).

**"Patent Security Agreement"** shall mean the Patent Security Agreement dated as of the Closing Date and executed and delivered by certain of the Domestic Borrowers to the Collateral Agent for the benefit of the Secured Parties, as amended and in effect on the Effective Date.

**"Payment Conditions"** means, as of the date of the making of any Restricted Payment or consummation of any Acquisition, that (a) no Default or Event of Default exists or would arise after giving effect to such Restricted Payment or Acquisition, *and* (b) either (i) the Borrowers have pro forma projected Excess Availability for the following six month period equal to or greater than 50% of the Loan Cap, after giving pro forma effect to such Restricted Payment or Acquisition, *or* (ii)(A) the Borrowers have pro forma projected Excess Availability for the following six month period of less than 50% of the Loan Cap but equal to or greater than 20% of the Loan Cap, after giving pro forma effect to the Restricted Payment or Acquisition, *and* (B) the Fixed Charge Coverage Ratio, on a pro-forma basis for the twelve months preceding such Restricted Payment or Acquisition, will be equal to or greater than 1.0:1.0 *and* (c) after giving effect to such Restricted Payment or Acquisition, the Borrowers are Solvent. In the event that the aggregate amount of any payment paid by the Borrowers for any Restricted Payment or in an Acquisition or a series of related Restricted Payments or Acquisitions equals or exceeds $10,000,000 during any consecutive thirty (30) day period, then the Borrowers shall provide a certificate signed by a Financial

Officer, no later than five (5) days prior to the anticipated date of such Restricted Payment or Acquisition (or the first such Restricted Payment or Acquisition, if in connection with a series of Restricted Payment or Acquisitions) certifying as to the satisfaction of the applicable Payment Conditions (on a basis (including, without limitation, giving due consideration to results for prior periods) reasonably satisfactory to the Administrative Agent) including the relevant calculations therefor and accompanied by such information required to be delivered to the Administrative Agent pursuant to Section 5.1(j), if applicable, (to the extent not previously delivered) provided that if pro forma projected Excess Availability for the following six month period is less than or equal to 50% of the Loan Cap, such a certificate shall be provided if the aggregate amount of any Restricted Payment or Acquisition paid by the Borrowers in a transaction or a series of related transactions equals or exceeds $5,000,000.

**"PBGC"** means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

**"Perfection Certificate"** means, collectively, (i) a certificate of the Domestic Borrowers in the form approved by the Collateral Agent as to certain matters regarding the Collateral and (ii) a certificate of the Canadian Borrower in the form approved by the Canadian Agent as to certain matters regarding the Collateral.

**"Permitted Acquisition"** means (a) the acquisition (in a transaction or series of related transactions) of not less than eighty percent (80%) of the capital stock or other equity interests of, or (b) the acquisition (in a transaction or series of related transactions) of all or substantially all of the assets or properties of, or any division or business unit of, any Person, whether or not pursuant to a transaction of merger or consolidation, or (c) any acquisition of any store locations or Leases of any Person (each of the foregoing an **"Acquisition"**) in each case which satisfies each of the following conditions:

(i) The Acquisition is of a business permitted to be conducted by the Borrowers pursuant to Section 6.3(b) hereof; and

(ii) Prior to and after giving effect to the Acquisition, no Default or Event of Default will exist or will arise therefrom; and

(iii) The Person making the Acquisition must be a Borrower or a Subsidiary which will become a Borrower or Guarantor (if required) in accordance with Section 5.14 hereof and the Borrowers (including such Person) shall take such steps as are necessary to grant to the Collateral Agent, for the benefit of the Secured Parties, a legal, valid and enforceable first priority security interest (except as provided in Section 6.2 hereof) in all of the assets and capital stock or other equity interests acquired in connection with such acquisition; and

(iv) If a Borrower shall merge with such other Person, such Borrower shall be the surviving party of such merger; and

(v) Either (A) the aggregate consideration for such Acquisition, together with the consideration for all other Acquisitions undertaken by the Borrowers in such Fiscal Year, shall not exceed $30,000,000 in any Fiscal Year, or (B) the Payment Conditions shall have been satisfied; and

(vi) In the case of the Acquisition of capital stock or other equity interests of another Person, the board of directors (or other comparable governing body) of such other Person shall have duly approved such Acquisition.

**"Permitted Discretion"** means the Administrative Agent's good faith credit judgment based upon any factor or circumstance which it reasonably believes in good faith: (i) will or could reasonably be expected to adversely affect the value of the Collateral, the enforceability or priority of the Collateral Agent's or the Canadian Agent's Liens thereon in favor of the applicable Secured Parties or the amount which the Collateral Agent, the Canadian Agent and the applicable Secured Parties would likely receive (after giving consideration to delays in payment and costs of enforcement) in the liquidation of such Collateral; (ii) suggests that any collateral report or financial information delivered to any Agent by or on behalf of a Borrower is incomplete, inaccurate or misleading in any material respect; (iii) could reasonably be expected to increase materially the likelihood of a bankruptcy, reorganization or other insolvency proceeding involving any of the Credit Parties; or (iv)creates or reasonably could be expected to create a Default or Event of Default. In exercising such judgment, the Administrative Agent may consider factors or circumstances already included in or tested by the definition of Eligible Inventory, Eligible Wholesale Receivables or Eligible Credit Card and Debit Card Receivables, as well as any of the following: (A) changes in demand for and pricing of Inventory; (B) changes in any concentration of risk with respect to Inventory or Accounts; (C) any other factors or circumstances that will or could reasonably be expected to have a Material Adverse Effect; (D) audits of books and records by third parties, history of chargebacks or other credit adjustments, or other relevant information regarding the creditworthiness of Account Debtors; and (E) any other factors that change or could reasonably be expected to change the credit risk of lending to the Borrowers on the security of the Inventory or Accounts. Notwithstanding the foregoing, it shall not be within Permitted Discretion for the Administrative Agent to establish Reserves which are duplicative of each other whether or not such reserves fall under more than one reserve category.

**"Permitted Encumbrances"** means:

(i) Liens imposed by law for taxes that are not yet due or are being contested in compliance with Section 5.5;

(ii) carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than 60 days or are being contested in compliance with Section 5.5;

(iii) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance, old-age pension and other social security laws or regulations (other than any Lien imposed under ERISA);

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

(v) judgment liens in respect of judgments that do not constitute an Event of Default under Section 7.1(m);

(vi) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or materially interfere with the ordinary conduct of business of the Borrowers or any of the other Credit Parties;

(vii) Possessory liens in favor of brokers and dealers arising in connection with the acquisition or disposition of Investments owned as of the date hereof and Permitted Investments, provided that such liens (a) attach only to such Investments and (b) secure only obligations incurred in the ordinary course and

arising in connection with the acquisition or disposition of such Investments and not any obligation in connection with margin financing;

(viii) Liens in favor of a financial institution encumbering deposits (including the right of setoff) held by such financial institution in the ordinary course of its business and which are within the general parameters customary in the banking industry;

(ix) Landlords' and lessors' liens in respect of rent that is not overdue by more than thirty (30) days or which is being contested in compliance with Section 5.5;

(x) leases or subleases granted by any Credit Party to any Person other than a Credit Party, provided that such lease or sublease does not interfere in any material respect with the business of such Credit Party or materially impair the Collateral Agent's interest in the Collateral;

(xi) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods and securing obligations that are not overdue by more than sixty (60) days, or are being contested in compliance with Section 5.5;

(xii) Liens deemed to exist in connection with Investments in repurchase agreements permitted under Section 6.4;

(xiii) Liens of a collecting bank arising under Section 4-210 of the UCC on items in the course of collection;

(xiv) reservations, limitations, provisos and conditions expressed in any original grant from the Crown or other grants of real or immovable property, or interests therein, that do not materially affect the use of the affected land for the purpose for which it is used by that Person;

(xv) the right reserved to or vested in any Governmental Authority by the terms of any lease, license, franchise, grant or permit acquired by that Person or by any statutory provision to terminate any such lease, license, franchise, grant or permit, or to require annual or other payments as a condition to the continuance thereof;

(xvi) security given to a public utility or any Governmental Authority when required by such utility or authority in connection with the operations of that Person in the ordinary course of its business; and

(xvii) Liens in favor of a credit card processor or check processor, as applicable, on proceeds of credit card charges or checks, as applicable, held by such processor to secure (A) chargebacks, fees, fines, penalties and other charges arising in the ordinary course of business with respect to the processing of credit card charges or checks, as applicable; or (B) equipment leases described on Schedule 1.3 (but no other such leases);

provided that, except as provided in any one or more of clauses (i) through (xiii) above, the term **"Permitted Encumbrances"** shall not include any Lien securing Indebtedness.

**"Permitted Investments"** means each of the following:

(i) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America or Canada (or by any agency or instrumentality thereof to the extent such obligations are backed by the full faith and credit of the United

States of America or Canada, as applicable), in each case maturing within one year from the date of acquisition thereof;

(ii) Investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, a credit rating of at least A-1 from S&P or P-1 from Moody's;

(iii) Investments in certificates of deposit, banker's acceptances and time deposits maturing within 270 days from the date of acquisition thereof issued or guaranteed by or placed with, and demand deposit and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any state thereof or under *the Bank Act* (Canada) that has a combined capital and surplus and undivided profits of not less than $100,000,000;

(iv) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (i) above (without regard to the limitation on maturity contained in such clause) and entered into with a financial institution satisfying the criteria described in clause (iii) above or with any primary dealer and having a market value at the time that such repurchase agreement is entered into of not less than 100% of the repurchase obligation of such counterparty entity with whom such repurchase agreement has been entered into;

(v) money market mutual funds, 90% of the investments of which are in cash or investments contemplated by clauses (i) through (iv) of this definition; and

(vi) Investments by the Lead Borrower consistent with the Lead Borrower's investment policy, which investment policy is approved by the Administrative Agent from time to time, such approval not to be unreasonably withheld;

*provided that*, notwithstanding the foregoing, after the occurrence and during the continuance of a Cash Dominion Event, (i) no such new Investments shall be permitted by a Borrower unless either (A) no Loans are then outstanding, or (B) the Investment is a temporary Investment pending expiration of an Interest Period for a LIBO Loan, Tranche A-1 LIBO Loan or BA Equivalent Loan, the proceeds of which Investment will be applied to the Obligations after the expiration of such Interest Period, and (ii) all such Investments are pledged by the applicable Borrower to the Collateral Agent or the Canadian Agent, as applicable, as additional collateral for the Obligations pursuant to such agreements as may be reasonably required by the Administrative Agent.

**"Permitted Overadvance"** means an Overadvance, as determined by the Administrative Agent, in its Permitted Discretion, (a) which is made to maintain, protect or preserve the Collateral and/or the Lenders' rights under the Loan Documents, or (b) which is otherwise in the Lenders' interests; provided that Permitted Overadvances shall not (i) exceed ten percent (10%) of the then Combined Borrowing Base in the aggregate outstanding at any time or (ii) unless a Liquidation is occurring, remain outstanding for more than ninety (90) consecutive Business Days, unless in case of clause (ii) the Required Lenders otherwise agree; and provided further that the foregoing shall not (1) modify or abrogate any of the provisions of Section 2.6(f) regarding the Lenders' obligations with respect to L/C Disbursements, or (2) result in any claim or liability against the Administrative Agent (regardless of the amount of any Overadvance) for Unintentional Overadvances and such Unintentional Overadvances shall not reduce the amount of Permitted Overadvances allowed hereunder, and further provided that in no event shall the Administrative Agent make an Overadvance, if after giving effect thereto, the principal amount of the Credit Extensions plus the outstanding amount of Tranche A-1 Loans (including any Overadvance or proposed Overadvance) would exceed the Total Commitments.

**"Permitted Refinancing**" means, with respect to any Person, any Indebtedness issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund (collectively, to "Refinance"), the Indebtedness being Refinanced (or previous refinancings thereof constituting a Permitted Refinancing); provided, that (a) the principal amount (or accreted value, if applicable) of such Permitted Refinancing does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so Refinanced (plus unpaid accrued interest and premiums thereon and underwriting discounts, defeasance costs, fees, commissions and expenses), (b) the weighted average life to maturity of such Permitted Refinancing is greater than or equal to the weighted average life to maturity of the Indebtedness being Refinanced (c) such Permitted Refinancing shall not require any scheduled principal payments due prior to the Maturity Date in excess of, or prior to, the scheduled principal payments due prior to such Maturity Date for the Indebtedness being Refinanced, (d) if the Indebtedness being Refinanced is subordinated in right of payment to the Obligations, such Permitted Refinancing shall be subordinated in right of payment to such Obligations on terms at least as favorable to the Secured Parties as those contained in the documentation governing the Indebtedness being Refinanced, (e) no Permitted Refinancing shall have different direct or indirect obligors, or greater guarantees or security, than the Indebtedness being Refinanced, (f) such Permitted Refinancing shall be otherwise on terms not materially less favorable to the Credit Parties than those contained in the documentation governing the Indebtedness being Refinanced, including, without limitation, with respect to amortization, maturity, financial and other covenants, and (g) at the time thereof, no Default or Event of Default shall have occurred and be continuing.

**"Permitted Senior Debt"** means Indebtedness of the Borrowers in the aggregate principal amount of up to $250,000,000, provided that:

(a) no portion of the principal of such Indebtedness in excess of 1% per annum shall be required to be paid, whether by stated maturity, mandatory or scheduled prepayment or redemption or otherwise, prior to the date that is 90 days after the Maturity Date, other than in the event of (i) a default under such Indebtedness, (ii) a change of control of the Lead Borrower or (iii) certain asset sales in each case, if such Indebtedness is secured, subject to the standstill and the lien subordination provisions described in clause (d) below;

(b) such Indebtedness may be secured by a first priority Lien on the trade names of the Borrowers and the capital stock of the Lead Borrower's Subsidiaries only and a second priority Lien on any Collateral (provided the Administrative Agent for the benefit of the Secured Parties is granted a second priority Lien on the trade names of the Borrowers and the capital stock of the Lead Borrower's Subsidiaries securing such Indebtedness);

(c) if secured, the security documents and instruments pursuant to which such Indebtedness shall be issued or outstanding shall be in form and substance reasonably satisfactory to the Administrative Agent;

(d) the covenants relating to restrictions on indebtedness and liens, in each case contained in the documentation pursuant to which such Indebtedness shall be issued or outstanding, shall be reasonably satisfactory to the Administrative Agent; and

(e) if such Indebtedness is secured, it shall be subject to an intercreditor agreement reasonably acceptable to the Administrative Agent that may include, among other things, (A) the priority of the Liens securing the Collateral, the trade names of the Borrowers and the capital stock of the Lead Borrower's Subsidiaries and the payment of proceeds therefrom, (B) a reasonable standstill by the holders of such Indebtedness as to remedies against the Collateral, (C) waivers by the holders of such Indebtedness of rights to contest validity or priority of Liens of the Administrative Agent or the Lenders (which waiver may be reciprocal) or object to dispositions of Collateral (including an affirmative agreement by such

holders to release Liens of such holders in the event of a disposition of Collateral approved by the Administrative Agent), (D) waiver of rights to object to the use of cash collateral or sale of Collateral, and reasonable restrictions on certain claims and actions, in any proceeding under any Debtor Relief Laws by the holders of such Indebtedness, and (E) restrictions on amendments to, or consents, waivers or other modifications with respect to, the documents evidencing such Indebtedness to the extent the same would be materially adverse to the Lenders.

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

**"Plan"** means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which a Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an **"employer"** as defined in Section 3(5) of ERISA.

"**Platform**" has the meaning set forth in Section 5.1.

**"Pledge Agreements"** means any Pledge Agreement executed and delivered by one or more of the Borrowers to the Collateral Agent, for the benefit of the Secured Parties, or to the Canadian Agent, for the benefit of the Canadian Secured Parties, as applicable, as the same may be amended and in effect from time to time, pursuant to which, without limitation, all of the issued and outstanding capital stock and other equity interests of initially, the Borrowers (other than the Lead Borrower and the Canadian Borrower) and thereafter, (i) all Material Domestic Subsidiaries that are not Borrowers owned by a Borrower and (ii) sixty-five percent (65%) (or such lesser amount as is owned by such Borrower or will not subject the Borrowers to materially adverse tax consequences) of all of the issued and outstanding capital stock or other equity interests of all Foreign Subsidiaries (including the Canadian Borrower) is pledged to the Collateral Agent or the Canadian Agent, as applicable (in each case, other than Subsidiaries that are not directly or indirectly wholly owned by such Borrower) as security for the Obligations.

**"Post Effective DDA"** means any DDA (other than a store-level DDA) opened after the Effective Date.

**"Pounds Sterling"** or **"£"** refers to lawful money of the United Kingdom.

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

"**Prepayment Event**" means:

(a) Any disposition of any Collateral outside of the ordinary course of business (but, including in any event, pursuant to a store closing sale); and

(b) Any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of (and payments in lieu thereof), of any Collateral;

(c) The receipt by any Credit Party of any Extraordinary Receipts arising from Collateral; and

(d) After the occurrence and during the continuance of a Cash Dominion Event, any disposition of any real estate owned by the Borrower Consolidated Group (including any sale-leaseback transaction);

provided that, in the absence of a continuing Cash Dominion Event, any such events occurring under clauses (a) through (c) above resulting in aggregate Net Proceeds of $15,000,000 or less in the aggregate in any Fiscal Year shall not constitute a Prepayment Event.

"**Prime Rate Loans**" shall mean Domestic Prime Rate Loans, Domestic Tranche A-1 Prime Rate Loans, or Canadian Prime Rate Loans, as applicable.

"**Pro Forma Availability Condition**" shall mean, for any date of calculation with respect to any transaction or payment, the Pro Forma Excess Availability following, and after giving effect to, such transaction or payment, will be equal to or greater than twenty percent (20%) of the Loan Cap.

"**Pro Forma Excess Availability**" shall mean, for any date of calculation, after giving pro forma effect to the transaction then to be consummated, the projected Excess Availability for each Fiscal Month during any subsequent projected six (6) Fiscal Months.

"**Proceeds**" shall have the meaning ascribed to it in the UCC or the PPSA, as applicable, and shall include proceeds of all Collateral.

"**Proceeds of Crime Act**" means the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada), as amended from time to time, and including all regulations thereunder.

**"Real Estate"** means all land, together with the buildings, structures, parking areas, and other improvements thereon, now or hereafter owned by any of the Credit Parties, including all fixtures and equipment used in connection with the operation of such structures and all easements, rights-of-way and similar rights relating thereto and all leases, tenancies, and occupancies thereof.

**"Register"** has the meaning set forth in Section 9.6(c).

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

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

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

**"Release"** has the meaning set forth in Section 101(22) of CERCLA.

**"Required Lenders"** shall mean, at any time, Lenders having Commitments greater than 50% of the Total Commitments, or if the Commitments have been terminated, Lenders whose percentage of the outstanding Loans and Letter of Credit Outstandings aggregate greater than 50% of all such Loans and Letter of Credit Outstandings, provided that such calculation shall exclude any Delinquent Lenders and any

such Delinquent Lender's Commitment in the event that such Delinquent Lender's rights to participate shall have been suspended or terminated pursuant to Section 8.14 of this Agreement.

**"Required Supermajority Lenders"** shall mean, at any time, Lenders having Commitments greater than 66 2/3% of the Total Commitments, or if the Commitments have been terminated, Lenders whose percentage of the outstanding Loans and Letter of Credit Outstandings aggregate greater than 66 2/3% of all such Loans and Letter of Credit Outstandings, provided that such calculation shall exclude any Delinquent Lenders and any such Delinquent Lender's Commitment in the event that such Delinquent Lender's rights to participate shall have been suspended or terminated pursuant to Section 8.14 of this Agreement.

**"Reserves"** means the Account Reserves, the Inventory Reserves and the Availability Reserves.

**"Restricted Payment"** means (i) any dividend or other distribution, directly or indirectly (whether in cash, securities or other property) with respect to any shares of any class of capital stock or other equity interests of any of the Credit Parties, or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such shares of capital stock or other equity interests of any of the Credit Parties or any option, warrant or other right to acquire any such shares of capital stock or other equity interests of any of the Credit Parties; or (ii) any payment or other distribution, directly or indirectly (whether in cash, securities, or other property) of or in respect of principal of or interest on any Indebtedness, or any payment or other distribution (whether in cash, securities, or other property), including any sinking fund or similar deposit on, an account of the purchase, redemption, retirement, acquisition, cancellation, or termination of any Indebtedness (other than the Obligations).

**"Revolving Loans"** means all Canadian Loans ~~and~~, Domestic Loans and Tranche A-1 Loans at any time made by a Lender pursuant to Section 2.3.

**"S&P"** means Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc.

**"Schuh Acquisition"** means the acquisition by UK Acquisition of Schuh Group Limited, a company incorporated in Scotland, on the First Amendment Effective Date pursuant to the Schuh Acquisition Documents.

**"Schuh Acquisition Documents"** means the Sale and Purchase Agreement relating to the issued share capital of Schuh Group Limited dated June 23, 2011 by and among the Sellers party thereto, Schuh Group Limited, UK Acquisition and the Lead Borrower, and all documents, instruments and agreements executed and/or delivered in connection therewith.

**"Schuh Earnout"** means the earnout consideration payable by UK Acquisition to the Sellers under the Schuh Acquisition Documents in an aggregate amount not to exceed £25,000,000.

**"Schuh Seller Notes"** means those certain [Promissory Notes] in an aggregate amount not to exceed £25,000,000 issued by UK Acquisition to the Sellers under the Schuh Acquisition Documents.

**"SEC"** means the United States Securities and Exchange Commission.

**"Secured Party"** or **"Secured Parties"** means, collectively, the Canadian Secured Parties and the Domestic Secured Parties.

**"Security Agreement"** means the Second Amended and Restated Security Agreement dated as of the Effective Date and executed and delivered by each of the Domestic Credit Parties to the Collateral Agent for the benefit of the Secured Parties, as amended and in effect from time to time.

**"Security Documents"** means the Security Agreement, the Trademark Security Agreement, the Patent Security Agreement, the Pledge Agreements, the Facility Guaranty, the Effective Date Guaranty, the Account Control Agreements, the Collateral Control Agreements, the Canadian Security Documents, and each other security agreement, mortgage (if any), guaranty or other instrument or document executed and delivered pursuant to Section 5.15 or any other provision hereof or any other Loan Document, to secure any of the Obligations and the Canadian Liabilities.

**"Settlement Date"** has the meaning provided in Section 2.7(b).

**"Shrink"** means Inventory which has been lost, misplaced, stolen, or is otherwise unaccounted for.

**"Solvent"** means, with respect to any Person on a particular date, that on such date (a) at fair valuations, all of the properties and assets of such Person are greater than the sum of the debts, including contingent liabilities, of such Person, (b) the present fair saleable value of the properties and assets of such Person is not less than the amount that would be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person is able to realize upon its properties and assets and pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, (d) such Person does not intend to, and does not believe that it will, incur debts beyond such Person's ability to pay as such debts mature, and (e) such Person is not engaged in a business or a transaction, and is not about to engage in a business or transaction, for which such Person's properties and assets would constitute unreasonably small capital after giving due consideration to the prevailing practices in the industry in which such Person is engaged.

**"Standby Letter of Credit"** means any Letter of Credit other than a Commercial Letter of Credit and that (a) is used in lieu or in support of performance guaranties or performance, surety or similar bonds (excluding appeal bonds) arising in the ordinary course of business, (b) is used in lieu or in support of stay or appeal bonds, or (c) supports the payment of insurance premiums for reasonably necessary insurance carried by any of the Borrowers.

"**Stated Amount"** means at any time the maximum amount for which a Letter of Credit may be honored.

"**Statutory Reserve Rate"** means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. LIBO Rate Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

**"Subsidiary"** means, with respect to any Person (the **"parent"**) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation,

limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power for the election of directors or other members of its governing body (other than securities or ownership interests having such power only upon satisfaction of a contingency) or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled by the parent and/or one or more Subsidiaries of the parent. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Lead Borrower.

"**Substantial Liquidation"** shall mean either (a) the Liquidation of substantially all of the Collateral, or (b) the sale or other disposition of substantially all of the Collateral by the Credit Parties.

**"Swingline Lender"** means Bank of America, in its capacity as lender of Swingline Loans hereunder.

**"Swingline Loan"** shall mean a Loan made by the Swingline Lender to the Domestic Borrowers pursuant to Section 2.5 hereof.

"**Swingline Note"** means a promissory note of the Domestic Borrowers substantially in the form of Exhibit B-3, payable to the Swingline Lender if requested by the Swingline Lender, evidencing the Swingline Loans.

"**Swingline Sublimit"** means an amount equal to the lesser of (a) $40,000,000 and (b) the Total Commitments. The Swingline Sublimit is part of, and not in addition to, the Total Commitments.

**"Synthetic Lease"** means any lease or other agreement for the use or possession of property creating obligations which do not appear as Indebtedness on the balance sheet of the lessee thereunder but which, upon the insolvency or bankruptcy of such Person, would be characterized as Indebtedness of such lessee without regard to the accounting treatment.

**"Taxes"** means any and all current or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority, including any interest or penalties thereon and any additions thereto.

**"Termination Date"** shall mean the earliest to occur of (i) the Maturity Date, (ii) the date on which the maturity of the Loans are accelerated and the Commitments are terminated in accordance with Section 7.1, or (iii) the date of the occurrence of any Event of Default pursuant to Section 7.1(j) or 7.1(k) or (iv) the termination of the Commitments in accordance with the provisions of Section 2.15 hereof.

"**Termination Event"** shall mean (a) the whole or partial withdrawal of the Canadian Borrower or any Canadian Subsidiary from a Canadian Pension Plan during a plan year; or (b) the filing of a notice to terminate in whole or in part a Canadian Pension Plan; or (c) the institution of proceedings by any Governmental Authority to terminate in whole or in part or have a trustee appointed to administer a Canadian Pension Plan.

**"Total Commitments"** shall mean, at any time, the sum of the Commitments at such time. As of the First Amendment Effective Date, the Total Commitments aggregate ~~$300,000,000.~~405,000,000.

" **Total Outstandings"** shall mean the sum of the Canadian Credit Extensions ~~and~~, the Domestic Credit Extensions and the Tranche A-1 Loans.

**"Trademark Security Agreement"** shall mean the Trademark Security Agreement dated as of the Closing Date and executed and delivered by certain of the Domestic Borrowers to the Collateral Agent for the benefit of the Secured Parties, as amended and in effect on the Effective Date.

"**Tranche A-1 Availability"** means, as of any date of determination thereof, the result, if a positive number, of:

(a) the Tranche A-1 Loan Cap

minus

(b) the Tranche A-1 Loans on such date.

**"Tranche A-1 Borrowing Base"** means, at any time of calculation, an amount equal to:

(a) the product of (i) the Tranche A-1 Inventory Advance Rate multiplied by (ii) the Appraised Value of Eligible Inventory of the Domestic Borrowers multiplied by (iii) the Cost of Eligible Inventory of the Domestic Borrowers, minus (B) Inventory Reserves related to Eligible Inventory of the Domestic Borrowers;

plus

(b) the product of (i) the Tranche A-1 Wholesale Receivables Advance Rate multiplied by (ii)(A) the then Eligible Wholesale Receivables of the Domestic Borrowers (other than Eligible Wholesale Receivables consisting of Lids Team Sports Receivables of the Domestic Borrowers), minus (B) Account Reserves related to such Eligible Wholesale Receivables of the Domestic Borrowers;

plus

(c) the product of (i) five percent (5%) multiplied by (ii)(A) the then Eligible Credit Card and Debit Card Receivables of the Domestic Borrowers, minus (B) Account Reserves related to Eligible Credit Card and Debit Card Receivables of the Domestic Borrowers.

"**Tranche A-1 Commitments"** means, as to each Tranche A-1 Lender, its obligation to make Tranche A-1 Loans to the Domestic Borrowers pursuant to Section 2.1, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Tranche A-1 Lender's name on Schedule 1.1 or in the Assignment and Acceptance pursuant to which such Tranche A-1 Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

**"Tranche A-1 Commitment Fee"** has the meaning provided therefor in Section 2.12(a).

"**Tranche A-1 Commitment Fee Rate"** means (a) if the average daily Tranche A-1 Loans for the preceding Fiscal Quarter are greater than or equal to 50% of the Tranche A-1 Commitments, 0.375% per annum, or (ii) if the average daily Tranche A-1 Loans for the preceding Fiscal Quarter are less than 50% of the Tranche A-1 Commitments, 0.50% per annum.

"**Tranche A-1 Commitment Percentage"** means the Commitment Percentages of the Tranche A-1 Lenders with respect to the Tranche A-1 Commitments.

"**Tranche A-1 Inventory Advance Rate"** means, (i) from the First Amendment Effective Date through and including June 23, 2012, ten percent (10%), (ii) from June 24, 2012 through and including June 23, 2013, seven and one-half percent (7.5%), and (iii) thereafter, five percent (5%).

"**Tranche A-1 Lenders"** means the Lenders having Tranche A-1 Commitments from time to time or at any time.

"**Tranche A-1 LIBO Loans"** shall mean any Tranche A-1 Loan bearing interest at a rate determined by reference to the Adjusted LIBO Rate in accordance with the provisions of Section 2.3.

"**Tranche A-1 Loans"** means any Loans at any time made by a Tranche A-1 Lender pursuant to Section 2.3.

"**Tranche A-1 Loan Cap"** means, at any time of determination, the lesser of (a) the Tranche A-1 Commitments and (b) the Tranche A-1 Borrowing Base.

"**Tranche A-1 Note"** means a promissory note made by the Domestic Borrowers in favor of a Tranche A-1 Lender evidencing Tranche A-1 Loans made by such Tranche A-1 Lender, substantially in the form of Exhibit B-4.

"**Tranche A-1 Wholesale Receivables Advance Rate"** means, (i) from the First Amendment Effective Date through and including June 23, 2012, five percent (5%), (ii) from June 24, 2012 through and including June 23, 2013, two and one-half percent (2.5%), and (iii) thereafter, 0%.

**"Type"**, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate, the BA Rate, the Domestic Prime Rate, the Canadian Prime Rate or the U.S. Index Rate.

**"UCC"** shall mean the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that if a term is defined in Article 9 of the Uniform Commercial Code differently than in another Article thereof, the term shall have the meaning set forth in Article 9; provided further that, if by reason of mandatory provisions of law, perfection, or the effect of perfection or non-perfection, of a security interest in any Collateral or the availability of any remedy hereunder is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, "Uniform Commercial Code" means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection or availability of such remedy, as the case may be.

"**UK Acquisition"** means Genesco (UK) Limited, a company registered in England and Wales.

"**UK LP"** means Genesco Scot LP, a Scottish limited partnership.

"**Unintentional Overadvance"** means an Overadvance which, to the Administrative Agent's knowledge, did not constitute an Overadvance when made but which has become an Overadvance resulting from changed circumstances beyond the control of the Agents and the Lenders, including, without limitation, a reduction in the Appraised Value of property or assets included in the Domestic Borrowing Base, the Tranche A-1 Borrowing Base or the Canadian Borrowing Base or a misrepresentation by the Credit Parties.

**"Unused Commitment"** shall mean, on any day, (a) the then Total Commitments (other than the Tranche A-1 Commitments) minus (b) the sum of (i) the principal amount of Loans then outstanding

(including, but only with respect to the calculation of the Commitment Fee due to the Lender that is the Swingline Lender, the principal amount of Swingline Loans then outstanding), and (ii) the then Letter of Credit Outstandings.

**"Unused Tranche A-1 Commitment"**shall mean, on any day, (a) the then Tranche A-1 Commitments minus (b) the principal amount of Tranche A-1 Loans then outstanding.

"**U.S. Index Rate"** means for any day a fluctuating rate per annum equal to the highest of (a) the Bank of America-Canada Branch dollar base rate; (b) the Federal Funds Effective Rate for such day, plus 0.50%; and (c) the LIBO Rate for a 30 day interest period as determined on such day, plus 1.0%.

"**U.S. Index Rate Loan"** means a Canadian Loan made in Dollars that bears interest based on the U.S. Index Rate.

**"Voting Stock"** means, with respect to any corporation, the outstanding stock of all classes (or equivalent interests) which ordinarily, in the absence of contingencies, entitles holders thereof to vote for the election of directors (or Persons performing similar functions) of such corporation, even though the right so to vote has been suspended by the happening of such contingency.

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

**1.2 Terms Generally; Interpretation**.

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns or, for natural persons, such Person's successors, heirs, executors, administrators and other legal representatives, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Sections, Exhibits and Schedules shall be construed to refer to Sections of, and Exhibits and Schedules to, this Agreement, (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights, (f) all financial statements and other financial information provided by the Borrowers and each of the other Credit Parties to the Administrative Agent or any Lender shall be provided with reference to Dollars, and (g) this Agreement and the other Loan Documents are the result of negotiation among, and have been reviewed by counsel to, among others, the Credit Parties and the Agents and are the product of discussions and negotiations among all parties. Accordingly, this Agreement and the other Loan Documents are not intended to be construed against the Agents or any of the Lenders merely on account of any such Agent's or any Lender's involvement in the preparation of such documents.

(b) For purposes of any Collateral located in the Province of Québec 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 Québec or

a court or tribunal exercising jurisdiction in the Province of Québec, (q) "personal property" shall be deemed to include "movable property", (r) "real property" shall be deemed to include "immovable property", (s)"tangible property" shall be deemed to include "corporeal property", (t)"intangible property" shall be deemed to include "incorporeal property", (u) "security interest" and "mortgage" shall be deemed to include a "hypothec", (v) all references to filing, registering or recording under the UCC or the PPSA shall be deemed to include publication under the Civil Code of Québec, (w) all references to "perfection" of or "perfected" Liens shall be deemed to include a reference to the "opposability" of such Liens to third parties, (x) any "right of offset", "right of setoff" or similar expression shall be deemed to include a "right of compensation", (y) "goods" shall be deemed to include "corporeal movable property" other than chattel paper, documents of title, instruments, money and securities, and (z) an "agent" shall be deemed to include a "mandatary".

**1.3 Accounting Terms**. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect on the Effective Date, on a basis consistent with the financial statements referred to in Section 4.1(g) of this Agreement, provided that, if the Borrowers request an amendment to any provision hereof to reflect the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrowers that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such provision shall have been amended in accordance herewith. Notwithstanding the foregoing, any obligations of a Person under a lease (whether existing now or entered into in the future) that is not (or would not be) a Capital Lease Obligation under GAAP as in effect on the Effective Date, shall not be treated as a Capital Lease Obligation solely as a result of the adoption of changes in GAAP outlined by the Financial Accounting Standards Board in its press release dated March 19, 2009.

**1.4 Rounding.** Any financial ratios required to be maintained by the Borrowers pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

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

**2. AMOUNT AND TERMS OF CREDIT**

**2.1 Commitments of the Lenders.**

(a) Each Lender severally and not jointly with any other Lender, agrees, upon the terms and subject to the conditions herein set forth, to extend credit to the Borrowers on a revolving basis, in the form of Revolving Loans and, with respect to the Lenders which are not Tranche A-1 Lenders,

participations in Letters of Credit and Swingline Loans and in an amount not to exceed the lesser of such Lender's Commitment or such Lender's Commitment Percentage of the lesser of (x) the Combined Borrowing Base or (y) the Total Commitments, subject to the following limitations:

(i) The aggregate outstanding amount of the Credit Extensions plus the Tranche A-1 Loans shall not at any time exceed Loan Cap.

(ii) The aggregate outstanding amount of the Domestic Credit Extensions shall not at any time exceed the Domestic Loan Cap.

(iii) The aggregate outstanding amount of the Canadian Credit Extensions shall not at any time exceed the Canadian Loan Cap.

(iv) The Loans made to and the Letters of Credit issued on behalf of, the Canadian Borrower by the Canadian Lenders may be either in $ or CD$, at the option of the Canadian Borrower, as herein set forth.

(v) No Lender shall be obligated to issue any Letter of Credit, and Letters of Credit shall be available from the Issuing Bank, subject to the ratable participation of all Lenders, as set forth in Section 2.6. The aggregate Domestic Letter of Credit Outstandings shall not at any time exceed the Domestic Letter of Credit Sublimit, and the aggregate Canadian Letter of Credit Outstandings shall not at any time exceed the Canadian Letter of Credit Sublimit.

(vi) Subject to all of the other provisions of this Agreement, Revolving Loans that are repaid may be reborrowed prior to the Termination Date. No new Credit Extension or Tranche A-1 Loan, however, shall be made to the Borrowers after the Termination Date.

(vii) The aggregate outstanding amount of the Tranche A-1 Loans shall not exceed the Tranche A-1 Loan Cap.

(viii) The Lead Borrower shall not request, and the Domestic Lenders shall be under no obligation to fund, any Domestic Loans unless the Domestic Borrowers have borrowed the full amount of the lesser of the Tranche A-1 Commitments or the Tranche A-1 Borrowing Base (to the extent that such Tranche A-1 Commitments have not been terminated).

(b) Each Borrowing by the Domestic Borrowers of Revolving Loans (other than Swingline Loans) shall be made by the Domestic Lenders pro rata in accordance with their Domestic Commitments or Tranche A-1 Commitments, as applicable, and each Borrowing by the Canadian Borrower of Revolving Loans (other than Swingline Loans) shall be made by the Canadian Lenders pro rata in accordance with their Canadian Commitments. The failure of any Domestic Lender or Canadian Lender, as applicable, to make any Loan to the Domestic Borrowers or the Canadian Borrower, as applicable, shall neither relieve any other Domestic Lender or Canadian Lender, as applicable, of its obligation to fund its Loan to the Domestic Borrowers or the Canadian Borrower, as applicable, in accordance with the provisions of this Agreement nor increase the obligation of any such other Domestic Lender or Canadian Lender, as applicable.

(c) ~~So~~On the First Amendment Effective Date, so long as no Default or Event of Default exists or would arise therefrom, the Lead Borrower shall have the right to request an increase of the Domestic Commitments by an amount of no more than $75,000,000, which Domestic Commitments shall, except as set forth below, be on the same terms and conditions as set forth herein with respect to the existing Domestic Commitments. After the First Amendment Effective Date, so long as no Default or Event of

Default exists or would arise therefrom, the Lead Borrower shall have the right at any time, and from time to time, to request an increase of the Total Commitments (other than the Tranche A-1 Commitments) by an additional amount of no more than $~~150,000,000~~75,000,000 (or, if the Domestic Commitments have been reduced pursuant to Section 2.15(e) hereof, an amount equal to $75,000,000 plus the amount of such reduction, but in any event in an amount not to exceed $150,000,000 in the aggregate) (but in no event shall the Canadian Commitments ever exceed $25,000,000 or the Domestic Commitments ever exceed $450,000,000 or the Total Commitments ever exceed $~~450,000,000~~480,000,000), which Commitments shall, except as set forth below, be on the same terms and conditions as set forth herein with respect to the existing Commitments. At the time of sending such notice after the First Amendment Effective Date, the Lead Borrower (in consultation with the Administrative Agent) shall specify the time period within which each 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 Lenders). Any such request shall be first made to all existing Lenders (other than Tranche A-1 Lenders) on a pro rata basis, provided that only the Canadian Lenders shall be permitted to participate in any increase of the Canadian Commitments. To the extent that any existing Lenders decline to increase their Commitments, or decline to increase their Commitments to the amount requested by the Lead Borrower, the Administrative Agent will promptly notify the Lead Arranger of such facts. Thereafter, the Lead Arranger, in consultation with the Lead Borrower, will use its reasonable efforts to arrange for other Persons to become a Lender hereunder and to issue Commitments in an amount equal to the amount of the increase in the Total Commitments requested by the Lead Borrower and not accepted by the existing Lenders (each such increase by either means, a "**Commitment Increase**," and each Person issuing, or Lender increasing, its Commitment, an "**Additional Commitment Lender**"), *provided, however,* that (i) no existing Lender shall be obligated to provide a Commitment Increase as a result of any such request by the Lead Borrower, (ii) any Lender that does not affirmatively agree to increase its Commitment shall be deemed to have declined to increase its Commitment and (iii) any Additional Commitment Lender which is not an existing Lender shall be subject to the approval of the Administrative Agent, the Issuing Bank and the Lead Borrower (which approval shall not be unreasonably withheld). Each Commitment Increase with respect to the Domestic Commitments shall be in a minimum amount of $25,000,000 and integral multiples of $5,000,000 above such amount and with respect to the Canadian Commitments shall be in a minimum amount of $5,000,000 and integral multiples of $1,000,000 above such amount and the Lead Borrower may make no more than four (4) requests for a Commitment Increase. No Commitment Increase shall become effective unless and until each of the following conditions have been satisfied:

(i) The Lead Borrower shall deliver to the Administrative Agent a certificate as of the Commitment Increase Date signed by a Financial Officer of the Lead Borrower and/or the Canadian Borrower, as applicable (A) certifying and attaching the resolutions adopted by the Borrowers approving or consenting to such increase, and (B) certifying that, before and after giving effect to such increase, (1) no Default or Event of Default exists, and the representations and warranties contained in Article 3 and the other Loan Documents are true and correct on and as of the Commitment Increase Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date.

(ii) The Borrowers, the Administrative Agent, and any Additional Commitment Lender that is not an existing Lender shall have executed and delivered a joinder to the Loan Documents in such form as the Administrative Agent shall reasonably require;

(iii) The Borrowers shall have paid such fees and other compensation to the Additional Commitment Lenders as the Lead Borrower and such Additional Commitment Lenders shall agree;

(iv) The Borrowers shall have paid such arrangement fees in such amounts, if any, to the Lead Arranger as the Borrowers and the Lead Arranger may agree;

(v) If required by the Additional Commitment Lenders, the Borrowers shall deliver to the Administrative Agent and the Lenders an opinion or opinions, in form and substance reasonably satisfactory to the Administrative Agent, from counsel to the Borrowers reasonably satisfactory to the Administrative Agent and dated such date;

(vi) A Note (to the extent requested by a Lender) will be issued at the Borrowers' expense, to each such Additional Commitment Lender, to be in conformity with requirements of Section 2.8 hereof (with appropriate modification) to the extent necessary to reflect the new Commitment of each Additional Commitment Lender; and

(vii) The Borrowers and the Additional Commitment Lenders shall have delivered such other instruments, documents and agreements as the Administrative Agent may reasonably have requested.

(d) If the Total Commitments are increased in accordance with this Section, the Administrative Agent, in consultation with the Lead Borrower, shall determine the effective date (the **"Commitment Increase Date")** and the final allocation of such increase. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Commitment Increase, and at such time (i) the Commitments under, and for all purposes of, this Agreement shall be increased by the aggregate amount of such Commitment Increases, (ii) Schedule 1.1 shall be deemed modified, without further action, to reflect the revised Commitments and Commitment Percentages of the Lenders, and (iii) this Agreement shall be deemed amended, without further action, to the extent necessary to reflect such increased Commitments.

(e) In connection with Commitment Increases hereunder, the Lenders and the Borrowers agree that, notwithstanding anything to the contrary in this Agreement, (i) the Borrowers shall, in coordination with the Administrative Agent, (x) repay outstanding Revolving Loans of certain Lenders, and obtain Revolving Loans from certain other Lenders (including the Additional Commitment Lenders), or (y) take such other actions as reasonably may be required by the Administrative Agent, in each case to the extent necessary so that all of the Lenders effectively participate in each of the outstanding Revolving Loans pro rata on the basis of their Commitment Percentages (determined after giving effect to any increase in the Commitments pursuant to this Section 2.1), and (ii) the Borrowers shall pay to the Lenders any costs of the type referred to in Section 2.19(b) in connection with any repayment and/or Revolving Loans required pursuant to preceding clause (i). Without limiting the obligations of the Borrowers provided for in this Section 2.1, the Administrative Agent and the Lenders agree that they will use their best efforts to attempt to minimize the costs of the type referred to in Section 2.19(b) which the Borrowers would otherwise occur in connection with the implementation of an increase in the Commitments.

**2.2 Reserves; Changes to Reserves.**

(a) The initial Inventory Reserves, Account Reserves and Availability Reserves as of the Effective Date are the following:

(i) Shrink (an Inventory Reserve): An amount equal to the one month accrual for Shrink reflected in the Borrowers' books and records from time to time.

(ii) Defective Inventory (an Inventory Reserve) (without duplication for damaged Inventory which is not deemed "eligible" for inclusion within the calculation of the Domestic Borrowing Base, Tranche A-1 Borrowing Base or Canadian Borrowing Base, as

applicable): An amount equal to the amount of defective goods reflected in the Borrowers' books and records from time to time.

(iii) Taxes (an Availability Reserve): An amount equal to taxes (whether assessed or estimated) and other governmental charges, including, without limitation, ad valorem and personal property taxes, provincial sales taxes and GST and HST taxes, which would have a Lien senior to the Liens of the Collateral Agent or the Canadian Agent, as applicable.

(iv) Customer Credit Liabilities (an Availability Reserve): An amount equal to 50% of the amount of gift certificates, gift cards, amounts due to customers, merchandise credits, and "passport club" liability reflected in the Borrowers' books and records from time to time.

(v) Rent (an Availability Reserve): An amount equal to two month's gross cash rent for each location in the States of Pennsylvania, Virginia, Washington and any other state or province which provides a lien for landlords which may have priority over the Collateral Agent's Lien or Canadian Agent's Lien, as applicable (except for those locations for which the Agents have received a landlord's waiver satisfactory in form to the Agents).

(vi) WEPPA (an Availability Reserve): An amount equal to $278,000 for amounts due to employees and protected under the *Wage Earner Protection Program Act* (Canada) which have priority over the Canadian Agent's Lien.

(b) The Administrative Agent shall have the right, at any time and from time to time after the Closing Date in its Permitted Discretion to establish, modify or eliminate Reserves upon two Business Days prior notice to the Borrowers, (during which period the Administrative Agent shall be available to discuss any such proposed Reserve with the Borrowers); provided that no such prior notice shall be required for (1) changes to any Reserves resulting solely by virtue of mathematical calculations of the amount of the Reserve in accordance with the methodology of calculation previously utilized (such as, but not limited to, rent and Customer Credit Liabilities), or (2) changes to Reserves or establishment of additional Reserves if a Material Adverse Effect has occurred or it would be reasonably likely that a Material Adverse Effect to the Lenders would occur were such Reserve not changed or established prior to the expiration of such two (2) Business Day period, or (3) any changes to Reserves during the continuance of any Event of Default.

**2.3 Making of Loans.**

(a) Except as set forth in Sections 2.16 and 2.24, (i) ~~Domestic~~ Loans (other than Swingline Loans) by the Domestic Lenders to the Domestic Borrowers shall be either Domestic Prime Rate Loans ~~or~~, Domestic Tranche A-1 Prime Rate Loans, LIBO Loans or Tranche A-1 LIBO Loans as the Lead Borrower on behalf of the Domestic Borrowers may request subject to and in accordance with this Section 2.3, (ii) all Swingline Loans shall be only Domestic Prime Rate Loans, and (iii) Canadian Loans by the Canadian Lenders to the Canadian Borrower shall be either Canadian Prime Rate Loans or BA Equivalent Loans (if made in Canadian Dollars), or LIBO Loans or U.S. Index Rate Loans (if made in Dollars). All Loans made pursuant to the same Borrowing shall, unless otherwise specifically provided herein, be Loans of the same Type. Each Lender may fulfill its Commitment with respect to any Loan by causing any lending office of such Lender to make such Loan; but any such use of a lending office shall not affect the obligation of the Borrowers to repay such Loan in accordance with the terms of the applicable Note. Each Lender shall, subject to its overall policy considerations, use reasonable efforts (but shall not be obligated) to select a lending office which will not result in the payment of increased costs by the Borrowers pursuant to Section 2.23. Subject to the other provisions of this Section 2.3 and the provisions of Section 2.24, Borrowings of Loans of more than one Type may be incurred at the same time, but no more than ten (10)

Borrowings of LIBO Loans, Tranche A-1 LIBO Loans and BA Equivalent Loans may be outstanding at any time.

(b) The Lead Borrower or Canadian Borrower, as applicable, shall give the Administrative Agent or the Canadian Agent, as applicable, three (3) Business Days' prior telephonic notice (thereafter confirmed in writing) of each LIBO Borrowing and BA Equivalent Loan Borrowing and prior telephonic notice on the same Business Day of each Borrowing of Domestic Prime Rate Loans, Domestic Tranche A-1 Prime Rate Loans, Canadian Prime Rate Loans, or U.S. Index Rate Loans, as applicable. Any such notice, to be effective, must be received by the Administrative Agent or the Canadian Agent, as applicable, not later than 11:00 a.m., New York time, on the third Business Day in the case of LIBO Loans, Tranche A-1 LIBO Loans and BA Equivalent Loans prior to, and, in the case of Domestic Prime Rate Loans, Domestic Tranche A-1 Prime Rate Loans, Canadian Prime Rate Loans, or U.S. Index Rate Loans, by 11:00 a.m. on the same Business Day of, the date on which such Borrowing is to be made. Such notice shall be irrevocable and shall specify the amount of the proposed Borrowing (which shall be in an integral multiple of $100,000, but not less than $1,000,000 in the case of LIBO Loans and Tranche A-1 LIBO Loans and CD$100,000, but not less than CD$1,000,000 in the case of BA Equivalent Loans) and the date thereof (which shall be a Business Day) and shall contain disbursement instructions. Such notice shall specify whether the Borrowing then being requested is to be a Borrowing of Domestic Prime Rate Loans, Domestic Tranche A-1 Prime Rate Loans, Canadian Prime Rate Loans, U.S. Index Rate Loans, LIBO Loans, Tranche A-1 LIBO Loans or BA Equivalent Loans, and, if LIBO Loans, Tranche A-1 LIBO Loans or BA Equivalent Loans, the Interest Period with respect thereto. If no election of Interest Period is specified in any such notice for a Borrowing of LIBO Loans, Tranche A-1 LIBO Loans or BA Equivalent Loans, such notice shall be deemed a request for an Interest Period of one month. If no election is made as to the Type of Loan, such notice shall be deemed a request for a Borrowing of Domestic Prime Rate Loans, Domestic Tranche A-1 Prime Rate Loans or Canadian Prime Rate Loans, as applicable. The Administrative Agent or the Canadian Agent, as applicable, shall promptly notify each Lender of its proportionate share of such Borrowing, the date of such Borrowing, the Type of Borrowing being requested and the Interest Period or Interest Periods applicable thereto, as appropriate. On the borrowing date specified in such notice, each Lender shall make its share of the Borrowing available at the Administrative Agent's Office or the Canadian Agent's Office, as applicable, no later than 2:00 p.m., New York time, in immediately available funds. Unless the Administrative Agent or the Canadian Agent, as applicable, shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent or the Canadian Agent, as applicable, such Lender's share of such Borrowing, the Administrative Agent or the Canadian Agent, as applicable, may assume that such Lender has made such share available on such date in accordance with this Section and may, in reliance upon such assumption, make available to the applicable Borrowers a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent or the Canadian Agent, as applicable, then the applicable Lender and the Borrowers severally agree to pay to the Administrative Agent or the Canadian Agent, as applicable, forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrowers to but excluding the date of payment to the Administrative Agent or the Canadian Agent, as applicable, at (i) in the case of such Lender, the Federal Funds Effective Rate or (ii) in the case of the Borrowers, the interest rate applicable to Domestic Prime Rate Loans, Domestic Tranche A-1 Prime Rate Loans or Canadian Prime Rate Loans, as applicable. If such Lender pays such amount to the Administrative Agent or the Canadian Agent, as applicable, then such amount shall constitute such Lender's Loan included in such Borrowing. Upon receipt of the funds made available by the Lenders to fund any Borrowing hereunder, the Administrative Agent or the Canadian Agent, as applicable, shall disburse such funds in the manner specified in the notice of borrowing delivered by the Lead Borrower or the Canadian Borrower, as applicable, and shall use commercially reasonable efforts to make the funds so received from the Lenders available to the Domestic Borrowers or the Canadian Borrower, as applicable, no later than 3:00 p.m., New York time.

(c) Notwithstanding anything to the contrary herein contained, all Loans to the Domestic Borrowers shall be Tranche A-1 Loans until the outstanding principal amount of such Tranche A-1 Loans equal the lesser of the Tranche A-1 Borrowing Base or the then Tranche A-1 Commitments. If any Tranche A-1 Loan is prepaid in part pursuant to Section 2.19(b), any Loans to the Domestic Borrowers thereafter requested shall be Tranche A-1 Loans until the maximum principal amount of Tranche A-1 Loans outstanding equals the lesser of the Tranche A-1 Borrowing Base or Tranche A-1 Commitments.

(d) ~~(c)~~The Administrative Agent, without the request of the Lead Borrower or the Canadian Borrower, may advance any interest, fee, service charge, or other payment to which any Agent or their Affiliates or any Lender is entitled from any Borrower pursuant hereto or any other Loan Document and may charge the same to the Loan Account notwithstanding that an Overadvance may result thereby; provided that in no event shall the Administrative Agent make an Overadvance, if after giving effect thereto, the principal amount of the Credit Extensions plus the Tranche A-1 Loans (including any Overadvance or proposed Overadvance) would exceed the Total Commitments. The Administrative Agent shall notify the Lead Borrower of any such advance or charge no later than one Business Day prior to the making thereof. Such action on the part of the Administrative Agent shall not constitute a waiver of the Administrative Agent's or the Canadian Agent's, as applicable, rights and each Borrower's obligations under Section 2.3(a). Any amount which is added to the principal balance of the Loan Account as provided in this Section 2.3(c) shall bear interest at the interest rate then and thereafter applicable to Domestic Prime Rate Loans, Domestic Tranche A-1 Prime Rate Loans or Canadian Prime Rate Loans, as applicable.

**2.4 Overadvances.** The Agents and the Lenders have no obligation to make any Loan or to provide any Letter of Credit if an Overadvance would result. The Administrative Agent may, in its discretion, make Permitted Overadvances without the consent of the Lenders and each Lender shall be bound thereby. Any Permitted Overadvances may constitute Swingline Loans. The making of any Permitted Overadvance is for the benefit of the Borrowers; such Permitted Overadvances constitute Revolving Loans and Obligations. The making of any such Permitted Overadvances on any one occasion shall not obligate the Administrative Agent or any Lender to make or permit any Permitted Overadvances on any other occasion or to permit such Permitted Overadvances to remain outstanding. Neither the Administrative Agent nor the Canadian Agent shall have any liability for, and no Credit Party shall have the right to, or shall, bring any claim of any kind whatsoever against the Administrative Agent or the Canadian Agent with respect to Unintentional Overadvances regardless of the amount of any such Overadvance(s).

**2.5 Swingline Loans.**

(a) The Swingline Lender is authorized by the Lenders and shall, subject to the provisions of this Section, make Swingline Loans up to the Swingline Sublimit in the aggregate outstanding at any time consisting of only Domestic Prime Rate Loans, upon a notice of Borrowing (which may be telephonic) received by the Administrative Agent and the Swingline Lender (which notice, at the Swingline Lender's discretion, may be submitted prior to 1:00 p.m., New York time, on the Business Day on which such Swingline Loan is requested) provided further that the Swingline Lender shall not be obligated to make any Swingline Loan at any time when any Lender is at such time a Deteriorating Lender hereunder, unless the Swingline Lender has entered into satisfactory arrangements with the Borrowers or such Lender to eliminate the Swingline Lender's risk with respect to such Lender. Swingline Loans shall be subject to periodic settlement with the Lenders under Section 2.7 below; provided, however, that during the months of November and December of each calendar year the Administrative Agent shall settle Swingline Loans at such times as it shall determine, in its discretion.

(b) The Swingline Lender shall, at the Lead Borrower's request, make Swingline Loans (A) in reliance upon the Borrowers' actual or deemed representations under Section 4.2 that the applicable conditions for borrowing are satisfied and (B) for Permitted Overadvances. If the conditions for

borrowing under Section 4.2 cannot be fulfilled, the Lead Borrower shall give immediate notice thereof to the Administrative Agent and the Swingline Lender (a **"Noncompliance Notice")** prior to requesting further Swingline Loans, and the Administrative Agent shall promptly provide each Lender with a copy of the Noncompliance Notice. If the conditions for borrowing under Section 4.2 cannot be fulfilled, the Required Lenders may direct the Swingline Lender to, and the Swingline Lender thereupon shall, cease making Swingline Loans (other than Permitted Overadvances) until such conditions can be satisfied or are waived in accordance with Section 9.3. Unless the Required Lenders otherwise direct the Swingline Lender, the Swingline Lender may, but is not obligated to, continue to make Swingline Loans beginning one Business Day after the Noncompliance Notice is furnished to the Lenders. Notwithstanding the foregoing, no Swingline Loans shall be made pursuant to this subsection (b) (other than Permitted Overadvances) if the aggregate Credit Extensions plus the Tranche A-1 Loans would exceed the limitations set forth in Section 2.1(a)(i) or (ii).

**2.6 Letters of Credit.**

(a) Upon the terms and subject to the conditions herein set forth, the Lead Borrower on behalf of the Domestic Borrowers, or the Canadian Borrower, may request the Issuing Bank, at any time and from time to time after the date hereof and prior to the Termination Date, to issue, and subject to the terms and conditions contained herein, the Issuing Bank shall issue, for the account of the relevant Borrower, one or more Letters of Credit; provided that no Letter of Credit shall be issued if after giving effect to such issuance (i) the aggregate Domestic Letter of Credit Outstandings would exceed the Domestic Letter of Credit Sublimit, (ii) the aggregate Canadian Letter of Credit Outstandings would exceed the Canadian Letter of Credit Sublimit, or (iii) the aggregate Credit Extensions plus the Tranche A-1 Loans would exceed the limitations set forth in Section 2.1(a)(i); and provided, further, that no Letter of Credit shall be issued if the Issuing Bank shall have received notice from the Administrative Agent, the Canadian Agent or the Required Lenders that the conditions to such issuance have not been met.

(b) The Issuing Bank shall not 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 the Issuing Bank from issuing such Letter of Credit, or any Applicable Law or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Bank shall prohibit, or request that the Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Issuing Bank is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon the Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Effective Date and which the Issuing Bank in good faith deems material to it;

(ii) the issuance of such Letter of Credit would violate one or more policies of the Issuing Bank applicable to letters of credit generally (and the Issuing Bank shall furnish prompt notice to the Lead Borrower of any such change in policy);

(iii) such Letter of Credit is to be denominated in a currency other than Dollars or Canadian Dollars; provided that if the Issuing Bank, in its discretion, issues a Letter of Credit denominated in a currency other than Dollars or Canadian Dollars, all reimbursements by the Borrowers of the honoring of any drawing under such Letter of Credit shall be paid in the currency in which such Letter of Credit was denominated;

(iv) such Letter of Credit contains any provisions for automatic reinstatement of the Stated Amount after any drawing thereunder; or

(v) a default of any Lender's obligations to fund under Section 2.3(b) exists or any Lender is at such time a Delinquent Lender or Deteriorating Lender hereunder, unless the Issuing Bank has entered into satisfactory arrangements with the Borrowers or such Lender to eliminate the Issuing Bank's risk with respect to such Lender.

(c) Each Letter of Credit shall expire at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (ii) the date that is five (5) Business Days prior to the Maturity Date, provided that each Letter of Credit may, upon the request of the Lead Borrower, include a provision whereby such Letter of Credit shall be renewed automatically for additional consecutive periods of twelve (12) months or less unless the Issuing Bank which issued such Letter of Credit notifies the beneficiary thereof at least thirty (30) days prior to the then-applicable expiration date that such Letter of Credit will not be renewed (but no Letter of Credit shall expire subsequent to the date that is five (5) Business Days prior to the Maturity Date unless the Borrowers shall have deposited cash into the Cash Collateral Account in an amount equal to 102% of such Letter of Credit).

(d) Drafts drawn under any Letter of Credit shall be reimbursed by the Borrowers in Dollars or Canadian Dollars, as applicable, on the same Business Day of any such payment thereof by the Issuing Bank by paying to the Administrative Agent or Canadian Agent, as applicable, an amount equal to such drawing (together with interest as provided in Section 2.6(e)) not later than 12:00 noon, New York time, on (i) the date that the Lead Borrower shall have received notice of such drawing, if such notice is received prior to 10:00 a.m., New York time, on such date, or (ii) the Business Day immediately following the day that the Lead Borrower receives such notice, if such notice is received after 10:00 a.m., New York time on the day of drawing, provided that the Lead Borrower or the Canadian Borrower, as applicable, may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.3 that such payment be financed with a Revolving Loan consisting of a Domestic Prime Rate Loan or a Swingline Loan, or a Canadian Prime Rate Loan or U.S. Index Rate Loan, as applicable, in an equivalent amount and, to the extent so financed, the applicable Borrowers' obligation to make such payment shall be discharged and replaced by the resulting Domestic Prime Rate Loan or a Swingline Loan, a Canadian Prime Rate Loan or U.S. Index Rate Loan, as applicable. The Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit issued by the Issuing Bank. The Issuing Bank shall promptly notify the Administrative Agent or the Canadian Agent, as applicable, and the Lead Borrower or the Canadian Borrower, as applicable, by telephone (confirmed by telecopy) of such demand for payment and whether the Issuing Bank has made or will make payment thereunder (which payment shall not be made until two (2) Business Days after such notice from the Issuing Bank to the Lead Borrower or the Canadian Borrower, as applicable), provided that any failure to give or delay in giving such notice shall not relieve the Borrowers of their obligation to reimburse the Issuing Bank and the Lenders with respect to any such payment.

(e) If the Issuing Bank shall make any L/C Disbursement, then, unless the Borrowers shall reimburse the Issuing Bank in full on the date such payment is made, the unpaid amount thereof shall bear interest, for each day from and including the date such payment is made to but excluding the date that the Borrowers reimburse the Issuing Bank therefor, at the rate per annum then applicable to Domestic Prime Rate Loans, Canadian Prime Rate Loans or U.S. Index Rate Loans, as applicable, provided that if the Borrowers fail to reimburse the Issuing Bank when such reimbursement is due pursuant to paragraph (c) of this Section, then Section 2.10 shall apply. Interest accrued pursuant to this paragraph shall be for the account of the Issuing Bank, except that interest accrued on and after the date of payment by any Lender

pursuant to paragraph (g) of this Section to reimburse the Issuing Bank shall be for the account of such Lender to the extent of such payment.

(f) Immediately upon the issuance of any Letter of Credit by the Issuing Bank (or the amendment of a Letter of Credit increasing the amount thereof), and without any further action on the part of the Issuing Bank, the Issuing Bank shall be deemed to have sold to each Domestic Lender or Canadian Lender, as applicable, and each such Lender shall be deemed unconditionally and irrevocably to have purchased from the Issuing Bank, without recourse or warranty, an undivided interest and participation, to the extent of such Lender's Domestic Commitment Percentage or Canadian Commitment Percentage, as applicable, in such Letter of Credit, each drawing thereunder and the obligations of the Borrowers under this Agreement and the other Loan Documents with respect thereto. Upon any change in the Commitments pursuant to Section 2.1(c) Section 2.15, and/or 9.6, it is hereby agreed that with respect to all Letter of Credit Outstandings, there shall be an automatic adjustment to the participations hereby created to reflect the new Commitment Percentages of the assigning and assignee Lenders and any new Lenders. Any action taken or omitted by the Issuing Bank under or in connection with a Letter of Credit issued by the Issuing Bank, if taken or omitted in the absence of gross negligence, bad faith or willful misconduct, shall not create for the Issuing Bank any resulting liability to any Lender.

(g) In the event that the Issuing Bank makes any L/C Disbursement and the Borrowers shall not have reimbursed such amount in full to the Issuing Bank pursuant to Section 2.6(d) the Issuing Bank shall promptly notify the Administrative Agent or the Canadian Agent, as applicable, which shall promptly notify each applicable Lender of such failure, and each such Lender shall promptly and unconditionally pay to the Administrative Agent for the account of the Issuing Bank at the Administrative Agent's Office or the Canadian Agent's Office, as applicable, the amount of such Lender's Domestic Commitment Percentage or Canadian Commitment Percentage, as applicable, of such unreimbursed payment in dollars and in same day funds. If the Issuing Bank so notifies the Administrative Agent or the Canadian Agent, as applicable, and the Administrative Agent or the Canadian Agent, as applicable, so notifies the applicable Lenders prior to 11:00 a.m., New York time, on any Business Day, each such Lender shall make available to the Issuing Bank such Lender's Domestic Commitment Percentage or Canadian Commitment Percentage, as applicable, of the amount of such payment on such Business Day in same day funds (or if such notice is received by the applicable Lenders after 11:00 a.m., New York time on the day of receipt, payment shall be made on the immediately following Business Day). If and to the extent any Lender shall not have so made its Domestic Commitment Percentage or Canadian Commitment Percentage, as applicable, of the amount of such payment available to the Issuing Bank, such Lender agrees to pay to the Issuing Bank, forthwith on demand such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Administrative Agent or the Canadian Agent, as applicable, for the account of the Issuing Bank at the Federal Funds Effective Rate or the Bank of Canada Overnight Rate, as applicable. Each Lender agrees to fund its Domestic Commitment Percentage or Canadian Commitment Percentage, as applicable, of such unreimbursed payment notwithstanding a failure to satisfy any applicable lending conditions or the provisions of Sections 2.1 or 2.6, or the occurrence of the Termination Date. The failure of any Lender to make available to the Issuing Bank its Domestic Commitment Percentage or Canadian Commitment Percentage, as applicable, of any payment under any Letter of Credit shall neither relieve any Lender of its obligation hereunder to make available to the Issuing Bank its Domestic Commitment Percentage or Canadian Commitment Percentage, as applicable, of any payment under any Letter of Credit on the date required, as specified above, nor increase the obligation of such other Lender. Whenever any Lender has made payments to the Issuing Bank in respect of any reimbursement obligation in respect of any Letter of Credit, such Lender shall be entitled to share ratably, based on its Domestic Commitment Percentage or Canadian Commitment Percentage, as applicable, in all payments and collections thereafter received on account of such reimbursement obligation.

(h) Whenever any Borrower desires that the Issuing Bank issue a Letter of Credit (or amend, renew or extend an outstanding Letter of Credit), the Lead Borrower or the Canadian Borrower, as applicable, shall give to the Issuing Bank and the Administrative Agent or the Canadian Agent, as applicable, at least two (2) Business Days' prior written (including telegraphic, telex, facsimile, cable or other electronic communication) notice (or such shorter period as may be agreed upon by the Issuing Bank and such Borrower) specifying the date on which the proposed Letter of Credit is to be issued, amended, renewed or extended (which shall be a Business Day), the Stated Amount of the Letter of Credit so requested, the expiration date of such Letter of Credit, the name and address of the beneficiary thereof, and the provisions thereof. If requested by the Issuing Bank, the applicable Borrower shall also submit a letter of credit application on the Issuing Bank's standard form in connection with any request for the issuance, amendment, renewal or extension of a Letter of Credit.

(i) The obligations of the Borrowers to reimburse the Issuing Bank for any L/C Disbursement shall be unconditional and irrevocable and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including, without limitation: (i) any lack of validity or enforceability of any Letter of Credit; (ii) the existence of any claim, setoff, defense or other right which the Borrowers may have at any time against a beneficiary of any Letter of Credit or against the Issuing Bank or any of the Lenders, whether in connection with this Agreement, the transactions contemplated herein or any unrelated transaction; (iii) any draft, demand, certificate or other document presented under any Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; (iv) payment by the Issuing Bank of any Letter of Credit issued by the Issuing Bank against presentation of a demand, draft or certificate or other document which appears on its face to be in order but in fact does not comply with the terms of such Letter of Credit; (v) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrowers' obligations hereunder; or (vi) the fact that any Event of Default shall have occurred and be continuing. None of the Administrative Agent, the Canadian Agent, the Lenders, the Issuing Bank or any of their Affiliates shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Issuing Bank, provided that the foregoing shall not be construed to excuse the Issuing Bank from liability to the Borrowers to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrowers to the extent permitted by Applicable Law) suffered by the Borrowers that are caused by the Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence, bad faith or willful misconduct on the part of the Issuing Bank (as finally determined by a court of competent jurisdiction), the Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented that appear on their face to be in compliance with the terms of a Letter of Credit, the Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(j) If any Event of Default shall occur and be continuing, on the Business Day that the Lead Borrower or the Canadian Borrower, as applicable, receives notice from the Administrative Agent, the Canadian Agent or the Required Lenders demanding the deposit of cash collateral pursuant to this paragraph, the applicable Borrowers shall deposit in the Cash Collateral Account an amount in cash equal

to 102% of the Letter of Credit Outstandings as of such date plus any accrued and unpaid interest thereon. Each such deposit shall be held by the Collateral Agent or the Canadian Agent, as applicable, as collateral for the payment and performance of the Obligations or the Canadian Liabilities, as applicable. The Collateral Agent or the Canadian Agent, as applicable, shall have exclusive dominion and control, including the exclusive right of withdrawal, over such Cash Collateral Account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Collateral Agent at the request of the Lead Borrower or the Canadian Agent at the Canadian Borrower's request, as applicable, and at the Borrowers' risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such Cash Collateral Account shall be applied by the Collateral Agent or the Canadian Agent, as applicable, to reimburse the Issuing Bank for payments on account of drawings under Letters of Credit for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrowers for the applicable Letter of Credit Outstandings at such time or, if the Loans have matured or the maturity of the Loans has been accelerated, be applied to satisfy other Obligations or the Canadian Liabilities.

(k) The Borrowers, the Administrative Agent, the Canadian Agent and the Lenders agree that the Existing Letters of Credit shall be deemed Letters of Credit hereunder as if issued by the Issuing Bank.

(l) The Issuing Bank, on a daily basis (unless otherwise agreed by the Administrative Agent), shall provide to the Administrative Agent an accurate report that details the activity with respect to each Letter of Credit issued by the Issuing Bank (including an indication of the maximum amount then in effect with respect to such Letter of Credit). The Administrative Agent, on a quarterly basis, shall provide the Lenders with a summary of the outstanding Letters of Credit in form and substance customarily provided by the Administrative Agent in transactions of this nature.

(m) Unless otherwise expressly agreed by the Issuing Bank and the Lead Borrower when a Letter of Credit is issued, (i) the rules of the ISP shall apply to each Domestic Letter of Credit or Canadian Letter of Credit that is a 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 Domestic Letter of Credit or Canadian Letter of Credit that is a Commercial Letter of Credit.

**2.7 Settlements Among Lenders.**

(a) The Swingline Lender may (but shall not be obligated to), at any time, but not less than weekly, on behalf of the Domestic Borrowers (which hereby authorize the Swingline Lender to act in their behalf in that regard) request the Administrative Agent to cause the Domestic Lenders to make a Revolving Loan (which shall be a Domestic Prime Rate Loan) in an amount equal to such Domestic Lender's Domestic Commitment Percentage of the outstanding amount of Swingline Loans made in accordance with Section 2.5, which request may be made regardless of whether the conditions set forth in Section 4 have been satisfied. Upon such request, each Domestic Lender shall make available to the Administrative Agent at the Administrative Agent's Office the proceeds of such Revolving Loan for the account of the Swingline Lender. If the Swingline Lender requires a Revolving Loan to be made by the Domestic Lenders and the request therefor is received prior to 12:00 Noon, New York time, on a Business Day, such transfers shall be made in immediately available funds no later than 3:00 p.m., New York time, that day; and, if the request therefor is received after 12:00 Noon, New York time, then such transfers shall be made no later than 3:00 p.m., New York time, on the next Business Day. The obligation of each Domestic Lender to transfer such funds is irrevocable, unconditional and without recourse to or warranty by the Administrative Agent or the Swingline Lender. If and to the extent any Domestic Lender shall not have

so made its transfer to the Administrative Agent, such Domestic Lender agrees to pay to the Administrative Agent, forthwith on demand, such amount together with interest thereon for each day from such date until the date such amount is paid to the Administrative Agent at the Federal Funds Effective Rate.

(b) The amount of each Lender's Domestic Commitment Percentage, Tranche A-1 Commitment Percentage and Canadian Commitment Percentage of outstanding Revolving Loans shall be computed weekly (or more frequently in the Administrative Agent's discretion) and shall be adjusted upward or downward as required to reflect all Revolving Loans and repayments of Revolving Loans received by the Administrative Agent or the Canadian Agent, as applicable, as of 3:00 p.m., New York time, on the Business Day specified by the Administrative Agent (such date, the **"Settlement Date").**

(c) The Administrative Agent shall deliver to each of the Lenders promptly after the Settlement Date a statement of the then current amount of outstanding Revolving Loans for the period. As reflected on such statement: (x) the Administrative Agent or the Canadian Agent, as applicable, shall transfer to each Domestic Lender and Canadian Lender its applicable Domestic Commitment Percentage, Tranche A-1 Commitment Percentage or Canadian Commitment Percentage, as applicable, of repayments, and (y) each Domestic Lender and Canadian Lender shall transfer to the Administrative Agent or the Canadian Agent, as applicable, (as provided below), or the Administrative Agent or the Canadian Agent, as applicable, shall transfer to each Domestic Lender or Canadian Lender, as applicable, such amounts as are necessary to ensure that, after giving effect to all such transfers, the amount of Revolving Loans made by each Lender shall be equal to such Lender's applicable Commitment Percentage of Revolving Loans outstanding as of such Settlement Date. If the summary statement requires transfers to be made to the Administrative Agent or the Canadian Agent, as applicable, by the Domestic Lenders or Canadian Lenders, as applicable, and is received prior to 12:00 Noon, New York time, on a Business Day, such transfers shall be made in immediately available funds no later than 3:00 p.m., New York time, that day; and, if received after 12:00 Noon, New York time, then such transfers shall be made no later than 3:00 p.m., New York time, on the next Business Day. The obligation of each Lender to transfer such funds is irrevocable, unconditional and without recourse to or warranty by the Administrative Agent or the Canadian Agent, as applicable. If and to the extent any Lender shall not have so made its transfer to the Administrative Agent or the Canadian Agent, as applicable, such Lender agrees to pay to the Administrative Agent or the Canadian Agent, as applicable, forthwith on demand, such amount together with interest thereon for each day from such date until the date such amount is paid to the Administrative Agent or the Canadian Agent, as applicable at the Federal Funds Effective Rate in respect of amounts due in Dollars and the Bank of Canada Overnight Rate in respect of amounts due in Canadian Dollars.

**2.8 Notes; Repayment of Loans.**

(a) The Credit Extensions and the Tranche A-1 Loans of each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. Absent manifest error, the accounts or records maintained by the Administrative Agent and each Lender shall be presumed to reflect correctly the amount of the Credit Extensions and the Tranche A-1 Loans made by the Lenders to the Borrowers and the interest and payments thereon. Any failure so to record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Loans made by such Lender (including the Swingline Lender, with respect to Swingline Loans) shall be evidenced by a Note duly executed on behalf of the Borrowers or the Canadian Borrower, as applicable, dated the Effective Date, in substantially the form attached hereto as Exhibit B-1, Exhibit B-~~2~~2, Exhibit B-3 or Exhibit B-~~3~~4, as applicable, payable to the order of each such

Lender (or the Swingline Lender, as applicable) in an aggregate principal amount equal to such Lender's Domestic Commitment or Canadian Commitment, as applicable (or, in the case of the Note evidencing the Swingline Loans, $40,000,000).

(b) Each Lender is hereby authorized by the Borrowers to endorse on a schedule attached to each Note delivered to such Lender (or on a continuation of such schedule attached to such Note and made a part thereof), or otherwise to record in such Lender's internal records, an appropriate notation evidencing the date and amount of each Loan from such Lender, each payment and prepayment of principal of any such Loan, each payment of interest on any such Loan and the other information provided for on such schedule; provided, however, that the failure of any Lender to make such a notation or any error therein shall not affect the obligation of the Borrowers to repay the Loans made by such Lender in accordance with the terms of this Agreement and the applicable Notes.

(c) Upon receipt of an affidavit of a Lender as to the loss, theft, destruction or mutilation of such Lender's Note and an indemnity in form and substance reasonably satisfactory to the Lead Borrower, and upon cancellation of such Note, the Borrowers or the Canadian Borrower, as applicable, will issue, in lieu thereof, a replacement Note in favor of such Lender, in the same principal amount thereof and otherwise of like tenor.

**2.9 Interest on Loans.**

(a) Subject to Section 2.10, (i) each Domestic Prime Rate Loan shall bear interest (computed on the basis of the actual number of days elapsed over a year of 365 (or 366, as the case may be) days), at a rate per annum that shall be equal to the then Base Rate, plus the Applicable Margin for Domestic Prime Rate Loans, ~~and (ii~~(ii) each Domestic Tranche A-1 Prime Rate Loan shall bear interest (computed on the basis of the actual number of days elapsed over a year of 365 (or 366, as the case may be) days), at a rate per annum that shall be equal to the then Base Rate, plus the Applicable Margin for Domestic Tranche A-1 Prime Rate Loans, and (iii) each Canadian Prime Rate Loan shall bear interest (computed on the basis of the actual number of days elapsed over a year of 365 (or 366, as the case may be) days), at a rate per annum that shall be equal to the then Canadian Prime Rate, plus the Applicable Margin for Canadian Prime Rate Loans.

(b) Subject to Section 2.10, (i) each LIBO Loan shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days) at a rate per annum equal, during each Interest Period applicable thereto, to the Adjusted LIBO Rate for such Interest Period, plus the Applicable Margin for LIBO Loans, ~~and (ii~~(ii) each Tranche A-1 LIBO Loan shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days) at a rate per annum equal, during each Interest Period applicable thereto, to the Adjusted LIBO Rate for such Interest Period, plus the Applicable Margin for Tranche A-1 LIBO Loans, and (iii) each BA Equivalent Loan shall bear interest (computed on the basis of the actual number of days elapsed over a year of 365 (or 366, as the case may be) days) at a rate per annum equal, during each Interest Period applicable thereto, to the BA Rate for such Interest Period, plus the Applicable Margin for BA Equivalent Loans.

(c) Subject to Section 2.10, each U.S. Index Rate Loan shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days) at a rate per annum equal to the then U.S. Index Rate, plus the Applicable Margin for U.S. Index Rate Loans.

(d) Accrued interest on all Loans shall be payable in arrears on each Interest Payment Date applicable thereto, on the Termination Date, after the Termination Date on demand and (with respect to LIBO Loans, Tranche A-1 LIBO Loans and BA Equivalent Loans) upon any repayment or prepayment thereof (on the amount prepaid).

For the purposes of the *Interest Act* (Canada) and disclosure thereunder, whenever interest to be paid hereunder is to be calculated on the basis of a year of 360 days or any other period of time that is less than a calendar year, the yearly rate of interest to which the rate determined pursuant to such calculation is equivalent is the rate so determined multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by either 360 or such other period of time, as the case may be. Calculations of interest shall be made using the nominal rate method of calculation, and will not be calculated using the effective rate method of calculation or any other basis that gives effect to the principle of deemed reinvestment of interest.

**2.10 Default Interest.** Effective upon the occurrence of any Event of Default and at all times thereafter while such Event of Default is continuing, at the option of the Administrative Agent or upon the direction of the Required Lenders, interest shall accrue on all outstanding Loans (including Swingline Loans) (after as well as before judgment, as and to the extent permitted by law), and all fees payable under Sections 2.11, 2.12 and 2.13 shall accrue, at a rate per annum equal to the applicable rate (including the Applicable Margin) otherwise in effect from time to time plus 2.00% per annum, and such interest shall be payable on demand.

**2.11 Certain Fees.** The Borrowers shall pay to the Administrative Agent and the Lead Arranger, for the account of the Administrative Agent, the Lead Arranger and the Lenders, the fees set forth in the Fee Letter as and when payment of such fees is due as therein set forth.

**2.12 Unused Commitment Fee.**

(a) The Domestic Borrowers shall pay to the Administrative Agent for the account of the Lenders (other than the Tranche A-1 Lenders) in accordance with their respective Domestic Commitment Percentages, a commitment fee (the "Commitment Fee") computed at the Commitment Fee Rate per annum (on the basis of actual days elapsed in a year of 360 days), of the average daily balance of the Unused Commitment for each day commencing on and including the Effective Date and ending on but excluding the Termination Date. The Domestic Borrowers shall pay to the Administrative Agent for the account of the Tranche A-1 Lenders in accordance with their respective Tranche A-1 Commitment Percentages, a commitment fee (the "Tranche A-1 Commitment Fee") computed at the Tranche A-1 Commitment Fee Rate per annum (on the basis of actual days elapsed in a year of 360 days), of the average daily balance of the Unused Tranche A-1 Commitment for each day commencing on and including the First Amendment Effective Date and ending on but excluding the Termination Date.

(b) Upon the occurrence of an Event of Default, at the option of the Administrative Agent or at the direction of the Required Lenders, the Commitment Fee shall be determined in the manner set forth in Section 2.10.

(c) The Commitment Fee accrued in any calendar quarter shall be payable on the first day of the next calendar quarter, in arrears for the immediately preceding calendar quarter, commencing April 1, 2011, except that all Commitment Fees so accrued as of the Termination Date shall be payable on the Termination Date. The Administrative Agent shall pay the Commitment Fee to the Lenders (including the Tranche A-1 Lenders) based upon their Domestic Commitment Percentage, Tranche A-1 Commitment Percentage or Canadian Commitment Percentage, as applicable.

**2.13 Letter of Credit Fees.** The Borrowers shall pay the Administrative Agent or the Canadian Agent, as applicable, for the account of the Domestic Lenders (other than the Tranche A-1 Lenders) or the Canadian Lenders, as applicable, on first day of each calendar quarter, in arrears for the immediately preceding calendar quarter, a fee (each, a "Letter of Credit Fee") equal to the following per annum

percentages of the Stated Amount of the following categories of Letters of Credit outstanding during the subject quarter:

(a) Each Standby Letter of Credit: The then Applicable Margin per annum for LIBO Loans based upon the average Stated Amount of such Standby Letter of Credit for such period.

(b) Each Banker's Acceptance and Commercial Letter of Credit: Fifty percent (50%) of the then Applicable Margin per annum for LIBO Loans based upon the average Stated Amount of such Banker's Acceptance or Commercial Letter of Credit for such period.

(c) After the occurrence and during the continuance of an Event of Default, at the option of the Administrative Agent or upon the direction of the Required Lenders, the Letter of Credit Fee set forth in clauses (a) and (b) above shall be increased by an amount equal to two percent (2%) per annum.

(d) The Borrowers shall pay to the Issuing Bank, in addition to the Letter of Credit Fees otherwise provided for hereunder, fees and charges in connection with the issuance, negotiation, settlement, amendment and processing of each Letter of Credit issued by the Issuing Bank as are customarily imposed by the Issuing Bank and agreed to by the Lead Borrower from time to time in connection with letter of credit transactions.

(e) All Letter of Credit Fees shall be calculated on the basis of a 360-day year and actual days elapsed.

**2.14 Nature of Fees.** All fees shall be paid on the dates due, in immediately available funds, to the Administrative Agent, for the respective accounts of the Administrative Agent, the Lead Arranger, the Issuing Bank, and the Lenders, as provided herein. All fees shall be fully earned on the date when due and shall not be refundable under any circumstances. For greater certainty, the Canadian Borrower shall not be liable for any fees which form part of the Obligations unless they are Canadian Liabilities (including as provided in Section 2.12(b), Section 2.11, or Section 9.4).

**2.15 Termination or Reduction of Commitments.**

(a) Upon at least three (3) Business Days' prior written notice to the Administrative Agent, the Lead Borrower may at any time or from time to time in part permanently reduce the Domestic Commitments. Each such reduction shall be in the principal amount of $10,000,000 or any integral multiple of $1,000,000 in excess thereof. Each such reduction shall (i) be applied ratably to the Domestic Commitments of each Lender and (ii) be irrevocable when given. At the effective time of each such reduction, the Domestic Borrowers shall pay to the Administrative Agent for application as provided herein (i) all Commitment Fees accrued on the amount of the Domestic Commitments so reduced through the date thereof, (ii) any amount by which the Domestic Credit Extensions outstanding on such date exceed the amount to which the Domestic Commitments are to be reduced effective on such date, in each case pro rata based on the amount prepaid, and (iii) any Breakage Costs, if applicable.

(b) Upon at least three (3) Business Days' prior written notice to the Administrative Agent and the Canadian Agent, the Canadian Borrower may at any time or from time to time in part permanently reduce the Canadian Commitments to an amount not less than CD$5,000,000. Each such reduction shall be in the principal amount of CD$1,000,000 or any integral multiple of CD$1,000,000 in excess thereof. Each such reduction shall (i) be applied ratably to the Canadian Commitments of each Canadian Lender and (ii) be irrevocable when given. At the effective time of each such reduction, the Canadian Borrower shall pay to the Canadian Agent for application as provided herein (i) any amount by which the Canadian Credit Extensions outstanding on such date exceed the amount to which the Canadian

Commitments are to be reduced effective on such date, in each case pro rata based on the amount prepaid, and (ii) any Breakage Costs, if applicable.

(c) Upon at least three (3) Business Days' prior written notice to the Administrative Agent, the Lead Borrower may reduce or terminate the Tranche A-1 Commitments as long as immediately after giving effect to such reduction or termination, there are no Domestic Loans outstanding. In the event that all of the Domestic Commitments are terminated, the Lead Borrower shall contemporaneously therewith terminate all Tranche A-1 Commitments. Each reduction of the Tranche A-1 Commitments shall be in the principal amount of $5,000,000 or any integral multiple thereof. The Domestic Borrowers shall pay to the Administrative Agent for application as provided herein (i) at the effective time of any such termination (but not any partial reduction), all Tranche A-1 Commitment Fees accrued on the Tranche A-1 Commitments so terminated, and (ii) at the effective time of any such reduction or termination, any amount by which the Tranche A-1 Loans to the Domestic Borrowers outstanding on such date exceed the amount to which the Tranche A-1 Commitments are to be reduced effective on such date.

(d) ~~(c) Upon at least three (3) Business Days' prior written notice to the Administrative Agent, the Lead Borrower may~~ Upon at least three (3) Business Days' prior written notice to the Administrative Agent, the Lead Borrower may at any time terminate the Domestic Commitments, the Tranche A-1 Commitments and/or the Canadian Commitments. At the effective time of each such termination specified in such notice, the Domestic Borrowers shall repay to the Administrative Agent and the Canadian Borrower shall repay the Canadian Agent, in each case for application as provided herein all Obligations or Canadian Liabilities, as applicable. The Canadian Commitments and the Tranche A-1 Commitments shall be automatically terminated upon any termination of the Domestic Commitments.

**2.16 Alternate Rate of Interest.** If prior to the commencement of any Interest Period for a LIBO Borrowing or a BA Equivalent Loan Borrowing:

(a) the Administrative Agent determines (which determination shall be presumed correct absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or BA Rate for such Interest Period; or

(b) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate or BA Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to the Lead Borrower or the Canadian Borrower, as applicable, and the Lenders by telephone or telecopy as promptly as practicable thereafter (but in any event, within two (2) Business Days after such determination or advice) and, until the Administrative Agent notifies the Lead Borrower or the Canadian Borrower, as applicable, and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Borrowing Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a LIBO Borrowing or a BA Equivalent Loan Borrowing shall be ineffective and (ii) if any Borrowing Request requests a LIBO Borrowing or a BA Equivalent Loan Borrowing, such Borrowing shall be made as a Borrowing of Domestic Prime Rate Loans, Domestic Tranche A-1 Prime Rate Loans, U.S. Index Rate Loans, or Canadian Prime Rate Loans, as applicable.

**2.17 Conversion and Continuation of Loans.** The Lead Borrower on behalf of the Borrowers shall have the right at any time,

(a) on three (3) Business Days' prior irrevocable notice to the Administrative Agent (which notice, to be effective, must be received by the Administrative Agent not later than 11:00 a.m., New

York time, on the third Business Day preceding the date of any conversion), (~~x~~w) to convert any outstanding Borrowings of Domestic Prime Rate Loans (but in no event Swingline Loans) to Borrowings of LIBO Loans, (x) to convert any outstanding Borrowings of Domestic Tranche A-1 Prime Rate Loans to Borrowings of Tranche A-1 LIBO Loans, (y) to convert any outstanding Borrowings of Canadian Prime Rate Loans or U.S. Index Rate Loans to Borrowings of BA Equivalent Loans or LIBO Loans, as applicable, or (~~y~~z) to continue an outstanding Borrowing of LIBO Loans, Tranche A-1 LIBO Loans or BA Equivalent Loans, as applicable, for an additional Interest Period,

(b) on irrevocable notice to the Administrative Agent (which notice, to be effective, must be received by the Administrative Agent not later than 11:00 a.m., New York time, on the same Business Day of any conversion), to convert any outstanding Borrowings of LIBO Loans to a Borrowing of Domestic Prime Rate Loans or U.S. Index Rate Loans (or, in the case of the Canadian Borrower, Borrowings of BA Equivalent Loans to a Borrowing of Canadian Prime Rate Loans), or to convert any outstanding Borrowings of Tranche A-1 LIBO Loans to a Borrowing of Domestic Tranche A-1 Prime Rate Loans,

subject to the following:

(i) no Borrowing of Loans may be converted into, or continued as, LIBO Loans, Tranche A-1 LIBO Loans or BA Equivalent Loans at any time when an Event of Default has occurred and is continuing;

(ii) if less than a full Borrowing of Loans is converted, such conversion shall be made pro rata among the Domestic Lenders and the Canadian Lenders, as applicable, in accordance with the respective principal amounts of the Loans comprising such Borrowing held by such Lenders immediately prior to such conversion;

(iii) the aggregate principal amount of Loans being converted into or continued as LIBO Loans or Tranche A-1 LIBO Loans shall be in an integral of $100,000 and at least $1,000,000, and the aggregate principal amount of Loans being converted into or continued as BA Equivalent Loans shall be in an integral of CD$100,000 and at least CD$1,000,000;

(iv) each Domestic Lender shall effect each conversion by applying the proceeds of its new LIBO Loan, Tranche A-1 LIBO Loan, Domestic Prime Rate Loan or Domestic Tranche A-1 Prime Rate Loan, as the case may be, to its Loan being so converted, and each Canadian Lender shall effect each conversion by applying the proceeds of its new BA Equivalent Loan or Canadian Prime Rate Loan, as the case may be, to its Loan being so converted;

(v) the Interest Period with respect to a Borrowing of LIBO Loans, Tranche A-1 LIBO Loans or BA Equivalent Loans effected by a conversion or with respect to a Borrowing of LIBO Loans, Tranche A-1 LIBO Loans or BA Equivalent Loans being continued as LIBO Loans, Tranche A-1 LIBO Loans or BA Equivalent Loans, respectively, shall commence on the date of conversion or the expiration of the current Interest Period applicable to such continued Borrowing, as the case may be;

(vi) a Borrowing of LIBO Loans, Tranche A-1 LIBO Loans or BA Equivalent Loans may be converted only on the last day of an Interest Period applicable thereto;

(vii) each request for a conversion or continuation of a Borrowing of LIBO Loans, Tranche A-1 LIBO Loans or BA Equivalent Loans which fails to state an applicable Interest Period shall be deemed to be a request for an Interest Period of one month; and

(viii) no more than ten (10) Borrowings of LIBO Loans, Tranche A-1 LIBO Loans and BA Equivalent Loans may be outstanding at any time.

If the Lead Borrower does not give notice to convert any Borrowing of Domestic Prime Rate Loans, Domestic Tranche A-1 Prime Rate Loans or Canadian Prime Rate Loans, or does not give notice to continue, or does not have the right to continue, any Borrowing as LIBO Loans, Tranche A-1 LIBO Loans or BA Equivalent Loans, in each case as provided above, such Borrowing shall automatically be converted to, or continued as, as applicable, a Borrowing of Domestic Prime Rate Loans, Domestic Tranche A-1 Prime Rate Loans or Canadian Prime Rate Loans, as applicable, at the expiration of the then current Interest Period. The Administrative Agent shall, after it receives notice from the Lead Borrower, promptly give each Lender notice of any conversion, in whole or part, of any Loan made by such Lender.

**2.18 Mandatory Prepayment; Cash Collateral; Commitment Termination.** The outstanding Obligations shall be subject to mandatory prepayment as follows:

(a) If at any time the amount of the Credit Extensions plus the Tranche A-1 Loans exceeds the Loan Cap, the Borrowers will immediately (A) prepay the Loans in an amount necessary to eliminate such excess, and (B) if, after giving effect to the prepayment in full of all outstanding Loans such excess has not been eliminated, deposit cash into the Cash Collateral Account in an amount equal to 102% of the Letter of Credit Outstandings.

(b) If at any time the amount of the Canadian Credit Extensions to the Canadian Borrower exceeds Canadian Availability, the Canadian Borrower will immediately (A) prepay the Canadian Loans in an amount necessary to eliminate such excess, and (B) if, after giving effect to the prepayment in full of all outstanding Canadian Loans such excess has not been eliminated, deposit cash into the Cash Collateral Account in an amount equal to 102% of the Canadian Letter of Credit Outstandings.

(c) If at any time the amount of the Domestic Credit Extensions to the Domestic Borrowers exceeds Domestic Availability, the Domestic Borrowers will immediately (A) prepay the Domestic Loans in an amount necessary to eliminate such excess, and (B) if, after giving effect to the prepayment in full of all outstanding Domestic Loans such excess has not been eliminated, deposit cash into the applicable Cash Collateral Account in an amount equal to 102% of the Domestic Letter of Credit Outstandings.

(d) If at any time the amount of the Tranche A-1 Loans to the Domestic Borrowers exceeds Tranche A-1 Availability, the Domestic Borrowers will immediately prepay the Tranche A-1 Loans in an amount necessary to eliminate such excess.

(e) ~~(d)~~If at any time following one or more fluctuations in the exchange rate of the Canadian Dollar against the Dollar, the amount of the Canadian Credit Extensions to the Canadian Borrower exceeds Canadian Availability, the Canadian Borrower shall (x) if such excess is in an aggregate amount that is greater than or equal to $500,000 within two (2) Business Days of notice from the Administrative Agent, (y) if such excess is an aggregate amount that is less than $500,000 and such excess continues to exist in an aggregate amount less than $500,000 for at least five (5) Business Days, within two (2) Business Days of notice from the Administrative Agent or (z) if an Event of Default has occurred and is continuing, immediately (i) make the necessary payments or repayments to reduce such Canadian Liabilities to an amount necessary to eliminate such excess or (ii) maintain or cause to be maintained with the Administrative Agent deposits as continuing collateral security for the Obligations of the Canadian Borrower in an amount equal to or greater than the amount of such excess, such deposits to be maintained in such form and upon such terms as are acceptable to the Administrative Agent. Without in any way limiting the foregoing provisions, the Administrative Agent shall, weekly or more frequently in the sole discretion

of the Administrative Agent, make the necessary exchange rate calculations to determine whether any such excess exists on such date and advise the Borrowers if such excess exists.

(f) ~~(e)~~To the extent required pursuant to Section 2.21, the Revolving Loans shall be repaid daily in accordance with the provisions of said Section 2.21.

(g) ~~(f)~~The Borrowers shall prepay the Loans in an amount equal to the Net Proceeds received by any Credit Party on account of a Prepayment Event, irrespective of whether a Cash Dominion Event then exists and is continuing; provided that Net Proceeds from any assets of the Canadian Credit Parties shall only be applied to the Canadian Liabilities.

(h) ~~(g)~~Subject to the foregoing, outstanding Prime Rate Loans and U.S. Index Rate Loans shall be prepaid before outstanding LIBO Loans, Tranche A-1 LIBO Loans or BA Equivalent Loans are prepaid. Each partial prepayment of LIBO Loans and Tranche A-1 LIBO Loans shall be in an integral multiple of $100,000, and each partial prepayment of BA Equivalent Loans shall be in an integral multiple of CD$100,000. No prepayment of LIBO Loans, Tranche A-1 LIBO Loans or BA Equivalent Loans shall be permitted pursuant to this Section 2.18 other than on the last day of an Interest Period applicable thereto, unless the Borrowers simultaneously reimburse the Lenders for all **"Breakage Costs"** (as defined below) associated therewith. In order to avoid such Breakage Costs, as long as no Event of Default has occurred and is continuing, at the request of the Lead Borrower the Administrative Agent or the Canadian Agent, as applicable, shall hold all amounts required to be applied to LIBO Loans, Tranche A-1 LIBO Loans or BA Equivalent Loans in the applicable Cash Collateral Account and will apply such funds to the applicable LIBO Loans, Tranche A-1 LIBO Loans or BA Equivalent Loans, as applicable, at the end of the then pending Interest Period therefor and such LIBO Loans, Tranche A-1 LIBO Loans and BA Equivalent Loans shall continue to bear interest at the rate set forth in Section 2.9 until the amounts in the applicable Cash Collateral Account have been so applied (provided that the foregoing shall in no way limit or restrict the Agents' rights upon the subsequent occurrence of an Event of Default). No partial prepayment of a Borrowing of LIBO Loans, Tranche A-1 LIBO Loans or BA Equivalent Loans shall result in the aggregate principal amount of the LIBO Loans or Tranche A-1 LIBO Loans remaining outstanding pursuant to such Borrowing being less than $1,000,000 or the aggregate principal amount of the BA Equivalent Loans remaining outstanding pursuant to such Borrowing being less than CD$1,000,000 (unless all such outstanding LIBO Loans, Tranche A-1 LIBO Loans or BA Equivalent Loans are being prepaid in full). Any prepayment of the Revolving Loans shall not permanently reduce the Commitments.

(i) ~~(h)~~All amounts required to be applied to Loans hereunder (other than Swingline Loans) shall be applied ratably in accordance with each Domestic Lender's Domestic Commitment Percentage, or Tranche A-1 Lender's Tranche A-1 Commitment Percentage, or Canadian Lender's Canadian Commitment Percentage, as applicable.

(j) ~~(i)~~Upon the Termination Date, the Commitments and the credit facility provided hereunder shall be terminated in full and the Domestic Borrowers shall pay, in full and in cash, all outstanding Loans and all other outstanding Obligations owing by them and the Canadian Borrower shall pay in full and in cash, all outstanding Loans to it and all Canadian Liabilities.

(k) ~~(j)~~All Obligations shall be payable to the Administrative Agent or the Canadian Agent, as applicable, in the currency in which they are denominated.

**2.19 Optional Prepayment of Loans; Reimbursement of Lenders.**

(a) The Borrowers shall have the right at any time and from time to time to prepay outstanding Loans in whole or in part, (x) with respect to LIBO Loans, Tranche A-1 LIBO Loans and BA

Equivalent Loans, upon at least two Business Days' prior written, telex or facsimile notice to the Administrative Agent prior to 11:00 a.m., New York time, and (y) with respect to Domestic Prime Rate Loans, Domestic Tranche A-1 Prime Rate Loans, Canadian Prime Rate Loans or U.S. Index Rate Loans, upon written, telex or facsimile notice to the Administrative Agent, which notice shall be received prior to 11:00 a.m., New York time on the same Business Day of such prepayment, subject to the following limitations:

(i) All prepayments under this Section 2.19 shall be paid to the Administrative Agent or the Canadian Agent, as applicable, for application, first, to the prepayment of outstanding Swingline Loans, second, to the prepayment of other outstanding Loans ratably in accordance with each Lender's Domestic Commitment Percentage, Tranche A-1 Commitment Percentage or Canadian Commitment Percentage, as applicable, and third, to the funding of a cash collateral deposit in the applicable Cash Collateral Account in an amount equal to 102% of all Letter of Credit Outstandings.

(ii) Subject to the foregoing, outstanding Prime Rate Loans and U.S. Index Rate Loans shall be prepaid before outstanding LIBO Loans, Tranche A-1 LIBO Loans or BA Equivalent Loans are prepaid. Each partial prepayment of LIBO Loans and Tranche A-1 LIBO Loans shall be in an integral multiple of $100,000, and each partial prepayment of BA Equivalent Loans shall be in an integral multiple of CD$100,000. No prepayment of LIBO Loans, Tranche A-1 LIBO Loans or BA Equivalent Loans shall be permitted pursuant to this Section 2.19 other than on the last day of an Interest Period applicable thereto, unless the Borrowers simultaneously reimburse the Lenders for all **"Breakage Costs"** (as defined below) associated therewith. No partial prepayment of a Borrowing of LIBO Loans, Tranche A-1 LIBO Loans or BA Equivalent Loans shall result in the aggregate principal amount of the LIBO Loans or Tranche A-1 LIBO Loans remaining outstanding pursuant to such Borrowing being less than $1,000,000 or the aggregate principal amount of the BA Equivalent Loans remaining outstanding pursuant to such Borrowing being less than CD$1,000,000 (unless all such outstanding LIBO Loans, Tranche A-1 LIBO Loans or BA Equivalent Loans are being prepaid in full).

(iii) Each notice of prepayment shall specify the prepayment date, the principal amount and Type of the Loans to be prepaid and, in the case of LIBO Loans, Tranche A-1 LIBO Loans or BA Equivalent Loans, the Borrowing or Borrowings pursuant to which such Loans were made. Each notice of prepayment shall be irrevocable and shall commit the Borrowers to prepay such Loan by the amount and on the date stated therein. The Administrative Agent shall, promptly after receiving notice from the Lead Borrower hereunder, notify each Lender of the principal amount and Type of the Loans held by such Lender which are to be prepaid, the prepayment date and the manner of application of the prepayment.

(b) Notwithstanding the provisions of Section 2.19(a) which generally permit voluntary prepayments of the Revolving Loans, only if all Domestic Loans are repaid in full may the Borrowers prepay amounts owed with respect to the Tranche A-1 Loans, provided, however, that any such prepayment shall not reduce or terminate the Tranche A-1 Commitments. In addition, the Borrowers shall also repay the Tranche A-1 Loans (a) at any time that the outstanding amount of the Tranche A-1 Loans exceeds the lesser of the Tranche A-1 Commitments and the Tranche A-1 Borrowing Base, and (b) as required upon any reduction or termination of the Tranche A-1 Commitments in accordance with the provisions of Section 2.15(c) or Section 2.15(e) hereof.

(c) ~~(b)~~ The Borrowers shall reimburse each Lender on demand for any loss incurred or to be incurred by it in the reemployment of the funds released (i) resulting from any prepayment (for any reason whatsoever, including, without limitation, conversion to a Domestic Prime Rate Loan, Domestic

Tranche A-1 Prime Rate Loan, a Canadian Prime Rate Loan or a U.S. Index Rate Loan or acceleration by virtue of, and after, the occurrence of an Event of Default) of any LIBO Loan, Tranche A-1 LIBO Loan or BA Equivalent Loan required or permitted under this Agreement, if such Loan is prepaid other than on the last day of the Interest Period for such Loan or (ii) in the event that after the Lead Borrower delivers a notice of borrowing under Section 2.3 in respect of LIBO Loans, Tranche A-1 LIBO Loans or BA Equivalent Loans, such Loans are not borrowed on the first day of the Interest Period specified in such notice of borrowing for any reason. Such loss shall be the amount as reasonably determined by such Lender as the excess, if any, of (A) the amount of interest which would have accrued to such Lender on the amount so paid or not borrowed at a rate of interest equal to the Adjusted LIBO Rate or the BA Rate for such Loan, for the period from the date of such payment or failure to borrow to the last day (x) in the case of a payment or refinancing of a LIBO Loan, Tranche A-1 LIBO Loan or a BA Equivalent Loan other than on the last day of the Interest Period for such Loan, of the then current Interest Period for such Loan or (y) in the case of such failure to borrow, of the Interest Period for such LIBO Loan, Tranche A-1 LIBO Loan or BA Equivalent Loan which would have commenced on the date of such failure to borrow, over (B) in the case of a LIBO Loan or Tranche A-1 LIBO Loan, the amount of interest which would have accrued to such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the London interbank market, or, in the case of a BA Equivalent Loan, the amount of interest which would have accrued to such Lender on such amount by placing such amount on deposit for a comparable period with Bank of America-Canada Branch (collectively, **"Breakage Costs").** Any Lender demanding reimbursement for such loss shall deliver to the Lead Borrower from time to time one or more certificates setting forth the amount of such loss as determined by such Lender and setting forth in reasonable detail the manner in which such amount was determined.

(d) ~~(c)~~In the event the Borrowers fail to prepay any Loan on the date specified in any prepayment notice delivered pursuant to Section 2.19(a), the Borrowers on demand by any Lender shall pay to the Administrative Agent for the account of such Lender any amounts required to compensate such Lender for any actual loss incurred by such Lender as a result of such failure to prepay, including, without limitation, any loss, cost or expenses incurred by reason of the acquisition of deposits or other funds by such Lender to fulfill deposit obligations incurred in anticipation of such prepayment. Any Lender demanding such payment shall deliver to the Lead Borrower from time to time one or more certificates setting forth the amount of such loss as determined by such Lender and setting forth in reasonable detail the manner in which such amount was determined.

(e) ~~(d)~~Whenever any partial prepayment of Loans are to be applied to LIBO Loans, Tranche A-1 LIBO Loans or BA Equivalent Loans, such LIBO Loans, Tranche A-1 LIBO Loans or BA Equivalent Loans shall be prepaid in the chronological order of their Interest Payment Dates.

**2.20 Maintenance of Loan Account; Statements of Account.**

(a) The Administrative Agent and the Canadian Agent, as applicable, shall maintain an account on its books in the name of the Borrowers (the **"Loan Account")** which will reflect (i) all Loans and other advances made by the Lenders to the Borrowers or for the Borrowers' account, (ii) all L/C Disbursements, fees and interest that have become payable as herein set forth, and (iii) any and all other monetary Obligations that have become payable.

(b) The Loan Account will be credited with all amounts received by the Administrative Agent and the Canadian Agent, as applicable, from the Borrowers or otherwise for the Borrowers' account, including all amounts received in the Bank of America Concentration Account from the Controlled Account Banks, and the amounts so credited shall be applied as set forth in Sections 2.22(a), (b) and (c) or 7.4, as applicable. After the end of each month, the Administrative Agent or the Canadian Agent, as applicable, shall send to the Lead Borrower or the Canadian Borrower, as applicable, a statement

accounting for the charges, loans, advances and other transactions occurring among and between the Administrative Agent or the Canadian Agent, as applicable, the Lenders and the Borrowers during that month. The monthly statements shall, absent manifest error, be an account stated, which is final, conclusive and binding on the Borrowers.

**2.21 Cash Receipts.**

(a) The Borrowers shall deliver to the Administrative Agent (i) on the Effective Date and thereafter annually (or at such times as the Administrative Agent may reasonably request following the occurrence and during the continuance of a Cash Dominion Event), a list of all present DDAs maintained by the Borrowers, which list includes, with respect to each depository (A) the name of that depository; (B) the account number(s) maintained with such depository; and (C) to the extent known, a contact person at such depository (the **"DDA List"),** (ii) upon the occurrence of an Event of Default at the request of the Administrative Agent, notifications executed on behalf of the Borrowers to each depository institution identified on the DDA List in form and substance reasonably satisfactory to the Administrative Agent, of the Administrative Agent's interest in such DDA as described more fully in Section 2.21(d) and substantially in the form of Exhibit G (each, a **"DDA Notification"),** and (iii) on or prior to the Effective Date and periodically thereafter notifications (the **"Credit Card Notifications")** executed on behalf of the Borrowers with each of the Borrowers' major credit card and debit card processors in form and substance reasonably satisfactory to the Administrative Agent.

(b) Annexed hereto as Schedule 2.21(b) is a list describing all arrangements to which any Borrower is a party with respect to the payment to any Borrower of the proceeds of all credit card and debit card charges for sales by such Borrower.

(c) Annexed hereto as Schedule 2.21(c) is a list describing all Concentration Accounts and Investment Accounts maintained by the Borrowers. On or prior to the Effective Date, the Borrowers shall enter into an Account Control Agreement with the Controlled Account Banks for the Concentration Accounts and the Investment Accounts, in each case in form and substance reasonably satisfactory to the Administrative Agent.

(d) The DDA Notifications and Credit Card Notifications shall require, after the occurrence and during the continuance of a Cash Dominion Event, the sweep on each Business Day of all available cash receipts and other proceeds from the sale or disposition of any Collateral, including, without limitation, the proceeds of all credit card and debit card charges (all such cash receipts and proceeds, **"Cash Receipts"),** to (x) a concentration account maintained by the Collateral Agent at Bank of America (the **"Bank of America Concentration Account"),** or (y) a Controlled Account, as the Administrative Agent or the Canadian Agent, as applicable, may direct.

(e) The Account Control Agreements shall require, after the occurrence and during the continuance of a Cash Dominion Event, the sweep on each Business Day of all Cash Receipts to the Bank of America Concentration Account or to such other account as the Administrative Agent may direct, and with respect to the Canadian Borrower, to a Concentration Account established by the Canadian Borrower or as the Canadian Agent may otherwise direct. Notwithstanding any provision of this Agreement or any other Loan Document to the contrary, the Administrative Agent or the Canadian Agent, as applicable, shall not send a notice of exclusive control regarding or otherwise exercise control over (i) any DDA subject to an Account Control Agreement unless a Cash Dominion Event shall have occurred and be continuing and will withdraw such notice of exclusive control and relinquish such control at such time as a Cash Dominion Event is no longer in effect, if requested in writing, by the Lead Borrower, or (ii) any Excluded DDA.

(f) If at any time after the occurrence and during the continuance of a Cash Dominion Event, any cash or cash equivalents owned by the Borrowers are deposited to any account (other than an Excluded DDA or a DDA for which a DDA Notification has been delivered), or held or invested in any manner, otherwise than in a Controlled Account that is subject to a Account Control Agreement as required herein, then the Administrative Agent may require the Borrowers to have all funds held in such account transferred to the Bank of America Concentration Account or such other Controlled Account as the Administrative Agent may direct, and with respect to the Canadian Borrower, to a Concentration Account established by the Canadian Borrower or as the Canadian Agent may otherwise direct.

(g) The Borrowers may close DDAs or Controlled Accounts and/or open new DDAs or Controlled Accounts, subject to the execution and delivery to the Administrative Agent or the Canadian Agent, as applicable, of appropriate DDA Notifications or Account Control Agreements consistent with the provisions of this Section 2.21. Unless consented to in writing by the Administrative Agent or the Canadian Agent, as applicable, the Borrowers may not enter into any agreements with additional credit card processors unless contemporaneously therewith, a Credit Card Notification is executed and delivered to the Administrative Agent or the Canadian Agent, as applicable.

(h) The Bank of America Concentration Account and the Concentration Accounts established by the Canadian Borrower are and shall remain under the sole dominion and control of the Collateral Agent or the Canadian Agent, as applicable. Each Borrower acknowledges and agrees that, subject to the provisions of subparagraph (i) below, (i) such Borrower has no right of withdrawal from the Bank of America Concentration Account and the Concentration Accounts established by the Canadian Borrower, (ii) the funds on deposit in the Bank of America Concentration Account shall continue to be collateral security for all of the Obligations (including the Canadian Liabilities), (iii) the funds on deposit in the Concentration Accounts established by the Canadian Borrower shall continue to be collateral security for all of the Canadian Liabilities, and (iv) the funds on deposit in the Bank of America Concentration Account shall be applied as provided in Sections 2.22(a) or 7.4, as applicable.

(i) So long as no Cash Dominion Event has occurred and is continuing, the Borrowers may direct, and shall have sole control over, the manner of disposition of its funds in the DDAs and the Controlled Accounts.

(j) After the occurrence and during the continuation of a Cash Dominion Event, the Borrowers shall cause the ACH or wire transfer to, upon the Administrative Agent's or the Canadian Agent's, as applicable, instruction, any Controlled Account, no less frequently than daily (unless the Commitments have been terminated hereunder and the Obligations have been paid in full) of the then current contents of each such DDA (other than any Excluded DDA), each such transfer to be net of any minimum balance, not to exceed with respect to any DDA (other than any Excluded DDA) $2,500, as may be required to be maintained in the subject DDA by the bank at which such DDA is maintained, and, in connection with each such transfer, the Borrowers shall also provide the Administrative Agent with an accounting of the contents of each DDA (other than any Excluded DDA).

(k) After the occurrence and during the continuation of a Cash Dominion Event, whether or not any Obligations are then outstanding, the Borrowers shall cause the ACH or wire transfer, upon the Administrative Agent's or the Canadian Agent's, as applicable, instruction, to the Bank of America Concentration Account of the then current entire ledger balance of each Controlled Account, net of such minimum balance, not to exceed $10,000, as may be required to be maintained in the subject Controlled Account by the bank at which such Controlled Account is maintained; provided that amounts in Controlled Accounts established by the Canadian Borrower shall be delivered only to a concentration account at Bank of America-Canada Branch or as the Canadian Agent may otherwise direct.

(l) In the event that, notwithstanding the provisions of this Section 2.21, after the occurrence of a Cash Dominion Event, the Borrowers receive or otherwise have dominion and control of any such proceeds or collections (other than proceeds deposited in any Excluded DDA), such proceeds and collections shall be held in trust by the Borrowers for the Administrative Agent or the Canadian Agent, as applicable, and shall not be commingled with any of the Borrowers' other funds or deposited in any account of Borrower other than as instructed by the Administrative Agent or the Canadian Agent, as applicable.

(m) After the occurrence and during the continuation of a Cash Dominion Event, the Borrowers shall deliver to the Administrative Agent on each anniversary of the Effective Date (or at such other times as the Administrative Agent may reasonably request), a list of all Account Debtors, which list includes, with respect to each Account Debtor (i) the name, address, and telephone number of that Account Debtor; (ii) the account/reference numbers for such Account Debtor; and (iii) to the extent known, a contact person at such Account Debtor (the **"Account Debtor List").**

**2.22 Application of Payments.**

(a) As long as the time for payment of the Obligations has not been accelerated, all amounts received in the Bank of America Concentration Account from any source (other than proceeds received from the Canadian Borrower or its assets), including the Controlled Account Banks following the occurrence and during the continuance of a Cash Dominion Event, and other amounts received by the Administrative Agent, shall be applied, on the day of receipt, in the following order: first, to pay any fees and expense reimbursements and indemnification then due and payable to the Administrative Agent, the Issuing Bank (other than on account of Canadian Letters of Credit), and the Collateral Agent; second, to pay interest then due and payable on Credit Extensions (other than Tranche A-1 Loans) to the Domestic Borrowers; third, to repay any outstanding Swingline Loans; fourth, to repay any outstanding Revolving Loans that are Domestic Prime Rate Loans (other than Tranche A-1 Loans) and any outstanding reimbursement obligations under Letters of Credit and Banker's Acceptances other than Canadian Letters of Credit or Banker's Acceptances arising from Canadian Letters of Credit; fifth, to repay any outstanding Revolving Loans that are LIBO Loans and all Breakage Costs due in respect of such repayment pursuant to Section 2.19(b) or, at the Lead Borrower's option, to fund a cash collateral deposit to the Cash Collateral Account sufficient to pay, and with direction to pay, all such outstanding LIBO Loans on the last day of the then-pending Interest Period therefor from such Cash Collateral Account (in each case, other than Tranche A-1 Loans and Canadian Loans); sixth, if an Event of Default exists, to fund a cash collateral deposit in the Cash Collateral Account in an amount equal to 102% of all Letter of Credit Outstandings other than Canadian Letter of Credit Outstandings; seventh, to pay interest then due and payable on Tranche A-1 Loans to the Domestic Borrowers; eighth, to repay any outstanding Tranche A-1 Loans that are Prime Rate Loans; ninth, to repay any outstanding Tranche A-1 LIBO Loans and all Breakage Costs due in respect of such repayment pursuant to Section 2.19(b) or, at the Lead Borrower's option, to fund a cash collateral deposit to the Cash Collateral Account sufficient to pay, and with direction to pay, all such outstanding Tranche A-1 LIBO Loans on the last day of the then-pending Interest Period therefor from such Cash Collateral Account; tenth, to pay fees and expense reimbursements and indemnification then due and payable to the Canadian Agent and the Issuing Bank issuing Canadian Letters of Credit (other than fees, expense reimbursements and indemnification payable in connection with Other Canadian Liabilities of the Canadian Borrower); ~~eighth~~eleventh, to pay interest due and payable on Credit Extensions to the Canadian Borrower; ~~ninth~~twelfth, to repay pro rata outstanding Revolving Loans that are Canadian Prime Rate Loans or U.S. Index Rate Loans and all outstanding reimbursement obligations under Canadian Letters of Credit; ~~tenth~~thirteenth, to repay outstanding Revolving Loans that are BA Equivalent Loans and all Breakage Costs due in respect of such repayment pursuant to Section 2.19(b) or, at the Canadian Borrower's option, to fund a cash collateral deposit to the GCO Canada Cash Collateral Account sufficient to pay, and with direction to pay, all such outstanding BA Equivalent Loans on the last day of the then-pending Interest Period therefor from such GCO Canada Cash Collateral Account; ~~eleventh~~fourteenth, if an Event of Default exists, to fund

a cash collateral deposit in the GCO Canada Cash Collateral Account in an amount equal to 102% of all Canadian Letter of Credit Outstandings; ~~twelfth~~fifteenth, to pay all other Obligations and all Other Domestic Liabilities of the Domestic Borrowers and all Other Canadian Liabilities of the Canadian Borrower that are then outstanding and then due and payable. If all amounts set forth in clauses first through and including ~~twelfth~~fifteenth above are paid, any excess amounts shall be deposited in a separate cash collateral account, and shall be released to the Lead Borrower on the day of receipt. So long as no Event of Default has occurred and is continuing, the Administrative Agent shall release the funds held in the Cash Collateral Account pursuant to clauses fifth, ninth and ~~tenth~~thirteenth above to the Borrowers upon the Lead Borrower's request.

(b) As long as the time for payment of the Obligations has not been accelerated, all amounts received in the Concentration Accounts established by the Canadian Borrower constituting proceeds from the Canadian Borrower or its assets, and other amounts received by the Canadian Agent, shall be applied, on the day of receipt, in the following order: first, to pay any fees and expense reimbursements and indemnification then due and payable to the Canadian Agent and the Issuing Bank (on account of Canadian Letters of Credit); second, to pay interest then due and payable on Credit Extensions to the Canadian Borrower; third, to repay pro rata outstanding Revolving Loans that are Canadian Prime Rate Loans or U.S. Index Rate Loans and all outstanding reimbursement obligations under Canadian Letters of Credit; fifth, to repay outstanding Revolving Loans that are LIBO Loans or BA Equivalent Loans made to the Canadian Borrower and all Breakage Costs due in respect of such repayment pursuant to Section 2.19(b) or, at the Canadian Borrower's option, to fund a cash collateral deposit to the GCO Canada Cash Collateral Account sufficient to pay, and with direction to pay, all such outstanding LIBO Loans or BA Equivalent Loans on the last day of the then-pending Interest Period therefor from such GCO Canada Cash Collateral Account; sixth, if an Event of Default exists, to fund a cash collateral deposit in the GCO Canada Cash Collateral Account in an amount equal to 102% of all Canadian Letter of Credit Outstandings; seventh, to pay all other Canadian Liabilities that are then outstanding and then due and payable. If all amounts set forth in clauses first through and including seventh above are paid, any excess amounts shall be deposited in a separate cash collateral account, and shall be released to the Canadian Borrower on the day of receipt. So long as no Event of Default has occurred and is continuing, the Administrative Agent shall release the funds held in the GCO Canada Cash Collateral Account pursuant to clause fifth above to the Canadian Borrowers upon the Canadian Borrower's request.

(c) All credits against the Obligations shall be effective on the day of receipt thereof, and shall be conditioned upon final payment to the Administrative Agent of the items giving rise to such credits. If any item deposited to the Bank of America Concentration Account and credited to the Loan Account is dishonored or returned unpaid for any reason, whether or not such return is rightful or timely, the Administrative Agent shall have the right to reverse such credit and charge the amount of such item to the Loan Account and the Borrowers shall indemnify the Administrative Agent, the Collateral Agent, the Issuing Bank and the Lenders against all claims and losses resulting from such dishonor or return.

**2.23 Increased Costs.**

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender or any holding company of any Lender (except any such reserve requirement already reflected in the Adjusted LIBO Rate) or the Issuing Bank; or

(ii) impose on any Lender or the Issuing Bank or the London interbank market any other condition affecting this Agreement or LIBO Loans, Tranche A-1 LIBO Loans or BA Equivalent Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any LIBO Loan, Tranche A-1 LIBO Loan or BA Equivalent Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or the Issuing Bank of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender or the Issuing Bank hereunder (whether of principal, interest or otherwise) other than Taxes, which shall be governed by Section 2.26 hereof, then, as long as the Borrowers are treated in the same manner as all similarly situated customers, the Borrowers will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender or the Issuing Bank determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or the Issuing Bank's capital or on the capital of such Lender's or the Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the Issuing Bank, to a level below that which such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Bank's policies and the policies of such Lender's or the Issuing Bank's holding company with respect to capital adequacy), then, as long as the Borrowers are treated in the same manner as all similarly situated customers, the Borrowers will pay to such Lender or the Issuing Bank, as the case may be, from time to time, such additional amount or amounts as will compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company for any such reduction suffered.

(c) A certificate of a Lender or the Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or the Issuing Bank or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section and setting forth in reasonable detail the manner in which such amount or amounts were determined shall be delivered to the Lead Borrower and shall be conclusive absent manifest error. The Borrowers shall pay such Lender or the Issuing Bank, as the case may be, the amount shown as due on any such certificate within ten (10) Business Days after receipt thereof.

(d) Failure or delay on the part of any Lender or the Issuing Bank to demand compensation pursuant to this Section within ninety (90) days of the effective date of the relevant Change in Law shall constitute a waiver of such Lender's or the Issuing Bank's right to demand such compensation.

**2.24 Change in Legality.**

(a) Notwithstanding anything to the contrary contained elsewhere in this Agreement, if (x) any Change in Law shall make it unlawful for a Lender to make or maintain a LIBO Loan, Tranche A-1 LIBO Loan or BA Equivalent Loan or to give effect to its obligations as contemplated hereby with respect to a LIBO Loan, Tranche A-1 LIBO Loan or BA Equivalent Loan or (y) at any time any Lender determines that the making or continuance of any of its LIBO Loans, Tranche A-1 LIBO Loans or BA Equivalent Loans has become impracticable as a result of a contingency occurring after the date hereof which adversely affects the London interbank market or other relevant markets for the BA Rate or the position of such Lender in the London interbank market or such other market, then, by written notice to the Lead Borrower, such Lender may (i) declare that LIBO Loans, Tranche A-1 LIBO Loans or BA Equivalent Loans will not thereafter be made by such Lender hereunder, whereupon any request by the Borrowers for a LIBO Borrowing or BA Equivalent Loan Borrowing shall, as to such Lender only, be deemed a request for

a Domestic Prime Rate Loan, Domestic Tranche A-1 Prime Rate Loan, a Canadian Prime Rate Loan or a U.S. Index Rate Loan, as applicable, unless such declaration shall be subsequently withdrawn; and (ii) require that all outstanding LIBO Loans, Tranche A-1 LIBO Loans or BA Equivalent Loans made by it be converted to Prime Rate Loans or U.S. Index Rate Loans, as applicable, in which event all such LIBO Loans, Tranche A-1 LIBO Loans or BA Equivalent Loans shall be automatically converted to Prime Rate Loans or U.S. Index Rate Loans, as applicable, as of the effective dates of such notice as provided in paragraph (b) below. In the event any Lender shall exercise its rights under clause (i) or (ii) of this paragraph (a), all payments and prepayments of principal which would otherwise have been applied to repay the LIBO Loans, Tranche A-1 LIBO Loans or BA Equivalent Loans that would have been made by such Lender or the converted LIBO Loans, Tranche A-1 LIBO Loans or BA Equivalent Loans of such Lender shall instead be applied to repay the Prime Rate Loans or U.S. Index Rate Loans, as applicable, made by such Lender in lieu of, or resulting from the conversion of, such LIBO Loans, Tranche A-1 LIBO Loans or BA Equivalent Loans.

(b) For purposes of this Section 2.24, a notice to the Lead Borrower by any Lender pursuant to paragraph (a) above shall be effective, if any LIBO Loans, Tranche A-1 LIBO Loans or BA Equivalent Loans shall then be outstanding, on the last day of each then-current Interest Period; and otherwise such notice shall be effective on the date of receipt by the Lead Borrower.

**2.25 Payments; Sharing of Setoff.**

(a) The Borrowers shall make each payment required to be made by it hereunder or under any other Loan Document (whether of principal, interest, fees or reimbursement of drawings under Letters of Credit, or of amounts payable under Sections 2.19(b), 2.23, 2.26 or 9.4, or otherwise) prior to 2:00 p.m., New York time, on the date when due, in immediately available funds, without setoff or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent or the Canadian Agent, as applicable, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent's Office or the Canadian Agent's Office, as applicable, except payments to be made directly to the Issuing Bank or Swingline Lender as expressly provided herein and except that payments pursuant to Sections 2.19(b), 2.23, 2.26 or 9.4 shall be made directly to the Persons entitled thereto and payments pursuant to other Loan Documents shall be made to the Persons specified therein. The Administrative Agent or Canadian Agent, as applicable, shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment under any Loan Document (other than payments with respect to LIBO Borrowings or BA Equivalent Loan Borrowings) shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, if any payment due with respect to LIBO Borrowings or BA Equivalent Loan Borrowings shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, unless that succeeding Business Day is in the next calendar month, in which event, the date of such payment shall be on the last Business Day of the subject calendar month, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments under each Loan Document shall be made in the currency specified therein.

(b) If at any time insufficient funds are received by and available to the Administrative Agent or the Canadian Agent, as applicable, to pay fully all amounts of principal, unreimbursed drawings under Letters of Credit, interest and fees then due hereunder, such funds shall be applied ratably among the parties entitled thereto in accordance with the provisions of Sections 2.22(a) and 2.22(b) hereof.

(c) If any Domestic Lender or Canadian Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or

participations in drawings under Letters of Credit or Swingline Loans resulting in such Domestic Lender's or Canadian Lender's receiving payment of a greater proportion of the aggregate amount of its Loans and participations in drawings under Letters of Credit and Swingline Loans and accrued interest thereon than the proportion received by any other Lender, then the Domestic Lender or Canadian Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans and participations in drawings under Letters of Credit and Swingline Loans of other Domestic Lenders or Canadian Lenders, as applicable, to the extent necessary so that the benefit of all such payments shall be shared by the Domestic Lenders or Canadian Lenders, as applicable, ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and participations in drawings under Letters of Credit and Swingline Loans, provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrowers pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Domestic Lender or Canadian Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in drawings under Letters of Credit to any assignee or participant, other than to the Borrowers or any Affiliate thereof (as to which the provisions of this paragraph shall apply). The Borrowers consent to the foregoing and agree, to the extent they may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrowers rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrowers in the amount of such participation. Notwithstanding the foregoing, any amounts of the Canadian Borrower so offset shall be applied solely to the Canadian Liabilities and any adjustments with respect thereto shall be made solely amongst Lenders having a Canadian Commitment.

(d) Unless the Administrative Agent shall have received notice from the Lead Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Bank hereunder that the Borrowers will not make such payment, the Administrative Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the applicable Lenders or the Issuing Bank, as the case may be, the amount due. In such event, if the Borrowers have not in fact made such payment, then each of the Lenders or the Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or the Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the Federal Funds Effective Rate n the case of payments made in Dollars and the Bank of Canada Overnight Rate in the case of payments made in Canadian Dollars.

(e) Without limiting the provisions of Section 8.14, if any Lender shall fail to make any payment required to be made by it pursuant to this Agreement, then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under this Agreement until all such unsatisfied obligations are fully paid.

**2.26 Taxes.**

(a) Any and all payments by or on account of any obligation of the Borrowers hereunder or under any other Loan Document shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes except as required in accordance with Applicable Law. If the Borrowers shall be required to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Agents, any Lender or the Issuing Bank (as the case may be) receives an amount equal to the sum it would have received had no such deductions been

made, (ii) the Borrowers shall make such deductions, and (iii) the Borrowers shall pay the full amount deducted to the relevant Governmental Authority in accordance with Applicable Law.

(b) In addition, the Borrowers shall pay any Other Taxes to the relevant Governmental Authority in accordance with Applicable Law.

(c) The Borrowers shall indemnify the Agents, each Lender and the Issuing Bank, and the Canadian Borrower shall indemnify the Canadian Agent, each Canadian Lender and the Issuing Bank in respect of any Canadian Letter of Credit within ten (10) Business Days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by such Agent or Lender or the Issuing Bank, as the case may be, on or with respect to any payment by or on account of any obligation of the Borrowers hereunder or under any other Loan Document (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrowers by a Lender or the Issuing Bank, or by any Agent on its own behalf or on behalf of a Lender or the Issuing Bank setting forth in reasonable detail the manner in which such amount was determined, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrowers to a Governmental Authority, the Borrowers shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent or the Canadian Agent, as applicable.

(e) Any Foreign Lender other than a Canadian Lender that is entitled to an exemption from or reduction in withholding tax shall deliver to the Lead Borrower and the Administrative Agent two copies of either United States Internal Revenue Service Form W-8BEN or Form W-8ECI, or any subsequent versions thereof or successors thereto, or, in the case of a Foreign Lender's claiming exemption from or reduction in U.S. Federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of **"portfolio interest"**, a Form W-8BEN, or any subsequent versions thereof or successors thereto (and, if such Foreign Lender delivers a Form W-8BEN, a certificate representing that such Foreign Lender is not a bank for purposes of Section 881(c) of the Code, is not a 10-percent shareholder (within the meaning of Section 871(h)(3)(B) of the Code) of the Borrowers and is not a controlled foreign corporation related to the Borrowers (within the meaning of Section 864(d)(4) of the Code)), properly completed and duly executed by such Foreign Lender claiming complete exemption from or reduced rate of, United States federal withholding tax on payments by the Borrowers under this Agreement and the other Loan Documents, or in the case of a Foreign Lender claiming exemption for **"portfolio interest"** certifying that it is not a foreign corporation, partnership, estate or trust. Such forms shall be delivered by each Foreign Lender other than a Canadian Lender on or before the date it becomes a party to this Agreement (or, in the case of a transferee that is a participation holder, on or before the date such participation holder becomes a transferee hereunder) and on or before the date, if any, such Foreign Lender changes its applicable lending office by designating a different lending office (a **"New Lending Office")**. In addition, each Foreign Lender shall deliver such forms promptly upon the obsolescence or invalidity of any form previously delivered by such Foreign Lender. Notwithstanding any other provision of this Section 2.26(e), a Foreign Lender shall not be required to deliver any form pursuant to this 2.26(e) that such Foreign Lender is not legally able to deliver.

(f) The Borrowers shall not be required to indemnify any Foreign Lender or to pay any additional amounts to any Foreign Lender in respect of United States federal withholding tax pursuant to paragraph (a) or (c) above to the extent that the obligation to pay such additional amounts would not have

arisen but for a failure by such Foreign Lender to comply with the provisions of paragraph (e) above. Should a Lender become subject to Taxes because of its failure to deliver a form required hereunder, the Borrowers shall, at such Lender's expense, take such steps as such Lender shall reasonably request to assist such Lender to recover such Taxes.

**2.27 Security Interests in Collateral.** To secure their Obligations under this Agreement and the other Loan Documents, each Credit Party shall grant, and the Lead Borrower shall cause each Domestic Credit Party to grant, to the Collateral Agent, for its benefit and the ratable benefit of the other Secured Parties, and shall cause each Canadian Credit Party to grant, to the Collateral Agent, for its benefit and the ratable benefit of the other Canadian Secured Parties, a first-priority security interest in, and hypothec of, all of the Collateral pursuant hereto and to the Security Documents; provided that the Collateral granted by the Canadian Borrower shall secure only the Canadian Liabilities.

**2.28 Mitigation Obligations; Replacement of Lenders.**

(a) If any Lender requests compensation under Section 2.23, or if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.26, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Sections 2.23 or 2.26, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrowers (in the case of the Canadian Borrower, only in respect of any Canadian Lender) hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment; provided, however, that the Borrowers shall not be liable for such costs and expenses of a Lender requesting compensation if (i) such Lender becomes a party to this Agreement after the Effective Date and (ii) any relevant Change in Law occurred prior to the date such Lender becomes a party hereto.

(b) If any Lender requests compensation under Section 2.23, or if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.26, or if any Lender defaults in its obligation to fund Loans hereunder, then the Borrowers may, at their sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.6), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that (i) except in the case of an assignment to another Lender, the Borrowers shall have received the prior written consent of the Administrative Agent, the Issuing Bank and the Swingline Lender and the Canadian Agent only in the case of a Canadian Lender, which consent shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in unreimbursed drawings under Letters of Credit and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.23 or payments required to be made pursuant to Section 2.26, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

**3. REPRESENTATIONS AND WARRANTIES**

Each Borrower represents and warrants to the Agents and the Lenders that:

**3.1 Organization; Powers.** Each of the Credit Parties and each Material Foreign Subsidiary is, duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, and each such Person has all requisite power and authority to carry on its business as now conducted and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required.

**3.2 Authorization; Enforceability.** The transactions contemplated hereby and by the other Loan Documents to be entered into by each of the Credit Parties are within such Person's corporate powers and have been duly authorized by all necessary corporate, and, if required, stockholder action. This Agreement has been duly executed and delivered by each of the Borrowers and constitutes, and each other Loan Document to which any of the Credit Parties is a party, when executed and delivered by such Credit Party, will constitute, a legal, valid and binding obligation of such Credit Party (as the case may be), enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

**3.3 Governmental Approvals; No Conflicts.** The transactions to be entered into contemplated by the Loan Documents (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except (i) for such as have been obtained or made and are in full force and effect, (ii) for those for which a failure to obtain same could not be reasonably be expected to have a Material Adverse Effect, and (iii) for filings and recordings necessary to perfect Liens created under the Loan Documents, (b) will not violate any Applicable Law or regulation or the charter, by laws or other organizational documents of any Borrower, any of the other Credit Parties, or any Material Foreign Subsidiary or any order of any Governmental Authority, except for such violations as could not reasonably be expected to have a Material Adverse Effect, (c) will not violate or result in a default under any indenture, agreement or other instrument binding upon any Borrower, any of the other Credit Parties, or any Material Foreign Subsidiary, or their respective assets, except for such violations or defaults as could not reasonably be expected to have a Material Adverse Effect, or give rise to a right thereunder to require any material payment to be made by any Borrower, any of the other Credit Parties, or any Material Foreign Subsidiary and (d) will not result in the creation or imposition of any Lien on any material asset of any Borrower, any of the other Credit Parties, or any Material Foreign Subsidiary, except Liens created under the Loan Documents or otherwise permitted hereby or thereby.

**3.4 Financial Condition.**

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of the Borrower Consolidated Group as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein.

(b) The unaudited Consolidated and consolidating balance sheet of the Borrower Consolidated Group dated October 30, 2010, and the related Consolidated and consolidating statements of income or operations, shareholders' equity and cash flows for the Fiscal Quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present the financial condition of the Borrower

Consolidated Group as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

(c) Since the date of the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

**3.5 Properties.**

(a) Each of the Credit Parties has good title to, or valid leasehold interests in, all of such Person's real and personal property material to its business, except for defects which could not reasonably be expected to have a Material Adverse Effect.

(b) Schedule 3.5(b)(i) sets forth the address (including county) of all Real Estate that is owned by each of the Credit Parties as of the Effective Date, together with a list of the holders of any mortgage or other Lien thereon. Schedule 3.5(b)(ii) sets forth the address of all Real Estate (including retail store locations) that is leased by each of the Credit Parties as of the Effective Date. Each of such leases is in full force and effect and no Credit Party is in default of the terms thereof, except for such defaults which would not reasonably be expected to have a Material Adverse Effect.

(c) Schedule 6.1 sets forth a complete and accurate list of all Indebtedness of each Credit Party on the Effective Date, showing the amount, obligor or issuer and maturity thereof.

(d) Schedule 6.2 sets forth a complete and accurate list of all Liens on the property or assets of each Credit Party as of the Effective Date, showing as of the Effective Date the lienholder thereof, the principal amount of the obligations secured thereby and the property or assets of such Credit Party subject thereto. The property of each Credit Party is subject to no Liens, other than Permitted Encumbrances.

(e) Schedule 6.4 sets forth a complete and accurate list of all Investments held by any Credit Party on the Effective Date, showing the amount, obligor or issuer and maturity, if any, thereof.

**3.6 Litigation and Environmental Matters.**

(a) There are no actions, suits, investigations, or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of any of the Credit Parties, threatened against or affecting any such Person or any Material Foreign Subsidiary (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than those set forth on Schedule 3.6) or (ii) that involve any of the Loan Documents.

(b) Except for the matters set forth on Schedule 3.6, and except as could not reasonably be expected to have a Material Adverse Effect, none of the Credit Parties nor any Material Foreign Subsidiary (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received written notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability.

(c) Since the Effective Date, there has been no change in the status of the matters set forth on Schedule 3.6 that, individually or in the aggregate, has resulted in, or could reasonably be expected to result in, a Material Adverse Effect.

**3.7 Compliance with Laws and Agreements.** Except as set forth in Schedule 3.7, each of the Credit Parties is in compliance with all laws, regulations and orders of any Governmental Authority applicable to such Person or its property and all indentures, material agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing.

**3.8 Investment Company or Holding Company Status.** None of the Credit Parties is an (a) "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940 or (b) a "holding company," an "affiliate" of a "holding company" or a "subsidiary company" of a "holding company," as defined in, or subject to regulation under, the Public Utility Holding Company Act of 2005, as amended.

**3.9 Taxes.** Except as set forth in Schedule 3.9, each of the Credit Parties and each Material Foreign Subsidiary has timely filed or caused to be filed all tax returns and reports required to have been filed and has paid or caused to be paid prior to delinquency all taxes required to have been paid by it, except (a) taxes that are being contested in good faith by appropriate proceedings, for which such Person has set aside on its books adequate reserves, and as to which no Lien (other than an inchoate Lien) secures such obligation, and which contest effectively suspends the collection of the contested obligation and the enforcement of any Lien securing such obligation, or (b) to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

**3.10 ERISA/Canadian Pension Plan.**

(a) Except as set forth in Schedule 3.10, none of the Credit Parties nor any Material Foreign Subsidiary is party to a Plan. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. Except as set forth in Schedule 3.10, the present value of all accumulated benefit obligations under each Plan and each Canadian Pension Plan (based on, inter alia, the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plan or Canadian Pension Plan. Schedule 3.10 sets forth the amount of underfunding on such basis for all Plans and Canadian Pension Plans as of the date of the most recent financial statements, and nothing is reasonably expected to occur that could increase the amount of such underfunding to an amount that, in either case, could reasonably be expected to result in a Material Adverse Effect.

(b) The Canadian Borrower and its Subsidiaries are in compliance with the requirements of the *Pension Benefits Act* (Ontario) or similar legislation of another Canadian province or territory and *the Income Tax Act* (Canada), except where the failure to so comply would not reasonably be expected to have a Material Adverse Effect. No fact or situation that may reasonably be expected to result in a Material Adverse Effect exists in connection with any Canadian Pension Plan. No Termination Event has occurred. No lien has arisen, choate or inchoate, in respect of the Canadian Borrower or its Subsidiaries or their property in connection with any Canadian Pension Plan (save for contribution amounts not yet due).

**3.11 Interdependence of Credit Parties.**

(a) The business of each of the Credit Parties shall benefit from the successful performance of the business of each of the other Credit Parties, and the Credit Parties as a whole.

(b) Each of the Credit Parties has cooperated to the extent necessary and shall continue to cooperate with each of the other Credit Parties to the extent necessary in the development and conduct of each of the other Credit Parties' business, and shall to the extent necessary share and participate in the formulation of methods of operation, distribution, leasing, inventory control, and other similar business matters essential to each of the Credit Parties' respective businesses.

(c) The failure of any of the Credit Parties to cooperate with all of the other Credit Parties in the conduct of their respective businesses could have an adverse impact on the business of each of the other Credit Parties, and the failure of any of the Credit Parties to associate or cooperate with all of the other Credit Parties could impair the goodwill of such other Credit Parties and the Credit Parties as a whole.

(d) Each of the Credit Parties (other than the Canadian Credit Parties) is undertaking joint and several liability for the Domestic Obligations on the terms and conditions set forth herein and is undertaking joint and several liability for the Canadian Liabilities on the terms and conditions set forth in the Effective Date Guaranty and represents and warrants that the financial accommodations being provided hereby are for the mutual benefit, directly and indirectly, of each of the Credit Parties.

**3.12 Disclosure.** The Borrowers have disclosed to the Lenders all agreements, instruments and corporate or other restrictions to which any of the Credit Parties or any Material Foreign Subsidiary is subject, and all other matters known to any such Person, that, individually or in the aggregate, in each case, could reasonably be expected to result in a Material Adverse Effect. None of the reports, financial statements, certificates or other information furnished by or on behalf of any of the Credit Parties or any Material Foreign Subsidiary to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or any other Loan Document or delivered hereunder or thereunder (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that with respect to projected financial information and other forward-looking information, the Borrowers represent only that such information was prepared in good faith on the basis of assumptions believed to be reasonable at the time.

**3.13 Subsidiaries.** On and as of the Effective Date, the authorized capital stock or other equity interests, and the number of issued and outstanding shares of capital stock or other equity interests of the Borrowers and each other member of the Borrower Consolidated Group is as described in Schedule 3.13 and, as to Subsidiaries, Schedule 3.13 indicates whether such Subsidiary is a Material Subsidiary, and, if not a Material Subsidiary, whether such Subsidiary is active or inactive. All such outstanding shares of capital stock or other equity interests of the Borrowers, each of the other Credit Parties and each Material Foreign Subsidiary have been duly and validly issued in material compliance with all legal requirements relating to the authorization and issuance of shares of capital stock or other equity interests, and (except in the case of the options for shares of the common stock of the Lead Borrower described on Schedule 3.13) are fully paid and non-assessable. Except as set forth on Schedule 3.13, as of the Effective Date, none of the Credit Parties is party to any joint venture, general or limited partnership, or limited liability company, agreements or any other business ventures or entities.

**3.14 Insurance.** Schedule 3.14 sets forth a description of all insurance maintained by or on behalf of the Credit Parties and each Material Foreign Subsidiary as of the Effective Date. Each of such

policies is in full force and effect. As of the Effective Date, all premiums in respect of such insurance that are due and payable have been paid.

**3.15 Labor Matters.** There are no strikes, lockouts or slowdowns against any of the Credit Parties or any Material Foreign Subsidiary pending or, to the knowledge of the Borrowers, threatened, that could reasonably be expected to result in a Material Adverse Effect. The hours worked by and payments made to employees of the Credit Parties or any Material Foreign Subsidiary have not been in violation of the Fair Labor Standards Act, if applicable, or any other applicable federal, state, local or foreign law dealing with such matters to the extent that any such violations could reasonably be expected to have a Material Adverse Effect. All material payments due from any of the Credit Parties or any Material Foreign Subsidiary, or for which any material claim may be made against any such Person, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of such Credit Party or such Material Foreign Subsidiary. The consummation of the transactions contemplated by the Loan Documents will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any of the Credit Parties or any Material Foreign Subsidiary is bound.

**3.16 Certain Transactions.** Except as set forth on Schedule 3.16, none of the officers, partners, or directors of any of the Credit Parties is presently a party to any transaction, and, to the knowledge of the executive officers of each of the Credit Parties, none of the employees of any of the Credit Parties is presently a party to any material transaction, with any of the other Credit Parties or any Affiliate (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any officer, partner, director or such employee or, to the knowledge of the executive officers of the Borrowers, any corporation, partnership, trust or other entity in which any officer, partner, director, or any such employee or natural person related to such officer, partner, director or employee or other Person in which such officer, partner, director or employee has a direct or indirect beneficial interest, has a substantial direct or indirect beneficial interest or is an officer, director, trustee or partner.

**3.17 Restrictions on the Credit Parties.** None of the Credit Parties nor any Material Foreign Subsidiary is a party to or bound by any contract, agreement or instrument, or subject to any charter or other corporate restriction, that has or could reasonably be expected to have a Material Adverse Effect.

**3.18 Security Documents.**

The Security Documents create in favor of the Collateral Agent, for the ratable benefit of the Domestic Secured Parties or the Canadian Secured Parties, as applicable, a legal, valid and enforceable security interest in the Collateral, and the Security Documents constitute, or will upon the filing of financing statements and the obtaining of "control", in each case with respect to the relevant Collateral as required under the applicable Uniform Commercial Code or PPSA, the creation of a fully perfected first priority Lien on, and security interest in, all right, title and interest of the Borrowers and each Guarantor thereunder in such Collateral, in each case prior and superior in right to any other Person (other than Permitted Encumbrances having priority under Applicable Law), except as permitted hereunder or under any other Loan Document.

**3.19 Federal Reserve Regulations.**

(a) None of the Credit Parties is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock.

(b) No part of the proceeds of any Loan or any Letter of Credit will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, to buy or carry Margin Stock or to extend credit to others for the purpose of buying or carrying Margin Stock or to refund indebtedness originally incurred for such purpose or for any other purpose, in any case that entails a violation of, or that is not permitted by the provisions of the Regulations of the Board, including Regulation U or X and the Credit Parties agree to comply with the Administrative Agent's, and the Lenders', requests for information relating to any transactions involving Margin Stock to the extent relevant to comply with such regulations.

**3.20 Solvency.** Before and after giving effect to each Credit Extension and each Tranche A-1 Loan, (a) the Credit Parties, taken as a whole, are and will be Solvent, and (b) the Credit Parties and the Material Foreign Subsidiaries, taken as a whole, are and will be Solvent. No transfer of property is being made by any Borrower and no obligation is being incurred by any Borrower in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of any Borrower.

**3.21 Franchises, Patents, Copyrights, Etc.** Except as otherwise set forth on Schedule 3.21 hereto, each of the Credit Parties owns, or is licensed to use, all franchises, patents, copyrights, trademarks, tradenames, service marks, licenses and permits, and rights in respect of the foregoing, adequate for the conduct of its business as substantially now conducted, and to its knowledge, without conflict with any rights of any other Person (and, in each case, free of any Lien that is not a Permitted Encumbrance), except to the extent that a failure to do so would not reasonably be expected to have a Material Adverse Effect.

**3.22 Brokers.** No broker or finder brought about the obtaining, making or closing of the Loans or transactions contemplated by the Loan Documents, and no Credit Party or Affiliate thereof has any obligation to any Person in respect of any finder's or brokerage fees in connection therewith.

**3.23 Casualty.** Neither the businesses nor the properties of any Credit Party or any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

**3.24 Intellectual Property; Licenses, Etc.** The Credit Parties own, or possess the right to use, all of the Intellectual Property, licenses, permits and other authorizations that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person, except as would not be reasonably expected to have a Material Adverse Effect.

**4. CONDITIONS.**

**4.1 Effective Date.** The obligation of the Lenders to make the initial Loans and of the Issuing Bank to issue the initial Letters of Credit is subject to the following conditions precedent:

(a) The Agents (or their counsel) shall have received from each party hereto either (i) a counterpart of this Agreement and all other Loan Documents (including, without limitation, the Security Documents) to be delivered on or before the Effective Date, signed on behalf of such party or (ii) written evidence satisfactory to the Agents and the Lead Arranger (which may include telecopy transmission or electronic transmission of a pdf formatted copy of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement and all other Loan Documents to be delivered on or before the Effective Date.

(b) The Agents shall have received a favorable written opinion (addressed to each Agent and the Lenders on the Effective Date and dated the Effective Date) of (i) Bass Berry & Sims PLC, counsel for the Credit Parties, (ii) Hodgson Russ LLP, (iii) Larkin Hoffman Daly & Lindgren Ltd., (iv) McCarthy Tétrault LLP, and (v) applicable local counsel, each in form satisfactory to the Administrative Agent, covering such matters relating to the Credit Parties, the Loan Documents or the transactions contemplated thereby as the Required Lenders shall reasonably request. The Borrowers hereby request such counsel to deliver such opinions.

(c) The Agents shall have received such documents and certificates as the Agents or their counsel may reasonably request relating to the organization, existence and good standing of each of the Credit Parties, the authorization of the transactions contemplated by the Loan Documents and any other legal matters relating to the Credit Parties, the Loan Documents or the transactions contemplated thereby, all in form and substance reasonably satisfactory to the Agents and their counsel.

(d) The Agents shall have received a Borrowing Base Certificate dated the Effective Date, relating to the Fiscal Month ended on December 25, 2010, and executed by a Financial Officer of the Lead Borrower.

(e) The Agents shall have received a certificate from a Financial Officer of the Lead Borrower, together with such other evidence reasonably requested by the Agents, in each case reasonably satisfactory in form and substance to the Agents, certifying that as of the Effective Date (i) the Credit Parties, on a Consolidated basis, are Solvent, (ii) there has been no event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect, and (iii) the representations and warranties made by the Borrowers in the Loan Documents are true and correct in all material respects and that no event has occurred (or failed to occur) which is or which, solely with the giving of notice or passage of time (or both) would be a Default or an Event of Default.

(f) All necessary consents and approvals to the transactions contemplated hereby shall have been obtained and shall be reasonably satisfactory to the Agents, including, without limitation, consents from all requisite material Governmental Authorities and, except as would not reasonably be expected to have or result in a Material Adverse Effect, all third parties shall have approved or consented to the transactions contemplated hereby, to the extent required, all applicable waiting periods shall have expired and there shall be no material governmental or judicial action, actual or threatened, that would reasonably be expected to materially restrain, prevent or impose burdensome conditions on the transactions contemplated hereby.

(g) The Administrative Agent shall be reasonably satisfied that any financial statements delivered to it and the Lenders fairly present the business and financial condition of the Borrower Consolidated Group (subject, in the case of interim financial statements, to year-end adjustments and the absence of footnotes) and that there has been no Material Adverse Effect since January 30, 2010.

(h) Except as set forth on Schedule 3.6, there shall not be pending any litigation or other proceeding, the result of which could reasonably be expected to have a Material Adverse Effect.

(i) There shall not have occurred any event of default, nor shall any event exist which is, or solely with the passage of time, the giving of notice or both, would be an event of default under any Material Indebtedness.

(j) The Collateral Agent shall have received results of searches from such jurisdictions as may be reasonably required by the Collateral Agent or other evidence reasonably

satisfactory to the Collateral Agent (in each case dated as of a date reasonably satisfactory to the Collateral Agent) indicating the absence of Liens on the Collateral, including, without limitation, receivables from credit card processors and check processors, except for Permitted Encumbrances and Liens for which termination statements, estoppel certificates and releases reasonably satisfactory to the Collateral Agent are being tendered on the Effective Date.

(k) The Collateral Agent and the Canadian Agent shall have received all documents and instruments, including Uniform Commercial Code and PPSA financing statements, and certified statements issued by the Québec Register of Personal and Movable Real Rights, required by law or reasonably requested by the Collateral Agent and the Canadian Agent to be filed, registered or recorded to create or perfect the first priority Liens intended to be created under the Loan Documents and, to the extent required by the Collateral Agent and the Canadian Agent, all such documents and instruments shall have been so filed, registered or recorded to the satisfaction of the Collateral Agent and the Canadian Agent.

(l) The Collateral Agent and the Canadian Agent, as applicable, shall have received Account Control Agreements, the Credit Card Notifications, Collateral Control Agreements, and other similar third party agreements required to be delivered hereunder on or before the Effective Date.

(m) The Agents shall have received the results of a commercial financial examination and Inventory appraisal, in each case by a third party auditor or appraiser acceptable to the Agents, which results shall be satisfactory to the Agents.

(n) All fees due at or immediately after the Effective Date and all reasonable costs and expenses incurred by the Agents in connection with the establishment of the credit facility contemplated hereby (including the reasonable fees and expenses of counsel to the Agents) shall have been paid in full.

(o) The consummation of the transactions contemplated hereby shall not (a) violate any Applicable Law, or (b) conflict with, or result in a default or event of default under, any material agreement of Borrowers or any other Credit Party, taken as a whole (and the Agents and the Lenders shall receive a satisfactory opinion of Borrowers' counsel to that effect). No event shall exist which is, or solely with the passage of time, the giving of notice or both, would be an event of default under any agreement of any of the Credit Parties if such event of default could reasonably be expected to have a Material Adverse Effect.

(p) There shall be no Default or Event of Default on the Effective Date.

(q) The Collateral Agent shall have received, and be satisfied with, evidence of the Borrowers' insurance, together with such endorsements as are required by the Loan Documents.

(r) The Agents shall have received all of the items set forth on the Closing Agenda attached hereto as Exhibit F.

(s) The Administrative Agent and the Lenders shall have received and be satisfied with (a) a detailed forecast for the period commencing with the Fiscal Year beginning [February 1, 2012] and ending on the Maturity Date, which shall include an Excess Availability model, Consolidated income statement, balance sheet, and statement of cash flow, prepared on an annual basis, each prepared in conformity with GAAP and consistent with the Borrowers' then current practices and (b) such other information (financial or otherwise) reasonably requested by the Administrative Agent.

(t) The Borrowers shall have Excess Availability on the Effective Date, after giving effect to any Credit Extensions made on the Effective Date, of not less than $100,000,000.

(u) The Administrative Agent and each Lender shall have received all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the USA PATRIOT Act and the Proceeds of Crime Act.

(v) There shall have been delivered to the Administrative Agent such additional instruments and documents as the Agents or counsel to the Agents reasonably may require or request.

The Administrative Agent shall notify the Lead Borrower and the Lenders of the Effective Date, and such notice shall be conclusive and binding. Notwithstanding the foregoing, the obligations of the Lenders to make Loans and of the Issuing Bank to issue Letters of Credit hereunder shall not become effective unless each of the foregoing conditions is satisfied (or waived pursuant to Section 9.3) at or prior to 5:00 p.m., New York time, on January 14, 2011 (and, in the event such conditions are not so satisfied or waived, this Agreement shall terminate at such time).

**4.2 Conditions Precedent to Each Loan and Each Letter of Credit.** In addition to those conditions described in Section 4.1, the obligation of the Lenders to make each Loan and of the applicable Issuing Bank to issue each Letter of Credit subsequent to the Effective Date is subject to the following conditions precedent:

(a) **Notice.** The Administrative Agent shall have received a notice with respect to such Borrowing or issuance, as the case may be, as required by Section 2.3.

(b) **Representations and Warranties.** All representations and warranties contained in this Agreement and the other Loan Documents or otherwise made in writing in connection herewith or therewith shall be true and correct in all material respects on and as of the date of each Borrowing or the issuance of each Letter of Credit hereunder with the same effect as if made on and as of such date, (i) other than representations and warranties that relate solely to an earlier date and (ii) in the case of any representation and warranty qualified by materiality, they shall be true and correct in all respects.

(c) **No Default.** On the date of each Borrowing hereunder and the issuance of each Letter of Credit, no Default or Event of Default shall have occurred and be continuing.

(d) **Borrowing Base Certificate.** The Administrative Agent shall have received the most recently required Borrowing Base Certificate, with each such Borrowing Base Certificate including schedules as required by the Administrative Agent.

The request by the Borrowers for, and the acceptance by the Borrowers of, each extension of credit hereunder shall be deemed to be a representation and warranty by the Borrowers that the conditions specified in this Section 4.2 have been satisfied at that time and that after giving effect to such extension of credit the Borrowers shall continue to be in compliance with Section 2.1(a). The conditions set forth in this Section 4.2 are for the sole benefit of the Administrative Agent and the Lenders and may be waived by the Administrative Agent in whole or in part without prejudice to the Administrative Agent or any Lender.

**5. AFFIRMATIVE COVENANTS.**

Until the Commitments have expired or have been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit shall have expired or have been terminated and all L/C Disbursements shall have been reimbursed, each of the Credit Parties covenants and agrees with the Agents and the Lenders that:

**5.1 Financial Statements and Other Information.** The Borrowers will furnish to the Administrative Agent:

(a) within ninety (90) days after the end of each Fiscal Year of the Lead Borrower, a Consolidated balance sheet and the related Consolidated statements of income, stockholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all audited and reported on by Ernst & Young or another independent public accountant of recognized national standing (without a "going concern" or like qualification or exception and without a qualification or exception as to the scope of such audit) to the effect that as of the date(s) thereof and for the period(s) covered thereby, such Consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Lead Borrower on a Consolidated basis in accordance with GAAP consistently applied;

(b) within forty-five (45) days after the end of each Fiscal Quarter of the Lead Borrower, a Consolidated balance sheet and the related Consolidated statements of income, stockholders' equity and cash flows, as of the end of and for such Fiscal Quarter and the elapsed portion of the Fiscal Year, with comparative results to the same fiscal periods of the prior Fiscal Year, all certified by a Financial Officer of the Lead Borrower as presenting in all material respects the financial condition and results of operations of the Lead Borrower on a Consolidated basis in accordance with GAAP consistently applied, subject to normal year end audit adjustments and the absence of footnotes,

(c) during the continuance of Cash Dominion Event, within fifteen (15) days after the end of each Fiscal Month, a Consolidated and consolidating balance sheet and related Consolidated and consolidating statements of income, stockholders' equity and cash flows for the Lead Borrower and its Subsidiaries as of the end of and for such Fiscal Month and the elapsed portion of the Fiscal Year, with comparative results to the same fiscal periods of the prior Fiscal Year, all certified by a Financial Officer of the Lead Borrower as presenting in all material respects the financial condition and results of operations of the Lead Borrower and its Subsidiaries on a Consolidated and consolidating basis in accordance with GAAP consistently applied, subject to normal year end audit adjustments and the absence of footnotes;

(d) concurrently with any delivery of financial statements under clause (a), (b), or, if applicable, (c) above, a certificate of a Financial Officer of the Lead Borrower in the form of Exhibit E hereto (i) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, and (ii) only if a Covenant Compliance Event shall then be in existence, setting forth reasonably detailed calculations with respect to the Fixed Charge Coverage Ratio for such period, and (iii) stating whether any change in GAAP or in the application thereof has occurred since the date of the Lead Borrower's financial statements referred to in Section 3.4 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate;

(e) within sixty (60) days after the commencement of each Fiscal Year of the Lead Borrower, a detailed Consolidated budget by quarter for such Fiscal Year (including a projected Consolidated balance sheet and related statements of projected Consolidated operations and cash flow as of the end of and for such Fiscal Year), provided that such Consolidated budget shall be prepared on a month-by-month basis for any budget submitted after a Cash Dominion Event has occurred and while such Cash Dominion Event continues;

(f) within ten (10) Business Days after the end of each Fiscal Month, a certificate in the form of Exhibit D (a **"Borrowing Base Certificate")** showing the Domestic Borrowing Base, Tranche A-1 Borrowing Base and Canadian Borrowing Base as of the close of business on the last day of the immediately preceding month, each such Borrowing Base Certificate to be certified as true and correct on

behalf of the Borrowers by a Financial Officer of the Lead Borrower, provided, however, if an Accelerated Borrowing Base Delivery Event has occurred and is continuing, the Administrative Agent may require that Borrowers furnish such Borrowing Base Certificate (showing the Domestic Borrowing Base, Tranche A-1 Borrowing Base and Canadian Borrowing Base as of the close of business on the last day of the immediately preceding week) weekly on Wednesday of each week;

(g) within thirty (30) days of the end of each Fiscal Quarter, the Lead Borrower will notify the Administrative Agent of the opening or closing of any of Borrower's stores in Pennsylvania, Virginia or Washington;

(h) promptly after the same become publicly available, copies of all periodic reports filed by the Lead Borrower with the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of the functions of said Commission;

(i) the financial and collateral reports described on Schedule 5.1(i) hereto, at the times set forth in such Schedule;

(j) No later than five (5) days prior the anticipated consummation of a Permitted Acquisition, (A) copies of the then draft purchase and sale agreements or other material acquisition documents to be executed in connection with the Permitted Acquisition (and furnish the final executed documentation promptly after consummation of such Permitted Acquisition), and (B) with respect to any Permitted Acquisition for aggregate consideration of equal to or greater than $25,000,000 (excluding consideration consisting of capital stock or other equity interests of the Borrower), (i) copies of the most recent audited (if any), and if later, unaudited financial statements of the Person which is the subject of the Permitted Acquisition, and (ii) an unaudited pro forma Consolidated balance sheet and income statement of the Lead Borrower as of the end of the most recently completed Fiscal Quarter but prepared as though the Permitted Acquisition had occurred on such date and related pro forma calculations of average Excess Availability for the subsequent four Fiscal Quarters period;

(k) notice of any (i) sale or other disposition of assets of any Borrower permitted under Section 6.5(d) hereof promptly following the date of consummation such sale or disposition or (ii) incurrence of any Indebtedness permitted under Section 6.1(d) or (e) promptly following the incurrence of such Indebtedness;

(l) promptly upon receipt thereof, copies of all reports submitted to the Lead Borrower or any of the other Credit Parties by independent certified public accountants in connection with each annual, interim or special audit of the books of the Credit Parties made by such accountants, including any management letter commenting on the Borrowers' internal controls submitted by such accountants to management in connection with their annual audit; and

(m) promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of the Lead Borrower or any of the other Credit Parties, or compliance with the terms of any Loan Document, as the Agents or any Lender, acting through the Administrative Agent, may reasonably request.

Documents required to be delivered pursuant to Sections 5.1(a), (b), (c) and (f) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Lead Borrower posts such documents, or provides a link thereto on the Lead Borrower's website on the Internet at the website address; or (ii) on which such documents are posted on the Lead Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent) or when the

Administrative Agent receives an electronic copy; provided that: (i) the Lead Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests the Lead Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) the Lead Borrower shall notify the Administrative Agent and each Lender (by telecopier or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Credit Parties with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Credit Parties hereby acknowledge that (a) the Administrative Agent and/or the Lead Arranger will make available to the Lenders and the Issuing Bank materials and/or information provided by or on behalf of the Credit Parties hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "Platform") and (b) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Credit Parties or their securities) (each, a "Public Lender"). The Credit Parties hereby agree that they will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Credit Parties shall be deemed to have authorized the Administrative Agent, the Lead Arranger, the Issuing Bank and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Credit Parties or their securities for purposes of United States Federal and state securities laws; (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor"; and (z) the Administrative Agent and the Lead Arranger shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor."

**5.2 Notices of Material Events.** The Borrowers will, and the Lead Borrower will cause each of the other Credit Parties to, furnish to the Administrative Agent (which in turn shall furnish to the Issuing Bank, the Collateral Agent and each Lender) prompt written notice of the following:

(a) the occurrence of any Default;

(b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting any of the Credit Parties that, if adversely determined, could reasonably be expected to result in a Material Adverse Effect;

(c) the occurrence of any ERISA Event or Termination Event that, alone or together with any other ERISA Events or Termination Events that have occurred, could reasonably be expected to result in a Material Adverse Effect;

(d) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect;

(e) any change in the Lead Borrower's chief executive officer or chief financial officer;

(f) any collective bargaining agreement or other material labor contract to which any of the Credit Parties becomes a party, or the application for the certification of a collective bargaining agent;

(g) the filing of any Lien for unpaid taxes in an aggregate amount in excess of $1,000,000 against any of the Credit Parties;

(h) the discharge by any of the Credit Parties of its present independent accountants or any withdrawal or resignation by such independent accountants; and

(i) any material change in accounting policies or financial reporting practices by any Credit Party or any Subsidiary thereof.

Each notice delivered under this Section shall be accompanied by a statement of a Financial Officer or other executive officer of the Lead Borrower setting forth the details of the event or development requiring such notice and, if applicable, any action taken or proposed to be taken with respect thereto.

**5.3 Information Regarding Collateral.**

(a) The Lead Borrower will furnish to the Agents, unless indicated otherwise herein, thirty (30) days' prior written notice of any change (i) in any Credit Party's corporate or legal name or in any trade name used to identify it in the conduct of its business or in the ownership of its properties, (ii) within the time period specified in Section 5.1(b) hereof for the delivery of financial statements, in the location of any Credit Party's chief executive office, its principal place of business or any office in which it maintains books or records relating to Accounts, (iii) in any Credit Party's organizational structure or (iv) in any Credit Party's jurisdiction of incorporation or formation, Federal Taxpayer Identification Number or organizational identification number assigned to it by its state of organization.

(b) Prior to opening any DDA (other than a store-level DDA or Excluded DDA) into which any amount is deposited that would result in the aggregate balance in all Post Effective DDAs exceeding $500,000, the Borrowers will give written notice of the opening of such account to the Administrative Agent. At the option of the Administrative Agent, the applicable Borrower shall enter into a Account Control Agreement with the financial institution at which such DDA is opened, which Account Control Agreement shall be in form and substance reasonably satisfactory to the Administrative Agent.

**5.4 Existence; Conduct of Business.** Except to the extent that a failure to do so could not reasonably be expected to have a Material Adverse Effect, the Lead Borrower will, and will cause each of the other Credit Parties and each Material Foreign Subsidiary to, do or cause to be done all things necessary to comply with its respective charter, certificate of incorporation, and/or other organizational documents, as applicable, and by-laws and/or other instruments which deal with corporate governance, and to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges, franchises, patents, copyrights, trademarks and trade names material to the conduct of its business, provided that the foregoing shall not prohibit any merger, amalgamation, consolidation, liquidation or dissolution permitted under Section 6.3 or any sale, lease, transfer or other disposition permitted by Section 6.5.

**5.5 Payment of Obligations.** Each Borrower will, and the Lead Borrower will cause each other Credit Party and each Material Foreign Subsidiary to, pay its Indebtedness and other obligations, including tax liabilities, before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate actions, (b) such Borrower, such other

Credit Party, or such Material Foreign Subsidiary has set aside on its books adequate reserves with respect thereto to the extent required by and in accordance with GAAP, (c) such contest effectively suspends collection of the contested obligation, (d) no Lien (other than an inchoate Lien) secures such obligation and (e) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect. Nothing contained herein shall be deemed to limit the rights of the Administrative Agent under Section 2.2(b).

**5.6 Maintenance of Properties.** The Lead Borrower will, and will cause each of the other Credit Parties and each Material Foreign Subsidiary to, keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted and with the exception of asset dispositions permitted hereunder.

**5.7 Insurance.**

(a) The Lead Borrower will, and will cause each of the Credit Parties and each Material Foreign Subsidiary to, (i) maintain insurance with financially sound and reputable insurers reasonably acceptable to the Agents (or, to the extent consistent with prudent business practice, a program of self-insurance consistent with current practices) on such of its property and in at least such amounts and against at least such risks as is customary with companies in the same or similar businesses operating in the same or similar locations, including public liability insurance against claims for personal injury or death occurring upon, in or about or in connection with the use of any properties owned, occupied or controlled by it (including the insurance required pursuant to the Security Documents); (ii) maintain such other insurance as may be required by law; and (iii) furnish to the Agents, upon written request, full information as to the insurance carried. The Agents shall not, by the fact of approving, disapproving, accepting, obtaining or failing to obtain any such insurance, incur liability for the form or legal sufficiency of insurance contracts, solvency of insurance companies or payment of lawsuits, and each Borrower hereby expressly assumes full responsibility therefor and liability, if any, thereunder. The Lead Borrower shall, and shall cause each of the other Credit Parties and each Material Foreign Subsidiary to, furnish to the Agents certificates or other evidence satisfactory to the Agents of compliance with the foregoing insurance provisions.

(b) Fire and extended coverage or "all-risk" policies maintained with respect to any Collateral shall be endorsed or otherwise amended to include (i) a non-contributing mortgage clause (regarding improvements to real property) and a lenders' loss payable clause (regarding personal property), in form and substance reasonably satisfactory to the Lead Borrower and the Agents, which endorsements or amendments shall provide that the insurer shall pay all proceeds otherwise payable to the Borrowers under the policies directly to the Agents, (ii) a provision to the effect that none of the Borrowers, the Administrative Agent, the Collateral Agent, or any other party shall be a coinsurer and (iii) such other provisions as the Agents may reasonably require from time to time to protect the interests of the Lenders. Commercial general liability policies shall be endorsed to name the Agents as additional insureds. Business interruption policies, if any, shall name the Agents as an additional loss payee and shall be endorsed or amended to include (i) a provision that, from and after the Effective Date, the insurer shall pay all proceeds in excess of $5,000,000 otherwise payable to the Borrowers under the policies directly to the Administrative Agent or the Collateral Agent, provided, however, that the Agents hereby agree that prior to the occurrence a Cash Dominion Event, the Agents shall remit all proceeds received by Agents under the policies to Borrowers, provided further that after the occurrence and during the continuance of a Cash Dominion Event, the Agents shall apply any proceeds received in accordance with Sections 2.22 or 7.4 hereof, as applicable, (ii) a provision to the effect that none of the Borrowers, the Agents or any other party shall be a co-insurer and (iii) such other provisions as the Agents may reasonably require from time to time to protect the interests of the Lenders. Each such policy referred to in this paragraph also shall provide that it shall not be canceled, modified or not renewed except upon not less than 30 days' prior written notice thereof by the insurer to the Agents (giving the Agents the right to cure defaults in the payment of

premiums). The Borrowers shall, and the Lead Borrower shall cause each Material Foreign Subsidiary to, deliver to the Agents, prior to the cancellation, modification or nonrenewal of any such policy of insurance, a copy of a renewal or replacement policy (or other evidence of renewal of a policy previously delivered to the Agents) together with evidence satisfactory to the Agents of payment of the premium therefor.

**5.8 Casualty and Condemnation.** Each Borrower will furnish to the Agents and the Lenders prompt written notice of any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any material portion of the Collateral or any material part thereof or material interest therein under power of eminent domain or by condemnation or similar proceeding.

**5.9 Books and Records; Inspection and Audit Rights.**

(a) Each Borrower will, and the Lead Borrower will cause each of the other Credit Parties and each Material Foreign Subsidiary to, keep proper books of record and account in which full, true and correct entries in all material respects are made of all dealings and transactions in relation to its business and activities. Each Borrower will permit any representatives designated by any Agent on its own behalf or on behalf of the Lenders, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested.

(b) Each Borrower will, and the Lead Borrower will cause each of the other Credit Parties and each Material Foreign Subsidiary to, from time to time upon the reasonable request and reasonable prior notice of the Collateral Agent or the Required Lenders through the Administrative Agent, permit any Agent or professionals (including consultants, accountants, lawyers and appraisers) retained by the Agents to conduct appraisals, commercial finance examinations and other evaluations as they deem necessary or appropriate, including, without limitation, of (i) the Borrowers' practices in the computation of the Domestic Borrowing Base, Tranche A-1 Borrowing Base or Canadian Borrowing Base, as applicable and (ii) the assets included in the Domestic Borrowing Base, Tranche A-1 Borrowing Base or Canadian Borrowing Base, as applicable and related financial information such as, but not limited to, sales, gross margins, payables, accruals and reserves, and pay the reasonable fees and expenses of the Agents or such professionals with respect to such evaluations and appraisals, provided that (1) so long as Excess Availability, at any time tested, is greater than or equal to forty percent (40%) of the Loan Cap, no more than one such Inventory appraisal and one commercial finance examination shall be required during any twelve month period following the Effective Date, and (2) so long as Excess Availability, at any time tested, is less than forty percent (40%) of the Loan Cap but greater than or equal to fifteen percent (15%) of the Loan Cap, no more than two such Inventory appraisals and two commercial finance examinations shall be required during any twelve month period following the Effective Date, and (3) so long as Excess Availability, at any time tested, is less than fifteen percent (15%) of the Loan Cap, no more than three such Inventory appraisals and three commercial finance examinations shall be required during any twelve month period following the Effective Date, all of the foregoing appraisals and commercial finance examinations at the expense of the Borrowers and (4) following the occurrence and during the continuance of any Event of Default, the Administrative Agent may undertake such additional appraisals and commercial finance examinations as it deems appropriate, each at Borrowers' expense. Notwithstanding the foregoing, the Administrative Agent may undertake up to one additional commercial finance examination and up to one additional appraisal in any twelve month period as it deems appropriate, each at the expense of the Lenders.

(c) The Borrowers and each Material Foreign Subsidiary shall, at all times, retain Ernst & Young or other independent certified public accountants of national standing, and instruct such accountants to cooperate with, and be available to, the Administrative Agent or its representatives to discuss the Borrowers' and each Material Foreign Subsidiary's financial performance, financial condition,

operating results, controls and such other matters within the scope of the retention of such accountants as may be raised by the Administrative Agent.

**5.10 Fiscal Year.** Each of the Borrowers, each of the other Credit Parties and each Material Foreign Subsidiary shall have a Fiscal Year ending on the Saturday closest to January 31 of each year and shall notify the Administrative Agent of any change in such Fiscal Year.

**5.11 Physical Inventories.**

(a) The Collateral Agent, at the expense of the Borrowers, may participate in and/or observe each physical count and/or inventory of so much of the Collateral as consists of Inventory which is undertaken on behalf of the Borrowers so long as such participation does not disrupt the normal inventory schedule or process, provided that such participation shall be limited to once in any twelve month period after the Effective Date (unless a Cash Dominion Event shall have occurred and be continuing).

(b) The Borrowers, at their own expense, shall cause not less than one physical inventory of the Borrowers' inventory to be undertaken in each twelve (12) month period during which this Agreement is in effect, conducted by the Borrowers and using practices consistent with practices in effect on the date hereof.

(c) At the Administrative Agent's request, the Borrowers, within forty-five (45) days following the completion of such inventory, shall provide the Collateral Agent with a reconciliation of the results of each such inventory (as well as of any other physical inventory undertaken by the Borrowers). The Borrowers shall promptly post the results of each such inventory to the Borrowers' stock ledger and general ledger, as applicable.

(d) If and so long as there are any Loans outstanding, the Collateral Agent, in its discretion, if any Event of Default exists, may cause such additional inventories to be taken as the Collateral Agent determines (each, at the expense of the Borrowers). The Collateral Agent shall use its best efforts to schedule any such inventories so as to not unreasonably disrupt the operation of the Borrowers' business.

**5.12 Compliance with Laws.** Each Borrower will, and the Lead Borrower will cause each other Credit Party and each Material Foreign Subsidiary to, comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

**5.13 Use of Proceeds and Letters of Credit.** The proceeds of Loans made hereunder and Letters of Credit issued hereunder will be used only (a) for Restricted Payments, Permitted Investments under Section 6.4(e)(i) hereof and Permitted Acquisitions, (b) to finance the acquisition of working capital assets of the Borrowers and the Subsidiaries, including the purchase of inventory and equipment, in each case in the ordinary course of business, (c) to finance Capital Expenditures of the Borrowers and the Subsidiaries, (d) for refinancing of the Indebtedness under the Existing Credit Agreement, (e) to pay transaction costs in connection with this Agreement and the other Loan Documents, and (f) for general corporate purposes, including without limitation the issuance of Letters of Credit, all to the extent permitted herein. No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations U and X.

**5.14 Additional Subsidiaries.**

(a) If any additional Material Domestic Subsidiary of any Borrower is formed or acquired after the Effective Date, or if any Subsidiary of any Borrower that is not a Material Domestic

Subsidiary on the Effective Date becomes a Material Domestic Subsidiary following the Effective Date, the Lead Borrower will promptly notify the Agents and the Lenders thereof and (i) if a Material Domestic Subsidiary of which a Borrower owns directly or indirectly, at least 80% of the Voting Stock or ownership interest, as applicable, the Borrowers will cause such Material Domestic Subsidiary to become a Borrower or Guarantor hereunder, as the Administrative Agent may request, and under each applicable Security Document in the manner provided therein, within thirty (30) days after such Material Domestic Subsidiary is formed or acquired, and (A) execute and deliver to the Administrative Agent a Joinder Agreement, (B) deliver to the Administrative Agent documents of the types referred to in clauses (b), (c), (k), (l), (m), (n) and (r) of Section 4.1, together with such other documents as the Administrative Agent may request in its Permitted Discretion and (C) promptly take such actions to create and perfect Liens on such Material Domestic Subsidiary's assets to secure the Obligations as the Administrative Agent shall reasonably request and (ii) if any shares of capital stock or other equity interests or Indebtedness of such Material Domestic Subsidiary (whether or not wholly-owned) are owned by or on behalf of any Borrower, the Borrowers will cause such shares and any promissory notes evidencing such Indebtedness to be pledged within thirty (30) Days after such Material Domestic Subsidiary is formed or acquired or becomes a Material Domestic Subsidiary.

(b) If any additional Material Foreign Subsidiary of any Borrower is formed or acquired after the Effective Date or if a Foreign Subsidiary becomes a Material Foreign Subsidiary, the Lead Borrower will notify the Agents and the Lenders thereof and the Borrowers shall cause 65% of the outstanding shares of Voting Stock of such Material Foreign Subsidiary (or such lesser percentage as is owned by any such Borrower or as may be necessary to avoid any adverse tax consequences) to be pledged within sixty (60) days after such Material Foreign Subsidiary is formed or acquired or such Subsidiary becomes a Material Foreign Subsidiary. In addition, if any such Material Foreign Subsidiary is a Canadian Subsidiary of the Canadian Borrower, the Borrowers will cause such Canadian Subsidiary to become a guarantor of the Canadian Liabilities hereunder, as the Administrative Agent may request, and under each applicable Canadian Security Document in the manner provided therein, within thirty (30) days after such Canadian Subsidiary is formed or acquired, and (A) execute and deliver to the Canadian Agent a Joinder Agreement, (B) deliver to the Canadian Agent documents of the types referred to in clauses (b), (c), (k), (l), (m), (n) and (r) of Section 4.1, together with such other documents as the Administrative Agent may request in its Permitted Discretion and (C) promptly take such actions to create and perfect Liens on such Canadian Subsidiary's assets to secure the Canadian Liabilities as the Administrative Agent shall reasonably request.

**5.15 Further Assurances.** Each Borrower will, and the Lead Borrower will cause each of the other Credit Parties and each Material Foreign Subsidiary to execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements and other documents), that may be required under any Applicable Law, or which any Agent or the Required Lenders may reasonably request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created or intended to be created by the Security Documents or the validity or priority of any such Lien, all at the expense of the Borrowers, provided however, that a Material Foreign Subsidiary will not be required to take any of the foregoing actions if and to the extent such action would cause an adverse tax consequence. The Borrowers also agree to provide to the Agents, from time to time upon request, evidence reasonably satisfactory to the Agents as to the perfection and priority of the Liens created or intended to be created by the Security Documents.

**5.16 Compliance with Terms of Leaseholds**

The Borrowers shall perform all obligations in respect of all Leases of real property to which any Credit Party is a party and keep such Leases in full force and effect, except (a) for store

closures in the ordinary course of business or (b) where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

**5.17 Environmental Laws.**

Each of the Credit Parties shall (a) conduct its operations and keep and maintain its Real Estate in material compliance with all Environmental Laws; (b) obtain and renew all environmental permits necessary for its operations and properties; and (c) implement any and all investigation, remediation, removal and response actions that are appropriate or necessary to comply in all material respects with Environmental Laws pertaining to the presence, generation, treatment, storage, use, disposal, transportation or release of any Hazardous Materials on, at, in, under, above, to, from or about any of its Real Estate.

**6. NEGATIVE COVENANTS.**

Until the Commitments have expired or have been terminated and the principal of and interest on each Loan and all fees payable hereunder have been paid in full and all Letters of Credit have expired or have been terminated and all L/C Disbursements shall have been reimbursed, each Borrower covenants and agrees with the Agents and the Lenders that:

**6.1 Indebtedness.** The Borrowers will not, nor will the Lead Borrower permit any of the other Credit Parties to, create, incur, assume or permit to exist any Indebtedness of such Credit Parties, except:

(a) Indebtedness created under the Loan Documents;

(b) Indebtedness set forth in Schedule 6.1 and Permitted Refinancings thereof;

(c) Indebtedness of any ~~Borrower or Subsidiary to any other Borrower or Subsidiary, provided, however, that the aggregate amount of Indebtedness incurred pursuant to this paragraph (c) that is owed to any Borrower by Subsidiaries that are not Borrowers or Guarantors, when combined with the amount of Investments in such Subsidiaries set forth in Section 6.4(e), shall not at any time exceed $10,000,000 in the aggregate from and after the Effective Date, and further provided that with respect to each incurrence of Indebtedness pursuant to this paragraph (c), (A) no Default or Event of Default has occurred and is continuing or would result from the incurrence of such Indebtedness, and (B) the Pro Forma Availability Condition is satisfied;~~Credit Party to any other Credit Party;

(d) Indebtedness of the Credit Parties incurred to finance the acquisition of any fixed or capital assets, including Capital Lease Obligations and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and Permitted Refinancings thereof, provided that the aggregate principal amount of Indebtedness permitted by this clause (d) shall not exceed $30,000,000 at any time outstanding;

(e) Indebtedness incurred to finance any Real Estate owned by any of the Credit Parties or incurred in connection with any sale-leaseback transaction, provided that if any Inventory of any Credit Party is or is to be located at or on such Real Estate, the Collateral Agent shall have received a mortgagee waiver from the lender of any such Indebtedness relating to such Real Estate so financed in form and substance reasonably satisfactory to the Collateral Agent;

(f) Indebtedness under Hedging Agreements, other than those entered into for speculative purposes, entered into in the ordinary course of business;

(g) Contingent liabilities under surety bonds or similar instruments incurred in the ordinary course of business in connection with the construction or improvement of stores;

(h) (i) Guarantees by the Lead Borrower of the Schuh Seller Notes and the Schuh Earnout, provided that such Guarantees shall not be secured by a Lien on any assets of the Credit Parties, and (ii) other Guarantees by any of the Credit Parties of Indebtedness of any of the other Credit Parties, provided that such Indebtedness is otherwise permitted by this Section 6.1;

(i) Indebtedness of any Person that becomes a ~~Subsidiary~~Credit Party after the Effective Date, provided that (i) such Indebtedness exists at the time such Person becomes a ~~Subsidiary~~Credit Party and is not created in contemplation of or in connection with such Person becoming a ~~Subsidiary~~Credit Party and (ii) the aggregate outstanding principal amount of Indebtedness permitted by this subsection (i) shall not, without duplication, exceed $50,000,000 at any time;

(j) financed insurance premiums not past due;

(k) Permitted Senior Debt; and

(l) ~~(k)~~ other unsecured Indebtedness in an aggregate principal amount, together with any Indebtedness incurred under clause (k) above, not exceeding $~~100,000,000~~250,000,000 at any time outstanding.

**6.2 Liens.** The Borrowers will not, nor will the Lead Borrower permit any of the other Credit Parties to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except:

(a) Liens created under the Loan Documents;

(b) Permitted Encumbrances;

(c) any Lien on any property or asset of any Borrower or any of the other Credit Parties set forth in Schedule 6.2, provided that (i) such Lien shall not apply to any other property or asset of such Person and (ii) such Lien shall secure only those obligations that it secures as of the Effective Date, and Permitted Refinancings thereof;

(d) Liens on fixed or capital assets acquired by any Borrower or by any of the other Credit Parties, provided that (i) such Liens secure Indebtedness permitted by Section 6.1(d), (ii) such Liens and the Indebtedness secured thereby are incurred on or prior to or within 45 days after such acquisition or the completion of such construction or improvement, (iii) the Indebtedness secured thereby does not exceed 100% of the cost of acquiring such fixed or capital assets, (iv) such Liens shall not apply to any other property or assets of the Borrowers or of any of the other Credit Parties, and (v) at the Collateral Agent's option with respect to material Liens which arise after the Effective Date, the Credit Parties shall have used commercially reasonable efforts to ensure that the Collateral Agent shall have entered into an intercreditor agreement with the holder of such Lien on terms reasonably satisfactory to the Collateral Agent to allow, among other things, the Collateral Agent to exercise rights and remedies as a secured party with respect to the Collateral;

(e) Liens to secure Indebtedness permitted by Section 6.1(e), provided that such Liens shall not apply to any property or assets of the Borrowers other than the Real Estate so financed or which is the subject of a sale-leaseback transaction, provided that if any Inventory of any Credit Party is or is to be

located at or on such Real Estate, the Collateral Agent shall have received a mortgagee waiver from the lender of any such Indebtedness relating to such Real Estate so financed in form and substance reasonably satisfactory to the Collateral Agent; ~~and~~

(f) Security interests existing on any property or assets (other than Inventory, Accounts, and the Proceeds thereof) prior to the acquisition thereof by any of the Credit Parties or existing on any property or assets (other than Inventory, Accounts, and the Proceeds thereof) of any Person that becomes a ~~Subsidiary~~Credit Party after the Effective Date prior to the time such Person becomes a ~~Subsidiary~~Credit Party, provided that (i) such security interests secure Indebtedness permitted by Section 6.1(i), (ii) such security interests are not created in contemplation of or in connection with such acquisition or such Person becoming a ~~Subsidiary~~Credit Party, as applicable, (iii) such security interests shall not apply to any other property or assets of any Borrower or any ~~Subsidiary~~Credit Party and (iv) such security interests shall secure only the Indebtedness that such security interests secure on the date of such acquisition or the date such Person becomes a ~~Subsidiary~~Credit Party, as applicable, and any Permitted Refinancings thereof; ~~and~~

(g) Liens on assets other than Inventory, Accounts and cash Proceeds thereof securing Indebtedness permitted pursuant to Section 6.1 up to an aggregate amount not to exceed $5,000,000 that are not otherwise contemplated by this Section ~~6.2.~~6.2; and

(h) Liens to secure Permitted Senior Debt as described in the definition thereof.

**6.3 Fundamental Changes.** (a) The Borrowers shall not, nor shall the Lead Borrower permit any of the other Credit Parties or any Material Foreign Subsidiary to, liquidate, merge, amalgamate or consolidate into or with any other Person or enter into or undertake any plan or agreement of liquidation, merger, amalgamation, or consolidation with any other Person, provided that (i) a Borrower may merge or amalgamate with another company in connection with a Permitted Acquisition if such Borrower is the surviving company, (ii) any wholly-owned Subsidiary may merge, amalgamate, or consolidate into or with a Borrower or any other wholly-owned Subsidiary of a Borrower if no Default or Event of Default has occurred and is continuing or would result from such merger or amalgamation and if a Borrower is the surviving company in any merger, amalgamation, or consolidation to which it is a party, (iii) a Subsidiary may merge, amalgamate or consolidate into or with another entity in connection with a Permitted Acquisition if, upon consummation of such merger, amalgamation, or consolidation, the surviving entity shall be a direct or indirect wholly-owned Subsidiary and, if the surviving entity is a Material Domestic Subsidiary, such Material Domestic Subsidiary becomes a party to the Security Documents, (iv) any Domestic Subsidiary may merge or consolidate into or with any other Domestic Subsidiary, and, if the surviving entity is a Material Domestic Subsidiary, such Material Domestic Subsidiary becomes a party to the Security Documents (v) any Foreign Subsidiary may merge into or amalgamate with any other Foreign Subsidiary and (vi) any Subsidiary (other than a Borrower) may liquidate or dissolve if the Lead Borrower determines in good faith that such liquidation is in the best interests of the Borrowers and would not have a Material Adverse Effect.

(b) The Lead Borrower shall not, and shall not permit any of the other Credit Parties to, engage to any material extent in any business other than businesses of the type conducted by the Credit Parties on the date of execution of this Agreement, reasonable extensions thereof and businesses reasonably related or complementary thereto, except that the Borrowers or any of the other Credit Parties may withdraw from any business activity which such Person's board of directors reasonably deems unprofitable or unsound, provided that promptly after such withdrawal, the Lead Borrower shall provide the Administrative Agent with written notice thereof.

**6.4 Investments, Loans, Advances, Guarantees and Acquisitions.** The Borrowers shall not, nor shall the Lead Borrower permit any of the other Credit Parties to, purchase, hold or acquire (including pursuant to any merger or amalgamation with any Person that was not a wholly owned Subsidiary prior to such merger or amalgamation) any capital stock or other equity interests, evidences of indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person constituting a business unit (each of the foregoing, an "Investment"), except for:

(a) Permitted Acquisitions;

(b) Permitted Investments;

(c) Investments existing on the Effective Date and set forth on Schedule 6.4;

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

(e) (i) Investments in UK LP and UK Acquisition on the First Amendment Effective Date in an amount not to exceed 76,000,000 Pounds Sterling in connection with the Schuh Acquisition, (ii) Investments in UK LP and UK Acquisition to make payments on account of the Schuh Seller Notes as long as after giving effect thereto the Payment Conditions are then satisfied, provided that for purposes of this clause (e)(ii) only, Excess Availability required under clause (b) of the definition of "Payment Conditions" shall be 30% of the Loan Cap for the periods set forth therein (and not 50% of the Loan Cap), (iii) Investments in UK LP and UK Acquisition to make payments on account of the Schuh Earnout as long as after giving effect thereto the Payment Conditions are then satisfied, and (iv) other Investments in Subsidiaries, provided, however, that the aggregate amount of Investments pursuant to this paragraph (e)(iv) in (x) Subsidiaries that are not Borrowers or Guarantors, ~~including the amount of Indebtedness due from such Subsidiaries set forth in Section 6.1(e), may not at any time exceed $10,000,000~~ (other than UK LP and UK Acquisition) may not at any time exceed $10,000,000 from time to time in the aggregate from and after the First Amendment Effective Date, and (y) UK LP and UK Acquisition may not at any time exceed $50,000,000 in the aggregate from and after the ~~Effective Date~~First Amendment Effective Date (provided that such Investments shall not exceed $10,000,000 from time to time in any Fiscal Year unless the Payment Conditions have been satisfied), and further provided that, in each case set forth in clauses (i) through (iv) hereof, no Default or Event of Default has occurred and is continuing or would result from such Investment;

(f) loans or advances to employees for the purpose of travel, entertainment or relocation in the ordinary course of business and consistent with past practices, not exceeding $1,000,000 in the aggregate at any time outstanding; provided, that no such advances to any single employee shall exceed $500,000 in the aggregate;

(g) ~~Investments by a Foreign Subsidiary in another Foreign Subsidiary;~~Reserved;

(h) Investments consisting of amounts potentially due from a seller of assets in a Permitted Acquisition that (i) relate to customary post-closing adjustments with respect to accounts receivable, accounts payable and similar items typically subject to post-closing adjustments in similar transactions, and (ii) are outstanding for a period of one hundred eighty (180) days or less following the closing of such Permitted Acquisition;

(i) the ~~Borrowers and their respective Subsidiaries~~Credit Parties may make and own loans or advances to the trustee of various employee incentive and stock purchase plans of the Credit Parties, not to exceed $500,000 in the aggregate at any one time outstanding;

(j) the ~~Borrowers and their respective Subsidiaries~~Credit Parties may engage in transactions permitted by Section 6.3;

(k) except while a Cash Dominion Event is in existence, the ~~Borrowers and their respective Subsidiaries~~Credit Parties may make other Investments (including acquisitions of stock or assets of another Person other than Acquisitions) not to exceed in the aggregate $10,000,000 in any Fiscal Year of Borrower;

(l) Investments by the ~~Borrowers and their respective Subsidiaries~~Credit Parties in the form of Hedging Agreements entered into in the ordinary course of business and not for speculative purposes;

(m) Guarantees by the ~~Borrowers and their respective Subsidiaries~~Credit Parties with respect to the lease of property (whether real or personal) by such Person as lessee that is not a Capital Lease Obligation; and

(n) Guarantees constituting Indebtedness permitted by Section 6.1.

**6.5 Asset Sales.** The Borrowers will not, nor will the Lead Borrower permit any of the other Credit Parties to, sell, transfer, lease or otherwise dispose of any asset, including any capital stock or other equity interests except:

(a) (i) sales of Inventory in each case in the ordinary course of business, or (ii) used or surplus equipment, or (iii) Permitted Investments;

(b) sales, transfers and dispositions among the Credit Parties;

(c) sales or other transfers of assets pursuant to store closures provided that in any Fiscal Year, Borrowers shall not close more than ten percent (10%) of the total number of Borrowers' stores open at the beginning of such Fiscal Year;

(d) other sales, transfers, or dispositions of assets not in the ordinary course of business and not pursuant to store closures; provided that (y) no Default or Event of Default then exists or would arise therefrom, and (z) in the event that the aggregate amount of any such sale, transfer or disposition exceeds $15,000,000, the Pro Forma Availability Condition shall be satisfied after giving effect to such sale, transfer or disposition.

(e) sales or issuances by the Lead Borrower of any of its capital stock or other equity interests that do not result in a Change in Control;

(f) sales or issuances of capital stock or other equity interests to any Borrower;

(g) the sale of any Real Property provided that (i) the consideration for such sale is not less than the fair value of such Real Property and (ii) a Credit Party in connection with such sale enters into a lease of such Real Property on terms reasonably acceptable to the Administrative Agent; and

(h) the sale, transfer or disposition of accounts receivable in connection with the compromise, settlement or collection thereof.

provided that all sales, transfers, leases and other dispositions of Inventory and the proceeds thereof shall be made for cash consideration or on customary terms, and further provided that that all sales, transfers, leases and other dispositions permitted by clauses (a)(i), (a)(ii), (c) and (d) above shall be made at arm's length and for fair value; and further provided that the authority granted hereunder may be terminated in whole or in part by the Agents upon the occurrence and during the continuance of any Event of Default.

**6.6 Restrictive Agreements.** The Borrowers will not, nor will the Lead Borrower permit any of the other Credit Parties to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of any of the Credit Parties to create, incur or permit to exist any Lien upon any of its property or assets or (b) the ability of any of the Credit Parties to pay dividends or other distributions with respect to any shares of its capital stock or other equity interests or to make or repay loans or advances to the Borrowers or any of the other Credit Parties or to guarantee Indebtedness of the Borrowers or any of the other Credit Parties, provided that (i) the foregoing shall not apply to restrictions and conditions imposed by law or by any Loan Document, (ii) the foregoing restrictions shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary pending such sale, provided that such restrictions and conditions apply only to the Subsidiary that is to be sold and such sale is permitted hereunder, (iii) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness and (iv) clause (a) of the foregoing shall not apply to customary provisions in leases restricting the assignment or subleasing thereof.

**6.7 Restricted Payments; Certain Payments of Indebtedness.** The Borrowers will not, nor will the Lead Borrower permit any of the other Credit Parties to declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment ~~unless after giving effect thereto the Payment Conditions are then satisfied~~ or any payments on the Guarantees set forth in Section 6.1(h)(i), except that the Borrowers shall be permitted to:

(a) make Restricted Payments consisting of cash dividends on preferred stock of the Credit Parties in an amount not to exceed $500,000 in any Fiscal Year so long as no Event of Default has occurred and is continuing;

(b) make Restricted Payments to any other Credit Party;

(c) make Restricted Payments as long as after giving effect thereto the Payment Conditions are then satisfied;

(d) ~~(b)~~ pay regularly scheduled interest and principal payments as and when due on a non-accelerated basis and prior to maturity in respect of any Indebtedness permitted under Section 6.1 at such times as no Event of Default is in existence or would arise as a result of such payment;

(e) make, directly or indirectly, any payments on the Guarantees set forth in Section 6.1(h)(i) as long as after giving effect thereto the Payment Conditions are then satisfied; provided that for purposes of payments on the Guarantee with respect to the Schuh Seller Notes pursuant to this clause (d) only, Excess Availability required under clause (b) of the definition of "Payment Conditions" shall be 30% of the Loan Cap for the periods set forth therein (and not 50% of the Loan Cap); and

(f) ~~(c)~~ Permitted Refinancings of Indebtedness.

**6.8 Transactions with Affiliates.** The Borrowers will not, nor will the Lead Borrower permit any other Credit Party to at any time sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) transactions in the ordinary course of business that are at prices and on terms and conditions not less favorable to the Borrowers than could be obtained on an arm's-length basis from unrelated third parties, and (b) transactions between or among the Borrowers and one or more Subsidiaries, not involving any other Affiliate, that would not otherwise violate the provisions of the Loan Documents.

**6.9 Additional Subsidiaries.** The Borrowers will not, nor will the Lead Borrower permit any of the other Credit Parties to, create any additional Subsidiary unless no Default or Event of Default would arise therefrom and the requirements of Section 5.14 are satisfied to the extent applicable.

**6.10 Amendment of Material Documents.** The Borrowers will not, nor will the Lead Borrower permit any other Credit Party or any Material Foreign Subsidiary to, amend, modify or waive any of its rights under (a) its certificate of incorporation, by-laws or other organizational documents to the extent that such amendment, modification or waiver would result in a Material Adverse Effect, or (b) any Material Indebtedness, in each case to the extent that such amendment, modification or waiver would result in a Default or Event of Default under any of the Loan Documents or would result in a Material Adverse Effect.

**6.11 Fixed Charge Coverage Ratio.** After the occurrence and during the continuance of a Covenant Compliance Event, the Borrowers shall not permit the Fixed Charge Coverage Ratio to be less than 1.0:1.0 tested at the end of each Applicable Fiscal Period.

**6.12 Environmental Laws.** The Borrowers shall not, nor will the Lead Borrower permit any other Credit Party or any Material Foreign Subsidiary to (a) fail to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, or (b) become subject to any Environmental Liability, in each case which is reasonably likely to have a Material Adverse Effect.

**6.13 Fiscal Year.** The Borrowers shall not change their Fiscal Year without the prior written consent of the Administrative Agent, which consent shall not be unreasonably withheld.

**7. EVENTS OF DEFAULT.**

**7.1 Events of Default.** If any of the following events (each, an "Event of Default") shall occur:

(a) the Borrowers shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any L/C Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) the Borrowers shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Section) payable under this Agreement or any other Loan Document, within three (3) Business Days after the same shall become due and payable;

(c) any representation or warranty made or deemed made by or on behalf of any Borrower or any other Credit Party in or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, or in any certificate or financial statement (including, without limitation, any Borrowing Base Certificate) furnished pursuant to or in connection with any Loan

Document or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect in any material respect when made or deemed made;

(d) the Borrowers shall fail to observe or perform any covenant, condition or agreement contained in Sections 2.21, 5.1(f), 5.2(a), 5.3(b), 5.4, 5.7, 5.13, or in Section 6 (other than Section 6.12);

(e) the Borrowers shall fail to observe or perform any covenant, condition or agreement contained in Sections 5.1(a), 5.1(b), 5.1(c), 5.1(d), 5.1(e), 5.1(i), 5.2(b)-(i), 5.9, or 5.14 within three (3) Business Days after notice from the Administrative Agent to the Lead Borrower that the Borrowers have failed to observe or perform such covenant, condition or agreement;

(f) any Borrower or any of the other Credit Parties shall fail to observe or perform any covenant, condition or agreement contained in any Loan Document (other than those specified in clause (a), (b), (c), (d) or (e) of this Section), and such failure shall continue unremedied for a period of 30 days after notice thereof from the Administrative Agent to the Lead Borrower;

(g) any Borrower or any of the other Credit Parties shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness when and as the same shall become due and payable (after giving effect to the expiration of any grace or cure period set forth therein);

(h) any Borrower, any of the other Credit Parties, or any Material Foreign Subsidiary shall fail to perform any covenant or condition contained in any contract or agreement to which it is party as and when such performance is required (after giving effect to the expiration of any grace or cure period set forth therein) if such failure could reasonably be expected to have a Material Adverse Effect;

(i) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits the holder or holders of any such Material Indebtedness or any trustee or agent on its or their behalf to cause any such Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity;

(j) an involuntary proceeding shall be commenced or an involuntary petition or proposal shall be filed seeking (i) liquidation, reorganization or other relief in respect of any Borrower, any of the other Credit Parties or any Material Foreign Subsidiary or its debts, or of a substantial part of its assets, under any Debtor Relief Law now or hereafter in effect or (ii) the appointment of a receiver, interim receiver, trustee, custodian, monitor, administrator, sequestrator, conservator or similar official for any Borrower, any of the other Credit Parties or any Material Foreign Subsidiary or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for 60 days;

(k) any Borrower, any of the other Credit Parties or any Material Foreign Subsidiary shall (i) voluntarily commence any proceeding or file any petition or proposal seeking liquidation, reorganization or other relief under any Debtor Relief Law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (j) of this Section, (iii) apply for or consent to the appointment of a receiver, interim receiver, trustee, custodian, monitor, administrator, sequestrator, conservator or similar official for any Borrower, any of the other Credit Parties or any Material Foreign Subsidiary or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a

general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(l) any Borrower, any of the other Credit Parties or any Material Foreign Subsidiary shall become unable, or admit in writing its inability or fail generally to pay its debts as they become due;

(m) one or more uninsured final judgments for the payment of money in an aggregate amount in excess of $25,000,000 shall be rendered against any Borrower, any of the other Credit Parties or any Material Foreign Subsidiary or any combination thereof or any one or more non-monetary judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and, in each case, the same shall remain undischarged for a period of 45 consecutive days during which execution shall not be effectively stayed, or any action shall be successfully legally taken by a judgment creditor to attach or levy upon any material assets of any Borrower, any of the other Credit Parties or any Material Foreign Subsidiary to enforce any such judgment;

(n) any challenge is asserted by or on behalf of any Borrower or any of the other Credit Parties to the validity of any Loan Document or the applicability or enforceability of any Loan Document strictly in accordance with the subject Loan Document's terms or which seeks to void, avoid, limit, or otherwise adversely affect any security interest created by or in any Loan Document or any payment made pursuant thereto;

(o) any challenge is asserted by or on behalf of any other Person to the validity of any Loan Document or the applicability or enforceability of any Loan Document strictly in accordance with the subject Loan Document's terms or which seeks to void, avoid, limit, or otherwise adversely affect any security interest created by or in any Loan Document or any payment made pursuant thereto, in each case, as to which an order or judgment has been entered adverse to the Agents and the Lenders.

(p) any Lien purported to be created under any Security Document shall be asserted by any Borrower or any of the other Credit Parties not to be a valid and perfected Lien on any Collateral, with the priority required by the applicable Security Document, except as a result of the sale or other disposition of the applicable Collateral in a transaction permitted under the Loan Documents;

(q) a Change in Control shall occur;

(r) an ERISA Event or Termination Event shall have occurred that when taken together with all other ERISA Events and Termination Events that have occurred, could reasonably be expected to result in a Material Adverse Effect;

(s) the occurrence of any uninsured loss to any material portion of the Collateral;

(t) any director, Financial Officer or other senior officer of the Borrower Consolidated Group is criminally indicted or convicted of a felony for fraud or dishonesty in connection with the Borrower Consolidated Group's business, unless such director, Financial Officer or senior officer promptly resigns or is promptly removed or replaced;

(u) the imposition of any stay or other order against any Borrower, any of the other Credit Parties or any Material Foreign Subsidiary, the effect of which (i) is to restrain in any material way the conduct by the Credit Parties, taken as a whole, and the Credit Parties and the Material Foreign Subsidiaries, taken as a whole, of their business in the ordinary course and (ii) would have a Material Adverse Effect;

(v) except as otherwise permitted hereunder, the determination by the Borrower Consolidated Group, whether by vote of its board of directors or otherwise to: terminate the operation of their business in the ordinary course, to liquidate all or substantially all of the Borrower Consolidated Group's' assets or store locations, or to employ an agent or other third party to conduct any so-called store closing, store liquidation or **"Going-Out-Of-Business"** sales for all or substantially all of the Borrower Consolidated Group's' store locations; or

(w) the termination or attempted termination of the Effective Date Guaranty or any Facility Guaranty except as expressly permitted hereunder or under any other Loan Document.

then, and in every such event (other than an event with respect to each Borrower, any of the other Credit Parties or any Material Foreign Subsidiary described in clause (j) or (k) of this Section), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Lead Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately and no Lender shall thereafter be obligated to make any Loans, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part,in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrowers accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrowers; and (iii) require the Borrowers to furnish cash collateral in an amount equal to 102% of the Letter of Credit Outstandings, and in case of any event with respect to any Borrower described in clause (j) or (k) of this Section, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrowers accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrowers.

**7.2 When Continuing**. For all purposes under this Agreement, each Default and Event of Default that has occurred shall be deemed to be continuing at all times thereafter unless it either (a) is cured or corrected to the reasonable written satisfaction of the Lenders in accordance with Section 9.3, or (b) is waived in writing by the Lenders in accordance with Section 9.3.

**7.3 Remedies on Default**. In case any one or more of the Events of Default shall have occurred and be continuing, and whether or not the maturity of the Loans shall have been accelerated pursuant hereto, the Administrative Agent may proceed to protect and enforce its rights and remedies under this Agreement, the Notes or any of the other Loan Documents by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Agreement and the other Loan Documents or any instrument pursuant to which the Obligations are evidenced, and, if such amount shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of the Agents or the Lenders. No remedy herein is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or any other provision of law.

**7.4 Application of Proceeds.**

(a) After the exercise of remedies provided for in Section 7.3 or upon the acceleration of the time for payment of the Obligations following an Event of Default (or after the Loans have automatically become immediately due and payable and the Letter of Credit Outstandings have automatically been required to be Cash Collateralized as set forth in Section 7.1), any amounts received

from any Domestic Credit Party, from the liquidation of any Collateral of any Domestic Credit Party, or on account of the Obligations (other than the Canadian Liabilities), shall be applied by the Administrative Agent against the Obligations in the following order:

First, to payment of that portion of the Obligations (excluding the Other Domestic Liabilities and the Canadian Liabilities) constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Section 9.4) payable to the Administrative Agent, in its capacity as such;

Second, to payment of that portion of the Obligations (excluding the Other Domestic Liabilities and the Canadian Liabilities) constituting indemnities, expenses, and other amounts (other than principal, interest and fees) then currently payable to the Domestic Lenders and the Issuing Bank (on account of Domestic Letters of Credit) (including fees, charges and disbursements of counsel to the respective Domestic Lenders and the Issuing Bank on account of Domestic Letters of Credit), ratably among them in proportion to the amounts described in this clause Second payable to them;

Third, to the extent not previously reimbursed by the Domestic Lenders, to payment to the Domestic Lenders of that portion of the Obligations constituting principal and accrued and unpaid interest on any Permitted Overadvances, ratably among the Domestic Lenders in proportion to the amounts described in this clause Third payable to them;

Fourth, to the extent that Swingline Loans made to the Domestic Borrowers have not been refinanced by a Domestic Loan, payment to the Swingline Lender of that portion of the Obligations constituting accrued and unpaid interest on the Swingline Loans made to the Domestic Borrowers;

Fifth, to the extent that Swingline Loans made to the Domestic Borrowers have not been refinanced by a Domestic Loan, payment to the Swingline Lender of that portion of the Obligations constituting unpaid principal on the Swingline Loans made to the Domestic Borrowers;

Sixth, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Domestic Loans and other Obligations (other than the Tranche A-1 Loans and the Canadian Liabilities), and fees (including Letter of Credit Fees, other than any fees due on account of any Canadian Letter of Credit), ratably among the Domestic Lenders and the Issuing Bank in proportion to the respective amounts described in this clause Sixth payable to them;

Seventh, to payment of that portion of the Obligations constituting unpaid principal of the Domestic Loans (other than the Tranche A-1 Loans), ratably among the Domestic Lenders and the Issuing Bank in proportion to the respective amounts described in this clause Seventh held by them;

Eighth, to the Administrative Agent for the account of the Issuing Bank, to Cash Collateralize the aggregate undrawn amount of Domestic Letters of Credit;

Ninth, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Tranche A-1 Loans, ratably among the Domestic Lenders in proportion to the respective amounts described in this clause Ninth payable to them;

Tenth, to payment of that portion of the Obligations constituting unpaid principal of the Tranche A-1 Loans, ratably among the Domestic Lenders in proportion to the respective amounts described in this clause Tenth held by them;

Eleventh, to the Collateral Agent to be held by the Collateral Agent, for the ratable benefit of the Canadian Lenders as cash collateral for payment of that portion of the Canadian Liabilities (excluding the Other Canadian Liabilities) constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Canadian Agent and amounts payable under Section 9.4) payable to the Canadian Agent, in its capacity as such;

~~Tenth~~Twelfth, to the Collateral Agent to be held by the Collateral Agent, for the ratable benefit of the Canadian Lenders and the Issuing Bank as cash collateral to payment of that portion of the Canadian Liabilities (excluding the Other Canadian Liabilities) constituting indemnities, expenses, and other amounts (other than principal, interest and fees) payable to the Canadian Lenders and the Issuing Bank (on account of Canadian Letters of Credit) (including fees, charges and disbursements of counsel to the respective Canadian Lenders and the Issuing Bank on account of Canadian Letters of Credit) and amounts payable under Section 9.4), ratably among them in proportion to the amounts described in this clause ~~Tenth~~Twelfth payable to them;

~~Eleventh~~Thirteenth, to the extent not previously reimbursed by the Canadian Lenders, to the Collateral Agent to be held by the Collateral Agent, for the ratable benefit of the Canadian Lenders as cash collateral to payment to the Canadian Lenders of that portion of the Canadian Liabilities constituting principal and accrued and unpaid interest on any Permitted Overadvances, ratably among the Canadian Lenders in proportion to the amounts described in this clause ~~Eleventh~~Thirteenth payable to them;

~~Twelfth~~Fourteenth, to the Collateral Agent to be held by the Collateral Agent, for the ratable benefit of the Canadian Lenders and the Issuing Bank as cash collateral to payment of that portion of the Canadian Liabilities constituting accrued and unpaid interest on the Canadian Loans and other Canadian Liabilities, and fees (including Letter of Credit Fees not paid pursuant to clause Sixth above), ratably among the Canadian Lenders and the Issuing Bank in proportion to the respective amounts described in this clause ~~Twelfth~~Fourteenth payable to them;

~~Thirteenth~~Fifteenth, to the Collateral Agent to be held by the Collateral Agent, for the ratable benefit of the Canadian Lenders and the Issuing Bank as cash collateral to payment of that portion of the Canadian Liabilities constituting unpaid principal of the Canadian Loans, ratably among the Canadian Lenders and the Issuing Bank in proportion to the respective amounts described in this clause ~~Thirteenth~~Fifteenth held by them;

~~Fourteenth~~Sixteenth, to the Collateral Agent to be held by the Collateral Agent, for the ratable benefit of the Canadian Lenders and the Issuing Bank, to Cash Collateralize the aggregate undrawn amount of Canadian Letters of Credit;

~~Fifteenth~~Seventeenth, to payment of all other Obligations (including without limitation the cash collateralization of unliquidated indemnification obligations for which a claim has been made, but excluding any Other Domestic Liabilities and Other Canadian Liabilities, ratably among the Lenders in proportion to the respective amounts described in this clause ~~Fifteenth~~Seventeenth held by them;

~~Sixteenth~~Eighteenth, to payment of that portion of the Obligations arising from Cash Management Services to the extent secured under the Security Documents, ratably among the Lenders in proportion to the respective amounts described in this clause ~~Sixteenth~~Eighteenth held by them;

~~Seventeenth~~Nineteenth, to payment of all other Obligations arising from Bank Products, ratably among the Lenders in proportion to the respective amounts described in this clause ~~Seventeenth~~Nineteenth held by them; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Domestic Credit Parties or as otherwise required by Applicable Law.

Amounts used to Cash Collateralize the aggregate undrawn amount of Domestic Letters of Credit pursuant to clause Eighth above shall be applied to satisfy drawings under such Domestic Letters of Credit as they occur. If any amount remains on deposit as cash collateral after all Domestic Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

(b) After the exercise of remedies provided for in Section 7.3 or upon the acceleration of the time for payment of the Obligations following an Event of Default (or after the Loans have automatically become immediately due and payable and the Letter of Credit Outstandings have automatically been required to be Cash Collateralized as set forth in Section 7.1), any amounts received from any Canadian Credit Party, from the liquidation of any Collateral of any Canadian Credit Party, or on account of the Canadian Liabilities, shall be applied by the Canadian Agent against the Canadian Liabilities in the following order:

First, to payment of that portion of the Canadian Liabilities (excluding the Other Canadian Liabilities) constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Canadian Agent and amounts payable under Section 9.4 payable to the Canadian Agent, in its capacity as such;

Second, to payment of that portion of the Canadian Liabilities (excluding the Other Canadian Liabilities) constituting indemnities, expenses, and other amounts (other than principal, interest and fees) payable to the Canadian Lenders and the Issuing Bank (on account of Canadian Letters of Credit) (including fees, charges and disbursements of counsel to the respective Domestic Lenders and the Issuing Bank on account of Canadian Letters of Credit) and amounts payable under Section 9.4), ratably among them in proportion to the amounts described in this clause Second payable to them;

Third, to the extent not previously reimbursed by the Canadian Lenders, to the Canadian Agent to be applied to that portion of the Canadian Liabilities constituting principal and accrued and unpaid interest on any Permitted Overadvances, ratably among the Canadian Lenders in proportion to the amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Canadian Liabilities constituting accrued and unpaid interest on the Canadian Loans and other Canadian Liabilities, and fees (including Letter of Credit Fees due on account of Canadian Letters of Credit), ratably among the Canadian Lenders and the Issuing Bank in proportion to the respective amounts described in this clause Fourth payable to them;

Fifth, to payment of that portion of the Canadian Liabilities constituting unpaid principal of the Canadian Loans, ratably among the Canadian Lenders and the Issuing Bank in proportion to the respective amounts described in this clause Fifth held by them;

Sixth, to the Collateral Agent for the account of the Issuing Bank, to Cash Collateralize the aggregate undrawn amount of Canadian Letters of Credit;

Seventh, to payment of all other Canadian Liabilities(including without limitation the cash collateralization of unliquidated indemnification obligations, but excluding any Other Canadian Liabilities), ratably among the Canadian Lenders in proportion to the respective amounts described in this clause Seventh held by them;

Eighth, to payment of that portion of the Canadian Liabilities arising from Cash Management Services to the extent secured under the Security Documents, ratably among the Canadian Lenders in proportion to the respective amounts described in this clause Eighth held by them;

Ninth, to payment of all other Canadian Liabilities arising from Bank Products to the extent secured under the Security Documents, ratably among the Canadian Lenders in proportion to the respective amounts described in this clause Ninth held by them; and

Last, the balance, if any, after all of the Canadian Liabilities have been indefeasibly paid in full, to the Canadian Credit Parties or as otherwise required by Applicable Law.

Amounts used to Cash Collateralize the aggregate undrawn amount of Canadian Letters of Credit pursuant to clause Sixth above shall be applied to satisfy drawings under such Canadian Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Canadian Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Canadian Liabilities, if any, in the order set forth above.

**8. THE AGENTS.**

**8.1 Administration by Administrative Agent**. Each Lender, the Collateral Agent, the Canadian Agent and the Issuing Bank hereby irrevocably designate Bank of America as Administrative Agent under this Agreement and the other Loan Documents. The general administration of the Loan Documents shall be by the Administrative Agent. The Lenders, the Collateral Agent, the Canadian Agent and the Issuing Bank each hereby irrevocably authorize the Administrative Agent (i) to enter into the Loan Documents to which it is a party and (ii) at its discretion, to take or refrain from taking such actions as agent on its behalf and to exercise or refrain from exercising such powers under the Loan Documents and the Notes as are delegated by the terms hereof or thereof, as appropriate, together with all powers reasonably incidental thereto. The Administrative Agent shall have no duties or responsibilities except as set forth in this Agreement and the remaining Loan Documents, nor shall it have any fiduciary relationship with any Lender, Canadian Agent, or the Issuing Bank and no implied covenants, responsibilities, duties, obligations, or liabilities shall be read into the Loan Documents or otherwise exist against the Administrative Agent.

Each of the Lenders (in its capacity as a Lender), the Swingline Lender and the Issuing Bank hereby irrevocably appoints Bank of America Canada-Branch as Canadian Agent.

**8.2 The Collateral Agent**.

(a) Each Lender, the Administrative Agent and the Issuing Bank hereby irrevocably (i) designate Bank of America as Collateral Agent under this Agreement and the other Loan Documents, (ii) authorize the Collateral Agent to enter into the Security Documents and the other Loan Documents to which it is a party and to perform its duties and obligations thereunder, together with all powers reasonably incidental thereto, (iii) agree and consent to all of the provisions of the Security Documents and (iv)

acknowledge and agree that, notwithstanding any provisions of the Loan Documents to the contrary, the Collateral Agent will not obtain a perfected security interest in the Borrowers' Intellectual Property applied for or registered in jurisdictions outside of the United States or Canada as of the Effective Date. All Collateral shall be held or administered by the Collateral Agent (or its duly-appointed agent) for its benefit and for the ratable benefit of the other Secured Parties. Any proceeds received by the Collateral Agent from the foreclosure, sale, lease or other disposition of any of the Collateral and any other proceeds received pursuant to the terms of the Security Documents or the other Loan Documents shall be paid over to the Administrative Agent for application as provided in Sections 2.18, 2.22, or 7.4, as applicable. The Collateral Agent shall have no duties or responsibilities except as set forth in this Agreement and the remaining Loan Documents, nor shall it have any fiduciary relationship with any Lender, and no implied covenants, responsibilities, duties, obligations, or liabilities shall be read into the Loan Documents or otherwise exist against the Collateral Agent.

(b) Without limiting the generality of the foregoing Section 8.2(a),for the purposes of creating a solidarité active in accordance with article 1541 of the Civil Code of Québec between each Secured Party that is owed any Canadian Liabilities, taken individually, on the one hand, and the Collateral Agent, on the other hand, each Canadian Credit Party and each such Secured Party acknowledge and agree with the Collateral Agent that such Secured Party and the Collateral Agent are hereby conferred the legal status of solidary creditors of the Canadian Credit Parties in respect of all Canadian Liabilities, present and future, owed by any Canadian Credit Party to each such Secured Party and the Collateral Agent (collectively, for the purposes of this paragraph, the "solidary claim"). Accordingly, but subject (for the avoidance of doubt) to article 1542 of the Civil Code of Québec, the Canadian Credit Parties are irrevocably bound towards the Collateral Agent and each such Secured Party in respect of the entire solidary claim of the Collateral Agent and such Secured Party. As a result of the foregoing, the Canadian Credit Parties confirm and agree that subject to Section 8.2(a), above, the rights of the Collateral Agent and each of the Secured Parties who are owed Canadian Liabilities from time to time a party to this Agreement or any of the other Loan Documents by way of assignment or otherwise are solidary and, as regards the Canadian Liabilities owing from time to time to each such Secured Party, each of the Collateral Agent and such Secured Party is entitled, when permitted pursuant to Section 8.2, to: (i) demand payment of all outstanding amounts from time to time in respect of the Canadian Liabilities; (ii) exact the whole performance of such Canadian Liabilities from the Canadian Credit Parties; (iii) benefit from the Collateral Agent's Liens in the Collateral in respect of such Canadian Liabilities; (iv) give a full acquittance of such Canadian Liabilities (each Secured Party that is owed Canadian Liabilities hereby agreeing to be bound by any such acquittance); and (v) exercise all rights and recourses under the Loan Documents with respect to those Canadian Liabilities. The Canadian Liabilities of the Canadian Credit Parties will be secured by the Collateral Agent's Liens in the Collateral and the Collateral Agent and the Secured Parties who are owed Canadian Liabilities will have a solidary interest therein.

**8.3 Sharing of Excess Payments**. Each of the Lenders, the Agents and the Issuing Bank agrees that if it shall, through the exercise of a right of banker's lien, setoff or counterclaim against the Borrowers, including, but not limited to, a secured claim under Section 506 of the Bankruptcy Code or other security or interest arising from, or in lieu of, such secured claim and received by such Lender, any Agent or the Issuing Bank under any applicable bankruptcy, insolvency or other similar law, or otherwise, obtain payment in respect of the Obligations owed it (an "excess payment") as a result of which such Lender, such Agent or the Issuing Bank has received payment of any Loans or other Obligations outstanding to it in excess of the amount that it would have received if all payments at any time applied to the Loans and other Obligations had been applied in the order of priority set forth in Section 7.4, then such Lender, such Agent or the Issuing Bank shall promptly purchase at par (and shall be deemed to have thereupon purchased) from the other Lenders, such Agent and the Issuing Bank, as applicable, a participation in the Loans and Obligations outstanding to such other Persons, in an amount determined by the Administrative Agent in good faith as the amount necessary to ensure that the economic benefit of such excess payment is

reallocated in such manner as to cause such excess payment and all other payments at any time applied to the Loans and other Obligations to be effectively applied in the order of priority set forth in Section 7.4 pro rata in proportion to the respective Commitment Percentages; provided, that if any such excess payment is thereafter recovered or otherwise set aside such purchase of participations shall be correspondingly rescinded (without interest) and, provided further, that, without limiting the provisions of Section 8.16, to the extent that any excess payment arises solely from the proceeds of the assets of the Canadian Credit Parties, such excess shall be reallocated solely amongst the Canadian Lenders. The Borrowers expressly consent to the foregoing arrangements and agree that any Lender, any Agent or the Issuing Bank holding (or deemed to be holding) a participation in any Loan or other Obligation may exercise any and all rights of banker's lien, setoff or counterclaim with respect to any and all moneys owing by such Borrower to such Lender, such Agent or the Issuing Bank as fully as if such Lender, Agent or the Issuing Bank held a Note and was the original obligee thereon, in the amount of such participation.

**8.4 Agreement of Applicable Lenders**. Upon any occasion requiring or permitting an approval, consent, waiver, election or other action on the part of the Applicable Lenders, action shall be taken by the Agents for and on behalf or for the benefit of all Lenders upon the direction of the Applicable Lenders, and any such action shall be binding on all Lenders. No amendment, modification, consent, or waiver shall be effective except in accordance with the provisions of Section 9.3.

Upon the occurrence of an Event of Default, the Agents shall take such action with respect thereto as may be reasonably directed by the Applicable Lenders; provided that unless and until the Agents shall have received such directions, the Agents may (but shall not be obligated to) take such action as they shall deem advisable in the best interests of the Lenders. In no event shall the Agents be required to comply with any such directions to the extent that the Agents believe that the Agents' compliance with such directions would be unlawful.

**8.5 Liability of Agents.**

(a) Each of the Agents, when acting on behalf of the Lenders and the Issuing Bank, may execute any of its respective duties under this Agreement by or through any of its respective officers, agents and employees, and none of the Agents nor their respective directors, officers, agents or employees shall be liable to the Lenders or the Issuing Bank or any of them for any action taken or omitted to be taken in good faith, or be responsible to the Lenders or the Issuing Bank or to any of them for the consequences of any oversight or error of judgment, or for any loss, except to the extent of any liability imposed by law by reason of such Agent's own gross negligence or willful misconduct. The Agents and their respective directors, officers, agents and employees shall in no event be liable to the Lenders or the Issuing Bank or to any of them for any action taken or omitted to be taken by them pursuant to instructions received by them from the Applicable Lenders or in reliance upon the advice of counsel selected by it. Without limiting the foregoing, none of the Agents, nor any of their respective directors, officers, employees, or agents (A) shall be responsible to any Lender or the Issuing Bank for the due execution, validity, genuineness, effectiveness, sufficiency, or enforceability of, or for any recital, statement, warranty or representation in, this Agreement, any Loan Document or any related agreement, document or order, or (B) shall be required to ascertain or to make any inquiry concerning the performance or observance by any Borrower of any of the terms, conditions, covenants, or agreements of this Agreement or any of the Loan Documents, or (C) shall be responsible to any Lender or the Issuing Bank for the state or condition of any properties of the Borrowers or any other obligor hereunder constituting Collateral for the Obligations of the Borrowers hereunder, or any information contained in the books or records of the Borrowers; or (D) shall be responsible to any Lender or the Issuing Bank for the validity, enforceability, collectibility, effectiveness or genuineness of this Agreement or any other Loan Document or any other certificate, document or instrument furnished in connection therewith; or (E) shall be responsible to any Lender or the Issuing Bank for the validity, priority

or perfection of any lien securing or purporting to secure the Obligations or the value or sufficiency of any of the Collateral.

(b) The Agents may execute any of their duties under this Agreement or any other Loan Document by or through their agents or attorneys-in-fact,and shall be entitled to the advice of counsel concerning all matters pertaining to their rights and duties hereunder or under the Loan Documents. The Agents shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by them with reasonable care.

(c) None of the Agents nor any of their respective directors, officers, employees, or agents shall have any responsibility to the Borrowers on account of the failure or delay in performance or breach by any Lender (other than by any Agent in its capacity as a Lender) or the Issuing Bank of any of their respective obligations under this Agreement or the Notes or any of the Loan Documents or in connection herewith or therewith.

(d) The Agents shall be entitled to rely, and shall be fully protected in relying, upon any notice, consent, certificate, affidavit, or other document or writing believed by them to be genuine and correct and to have been signed, sent or made by the proper person or persons, and upon the advice and statements of legal counsel (including, without, limitation, counsel to the Borrowers), independent accountants and other experts selected by the Agents. The Agents shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless they shall first receive such advice or concurrence of the Applicable Lenders as they deem appropriate or they shall first be indemnified to their satisfaction by the Lenders against any and all liability and expense which may be incurred by them by reason of the taking or failing to take any such action.

**8.6 Notice of Default**. The Agents shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Agents have actual knowledge of the same or has received notice from a Lender or the Lead Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “notice of default”. In the event that the Agents obtain such actual knowledge or receive such a notice, the Agents shall give prompt notice there of to each of the Lenders. The Agents shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders. Unless and until the Agents shall have received such direction,the Agents may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to any such Default or Event of Default as they shall deem advisable in the best interest of the Lenders.

**8.7 Lenders’ Credit Decisions**. Each Lender acknowledges that it has, independently and without reliance upon the Agents or any other Lender, and based on the financial statements prepared by the Borrowers and such other documents and information as it has deemed appropriate, made its own credit analysis and investigation into the business, assets, operations, property, and financial and other condition of the Borrowers and has made its own decision to enter into this Agreement and the other Loan Documents. Each Lender also acknowledges that it will, independently and without reliance upon the Agents or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in determining whether or not conditions precedent to closing any Loan hereunder have been satisfied and in taking or not taking any action under this Agreement and the other Loan Documents.

**8.8 Reimbursement and Indemnification**. Each Lender agrees (i) to reimburse (x) each Agent for such Lender’s Commitment Percentage of any expenses and fees incurred by such Agent for the benefit of the Lenders or the Issuing Bank under this Agreement, the Notes and any of the Loan Documents, including, without limitation, counsel fees and compensation of agents and employees paid for services

rendered on behalf of the Lenders or the Issuing Bank, and any other expense incurred in connection with the operations or enforcement thereof not reimbursed by the Borrowers and (y) each Agent for such Lender's Commitment Percentage of any expenses of such Agent incurred for the benefit of the Lenders or the Issuing Bank that the Borrowers have agreed to reimburse pursuant to Section 9.4 and have failed to so reimburse and (ii) to indemnify and hold harmless the Agents and any of their directors, officers, employees, or agents, on demand, in the amount of such Lender's Commitment Percentage, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against it or any of them in any way relating to or arising out of this Agreement, the Notes or any of the Loan Documents or any action taken or omitted by it or any of them under this Agreement, the Notes or any of the Loan Documents to the extent not reimbursed by the Borrowers (except such as shall result from their respective gross negligence or willful misconduct). The provisions of this Section 8.8 shall survive the repayment of the Obligations and the termination of the Commitments.

**8.9 Rights of Agents**. It is understood and agreed that Bank of America shall have the same rights and powers hereunder (including the right to give such instructions) as the other Lenders and may exercise such rights and powers, as well as its rights and powers under other agreements and instruments to which it is or may be party, and engage in other transactions with the Borrowers, as though it were not the Administrative Agent or the Collateral Agent, respectively, of the Lenders under this Agreement. Without limiting the foregoing, the Agents and their Affiliates may accept deposits from, lend money to, and generally engage in any kind of commercial or investment banking, trust, advisory or other business with the Borrowers and their Subsidiaries and Affiliates as if it were not the Agent hereunder.

**8.10 Notice of Transfer**. The Agents may deem and treat a Lender party to this Agreement as the owner of such Lender's portion of the Loans for all purposes, unless and until, and except to the extent, an Assignment and Acceptance shall have become effective as set forth in Section 9.6(b).

**8.11 Successor Agent**. Any Agent may resign at any time by giving five (5) Business Days' written notice thereof to the Lenders, the Issuing Bank, the other Agents and the Lead Borrower. Upon any such resignation of any Agent, the Required Lenders shall have the right to appoint a successor Agent, which so long as there is no Default or Event of Default then in existence shall be reasonably satisfactory to the Lead Borrower (whose consent shall not be unreasonably withheld or delayed). If no successor Agent shall have been so appointed by the Required Lenders and shall have accepted such appointment, within 30 days after the retiring Agent's giving of notice of resignation, the retiring Agent may, on behalf of the Lenders, the other Agents and the Issuing Bank, appoint a successor Agent which shall be a commercial bank (or affiliate thereof) organized under the laws of the United States of America or of any State thereof and having a combined capital and surplus of a least $500,000,000 which, so long as there is no Default or Event of Default, shall be reasonably satisfactory to the Lead Borrower (whose consent shall not be unreasonably withheld or delayed). Upon the acceptance of any appointment as Agent by a successor Agent, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent and the retiring Agent shall be discharged from its duties and obligations under this Agreement. After any retiring Agent's resignation hereunder as such Agent, the provisions of this Section 8 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was such Agent under this Agreement.

**8.12 Reports and Financial Statements**. Promptly after receipt thereof from the Borrowers, the Administrative Agent shall remit to each Lender and the Collateral Agent copies of all financial statements required to be delivered by the Borrowers hereunder (or by making such financial statements available to the Lenders and the Collateral Agent electronically) and all commercial finance examinations and appraisals of the Collateral received by the Administrative Agent.

**8.13 Administrative Agent May File Proofs of Claim.** In case of the pendency of any proceeding under any federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or any other judicial proceeding relative to any Credit Party, the Administrative Agent (irrespective of whether the principal of any Loan or Letter of Credit Outstandings shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Credit Parties) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, Letter of Credit Outstandings and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Bank, the Administrative Agent and the other Secured Parties (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Bank, the Administrative Agent, such Secured Parties and their respective agents and counsel and all other amounts due the Lenders, the Issuing Bank, the Administrative Agent and such Secured Parties) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator,sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender, the Issuing Bank and each other Secured Party to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders, the Issuing Bank, and the other Secured Parties, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under this Agreement.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender, the Issuing Bank or any other Secured Party any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender, the Issuing Bank or any other Secured Party or to authorize the Administrative Agent to vote in respect of the claim of any Lender, the Issuing Bank or any other Secured Party in any such proceeding.

**8.14 Delinquent Lender.**

(a) If for any reason any Lender shall fail or refuse to abide by its obligations under this Agreement, including without limitation its obligation to make available to Administrative Agent its Commitment Percentage of any Revolving Loans, expenses or setoff or purchase its pro rata share of a participation interest in the Swingline Loans (a "Delinquent Lender") and such failure is not cured within one (1) Business Day of receipt from the Administrative Agent of written notice thereof,then, in addition to the rights and remedies that may be available to the Agents, the other Lenders, the Borrowers or any other party at law or in equity, and not in limitation thereof, (i) such Delinquent Lender's right to participate in the administration of, or decision-making rights related to, the Loans, this Agreement or the other Loan Documents shall be suspended during the pendency of such failure or refusal (provided that no Delinquent Lender's Commitment may be increased without its consent), (ii) a Delinquent Lender shall be deemed to have assigned any and all payments due to it from the Borrowers, whether on account of outstanding Loans, interest, fees or otherwise, to the remaining non-delinquent Lenders for application to, and reduction of, their proportionate shares of all outstanding Loans until, as a result of application of such assigned

payments the Lenders' respective Commitment Percentages of all outstanding Loans shall have returned to those in effect immediately prior to such delinquency and without giving effect to the nonpayment causing such delinquency, and (iii) at the option of the Administrative Agent, any amount payable to such Delinquent Lender hereunder (whether on account of principal, interest, fees or otherwise) shall, in lieu of being distributed to such Delinquent Lender, be retained by the Administrative Agent as cash collateral for future funding obligations of the Delinquent Lender in respect of any Loan or existing or future participating interest in any Swingline Loan or Letter of Credit. The Delinquent Lender's decision-making and participation rights and rights to payments as set forth in clauses (i) and (ii) hereinabove shall be restored only upon the payment by the Delinquent Lender of its Commitment Percentage of any Loans, any participation obligation, or expenses as to which it is delinquent, together with interest thereon at the rate set forth in Section 2.10 hereof from the date when originally due until the date upon which any such amounts are actually paid.

(b) The non-delinquent Lenders shall also have the right, but not the obligation, in their respective, sole and absolute discretion, to acquire for no cash consideration, (pro rata, based on the respective Commitments of those Lenders electing to exercise such right) the Delinquent Lender's Commitment to fund future Loans (the "Delinquent Lender's Future Commitment"). Upon any such purchase of the Commitment Percentage of any Delinquent Lender's Future Commitment, the Delinquent Lender's share in future Loans and its rights under the Loan Documents with respect thereto shall terminate on the date of purchase, and the Delinquent Lender shall promptly execute all documents reasonably requested to surrender and transfer such interest, including, if so requested, an Assignment and Acceptance. Each Delinquent Lender shall indemnify the Agents and each non-delinquent Lender from and against any and all loss, damage or expenses, including but not limited to reasonable attorneys' fees and funds advanced by any Agent or by any non-delinquent Lender, on account of a Delinquent Lender's failure to timely fund its pro rata share of a Loan or to otherwise perform its obligations under the Loan Documents.

**8.15 Agency for Perfection.**

Each Lender hereby appoints each other Lender as agent for the purpose of perfecting Liens for the benefit of the Agents and the Lenders, in assets which, in accordance with Article 9 of the UCC, the PPSA or any other Law of the United States or any other jurisdiction can be perfected only by possession or control. Should any Lender (other than the Agents) obtain possession or control of any such Collateral, such Lender shall notify the Agents thereof, and, promptly upon the Collateral Agent's request therefor shall deliver such Collateral to the Collateral Agent or otherwise deal with such Collateral in accordance with the Collateral Agent's instructions.

**8.16 Risk Participation.**

(a) Upon the earlier of Substantial Liquidation or the Determination Date, if all Canadian Liabilities have not been repaid in full (other than the Other Canadian Liabilities of the Canadian Borrower and its Subsidiaries), then the Domestic Lenders shall purchase (by way of a participation) from the Canadian Lenders (on the date of Substantial Liquidation or the Determination Date, as applicable) such portion of the Canadian Liabilities (other than Other Canadian Liabilities relating to the Canadian Borrower and its Subsidiaries) so that each Lender shall, after giving effect to any such purchases, hold its Liquidation Percentage of all outstanding Canadian Liabilities and all other Obligations.

(b) Upon the earlier of Substantial Liquidation or the Determination Date, if all Obligations of the Domestic Borrowers (excluding those Obligations relating to the Canadian Liabilities or the Other Domestic Liabilities of the Domestic Borrowers) have not been repaid in full, then the Canadian Lenders shall purchase from the Domestic Lenders (on the date of Substantial Liquidation or the

Determination Date, as applicable) such portion of such Obligations so that each Lender shall, after giving effect to any such purchases, hold its Liquidation Percentage of all outstanding Obligations of the Domestic Borrowers and the Canadian Liabilities.

(c) All purchases of Obligations under this Section 8.16 shall be at par, for cash, with no premium, discount or reduction.

(d) No Lender shall be responsible for any default of any other Lender in respect of any other Lender's obligations under this Section 8.16, nor shall the obligations of any Lender hereunder be increased as a result of such default of any other Lender. Each Lender shall be obligated to the extent provided herein regardless of the failure of any other Lender to fulfill its obligations hereunder.

(e) Each Lender shall execute such instruments, documents and agreements and do such other actions as may be necessary or proper in order to carry out more fully the provisions and purposes of this Section 8.16 and the purchase of Obligations or the Canadian Liabilities, as applicable, as provided herein.

(f) The obligations of each Lender under this Section 8.16 are irrevocable and unconditional and shall not be subject to any qualification or exception whatsoever including, without limitation, lack of validity or enforceability of this Agreement or any of the Loan Documents or the existence of any claim, setoff, defense or other right which any Credit Party may have at any time against any of the Lenders.

No fees required to be paid on any assignment pursuant to Section 9.6(b) of this Agreement shall be payable in connection with any assignment under this Section 8.16.

**8.17 Co-Syndication Agents and Documentation Agent.** Neither the Co-Syndication Agents, Documentation Agent, nor the Lead Arranger or Bookrunners in their capacity as such, shall have any obligation, responsibility or required performance hereunder and shall not become liable in any manner to any party hereto. No party shall have any obligation or liability, or owe any performance, hereunder, to the Co-Syndication Agents or Documentation Agent, each in their capacity as such.

**9. MISCELLANEOUS.**

**9.1 Notices.** Except in the case of notices and other communications expressly permitted to be given by telephone, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

(a) if to any Borrower, to it at Genesco Inc. Genesco Park, Suite 488, 1415 Murfreesboro Road, P.O. Box 731, Nashville, TN 37202-0731 Attention Jim Gulmi, Chief Financial Officer (Telecopy No. (615) 367-7421), with a copy to Bass, Berry & Sims PLC, 315 Deaderick Street, Suite 2700, Nashville, TN 37238, Attention: Jennifer H. Noonan (Telecopy No. (615) 742-2765);

(b) if to the Administrative Agent or the Collateral Agent, to Bank of America, N.A., 100 Federal Street, Boston, Massachusetts 02110, Attention of Matthew Potter (Telecopy No. (617) 434-4313), with a copy to Riemer & Braunstein, LLP, Three Center Plaza, Boston, Massachusetts 02108, Attention: David S. Berman, Esquire (Telecopy No. (617) 880-3456);

(c) if to any other Lender, to it at its address (or telecopy number) specified in its Administrative Questionnaire.

Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

Notices and other communications to the Agents, the Lenders and the Issuing Bank hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites). Without limiting the foregoing, such notices and other communications shall be deemed to have been delivered when the Lead Borrower provides notice to the Administrative Agent by e-mail that such materials are posted on the website of the Securities and Exchange Commission at www.sec.gov or on another website accessible to the Administrative Agent. The Borrowers agree that the Administrative Agent may make such materials, as well as any other written information, documents, instruments and other material relating to the Borrowers or any of their Subsidiaries or any other materials or matters relating to this Agreement or any of the transactions contemplated hereby, available to the Lenders by posting such notices on Intralinks or a substantially similar electronic system. The foregoing shall not apply to notices to any Lender or the Issuing Bank pursuant to Section 2 if such Lender or the Issuing Bank, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication.

**9.2 The Platform.** THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Agents or any of their Related Parties (collectively, the "Agent Parties") have any liability to any Credit Party, any Lender, the Issuing Bank or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Credit Parties' or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to any Credit Party, any Lender, the Issuing Bank or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

**9.3 Waivers; Amendments.**

(a) No failure or delay by the Agents, the Issuing Bank or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Agents, the Issuing Bank and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by Borrower therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance

of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Agents, any Lender or the Issuing Bank may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except, in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrowers and the Required Lenders or, in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Agents and the Borrowers that are parties thereto, in each case with the consent of the Required Lenders, provided that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender, (ii) reduce the principal amount of any Loan or L/C Disbursement or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender affected thereby, (iii) postpone the scheduled date of payment of the principal amount of any Loan or L/C Disbursement, or any interest thereon, or any fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of the Commitments or the Maturity Date, without the written consent of each Lender affected thereby, (iv) change Sections 2.18, 2.21, 2.22, 7.4 or Section 5.4 of the Security Agreement, without the written consent of each Lender, (v) change any of the provisions of this Section 9.3 or the definition of the term **"Required Lenders", "Required Supermajority Lenders"** or any other provision of any Loan Document specifying the number or percentage of Lenders required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender, (vi) release any Borrower or any Guarantor from its obligations under any Loan Document, or limit its liability in respect of such Loan Document, without the written consent of each Lender, (vii) except for sales described in Section 6.5 or as permitted in the Security Documents, release all or substantially all of the Collateral from the Liens of the Security Documents, without the written consent of each Lender, (viii) change the advance rates contained in the definitions of **"Canadian Borrowing Base"** ~~or~~, **"Domestic Borrowing Base"** or **"Tranche A-1 Borrowing Base"** if as a result thereof the amounts available to be borrowed by the Borrowers would be increased, without the written consent of each Lender, (ix) increase the Permitted Overadvance, without the written consent of each Lender, (x) subordinate the Obligations hereunder, or the Liens granted hereunder or under the other Loan Documents, to any other Indebtedness or Lien, as the case may be without the prior written consent of each Lender, (xi) except as provided in clause (viii) hereof, change the definitions of **"Canadian Borrowing Base", "Domestic Borrowing Base", "Tranche A-1 Borrowing Base"** or **"Combined Borrowing Base"** or any component definition thereof if as a result thereof the amounts available to be borrowed by the Borrowers would be increased, without the written consent of the Required Supermajority Lenders provided that the foregoing shall not limit the discretion of the Administrative Agent to change, establish or eliminate any Reserves, or (xii) change Section 5.9(b) to reduce the number of appraisals and commercial finance examinations permitted thereby, without the written consent of each Lender, and provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of the Agents or the Issuing Bank without the prior written consent of the affected Agent or the Issuing Bank, as the case may be.

(c) Notwithstanding anything to the contrary contained in this Section 9.3, in the event that the Borrowers request that this Agreement or any other Loan Document be modified, amended or waived in a manner which would require the consent of the Lenders pursuant to Section 9.3(b) and such amendment is approved by the Required Lenders, but not by the requisite percentage of the Lenders, the Borrowers and the Required Lenders shall be permitted to amend this Agreement without the consent of the Lender or Lenders which did not agree to the modification or amendment requested by the Borrowers (such Lender or Lenders, collectively the **"Minority Lenders")** to provide for (w) the termination of the Commitment of each of the Minority Lenders, (x) the addition to this Agreement of one or more other financial institutions, or an increase in the Commitment of one or more of the Required Lenders, so that the aggregate Commitments after giving effect to such amendment shall be in the same amount as the aggregate Commitments immediately before giving effect to such amendment, (y) if any Loans are outstanding at the

time of such amendment, the making of such additional Loans by such new or increasing Lender or Lenders, as the case may be, as may be necessary to repay in full the outstanding Loans (including principal, interest, and fees) of the Minority Lenders immediately before giving effect to such amendment and (z) such other modifications to this Agreement or the Loan Documents as may be appropriate and incidental to the foregoing.

(d) No notice to or demand on any Borrower shall entitle any Borrower to any other or further notice or demand in the same, similar or other circumstances. Each holder of a Note shall be bound by any amendment, modification, waiver or consent authorized as provided herein, whether or not a Note shall have been marked to indicate such amendment, modification, waiver or consent and any consent by a Lender, or any holder of a Note, shall bind any Person subsequently acquiring a Note, whether or not a Note is so marked. No amendment to this Agreement shall be effective against the Borrowers unless signed by the Borrowers.

**9.4 Expenses; Indemnity; Damage Waiver.**

(a) Except as otherwise limited herein, the Borrowers shall jointly and severally pay (i) all reasonable out-of-pocket expenses incurred by the Agents and their Affiliates, including the reasonable fees, charges and disbursements of counsel for the Agents, outside consultants for each of them, appraisers, and for commercial finance examinations, in connection with the arrangement of the credit facilities provided for herein, the preparation and administration of the Loan Documents or any amendments, modifications or waivers of the provisions thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder, and (iii) all reasonable out-of-pocket expenses incurred by the Agents, the Issuing Bank or any Lender, including the reasonable fees, charges and disbursements of any counsel and any outside consultants for the Agents, the Issuing Bank or any Lender, for appraisers, commercial finance examinations, and environmental site assessments, in connection with the enforcement or protection of its rights in connection with the Loan Documents, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit; provided that the Lenders who are not the Agents or the Issuing Bank shall be entitled to reimbursement for no more than one counsel representing all such Lenders (absent a conflict of interest in which case the Lenders may engage and be reimbursed for such additional counsel as are required in connection with such conflict).

(b) The Borrowers shall jointly and severally indemnify the Agents, the Issuing Bank and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an **"Indemnitee"),** against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the reasonable fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of any Loan Document or any other agreement or instrument contemplated hereby, the performance by the parties to the Loan Documents of their respective obligations thereunder or the consummation of the transactions contemplated by the Loan Documents or any other transactions contemplated hereby, (ii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by the Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property currently or formerly owned or operated by any Borrower or any other Credit Party, or any Environmental Liability related in any way to Borrower or any other Credit Party, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether brought by any Credit Party

or any other Person, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto, provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee or any Affiliate of such Indemnitee (or of any officer, director, employee, advisor or agent of such Indemnitee or any such Indemnitee's Affiliates). In connection with any indemnified claim hereunder, the Indemnitee shall be entitled to select its own counsel and the Borrowers shall promptly pay the reasonable fees and expenses of such counsel.

(c) To the extent that any Borrower fails to pay any amount required to be paid by it to the Agents or the Issuing Bank under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the Agents or the Issuing Bank, as the case may be, such Lender's Commitment Percentage of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Agents or the Issuing Bank.

(d) To the extent permitted by Applicable Law, no party hereto shall assert, and each party hereby waives, any claim against any Borrower or Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the transactions contemplated by the Loan Documents, any Loan or Letter of Credit or the use of the proceeds thereof.

(e) All amounts due under this Section shall be payable promptly after written demand therefor.

**9.5 Designation of Lead Borrower as Borrowers' Agent.**

(a) Each Domestic Borrower hereby irrevocably designates and appoints the Lead Borrower as that Domestic Borrower's agent to obtain Loans and Letters of Credit hereunder, the proceeds of which shall be available to each Domestic Borrower for those uses as those set forth herein. As the disclosed principal for its agent, each Domestic Borrower shall be obligated to the Agents and each Lender on account of Loans so made and Letters of Credit so issued hereunder as if made directly by the Lenders to that Domestic Borrower, notwithstanding the manner by which such Loans and Letters of Credit are recorded on the books and records of the Lead Borrower and of any Domestic Borrower.

(b) Each Borrower recognizes that credit available to it hereunder is in excess of and on better terms than it otherwise could obtain on and for its own account and that one of the reasons therefor is its joining in the credit facility contemplated herein with all other Borrowers. Consequently, each Borrower hereby assumes, guarantees, and agrees to discharge all Obligations of all other Borrowers as if the Borrower so assuming and guarantying were each other Borrower; provided that the Canadian Borrower shall be liable only for the Canadian Liabilities.

(c) The Lead Borrower shall act as a conduit for each Domestic Borrower (including itself, as a "Domestic Borrower") on whose behalf the Lead Borrower has requested a Loan. The Lead Borrower shall cause the transfer of the proceeds of each Loan to the (those) Domestic Borrower(s) on whose behalf such Loan was obtained. Neither the Agents nor any Lender shall have any obligation to see to the application of such proceeds.

(d) Each of the Borrowers shall remain jointly and severally liable to the Agents and the Lenders for the payment and performance of all Obligations (which payment and performance shall continue to be secured by all Collateral granted by each of the Borrowers) notwithstanding any determination by the Administrative Agent to cease making Loans or causing Letters of Credit to be issued

to or for the benefit of any Borrower; provided that the Canadian Borrower shall be liable only for the Canadian Liabilities and the Collateral granted by the Canadian Borrower shall secure only the Canadian Liabilities.

(e) The authority of the Lead Borrower to request Loans on behalf of, and to bind, the Domestic Borrowers, shall continue unless and until the Administrative Agent acts as provided in subparagraph (c), above, or the Administrative Agent actually receives

(i) written notice of: (i) the termination of such authority, and (ii) the subsequent appointment of a successor Lead Borrower, which notice is signed by the respective Presidents of each Domestic Borrower (other than the President of the Lead Borrower being replaced) then eligible for borrowing under this Agreement; and

(ii) written notice from such successive Lead Borrower (i) accepting such appointment; (ii) acknowledging that such removal and appointment has been effected by the respective Presidents of such Domestic Borrowers eligible for borrowing under this Agreement; and (iii) acknowledging that from and after the date of such appointment, the newly appointed Lead Borrower shall be bound by the terms hereof, and that as used herein, the term **"Lead Borrower"** shall mean and include the newly appointed Lead Borrower.

**9.6 Successors and Assigns.**

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), except that no Borrower may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any such attempted assignment or transfer without such consent shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit) and, to the extent expressly contemplated hereby, the Related Parties of each of the Agents, the Issuing Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Lender may assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it), provided that (i) except in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund, each of the Lead Borrower (but only if no Event of Default then exists), the Agents and the Issuing Bank must give their prior written consent to such assignment (which consent shall not be unreasonably withheld or delayed), (ii) except in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than $5,000,000 unless the Administrative Agent otherwise consents, (iii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations, (iv) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee of $3,500. The assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire. Subject to acceptance and recording thereof pursuant to paragraph (d) of this Section, from and after the effective date specified in each Assignment and Acceptance the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the

assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Section 9.4). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (e) of this Section.

(c) The Administrative Agent, acting for this purpose as an agent of the Borrowers, shall maintain at the Administrative Agent's Office a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of the Loans and L/C Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the **"Register").** The entries in the Register shall be conclusive absent manifest error and the Borrowers, the Administrative Agent, the Issuing Bank and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Lead Borrower, the Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an assignee, the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(e) Any Lender may, without the consent of the Borrowers, the Agents, and the Issuing Bank, sell participations to one or more banks or other entities (a **"Participant")** in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it), provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrowers, the Agents, the Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation in the Commitments, the Loans and the Letters of Credit Outstandings shall provide that such Lender shall retain the sole right to enforce the Loan Documents and to approve any amendment, modification or waiver of any provision of the Loan Documents, provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.3(b) that affects such Participant. Subject to paragraph (f) of this Section and Section 2.28, the Borrowers agree that each Participant shall be entitled to the benefits (and subject to the obligations) of Sections 2.23, 2.25, and 2.26 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.10 as though it were a Lender, provided such Participant agrees to be subject to Section 2.25(c) as though it were a Lender.

(f) A Participant shall not be entitled to receive any greater payment under Section 2.23 or 2.26 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Lead Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 2.26 unless (i) the Lead Borrower is notified of the participation sold to

such Participant and such Participant agrees, for the benefit of the Borrowers, to comply with Section 2.26(e) as though it were a Lender required to comply with that Section and (ii) such Participant is eligible for exemption from the withholding tax referred to therein, following compliance with Section 2.26(e).

(g) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest, provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

**9.7 Survival.** All covenants, agreements, representations and warranties made by the Borrowers in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Agents, the Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 2.23, 2.26, and 9.4 and Section 8 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof.

**9.8 Counterparts; Integration; Effectiveness.** This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Agents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.1, this Agreement shall become effective when it shall have been executed by the Agents and the Lenders and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

**9.9 Severability.** Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

**9.10 Right of Setoff.** If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of the Borrowers against any of and all the obligations of the Borrowers now or hereafter existing under this Agreement held by such Lender, irrespective of whether or not such Lender

shall have made any demand under this Agreement and although such obligations may be unmatured and regardless of the adequacy of the Collateral. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender may have.

**9.11 Governing Law; Jurisdiction; Consent to Service of Process.**

(a) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK INCLUDING SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(b) The Borrowers agree that any suit for the enforcement of this Agreement or any other Loan Document may be brought in any court of the State of New York sitting in the Borough of Manhattan or any federal court sitting therein as the Administrative Agent may elect in its sole discretion and consent to the non-exclusive jurisdiction of such courts. The Borrowers hereby waive any objection which they may now or hereafter have to the venue of any such suit or any such court or that such suit is brought in an inconvenient forum. The Borrowers agree that any action commenced by any Borrower asserting any claim or counterclaim arising under or in connection with this Agreement or any other Loan Document shall be brought solely in a court of the State of New York sitting in the Borough of Manhattan or any federal court sitting therein as the Administrative Agent may elect in its sole discretion and consent to the exclusive jurisdiction of such courts with respect to any such action. Nothing in this agreement or in any other Loan Document shall affect any right that any Secured Party may otherwise have to bring any action or proceeding relating to this agreement or any other Loan Document against any Credit Party or its properties in the courts of any jurisdiction.

(c) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.1. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

**9.12 WAIVER OF JURY TRIAL.** EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**9.13 Headings.** Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

**9.14 Interest Rate Limitation.** Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts that are treated as interest on such Loan or otherwise regulated under Applicable Law (collectively the "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") that may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with Applicable Law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have

been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

**9.15 Additional Waivers.**

(a) The Obligations are joint and several obligations of each Borrower, provided that the Canadian Credit Parties shall be liable only for the Canadian Liabilities. To the fullest extent permitted by Applicable Law, the obligations of Borrower hereunder shall not be affected by (i) the failure of any Agent or any other Secured Party to assert any claim or demand or to enforce or exercise any right or remedy against any other Borrower under the provisions of this Agreement, any other Loan Document or otherwise, (ii) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, this Agreement, any other Loan Document, or any other agreement, with respect to any other Borrower of the Obligations under this Agreement, or (iii) the failure to perfect any security interest in, or the release of, any of the security held by or on behalf of the Collateral Agent or any other Secured Party.

(b) To the fullest extent permitted by Applicable Law, the obligations of each Borrower hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason (other than the payment in full in cash of the Obligations), including any claim of waiver, release, surrender, alteration or compromise of any of the Obligations, and shall not be subject to any defense or set-off, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of the Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of each Borrower hereunder shall not be discharged or impaired or otherwise affected by the failure of any Agent or any other Secured Party to assert any claim or demand or to enforce any remedy under this Agreement, any other Loan Document or any other agreement, by any waiver or modification of any provision of any thereof, by any default, failure or delay, willful or otherwise, in the performance of the Obligations, or by any other act or omission that may or might in any manner or to any extent vary the risk of any Borrower or that would otherwise operate as a discharge of any Borrower as a matter of law or equity (other than the payment in full in cash of all the Obligations).

(c) To the fullest extent permitted by Applicable Law, each Borrower waives any defense based on or arising out of any defense of any other Borrower or the unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any other Borrower, other than the payment in full in cash of all the Obligations. The Collateral Agent and the other Secured Parties may, at their election, foreclose on any security held by one or more of them by one or more judicial or nonjudicial sales, accept an assignment of any such security in lieu of foreclosure, compromise or adjust any part of the Obligations, make any other accommodation with any other Borrower, or exercise any other right or remedy available to them against any other Borrower, without affecting or impairing in any way the liability of any Borrower hereunder except to the extent that all the Obligations have been paid in full in cash. Pursuant to Applicable Law, each Borrower waives any defense arising out of any such election even though such election operates, pursuant to Applicable Law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Borrower against any other Borrower, as the case may be, or any security.

(d) Upon payment by any Borrower of any Obligations, all rights of such Borrower against any other Borrower arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subordinate and junior in right of payment to the prior payment in full in cash of all the Obligations. In addition, any indebtedness of any Borrower now

or hereafter held by any other Borrower is hereby subordinated in right of payment to the prior payment in full of the Obligations. Until the Obligations are paid in full, none of the Borrowers will demand, sue for, or otherwise attempt to collect any such indebtedness. If any amount shall erroneously be paid to any Borrower on account of (a) such subrogation, contribution, reimbursement, indemnity or similar right or (b) any such indebtedness of any Borrower, such amount shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Collateral Agent to be credited against the payment of the Obligations, whether matured or unmatured, in accordance with the terms of the Loan Documents.

**9.16 Confidentiality.** Each of the Lenders agrees that it will use its best efforts not to disclose without the prior consent of the Borrowers (other than to its employees, auditors, counsel or other professional advisors, to Affiliates or to another Lender if the Lender or such Lender's holding or parent company in its sole discretion determines that any such party should have access to such information, which party shall be informed of the confidential nature thereof) any information with respect to any Borrower which is furnished pursuant to this Agreement provided that any Lender may disclose any such information (a) as has become generally available to the public, (b) as may be required or appropriate in any report, statement or testimony submitted to any municipal, state or federal regulatory body having or claiming to have jurisdiction over such Lender or to the Federal Reserve Board or the Federal Deposit Insurance Corporation or similar organizations (whether in the United States or elsewhere) or their successors, (c) as may be required or appropriate in response to any summons or subpoena or in connection with any litigation, provided that if the Lender is able to do so prior to complying with the summons or subpoena, such Lender shall provide the Borrowers with prompt notice of such requested disclosure so that the Borrowers may seek a protective order or other appropriate remedy (nothing contained herein however shall result in such Lender's non-compliance with Applicable Law), (d) in order to comply with any law, order, regulation or ruling applicable to such Lender, (e) in connection with the enforcement of remedies under this Agreement and the other Loan Documents, and (f) to any prospective transferee in connection with any contemplated transfer of any of the Loans or Notes or any interest therein by such Lender provided that such prospective transferee agrees to be bound by the provisions of this Section. The Borrowers hereby agree that the failure of a Lender to comply with the provisions of this Section 9.16 shall not relieve the Borrowers of any of their obligations to such Lender under this Agreement and the other Loan Documents.

**9.17 Release of Collateral and Guaranty Obligations.**

(a) Notwithstanding anything to the contrary contained herein or in any other Loan Document, upon request of the Lead Borrower in connection with any disposition of property permitted by the Loan Documents, the Collateral Agent shall (without notice to or vote or consent of any Lender, or any Affiliate of any Lender that may be a party to any Hedging Agreement) take such actions as shall be required to release its security interest in any Collateral being disposed of in such disposition, and to release any guarantee obligations of a Person being disposed of in such disposition, to the extent necessary to permit consummation of such disposition in accordance with this Agreement and the other Loan Documents; provided that the Lead Borrower shall have delivered to the Administrative Agent, at least five (5) Business Days prior to the date of the proposed release, a written request for release identifying the relevant Collateral being disposed of in such disposition and the terms of such disposition in reasonable detail, together with a certification, in form and substance reasonably acceptable to the Collateral Agent, by the Lead Borrower stating that such transaction is in compliance with this Agreement and the other Loan Documents, together with copies of such supporting documentation as the Collateral Agent may reasonably request, and the Collateral Agent otherwise has determined, in its Permitted Discretion, that such transaction is in compliance with this Agreement and the other Loan Documents.

(b) Notwithstanding anything to the contrary contained herein or any other Loan Document, when all Obligations (excluding Obligations in respect of Hedging Agreements but including any contingent or indemnity obligations that the Administrative Agent reasonably believes are likely to

arise or be asserted) have been indefeasibly paid in full in cash, all Commitments have irrevocably terminated or expired and no Letter of Credit shall be outstanding (or cash collateralized as provided herein), upon request of the Lead Borrower, the Collateral Agent shall (without notice to or vote or consent of any Lender, or any Affiliate of any Lender that is a party to any Hedging Agreement) take such actions as shall be required to release its security interest in all Collateral, and to release all guarantee obligations provided for in any Loan Document. In connection with the termination of this Agreement and the release and termination of the security interests in the Collateral, the Agents may require such indemnities and collateral security as they shall reasonably deem necessary or appropriate to protect the Secured Parties against (x) loss on account of credits previously applied to the Obligations that may subsequently be reversed or revoked, (y) any obligations that may thereafter arise with respect Bank Products and Cash Management Services, and (z) any contingent indemnification or expense reimbursement Obligations under Section 9.4 hereof (i) for which a claim has been asserted or has arisen and, (ii) if the Credit Parties are the subject of a proceeding under any Debtor Relief Law, that the Administrative Agent reasonably believes are likely to arise or be asserted thereafter.

**9.18 Amendment and Restatement.** Effective as of the date hereof, each Borrower hereby agrees to become a borrower, debtor and obligor under, and to bind itself to, the Existing Financing Agreements to which Borrowers are bound generally (in each case, as modified and restated hereby), and, in such capacity, to assume and bind itself to all Obligations of Borrowers thereunder (as modified and restated hereby). The terms, conditions, agreements, covenants, representations and warranties set forth in and relating to the Existing Credit Agreement are hereby amended, restated, replaced and superseded in their entirety by the terms, conditions, agreements, covenants, representations and warranties set forth in this Agreement. This Agreement does not extinguish the obligations, including, without limitation, obligations for the payment of money, outstanding under the Existing Credit Agreement or discharge or release the obligations or the liens or priority of any mortgage, pledge, security agreement or any other security therefor, which shall continue, as modified and restated hereby, without interruption and in full force and effect. Nothing herein contained shall be construed as a substitution or novation of the obligations outstanding under the Existing Credit Agreement or instruments securing the same, which shall remain in full force and effect, except in each case as amended, restated, replaced and superseded hereby or by instruments executed in connection herewith. Nothing expressed or implied in this Agreement shall be construed as a release or other discharge of any Borrower or guarantor from any of their obligations or liabilities under the Existing Financing Agreements or any of the security agreements, pledge agreements, mortgages, guaranties or other loan documents executed in connection therewith, except in each case as amended, restated, replaced and superseded hereby or by instruments executed in connection herewith. Each Borrower hereby confirms and agrees that (i) the Existing Credit Agreement and each Existing Financing Agreement to which it is a party is, and shall continue to be, in full force and effect and is hereby ratified and confirmed in all respects, in each case as amended, restated, replaced and superseded hereby or by instruments executed in connection herewith, except that on and after the Effective Date all references in any such Existing Financing Agreement to “the Agreement”, “thereto”, “thereof” “thereunder” or words of like import referring to the Existing Credit Agreement shall mean the Existing Credit Agreement as amended, restated, replaced and superseded by this Agreement; and (ii) to the extent that any such Existing Financing Agreement purports to assign or pledge to the Collateral Agent for the benefit of the Lenders a security interest in or lien on, any collateral as security for the Obligations of any Borrower from time to time existing in respect of the Existing Credit Agreement, such pledge, assignment or grant of the security interest or lien is hereby ratified and confirmed in all respects in favor of Collateral Agent for the benefit of Lenders, which shall remain in full force and effect, except as amended, restated, replaced and superseded hereby or by instruments executed in connection herewith.

**9.19 Commitments.** Effective as of the date hereof, the Administrative Agent shall reallocate the Commitments and Loans of the Lenders hereunder and shall notify the Lenders of any payment required

to be made so that the Commitments and Loans of the Lenders are in accordance with Schedule 1.1. Upon receipt of such notice, each Lender shall make the payments specified therein, if any.

**9.20 Judgment Currency**

(a) If, for the purposes of obtaining judgment in any court in any jurisdiction with respect to this Agreement or any other Loan Document, it becomes necessary to convert into a particular currency (the "Judgment Currency") any amount due under this Agreement or under any other Loan Document in any currency other than the Judgment Currency (the "Currency Due"), then conversion shall be made at the rate of exchange prevailing on the Business Day before the day on which judgment is given. For this purpose "rate of exchange" means the rate at which the applicable Agent is able, on the relevant date, to purchase the Currency Due with the Judgment Currency in accordance with its normal practice for the applicable currency conversion in the wholesale market. In the event that there is a change in the rate of exchange prevailing between the conversion date and the date of actual payment of the amount due, the Credit Parties will pay such additional amount (if any, but in any event not a lesser amount) as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of Currency Due which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial order at the rate of exchange prevailing on the conversion date. If the amount of the Currency Due which the applicable Agent is so able to purchase is less than the amount of the Currency Due originally due to it, the applicable Credit Party shall indemnify and save the Agents, the Issuing Bank and the Lenders harmless from and against all loss or damage arising as a result of such deficiency. This indemnity shall constitute an obligation separate and independent from the other obligations contained in this Agreement and the other Loan Documents, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by any Agent from time to time and shall continue in full force and effect notwithstanding any judgment or order for a liquidated sum in respect of an amount due under this Agreement or any other Loan Document or under any judgment or order.

**9.21 USA Patriot Act Notice.** Each Lender and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Credit Parties that pursuant to the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. 107-56, signed into law October 26, 2001) (the "Act"), it is required to obtain, verify and record information that identifies the Credit Parties, which information includes the name and address of each Credit Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify such Credit Party in accordance with the Act.

**9.22 Foreign Asset Control Regulations.** Neither of the advance of the Loans nor the use of the proceeds of any thereof will violate the Trading With the Enemy Act (50 U.S.C. § 1 et seq., as amended) (the "Trading With the Enemy Act") or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) (the "Foreign Assets Control Regulations") or any enabling legislation or executive order relating thereto (which for the avoidance of doubt shall include, but shall not be limited to (a) Executive Order 13224 of September 21, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the "Executive Order") and (b) the Act). Furthermore, none of the Borrowers or their Affiliates (a) is or will become a "blocked person" as described in the Executive Order, the Trading With the Enemy Act or the Foreign Assets Control Regulations or (b) engages or will engage in any dealings or transactions, or be otherwise associated, with any such "blocked person" or in any manner violative of any such order.

**9.23 Canadian Anti-Money Laundering Legislation.**

(a) Each Credit Party acknowledges that, pursuant to the Proceeds of Crime Act and other applicable anti-money laundering, anti-terrorist financing, government sanction and "know your client" laws (collectively, including any guidelines or orders thereunder, "AML Legislation"), the Lenders may be required to obtain, verify and record information regarding the Credit Parties and their respective directors, authorized signing officers, direct or indirect shareholders or other Persons in control of the Credit Parties, and the transactions contemplated hereby. Each Credit Party shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Lender or any prospective assignee or participant of a Lender, the Issuing Bank or any Agent, in order to comply with any applicable AML Legislation, whether now or hereafter in existence.

(b) If the Administrative Agent or Canadian Agent has ascertained the identity of any Credit Party or any authorized signatories of the Credit Parties for the purposes of applicable AML Legislation, then the Administrative Agent or Canadian Agent:

(i) shall be deemed to have done so as an agent for each Lender, and this Agreement shall constitute a "written agreement" in such regard between each Lender and the Administrative Agent and/or Canadian Agent within the meaning of the applicable AML Legislation; and

(ii) shall provide to each Lender copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness.

Notwithstanding the preceding sentence and except as may otherwise be agreed in writing, each of the Lenders agrees that neither the Administrative Agent nor any other Agent has any obligation to ascertain the identity of the Credit Parties or any authorized signatories of the Credit Parties on behalf of any Lender, or to confirm the completeness or accuracy of any information it obtains from any Credit Party or any such authorized signatory in doing so.

**9.24 No Advisory or Fiduciary Responsibility**. In connection with all aspects of each transaction contemplated hereby, the Credit Parties each acknowledge and agree that: (i) the credit facility provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Credit Parties, on the one hand, and the Secured Parties, on the other hand, and each of the Credit Parties is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (ii) in connection with the process leading to such transaction, the each Secured Party is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Credit Parties or any of their respective Affiliates, stockholders, creditors or employees or any other Person; (iii) none of the Secured Parties has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Credit Parties with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether any of the Secured Parties has advised or is currently advising any Credit Party or any of its Affiliates on other matters) and none of the Secured Parties has any obligation to any Credit Party or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; (iv) the Secured Parties and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Credit Parties and their

respective Affiliates, and none of the Secured Parties has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) the Secured Parties have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and each of the Credit Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. Each of the Credit Parties hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against each of the Secured Parties with respect to any breach or alleged breach of agency or fiduciary duty.

**9.25 Limitation of Canadian Borrower Liability.**

Notwithstanding anything to the contrary herein contained, the liability of the Canadian Borrower hereunder and under any other Loan Documents shall be limited to the Canadian Liabilities and the Canadian Borrower shall have no liability whatsoever under the Loan Documents with respect to any other Obligations of the Domestic Borrowers or the other Domestic Credit Parties.

**9.26 Language.**

The parties herein have expressly requested that this Agreement and all related documents be drawn up in the English language. A la demande expresse des parties aux présentes, cette convention et tout document y afférent ont été rédigés en langue anglaise.

[balance of page left intentionally blank; signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

DOMESTIC BORROWERS:

GENESCO INC. as
Lead Borrower

By _____
Name:
Title:

GENESCO BRANDS, INC.
as a Domestic Borrower

By _____
Name:
Title:

HAT WORLD CORPORATION
as a Domestic Borrower

By _____
Name:
Title:

HAT WORLD, INC.
as a Domestic Borrower

By _____
Name:
Title:

FLAGG BROS. OF PUERTO RICO, INC.
as a Domestic Borrower

By _____
Name:
Title:

KEUKA FOOTWEAR, INC.
as a Domestic Borrower

By _____
Name:
Title:

CANADIAN BORROWER:

GCO CANADA INC.
as Canadian Borrower

By _____
Name:
Title:

**[SIGNATURE PAGES TO FOLLOW]**

BANK OF AMERICA, N.A.,
as Administrative Agent, Collateral Agent, an Issuing Bank and a Lender

By: _____

Name: ~~Christine Hutchinson~~Matthew Potter
Title: ~~Director~~Vice President
Address: 100 Federal Street, 9th Floor
Boston, Massachusetts 02110
Attn: ~~Ms. Christine Hutchinson~~Mr. Matthew Potter
Telephone: (617) 434-~~2385~~2041
Telecopy: (617) [___]

**[SIGNATURE PAGES TO FOLLOW]**

BANK OF AMERICA, N.A. (ACTING THROUGH ITS CANADA BRANCH),
as Canadian Agent and a Canadian Lender

By: _____
Name:
Title:
Address: 1

Attn:
Telephone:
Telecopy: _____ [_____]

**OTHER LENDERS**

By: _____
Name:
Title:

**Exhibit 10.2**

# AMENDMENT AND RESTATEMENT AGREEMENT

**dated 23 June 2011**

**between**

**SCHUH GROUP LIMITED**
**as Parent**

**and others as Borrowers and Guarantors**

**LLOYDS TSB BANK PLC**
**as Arranger**

**LLOYDS TSB BANK PLC**
**as Agent**

**and**

**LLOYDS TSB BANK PLC**
**as Security Trustee**

Dickson Minto W.S.
Edinburgh

B027/732/EH4376448.5

**THIS AGREEMENT** is dated 23 June 2011 and made between:

(1) **SCHUH GROUP LIMITED**, a company incorporated in Scotland with registered number SC379625 and having its registered office at 5th Floor, Quartermile Two, 2 Lister Square, Edinburgh EH3 9GL (the "**Parent**");

(2) **THE SUBSIDIARIES** of the Parent listed in Part I of Schedule 1 as borrowers (the "**Borrowers**")**;**

(3) **THE SUBSIDIARIES** of the Parent listed in Part II of Schedule 1 as guarantors (the "**Guarantors**");

(4) **LLOYDS TSB BANK PLC** (in this capacity the "**Arranger**");

(5) **LLOYDS TSB BANK PLC** (in this capacity the "**Original Lender**");

(6) **LLOYDS TSB BANK PLC** as agent of the other Finance Parties (the "**Agent**"); and

(7) **LLOYDS TSB BANK PLC** as security trustee for the Secured Parties (the "**Security Trustee**").

**WHEREAS:**

(A) The Parent, the Guarantors, the Borrowers, the Agent, the Arranger, the Security Trustee and the Original Lender entered into a senior term facilities agreement dated 10 November 2010 (the "**Facilities Agreement**") in terms of which certain facilities were made available to the Borrowers (as defined therein);

(B) the parties wish to amend and restate the Facilities Agreement in accordance with the terms of this Agreement.

**NOW IT IS HEREBY AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

1.1. In this Agreement:

"**2011 Financial Model**" means the financial model prepared by the Parent (including, without limitation, capital expenditure levels for financial year 2011/2012) dated on or around the date of this Agreement and delivered to the Agent pursuant to the terms of this Agreement.

"**Amended and Restated Facilities Agreement**" means the Facilities Agreement as amended and restated in the form set out in Schedule 3 (Form of Amended and Restated Facilities Agreement).

"**Effective Date**" means the date on which the Agent confirms in writing to the Parent and the Original Lender that it has received (or has waived the requirement to receive) the documents and/or evidence listed in Schedule 2 (Conditions Precedent), in each case in form and substance satisfactory to the Agent.

1.2. In this Agreement a term defined in the Facilities Agreement has the same meaning when used in this Agreement and Clause 1 (Definitions and Interpretation) of the Facilities Agreement shall apply hereto except that references in such Clause to the Facilities Agreement are to be construed as references to this Agreement.

1.3. Unless expressly provided to the contrary in this Agreement, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Agreement. Notwithstanding any term of any Finance Document, the consent of any person who is not a party to this Agreement is not required to rescind or vary this Agreement at any time.

**2. AMENDMENT OF THE FACILITIES AGREEMENT**

2.1. With effect from the Effective Date, the Facilities Agreement shall be amended and restated in the form set out as Schedule 3 to this Agreement.

2.2. Subject to the terms of this Agreement, the Facilities Agreement shall remain in full force and effect. With effect from the Effective Date, this Agreement and the Facilities Agreement shall be read and construed as one document and all references in the Facilities Agreement and in each of the Finance Documents to the Facilities Agreement shall be read and construed as references to the Amended and Restated Facilities Agreement.

2.3. Save to the extent expressly provided in this Agreement, the Finance Documents shall remain in full force and effect.

2.4. If the Effective Date has not occurred by 5pm (UK time) on 30 June 2011, this Agreement shall lapse and shall cease to have any effect other than Clause 5 (Fees and expenses) which shall remain in full force and effect.

**3. CONSENTS**

The Agent (on behalf of the Lenders) hereby consents to the following with effect from the Effective Date:

(i) the change of control resulting from the acquisition of the entire issued share capital of the Parent by UK Acquisition Company;

(ii) the repayment in full of the Loan Notes and the termination of the Intercreditor Agreement; and

(iii) the close-out or termination of the Hedging Agreements as at the Effective Date.

**4. REPRESENTATIONS AND WARRANTIES**

4.1. Each Obligor represents and warrants to each Finance Party on the date of this Agreement and on the Effective Date in terms of the Repeating Representations, in each case as if references to “this Agreement” and “the Finance Documents” in those representations are construed as references to this Agreement and (on the Effective Date) the Amended and Restated Facilities Agreement.

4.2. Each Obligor represents and warrants to the Agent and the other Finance Parties on the date of this Agreement and on the Effective Date that:

(i) to the best of its knowledge and belief (having made due and diligent enquiry), any factual information contained in the 2011 Financial Model was true and accurate in all material respects as at its date or (as the case may be) as at the date the information is expressed to be given;

(ii) the 2011 Financial Model has been prepared in good faith on the basis of

recent historical information and on the basis of assumptions which were reasonable as at the date they were prepared and supplied, and has been approved by the board of directors of the Parent; and

(iii) to the best of its knowledge and belief (having made due and diligent enquiry), no event or circumstance has occurred or arisen and no information has been omitted from the 2011 Financial Model and no information has been given or withheld that results in the information, opinions, intentions, forecasts or projections contained in the 2011 Financial Model being untrue or misleading in any material respect.

**5. FEES AND EXPENSES**

5.1. In consideration for the Lenders agreeing to the amendments to the Facilities Agreement provided for in this Agreement, on the Effective Date the Parent shall pay to the Agent for the account of the Lenders an arrangement fee of £100,000 (including £8,000 in respect of reimbursement of travel costs), which shall be debited to the current account of the Parent with the Agent.

5.2. The Parent shall promptly on demand pay to the Agent and the Security Trustee the amount of all costs and expenses (together with any VAT or similar taxes thereon) reasonably incurred by them or by the Lenders in connection with this Agreement and the documents contemplated by this Agreement (including, without limitation, legal fees).

**6. PRESERVATION OF GUARANTEES AND SECURITY**

Each Obligor:

(i) confirms its consent to the amendment and restatement of the terms of the Facilities Agreement as contemplated by this Agreement; and

(ii) confirms that the Transaction Security Documents granted by it on or prior to the date of this Agreement, the guarantee granted by it pursuant to Clause 19 (Guarantee and Indemnity) of the Facilities Agreement and the security rights constituted or evidenced by the Transaction Security Documents are and remain in full force and effect and apply as from the Effective Date to, inter alia, the Amended and Restated Facilities Agreement and the guarantees granted pursuant to Clause 19 (Guarantee and Indemnity) of the Facilities Agreement will continue to be legal, valid, binding and enforceable in accordance with their respective terms.

**7. GENERAL**

7.1. The provisions of Clauses 36 (Remedies and Waivers), 35 (Partial Invalidity), 33 (Notices) and 41 (Enforcement) of the Facilities Agreement shall be deemed to be incorporated in this Agreement (with such conforming amendments as the context requires) as if set out in this Agreement.

7.2. Neither the execution of this Agreement nor the making of any amount available under the Facilities Agreement or the Amended and Restated Facilities Agreement amounts to a waiver of any outstanding Event of Default.

7.3. This Agreement is designated by the Parent and the Agent as a Finance Document.

7.4. Each Obligor hereby confirms that the amendment and restatement of the Facilities

Agreement pursuant to this Agreement is an amendment and restatement within the contemplation of the Finance Documents.

7.5. The Parent shall, and shall procure that each other Obligor will, at the request of the Agent and at its own expense, do all such acts and things necessary to give effect to the amendments effected or to be effected pursuant to this Agreement.

**8. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

**9. GOVERNING LAW**

This Agreement is, and any non-contractual obligations arising out of or in connection with it are, governed by English law.

**This Agreement has been entered into on the date stated at the beginning of this Agreement.**

**SCHEDULE 1**

**PART I**
**THE BORROWERS**

Schuh Group Limited (Reg. No. SC379625)

Schuh (Holdings) Limited (Reg. No. SC265833)

**PART II**
**THE GUARANTORS**

Schuh Group Limited (Reg. No. SC379625)

Schuh (Holdings) Limited (Reg. No. SC265833)

Schuh Limited (Reg. No. SC125327)

Schuh (ROI) Limited (Reg. No. 272987)

## SCHEDULE 2

## CONDITIONS PRECEDENT

**1. Obligors**

(a) A copy of the Constitutional Documents and of the constitutional documents of each other Obligor, or a certificate of an authorised signatory of the Parent confirming that there has been no change to such documents since 10 November 2010.

(b) A copy of a resolution of the board or, if applicable, a committee of the board of directors of each Obligor:

(i) approving the terms of, and the transactions contemplated by, this Agreement and resolving that it execute, deliver and perform this Agreement;

(ii) authorising a specified person, on its behalf to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with this Agreement.

(c) A certificate of an authorised signatory of the Parent certifying that each copy document relating to it specified in this Schedule 2 is true and complete and in full force and effect as at a date no earlier than the date of this Agreement.

**2. Legal Opinions**

The following legal opinions, each addressed to the Finance Parties:

(a) a legal opinion of Dickson Minto W.S., legal advisers to the Agent as to Scots law and English law; and

(b) a legal opinion of Matheson Ormsby Prentice, legal advisers to the Agent as to Irish law.

**3. Other documents and evidence**

(a) This Agreement executed by the Obligors.

(b) A certified true copy of the purchase agreement in respect of the purchase of the entire issued share capital of the Parent by UK Acquisition Company.

(c) A certified true copy of the Consideration Loan Note Instrument (as defined in the purchase agreement referred to at 3(b) above).

(d) A certified true copy of the Tax Loan Note Instrument (as defined in the purchase agreement referred to at 3(b) above).

(e) A certified true copy of the Escrow Loan Note Instrument (as defined in the purchase agreement referred to at 3(b) above).

(f) An updated copy of the Group Structure Chart.

(g) The 2011 Financial Model.

(h) The Hedging Policy Letter.

(i) A list of the directors of the Parent as at the Effective Date.

(j) A funds flow relating to the acquisition of the Parent by the UK Acquisition Company.

(k) Any information and evidence required by the Finance Parties in respect of any Obligor to comply with its know your customer or anti money laundering procedures.

(l) Evidence satisfactory to the Agent that the close-out of the interest rate swaps with reference numbers 1361103TS and 1361118TS has been implemented.

(m) The Subordination Agreement.

(n) The Ranking Agreement, and a certified true copy of all documentation referred to therein.

(n) The confidentiality agreement between Genesco Inc. and Lloyds TSB Bank PLC executed by the parties thereto.

(o) The Working Capital Facility Letter.

(p) A copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary or desirable (if it has notified the Parent accordingly) in connection with the entry into and performance of the transactions contemplated by this Agreement or for the validity and enforceability of this Agreement.

**SCHEDULE 3**

**FORM OF AMENDED AND RESTATED FACILITIES AGREEMENT**

**SENIOR TERM FACILITIES AGREEMENT**

**£29,500,000**

**FACILITIES AGREEMENT**

**for**

**SCHUH GROUP LIMITED**
**as Parent**

**arranged by**

**LLOYDS TSB BANK PLC**
**as Mandated Lead Arranger**

**with**

**LLOYDS TSB BANK PLC**
**acting as Agent**

**and**

**LLOYDS TSB BANK PLC**
**acting as Security Trustee**

**CONTENTS**

**THIS AGREEMENT** is the amended and restated form of a facility agreement originally dated 10 November 2010 and in its amended and restated form is made between:

(1) **SCHUH GROUP LIMITED** a company incorporated in Scotland with registered number SC379625 and with its registered office at 5th Floor, Quartermile Two, 2 Lister Square, Edinburgh EH3 9GL (the "**Parent**");

(2) **THE SUBSIDIARY** of the Parent listed in Part I of Schedule 1 (The Original Parties) as borrower (together with the Parent being the "**Borrowers**");

(3) **THE SUBSIDIARIES** of the Parent listed in Part I of Schedule 1 (The Original Parties) as guarantors (together with the Parent, the "**Guarantors**");

(4) **LLOYDS TSB BANK PLC** with registered number 00002065 and having its registered office at 25 Gresham Street, London EC2V 7HN as mandated lead arranger (the "**Arranger**");

(5) **THE FINANCIAL INSTITUTIONS** listed in Part II of Schedule 1 (The Original Parties) as lenders (the "**Original Lenders**");

(6) **LLOYDS TSB BANK PLC** with registered number 00002065 and having its registered office at 25 Gresham Street, London EC2V 7HN as agent of the other Finance Parties (the "**Agent**"); and

(7) **LLOYDS TSB BANK PLC** with registered number 00002065 and having its registered office at 25 Gresham Street, London EC2V 7HN as security trustee for the Secured Parties (the "**Security Trustee**").

**IT IS AGREED** as follows:

**SECTION 1**
**INTERPRETATION**

**1. DEFINITIONS AND INTERPRETATION**

**1.1. Definitions**

In this Agreement:

"**Acceptable Bank**" means:

(a) a bank or financial institution duly authorised under applicable laws to carry on the business of banking (including, without limitation, the business of making deposits) which is approved in writing by the Agent; or

(b) any Finance Party.

"**Accession Letter**" means a document substantially in the form set out in Schedule 7 (Form of Accession Letter).

"**Accounting Period**" means, in respect of the period up to and including P6 2012, each of the thirteen periods in any Financial Year for which the Parent is to prepare consolidated four weekly management accounts for the purposes of this Agreement and each such period shall be referred to herein as "P" followed by the relevant number and Financial Year in respect thereof (for the avoidance of doubt and by way of example "P9 2011" means the ninth trading period in the period of thirteen Accounting Periods from 29 March 2010 to 27 March 2011) and, thereafter, each of the twelve periods in any Financial Year for which the Parent is to prepare monthly management accounts for the purposes of this Agreement.

"**Accounting Principles**" means generally accepted accounting principles in the UK, including IFRS.

"**Accounting Reference Date**" means the accounting reference date for the purposes of section 391 of the Companies Act 2006, being 30 March in the case of each member of the Group in respect of each year ending up to and including 30 March 2010 and 31 January in respect of each year thereafter, (with their financial year ending not more than 7 days after, or less than 7 days before, such date).

"**Acquisition Agreement**" means the sale and purchase agreement dated on or about the Restatement Date setting out the terms on which the UK Acquisition Company is to acquire the shares in the Parent.

"**Additional Borrower**" means a company which becomes a Borrower in accordance with Clause 26 (Changes to the Obligors).

"**Additional Cost Rate**" has the meaning given to it in Schedule 4 (Mandatory Cost Formula).

"**Additional Guarantor**" means a company which becomes a Guarantor in accordance with Clause 26 (Changes to the Obligors).

"**Additional Obligor**" means an Additional Borrower or an Additional Guarantor.

"**Affiliate**" means, in relation to any person, a Subsidiary of that person or a Holding

Company of that person or any other Subsidiary of that Holding Company.

"**Annual Financial Statements**" means the financial statements for a Financial Year delivered pursuant to paragraph (a) of Clause 21.1 (Financial Statements).

"**Assignment Agreement**" means an agreement substantially in the form set out in Schedule 6 (Form of Assignment Agreement) or any other form agreed between the relevant assignor and assignee.

"**Auditors**" means one of PricewaterhouseCoopers, Ernst & Young, KPMG, Deloitte & Touche or such other firm approved in advance by the Majority Lenders (such approval not to be unreasonably withheld or delayed).

"**Authorisation**" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

"**Availability Period**" means the period from and including the date of this Agreement to and including the Termination Date in relation to the relevant Facility.

"**Available Commitment**" means, in relation to a Facility, a Lender's Commitment under that Facility minus (subject as set out below):

(a) the amount of its participation in any outstanding Utilisations under that Facility; and

(b) in relation to any proposed Utilisation, the amount of its participation in any other Utilisations that are due to be made under that Facility on or before the proposed Utilisation Date.

"**Available Facility**" means, in relation to a Facility, the aggregate for the time being of each Lender's Available Commitment in respect of that Facility.

"**Borrower**" means a Borrower listed in Part I of Schedule 1 (the Original Parties) or an Additional Borrower unless it has ceased to be a Borrower in accordance with Clause 26 (Changes to the Obligors).

"**Break Costs**" means the amount (if any) by which:

(a) the interest (excluding Margin) which a Lender should have received for the period from the date of receipt of all or any part of its participation in a Loan or Unpaid Sum to the last day of the current Interest Period in respect of that Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;

exceeds:

(b) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the Relevant Interbank Market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

"**Budget**" any budget delivered by the Parent to the Agent pursuant to Clause 21.4 (Budget).

"**Business Acquisition**" means the acquisition of a company or any shares or

securities or a business or undertaking (or, in each case, any interest in any of them) or the incorporation of a company.

"**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for general business in London.

"**Business Plan**" means the business plan prepared by the Parent and delivered to the Agent on or around 23 July 2010 including the agreed form financial projections of the Group.

"**Capital Expenditure**" means any expenditure or obligation (other than expenditure or obligations in respect of Business Acquisitions) in respect of expenditure which, in accordance with the Accounting Principles, is treated as capital expenditure (and including the capital element of any expenditure or obligation incurred in connection with a Finance Lease).

"**Cash**" means, at any time, cash in hand or at bank or amounts on deposit with a Lender (which, for the avoidance of any doubt, includes any cash held by way of cash cover for any reason) which are freely transferable and freely convertible and accessible by a member of the Group within 7 days together with (without double counting) cash in transit and in any such case is not subject to any Security (other than the Transaction Security).

"**Cashflow**" has the meaning given to that term in Clause 22.2 (Financial definitions).

"**Change of Control**" means (A) any person or group of persons acting in concert gains direct or indirect control of Genesco Inc. after the Restatement Date, (B) Genesco Inc. ceases to have legal and beneficial ownership of the entire issued share capital of UK Acquisition Company, (C) UK Acquisition Company ceases to have legal and beneficial ownership of the entire issued share capital of the Parent or (D) any person or group of persons acting in concert gains direct or indirect control of the Parent after the Restatement Date. For the purposes of this definition:

(a) "**control**" of the Parent means:

(i) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:

(A) cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the Parent; or

(B) appoint or remove all, or the majority, of the directors or other equivalent officers of the Parent; or

(C) give directions with respect to the operating and financial policies of the Parent with which the directors or other equivalent officers of the Parent are obliged to comply; and/or

(ii) the holding beneficially of more than 50% of the issued share capital of the Parent (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital);

(b) "**control**" of Genesco Inc. means:

(i) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have "beneficial ownership" of all securities that such person or group has the right to acquire, whether such right is exerciseable immediately or only after the passage of time (such right being an "option right") directly or indirectly, of more than 50% of the equity securities of Genesco Inc. entitled to vote for members of the board of directors or equivalent governing body of Genesco Inc. on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right); and/or

(ii) during any period of 12 consecutive months, a majority of the members of the board of directors or other equivalent body of Genesco Inc. cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in paragraph (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in paragraphs (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body;

(c) "**acting in concert**" means, a group of persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate, through the acquisition directly or indirectly of shares in the Parent by any of them, either directly or indirectly, to obtain or consolidate control of the Parent.

"**Charged Property**" means all of the assets of the Obligors which from time to time are, or are expressed to be, the subject of the Transaction Security.

"**Commitment**" means a Facility A Commitment or a Facility B Commitment.

"**Company**" means Schuh Limited, a company incorporated in Scotland with registered number SC125327 and with its registered office at 1 Neilson Square, Deans Industrial Estate, Livingston EH54 8RQ.

"**Compliance Certificate**" means a certificate substantially in the form set out in Schedule 9 (Form of Compliance Certificate).

"**Confidential Information"** means all information relating to the Parent, the Company, any Obligor, the Group, the Finance Documents or a Facility of which a Finance Party becomes aware in its capacity as, for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or a Facility from either:

(a) any member of the Group or any of its advisers; or

(b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or any of its advisers,

in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

(i) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 38 (Confidentiality*);* or

(ii) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers;

(iii) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

"**Confidentiality Undertaking**" means a confidentiality undertaking substantially in a recommended form of the LMA or in any other form agreed between the Parent and the Agent.

"**Constitutional Documents**" means the certificate of incorporation, the certificate of incorporation on change of name (if any) and the memorandum and articles of association of the Parent in the agreed form at the Restatement Date.

"**Deal Costs**" means all fees, costs and expenses, stamp, registration and other Taxes incurred by the Parent or any other member of the Group in connection with the Transaction Documents.

"**Debenture**" means the debenture by Schuh (ROI) Limited in favour of the Security Trustee dated on or around the date of this Agreement.

"**Debt Purchase Transaction"** means, in relation to a person, a transaction where such person:

(i) purchases by way of assignment or transfer;

(ii) enters into sub-participation in respect of; or

(iii) enters into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of,

any Commitment or amount outstanding under this Agreement.

"**Default**" means an Event of Default or any event or circumstance specified in Clause 24 (Events of Default) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

"**Defaulting Lender"** means any Lender:

(a) which has failed to make its participation in a Loan available or has notified the Agent that it will not make its participation in a Loan available by the Utilisation Date of that Loan in accordance with Clause 5.4 (Lenders' participation);

(b) which has rescinded or repudiated a Finance Document; or

(c) with respect to which an Insolvency Event has occurred and is continuing,

unless, in the case of paragraph (a) above:

(i) its failure to pay is caused by:

(A) administrative or technical error; or

(B) a Disruption Event; and

payment is made within 5 Business Days of its due date; or

(ii) the Lender is disputing in good faith whether it is contractually obliged to make the payment in question;

(iii) it is unlawful in any relevant jurisdiction for the Lender to make that payment (provided that this shall not prejudice the rights of the Borrowers under Clause 7.1 (Illegality);

(iv) the failure to make that payment is caused by the negligence or wilful default of a third party beyond its control;

(v) the failure to make that payment is caused by an administrative or technical error experienced by a third party beyond its control; or

(vi) the Agent is an Impaired Agent and a Borrower has failed to notify the Lenders by giving not less than 3 Business Days prior notice of alternative arrangements for that payment.

"**Delegate**" means any delegate, agent, attorney or co-trustee appointed by the Security Trustee.

"**Disruption Event**" means either or both of:

(a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facilities (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or

(b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:

(i) from performing its payment obligations under the Finance Documents; or

(ii) from communicating with other Parties in accordance with the terms

of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.

"**Dormant Subsidiary**" means a member of the Group which does not trade (for itself or as agent for any person) and does not own, legally or beneficially, assets (including, without limitation, indebtedness owed to it) which in aggregate have a value of £5,000 or more or its equivalent in other currencies.

"**Environment"** means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:

(a) air (including, without limitation, air within natural or man-made structures, whether above or below ground);

(b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and

(c) land (including, without limitation, land under water).

"**Environmental Claim**" means any claim, proceeding, notice or investigation by any person in respect of any Environmental Law.

"**Environmental Law**" means any applicable law or regulation which relates to:

(a) the pollution or protection of the Environment;

(b) the conditions of the workplace; or

(c) any emission, generation, handling, storage, disposal, removal, use, release, spillage or discharge of any substance which, alone or in combination with any other, is capable of causing harm to the Environment including, without limitation, any waste.

"**Environmental Permits**" means any permit and other Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of any member of the Group conducted on or from the properties owned or used by any member of the Group.

"**Escrow Account**" means an interest-bearing account:

(a) held in Scotland by a Borrower with the Agent or the Security Trustee;

(b) identified in a letter between the Parent and the Agent as the Escrow Account;

(c) subject to Security in favour of the Security Trustee, which Security is in form and substance satisfactory to the Agent and the Security Trustee; and

(d) from which no withdrawals may be made by any members of the Group except as contemplated by this Agreement,

(as the same may be re-designated, substituted or replaced from time to time).

"**Escrow Account Certificate**" means, in respect of any Quarter Date, a certificate

signed by two directors of the Parent (one of whom must be the chief financial officer of the Group) confirming that as at such Quarter Date:

(a) no Default is continuing;

(b) the Parent has complied with each of the financial covenants set out in Clause 22.2 (Financial condition) on each Quarter Date up to and including the date of the relevant Escrow Account Certificate provided that, in the case of each Quarter Date occurring after the Relevant Quarter Date (as defined in Clause 22.4(a)), no account is taken of any New Shareholder Injection; and

(c) the Parent will comply with each of the financial covenants set out in Clause 22.2 (Financial condition) on each of the two Quarter Dates falling after the Quarter Date as at which the relevant Escrow Account Certificate is given, and attaching such supporting evidence as the Agent may reasonably request in connection with such confirmation provided that in the case of each of such Quarter Dates no account is taken of any New Shareholder Injection.

"**Event of Default**" means any event or circumstance specified as such in Clause 24 (Events of Default).

"**Excess Cashflow**" has the meaning given to that term in Clause 22.1 (Financial definitions).

"**Existing Retail Facilities**" means the retail and merchant service facilities currently provided by Alliance & Leicester and by Lloyds Cardnet to the Group.

"**Facility**" means a Term Facility and "**Facilities**" means all or any of them as the context requires.

"**Facility A**" means the term loan facility made available under this Agreement as described in paragraph (a)(i) of Clause 2.1 (The Facilities).

"**Facility A Commitment**" means:

(a) in relation to an Original Lender, the amount set opposite its name under the heading "**Facility A Commitment**" in Part II of Schedule 1 (The Original Parties) and the amount of any other Facility A Commitment transferred to it under this Agreement; and

(b) in relation to any other Lender, the amount of any Facility A Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

"**Facility A Loan**" means a loan made or to be made under Facility A or the principal amount outstanding for the time being of that loan.

"**Facility A Repayment Date**" means each date set out in paragraph (a) of Clause 6.1 (Repayment of Term Loans).

"**Facility A Repayment Instalment**" means each of the repayment instalments set out in paragraph (a) of Clause 6.1 (Repayment of Term Loans) opposite the relevant Facility A Repayment Date.

"**Facility B**" means the term loan facility made available under this Agreement as

described in paragraph (a)(ii) of Clause 2.1 (The Facilities).

"**Facility B Commitment**" means:

(a) in relation to an Original Lender, the amount set opposite its name under the heading "**Facility B Commitment**" in Part II of Schedule 1 (The Original Parties) and the amount of any other Facility B Commitment transferred to it under this Agreement; and

(b) in relation to any other Lender, the amount of any Facility B Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

"**Facility B Loan**" means a loan made or to be made under Facility B or the principal amount outstanding for the time being of that loan.

"**Facility B Repayment Date**" means 31 October 2015.

"**Facility Office**" means:

(a) in respect of a Lender, the office or offices notified by that Lender to the Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement; or

(b) in respect of any other Finance Party, the office in the jurisdiction in which it is resident for tax purposes.

"**Fee Letter**" means any letter or letters dated on or about the date of this Agreement between the Arranger and the Parent (or the Agent and the Parent or the Security Trustee and the Parent) setting out any of the fees referred to in Clause 13 (Fees).

"**Finance Document**" means this Agreement, any Accession Letter, any Compliance Certificate, any Fee Letter, any Hedging Agreement, any Resignation Letter, any Selection Notice, the Subordination Agreement, any Transaction Security Document, any Utilisation Request, the Working Capital Facility Letter, the Ranking Agreement, any document entered into in respect of the Lloyds Retail Facilities and any other document designated as a "**Finance Document**" by the Agent and the Parent.

"**Finance Lease**" means any lease or hire purchase contract which would, in accordance with the Accounting Principles, be treated as a finance or capital lease.

"**Finance Party**" means the Agent, the Arranger, the Security Trustee, a Lender, the Working Capital Lender and Lloyds TSB Bank plc (or any other member of the LBG Group) as provider of the Lloyds Retail Facilities.

"**Financial Due Diligence Report"** means the report by KPMG dated on or around the date of this Agreement relating to the Parent and its subsidiaries and addressed to, and/or capable of being relied upon by, Lloyds TSB Bank plc as original lender.

"**Financial Indebtedness**" means any indebtedness for or in respect of:

(a) moneys borrowed and debit balances at banks or other financial institutions;

(b) any acceptance under any acceptance credit or bill discounting facility (or

dematerialised equivalent);

(c) any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of Finance Leases;

(e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis and meet any requirement for de-recognition under the Accounting Principles);

(f) any Treasury Transaction (and, when calculating the value of that Treasury Transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that Treasury Transaction, that amount) shall be taken into account);

(g) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;

(h) any amount raised by the issue of redeemable shares which are redeemable (other than at the option of the issuer) before 31 December 2015 or are otherwise classified as borrowings under the Accounting Principles;

(i) any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind entering into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (ii) the agreement is in respect of the supply of assets or services and payment is due more than 90 days after the date of supply;

(j) any amount raised under any other transaction (including any forward sale or purchase, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing or otherwise classified as borrowings under the Accounting Principles; and

(k) the amount of any liability in respect of any guarantee for any of the items referred to in paragraphs (a) to (j) above.

"**Financial Quarter**" has the meaning given to that term in Clause 22.1 (Financial definitions).

"**Financial Year**" has the meaning given to that term in Clause 22.1 (Financial definitions).

"**Flotation**" means:

(i) a successful application being made for the admission of any part of the share capital of any member of the Group to the Official List of the UK Listing Authority and the admission of any part of the share capital of any member of the Group to trading on the London Stock Exchange plc; or

(ii) the grant of permission to deal with any part of the issued share capital of any member of the Group on the Alternative Investment Market or the European Acquisition of Securities Dealers Automated Quotation System or on any recognised investment exchange (as that term is used in the Financial

Services and Markets Act 2000) or in or on any exchange or market replacing the same or any other exchange or market in any country.

**"Funds Flow"** means the funds flow delivered by the Parent to the Agent on or around the date of this Agreement in connection with the facilities being made available to the Group by the Finance Parties.

"**Genesco Closing Schedule**" means the schedule in the agreed form setting out the dates to which the Group will prepare Monthly Financial Statements and Quarterly Financial Statements after the Restatement Date.

"**Group**" means the Parent and each of its Subsidiaries for the time being.

"**Group Structure Chart**" means the group structure chart in the agreed form.

"**Guarantor**" means a Guarantor listed in Part I of Schedule 1 (the Original Parties) as a Guarantor or an Additional Guarantor, unless it has ceased to be a Guarantor in accordance with Clause 26 (Changes to the Obligors).

"**Hedging Agreement**" means any master agreement, confirmation, schedule or other agreement in agreed form entered into or to be entered into by the Parent and a Lender for the purpose of hedging interest rate liabilities in relation to the Term Facilities in accordance with any Hedging Policy Letter.

"**Hedging Policy Letter**" means any letter entered into at any time by the Parent to the Agent setting out the proposed policy of the Group in relation to the hedging of its exposure to floating rates of interest.

"**Holding Account**" means an account:

(a) held in Scotland by a member of the Group with the Agent or Security Trustee;

(b) identified in a letter between the Parent and the Agent as a Holding Account; and

(c) subject to Security in favour of the Security Trustee which Security is in form and substance satisfactory to the Security Trustee,

(as the same may be redesignated, substituted or replaced from time to time).

"**Holding Company**" means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.

"**Holdings**" means Schuh Holdings Limited (Registered No. SC265833).

"**IFRS**" means international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

"**Impaired Agent**" means the Agent at any time when:

(a) (if the Agent is also a Lender) it is a Defaulting Lender under paragraph (a) or (b) of the definition of "Defaulting Lender";

(b) an Insolvency Event has occurred and is continuing with respect to the Agent; or

(c) the Agent rescinds or repudiates a Finance Document.

"**Increase Confirmation**" means a confirmation substantially in the form set out in Schedule 10 (Form of Increase Confirmation).

"**Information Package**" means the Reports, the Business Plan and the Funds Flow.

"**Insolvency Event**" in relation to a Finance Party means:

(a) a Finance Party being dissolved (other than pursuant to a consolidation, amalgamation or merger);

(b) a Finance Party admits in writing its inability generally to pay its debts as they become due; or

(c) the appointment of a liquidator, receiver, administrator, compulsory manager or similar officer in respect of that Finance Party or all or any material part of that Finance Party's assets or any analogous procedure or any formal step being taken in respect of any such appointment or procedure other than the presentation of a petition for any such appointment or procedure which is dismissed, stayed or discharged within 30 days.

"**Insurance Adequacy Letter**" means the letter from Aon addressed to the Finance Parties dated on or around the date of this Agreement in respect of the insurance provision of the Group.

"**Intellectual Property**" means:

(a) any patents, trade marks, service marks, designs, business names, copyrights, database rights, design rights, domain names, moral rights, inventions, confidential information, know how and other intellectual property rights and interests (which may now or in the future subsist), whether registered or unregistered; and

(b) the benefit of all applications and rights to use such assets of each member of the Group (which may now or in the future subsist).

"**Interest Period**" means, in relation to a Loan, each period determined in accordance with Clause 11 (Interest Periods) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 10.3 (Default interest).

"**ITA**" means the Income Tax Act 2007.

"**Joint Venture**" means any joint venture entity, whether a company, unincorporated firm, undertaking, association, joint venture or partnership or any other entity.

"**LBG Group**" means Lloyds Banking Group plc and its Subsidiaries from time to time.

"**Legal Reservations**" means:

(a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;

(b) the time barring of claims under the applicable limitation laws, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim;

(c) the principle that any additional interest imposed under any relevant agreement may be held to be unenforceable on the grounds that it is a penalty and thus void;

(d) the principle that an English court may not give effect to an indemnity for legal costs incurred by an unsuccessful litigant;

(e) the principle that in certain circumstances security granted by way of fixed charge may be characterised as a floating charge or that security purported to be constituted by way of an assignment may be recharacterised as a charge;

(f) similar principles, rights and defences under the laws of any Relevant Jurisdiction; and

(g) any other matters which are set out as qualifications or reservations as to matters of law (but not of fact) expressed in any legal opinion required to be given by this Agreement.

"**Lender**" means:

(a) any Original Lender; and

(b) any bank, financial institution, trust, fund or other entity which has become a Party in accordance with Clause 25 (Changes to the Lenders),

which in each case has not ceased to be a Party in accordance with the terms of this Agreement.

"**LIBOR**" means, in relation to any Loan:

(a) the applicable Screen Rate; or

(b) (if no Screen Rate is available for the Interest Period of that Loan) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Agent at its request quoted by the Reference Banks to leading banks in the London interbank market,

as of 11.00 a.m. on the Quotation Day for the offering of deposits in Sterling and for a period comparable to the Interest Period for that Loan.

"**Limitation Acts**" means the Limitation Act 1980, the Foreign Limitation Periods Act 1984, the Prescription and Limitation (Scotland) Act 1973, the Prescription and Limitation (Scotland) Act 1984 and any other enactment (whenever passed) relating to the prescription and/or limitation of actions and/or claims in any part of the United Kingdom.

"**Livingston Property**" means the heritable property situated at 1 Neilson Square, Deans Industrial Estate, Livingston EH54 8EQ (Title Number WLN1738).

"**Lloyds Retail Facilities**" means the retail and merchant services facilities (if any) provided to the Group by a member of the LBG Group from time to time.

"**LMA**" means the Loan Market Association.

"**Loan**" means a Term Loan.

"**Majority Lenders**" means a Lender or Lenders whose Commitments aggregate more than $66^{2}/_{3}$ per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than $66^{2}/_{3}$ per cent. of the Total Commitments immediately prior to that reduction).

"**Mandatory Cost**" means in respect of any Lender, the cost of complying with any reserve asset, liquidity, special deposit or other regulatory requirements affecting it, expressed as a percentage rate per annum, including for a Lender participating through a Facility Office in the United Kingdom or a Participating Member State the percentage rate per annum calculated by the Agent in accordance with Schedule 4 (Mandatory Cost formula) and the cost, expressed as a percentage rate per annum, of complying with any reserve, special deposit, compulsory loan, insurance charge or similar requirement (including any Reserve Requirements) against assets held by, deposits or other liabilities in or for the account of, advances, loans or other extensions of credit by, or any other acquisition of funds by, any office of such Lender.

"**Mandatory Prepayment Account**" means an interest-bearing account:

(a) held in Scotland by a Borrower with the Agent or Security Trustee;

(b) identified in a letter between the Parent and the Agent as a Mandatory Prepayment Account;

(c) subject to Security in favour of the Security Trustee which Security is in form and substance satisfactory to the Agent and Security Trustee; and

(d) from which no withdrawals may be made by any members of the Group except as contemplated by this Agreement,

(as the same may be redesignated, substituted or replaced from time to time).

"**Margin**" means:

(a) in relation to any Facility A Loan, two point five per cent. (2.5%) per annum;

(b) in relation to any Facility B Loan, three point seven five per cent. (3.75%) per annum;

(c) in relation to any Unpaid Sum relating or referable to a Facility, the rate per annum specified above for that Facility;

(d) in relation to any other Unpaid Sum, the highest rate specified above; and

(e) if at any time a breach of the terms of Clause 22 (Financial Covenants) is continuing each of the rates referred to in (a) to (d) (inclusive) above will increase to two times the Margin which would otherwise be applicable to such amount for so long as such breach continues unwaived.

"**Material Adverse Effect**" means any event or circumstance which is in the opinion of the Majority Lenders (acting reasonably) materially adverse to:

(a) the business, operations, property, condition (financial or otherwise) or prospects of the Group taken as a whole; or

(b) the ability of an Obligor to perform its payment obligations under any of the Finance Documents and/or its obligations under Clause 22.2 (Financial condition) of this Agreement; or

(c) the validity or enforceability of, or the effectiveness or ranking of any Security granted or purporting to be granted pursuant to any of, the Finance Documents or the rights or remedies of any Finance Party under any of the Finance Documents.

"**Month**" means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

(a) (subject to paragraph (c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;

(b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and

(c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

The above rules will only apply to the last Month of any period. "**Monthly**" shall be construed accordingly.

"**Monthly Financial Statements**" means the financial statements delivered pursuant to paragraph (b) of Clause 21.1 (Financial Statements).

"**Non-Consenting Lender**" has the meaning given to that term in Clause 37.3 (Replacement of Lender).

"**Obligor**" means a Borrower or a Guarantor.

"**Obligors' Agent**" means the Parent, appointed to act on behalf of each Obligor in relation to the Finance Documents pursuant to Clause 2.4 (Obligors' Agent).

"**Original Financial Statements**" means:

(a) in relation to the Parent, the audited consolidated financial statements of the Group for its financial year ended 30 March 2010 and the unaudited management accounts for the Accounting Period which ended on the last day of P6 2011; and

(b) in relation to any other Obligor, its audited financial statements delivered to the Agent as required by Clause 26 (Changes to the Obligors).

"**Participating Member State**" means any member state of the European Communities that adopts or has adopted the euro as its lawful currency in accordance with legislation of the European Community relating to Economic and Monetary Union.

"**Party**" means a party to this Agreement.

**"Perfection Requirements"** means the making or the procuring of the appropriate registrations, filings, endorsements, notarisations, stampings and/or notifications of the Transaction Security Documents and/or the Transaction Security created thereunder.

"**Permitted Acquisition**" means:

(a) an acquisition permitted in terms of Clause 23.29 (Capital Expenditure);

(b) an acquisition by a member of the Group of an asset sold, leased, transferred or otherwise disposed of by another member of the Group in circumstances constituting a Permitted Disposal;

(c) an acquisition of shares or securities pursuant to a Permitted Share Issue;

(d) an acquisition approved in writing by the Majority Lenders.

"**Permitted Bank Accounts**" means each of the accounts held by Schuh (RoI) Limited with Ulster Bank (or such other bank notified by the Parent to the Agent from time to time).

"**Permitted Disposal**" means any sale, lease, licence, transfer or other disposal which is on arms' length terms:

(a) of trading stock or cash made by any member of the Group in the ordinary course of trading of the disposing entity;

(b) of any asset by a member of the Group (the "**Disposing Company**") to another member of the Group (the "**Acquiring Company**"), but if:

(i) the Disposing Company is an Obligor, the Acquiring Company must also be an Obligor;

(ii) the Disposing Company had given Security over the asset, the Acquiring Company must give equivalent Security over that asset; and

(iii) the Disposing Company is a Guarantor, the Acquiring Company must be a Guarantor guaranteeing at all times an amount no less than that guaranteed by the Disposing Company;

(c) of assets (other than shares, businesses, any Properties or any Intellectual Property) in exchange for other assets comparable or superior as to type, value or quality;

(d) of obsolete or redundant vehicles, plant and equipment for cash;

(e) arising as a result of any Permitted Security; and

(f) of assets (other than shares, businesses, any Properties or any Intellectual Property) for cash where the higher of the market value and net consideration receivable (when aggregated with the higher of the market value and net consideration receivable for any other sale, lease, licence, transfer or other disposal not allowed under the preceding paragraphs) does

not exceed £200,000 (or its equivalent) in any Financial Year of the Parent.

"**Permitted Financial Indebtedness**" means Financial Indebtedness:

(a) arising under a foreign exchange transaction for spot or forward delivery entered into in connection with protection against fluctuation in currency rates where that foreign exchange exposure arises in the ordinary course of trade, but not a foreign exchange transaction for investment or speculative purposes;

(b) arising under a Permitted Loan or a Permitted Guarantee or as permitted by Clause 23.30 (Treasury Transactions);

(c) of any person acquired by a member of the Group after the date of this Agreement which is incurred under arrangements in existence at the date of acquisition, but not incurred or increased or its maturity date extended in contemplation of, or since, that acquisition, and outstanding only for a period of three months following the date of acquisition;

(d) under finance or capital leases of vehicles, plant, equipment or computers, provided that the aggregate capital value of all such items so leased under outstanding leases by members of the Group does not exceed £100,000 (or its equivalent in other currencies) at any time;

(e) arising under the Working Capital Facility Letter;

(f) arising in respect of the Retail Facilities;

(g) arising under a loan made by the UK Acquisition Company to the Parent which is subordinated to the Facilities in accordance with the Subordination Agreement;

(h) arising by way of a New Shareholder Injection; and

(i) not permitted by the preceding paragraphs or as a Permitted Transaction and the outstanding principal amount of which does not exceed £100,000 (or its equivalent) in aggregate for the Group at any time.

"**Permitted Guarantee**" means:

(a) the endorsement of negotiable instruments in the ordinary course of trade;

(b) any performance or similar bond guaranteeing performance by a member of the Group under any contract entered into in the ordinary course of trade;

(c) any guarantee permitted under Clause 23.19 (Financial Indebtedness);

(d) any guarantee given in respect of the netting or set-off arrangements permitted pursuant to paragraph (b) of the definition of Permitted Security; or

(e) the Guarantee (as defined in the Ranking Agreement).

"**Permitted Joint Venture**" means any investment in any Joint Venture where the Parent has obtained the prior written consent (not to be unreasonably withheld or delayed) of the Majority Lenders for the investment in that Joint Venture.

"**Permitted Loan**" means:

(a) any trade credit extended by any member of the Group to its customers on normal commercial terms and in the ordinary course of its trading activities;

(b) Financial Indebtedness which is referred to in the definition of, or otherwise constitutes, Permitted Financial Indebtedness (except under paragraph (c) of that definition);

(c) a loan made by an Obligor to another Obligor or made by a member of the Group which is not an Obligor to another member of the Group;

(d) a loan made by a member of the Group to an employee or director of any member of the Group if the amount of that loan when aggregated with the amount of all loans to employees and directors by members of the Group does not exceed £100,000 (or its equivalent) at any time;

(e) a loan made by the Parent or any of its wholly owned subsidiaries to the UK Acquisition Company in compliance with the terms of paragraph (b) of the definition of Permitted Payment; and

(f) any other loan so long as the aggregate amount of the Financial Indebtedness under any such loans does not exceed £100,000 (or its equivalent) at any time.

"**Permitted Merger**" means:

(a) an amalgamation, demerger, merger, consolidation or corporate reconstruction on a solvent basis of an Obligor where:

(i) all of the business and assets of that Obligor are retained by one or more other Obligors;

(ii) the surviving entity of that amalgamation, demerger, merger, consolidation or corporate reconstruction is liable for the obligations of the Obligor it has merged with and is incorporated in the same jurisdiction as that Obligor; and

(iii) the Agent and the Security Trustee are given thirty Business Days' notice by the Parent of that proposed amalgamation, demerger, merger, consolidation or corporate reconstruction and the Security Trustee, acting reasonably, is satisfied that the Finance Parties will enjoy the same or equivalent Security over the same assets and over that Obligor and the shares in it (or the shares of the surviving entity); or

(b) an amalgamation, demerger, merger, consolidation or corporate reconstruction on a solvent basis of a member of the Group which is not an Obligor where all of the business and assets of that member remain within the Group; or

(c) an amalgamation or merger between an Obligor and another entity in connection with a Permitted Acquisition where such Obligor is the surviving entity.

"**Permitted Payment**" means:

(a) the payment of a dividend to the Parent or any of its wholly-owned Subsidiaries;

(b) the payment of a dividend or the making of a loan by the Parent to the UK Acquisition Company provided that:

(i) no Event of Default would occur as a result of that loan and/or dividend;

(ii) the Parent provides to the Agent such information as the Agent may reasonably require so as to demonstrate to the Agent that such loan and/or dividend would not cause a breach of the financial covenants under Clause 22 (Financial Covenants) of this Agreement in the period of 12 months following the making of such loan and/or payment of such dividend;

(iii) such loan and/or dividend is paid by the Parent into an account of the UK Acquisition Company held with the Agent or Security Trustee and subject to Security in favour of the Security Trustee which Security is in form and substance satisfactory to the Agent and the Security Trustee; and

(iv) simultaneously with the payment referred to in (iii) above, the UK Acquisition Company subscribes in cash for a corresponding amount in the equity capital of the Parent;

(c) the payment of any other dividend agreed between the Parent and the Lenders.

"**Permitted Security**" means:

(a) any lien arising by operation of law and in the ordinary course of trading and not as a result of any default or omission by any member of the Group;

(b) any netting or set-off arrangement entered into by any member of the Group with Lloyds TSB Bank plc in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of members of the Group but only so long as (i) such arrangement does not permit credit balances of Obligors to be netted or set off against debit balances of members of the Group which are not Obligors and (ii) such arrangement does not give rise to other Security over the assets of Obligors in support of liabilities of members of the Group which are not Obligors;

(c) any Security or Quasi-Security over or affecting any asset acquired by a member of the Group after the date of this Agreement, if:

(i) the Security or Quasi-Security was not created in contemplation of the acquisition of that asset by a member of the Group;

(ii) the principal amount secured has not been increased in contemplation of or since the acquisition of that asset by a member of the Group; and

(iii) the Security or Quasi-Security is removed or discharged within three months of the date of acquisition of such asset;

(d) any Security or Quasi-Security over or affecting any asset of any company which becomes a member of the Group after the date of this Agreement, where the Security or Quasi-Security is created prior to the date on which that company becomes a member of the Group, if:

(i) the Security or Quasi-Security was not created in contemplation of the acquisition of that company;

(ii) the principal amount secured has not increased in contemplation of or since the acquisition of that company; and

(iii) the Security or Quasi-Security is removed or discharged within three months of that company becoming a member of the Group;

(e) any Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a member of the Group in the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission by any member of the Group;

(f) any Security or Quasi-Security arising as a consequence of any finance or capital lease permitted pursuant to paragraph (e) of the definition of "Permitted Financial Indebtedness";

(g) any Security in favour of Bank of Scotland plc or any other member of the LBG Group by any member of the Group;

(h) any Security securing indebtedness the outstanding principal amount of which (when aggregated with the outstanding principal amount of any other indebtedness which has the benefit of Security given by any member of the Group other than any permitted under paragraphs (a) to (g) above) does not exceed £100,000; or

(i) the Noteholder Securities (as defined in the Ranking Agreement).

"**Permitted Share Issue**" means an issue of:

(a) ordinary shares by the Parent to employees, paid for in full in cash upon issue and which by their terms are not redeemable and where such issue does not lead to a Change of Control of the Parent;

(b) shares by a member of the Group which is a Subsidiary to its immediate Holding Company where (if the existing shares of the Subsidiary are the subject of the Transaction Security) the newly-issued shares also become subject to the Transaction Security on the same terms.

"**Permitted Transaction**" means:

(a) any disposal required, Financial Indebtedness incurred, guarantee, indemnity or Security or Quasi-Security given, or other transaction arising, under the Finance Documents;

(b) the solvent liquidation or reorganisation of any member of the Group which is not an Obligor so long as any payments or assets distributed as a result of such liquidation or reorganisation are distributed to an Obligor; or

(c) transactions (other than (i) any sale, lease, license, transfer or other disposal and (ii) the granting or creation of Security or the incurring or permitting to subsist of Financial Indebtedness) conducted in the ordinary course of trading on arms' length terms.

"**Properties**" means the heritable or freehold properties owned by the Group at the date of this Agreement and any other freehold property acquired by a member of the Group after the date of this Agreement. A reference to "**Property**" is a reference to any of the Properties.

"**Qualifying Lender**" has the meaning given to that term in Clause 14 (Tax gross-up and indemnities).

"**Quarter Date**" means the last day of a Financial Quarter.

"**Quarterly Financial Statements**" means the management accounts for a Financial Quarter.

"**Quasi-Security**" has the meaning given to that term in Clause 23.13 (Negative pledge).

"**Quotation Day**" means, in relation to any period for which an interest rate is to be determined, the first day of that period.

"**Ranking Agreement**" means the ranking agreement dated on or around the Effective Date and made between the Security Trustee, the Noteholder Security Trustee (as defined therein), Schuh Limited and Schuh (ROI) Limited.

"**Receiver**" means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Property.

"**Reference Banks**" means, in relation to LIBOR, the principal London offices of Barclays Bank PLC, Lloyds TSB Bank plc and The Royal Bank of Scotland plc or such other banks as may be appointed by the Agent in consultation with the Parent.

"**Related Fund**" in relation to a fund (the "**first fund**"), means a fund which is managed or advised by the same investment manager or adviser as the first fund or, if it is managed by a different investment manager or adviser, a fund whose investment manager or adviser is an Affiliate of the investment manager or adviser of the first fund.

"**Relevant Jurisdiction**" means, in relation to an Obligor:

(a) its jurisdiction of incorporation;

(b) any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated;

(c) any jurisdiction where it conducts its business; and

(d) the jurisdiction whose laws govern the perfection of any of the Transaction Security Documents entered into by it.

"**Relevant Period**" has the meaning given to that term in Clause 22.2 (Financial definitions).

"**Repayment Date**" means a Facility A Repayment Date or the Facility B Repayment Date.

"**Repeating Representations**" means each of the representations set out in Clause 20.2 (Status) to Clause 20.7 (Governing law and enforcement) (inclusive), Clause 20.11 (No default), paragraphs (f) and (g) of Clause 20.13 (Original Financial Statements), Clause 20.19 (Ranking) to Clause 20.21 (Legal and beneficial ownership) (inclusive) and Clause 20.28 (Centre of main interests and establishments).

"**Reports**" means the Financial Due Diligence Report and the Tax Letter.

"**Resignation Letter**" means a letter substantially in the form set out in Schedule 8 (Form of Resignation Letter).

"**Restatement Date**" means 22 June 2011.

"**Retail Facilities**" means the retail and merchant services facilities used by the Group from time to time (including, without limitation, the Existing Retail Facilities and the Lloyds Retail Facilities).

"**Screen Rate**" means, in relation to LIBOR, the British Bankers' Association Interest Settlement Rate for the relevant period displayed on the appropriate page of the Reuters screen. If the agreed page is replaced or service ceases to be available, the Agent may specify another page or service displaying the appropriate rate after consultation with the Parent and the Lenders.

"**Secured Obligations**" means all present and future obligations and liabilities (whether actual or contingent, whether owed jointly, severally or in any other capacity whatsoever and whether originally incurred by an Obligor or by some other person) of each Obligor to the Finance Parties (or any of them) under each of the Finance Documents except for any obligation or liability which, if it were so included, would cause that obligation or liability or any of the Security in respect thereof, to be unlawful or prohibited by any applicable law.

"**Secured Parties**" means each Finance Party from time to time and any Receiver or Delegate.

"**Security**" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"**Selection Notice**" means a notice substantially in the form set out in Part II of Schedule 3 (Requests) given in accordance with Clause 11 (Interest Periods) in relation to a Term Facility.

"**Senior Management**" means each and all of Colin Temple, Mark Crutchley, Kenneth Ball and David Spencer.

"**Senior Management Event**" means Colin Temple and Mark Crutchley cease (in the period of 24 months following the Restatement Date) to be employed by the Parent (as chief executive officer and chief financial officer of the Group respectively) (the date on which both of such individuals cease to be so employed being for these purposes the "**Trigger Date**") and, following the presentation to the Lenders of the Group's alternative arrangements for the senior management of the Group (including, without limitation, the identity of the proposed new chief executive officer and chief financial officer of the Group) within 120 days of the Trigger Date,

the Agent (acting on the instructions of the Majority Lenders, acting reasonably) does not provide a written consent to such cessation within 180 days of the Trigger Date. This definition shall also apply to any replacement person approved by the Agent in accordance with the terms of this definition as if references in this Clause to Colin Temple or to Mark Crutchley were references to that replacement person.

"**Standard Security**" means the standard security by the Company in favour of the Security Trustee in respect of the Livingston Property dated on or around the date of this Agreement.

"**Sterling**" and the figure "**£**" means the lawful currency of the UK.

"**Subordination Agreement**" means a subordination agreement between the Borrower, UK Acquisition Company and the Security Trustee as security trustee for the Finance Parties substantially in the agreed form.

"**Subsidiary**" means, in relation to any company, corporation or legal entity (a "**holding company**"), any company, corporation or legal entity:

(a) which is controlled, directly or indirectly, by the holding company; or

(b) more than half the issued share capital of which is beneficially owned, directly or indirectly, by the holding company; or

(c) which is a subsidiary of another subsidiary of the holding company,

and, for these purposes, a company, corporation or legal entity shall be treated as being controlled by another if that other company, corporation or legal entity is able to direct its affairs and/or to control the composition of its board of directors or equivalent body.

"**Tax**" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

"**Tax Letter**" means the letter dated on or around the date of this Agreement from KPMG to the Finance Parties in respect of the tax position of the Group.

"**Taxes Act**" means the Income and Corporation Taxes Act 1988.

"**Term Facilities**" means Facility A and Facility B and "**Term Facility**" means any of them as the context may require.

"**Termination Date**" means:

(a) in relation to Facility A, 31 October 2015; and

(b) in relation to Facility B, 31 October 2015.

"**Term Loan**" means a Facility A Loan or a Facility B Loan.

"**Total Commitments**" means the aggregate of the Total Facility A Commitments and the Total Facility B Commitments, being £29,500,000 at the Restatement Date.

"**Total Facility A Commitments**" means the aggregate of the Facility A Commitments, being £15,500,000 at the Restatement Date.

"**Total Facility B Commitments**" means the aggregate of the Facility B Commitments, being £14,000,000 at the Restatement Date.

"**Trade Sale**" means a disposal (whether in a single transaction or a series of related transactions) of all or substantially all of the business and assets of the Group.

"**Transaction Documents**" means the Acquisition Agreement, the Constitutional Documents and the Finance Documents.

"**Transaction Security**" means the Security created or expressed to be created in favour of the Security Trustee pursuant to the Transaction Security Documents.

"**Transaction Security Documents**" means each of the documents listed as being a Transaction Security Document in paragraph 3(g) — (n) of Part I of Schedule 2 (Conditions Precedent) and any document required to be delivered to the Agent under paragraph 13 of Part II of Schedule 2 (Conditions Precedent) together with any other any document entered into by any Obligor creating or expressed to create any Security over all or any part of its assets in respect of the obligations of any of the Obligors under any of the Finance Documents.

"**Transfer Certificate**" means a certificate substantially in the form set out in Schedule 5 (Form of Transfer Certificate) or any other form agreed between the Agent and the Parent.

"**Transfer Date**" means, in relation to an assignment or transfer, the later of:

(a) the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate; and

(b) the date on which the Agent executes the relevant Assignment Agreement or Transfer Certificate.

"**Treasury Transactions**" means any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price.

"**UK Acquisition Company**" means Genesco (UK) Limited (Reg. No. 7667223).

"**Unpaid Sum**" means any sum due and payable but unpaid by an Obligor under the Finance Documents.

"**Utilisation**" means a Loan.

"**Utilisation Date**" means the date on which a Utilisation is made.

"**Utilisation Request**" means a notice substantially in the form set out in Part 1 of Schedule 3 (Requests).

"**VAT**" means value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature.

"**Working Capital Facility**" means the working capital facilities provided by the Working Capital Lender to various members of the Group pursuant to the terms of the Working Capital Facility Letter.

"**Working Capital Facility Letter**" means the working capital facility letter between each of the Parent, Holdings and the Company and Lloyds TSB Bank plc dated on or

around the Restatement Date or any other facility letter entered into from time to time between members of the Group and the Working Capital Lender setting out the terms on which working capital facilities are available to the Group.

"**Working Capital Lender**" means Lloyds TSB Bank plc (or another member of the LBG Group) as provider of the Working Capital Facility.

**1.2. Construction**

(a) Unless a contrary indication appears, a reference in this Agreement to:

(i) the "**Agent**", the "**Arranger**", any "**Finance Party**", any "**Lender**", any "**Obligor**", any "**Party**", any "**Secured Party**", the "**Security Trustee**" or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees and, in the case of the Security Trustee, any person for the time being appointed as Security Trustee or Security Trustees in accordance with the Finance Documents;

(ii) a document in "**agreed form**" is a document which is previously agreed in writing by or on behalf of the Parent and the Agent or, if not so agreed, is in the form specified by the Agent;

(iii) "**assets**" includes present and future properties, revenues and rights of every description;

(iv) a "**Finance Document**" or a "**Transaction Document**" or any other agreement or instrument is a reference to that Finance Document or Transaction Document or other agreement or instrument as amended or novated (however fundamentally) and includes (without limiting the generality of the foregoing) any variation, increase, extension or addition of or to any facility or amount made available under any such document or any variation of the purposes for which such facility or amount may be available from time to time;

(v) "**guarantee**" means (other than in Clause 19 (Guarantee and Indemnity) any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;

(vi) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

(vii) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);

(viii) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being one with which it is customary to

comply) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

(ix) a provision of law is a reference to that provision as amended or re-enacted;

(x) a time of day is a reference to London time; and

(xi) the "**date of this Agreement**" shall be a reference to 10 November 2010.

(b) Section, Clause and Schedule headings are for ease of reference only.

(c) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.

(d) A Default (other than an Event of Default) is "**continuing**" if it has not been remedied or waived and an Event of Default is "**continuing**" if it has not been remedied or waived.

**1.3. Third party rights**

(a) Unless expressly provided to the contrary in a Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Agreement.

(b) Notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

## SECTION 2

## THE FACILITIES

### 2. THE FACILITIES

### 2.1. The Facilities[1]

(a) Subject to the terms of this Agreement, the Lenders make available:

(i) a Sterling term loan facility in an aggregate amount equal to the Total Facility A Commitments, of which £7,000,000 will be made available to the Parent and £10,000,000 will be made available to Holdings; and

(ii) a Sterling term loan facility in an aggregate amount equal to the Total Facility B Commitments which shall be made available to Holdings.

### 2.2. Increase

(a) The Parent may by giving prior notice to the Agent by no later than the date falling 5 Business Days after the effective date of a cancellation of:

(i) the Available Commitments of a Defaulting Lender in accordance with Clause 7.5 (Right of cancellation in relation to a Defaulting Lender); or

(ii) the Commitments of a Lender in accordance with Clause 7.1 (Illegality),

request that the Total Commitments be increased (and the Total Commitments under that Facility shall be so increased) in an aggregate amount in the Base Currency of up to the amount of the Available Commitments or Commitments so cancelled as follows:

(iii) the increased Commitments will be assumed by one or more Lenders or other banks, financial institutions, trusts, funds or other entities (each an "**Increase Lender**") selected by the Company (each of which shall not be a member of the Group nor an Investor nor an Affiliate of an Investor and which is further acceptable to the Agent (acting reasonably)) and each of which confirms its willingness to assume and does assume all the obligations of a Lender corresponding to that part of the increased Commitments which it is to assume, as if it had been an Original Lender;

(iv) each of the Obligors and any Increase Lender shall assume obligations towards one another and/or acquire rights against one another as the Obligors and the Increase Lender would have assumed and/or acquired had the Increase Lender been an Original Lender;

(v) each Increase Lender shall become a Party as a "**Lender**" and any Increase Lender and each of the other Finance Parties shall assume

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1 The Facilities were fully drawn on the date of this Agreement and no amounts remain available to be drawn under this Agreement. Facility A has been repaid as to £1,500,000 since the date of this Agreement.

obligations towards one another and acquire rights against one another as that Increase Lender and those Finance Parties would have assumed and/or acquired had the Increase Lender been an Original Lender;

(vi) the Commitments of the other Lenders shall continue in full force and effect; and

(vii) any increase in the Total Commitments shall take effect on the date specified by the Company in the notice referred to above or any later date on which the conditions set out in paragraph (b) below are satisfied.

(b) An increase in the Total Commitments will only be effective on:

(i) the execution by the Agent of an Increase Confirmation from the relevant Increase Lender promptly on receipt on such Increase Confirmation; and

(ii) in relation to an Increase Lender which is not a Lender immediately prior to the relevant increase:

(A) the Increase Lender entering into the documentation required for it to accede as a party to the Intercreditor Deed; and

(B) the performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assumption of the increased Commitments by that Increase Lender, the completion of which the Agent shall promptly notify to the Company and the Increase Lender.

(c) Each Increase Lender, by executing the Increase Confirmation, confirms (for the avoidance of doubt) that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the increase becomes effective.

(d) Unless the Agent otherwise agrees or the increased Commitment is assumed by an existing Lender, the Company shall, on the date upon which the increase takes effect, pay to the Agent (for its own account) a fee of £5,000 and the Company shall promptly on demand pay the Agent and the Security Trustee the amount of all costs and expenses (including legal fees) reasonably incurred by either of them and, in the case of the Security Trustee, by any Receiver or Delegate in connection with any increase in Commitments under this Clause 2.2.

(e) The Parent may pay to the Increase Lender a fee in the amount and at the times agreed between the Parent and the Increase Lender in a Fee Letter.

(f) Clause 25.4 (Limitation of responsibility of Existing Lenders) shall apply *mutatis mutandis* in this Clause 2.2 in relation to an Increase Lender as if references in that Clause to:

(i) an "**Existing Lender**" were references to all the Lenders immediately prior to the relevant increase;

(ii) the "**New Lender**" were references to that "**Increase Lender**"; and

(iii) a "**re-transfer**" and "**re-assignment**" were references to respectively a "**transfer**" and "**assignment**".

**2.3. Finance Parties' rights and obligations**

(a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.

(b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor shall be a separate and independent debt.

(c) A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.

**2.4. Obligors' Agent**

(a) Each Obligor (other than the Parent) by its execution of this Agreement or an Accession Letter irrevocably appoints the Parent to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:

(i) the Parent on its behalf to supply all information concerning itself contemplated by this Agreement to the Finance Parties and to give all notices and instructions (including, in the case of a Borrower, Utilisation Requests), to execute on its behalf any Accession Letter, to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by any Obligor notwithstanding that they may affect the Obligor, without further reference to or the consent of that Obligor; and

(ii) each Finance Party to give any notice, demand or other communication to that Obligor pursuant to the Finance Documents to the Parent,

and in each case the Obligor shall be bound as though the Obligor itself had given the notices and instructions (including, without limitation, any Utilisation Requests) or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.

(b) Every act, omission, agreement, undertaking, settlement, waiver, amendment, supplement, variation, notice or other communication given or made by the Obligors' Agent or given to the Obligors' Agent under any Finance Document on behalf of another Obligor or in connection with any Finance Document (whether or not known to any other Obligor and whether occurring before or after such other Obligor became an Obligor under any Finance Document) shall be binding for all purposes on that Obligor as if that Obligor had expressly made, given or concurred with it. In the event of any conflict between any notices or other communications of the Obligors' Agent and any other Obligor, those of the Obligors' Agent shall prevail.

## 3. PURPOSE

### 3.1. Purpose

(a) The Parent shall apply all amounts borrowed by it under a Term Facility towards the payment of certain sums due to the shareholders of Holdings, certain of whom are exiting on or around the date of this Agreement and Holdings shall apply all amounts borrowed by it under a Term Facility towards the refinance of certain facilities previously made available to it and certain of its Subsidiaries by Bank of Scotland plc.

### 3.2. Monitoring

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

## 4. CONDITIONS OF UTILISATION

### 4.1. Initial conditions precedent

The Lenders will only be obliged to comply with Clause 5.4 (Lenders' participation) in relation to any Utilisation if on or before the Utilisation Date for that Utilisation, the Agent has received all of the documents and other evidence listed in Part I of Schedule 2 (Conditions precedent) in form and substance satisfactory to the Agent. The Agent shall notify the Parent and the Lenders promptly upon being so satisfied.

### 4.2. Further conditions precedent

Subject to Clause 4.1 (Initial conditions precedent), the Lenders will only be obliged to comply with Clause 5.4 (Lenders' participation), if on the date of the Utilisation Request and on the proposed Utilisation Date:

(a) no Default is continuing or would result from the proposed Utilisation; and

(b) in relation to any Utilisation on the date of this Agreement, all the representations and warranties in Clause 20 (Representations) or, in relation to any other Utilisation, the Repeating Representations, to be made by each Obligor are true.

### 4.3. Maximum number of Utilisations

(a) A Borrower (or the Parent) may not deliver a Utilisation Request if as a result of the proposed Utilisation four or more Term Loans would be outstanding.

(b) A Borrower (or the Parent) may not request that a Facility A Loan be divided if, as a result of the proposed division, three or more Facility A Loans would be outstanding.

(c) A Borrower (or the Parent) may not request that a Facility B Loan be divided.

## SECTION 3

## UTILISATION

### 5. UTILISATION — LOANS

#### 5.1. Delivery of a Utilisation Request

A Borrower (or the Parent on its behalf) may utilise a Facility by delivery to the Agent of a duly completed Utilisation Request not later than 10.00 a.m. one Business Day prior to the proposed Utilisation Date.

#### 5.2. Completion of a Utilisation Request for Loans

(a) Each Utilisation Request for a Loan is irrevocable and will not be regarded as having been duly completed unless:

(i) it identifies the Facility to be utilised;

(ii) the proposed Utilisation Date is a Business Day within the Availability Period applicable to that Facility;

(iii) the currency and amount of the Utilisation comply with Clause 5.3 (Currency and amount); and

(iv) the proposed Interest Period complies with Clause 11 (Interest Periods).

(b) Multiple Utilisations may be requested in a Utilisation Request where the proposed Utilisation Date is the date of this Agreement. Only one Utilisation may be requested in each subsequent Utilisation Request.

#### 5.3. Currency and amount

(a) The currency specified in a Utilisation Request must be Sterling.

(b) The amount of the proposed Utilisation must be:

(i) an amount equal to £7,000,000 for that part of Facility A which is to be drawn down by the Parent or, if less, the Available Facility;

(ii) an amount equal to £10,000,000 for that part of Facility A which is to be drawn down by Holdings or, if less, the Available Facility; or

(iii) an amount equal to £14,000,000 for Facility B or, if less, the Available Facility.

#### 5.4. Lenders' participation

(a) If the conditions set out in this Agreement have been met, each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.

(b) The amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the Loan.

**5.5. Limitations on Utilisations**

A Term Facility may only be utilised on the date of this Agreement and only if all the Term Facilities are utilised in full on that date.

**5.6. Cancellation of Commitment**

(a) The Facility A Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period for Facility A.

(b) The Facility B Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period for Facility B.

**5.7. Clean down**

The Parent shall ensure that:

(a) the amount outstanding under the Working Capital Facility Letter; LESS

(b) any amount of cash (other than cash held in a Holding Account or Mandatory Prepayment Account) held by wholly-owned members of the Group,

(as confirmed in a certificate signed by a director of the Parent provided to the Agent within 15 Business Days after the end of each Financial Year) shall not exceed zero for a period of not less than 10 successive days in each of its Financial Years. Not less than 9 months shall elapse between two such periods.

## SECTION 4

## REPAYMENT, PREPAYMENT AND CANCELLATION

### 6. REPAYMENT

#### 6.1. Repayment of Term Loans

(a) The Borrowers shall repay the Facility A Loans in instalments by repaying on each Facility A Repayment Date the amount set out opposite that Facility A Repayment Date below:

| Facility A Repayment Date | Repayment Instalment (£) |
|---|---|
| 30 June 2011 | 750,000 |
| 30 September 2011 | 750,000 |
| 31 December 2011 | 750,000 |
| 31 March 2012 | 750,000 |
| 30 June 2012 | 875,000 |
| 30 September 2012 | 875,000 |
| 31 December 2012 | 875,000 |
| 31 March 2013 | 875,000 |
| 30 June 2013 | 875,000 |
| 30 September 2013 | 875,000 |
| 31 December 2013 | 875,000 |
| 31 March 2014 | 875,000 |
| 30 June 2014 | 875,000 |
| 30 September 2014 | 875,000 |
| 31 December 2014 | 875,000 |
| 31 March 2015 | 875,000 |
| 30 June 2015 | 1,000,000 |
| 31 October 2015 | 1,000,000 |

(b) Holdings shall repay the Facility B Loans on the Facility B Repayment Date.

(c) The Borrowers may not reborrow any part of a Term Facility which is repaid.

#### 6.2. Effect of cancellation and prepayment on scheduled repayments and reductions

(a) If the Parent cancels the whole or any part of the Facility A Commitments in accordance with Clause 7.4 (Right of cancellation and repayment in relation to a single Lender) or if the Facility A Commitment of any Lender is reduced under Clause 7.1 (Illegality) then the amount of the Facility A Repayment Instalment for each Facility A Repayment Date falling after that cancellation will reduce *pro rata* by the amount cancelled.

(b) If any of the Facility A Loans are prepaid in accordance with Clause 7.4 (Right of cancellation and repayment in relation to a single Lender) or Clause 7.1 (Illegality) then the amount of the Facility A Repayment Instalment for each Facility A Repayment Date falling after that prepayment will reduce *pro rata* by the amount of the Facility A Loan.

(c) Subject to the terms of paragraph (d) below, if any of the Facility A Loans are prepaid in accordance with Clause 7.3 (Voluntary prepayment of Term Loans) or Clause 8.3 (Application of mandatory prepayments) then the

amount of the Facility A Repayment Instalment for each Facility A Repayment Date falling after that prepayment will reduce in inverse order of maturity by the amount of the Facility A Loan prepaid.

(d) If any of the Facility A Loans are prepaid pursuant to the terms of Clause 7.3(a), Clause 8.2(b) or Clause 8.3(c)(ii) then the amount prepaid will be applied against the Facility A Repayment Instalments falling after that prepayment in inverse order of maturity.

## 7. ILLEGALITY, VOLUNTARY PREPAYMENT AND CANCELLATION

### 7.1. Illegality

If it becomes unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund, issue or maintain its participation in any Utilisation:

(a) that Lender shall promptly notify the Agent upon becoming aware of that event;

(b) upon the Agent notifying the Parent, the Commitment of that Lender will be immediately cancelled; and

(c) each Borrower shall repay that Lender's participation in the Utilisations made to that Borrower on the last day of the Interest Period for each Utilisation occurring after the Agent has notified the Parent or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law).

### 7.2. Voluntary cancellation

(a) Subject to paragraph (b) below, the Parent may, if it gives the Agent not less than 5 Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, cancel the whole or any part (being a minimum amount of £250,000 and an integral multiple of £250,000) of an Available Facility. Any cancellation under this Clause 7.2 shall reduce the Commitments of the Lenders rateably under that Facility.

(b) The Parent shall not cancel any part of the Available Commitment with respect to Facility A unless there is no Available Commitment with respect to Facility B.

### 7.3. Voluntary prepayment of Term Loans

(a) Subject to paragraph (b) below, a Borrower may, if it gives the Agent not less than 5 Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of that Term Loan (but, if in part, being an amount that reduces the amount of that Term Loan by a minimum amount of £250,000 and an integral multiple of £50,000).

(b) The Facility A Loans shall only be prepaid if the whole of the Facility B Loans have been prepaid or will be prepaid at the same time. A prepayment of the Facility A Loans shall be applied to reduce the Facility A Repayment Instalments in inverse order of maturity.

**7.4. Right of cancellation and repayment in relation to a single Lender**

(a) If:

(i) any sum payable to any Lender by an Obligor is required to be increased under paragraph (i) of Clause 14.2 (Tax gross-up); or

(ii) any Lender claims indemnification from the Parent or an Obligor under Clause 14.3 (Tax indemnity) or Clause 15.1 (Increased costs),

the Parent may, whilst the circumstance giving rise to the requirement for indemnification continues, give the Agent notice of cancellation of the Commitment of that Lender and its intention to procure the repayment of that Lender's participation in the Utilisations.

(b) On receipt of a notice referred to in paragraph (a) above in relation to a Lender, the Commitment of that Lender shall immediately be reduced to zero.

(c) On the last day of each Interest Period which ends after the Parent has given notice under paragraph (a) above in relation to a Lender (or, if earlier, the date specified by the Parent in that notice), each Borrower to which a Utilisation is outstanding shall repay that Lender's participation in that Utilisation together with all interest and other amounts accrued under the Finance Documents.

**7.5. Right of cancellation in relation to a Defaulting Lender**

(a) If any Lender becomes a Defaulting Lender, the Company may, at any time whilst the Lender continues to be a Defaulting Lender, give the Agent 5 Business Days' notice of cancellation of each Available Commitment of that Lender.

(b) On the notice referred to in paragraph (a) above becoming effective, each Available Commitment of the Defaulting Lender shall immediately be reduced to zero.

(c) The Agent shall as soon as practicable after receipt of a notice referred to in paragraph (a) above, notify all the Lenders.

**8. MANDATORY PREPAYMENT**

**8.1. Exit**

Upon the occurrence of:

(i) any Flotation;

(ii) a Change of Control;

(iii) a Trade Sale; or

(iv) a Senior Management Event,

the Facilities will be cancelled and all outstanding Utilisations, together with accrued interest, and all other amounts accrued under the Finance Documents, shall become

immediately due and payable.

**8.2. Disposal and Insurance Proceeds and Excess Cashflow**

(a) For the purposes of this Clause 8.2, Clause 8.3 (Application of mandatory prepayments) and Clause 8.4 (Mandatory Prepayment Accounts and Holding Accounts):

"**Disposal**" means a sale, lease, licence, transfer, loan or other disposal by a person of any asset, undertaking or business (whether by a voluntary or involuntary single transaction or series of transactions).

"**Disposal Proceeds**" means the consideration receivable by any member of the Group (including any amount receivable in repayment of intercompany debt) for any Disposal made by any member of the Group except for Excluded Disposal Proceeds and after deducting:

(i) any reasonable expenses which are incurred by any member of the Group with respect to that Disposal to persons who are not members of the Group; and

(ii) any Tax incurred and required to be paid by the seller in connection with that Disposal (as reasonably determined by the seller, on the basis of existing rates and taking account of any available credit, deduction or allowance).

"**Excluded Disposal Proceeds**" means any Disposal Proceeds which:

(i) are applied in replacement of the assets in respect of which the relevant Disposal was made as soon as possible (but in any event within 90 days or, in the case of a disposal of land or buildings, within 12 months or, in any case, such longer period as the Majority Lenders may agree) after receipt; or

(ii) do not exceed £1,000,000.

"**Excluded Insurance Proceeds**" means any proceeds of an insurance claim which the Parent notifies the Agent are, or are to be, applied:

(a) to meet a third party claim;

(b) to compensate for a loss to be covered under any business interruption insurance policies; or

(c) to the replacement, reinstatement and/or repair of the assets or otherwise in amelioration of the loss in respect of which the relevant insurance claim was made,

as soon as possible (but in any event within 120 days or, in the case of proceeds in relation to any land or buildings, within 12 months or, in any case, such longer period as the Majority Lenders may agree) after receipt and provided that the amount of such proceeds will cease to fall within this definition if they are not so applied within such period.

"**Insurance Proceeds**" means the proceeds of any insurance claim received by any member of the Group except for Excluded Insurance Proceeds and after

deducting any reasonable expenses in relation to that claim which are incurred by any member of the Group to persons who are not members of the Group.

(b) The Parent shall ensure that the Borrowers prepay Utilisations in the following amounts at the times and in the order of application contemplated by Clause 8.3 (Application of mandatory prepayments):

(i) the amount of Disposal Proceeds;

(ii) the amount of Insurance Proceeds;

(iii) the amount equal to 50% of the Excess Cashflow for any Financial Year of the Parent, commencing with the Financial Year ending on or around 31 March 2012.

**8.3. Application of mandatory prepayments**

(a) A prepayment made under Clause 8.2 (Disposal and Insurance Proceeds and Excess Cashflow) shall be applied in prepayment of Term Loans as contemplated in paragraphs (b) to (e) inclusive below.

(b) Unless the Parent makes an election under paragraph (d) below, the Borrowers shall prepay Term Loans at the following times:

(i) in the case of any prepayment relating to the amounts of Disposal Proceeds or Insurance Proceeds, promptly upon receipt of those proceeds; and

(ii) in the case of any prepayment relating to an amount of Excess Cashflow, within 7 days of delivery pursuant to Clause 21.1 (Financial Statements) of the Annual Financial Statements for the relevant Financial Year.

(c) A prepayment under Clause 8.2 (Disposal and Insurance Proceeds and Excess Cashflow) shall prepay the Term Loans as follows:

(i) firstly, in prepayment of the Facility B Loan; and

(ii) secondly, once Facility B has been repaid in full, in reducing the Facility A Repayment Instalment for each Facility A Repayment Date falling after the date of prepayment in the manner contemplated by paragraph (d) of Clause 6.2 (Effect of cancellation and prepayment on scheduled repayments and reductions).

(d) Subject to paragraph (e) below, the Parent may elect that any prepayment under Clause 8.2 (Disposal and Insurance Proceeds and Excess Cashflow) be applied in prepayment of a Term Loan on the last day of the Interest Period relating to that Term Loan. If the Parent makes that election then a proportion of the Term Loan equal to the amount of the relevant prepayment will be due and payable on the last day of its Interest Period.

(e) If the Parent has made an election under paragraph (d) above but a Default has occurred and is continuing, that election shall no longer apply and a proportion of the Term Loan in respect of which the election was made equal to the amount of the relevant prepayment shall be immediately due and

payable (unless the Majority Lenders otherwise agree in writing).

**8.4. Mandatory Prepayment Accounts and Holding Accounts**

(a) The Parent shall ensure that:

(i) Disposal Proceeds and Insurance Proceeds in respect of which the Parent has made an election under paragraph (d) of Clause 8.3 (Application of mandatory prepayments) are paid into a Mandatory Prepayment Account as soon as reasonably practicable after receipt by a member of the Group;

(ii) any amounts which represent Excluded Insurance Proceeds and/or Excluded Disposal Proceeds which are to be applied for the specific purpose with the specific periods (as set out in the definitions of Excluded Insurance Proceeds and/or Excluded Disposal Proceeds) are paid into a Holding Account as soon as reasonably practicable after receipt by a member of the Group; and

(iii) an amount equal to any Excess Cashflow in respect of which the Parent has made an election under paragraph (d) of Clause 8.3 (Application of mandatory prepayments) is paid into a Mandatory Prepayment Account promptly after such election.

(b) The Parent and each Borrower irrevocably authorise the Agent to apply:

(i) amounts credited to the Mandatory Prepayment Account; and

(ii) amounts credited to the Holding Account which have not been applied within any applicable periods detailed in the definitions of Excluded Insurance Proceeds and/or Excluded Disposal Proceeds,

to pay amounts due and payable under Clause 8.3 (Application of mandatory prepayments) and otherwise under the Finance Documents. The Parent and each Borrower further irrevocably authorise the Agent to so apply amounts credited to the Holding Account whether or not the periods detailed in the definitions of Excluded Insurance Proceeds and/or Excluded Disposal Proceeds have elapsed since receipt of those proceeds if a Default has occurred and is continuing. The Parent and each Borrower also irrevocably authorise the Agent to transfer any amounts credited to the Holding Account referred to in this paragraph (b) to the Mandatory Prepayment Account pending payment of amounts due and payable under the Finance Documents (but if all such amounts have been paid any such amounts remaining credited to the Mandatory Prepayment Account may (unless a Default has occurred) be transferred back to the Holding Account.

(c) A Lender, Security Trustee or Agent with which a Mandatory Prepayment Account or Holding Account is held acknowledges and agrees that (i) interest shall accrue at normal commercial rates on amounts credited to those accounts and that the account holder shall be entitled to receive such interest (which shall be paid in accordance with the mandate relating to such account) unless a Default is continuing and (ii) each such account is subject to the Transaction Security.

**8.5. Excluded proceeds**

Where Excluded Disposal Proceeds and Excluded Insurance Proceeds include amounts which are intended to be used for a specific purpose within a specified period (as set out in the relevant definition of Excluded Disposal Proceeds or Excluded Insurance Proceeds), the Parent shall ensure that those amounts are used for that purpose and, if requested to do so by the Agent, shall promptly deliver a certificate to the Agent at the time of such application and at the end of such period confirming the amount (if any) which has been so applied within the requisite time periods provided for in the relevant definition.

**9. RESTRICTIONS**

**9.1. Notices of Cancellation or Prepayment**

Any notice of cancellation, prepayment, authorisation or other election given by any Party under Clause 7 (Illegality, voluntary prepayment and cancellation), paragraph (d) of Clause 8.3 (Application of mandatory prepayments) or Clause 8.4 (Mandatory prepayment Accounts and Holding Accounts) shall (subject to the terms of those Clauses) be irrevocable and, unless a contrary indication appears in this Agreement, any such notice shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.

**9.2. Interest and other amounts**

(a) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and Break Costs.

(b) Any prepayment or cancellation under this Agreement (except for any prepayment pursuant to any refinancing of the entire Commitments in respect of the Facilities in accordance with the terms of Clause 7.1 (Illegality) or as a result of the terms of paragraph (iv) of Clause 8.1 (Exit) or any prepayment as a result of the terms of Clause 8.2 (Disposal and Insurance proceeds and Excess Cashflow) or as a consequence of an Obligor being required to pay additional amounts pursuant to Clause 14.2 (Tax Gross-Up) where the prepayment is made within 30 days of such additional amounts becoming payable) shall be made together with an early repayment or cancellation fee payable by the Parent to the Agent (for the account of the Lenders) of an amount equal to (i) three per cent. (3%) of the amount prepaid and/or cancelled in the event that any amount is prepaid or cancelled within 12 months of the date of this Agreement as a result of or in connection with a refinancing of all or part of the Facilities by any bank or financial institution (other than all of the Lenders), a Trade Sale or a Flotation, (ii) two per cent. (2%) of the amount prepaid and/or cancelled in the event that any amount is prepaid or cancelled more than 12 months after but within 24 months of the date of this Agreement as a result of or in connection with a refinancing of all or part of the Facilities by any bank or financial institution (other than all of the Lenders), a Trade Sale or a Flotation, and (iii) one per cent. (1%) in the event that any amount is prepaid or cancelled more than 24 months after but within 36 months of the date of this Agreement as a result of or in connection with a refinancing of all or part of the Facilities by any bank or financial institution (other than all of the Lenders), a Trade Sale or a Flotation. Such fee shall be payable on the date of such prepayment or cancellation.

**9.3. No reborrowing of Term Facilities**

No Borrower may reborrow any part of a Term Facility which is prepaid.

**9.4. Prepayment in accordance with Agreement**

No Borrower shall repay or prepay all or any part of the Utilisations or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.

**9.5. No reinstatement of Commitments**

No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.

**9.6. Agent's receipt of Notices**

If the Agent receives a notice under Clause 7 (Illegality, voluntary prepayment and cancellation) or an election under paragraph (d) of Clause 8.3 (Application of mandatory prepayments) it shall promptly forward a copy of that notice or election to either the Parent or the affected Lender, as appropriate.

**9.7. Prepayment elections**

The Agent shall notify the Lenders as soon as possible of any proposed prepayment of any Term Loan under Clause 7.3 (Voluntary prepayment of Term Loans) or Clause 8.2 (Disposal and Insurance Proceeds and Excess Cashflow).

## SECTION 5

## COSTS OF UTILISATION

### 10. INTEREST

#### 10.1. Calculation of interest

The rate of interest on each Loan for each Interest Period is the percentage rate per annum which is the aggregate of the applicable:

(a) Margin;

(b) LIBOR; and

(c) Mandatory Cost, if any.

#### 10.2. Payment of interest

The Borrower to which a Loan has been made shall pay accrued interest on that Loan on the last day of each Interest Period (and, if the Interest Period is longer than three Months, on the dates falling at three Monthly intervals after the first day of the Interest Period).

#### 10.3. Default interest

(a) If an Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is two times the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this Clause 10.3 shall be immediately payable by the Obligor on demand by the Agent.

(b) If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:

(i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and

(ii) the rate of interest applying to the overdue amount during that first Interest Period shall be two times the rate which would have applied if the overdue amount had not become due.

(c) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

#### 10.4. Notification of rates of interest

The Agent shall promptly notify the Lenders and the relevant Borrower (or the Parent) of the determination of a rate of interest under this Agreement.

## 11. INTEREST PERIODS

### 11.1. Selection of Interest Periods and Terms

(a) A Borrower (or the Parent on behalf of a Borrower) may select an Interest Period for a Loan in the Utilisation Request for that Loan or (if the Loan is a Term Loan and has already been borrowed) in a Selection Notice.

(b) Each Selection Notice for a Term Loan is irrevocable and must be delivered to the Agent by the Borrower (or the Parent on behalf of the Borrower) to which that Term Loan was made not later than 10.00 a.m. on the Business Day prior to the last day of the then current Interest Period.

(c) If a Borrower (or the Parent) fails to deliver a Selection Notice to the Agent in accordance with paragraph (b) above, the relevant Interest Period will, subject to Clause 11.2 (Changes to Interest Periods), be three Months.

(d) Subject to this Clause 11, a Borrower (or the Parent) may select an Interest Period of three or six Months or any other period agreed between the Parent and the Agent (acting on the instructions of all the Lenders). In addition, a Borrower (or the Parent on its behalf) may select an Interest Period of (in relation to Facility A) a period of less than three Months, if necessary to ensure that there are Facility A Loans (with an aggregate amount equal to or greater than a Facility A Repayment Instalment) which have an Interest Period ending on a Facility A Repayment Date for the Borrowers to make the relevant Facility A Repayment Instalment due on that date.

(e) An Interest Period for a Loan shall not extend beyond the Termination Date applicable to its Facility.

(f) Each Interest Period for a Term Loan shall start on the Utilisation Date or (if already made) on the last day of its preceding Interest Period.

### 11.2. Changes to Interest Periods

(a) Prior to determining the interest rate for a Facility A Loan, the Agent may shorten an Interest Period for any Facility A Loan to ensure there are sufficient Facility A Loans (with an aggregate amount equal to or greater than the relevant Facility A Repayment Instalment) which have an Interest Period ending on a Facility A Repayment Date for the Borrowers to make the relevant Facility A Repayment Instalment due on that date.

(b) If the Agent makes any of the changes to an Interest Period referred to in this Clause 11.2, it shall promptly notify the Parent and the Lenders.

### 11.3. Non-Business Days

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

### 11.4. Consolidation and division of Facility A Loans

(a) Subject to paragraph (b) below, if two or more Interest Periods:

(i) relate to Facility A Loans;

(ii) end on the same date; and

(iii) are made to the same Borrower,

those Facility A Loans will, unless the Parent specifies to the contrary in the Selection Notice for the next Interest Period, be consolidated into, and treated as, a single Facility A Loan on the last day of the Interest Period.

(b) Subject to Clause 4.3 (Maximum number of Utilisations) and Clause 5.3 (Currency and amount), if the Parent requests in a Selection Notice that a Facility A Loan be divided into two or more Facility A Loans, that Facility A Loan will, on the last day of its Interest Period, be so divided with amounts specified in that Selection Notice, having an aggregate amount equal to the amount of the Facility A Loan immediately before its division.

## 12. CHANGES TO THE CALCULATION OF INTEREST

### 12.1. Absence of quotations

Subject to Clause 12.2 (Market disruption), if LIBOR is to be determined by reference to the Reference Banks but a Reference Bank does not supply a quotation by 11.00 a.m. on the Quotation Day, the applicable LIBOR shall be determined on the basis of the quotations of the remaining Reference Banks.

### 12.2. Market disruption

(a) If a Market Disruption Event occurs in relation to a Loan for any Interest Period, then the rate of interest on each Lender's share of that Loan for the Interest Period shall be the percentage rate per annum which is the sum of:

(i) the Margin;

(ii) the rate notified to the Agent by that Lender as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to that Lender of funding its participation in that Loan from whatever source it may reasonably select; and

(iii) the Mandatory Cost, if any, applicable to that Lender's participation in the Loan.

(b) In this Agreement "**Market Disruption Event**" means:

(i) at or about noon on the Quotation Day for the relevant Interest Period the Screen Rate is not available and none or only one of the Reference Banks supplies a rate to the Agent to determine LIBOR; or

(ii) before close of business in London on the Quotation Day for the relevant Interest Period, the Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed twenty five (25%) per cent. Of that Loan) that the cost to it of obtaining matching deposits in the Relevant Interbank Market would be in excess of LIBOR.

**12.3. Alternative basis of interest or funding**

(a) If a Market Disruption Event occurs and the Agent or the Parent so requires, the Agent and the Parent shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.

(b) Any alternative basis agreed pursuant to paragraph (a) above shall, with the prior consent of all the Lenders and the Parent, be binding on all Parties.

**12.4. Break Costs**

(a) Each Borrower shall, within three Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by that Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.

(b) Each Lender shall, as soon as reasonably practicable after a demand by the Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

**13. FEES**

**13.1. Arrangement fee**

The Parent shall pay to the Arranger an arrangement fee in the amount and at the times agreed in the Fee Letter.

**13.2. Agency fee**

The Parent shall pay to the Agent (for its own account) an agency fee in the amount and at the times agreed in the Fee Letter.

## SECTION 6

## ADDITIONAL PAYMENT OBLIGATIONS

### 14. TAX GROSS UP AND INDEMNITIES

#### 14.1. Definitions

(a) In this Agreement:

"**Protected Party**" means a Finance Party which is or will be subject to any liability or required to make any payment for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.

"**Qualifying Lender**" means:

(i) a Lender (other than a Lender within sub-paragraph (ii) below) which is beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document and is:

(A) a Lender:

(1) which is a bank (as defined for the purpose of Section 879 of the ITA) making an advance under a Finance Document; or

(2) in respect of an advance made under a Finance Document by a person that was a bank (as defined for the purpose of Section 879 of the ITA) at the time that that advance was made,

and which is within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance; or

(B) a Lender which is:

(1) a company resident in the United Kingdom for United Kingdom tax purposes;

(2) a partnership each member of which is:

(a) a company so resident in the United Kingdom; or

(b) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which is required to bring into account in computing its chargeable profits (within the meaning of Section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of the CTA;

(3) a company not so resident in the United Kingdom

which carries on a trade in the United Kingdom through a permanent establishment and which brings into account that interest payable in respect of that advance in computing the chargeable profits (within the meaning of Section 19 of the CTA) of that company; or

(C) a Treaty Lender; or

(ii) a building society (as defined for the purposes of section 880 of the ITA) making an advance under a Finance Document.

"**Tax Confirmation**" means a confirmation by a Lender that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:

(i) a company resident in the United Kingdom for United Kingdom tax purposes;

(ii) a partnership each member of which is:

(1) a company so resident in the United Kingdom; or

(2) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of Section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or

(iii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.

"**Tax Credit**" means a credit against, relief or remission for, or repayment of, any Tax.

"**Tax Deduction**" means a deduction or withholding for or on account of Tax from a payment under a Finance Document.

"**Tax Payment**" means either the increase in a payment made by an Obligor to a Finance Party under Clause 14.2 (Tax gross-up) or a payment under Clause 14.3 (Tax indemnity).

"**Treaty Lender**" means a Lender which:

(i) is treated as a resident of a Treaty State for the purposes of the Treaty; and

(ii) does not carry on a business in the United Kingdom through a permanent establishment with which that Lender's participation in the Loan is effectively connected.

"**Treaty State**" means a jurisdiction having a double taxation agreement (a "**Treaty**") with the United Kingdom which makes provision for full exemption from tax imposed by the United Kingdom.

(a) Unless a contrary indication appears, in this Clause 14 a reference to "**determines**" or "**determined**" means a determination made in the absolute discretion of the person making the determination.

**14.2. Tax gross-up**

(a) Each Obligor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.

(b) The Parent shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Agent accordingly. Similarly, a Lender shall notify the Agent on becoming so aware in respect of a payment payable to that Lender. If the Agent receives such notification from a Lender it shall notify the Parent and that Obligor.

(c) If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

(d) An Obligor is not required to make an increased payment to a Lender under paragraph (c) above for a Tax Deduction in respect of tax imposed by the United Kingdom from a payment of interest on a Loan, if on the date on which the payment falls due:

(i) the payment could have been made to the relevant Lender without a Tax Deduction the Lender had been a Qualifying Lender with respect to that payment, but on that date that Lender is not or has ceased to be a Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration, or application of) any law or Treaty, or any published practice or concession of any relevant taxing authority; or

(ii)

(A) the relevant Lender is a Qualifying Lender solely under sub-paragraph (i)(B) of the definition of Qualifying Lender;

(B) an officer of H.M. Revenue & Customs has given (and not revoked) a direction (a "**Direction**") under section 931 of the ITA (as that provision has effect on the date on which the relevant Lender became a Party) which relates to that payment and that Lender has received from that Obligor or the Parent a certified copy of that Direction; and

(C) the payment could have been made to the Lender without any Tax Deduction in the absence of that Direction; or

(iii) the relevant Lender is a Qualifying Lender solely under sub-paragraph (i)(B) of the definition of Qualifying Lender and:

(A) the relevant Lender has not given a Tax Confirmation to the Parent; and

(B) the payment could have been made to the Lender without any Tax Deduction if the Lender had given a Tax Confirmation to the Parent, on the basis that the Tax Confirmation would have enabled the Parent to have formed a reasonable belief that the payment was an "excepted payment" for the purpose of section 930 of the ITA; or

(iv) the relevant Lender is a Treaty Lender and the Obligor making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender complied with its obligations under paragraph (g) below.

(e) If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

(f) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Agent for the Finance Party entitled to the payment a valid original certificate of deduction of tax or other evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

(g) (i) Subject to paragraph (ii) below, a Treaty Lender and each Obligor which makes a payment to which that Treaty Lender is entitled shall co-operate in completing any procedural formalities necessary for that Obligor to obtain authorisation to make that payment without a Tax Deduction.

(ii) Nothing in paragraph (i) above shall require a Treaty Lender to:

(A) register under the HMRC DT Treaty Passport scheme;

(B) apply the HMRC DT Treaty Passport scheme to any Utilisation if it has so registered; or

(C) file Treaty forms if it has included an indication to the effect that it wishes the HMRC DT Treaty Passport scheme to apply to this Agreement in accordance with paragraph (h) below or paragraph (a) of Clause 14.6 (HMRC DT Treaty Passport scheme confirmation),

and the Obligor making that payment has not complied with its obligations under paragraph (i) below or paragraph (b) of Clause 14.6 (HMRC DT Treaty Passport scheme confirmation).

(h) A Treaty Lender which becomes a Party on the day on which this Agreement is entered into that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall include an indication to that effect (for the benefit of the Agent and without liability to any Obligor) by including its scheme reference number and its

jurisdiction of tax residence opposite its name in Part II of Schedule 1 (The Original Parties).

(i) Where a Lender includes the indication described in paragraph (h) above in Part II of Schedule 1 (The Original Parties):

(i) each Borrower shall, to the extent that that Lender is a Lender under a Facility made available to that Borrower pursuant to Clause 2 (The Facilities), file a duly completed form DTTP2 in respect of such Lender with HM Revenue & Customs within 30 days of the date of this Agreement and shall promptly provide the Lender with a copy of that filing; and

(ii) each Additional Borrower shall, to the extent that that Lender is a Lender under a Facility made available to that Additional Borrower pursuant to Clause 2 (The Facilities), file a duly completed form DTTP2 in respect of such Lender with HM Revenue & Customs within 30 days of becoming an Additional Borrower and shall promptly provide the Lender with a copy of that filing.

(j) If a Lender has not included an indication to the effect that it wishes the HMRC DT Treaty Passport scheme to apply to this Agreement in accordance with paragraph (h) above or paragraph (a) of Clause 14.6 (HMRC DT Treaty Passport scheme confirmation), no Obligor shall file any form relating to the HMRC DT Treaty Passport scheme in respect of that Lender's Commitment(s) or its participation in any Utilisation.

**14.3. Tax indemnity**

(a) The Parent shall (within three Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.

(b) Paragraph (a) above shall not apply:

(i) with respect to any Tax assessed on a Finance Party:

(A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or

(B) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or

(ii) to the extent a loss, liability or cost:

(A) is compensated for by an increased payment under Clause 14.2 (Tax gross-up); or

(B) would have been compensated for by an increased payment under Clause 14.2 (Tax gross-up) but was not so compensated solely because one of the exclusions in paragraph (d) of Clause 14.2 (Tax gross-up) applied.

(c) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Parent.

(d) A Protected Party shall, on receiving a payment from an Obligor under this Clause 14.3, notify the Agent.

**14.4. Tax Credit**

If an Obligor makes a Tax Payment and the relevant Finance Party determines that:

(a) a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part or to that Tax Payment; and

(b) that Finance Party has obtained, utilised and retained that Tax Credit,

the Finance Party shall pay an amount to the Obligor which that Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Obligor. Notwithstanding anything to the contrary, in no event shall any Finance Party be required to pay any amount to the Borrowers the payment of which would place such Finance Party in a less favourable net after tax position than such Finance Party would have been in if the Tax giving rise to the indemnity payments had never been paid.

**14.5. Lender Status Confirmation**

Each Lender which becomes a Party to this Agreement after the date of this Agreement shall indicate, in the Transfer Certificate or Assignment Agreement or Increase Confirmation which it executes on becoming a Party, and for the benefit of the Agent and without liability to any Obligor, which of the following categories it falls in:

(a) not a Qualifying Lender;

(b) a Qualifying Lender (other than a Treaty Lender); or

(c) a Treaty Lender.

If a New Lender fails to indicate its status in accordance with this Clause 14.5 then such New Lender shall be treated for the purposes of this Agreement as if it is not a Qualifying Lender until such time as it notifies the Agent which category applies (and the Agent, upon receipt of such notification, shall inform the Company). For the avoidance of doubt, a Transfer Certificate, Assignment Agreement or Increase Confirmation shall not be invalidated by any failure of a Lender to comply with this Clause 14.5.

**14.6. HMRC DT Treaty Passport scheme confirmation**

(a) A New Lender or an Increase Lender that is a Treaty Lender that holds a passport under the HMRC DT Treaty Passport scheme, and which then

wishes that scheme to apply to this Agreement, shall include an indication to that effect (for the benefit of the Agent and without liability to any Obligor) in the Transfer Certificate, Assignment Agreement or Increase Confirmation which it executes by including its scheme reference number and its jurisdiction of tax residence in that Transfer Certificate, Assignment Agreement or Increase Confirmation.

(b) Where a New Lender or an Increase Lender includes the indication described in paragraph (a) above in the relevant Transfer Certificate, Assignment Agreement or Increase Confirmation:

(i) each Borrower which is a Party as a Borrower as at the relevant Transfer Date or the date on which the increase in Total Commitments described in the relevant Increase Confirmation takes effect shall, and to the extent that that New Lender or Increase Lender becomes a Lender under a Facility which is made available to that Borrower pursuant to Clause 2 (The Facilities), file a duly completed form DTTP2 in respect of such Lender with HM Revenue & Customs within 30 days of that Transfer Date or that date on which the increase in Total Commitments takes effect and shall promptly provide the Lender with a copy of that filing; and

(ii) each Additional Borrower which becomes an Additional Borrower after the relevant Transfer Date or the date on which the increase in Total Commitments described in the relevant Increase Confirmation takes effect shall, to the extent that that New Lender or Increase Lender is a Lender under a Facility which is made available to that Additional Borrower pursuant to Clause 2 (The Facilities), file a duly completed form DTTP2 in respect of such Lender with HM Revenue & Customs within 30 days of becoming an Additional Borrower and shall promptly provide the Lender with a copy of that filing.

**14.7. Stamp taxes**

The Parent shall pay and, within three Business Days of demand, indemnify each Secured Party and Arranger against any cost, loss or liability that Secured Party or Arranger incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

**14.8. Notification to Parent and Agent**

Each Lender will notify the Parent and the Agent if it is not or ceases to be a Qualifying Lender.

**14.9. Value added tax**

(a) All consideration expressed to be payable under a Finance Document by any Party to a Finance Party shall be deemed to be exclusive of any VAT. Subject to paragraph (b) below, if VAT is chargeable on any supply made by any Finance Party to any Party in connection with a Finance Document, that Party shall pay to the Finance Party (in addition to and at the same time as paying the consideration) an amount equal to the amount of the VAT.

(b) If VAT is chargeable on any supply made by any Finance Party (the "**Supplier**") to any other Finance Party (the "**Recipient**") in connection with a Finance Document, and any Party is required by the terms of any Finance

Document to pay an amount equal to the consideration for such supply to the Supplier, such Party shall also pay to the Supplier (in addition to and at the same time as paying such amount) an amount equal to the amount of such VAT.

(c) Where a Finance Document requires any Party to reimburse a Finance Party for any costs or expenses, that Party shall also at the same time pay and indemnify the Finance Party against all VAT incurred by the Finance Party in respect of the costs or expenses to the extent that the Finance Party reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of the VAT.

## 15. INCREASED COSTS

### 15.1. Increased costs

(a) Subject to Clause 15.3 (Exceptions) the Parent shall, within three Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the date of this Agreement.

(b) In this Agreement "**Increased Costs**" means:

(i) a reduction in the rate of return from a Facility or on a Finance Party's (or its Affiliate's) overall capital;

(ii) an additional or increased cost; or

(iii) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document.

### 15.2. Increased cost claims

(a) A Finance Party intending to make a claim pursuant to Clause 15.1 (Increased Costs) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Parent.

(b) Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs.

### 15.3. Exceptions

(a) Clause 15.1 (Increased Costs) does not apply to the extent any Increased Cost is:

(i) attributable to a Tax Deduction required by law to be made by an Obligor;

(ii) compensated for by Clause 14.3 (Tax indemnity) (or would have been compensated for under Clause 14.3 (Tax indemnity) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 14.3 (Tax indemnity) applied);

(iii) compensated for by the payment of the Mandatory Cost; or

(iv) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.

(b) In this Clause 15.3 reference to a "**Tax Deduction**" has the same meaning given to the term in Clause 14.1 (Definitions).

## 16. OTHER INDEMNITIES

### 16.1. Currency indemnity

(a) If any sum due from an Obligor under the Finance Documents (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:

(i) making or filing a claim or proof against that Obligor; or

(ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

that Obligor shall as an independent obligation, within three Business Days of demand, indemnify the Arranger and each other Secured Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

(b) Each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

### 16.2. Other indemnities

(a) The Parent shall (or shall procure that an Obligor will), within three Business Days of demand, indemnify the Arranger and each other Secured Party against any cost, loss or liability incurred by it as a result of:

(i) the occurrence of any Event of Default;

(ii) a failure by an Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 30 (Sharing among the Finance Parties);

(iii) funding, or making arrangements to fund, its participation in a Utilisation requested by a Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by

that Finance Party alone);

(iv) a Utilisation (or part of a Utilisation) not being prepaid in accordance with a notice of prepayment given by a Borrower or the Parent.

(b) The Parent shall promptly indemnify each Finance Party, each Affiliate of a Finance Party and each officer or employee of a Finance Party or its Affiliate, against any cost, loss or liability incurred by that Finance Party or its Affiliate (or officer or employee of that Finance Party or Affiliate) in connection with or arising out of the Acquisition or the funding of the Acquisition (including but not limited to those incurred in connection with any litigation, arbitration or administrative proceedings or regulatory enquiry concerning the Acquisition), unless such loss or liability is caused by the gross negligence or wilful misconduct of that Finance Party or its Affiliate (or employee or officer of that Finance Party or Affiliate). Any Affiliate or any officer or employee of a Finance Party or its Affiliate may rely on this Clause 16.2.

**16.3. Indemnity to the Agent**

The Parent shall promptly indemnify the Agent against any cost, loss or liability incurred by the Agent (acting reasonably) as a result of:

(a) investigating any event which it reasonably believes is a Default;

(b) entering into or performing any foreign exchange contract for the purposes of paragraph (b) of Clause 31.10 (Change of currency); or

(c) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised.

**16.4. Indemnity to the Security Trustee**

(a) Each Obligor shall promptly indemnify the Security Trustee and every Receiver and Delegate against any cost, loss or liability incurred by any of them as a result of:

(i) the taking, holding, protection or enforcement of the Transaction Security,

(ii) the exercise of any of the rights, powers, discretions and remedies vested in the Security Trustee and each Receiver and Delegate by the Finance Documents or by law; and

(iii) any default by any Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents.

(b) The Security Trustee may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 16.4 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all monies payable to it.

## 17. MITIGATION BY THE LENDERS

### 17.1. Mitigation

(a) Each Finance Party shall, in consultation with the Parent, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (Illegality), Clause 14 (Tax gross-up and indemnities) or Clause 15 (Increased Costs) or paragraph 3 of Schedule 4 (Mandatory Cost formula) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

(b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

### 17.2. Limitation of liability

(a) The Parent shall indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 17.1 (Mitigation).

(b) A Finance Party is not obliged to take any steps under Clause 17.1 (Mitigation) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

## 18. COSTS AND EXPENSES

### 18.1. Transaction expenses

The Parent shall within three Business Days of demand pay the Agent, the Arranger and the Security Trustee the amount of all costs and expenses (including legal fees) reasonably incurred by any of them (and, in the case of the Security Trustee, by any Receiver or Delegate) in connection with the negotiation, preparation, printing, execution, syndication and perfection of:

(a) this Agreement and any other documents referred to in this Agreement and the Transaction Security;

(b) any other Finance Documents executed after the date of this Agreement.

### 18.2. Amendment costs

If (a) an Obligor requests an amendment, waiver or consent or (b) an amendment is required pursuant to Clause 31.10 (Change of currency), the Parent shall, within three Business Days of demand, reimburse each of the Agent and the Security Trustee for the amount of all costs and expenses (including legal fees) reasonably incurred by the Agent and the Security Trustee (and, in the case of the Security Trustee, by any Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement.

### 18.3. Security Trustee’s ongoing costs

(a) In the event of (i) a Default or (ii) the Security Trustee considering it necessary or expedient or (iii) the Security Trustee being requested by an Obligor or the Majority Lenders to undertake duties which the Security Trustee and the Parent agree to be of an exceptional nature and/or outside

the scope of the normal duties of the Security Trustee under the Finance Documents, the Parent shall pay to the Security Trustee any additional remuneration that may be agreed between them.

(b) If the Security Trustee and the Parent fail to agree upon the nature of the duties or upon any additional remuneration, that dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Trustee and approved by the Parent or, failing approval, nominated (on the application of the Security Trustee) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Parent) and the determination of any investment bank shall be final and binding upon the parties to this Agreement.

**18.4. Enforcement and preservation costs**

The Parent shall, within three Business Days of demand, pay to the Arranger and each other Secured Party the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of or the preservation of any rights under any Finance Document and the Transaction Security and any proceedings instituted by or against the Security Trustee as a consequence of taking or holding the Transaction Security or enforcing these rights.

## SECTION 7

## GUARANTEE

### 19. GUARANTEE AND INDEMNITY

#### 19.1. Guarantee and indemnity

Each Guarantor irrevocably and unconditionally jointly and severally:

(a) guarantees to each Finance Party punctual performance by each other Obligor of all that Obligor's obligations under the Finance Documents;

(b) undertakes with each Finance Party that whenever another Obligor does not pay any amount when due under or in connection with any Finance Document, that Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and

(c) indemnifies each Finance Party immediately on demand against any cost, loss or liability suffered by that Finance Party if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal. The amount of the cost, loss or liability shall be equal to the amount which that Finance Party would otherwise have been entitled to recover.

#### 19.2. Continuing Guarantee

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Obligor under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

#### 19.3. Reinstatement

If any payment by an Obligor or any discharge given by a Finance Party (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:

(a) the liability of each Obligor shall continue as if the payment, discharge, avoidance or reduction had not occurred; and

(b) each Finance Party shall be entitled to recover the value or amount of that security or payment from each Obligor, as if the payment, discharge, avoidance or reduction had not occurred.

#### 19.4. Waiver of defences

The obligations of each Guarantor under this Clause 19 will not be affected by an act, omission, matter or thing which, but for this Clause 19, would reduce, release or prejudice any of its obligations under this Clause 19 (without limitation and whether or not known to it or any Finance Party) including:

(a) any time, waiver or consent granted to, or composition with, any Obligor or other person;

(b) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;

(c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;

(d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;

(e) any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatsoever nature) or replacement of a Finance Document or any other document or security;

(f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or

(g) any insolvency or similar proceedings.

**19.5. Guarantor Intent**

Without prejudice to the generality of Clause 19.4 (Waiver of Defences), each Guarantor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

**19.6. Immediate recourse**

Each Guarantor waives any right it may have of first requiring any Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this Clause 19. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

**19.7. Appropriations**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, each Finance Party (or any trustee or agent on its behalf) may:

(a) refrain from applying or enforcing any other moneys, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and

(b) hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor’s liability under this Clause 19.

**19.8. Deferral of Guarantors' rights**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Agent otherwise directs, no Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents:

(a) to be indemnified by an Obligor;

(b) to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents; and/or

(c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party.

If a Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Finance Parties by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Finance Parties and shall promptly pay or transfer the same to the Agent or as the Agent may direct for application in accordance with Clause 31 (Payment mechanics) of this Agreement.

**19.9. Release of Guarantors' right of contribution**

If any Guarantor (a "**Retiring Guarantor**") ceases to be a Guarantor in accordance with the terms of the Finance Documents for the purpose of any sale or other disposal of that Retiring Guarantor then on the date such Retiring Guarantor ceases to be a Guarantor:

(a) that Retiring Guarantor is released by each other Guarantor from any liability (whether past, present or future and whether actual or contingent) to make a contribution to any other Guarantor arising by reason of the performance by any other Guarantor of its obligations under the Finance Documents; and

(b) each other Guarantor waives any rights it may have by reason of the performance of its obligations under the Finance Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under any Finance Document or of any other security taken pursuant to, or in connection with, any Finance Document where such rights or security are granted by or in relation to the assets of the Retiring Guarantor.

**19.10. Additional security**

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any Finance Party.

**19.11. Guarantee Limitations**

This guarantee does not apply to any liability to the extent that it would result in this guarantee constituting unlawful financial assistance within the meaning of Section 678 or 679 of the Companies Act 2006 or, as applicable, section 60 of the Companies Act 1963 of Ireland (as amended) and, with respect to any Additional Guarantor, is

subject to any limitations set out in the Accession Letter applicable to such Additional Guarantor. In particular, but without limiting the generality of the foregoing provisions, it is agreed that the guarantee and indemnity by Schuh (RoI) Limited in terms of this Clause 19 shall not include the payment of any arrangement fee payable under this Agreement (or any agreement amending or varying the terms of this Agreement) or the payment of any fees, costs or expenses payable by any member of the Group in connection with the Acquisition Agreement or with this Agreement (or any agreement amending or varying the terms of this Agreement).

## SECTION 8

## REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

### 20. REPRESENTATIONS

#### 20.1. General

Each Obligor makes the representations and warranties set out in this Clause 20 to each Finance Party.

#### 20.2. Status

(a) It and each of its Subsidiaries is a limited liability corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation.

(b) It and each of its Subsidiaries has the power to own its assets and carry on its business as it is being conducted.

#### 20.3. Binding obligations

Subject to the Legal Reservations and to any of the matters specified in paragraphs (a) to (e) inclusive of Clause 20.9:

(a) the obligations expressed to be assumed by it in each Transaction Document to which it is a party are legal, valid, binding and enforceable obligations; and

(b) (without limiting the generality of paragraph (a) above), each Transaction Security Document to which it is a party creates the security interests which that Transaction Security Document purports to create and those security interests are valid and effective.

#### 20.4. Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, the Transaction Documents and the granting of the Transaction Security do not and will not conflict with:

(a) any law or regulation applicable to it;

(b) the constitutional documents of any member of the Group; or

(c) any agreement or instrument binding upon it or any member of the Group or any of its or any member of the Group’s assets or constitute a default or termination event (however described) under any such agreement or instrument.

#### 20.5. Power and authority

(a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Transaction Documents to which it is or will be a party and the transactions contemplated by those Transaction Documents.

(b) No limit on its powers will be exceeded as a result of the borrowing, grant of

security or giving of guarantees or indemnities contemplated by the Transaction Documents to which it is a party.

**20.6. Validity and admissibility in evidence**

(a) All Authorisations required or desirable:

(i) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party; and

(ii) to make the Transaction Documents to which it is a party admissible in evidence in its Relevant Jurisdictions,

have been obtained or effected and are in full force and effect.

(b) All Authorisations necessary for the conduct of the business, trade and ordinary activities of members of the Group have been obtained or effected and are in full force and effect to the extent that failure to obtain or effect those Authorisations has or would reasonably be expected to have a Material Adverse Effect.

**20.7. Governing law and enforcement**

(a) Subject to the Legal Reservations, the choice of governing law of the Finance Documents will be recognised and enforced in its Relevant Jurisdictions.

(b) Subject to the Legal Reservations, any judgment obtained in relation to a Finance Document in the jurisdiction of the governing law of that Finance Document will be recognised and enforced in its Relevant Jurisdictions.

**20.8. Insolvency**

No:

(a) corporate action, legal proceeding or other procedure or step described in paragraph (a) of Clause 24.7 (Insolvency proceedings); or

(b) creditors' process described in Clause 24.8 (Creditors' process),

has been taken or, to the knowledge of the Parent, threatened in relation to a member of the Group and none of the circumstances described in Clause 24.6 (Insolvency) applies to a member of the Group.

**20.9. No filing or stamp taxes**

Under the laws of its Relevant Jurisdiction it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents except:

(a) registration of particulars of the Transaction Security Documents at the Companies Registration Office in Scotland under Section 878 of the Companies Act 2006 and payment of associated fees;

(b) registration of particulars of the Debenture at the Companies Registration Office in Ireland under Section 99 of the Companies Act 1963 and payment of associated fees;

(c) filing of the statutory declarations by directors (and, in the case of an Obligor incorporated in Ireland, section 60 of the Companies Act 1963 of Ireland) copies of which are delivered to the Agent under Clause 4.1 (Initial conditions precedent) at the Companies Registration Office in England and Wales;

(d) registration of the Standard Security at the Land Register of Scotland and payment of associated fees;

(e) registration of the Debenture in the Land Registry or registry of deeds in Ireland to the extent it relates to any specified Irish real property;

(f) registration of the Debenture at the Irish Patents Office to the extent it relates to any specified Irish trade marks or patents,

which registrations, filings, taxes and fees will be made and paid promptly after the date of the relevant Finance Document.

**20.10. Deduction of Tax**

It is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Document.

**20.11. No default**

(a) No Event of Default and, on the date of this Agreement, no Default is continuing or is reasonably likely to result from the making of any Utilisation or the entry into, the performance of, or any transaction contemplated by, any Transaction Document.

(b) No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (however described) under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or any of its Subsidiaries') assets are subject which has or is reasonably likely to have a Material Adverse Effect.

**20.12. No misleading information**

Save as disclosed in writing to the Agent prior to the date of this Agreement:

(a) to the best of its knowledge and belief (having made due and diligent enquiry), any factual information contained in the Information Package was true and accurate in all material respects as at the date of the relevant report or document containing the information or (as the case may be) as at the date the information is expressed to be given;

(b) the Business Plan has been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements, and the financial projections contained in the Business Plan have been prepared on the basis of recent historical information, are fair and based on reasonable assumptions

and have been approved by the board of directors of the Parent;

(c) any financial projection or forecast contained in the Information Package has been prepared on the basis of recent historical information and on the basis of reasonable assumptions and was fair (as at the date of the relevant report or document containing the projection or forecast) and arrived at after careful consideration;

(d) the expressions of opinion or intention provided by or on behalf of an Obligor for the purposes of the Information Package were made after careful consideration and (as at the date of the relevant report or document containing the expression of opinion or intention) were fair and based on reasonable grounds;

(e) to the best of its knowledge and belief (having made due and diligent enquiry), no event or circumstance has occurred or arisen and no information has been omitted from the Information Package and no information has been given or withheld that results in the information, opinions, intentions, forecasts or projections contained in the Information Package being untrue or misleading in any material respect;

(f) to the best of its knowledge and belief (having made due and diligent enquiry), all material information provided to a Finance Party by or on behalf of the Parent or the Company on or before the date of this Agreement and not superseded before that date (whether or not contained in the Information Package) is accurate and not misleading in any material respect and all projections provided to any Finance Party on or before the date of this Agreement have been prepared in good faith on the basis of assumptions which were reasonable at the time at which they were prepared and supplied; and

(g) to the best of its knowledge and belief (having made due and diligent enquiry), all other written information provided by any member of the Group (including its advisers) to a Finance Party or the provider of any Report was true, complete and accurate in all material respects as at the date it was provided and is not misleading in any respect.

**20.13. Original Financial Statements**

(a) Its Original Financial Statements were prepared in accordance with the Accounting Principles consistently applied.

(b) Its unaudited Original Financial Statements fairly represent its financial condition and results of operations for the relevant month or financial quarter unless expressly disclosed to the Agent in writing to the contrary prior to the date of this Agreement.

(c) Its audited Original Financial Statements give a true and fair view of its financial condition and results of operations during the relevant financial year unless expressly disclosed to the Agent in writing to the contrary prior to the date of this Agreement.

(d) To the best of its knowledge and belief (having made due and diligent enquiry), there has been no material adverse change in its assets, business or financial condition (or the assets, business or consolidated financial condition of the Group, in the case of the Parent) since the date of the Original Financial

Statements.

(e) The Original Financial Statements of the Company and the Parent do not consolidate the results, assets or liabilities of any person or business which does not form part of the Company Shares.

(f) Its most recent financial statements delivered pursuant to Clause 21.1 (Financial Statements):

(i) have been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements and the Business Plan; and

(ii) give a true and fair view of (if audited) or fairly present (if unaudited) its consolidated financial condition as at the end of, and consolidated results of operations for, the period to which they relate.

(g) The budgets and forecasts supplied under this Agreement were arrived at after careful consideration and have been prepared in good faith on the basis of recent historical information and on the basis of assumptions which were reasonable as at the date they were prepared and supplied.

(h) Since the date of the most recent financial statements delivered pursuant to Clause 21.1 (Financial Statements) there has been no material adverse change in the business, assets or financial condition of the Group.

**20.14. No proceedings pending or threatened**

Other than as disclosed to the Agent prior to the date of this Agreement, no litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which, if adversely determined, are reasonably likely to have a Material Adverse Effect have (to the best of its knowledge and belief (having made due and careful enquiry)) been started or threatened against it or any of its Subsidiaries.

**20.15. No breach of laws**

(a) It has not (and none of its Subsidiaries has) breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.

(b) No labour disputes are current or, to the best of its knowledge and belief (having made due and careful enquiry), threatened against any member of the Group which have or are reasonably likely to have a Material Adverse Effect.

**20.16. Environmental laws**

(a) Each member of the Group is in compliance with Clause 23.3 (Environmental compliance) and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would prevent such compliance in a manner or to an extent which has or is reasonably likely to have a Material Adverse Effect.

(b) No Environmental Claim has been commenced or (to the best of its knowledge and belief (having made due and careful enquiry)) is threatened

against any member of the Group where that claim has or is reasonably likely, if determined against that member of the Group, to have a Material Adverse Effect.

**20.17. Taxation**

(a) It is not (and none of its Subsidiaries is) materially overdue in the filing of any Tax returns and it is not (and none of its Subsidiaries is) overdue in the payment of any amount in respect of Tax of £100,000 (or its equivalent in any other currency) or more.

(b) No claims or investigations are being, or are reasonably likely to be, made or conducted against it (or any of its Subsidiaries) with respect to Taxes such that a liability of, or claim against, any member of the Group of £100,000 (or its equivalent in any other currency) or more is reasonably likely to arise.

(c) It is resident for Tax purposes only in the jurisdiction of its incorporation.

**20.18. Security and Financial Indebtedness**

(a) No Security or Quasi-Security exists over all or any of the present or future assets of any member of the Group other than as permitted by this Agreement.

(b) No member of the Group has any Financial Indebtedness outstanding other than as permitted by this Agreement.

**20.19. Ranking**

The Transaction Security has or will have first ranking priority and it is not subject to any prior ranking or pari passu ranking Security.

**20.20. Good title to assets**

It and each of its Subsidiaries has a good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on its business as presently conducted.

**20.21. Legal and beneficial ownership**

It and each of its Subsidiaries is the sole legal and beneficial owner of the respective assets over which it purports to grant Security.

**20.22. Shares**

The shares of any member of the Group which are subject to the Transaction Security are fully paid and not subject to any option to purchase or similar rights. The constitutional documents of companies whose shares are subject to the Transaction Security do not and could not restrict or inhibit any transfer of those shares on creation or enforcement of the Transaction Security. Other than in relation to share options granted or to be granted to employees in terms of any share option schemes operated by the Group, there are no agreements in force which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any share or loan capital of any member of the Group (including any option or right of pre-emption or conversion).

**20.23. Intellectual Property**

It and each of its Subsidiaries:

(a) is the sole legal and beneficial owner of or has licensed to it on normal commercial terms all the Intellectual Property which is material in the context of its business and which is required by it in order to carry on its business as it is being conducted and as contemplated in the Business Plan;

(b) does not (nor does any of its Subsidiaries), in carrying on its businesses, infringe any Intellectual Property of any third party in any respect which has or is reasonably likely to have a Material Adverse Effect; and

(c) has taken all formal or procedural actions (including payment of fees) required to maintain any material Intellectual Property owned by it.

**20.24. Group Structure Chart**

The Group Structure Chart delivered to the Agent pursuant to Part I of Schedule 2 (Conditions Precedent) is true, complete and accurate in all material respects.

**20.25. Obligors**

The Parent has no Subsidiaries other than the Obligors and Schuh Corporate Trustee Limited.

**20.26. Accounting reference date**

The Accounting Reference Date of each member of the Group is 30 March.

**20.27. Equity Documents**

Not restated.

**20.28. Centre of main interests and establishments**

For the purposes of The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings (the "**Regulation**"), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in its jurisdiction of incorporation and it has no "**establishment**" (as that term is used in Article 2(h) of the Regulations) in any other jurisdiction.

**20.29. Pensions**

(a) Neither it nor any of its Subsidiaries is or has at any time been an employer (for the purposes of Sections 38 to 51 of the Pensions Act 2004) of an occupational pension scheme which is not a money purchase scheme (both terms as defined in the Pensions Schemes Act 1993).

(b) Neither it nor any of its Subsidiaries is or has at any time been "connected" with or an "associate" of (as those terms are used in Sections 39 and 43 of the Pensions Act 2004) such an employer.

**20.30. Acquisition Documents**

Not restated.

**20.31. Times when representations made**

(a) All the representations and warranties in this Clause 20 are made by each Obligor on the date of this Agreement.

(b) The Repeating Representations are deemed to be made by each Obligor on the date of each Utilisation Request, on each Utilisation Date and on the first day of each Interest Period (except that those contained in paragraphs (a) — (e) of Clause 20.13 (Original Financial Statements) will cease to be so made once subsequent financial statements have been delivered under this Agreement).

(c) All the representations and warranties in this Clause 20 except Clause 20.12 (No misleading information) and Clause 20.24 (Group Structure Chart) are deemed to be made by each Additional Obligor on the day on which it becomes (or it is proposed that it becomes) an Additional Obligor.

(d) Each representation or warranty deemed to be made after the date of this Agreement shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

**21. INFORMATION UNDERTAKINGS**

The undertakings in this Clause 21 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

**21.1. Financial statements**

The Parent shall supply to the Agent in sufficient copies for all the Lenders:

(a) as soon as they are available, but in any event within 120 days after the end of each of its Financial Years:

(i) its audited consolidated financial statements for that Financial Year;

(ii) the audited financial statements (consolidated if appropriate) of each Obligor for that Financial Year; and

(iii) the audited financial statements of any other Subsidiary for that Financial Year if requested by the Agent;

(b) in the period from the Restatement Date to (and including) P6 2012 and at any time when (by reference to the level of EBITDA and Cashflow disclosed in any financial statements provided to the Agent in terms of this Agreement) the financial performance of the Group is below that anticipated in the Budget for the relevant period by more than 15%, as soon as they are available, but in any event within 30 days after the end of each Accounting Period its financial statements on a consolidated basis for that Accounting Period (to include cumulative management accounts for the Financial Year to date); and

(c) in the period following P6 2012, as soon as they are available, but in any event within 30 days after each Quarter Date its Quarterly Financial Statements on a consolidated basis for that Financial Quarter (to include

cumulative management accounts for the Financial Year to date).

**21.2. Provision and contents of Compliance Certificate**

(a) The Parent shall supply a Compliance Certificate to the Agent with each set of its audited consolidated Annual Financial Statements and each set of its Quarterly Financial Statements.

(b) The Compliance Certificate shall, amongst other things, set out (in reasonable detail) computations as to compliance with Clause 22 (Financial Covenants).

(c) Each Compliance Certificate shall be signed by one director of the Parent.

**21.3. Requirements as to financial statements**

(a) The Parent shall procure that each set of Annual Financial Statements, Quarterly Financial Statements and (if applicable) Monthly Financial Statements includes a balance sheet, profit and loss account and cashflow statement. In addition the Parent shall procure that:

(i) each set of Annual Financial Statements shall be audited by the Auditors;

(ii) each set of Quarterly Financial Statements and (if applicable) Monthly Financial Statements is accompanied by a narrative by the finance director of the Parent commenting on the performance of the Group for the Financial Quarter or Accounting Period to which the financial statements relate and the Financial Year to date and any material developments or proposals affecting the Group or its business.

(b) Each set of financial statements delivered pursuant to Clause 21.1 (Financial statements):

(i) shall be certified by a director of the relevant company as giving a true and fair view of (in the case of Annual Financial Statements for any Financial Year), or fairly representing (in other cases), its financial condition and operations as at the date as at which those financial statements were drawn up;

(ii) in the case of consolidated financial statements of the Group, shall be accompanied by a narrative comparing actual performance for the period to which the financial statements relate to the projected performance for that period set out in the Budget; and

(iii) shall be prepared using the Accounting Principles, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements for that Obligor unless, in relation to any set of financial statements, the Parent notifies the Agent that there has been a change in the Accounting Principles or the accounting practices and its Auditors (or, if appropriate, the Auditors of the Obligor) deliver to the Agent:

(A) a description of any change necessary for those financial statements to reflect the Accounting Principles or accounting practices upon which the relevant Obligor’s Original

Financial Statements were prepared; and

(B) sufficient information, in form and substance as may be reasonably required by the Agent, to enable the Lenders to determine whether Clause 22 (Financial covenants) has been complied with, to determine the amount of any prepayments to be made from Excess Cashflow under Clause 8.2 (Disposal and Insurance Proceeds and Excess Cashflow) and to make an accurate comparison between the financial position indicated in those financial statements and the relevant Obligor's Original Financial Statements.

Any reference in this Agreement to any financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.

(c) If the Agent wishes to discuss the financial position of any member of the Group with the Auditors, the Agent may notify the Parent, stating the questions or issues which the Agent wishes to discuss with the Auditors. In this event, the Parent must ensure that the Auditors are authorised (at the expense of the Parent):

(i) to discuss the financial position of each member of the Group with the Agent on request from the Agent; and

(ii) to disclose to the Agent for the Finance Parties any information which the Agent may reasonably request.

**21.4. Budget**

(a) The Parent shall supply to the Agent, in sufficient copies for all the Lenders, as soon as the same become available but in any event within 60 days after the start of each of its Financial Years, an annual Budget for that financial year.

(b) The Parent shall ensure that each Budget:

(i) is in a form reasonably acceptable to the Agent and includes a projected consolidated profit and loss, balance sheet and cashflow statement for the Group, projected financial covenant calculations and projected Capital Expenditure (including, without limitation, any such Capital Expenditure incurred using funds provided for the purpose by the UK Acquisition Company);

(ii) is prepared in accordance with the Accounting Principles and the accounting practices and financial reference periods applied to financial statements under Clause 21.1 (Financial statements); and

(iii) has been approved by the board of directors of the Parent.

(c) If the Parent updates or changes the Budget, it shall within not more than five days of the update or change being made deliver to the Agent, in sufficient copies for each of the Lenders, such updated or changed Budget together with a written explanation of the main changes in that Budget.

**21.5. Presentations**

Once in every financial year, or more frequently if requested to do so by the Agent if the Agent reasonably suspects a Default is continuing or may have occurred or may occur, at least two directors of the Parent (one of whom shall be the finance director) must give a presentation to the Finance Parties about:

(a) the on-going business and financial performance of the Group; and

(b) any other matter which a Finance Party may reasonably request.

**21.6. Year-end**

(a) The Parent shall, as soon as reasonably practicable after the Restatement Date, change its Accounting Reference Date (and the Accounting Reference Date of each other member of the Group) to 31 January but shall not otherwise change its Accounting Reference Date and shall procure that (other than to 31 January) no member of the Group changes its Accounting Reference Date.

(b) The Parent shall procure that each Accounting Period ends on an accounting date for the purposes of the preparation of the financial statements of the Group.

**21.7. Information: miscellaneous**

The Parent shall supply to the Agent (in sufficient copies for all the Lenders, if the Agent so requests):

(a) at the same time as they are dispatched, copies of all documents dispatched by the Parent to its shareholders generally (or any class of them) or dispatched by the Parent or any Obligors to its creditors generally (or any class of them);

(b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group, and which, if adversely determined, are reasonably likely to have a Material Adverse Effect or which would involve a liability, or a potential or alleged liability, exceeding £100,000 (or its equivalent in other currencies);

(c) promptly upon becoming aware of the relevant disposal or claim, details of any disposal or insurance claim which will require a prepayment under Clause 8.2 (Disposal and Insurance Proceeds and Excess Cashflow);

(d) at the same time as each board pack in relation to any proposed new store opening is distributed to the board of directors of the Parent or any other member of the Group, a copy of that board pack;

(e) promptly, such information as the Security Trustee may reasonably require about the Charged Property and compliance of the Obligors with the terms of any Transaction Security Documents; and

(f) promptly on request, such further information regarding the financial condition, assets and operations of the Group and/or any member of the Group (including any requested amplification or explanation of any item in

the financial statements, budgets or other material provided by any Obligor under this Agreement, any changes to Senior Management and an up to date copy of its shareholders' register (or equivalent in its jurisdiction of incorporation)) as any Finance Party through the Agent may reasonably request.

**21.8. Notification of default**

(a) Each Obligor shall notify the Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).

(b) Promptly upon a request by the Agent, the Parent shall supply to the Agent a certificate signed by one of its directors or senior officers on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

**21.9. "Know your customer" checks**

(a) If:

(i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;

(ii) any change in the status of an Obligor or the composition of the shareholders of an Obligor after the date of this Agreement; or

(iii) a proposed assignment or transfer by a Lender of any of its rights and/or obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges the Agent or any Lender (or, in the case of paragraph (iii) above, any prospective new Lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, each Obligor shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in paragraph (iii) above, on behalf of any prospective new Lender) in order for the Agent, such Lender or, in the case of the event described in paragraph (iii) above, any prospective new Lender to carry out and be satisfied with the results of all necessary "know your customer" or other checks in relation to any relevant person pursuant to the transactions contemplated in the Finance Documents.

(b) Each Lender shall promptly upon the request of the Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself) in order for the Agent to carry out and be satisfied with the results of all necessary "know your customer" or other checks on Lenders or prospective new Lenders pursuant to the transactions contemplated in the Finance Documents.

(c) The Parent shall, by not less than 10 Business Days' prior written notice to the Agent, notify the Agent (which shall promptly notify the Lenders) of its

intention to request that one of its Subsidiaries becomes an Additional Obligor pursuant to Clause 26 (Changes to the Obligors).

(d) Following the giving of any notice pursuant to paragraph (c) above, if the accession of such Additional Obligor obliges the Agent or any Lender to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Parent shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or on behalf of any prospective new Lender) in order for the Agent or such Lender or any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other checks in relation to any relevant person pursuant to the accession of such Subsidiary to this Agreement as an Additional Obligor.

## 22. FINANCIAL COVENANTS

### 22.1. Financial definitions

In this Agreement:

"**Cashflow**" means, in respect of any Relevant Period, EBITDA for that Relevant Period after:

(a) adding the amount of any decrease (and deducting the amount of any increase) in Working Capital for that Relevant Period;

(b) adding the amount of any cash receipts (and deducting the amount of any cash payments) during that Relevant Period in respect of any Exceptional Items not already taken account of in calculating EBITDA for any Relevant Period (other than, in the case of cash receipts, Relevant Proceeds);

(c) adding the amount of any cash receipts during that Relevant Period in respect of any Tax rebates or credits and deducting the amount actually paid or due and payable in respect of Taxes during that Relevant Period by any member of the Group;

(d) adding the amount of any increase in provisions, other non-cash debits and other non-cash charges (which are not Current Assets or Current Liabilities) and deducting the amount of any non-cash credits (which are not Current Assets or Current Liabilities) in each case to the extent taken into account in establishing EBITDA;

(e) deducting the amount of any Capital Expenditure actually made during that Relevant Period by any member of the Group (other than any amounts contributed for such purpose by the UK Acquisition Company in accordance with the terms of Clause 23.29(a)) less, to the extent not already taken into account in determining EBITDA, any landlords' inducements actually received in cash;

(f) adding the amount of any New Shareholder Injections permitted to be included in Cashflow pursuant to Clause 22.4 (Equity Cure),

and so that no amount shall be added (or deducted) more than once and there shall be excluded the effect of all cash movements associated with the Deal Costs.

"**Cashflow Cover**" means the ratio of Cashflow to Debt Service in respect of any Relevant Period.

"**Current Assets**" means the aggregate (on a consolidated basis) of all inventory, work in progress, trade and other receivables of each member of the Group including prepayments in relation to operating items and sundry debtors (but excluding Cash) maturing within twelve months from the date of computation but **excluding** amounts in respect of:

(a) receivables in relation to Tax;

(b) Exceptional Items and other non-operating items;

(c) any interest owing to any member of the Group; and

(d) prepaid Deal Costs.

"**Current Liabilities**" means the aggregate (on a consolidated basis) of all liabilities (including trade creditors, accruals and provisions) of each member of the Group falling due within twelve months from the date of computation but **excluding** amounts in respect of:

(a) liabilities for Financial Indebtedness and Finance Charges;

(b) liabilities for Tax;

(c) Exceptional Items and other non-operating items; and

(d) liabilities in relation to dividends declared but not paid by the Parent or by a member of the Group in favour of a person which is not a member of the Group.

"**Debt Service**" means, in respect of any Relevant Period, the aggregate of:

(a) Finance Charges for that Relevant Period;

(b) the aggregate of all scheduled repayments of Financial Indebtedness falling due during that Relevant Period but excluding:

  (i) any amounts falling due under the Working Capital Facility Letter or any other overdraft or revolving facility and which were available for simultaneous redrawing according to the terms of that facility; and

  (ii) any such obligations owed to any member of the Group;

(c) the amount of any cash dividends or distributions paid or made by the Parent in respect of that Relevant Period;

(d) the amount of the capital element of any payments in respect of that Relevant Period payable under any Finance Lease entered into by any member of the Group,

and so that no amount shall be included more than once.

"**EBIT**" means, in respect of any Relevant Period, the consolidated operating profit of the Group before taxation:

(a) **before deducting** any Finance Charges;

(b) **not including** any accrued interest owing to any member of the Group;

(c) **before taking into account** any Exceptional Items;

(d) **before deducting** any Deal Costs;

(e) **excluding** the amount of any profit of any member of the Group which is attributable to minority interests;

(f) **before taking into account** any unrealised gains or losses on any financial instrument (other than any derivative instrument which is accounted for on a hedge accounting basis);

(g) **before taking into account** any gain or loss arising from an upward or downward revaluation of any other asset;

**(h) before deducting** any amount that in accordance with the Accounting Principles is required to be deducted from the operating profits of the Group but which is in fact attributable to payments to be made by the UK Acquisition Company to either of Colin Temple or Mark Crutchley in accordance with the terms of the Acquisition Agreement;

in each case, to the extent added, deducted or taken into account, as the case may be, for the purposes of determining operating profits of the Group before taxation.

"**EBITDA**" means, in respect of any Relevant Period, EBIT for that Relevant Period **after adding back** any amount attributable to the amortisation, depreciation or impairment of assets of members of the Group.

"**Exceptional Items**" means any material items of an unusual or non-recurring nature which represent gains or losses including those arising on:

(a) the restructuring of the activities of an entity and reversals of any provisions for the cost of restructuring;

(b) disposals, revaluations or impairment of non-current assets;

(c) disposals of assets associated with discontinued operations; and

(d) the termination of any Treasury Transaction.

"**Excess Cashflow**" means, for any period for which it is being calculated, Cashflow for that period less (except to the extent already deducted in calculating Cashflow):

(a) Debt Service for that period;

(b) the amount of any voluntary or mandatory prepayments made under the Finance Documents during that period (but assuming for these purposes that any mandatory prepayment under paragraph (b)(iii) of Clause 8.2 is made in the Financial Year to which it is referable, and not in the following Financial Year);

(c) to the extent included in Cashflow, the cash proceeds of any New Shareholder Injection during that period;

(d) to the extent included in Cashflow, the cash proceeds of any Capital Expenditure contributed by the UK Acquisition Company in accordance with the terms of Clause 23.29(a); and

(e) £1,000,000.

"**Finance Charges**" means, for any Relevant Period, the aggregate amount of the accrued interest, commission, fees, discounts, prepayment fees, premiums or charges and other finance payments in respect of Financial Indebtedness whether paid or payable by any member of the Group (calculated on a consolidated basis) in respect of that Relevant Period:

(a) **including** the interest (but not the capital) element of payments in respect of Finance Leases;

(b) **including** any commission, fees, discounts and other finance payments payable by (and deducting any such amounts payable to) any member of the Group under any interest rate hedging arrangement;

(c) **excluding** any Deal Costs,

and so that no amount shall be added (or deducted) more than once.

"**Financial Quarter**" means the period commencing on the day after one Quarter Date and ending on the next Quarter Date.

"**Financial Year**" means the annual accounting period of the Group ending on or about 31 March in each year up to and including 31 March 2010 and ending on or about 31 January in each year thereafter.

"**Interest Cover**" means the ratio of EBITDA to Finance Charges in respect of any Relevant Period.

"**Leverage**" means, in respect of any Relevant Period, the ratio of Total Gross Debt on the last day of that Relevant Period to EBITDA in respect of that Relevant Period.

"**New Shareholder Injection**" means the aggregate amount of cash subscribed for by any Holding Company of the Parent for ordinary shares in the Parent or for subordinated loan notes (or other subordinated debt instruments) in the Parent, such subordination to be on the terms set out in the Subordination Agreement or otherwise acceptable to the Lenders.

"**Quarter Date**" means 29 October 2011 and thereafter, 31 January, 30 April, 31 July and 31 October (or such other date as represents the last trading Saturday in the relevant month or the next month as set out in the Genesco Closing Schedule) in each year.

"**Relevant Period**" means the period of thirteen Accounting Periods ending on or around 29 October 2011 and thereafter the period of 12 months ending on a Quarter Date.

"**Relevant Proceeds**" means Disposal Proceeds or Insurance Proceeds (each as defined in Clause 8.2 (Disposal, Insurance Proceeds and Excess Cashflow)).

"**Total Gross Debt**" means, at any time, the aggregate amount of all obligations of members of the Group for or in respect of Financial Indebtedness at that time but:

(a) **excluding** any such obligations to any other member of the Group;

(b) **including**, in the case of Finance Leases only, their capitalised value; and

(c) **excluding** any amount falling within paragraph (f) (Treasury Transactions) of the definition of Financial Indebtedness;

and so that no amount shall be included or excluded more than once.

"**Working Capital**" means, on any date, Current Assets less Current Liabilities.

**22.2. Financial condition**

The Parent shall ensure that:

(a) *Cashflow Cover*: Cashflow Cover in respect of any Relevant Period shall not be less than 1.1:1.

(b) *Interest Cover*: Interest Cover in respect of any Relevant Period ending on or around the Quarter Date specified in column 1 below shall not be less than the ratio set out in column 2 below opposite that Quarter Date:

| **Column 1**<br>**Date** | **Column 2**<br>**Ratio** |
|---|---|
| 29 October 2011 | 4.25:1 |
| 28 January 2012 | 4.5:1 |
| 28 April 2012 | 4.5:1 |
| 28 July 2012 | 4.5:1 |
| 27 October 2012 | 4.5:1 |
| 2 February 2013 | 4.5:1 |
| 4 May 2013 | 4.5:1 |
| 3 August 2013 | 4.5:1 |
| 2 November 2013 | 4.5:1 |
| 1 February 2014 | 4.5:1 |
| 3 May 2014 | 4.5:1 |
| 2 August 2014 | 4.5:1 |
| 1 November 2014 | 4.5:1 |
| 31 January 2015 | 4.5:1 |
| 2 May 2015 | 4.5:1 |
| 1 August 2015 | 4.5:1 |

(c) *Leverage*: Leverage in respect of any Relevant Period ending on the Quarter Date specified in column 1 below shall not exceed the ratio set out in column 2 below opposite that Quarter Date:

| Column 1<br>Quarter Date | Column 2<br>Ratio |
|---|---|
| 29 October 2011 | 2.75:1 |
| 28 January 2012 | 2.5:1 |
| 28 April 2012 | 2.30:1 |
| 28 July 2012 | 2.25:1 |
| 27 October 2012 | 2.25:1 |
| 2 February 2013 | 2.25:1 |
| 4 May 2013 | 2.25:1 |
| 3 August 2013 | 2.25:1 |
| 2 November 2013 | 2.25:1 |
| 1 February 2014 | 2.25:1 |
| 3 May 2014 | 2.25:1 |
| 2 August 2014 | 2.25:1 |
| 1 November 2014 | 2.25:1 |
| 31 January 2015 | 2.25:1 |
| 2 May 2015 | 2.25:1 |
| 1 August 2015 | 2.25:1 |

**22.3. Financial testing**

The financial covenants set out in Clause 22.2 (Financial condition) shall be calculated in accordance with the Accounting Principles and tested by reference to each of the financial statements delivered pursuant to paragraphs (a)(i) and (b) of Clause 21.1 (Financial Statements) and/or each Compliance Certificate delivered pursuant to Clause 21.2 (Provision and contents of Compliance Certificate).

**22.4. Equity Cure**

(a) In the event of any breach of any of the financial covenants in Clause 22.2 (Financial condition) (each a "**Financial Covenant**") for any Relevant Period ending on a Quarter Date (the "**Relevant Quarter Date**"), the Parent may, not later than 15 Business Days (the "**Reference Date**") after the last date for delivery of the Compliance Certificate for that Relevant Period, inject into the Group the cash proceeds of any New Shareholder Injection (the "**Cure Amount**") to remedy non-compliance with a Financial Covenant.

(b) The effect of the Cure Amount shall (subject to the provisions of this Clause) be that each Financial Covenant is recalculated to give effect to the following adjustments:

(i) for the purpose of calculating Cashflow Cover, the Cure Amount shall either (at the option of the Parent):

(1) be included in the calculation of Cashflow for that Relevant Period and (unless and until it is released to the Parent in terms of paragraph (e) below) the next three Relevant Periods; or

(2) reduce Total Gross Debt as at the start of the Relevant Period in which the non-compliance occurred and (unless and until it is released to the Parent in terms of paragraph (e) below) the next three Relevant Periods, and Debt Service shall be recalculated for such Relevant Periods on a pro forma basis as if the Total Gross Debt has been so reduced (and applied against Facility A and Facility B in accordance with the terms of Clause 7.3(b));

(ii) for the purpose of calculating Leverage, the Cure Amount shall reduce Total Gross Debt as at the end of that Relevant Period; and

(iii) for the purpose of calculating Interest Cover, the Cure Amount shall be deemed to have been applied in prepayment of the Facilities at the beginning of that Relevant Period and at the beginning of the next three Relevant Periods and Finance Charges for that Relevant Period and (unless and until it is released to the Parent in terms of paragraph (e) below) the next three Relevant Periods shall be recalculated on a pro forma basis as if the Facilities had been so reduced.

(c) If the re-testing of the Financial Covenants after giving effect to paragraphs (a) and (b) above demonstrates no breach has occurred in respect of the Relevant Period, then the relevant breach shall be deemed to have been remedied.

(d) A Cure Amount may be injected up to four times over the duration of the Facilities and may not be injected in consecutive Financial Quarters.

(e) The Parent shall procure that each Cure Amount is credited to the Escrow Account and shall be retained in the Escrow Account until the date of the Quarter Date falling 6 Months after the Relevant Quarter Date at which time it will be released to the Parent if the Parent delivers an Escrow Account Certificate to the Agent within 5 Business Days of such date. In the event that any Default occurs while any amount is held in the Escrow Account or the Parent fails to deliver an Escrow Account Certificate to the Agent within 5 Business Days of the date falling 6 Months after the Relevant Quarter Date, the balance of the Escrow Account may (at the discretion of the Agent, acting on the instructions of the Majority Lenders) be applied immediately in or towards permanent prepayment of Term Loans with such amount being applied against the Term Loans in the same manner as voluntary prepayments under Clause 7.3 (Voluntary Prepayment of Term Loans).

(f) Any recalculation made under this Clause 22.4 will be solely for the purpose of curing a Financial Covenant breach and not for any other purpose such as calculation of Margin or Excess Cashflow or for determining the application of Excess Cashflow.

## 23. GENERAL UNDERTAKINGS

The undertakings in this Clause 23 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

### 23.1. Authorisations

Each Obligor shall promptly:

(a) obtain, comply with and do all that is necessary to maintain in full force and effect; and

(b) supply certified copies to the Agent of,

any Authorisation required under any law or regulation of a Relevant Jurisdiction to:

(i) enable it to perform its obligations under the Finance Documents;

(ii) ensure the legality, validity, enforceability or admissibility in evidence of any Finance Document; and

(iii) carry on its business where failure to do so has or is reasonably likely to have a Material Adverse Effect.

### 23.2. Compliance with laws

Each Obligor shall (and the Parent shall ensure that each member of the Group will) comply in all respects with all laws to which it may be subject, if failure so to comply has or is reasonably likely to have a Material Adverse Effect.

### 23.3. Environmental compliance

Each Obligor shall (and the Parent shall ensure that each member of the Group will):

(i) comply with all Environmental Law;

(ii) obtain, maintain and ensure compliance with all requisite Environmental Permits;

(iii) implement procedures to monitor compliance with and to prevent liability under any Environmental Law,

where failure to do so has or is reasonably likely to have a Material Adverse Effect.

### 23.4. Environmental claims

Each Obligor shall (through the Parent), promptly upon becoming aware of the same, inform the Agent in writing of:

(a) any Environmental Claim against any member of the Group which is current, pending or threatened; and

(b) any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened against any member of the Group,

where the claim, if determined against that member of the Group, has or is reasonably likely to have a Material Adverse Effect.

**23.5. Taxation**

(a) Each Obligor shall (and the Parent shall ensure that each member of the Group will) pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:

(i) such payment is being contested in good faith;

(ii) adequate reserves are being maintained for those Taxes and the costs required to contest them which have been disclosed in its latest financial statements delivered to the Agent under Clause 21.1 (Financial statements); and

(iii) such payment can be lawfully withheld and failure to pay those Taxes does not have or is not reasonably likely to have a Material Adverse Effect.

(b) No member of the Group may change its residence for Tax purposes.

**23.6. Merger**

No Obligor shall (and the Parent shall ensure that no other member of the Group will) enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction other than a Permitted Transaction or a Permitted Merger.

**23.7. Change of business**

The Parent shall procure that no substantial change is made to the general nature of the business of the Group from that carried on by the Group at the date of this Agreement without the prior written consent of the Majority Lenders.

**23.8. Acquisitions**

(a) Except as permitted under either Clause 23.29 (Capital Expenditure) or paragraph (b) below, no Obligor shall (and the Parent shall ensure that no other member of the Group will):

(i) acquire a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them) or any assets; or

(ii) (other than the incorporation of Schuh Corporate Trustee Limited (Reg. No. SC379626) for the purposes only of acting as trustee of an employee share scheme for the Group) incorporate a company.

(b) Paragraph (a) above does not apply to an acquisition of a company, of shares, securities or a business or undertaking or any assets (or, in each case, any interest in any of them) or the incorporation of a company which is:

(i) a Permitted Acquisition; or

(ii) a Permitted Transaction.

**23.9. Joint ventures**

(a) Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no member of the Group will):

(i) enter into, invest in or acquire (or agree to acquire) any shares, stocks, securities or other interest in any Joint Venture; or

(ii) transfer any assets or lend to or guarantee or give an indemnity for or give Security for the obligations of a Joint Venture or maintain the solvency of or provide working capital to any Joint Venture (or agree to do any of the foregoing).

(b) Paragraph (a) above does not apply to any acquisition (or agreement to acquire) any interest in a Joint Venture or transfer of assets (or agreement to transfer assets) to a Joint Venture or loan made to or guarantee given in respect of the obligations of a Joint Venture if such transaction is a Permitted Joint Venture.

**23.10. Dormant subsidiaries**

No Obligor shall (and the Parent shall ensure no member of the Group will) cause or permit any member of the Group which is a Dormant Subsidiary to commence trading or cease to satisfy the criteria for a Dormant Subsidiary unless such Dormant Subsidiary becomes an Additional Guarantor in accordance with Clause 26.4 (Additional Guarantors).

**23.11. Preservation of assets**

Each Obligor shall (and the Parent shall ensure that each member of the Group will) maintain in good working order and condition (ordinary wear and tear excepted) all of its assets necessary or desirable in the conduct of its business.

**23.12. Pari passu ranking**

Each Obligor shall ensure that at all times any unsecured and unsubordinated claims of a Finance Party against it under the Finance Documents rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

**23.13. Negative pledge**

In this Clause 23.13, "**Quasi-Security**" means a transaction described in paragraph (b) below.

Except as permitted under paragraph (c) below:

(a) No Obligor shall (and the Parent shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets.

(b) No Obligor shall (and the Parent shall ensure that no other member of the Group will):

(i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor or any other member of the Group;

(ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;

(iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or

(iv) enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

(c) Paragraphs (a) and (b) above do not apply to any Security or (as the case may be) Quasi-Security, which is:

(i) a Permitted Security; or

(ii) a Permitted Transaction.

**23.14. Disposals**

(a) Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no member of the Group will) enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.

(b) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal which is:

(i) a Permitted Disposal; or

(ii) a Permitted Transaction.

**23.15. Arms' length basis**

(a) Except as permitted by paragraph (b) below, no Obligor shall (and the Parent shall ensure no member of the Group will) enter into any transaction with any person except on arms' length terms and for full market value.

(b) The following transactions shall not be a breach of this Clause 23.15:

(i) intra-Group loans permitted under Clause 23.16 (Loans or credit);

(ii) fees, costs and expenses payable under the Transaction Documents in the amounts set out in the Transaction Documents delivered to the Agent under Clause 4.1 (Initial conditions precedent) or agreed by the Agent; and

(iii) any Permitted Transactions.

**23.16. Loans or credit**

(a) Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no member of the Group will) be a creditor in respect of any Financial Indebtedness.

(b) Paragraph (a) above does not apply to:

(i) a Permitted Loan; or

(ii) a Permitted Transaction.

**23.17. No Guarantees or indemnities**

(a) Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no member of the Group will) incur or allow to remain outstanding any guarantee in respect of any obligation of any person.

(b) Paragraph (a) does not apply to a guarantee which is:

(i) a Permitted Guarantee; or

(ii) a Permitted Transaction.

**23.18. Corporate fees, dividends and share redemptions**

(a) Except as permitted under paragraph (b) below, the Parent shall not (and will ensure that no other member of the Group will):

(i) declare, make or pay any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);

(ii) repay or distribute any dividend or share premium reserve;

(iii) pay or allow any member of the Group to pay any management charges or fees or any advisory or other fees to (or to the order of) any of the shareholders of the Parent (or to any Holding Company of any such shareholders); or

(iv) redeem, repurchase, defease, retire or repay any of its share capital or resolve to do so.

(b) Paragraph (a) above does not apply to:

(i) a Permitted Payment;

(ii) a Permitted Transaction (other than one referred to in paragraph (c) of the definition of that term); or

(iii) management charges or fees or other advisory or other fees payable by members of the Group to the UK Acquisition Company not exceeding £500,000 in aggregate in any Financial Year.

**23.19. Financial Indebtedness**

(a) Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no member of the Group will) incur or allow to remain outstanding any Financial Indebtedness.

(b) Paragraph (a) above does not apply to Financial Indebtedness which is:

(i) Permitted Financial Indebtedness; or

(ii) a Permitted Transaction.

**23.20. Share capital**

No Obligor shall (and the Parent shall ensure no member of the Group will) issue any shares except pursuant to:

(a) a Permitted Share Issue; or

(b) a Permitted Transaction.

**23.21. Insurance**

(a) Each Obligor shall (and the Parent shall ensure that each member of the Group will) maintain insurances on and in relation to its business and assets against those risks and to the extent as is usual for companies carrying on the same or substantially similar business.

(b) All insurances must be with reputable independent insurance companies or underwriters.

(c) Not restated.

(d) Within 30 days of the date of this Agreement, the Parent shall provide to the Agent written evidence that the insurance policy(ies) relating to the Charged Property contain (in form and substance reasonably satisfactory to the Security Trustee) an endorsement naming the Security Trustee as sole loss payee.

**23.22. Pensions**

The Parent shall ensure that no member of the Group is or has been at any time an employer (for the purposes of Sections 38 to 51 of the Pensions Act 2004) of an occupational pension scheme which is not a money purchase scheme (both terms as defined in the Pension Schemes Act 1993) or "connected" with or an "associate" of (as those terms are under in Sections 39 or 43 of the Pensions Act 2004) such an employer.

**23.23. Access**

If a Default is continuing or the Agent reasonably suspects a Default is continuing or may occur, each Obligor shall, and the Parent shall ensure that each Obligor will, (not more than once in every Financial Year unless the Agent reasonably suspects a Default is continuing or may occur) permit the Agent and/or the Security Trustee and/or accountants or other professional advisers and contractors of the Agent or Security Trustee free access at all reasonable times and on reasonable notice at the

risk and cost of the Obligors to (a) the premises, assets, books, accounts and records of each Obligor and (b) meet and discuss matters with Senior Management.

**23.24. Management**

(a) The Parent must ensure that there is in place in respect of each Obligor qualified management with appropriate skills.

(b) If any of the Senior Management ceases (whether by reason of death, retirement at normal retiring age or through ill health or otherwise) to perform his or her duties, the Parent must as soon as reasonably practicable thereafter:

(i) notify the Agent; and

(ii) after consultation with the Agent as to the identity of such replacement person, find and appoint an adequately qualified replacement for him or her as promptly as practicable.

**23.25. Intellectual Property**

Each Obligor shall and the Parent shall procure that each member of the Group will:

(a) preserve and maintain the subsistence and validity of the Intellectual Property necessary for the business of the relevant member of the Group;

(b) use reasonable endeavours to prevent any infringement in any material respect of the Intellectual Property;

(c) make registrations and pay all registration fees and taxes necessary to maintain the Intellectual Property in full force and effect and record its interest in that Intellectual Property;

(d) not use or permit the Intellectual Property to be used in a way or take any step or omit to take any step in respect of that Intellectual Property which may materially and adversely affect the existence or value of the Intellectual Property or imperil the right of any member of the Group to use such property; and

(e) not discontinue the use of the Intellectual Property,

where failure to do so, in the case of paragraphs (a) and (b) above, or, in the case of paragraphs (d) and (e) above, such use, permission to use, omission or discontinuation, is reasonably likely to have a Material Adverse Effect.

**23.26. Amendments**

No Obligor shall (and the Parent shall ensure that no member of the Group will) amend, vary, novate, supplement, supersede, waive or terminate any term of a Transaction Document or any other document delivered to the Agent pursuant to Clauses 4.1 (Initial conditions precedent) or Clause 26 (Changes to the Obligors) or enter into any agreement with any shareholders of the Parent or any of their Affiliates which is not a member of the Group except in writing:

(a) in accordance with the provisions of Clause 37 (Amendments and Waivers); or

(b) after the date of this Agreement, in a way which could not be reasonably expected materially and adversely to affect the interests of the Lenders.

The Parent shall promptly supply to the Agent a copy of any document relating to any of the matters referred to in paragraphs (a) and (b) above.

**23.27. Financial assistance**

Each Obligor shall (and the Parent shall procure each member of the Group will) comply in all respects with Section 63 of the Companies Act 1963 in Ireland and any equivalent legislation in other jurisdictions including in relation to the execution of the Transaction Security Documents and payment of amounts due under this Agreement.

**23.28. Group bank accounts**

The Parent shall ensure that all bank accounts of the Group (other than the Permitted Bank Accounts but including the Holding Account, the Mandatory Prepayment Account and the Escrow Account) shall be opened and maintained with a Finance Party or an Affiliate of a Finance Party and are subject to valid Security under the Transaction Security Documents.

**23.29. Capital Expenditure**

(a) Subject to paragraph (b) below, the aggregate Capital Expenditure of the Group in respect of any Financial Year shall not exceed 115% of the amount approved by the Agent in the Budget (or in any updated or changed Budget) for that Financial Year.

(b) Capital Expenditure of the Group in excess of the limit specified in paragraph (a) above (or any other limit agreed between the Parent and the Majority Lenders) may be incurred using funds provided for the purpose by the UK Acquisition Company, and made available by subscription for ordinary shares in the Parent or by way of loan complying with the terms of paragraph (g) of Permitted Financial Indebtedness.

**23.30. Treasury Transactions**

(a) No Obligor shall (and the Parent will procure that no members of the Group will) enter into any Treasury Transaction, other than (with a member of the LBG Group provided that its terms are broadly competitive):

(i) the hedging transactions documented by the Hedging Agreements;

(ii) spot and forward delivery foreign exchange contracts entered into in the ordinary course of business and not for speculative purposes; and

(iii) any Treasury Transaction entered into for the hedging of actual or projected real exposures arising in the ordinary course of trading activities of a member of the Group for a period of not more than 12 months and not for speculative purposes.

(b) Not restated.

**23.31. Further assurance**

(a) Each Obligor shall (and the Parent shall procure that each member of the Group will) promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Trustee may reasonably specify (and in such form as the Security Trustee may reasonably require in favour of the Security Trustee or its nominee(s)):

(i) to perfect the Security created or intended to be created under or evidenced by the Transaction Security Documents (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Transaction Security) or for the exercise of any rights, powers and remedies of the Security Trustee or the Finance Parties provided by or pursuant to the Finance Documents or by law;

(ii) to confer on the Security Trustee or confer on the Finance Parties Security over any property and assets of that Obligor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Transaction Security Documents; and/or

(iii) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Transaction Security.

(b) Each Obligor shall (and the Parent shall procure that each member of the Group shall) take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Trustee or the Finance Parties by or pursuant to the Finance Documents.

**23.32. Payment of Loan Notes**

Not restated.

**23.33. Acquisition Agreement**

The Parent will not agree to amend or waive or permit the amendment or waiver of any of the material terms of the Acquisition Agreement, without the consent of the Agent, which consent will not be unreasonably withheld or delayed.

**24. EVENTS OF DEFAULT**

Each of the events or circumstances set out in this Clause 24 is an Event of Default (save for Clause 24.21 (Acceleration)).

**24.1. Non-payment**

An Obligor does not pay on the due date any amount payable pursuant to a Finance Document (other than amounts due and payable under the Working Capital Facility Letter) at the place at and in the currency in which it is expressed to be payable unless:

(a) its failure to pay is caused by:

(i) administrative or technical error; or

(ii) a Disruption Event; and

(b) payment is made within three Business Days of its due date.

**24.2. Financial covenants and other obligations**

(a) Any requirement of Clause 22 (Financial covenants) is not satisfied or an Obligor does not comply with the provisions of any of Clauses 21.1 (Financial Statements), 21.2 (Provision and contents of Compliance Certificate), 23.13 (Negative Pledge), 23.14 (Disposals), 23.16 (Loans or credit), 23.17 (No Guarantees or indemnities), 23.18 (Dividends and share redemption), 23.19 (Financial Indebtedness) and 23.26 (Amendments).

(b) An Obligor does not comply with any provision of any Transaction Security Document.

**24.3. Other obligations**

(a) An Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 24.1 (Non-payment) and Clause 24.2 (Financial covenants and other obligations)).

(b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within 15 Business Days (or such other period (if any) as the Agent may agree) of the Agent giving notice to the Parent or relevant Obligor or the Parent or an Obligor becoming aware of the failure to comply.

**24.4. Misrepresentation**

(a) Any representation or statement made or deemed to be made by an Obligor in the Finance Documents or any other document delivered by or on behalf of any Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

(b) No Event of Default under paragraph (a) will occur if the matter giving rise to the breach is capable of remedy and is remedied within 15 Business Days (or such other period (if any) as the Agent may agree) of the Agent giving notice to the Parent or relevant Obligor or the Parent or an Obligor becoming aware of the breach.

**24.5. Cross default**

(a) Any Financial Indebtedness of any member of the Group is not paid when due nor within any originally applicable grace period.

(b) Any Financial Indebtedness of any member of the Group is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).

(c) Any commitment for any Financial Indebtedness of any member of the Group is cancelled or suspended by a creditor of any member of the Group as a result of an event of default (however described).

(d) Any creditor of any member of the Group becomes entitled to declare any Financial Indebtedness of any member of the Group due and payable prior to its specified maturity as a result of an event of default (however described).

(e) No Event of Default will occur under this Clause 24.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than £100,000 (or its equivalent in any other currency or currencies) or (for a period of 15 Business Days) if the Financial Indebtedness relates to the Working Capital Facility.

**24.6. Insolvency**

(a) A member of the Group is unable or admits inability to pay its debts as they fall due or is deemed to or declared to be unable to pay its debts under applicable law, suspends or threatens to suspend making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.

(b) The value of the assets of any member of the Group is less than its liabilities (taking into account contingent and prospective liabilities).

(c) A moratorium is declared in respect of any indebtedness of any member of the Group. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

**24.7. Insolvency proceedings**

(a) Any corporate action, legal proceedings or other procedure or step is taken in relation to:

(i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration, examination or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any member of the Group;

(ii) a composition, compromise, assignment or arrangement with any creditor of any member of the Group;

(iii) the appointment of a liquidator, receiver, administrator, administrative receiver, examiner, compulsory manager or other similar officer in respect of any member of the Group or any of its assets; or

(iv) enforcement of any Security over any assets of any member of the Group,

or any analogous procedure or step is taken in any jurisdiction.

(b) Paragraph (a) shall not apply to:

(i) any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement or, if earlier, the date on which it is advertised; or

(ii) any step or procedure contemplated by paragraph (b) of the definition of Permitted Transaction.

**24.8. Creditors' process**

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of Obligor having an aggregate value of £250,000 or more (after taking into account the anticipated level of insurance proceeds (if any) which the Obligor will be entitled to receive and which in the opinion of the Agent (acting reasonably) is not being contested) and is not discharged within 10 Business Days.

**24.9. Unlawfulness and invalidity**

(a) It is or becomes unlawful for an Obligor to perform any of its obligations under the Finance Documents or any Transaction Security created or expressed to be created or evidenced by the Transaction Security Documents ceases to be effective.

(b) Any obligation or obligations of any Obligor under any Finance Documents are not (subject to the Legal Reservations) or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lenders under the Finance Documents.

(c) Any Finance Document ceases to be in full force and effect or any Transaction Security ceases to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than a Finance Party) to be ineffective.

**24.10. Cessation of business**

Any member of the Group suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business except as a result of a Permitted Disposal or a Permitted Transaction.

**24.11. Change of ownership**

(a) After the date of this Agreement, an Obligor (other than the Parent) ceases to be a wholly-owned Subsidiary of the Parent; or

(b) an Obligor ceases to own at least the same percentage of shares in a Material Company as at the date of this Agreement,

except, in either case, as a result of a disposal which is a Permitted Disposal or a Permitted Transaction.

**24.12. Constitutional Documents**

The Parent amends, varies, supplements, supersedes, waives or terminates its Constitutional Documents in any way that has a material and adverse impact on the Lenders without the prior written consent of the Majority Lenders.

**24.13. Change of management**

Not restated.

**24.14. Change of Key Personnel**

Not restated.

**24.15. Audit qualification**

The Auditors of the Group qualify the audited annual consolidated financial statements of the Parent in a manner which the Majority Lenders (acting reasonably) consider material in the context of the Finance Documents.

**24.16. Expropriation**

The authority or ability of any member of the Group to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any member of the Group or any of its assets.

**24.17. Repudiation and rescission of agreements**

An Obligor (or any other relevant party) rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or any of the Transaction Security or evidences an intention to rescind or repudiate a Finance Document or any Transaction Security.

**24.18. Litigation**

Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened in relation to the Transaction Documents or the transactions contemplated in the Transaction Documents or against any member of the Group or its assets which has or is reasonably likely to have a Material Adverse Effect.

**24.19. Material adverse change**

Any event or circumstance occurs which is reasonably likely to have a Material Adverse Effect.

**24.20. Employee Benefit Trust**

Not restated.

**24.21. Acceleration**

On and at any time after the occurrence of an Event of Default which is continuing the Agent may, and shall if so directed by the Majority Lenders, by notice to the Parent:

(a) cancel the Total Commitments at which time they shall immediately be cancelled;

(b) declare that all or part of the Utilisations, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, at which time they shall become immediately due and payable;

(c) declare that all or part of the Utilisations be payable on demand, at which

time they shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders; and/or

(d) exercise or direct the Security Trustee to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

## SECTION 9
## CHANGES TO PARTIES

### 25. CHANGES TO THE LENDERS

#### 25.1. Assignments and transfers by the Lenders

Subject to this Clause 25 a Lender (the "**Existing Lender**") may:

(a) assign any of its rights; or

(b) transfer by novation any of its rights and obligations,

under any Finance Document to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the "**New Lender**").

#### 25.2. Conditions of assignment or transfer

(a) An Existing Lender must consult with the Parent for no more than 10 days before it may make an assignment or transfer in accordance with Clause 25.1 (Assignments and transfers by the Lenders) unless the assignment or transfer is:

(i) to another Lender or an Affiliate of a Lender;

(ii) if the Existing Lender is a fund, to a fund which is a Related Fund of the Existing Lender; or

(iii) made at a time when an Event of Default is continuing.

(b) An assignment will only be effective on:

(i) receipt by the Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Finance Parties and the other Secured Parties as it would have been under if it was an Original Lender;

(ii) the New Lender entering into the documentation required for it to accede as a party to the Intercreditor Agreement; and

(iii) the performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Agent shall promptly notify to the Lender and the New Lender.

(c) A transfer will only be effective if the New Lender enters into the documentation required for it to accede as a party to the Intercreditor Agreement and if the procedure set out in Clause 25.5 (Procedure for transfer) is complied with.

(d) If:

(i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and

(ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 14 (Tax gross-up and indemnities) or Clause 15 (Increased Costs),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred.

**25.3. Assignment or transfer fee**

Unless the Agent otherwise agrees and excluding an assignment or transfer (i) to an Affiliate of a Lender, or (ii) to a Related Fund or (iii) made in connection with primary syndication of the Facilities, the New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account) a fee of £1,500.

**25.4. Limitation of responsibility of Existing Lenders**

(a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:

(i) the legality, validity, effectiveness, adequacy or enforceability of the Transaction Documents, the Transaction Security or any other documents;

(ii) the financial condition of any Obligor;

(iii) the performance and observance by any Obligor or any other member of the Group of its obligations under the Transaction Documents or any other documents; or

(iv) the accuracy of any statements (whether written or oral) made in or in connection with any Transaction Document or any other document,

and any representations or warranties implied by law are excluded.

(b) Each New Lender confirms to the Existing Lender, the other Finance Parties and the Secured Parties that it:

(i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender or any other Finance Party in connection with any Transaction Document or the Transaction Security; and

(ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.

(c) Nothing in any Finance Document obliges an Existing Lender to:

(i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 25; or

(ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Transaction Documents or otherwise.

**25.5. Procedure for transfer**

(a) Subject to the conditions set out in Clause 25.2 (Conditions of assignment or transfer) a transfer is effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.

(b) The Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.

(c) On the Transfer Date:

(i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents and in respect of the Transaction Security each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and in respect of the Transaction Security and their respective rights against one another under the Finance Documents and in respect of the Transaction Security shall be cancelled (being the "**Discharged Rights and Obligations**");

(ii) each of the Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Obligor or other member of the Group and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;

(iii) the Agent, the Arranger, the Security Trustee, the New Lender and the other Lenders shall acquire the same rights and assume the same obligations between themselves and in respect of the Transaction Security as they would have acquired and assumed had the New Lender been an Original Lender with the rights, and/or obligations

acquired or assumed by it as a result of the transfer and to that extent the Agent, the Arranger and the Security Trustee and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and

(iv) the New Lender shall become a Party as a "**Lender**".

**25.6. Procedure for assignment**

(a) Subject to the conditions set out in Clause 25.2 (Conditions of assignment or transfer) an assignment may be effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.

(b) The Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.

(c) On the Transfer Date:

(i) the Existing Lender will assign absolutely to the New Lender its rights under the Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement;

(ii) the Existing Lender will be released from the obligations (the "**Relevant Obligations**") expressed to be the subject of the release in the Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and

(iii) the New Lender shall become a Party as a "Lender" and will be bound by obligations equivalent to the Relevant Obligations.

(d) Lenders may utilise procedures other than those set out in this Clause 25.6 to assign their rights under the Finance Documents **provided that** they comply with the conditions set out in Clause 25.2 (Conditions of assignment or transfer).

**25.7. Copy of Transfer Certificate or Assignment Agreement to Parent**

The Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate, an Assignment Agreement or an Increase Confirmation, send to the Parent a copy of that Transfer Certificate or Assignment Agreement or Increase Confirmation.

**25.8. Disclosure of information**

(a) Any Lender may disclose to any of its Affiliates and any other person:

(i) to (or through) whom that Lender assigns or transfers (or may potentially assign or transfer) all or any of its rights and obligations under the Finance Documents;

(ii) with (or through) whom that Lender enters into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made by reference to, the Finance Documents or any Obligor; or

(iii) to whom, and to the extent that, information is required to be disclosed by any applicable law or regulation; or

(iv) for whose benefit that Lender charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 25.9 (Security over Lenders' rights); and

(b) any Finance Party may disclose to a rating agency or its professional advisers, or (with the consent of the Parent) any other person,

any information about any Obligor, the Group and the Finance Documents as that Lender or other Finance Party shall consider appropriate if in relation to paragraphs (a)(i) and (ii) above, the person to whom the information is to be given has entered into a Confidentiality Undertaking.

Any Confidentiality Undertaking signed by a Finance Party pursuant to this Clause 25.8 shall supersede any prior confidentiality undertaking signed by such Finance Party for the benefit of any member of the Group.

**25.9. Security over Lenders' rights**

In addition to the other rights provided to Lenders under this Clause 25, each Lender may without consulting with or obtaining consent from any Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

(a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and

(b) in the case of any Lender which is a fund, any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,

except that no such charge, assignment or Security shall:

(i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Finance Documents; or

(ii) require any payments to be made by an Obligor or grant to any person any more extensive rights than those required to be made or granted to the relevant Lender under the Finance Documents.

**25.10. Debt Purchase Transactions**

(a) The Parent shall not, and shall procure that each other member of the Group shall not (i) enter into any Debt Purchase Transaction or (ii) beneficially own all or any part of the share capital of a company that is a Lender or a party to a Debt Purchase Transaction of the type referred to in paragraphs (b) or (c) of the definition of Debt Purchase Transaction.

(b) For so long as any shareholder in the Parent (i) beneficially owns a Commitment or (ii) has entered into a sub-participation agreement relating to a Commitment or other agreement or arrangement having a substantially similar economic effect and such agreement has not been terminated:

(i) in ascertaining the Majority Lenders or whether any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents such Commitment shall be deemed to be zero; and

(ii) for the purposes of Clause 37.2 (Exceptions), such shareholder in the Parent or the person with whom it has entered into such sub-participation, other agreement or arrangement shall be deemed not to be a Lender.

(c) Each Lender shall, unless such Debt Purchase Transaction is an assignment or transfer, promptly notify the Agent in writing if it knowingly enters into a Debt Purchase Transaction with a shareholder in the Parent (a "**Notifiable Debt Purchase Transaction**").

(d) A Lender shall promptly notify the Agent if a Notifiable Debt Purchase Transaction to which it is a party:

(i) is terminated; or

(ii) ceases to be with a shareholder in the Parent.

(e) Each shareholder in the Parent that is a Lender agrees that:

(i) in relation to any meeting or conference call to which all the Lenders are invited to attend or participate, it shall not attend or participate in the same if so requested by the Agent or, unless the Agent otherwise agrees, be entitled to receive the agenda or any minutes of the same; and

(ii) in its capacity as Lender, unless the Agent otherwise agrees, it shall not be entitled to receive any report or other document prepared at the behest of, or on the instructions of, the Agent or one or more of the Lenders.

**26. CHANGES TO THE OBLIGORS**

**26.1. Assignment and transfers by Obligors**

No Obligor or any other member of the Group may assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

**26.2. Additional Borrowers**

(a) Subject to compliance with the provisions of paragraphs (c) and (d) of Clause 21.9 ("Know your customer" checks), the Parent may request that any of its wholly owned Subsidiaries which is not a Dormant Subsidiary becomes a Borrower. That Subsidiary shall become a Borrower if:

(i) it is incorporated in the same jurisdiction as an existing Borrower and the Majority Lenders approve the addition of that Subsidiary or otherwise if all the Lenders approve the addition of that Subsidiary;

(ii) the Parent and that Subsidiary deliver to the Agent a duly completed and executed Accession Letter;

(iii) the Subsidiary is (or becomes) a Guarantor prior to becoming a Borrower;

(iv) the Parent confirms that no Default is continuing or would occur as a result of that Subsidiary becoming an Additional Borrower; and

(v) the Agent has received all of the documents and other evidence listed in Part II of Schedule 2 (Conditions precedent) in relation to that Additional Borrower, each in form and substance satisfactory to the Agent.

(b) The Agent shall notify the Parent and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part II of Schedule 2 (Conditions precedent).

(c) Upon becoming an Additional Borrower that Subsidiary shall make any filings (and provide copies of such filings) as required by paragraph (g) of Clause 14.2 (Tax gross-up) and paragraph (b) of Clause 14.6 (HMRC DT Treaty Passport scheme confirmation) in accordance with those paragraphs.

**26.3. Resignation of a Borrower**

(a) In this Clause 26.3, Clause 26.5 (Resignation of a Guarantor) and Clause 26.7 (Resignation and release of Security on disposal), "**Third Party Disposal**" means the disposal of an Obligor to a person which is not a member of the Group where that disposal is permitted under Clause 23.14 (Disposals) or made with the approval of the Majority Lenders (and the Parent has confirmed this is the case).

(b) With the prior consent of all the Lenders, the Parent may request that a Borrower ceases to be a Borrower by delivering to the Agent a Resignation Letter. If a Borrower is the subject of a Third Party Disposal, the Parent may request that such Borrower (other than the Parent, Holdings or the Company) ceases to be a Borrower by delivering to the Agent a Resignation Letter.

(c) The Agent shall accept a Resignation Letter and notify the Parent and the other Finance Parties of its acceptance if:

(i) the Parent has confirmed that no Default is continuing or would result from the acceptance of the Resignation Letter;

(ii) the Borrower is under no actual or contingent obligations as a Borrower under any Finance Documents; and

(iii) the Parent has confirmed that it shall ensure that any relevant Disposal Proceeds will be applied in accordance with Clause 8.3 (Application of mandatory prepayments).

(d) Upon notification by the Agent to the Parent of its acceptance of the resignation of a Borrower, that company shall cease to be a Borrower and shall have no further rights or obligations under the Finance Documents as a Borrower except that the resignation shall not take effect (and the Borrower will continue to have rights and obligations under the Finance Documents) until the date on which the Third Party Disposal takes effect.

**26.4. Additional Guarantors**

(a) Subject to compliance with the provisions of paragraphs (b) and (c) of Clause 21.9 ("Know your customer" checks), the Parent may request that any of its wholly owned Subsidiaries become a Guarantor.

(b) The Parent shall procure that any other member of the Group which is not a Dormant Subsidiary shall, as soon as possible after becoming a member of the Group (or ceasing to be a Dormant Subsidiary), shall become an Additional Guarantor and grant Security as the Agent may require.

(c) A member of the Group shall become an Additional Guarantor if:

(i) the Parent and the proposed Additional Guarantor deliver to the Agent a duly completed and executed Accession Letter; and

(ii) the Agent has received all of the documents and other evidence listed in Part II of Schedule 2 (Conditions Precedent) in relation to that Additional Guarantor, each in form and substance satisfactory to the Agent.

(d) The Agent shall notify the Parent and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part II of Schedule 2 (Conditions precedent).

**26.5. Resignation of a Guarantor**

(a) The Parent may request that a Guarantor (other than the Parent or the Company) ceases to be a Guarantor by delivering to the Agent a Resignation Letter if:

(i) that Guarantor is being disposed of by way of a Third Party Disposal (as defined in Clause 26.3 (Resignation of a Borrower)) and the Parent has confirmed this is the case; or

(ii) all the Lenders have consented to the resignation of that Guarantor.

(b) The Agent shall accept a Resignation Letter and notify the Parent and the Lenders of its acceptance if:

(i) the Parent has confirmed that no Default is continuing or would result from the acceptance of the Resignation Letter;

(ii) no payment is due from the Guarantor under Clause 19.1 (Guarantee and indemnity);

(iii) where the Guarantor is also a Borrower, it is under no actual or contingent obligations as a Borrower and has resigned and ceased to be a Borrower under Clause 26.3 (Resignation of a Borrower); and

(iv) the Parent has confirmed that it shall ensure that the Disposal Proceeds will be applied, in accordance with Clause 8.3 (Application of mandatory prepayments).

(c) The resignation of that Guarantor shall not be effective until the date of the relevant Third Party Disposal at which time that company shall cease to be a Guarantor and shall have no further rights or obligations under the Finance Documents as a Guarantor.

**26.6. Repetition of Representations**

Delivery of an Accession Letter constitutes confirmation by the relevant Subsidiary that the representations and warranties referred to in paragraph (c) of Clause 20.31 (Times when representations made) are true and correct in relation to it as at the date of delivery as if made by reference to the facts and circumstances then existing.

**26.7. Resignation and release of security on disposal**

If a Borrower or Guarantor is or is proposed to be the subject of a Third Party Disposal then:

(a) where that Borrower or Guarantor created Transaction Security over any of its assets or business in favour of the Security Trustee, or Transaction Security in favour of the Security Trustee was created over the shares (or equivalent) of that Borrower or Guarantor, the Security Trustee may, at the cost and request of the Parent, release those assets, business or shares (or equivalent) and issue certificates of non-crystallisation;

(b) the resignation of that Borrower or Guarantor and related release of Transaction Security referred to in paragraph (a) above shall not become effective until the date of that disposal; and

(c) if the disposal of that Borrower or Guarantor is not made, the Resignation Letter of that Borrower or Guarantor and the related release of Transaction Security referred to in paragraph (a) above shall have no effect and the obligations of the Borrower or Guarantor and the Transaction Security created or intended to be created by or over that Borrower or Guarantor shall continue in full force and effect.

## SECTION 10
## THE FINANCE PARTIES

### 27. ROLE OF THE AGENT, THE ARRANGER AND OTHERS

#### 27.1. Appointment of the Agent

(a) Each of the Arranger and the Lenders appoints the Agent to act as its agent under and in connection with the Finance Documents.

(b) Each of the Arranger and the Lenders authorises the Agent to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

#### 27.2. Duties of the Agent

(a) The Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.

(b) Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.

(c) If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.

(d) If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Agent, the Arranger or the Security Trustee) under this Agreement it shall promptly notify the other Finance Parties.

(e) The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.

#### 27.3. Role of the Arranger

Except as specifically provided in the Finance Documents, the Arranger has no obligations of any kind to any other Party under or in connection with any Finance Document.

#### 27.4. No fiduciary duties

(a) Nothing in this Agreement constitutes the Agent and/or the Arranger as a trustee or fiduciary of any other person.

(b) None of the Agent, the Security Trustee or the Arranger shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

#### 27.5. Business with the Group

The Agent, the Security Trustee and the Arranger may accept deposits from, lend money to and generally engage in any kind of banking or other business with any member of the Group.

**27.6. Rights and discretions**

(a) The Agent may rely on:

(i) any representation, notice or document believed by it to be genuine, correct and appropriately authorised; and

(ii) any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.

(b) The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:

(i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 24.1 (Non-payment));

(ii) any right, power, authority or discretion vested in any Party or the Majority Lenders has not been exercised; and

(iii) any notice or request made by the Parent (other than a Utilisation Request or Selection Notice) is made on behalf of and with the consent and knowledge of all the Obligors.

(c) The Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.

(d) The Agent may act in relation to the Finance Documents through its personnel and agents.

(e) The Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.

(f) Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor the Arranger is obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.

**27.7. Majority Lenders' instructions**

(a) Unless a contrary indication appears in a Finance Document, the Agent shall (i) exercise any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by the Majority Lenders (or, if so instructed by the Majority Lenders, refrain from exercising any right, power, authority or discretion vested in it as Agent) and (ii) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with an instruction of the Majority Lenders.

(b) Unless a contrary indication appears in a Finance Document, any instructions given by the Majority Lenders will be binding on all the Finance Parties other than the Security Trustee.

(c) The Agent may refrain from acting in accordance with the instructions of the Majority Lenders (or, if appropriate, the Lenders) until it has received such security as it may require for any cost, loss or liability (together with any

associated VAT) which it may incur in complying with the instructions.

(d) In the absence of instructions from the Majority Lenders, (or, if appropriate, the Lenders) the Agent may act (or refrain from taking action) as it considers to be in the best interest of the Lenders.

(e) The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (e) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Transaction Security Documents or enforcement of the Transaction Security or Transaction Security Documents.

**27.8. Responsibility for documentation**

Neither of the Agent or the Arranger:

(a) is responsible for the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Agent, the Arranger, an Obligor or any other person given in or in connection with any Finance Document or the Reports or the transactions contemplated in the Finance Documents; or

(b) is responsible for the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Finance Document or the Transaction Security.

**27.9. Exclusion of liability**

(a) Without limiting paragraph (b) below the Agent will not be liable for any action taken by it under or in connection with any Finance Document or the Transaction Security, unless directly caused by its gross negligence or wilful misconduct.

(b) No Party (other than the Agent) may take any proceedings against any officer, employee or agent of the Agent, in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Transaction Document and any officer, employee or agent of the Agent may rely on this Clause subject to Clause 1.3 (Third party rights) and the provisions of the Third Parties Act.

(c) The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent if the Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.

(d) Nothing in this Agreement shall oblige the Agent or the Arranger to carry out any "know your customer" or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Agent and the Arranger that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent or the Arranger.

**27.10. Lenders' indemnity to the Agent**

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, within three Business Days of demand, against any cost, loss or liability incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) in acting as Agent under the Finance Documents (unless the Agent has been reimbursed by an Obligor pursuant to a Finance Document).

**27.11. Resignation of the Agent**

(a) The Agent may resign and appoint one of its Affiliates acting through an office in the United Kingdom as successor by giving notice to the Lenders and the Parent.

(b) Alternatively the Agent may resign by giving notice to the Lenders and the Parent, in which case the Majority Lenders (after consultation with the Parent) may appoint a successor Agent.

(c) If the Majority Lenders have not appointed a successor Agent in accordance with paragraph (b) above within 30 days after notice of resignation was given, the Agent (after consultation with the Parent) may appoint a successor Agent (acting through an office in the United Kingdom).

(d) The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.

(e) The Agent's resignation notice shall only take effect upon the appointment of a successor.

(f) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause 27. Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

(g) After consultation with the Parent, the Majority Lenders may, by notice to the Agent, require it to resign in accordance with paragraph (b) above. In this event, the Agent shall resign in accordance with paragraph (b) above.

**27.12. Replacement of the Agent**

(a) After consultation with the Company, the Majority Lenders may, by giving 30 days' notice to the Agent (or, at any time the Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Lenders) replace the Agent by appointing a successor Agent (acting through an office in the United Kingdom).

(b) The retiring Agent shall (at its own cost if it is an Impaired Agent and otherwise at the expense of the Lenders) make available to the successor Agent such documents and records and provide such assistance as the

successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.

(c) The appointment of the successor Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Agent. As from this date, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause 27.12 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date).

(d) Any successor Agent and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

**27.13. Confidentiality**

(a) In acting as agent for the Finance Parties, the Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.

(b) If information is received by another division or department of the Agent, it may be treated as confidential to that division or department and the Agent shall not be deemed to have notice of it.

(c) Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor the Arranger are obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would or might in its reasonable opinion constitute a breach of any law or a breach of a fiduciary duty.

**27.14. Relationship with the Lenders**

(a) The Agent may treat each Lender as a Lender, entitled to payments under this Agreement and acting through its Facility Office unless it has received not less than five Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

(b) Each Lender shall supply the Agent with any information required by the Agent in order to calculate the Mandatory Cost in accordance with Schedule 4 (Mandatory Cost formula).

(c) Each Lender shall supply the Agent with any information that the Security Trustee may reasonably specify (through the Agent) as being necessary or desirable to enable the Security Trustee to perform its functions as Security Trustee. Each Lender shall deal with the Security Trustee exclusively through the Agent and shall not deal directly with the Security Trustee.

**27.15. Credit appraisal by the Lenders**

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Agent and the Arranger that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

(a) the financial condition, status and nature of each member of the Group;

(b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;

(c) whether that Secured Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the Transaction Security, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;

(d) the adequacy, accuracy and/or completeness of the Reports and any other information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and

(e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property.

**27.16. Reference Banks**

If a Reference Bank (or, if a Reference Bank is not a Lender, the Lender of which it is an Affiliate) ceases to be a Lender, the Agent shall (in consultation with the Parent) appoint another Lender or an Affiliate of a Lender to replace that Reference Bank.

**27.17. Agent's management time**

Any amount payable to the Agent under Clause 16.3 (Indemnity to the Agent), Clause 18 (Costs and expenses) and Clause 27.10 (Lenders' indemnity to the Agent) shall include the cost of utilising the Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Agent may notify to the Parent and the Lenders, and is in addition to any fee paid or payable to the Agent under Clause 13 (Fees).

**27.18. Deduction from amounts payable by the Agent**

If any Party owes an amount to the Agent under the Finance Documents the Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

**27.19. Reliance and engagement letters**

Each Finance Party and Secured Party confirms that each of the Arranger and the Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Arranger or Agent) the terms of any reliance letter or engagement letters relating to the Reports or any reports or letters provided by accountants in connection with the Finance Documents or the transactions contemplated in the Finance Documents (including any net asset letter in

connection with the financial assistance procedures) and to bind it in respect of those Reports, reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters.

## 28. ROLE OF THE SECURITY TRUSTEE

### 28.1. Trust

The Security Trustee declares that it shall hold the Transaction Security on trust for the Finance Parties on the terms contained in this Agreement. Each of the parties to this Agreement agrees that the Security Trustee shall have only those duties, obligations and responsibilities expressly specified in this Agreement or in the Transaction Security Documents (and no others shall be implied).

### 28.2. No independent power

The Finance Parties shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any rights or powers arising under the Transaction Security Documents except through the Security Trustee.

### 28.3. Security Trustee's instructions

The Security Trustee shall:

(a) unless a contrary indication appears in a Finance Document, act in accordance with any instructions given to it by the Agent and shall be entitled to assume that (i) any instructions received by it from the Agent are duly given by or on behalf of the Majority Lenders or, as the case may be, the Lenders in accordance with the terms of the Finance Documents and (ii) unless it has received actual notice of revocation that any instructions or directions given by the Agent have not been revoked;

(b) be entitled to request instructions, or clarification of any direction, from the Agent as to whether, and in what manner, it should exercise or refrain from exercising any rights, powers and discretions and the Security Trustee may refrain from acting unless and until those instructions or clarification are received by it; and

(c) be entitled to, carry out all dealings with the Lenders through the Agent and may give to the Agent any notice or other communication required to be given by the Security Trustee to the Lenders.

### 28.4. Security Trustee's actions

Subject to the provisions of this Clause 28:

(a) the Security Trustee may, in the absence of any instructions to the contrary, take such action in the exercise of any of its powers and duties under the Finance Documents which in its absolute discretion it considers to be for the protection and benefit of all the Finance Parties; and

(b) at any time after receipt by the Security Trustee of notice from the Agent directing the Security Trustee to exercise all or any of its rights, remedies, powers or discretions under any of the Finance Documents, the Security Trustee may, and shall if so directed by the Agent, take any action as in its sole discretion it thinks fit to enforce the Transaction Security.

**28.5. Security Trustee's discretions**

The Security Trustee may:

(a) assume (unless it has received actual notice to the contrary in its capacity as Security Trustee for the Finance Parties) that (i) no Default has occurred and no Obligor is in breach of or default under its obligations under any of the Finance Documents and (ii) any right, power, authority or discretion vested in any person has not been exercised;

(b) if it receives any instructions or directions from the Agent to take any action in relation to the Transaction Security, assume that all applicable conditions under the Finance Documents for taking that action have been satisfied;

(c) engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts (whether obtained by the Security Trustee or by any other Finance Party) whose advice or services may at any time seem necessary, expedient or desirable;

(d) rely upon any communication or document believed by it to be genuine and, as to any matters of fact which might reasonably be expected to be within the knowledge of a Finance Party or an Obligor, upon a certificate signed by or on behalf of that person; or

(e) refrain from acting in accordance with the instructions of the Agent or Lenders (including bringing any legal action or proceeding arising out of or in connection with the Finance Documents) until it has received any indemnification and/or security that it may in its absolute discretion require (whether by way of payment in advance or otherwise) for all costs, losses and liabilities which it may incur in bringing such action or proceedings.

**28.6. Security Trustee's obligations**

The Security Trustee shall promptly inform the Agent of:

(a) the contents of any notice or document received by it in its capacity as Security Trustee from any Obligor under any Finance Document; and

(b) the occurrence of any Default or any default by an Obligor in the due performance of or compliance with its obligations under any Finance Document of which the Security Trustee has received notice from any other party to this Agreement.

**28.7. Excluded obligations**

The Security Trustee shall not:

(a) be bound to enquire as to the occurrence or otherwise of any Default or the performance, default or any breach by an Obligor of its obligations under any of the Finance Documents;

(b) be bound to account to any other Party for any sum or the profit element of any sum received by it for its own account;

(c) be bound to disclose to any other person (including any Finance Party) (i) any confidential information or (ii) any other information if disclosure

would, or might in its reasonable opinion, constitute a breach of any law or be a breach of fiduciary duty;

(d) be under any obligations other than those which are specifically provided for in the Finance Documents; or

(e) have or be deemed to have any duty, obligation or responsibility to, or relationship of trust or agency with, any Obligor.

**28.8. Exclusion of Security Trustee's liability**

Unless caused directly by its gross negligence or wilful default, the Security Trustee shall not accept responsibility or be liable for:

(a) the adequacy, accuracy and/or completeness of any information supplied by the Security Trustee or any other person in connection with the Finance Documents or the transactions contemplated in the Finance Documents, or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with the Finance Documents;

(b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;

(c) any losses to any person or any liability arising as a result of taking or refraining from taking any action in relation to any of the Finance Documents or the Transaction Security or otherwise, whether in accordance with an instruction from the Agent or otherwise;

(d) the exercise of, or the failure to exercise, any judgment, discretion or power given to it by or in connection with any of the Finance Documents, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with the Finance Documents or the Transaction Security; or

(e) any shortfall which arises on the enforcement of the Transaction Security.

**28.9. Own responsibility**

It is understood and agreed by each Finance Party that that Finance Party has at all times itself been, and will continue to be, solely responsible for making its own independent appraisal of and investigation into all risks arising under or in connection with the Finance Documents including but not limited to:

(a) the financial condition, creditworthiness, condition, affairs, status and nature of each of the Obligors;

(b) the legality, validity, effectiveness, adequacy and enforceability of each of the Finance Documents and the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with the Finance Documents or the Transaction Security;

(c) whether that Finance Party has recourse, and the nature and extent of that recourse, against any Obligor or any other person or any of their respective assets under or in connection with the Finance Documents, the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with the Finance Documents;

(d) the adequacy, accuracy and/or completeness of any information provided by any person in connection with the Finance Documents, the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with the Finance Documents; and

(e) the right or title of any person in or to, or the value or sufficiency of any part of, the Charged Property, the priority of any of the Transaction Security or the existence of any security interest affecting the Charged Property,

and each Finance Party warrants to the Security Trustee that it has not relied on, and will not at any time rely on, the Security Trustee in respect of any of these matters.

**28.10. No responsibility to perfect Transaction Security**

The Security Trustee shall not be liable for any failure to:

(a) require the deposit with it of any deed or document certifying, representing or constituting the title of any Obligor to any of the Charged Property;

(b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any of the Finance Documents or the Transaction Security;

(c) register, file or record or otherwise protect any of the Transaction Security (or the priority of any of the Transaction Security) under any applicable laws in any jurisdiction or to give notice to any person of the execution of any of the Finance Documents or of the Transaction Security;

(d) take, or to require any of the Obligors to take, any steps to perfect its title to any of the Charged Property or to render the Transaction Security effective or to secure the creation of any ancillary security interest under the laws of any jurisdiction; or

(e) require any further assurances in relation to any of the Transaction Security Documents.

**28.11. Insurance by Security Trustee**

(a) The Security Trustee shall not be under any obligation to insure any of the Charged Property, to require any other person to maintain any insurance or to verify any obligation to arrange or maintain insurance contained in the Finance Documents. The Security Trustee shall not be responsible for any loss which may be suffered by any person as a result of the lack of or inadequacy of any such insurance.

(b) Where the Security Trustee is named on any insurance policy as an insured party, it shall not be responsible for any loss which may be suffered by reason (directly or indirectly) of its failure to notify the insurers of any

material fact relating to the risk assumed by the insurers or any other information of any kind, unless any Finance Party has requested it to do so in writing and the Security Trustee has failed to do so within fourteen days after receipt of that request.

**28.12. Custodians and Nominees**

The Security Trustee may appoint and pay any person to act as a custodian or nominee on any terms in relation to any assets of the trust as the Security Trustee may determine, including for the purpose of depositing with a custodian this Agreement or any document relating to the trust created under this Agreement and the Security Trustee shall not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of any person appointed by it under this Agreement or be bound to supervise the proceedings or acts of any person.

**28.13. Acceptance of Title**

The Security Trustee shall be entitled to accept without enquiry, and shall not be obliged to investigate, the right and title as each of the Obligors may have to any of the Charged Property and shall not be liable for or bound to require any Obligor to remedy any defect in its right or title.

**28.14. Refrain from Illegality**

The Security Trustee may refrain from doing anything which in its opinion will or may be contrary to any relevant law, directive or regulation of any jurisdiction which would or might otherwise render it liable to any person, and the Security Trustee may do anything which is, in its opinion, necessary to comply with any law, directive or regulation.

**28.15. Business with the Obligors**

The Security Trustee may accept deposits from, lend money to, and generally engage in any kind of banking or other business with any of the Obligors.

**28.16. Releases**

Upon a disposal of any of the Charged Property:

(a) pursuant to the enforcement of the Transaction Security by a Receiver or the Security Trustee; or

(b) if that disposal is permitted under the Finance Documents,

the Security Trustee shall (at the cost of the Obligors) release that property from the Transaction Security and is authorised to execute, without the need for any further authority from the Finance Parties, any release of the Transaction Security or other claim over that asset and to issue any certificates of non-crystallisation of floating charges that may be required or desirable.

**28.17. Winding up of Trust**

If the Security Trustee, with the approval of the Majority Lenders, determines that (a) all of the Secured Obligations and all other obligations secured by any of the Transaction Security Documents have been fully and finally discharged and (b) none

of the Finance Parties is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Obligor pursuant to the Finance Documents, the trusts set out in this Agreement shall be wound up and the Security Trustee shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Trustee under each of the Transaction Security Documents.

**28.18. Perpetuity Period**

The perpetuity period under the rule against perpetuities, if applicable to this Agreement, shall be the period of one hundred and twenty five years from the date of this Agreement.

**28.19. Powers Supplemental**

The rights, powers and discretions conferred upon the Security Trustee by this Agreement shall be supplemental to the Trustee Acts 1925 and 2000 and in addition to any which may be vested in the Security Trustee by general law or otherwise.

**28.20. Trustee division separate**

In acting as trustee for the Finance Parties, the Security Trustee shall be regarded as acting through its trustee division which shall be treated as a separate entity from any of its other divisions or departments and any information received by any other division or department of the Security Trustee may be treated as confidential and shall not be regarded as having been given to the Security Trustee's trustee division.

**28.21. Disapplication**

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Trustee in relation to the trusts constituted by this Agreement. Where there are any inconsistencies between the Trustee Acts 1925 and 2000 and the provisions of this Agreement, the provisions of this Agreement shall, to the extent allowed by law, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Agreement shall constitute a restriction or exclusion for the purposes of that Act.

**28.22. Resignation of Security Trustee**

(a) The Security Trustee may resign and appoint one of its Affiliates as successor by giving notice to the other Parties (or to the Agent on behalf of the Lenders).

(b) Alternatively the Security Trustee may resign by giving notice to the other Parties (or to the Agent on behalf of the Lenders) in which case the Majority Lenders may appoint a successor Security Trustee.

(c) If the Majority Lenders have not appointed a successor Security Trustee in accordance with paragraph (b) above within 30 days after the notice of resignation was given, the Security Trustee (after consultation with the Agent) may appoint a successor Security Trustee.

(d) The retiring Security Trustee shall, at its own cost, make available to the successor Security Trustee such documents and records and provide such assistance as the successor Security Trustee may reasonably request for the

purposes of performing its functions as Security Trustee under the Finance Documents.

(e) The Security Trustee's resignation notice shall only take effect upon (i) the appointment of a successor and (ii) the transfer of all of the Transaction Security to that successor.

(f) Upon the appointment of a successor, the retiring Security Trustee shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of Clauses 27 (Role of the Agent, the Arranger and others) and this Clause 28 (Role of Security Trustee). Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

(g) The Majority Lenders may, by notice to the Security Trustee, require it to resign in accordance with paragraph (b) above. In this event, the Security Trustee shall resign in accordance with paragraph (b) above.

**28.23. Delegation**

(a) The Security Trustee may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any of the rights, powers and discretions vested in it by any of the Finance Documents.

(b) The delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions as the Security Trustee may think fit in the interests of the Finance Parties and it shall not be bound to supervise, or be in any way responsible for any loss incurred by reason of any misconduct or default on the part of any delegate or sub-delegate.

**28.24. Additional trustees**

(a) The Security Trustee may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it (i) if it considers that appointment to be in the interests of the Finance Parties or (ii) for the purposes of conforming to any legal requirements, restrictions or conditions which the Security Trustee deems to be relevant or (iii) for obtaining or enforcing any judgment in any jurisdiction, and the Security Trustee shall give prior notice to the Parent and the Agent of that appointment.

(b) Any person so appointed shall have the rights, powers and discretions (not exceeding those conferred on the Security Trustee by this Agreement) and the duties and obligations that are conferred or imposed by the instrument of appointment.

(c) The remuneration that the Security Trustee may pay to any person, and any costs and expenses incurred by that person in performing its functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Trustee.

**29. CONDUCT OF BUSINESS BY THE FINANCE PARTIES**

No provision of this Agreement will:

(a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;

(b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or

(c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

## 30. SHARING AMONG THE FINANCE PARTIES

### 30.1. Payments to Finance Parties

If a Finance Party (a "**Recovering Finance Party**") receives or recovers any amount from an Obligor other than in accordance with Clause 31 (Payment mechanics) and applies that amount to a payment due under the Finance Documents then:

(a) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Agent;

(b) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 31 (Payment mechanics), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and

(c) the Recovering Finance Party shall, within three Business Days of demand by the Agent, pay to the Agent an amount (the "**Sharing Payment**") equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 31.6 (Partial payments).

### 30.2. Redistribution of payments

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) in accordance with Clause 31.6 (Partial payments).

### 30.3. Recovering Finance Party's rights

(a) On a distribution by the Agent under Clause 30.2 (Redistribution of payments), the Recovering Finance Party will be subrogated to the rights of the Finance Parties which have shared in the redistribution.

(b) If and to the extent that the Recovering Finance Party is not able to rely on its rights under paragraph (a) above, the relevant Obligor shall be liable to the Recovering Finance Party for a debt equal to the Sharing Payment which is immediately due and payable.

### 30.4. Reversal of redistribution

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

(a) each Finance Party which has received a share of the relevant Sharing

Payment pursuant to Clause 30.2 (Redistribution of payments) shall, upon request of the Agent, pay to the Agent for account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay); and

(b) that Recovering Finance Party's rights of subrogation in respect of any reimbursement shall be cancelled and the relevant Obligor will be liable to the reimbursing Finance Party for the amount so reimbursed.

**30.5. Exceptions**

(a) This Clause 30 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.

(b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:

(i) it notified the other Finance Party of the legal or arbitration proceedings; and

(ii) the other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

## SECTION 11

## ADMINISTRATION

### 31. PAYMENT MECHANICS

#### 31.1. Payments to the Agent

(a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor or Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.

(b) Payment shall be made to such account in Edinburgh as the Agent specifies.

#### 31.2. Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 31.3 (Distributions to an Obligor) and Clause 31.4 (Clawback) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five Business Days' notice with a bank in London.

#### 31.3. Distributions to an Obligor

The Agent may (with the consent of the Obligor or in accordance with Clause 32 (Set-Off)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

#### 31.4. Clawback

(a) Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.

(b) If the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.

#### 31.5. Impaired Agent

(a) If, at any time, the Agent becomes an Impaired Agent, an Obligor or a Lender which is required to make a payment under the Finance Documents to the Agent in accordance with Clause 31.1 (Payments to the Agent) may instead either pay that amount direct to the required recipient or pay that amount to an interest-bearing account held with an Acceptable Bank within the meaning of paragraph (a) of the definition of "**Acceptable Bank**" and in

relation to which no Insolvency Event has occurred and is continuing, in the name of the Obligor or the Lender making the payment and designated as a trust account for the benefit of the Party or Parties beneficially entitled to that payment under the Finance Documents. In each case such payments must be made on the due date for payment under the Finance Documents.

(b) All interest accrued on the amount standing to the credit of the trust account shall be for the benefit of the beneficiaries of that trust account pro rata to their respective entitlements.

(c) A Party which has made a payment in accordance with this Clause 31.5 shall be discharged of the relevant payment obligation under the Finance Documents and shall not take any credit risk with respect to the amounts standing to the credit of the trust account.

(d) Promptly upon the appointment of a successor Agent in accordance with Clause 27.12 (Replacement of the Agent), each Party which has made a payment to a trust account in accordance with this Clause 31.5 shall give all requisite instructions to the bank with whom the trust account is held to transfer the amount (together with any accrued interest) to the successor Agent for distribution in accordance with Clause 31.2 (Distributions by the Agent).

**31.6. Partial payments**

(a) If the Agent receives a payment for application against amounts due in respect of any Finance Documents that is insufficient to discharge all the amounts then due and payable by an Obligor under those Finance Documents, the Agent shall apply that payment towards the obligations of that Obligor under those Finance Documents in the following order:

(i) first, in or towards payment pro rata of any unpaid fees, costs and expenses of the Agent and the Security Trustee under those Finance Documents;

(ii) secondly, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under those Finance Documents;

(iii) thirdly, in or towards payment pro rata of any principal due but unpaid under those Finance Documents; and

(iv) fourthly, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.

(b) The Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a)(ii) to (iv) above.

(c) Paragraphs (a) and (b) above will override any appropriation made by an Obligor.

**31.7. No set-off by Obligors**

All payments to be made by an Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

**31.8. Business Days**

(a) Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

(b) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

**31.9. Currency of account**

Sterling is the currency of account and payment for any sum due from an Obligor under any Finance Document.

**31.10. Change of currency**

(a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:

(i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Parent); and

(ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).

(b) If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Parent) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the relevant interbank market and otherwise to reflect the change in currency.

**31.11. Disruption to Payment Systems, etc.**

If either the Agent determines (in its discretion) that a Disruption Event has occurred or the Agent is notified by the Parent that a Disruption Event has occurred:

(a) the Agent may, and shall if requested to do so by the Parent, consult with the Parent with a view to agreeing with the Parent such changes to the operation or administration of the Facilities as the Agent may deem necessary in the circumstances;

(b) the Agent shall not be obliged to consult with the Parent in relation to any changes mentioned in paragraph (a) if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;

(c) the Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;

(d) any such changes agreed upon by the Agent and the Parent shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 37 (Amendments and Waivers);

(e) the Agent shall not be liable for any damages, costs or losses whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 31.11; and

(f) the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

## 32. SET-OFF

A Finance Party may set off any matured obligation due from an Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

## 33. NOTICES

### 33.1. Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

### 33.2. Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

(a) in the case of the Parent, Holdings, Schuh (ROI) Limited or the Company, that identified with its name below;

(b) in the case of each Lender or any other Obligor, that notified in writing to the Agent on or prior to the date on which it becomes a Party; and

(c) in the case of the Agent or the Security Trustee, that identified with its name below,

or any substitute address, fax number or department or officer as the Party may notify to the Agent (or the Agent may notify to the other Parties, if a change is made by the Agent) by not less than five Business Days' notice.

### 33.3. Delivery

(a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:

(i) if by way of fax, when received in legible form; or

(ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 33.2 (Addresses), if addressed to that department or officer.

(b) Any communication or document to be made or delivered to the Agent or the Security Trustee will be effective only when actually received by the Agent or Security Trustee and then only if it is expressly marked for the attention of the department or officer identified with the Agent's or Security Trustee's signature below (or any substitute department or officer as the Agent or Security Trustee shall specify for this purpose).

(c) All notices from or to an Obligor shall be sent through the Agent.

(d) Any communication or document made or delivered to the Parent in accordance with this Clause 33.3 will be deemed to have been made or delivered to each of the Obligors.

**33.4. Notification of address and fax number**

Promptly upon receipt of notification of an address, and fax number or change of address or fax number pursuant to Clause 33.2 (Addresses) or changing its own address or fax number, the Agent shall notify the other Parties.

**33.5. Communication when Agent is Impaired Agent**

If the Agent is an Impaired Agent the Parties may, instead of communicating with each other through the Agent, communicate with each other directly and (while the Agent is an Impaired Agent) all the provisions of the Finance Documents which require communications to be made or notices to be given to or by the Agent shall be varied so that communications may be made and notices given to or by the relevant Parties directly. This provision shall not operate after a replacement Agent has been appointed unless such replacement Agent becomes an Impaired Agent.

**33.6. Electronic communication**

(a) Any communication to be made between the Agent or the Security Trustee and a Lender under or in connection with the Finance Documents may be made by electronic mail or other electronic means, if the Agent, the Security Trustee and the relevant Lender:

(i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;

(ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and

(iii) notify each other of any change to their address or any other such information supplied by them.

(b) Any electronic communication made between the Agent and a Lender or the Security Trustee will be effective only when actually received in readable form and in the case of any electronic communication made by a Lender to the Agent or the Security Trustee only if it is addressed in such a manner as the Agent or Security Trustee shall specify for this purpose.

**33.7. English language**

(a) Any notice given under or in connection with any Finance Document must be in English.

(b) All other documents provided under or in connection with any Finance Document must be:

(i) in English; or

(ii) if not in English, and if so required by the Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

## 34. CALCULATIONS AND CERTIFICATES

**34.1. Accounts**

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are prima facie evidence of the matters to which they relate.

**34.2. Certificates and determinations**

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

**34.3. Day count convention**

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days.

## 35. PARTIAL INVALIDITY

If, at any time, any provision of the Finance Documents is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

## 36. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Finance Party or Secured Party, any right or remedy under the Finance Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

## 37. AMENDMENTS AND WAIVERS

### 37.1. Required consents

(a) Subject to Clause 37.2 (Exceptions) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Parent and any such amendment or waiver will be binding on all Parties.

(b) The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 37.

(c) Each Obligor agrees to any such amendment or waiver permitted by this Clause 37 which is agreed to by the Parent. This includes any amendment or waiver which would, but for this paragraph (c), require the consent of all of the Guarantors.

### 37.2. Exceptions

(a) An amendment or waiver that has the effect of changing or which relates to:

(i) the definition of "**Majority Lenders**" in Clause 1.1 (Definitions);

(ii) an extension to the date of payment of any amount under the Finance Documents;

(iii) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;

(iv) a change in currency of payment of any amount under the Finance Documents;

(v) an increase in or an extension of any Commitment or the Total Commitments;

(vi) a change to the Borrowers or Guarantors other than in accordance with Clause 26 (Changes to the Obligors);

(vii) any provision which expressly requires the consent of all the Lenders;

(viii) Clause 2.3 (Finance Parties' rights and obligations), Clause 8 (Mandatory prepayment), Clause 25 (Changes to the Lenders) or this Clause 37;

(ix) the nature or scope of the Charged Property or the manner in which the proceeds of enforcement of the Transaction Security are distributed (except insofar as it relates to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document); or

(x) the release of any Transaction Security unless permitted under this Agreement or any other Finance Document or relating to a sale or disposal of an asset which is the subject of the Transaction Security

where such sale or disposal is expressly permitted under this Agreement or any other Finance Document,

shall not be made without the prior consent of all the Lenders.

(b) An amendment or waiver which relates to the rights or obligations of the Agent, the Arranger or the Security Trustee may not be effected without the consent of the Agent, the Arranger or the Security Trustee.

**37.3. Replacement of a Lender**

(a) If at any time:

(i) any Lender becomes a Non-Consenting Lender (as defined in paragraph (c) below); or

(ii) an Obligor becomes obliged to repay any amount in accordance with Clause 7.1 (Illegality) or to pay additional amounts pursuant to Clause 15.1 (Increased Costs) or Clause 14.2 (Tax gross-up) to any Lender in excess of amounts payable to the other Lenders generally,

then the Parent may, on 5 Business Days' prior written notice to the Agent and such Lender, replace such Lender by requiring such Lender to (and such Lender shall) transfer pursuant to Clause 25 (Changes to the Lenders) all (and not part only) of its rights and obligations under this Agreement to a Lender or other bank, financial institution, trust, fund or other entity (a "**Replacement Lender**") selected by the Parent, and which is acceptable to the Agent (acting reasonably) which confirms its willingness to assume and does assume all the obligations of the transferring Lender (including the assumption of the transferring Lender's participations on the same basis as the transferring Lender) for a purchase price in cash payable at the time of transfer equal to the outstanding principal amount of such Lender's participation in the outstanding Utilisations and all accrued interest and/or Break Costs and other amounts payable in relation thereto under the Finance Documents.

(b) The replacement of a Lender pursuant to this Clause shall be subject to the following conditions:

(i) the Parent shall have no right to replace the Agent or Security Agent;

(ii) neither the Agent nor the Lender shall have any obligation to the Parent to find a Replacement Lender;

(iii) in the event of a replacement of a Non-Consenting Lender such replacement must take place no later than 90 days after the date the Non-Consenting Lender notifies the Parent and the Agent of its failure or refusal to give a consent in relation to, or agree to any waiver or amendment to the Finance Documents requested by the Parent; and

(iv) in no event shall the Lender replaced under this paragraph (b) be required to pay or surrender to such Replacement Lender any of the fees received by such Lender pursuant to the Finance Documents.

(c) In the event that:

(i) the Parent or the Agent (at the request of the Parent) has requested the Lenders to give a consent in relation to, or to agree to a waiver or amendment of, any provisions of the Finance Documents;

(ii) the consent, waiver or amendment in question requires the approval of all the Lenders; and

(iii) Lenders whose Commitments aggregate more than 85 per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 85 per cent. of the Total Commitments prior to that reduction) have consented or agreed to such waiver or amendment,

then any Lender who does not and continues not to consent or agree to such waiver or amendment shall be deemed a "**Non-Consenting Lender**".

**37.4. Disenfranchisement of Defaulting Lenders**

(a) For so long as a Defaulting Lender has any Available Commitment, in ascertaining the Majority Lenders or whether any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents, that Defaulting Lender's Commitments will be reduced by the amount of its Available Commitments.

(b) If a Defaulting Lender fails to respond to a request for a consent, waiver, amendment or other vote under the Finance Documents or any other vote of the Lenders under the terms of this Agreement within 10 Business Days in relation to consents, waivers, amendments or votes which require Majority Lender consent, and within 15 Business Days in relation to consents, waivers, amendments or votes which require all Lender consent (unless the Parent and the Agent agree to a longer time period) of that request being made, its Commitment and/or participation shall not be included for the purpose of calculating the Total Commitments or participations under the Facility when ascertaining whether any relevant percentage of Total Commitments and/or participations has been obtained to approve that request.

(b) For the purposes of this Clause 37.4, the Agent may assume that the following Lenders are Defaulting Lenders:

(1) any Lender which has notified the Agent that it has become a Defaulting Lender;

(2) any Lender in relation to which it is aware that any of the events of circumstances referred to in paragraphs (a), (b) or (c) of the definition of "Defaulting Lender" has occurred and none of the exceptions in paragraphs (i) to (vi) of the definition of "Defaulting Lender" apply.

unless it has received notice to the contrary from the Lender concerned or the Agent is otherwise aware that the Lender has ceased to be a Defaulting Lender.

**37.5. Replacement of a Defaulting Lender**

(a) The Parent may, at any time a Lender has become and continues to be a Defaulting Lender, by giving 5 Business Days' prior written notice to the Agent and such Lender, replace such Lender by requiring such Lender to (and such Lender shall) transfer pursuant to Clause 26 (Changes to the Lenders) all (and not part only) of its rights and obligations under this Agreement to a Lender or other bank, financial institution, trust, fund or other entity (a "**Replacement Lender**") selected by the Parent, and which (unless the Agent is an Impaired Agent) is acceptable to the Agent (acting reasonably), which confirms its willingness to assume and does assume all the obligations or all the relevant obligations of the transferring Lender (including the assumption of the transferring Lender's participations or unfunded participations (as the case may be) on the same basis as the transferring Lender) for a purchase price in cash payable at the time of transfer equal to the outstanding principal amount of such Lender's participation in the outstanding Utilisations and all accrued interest Break Costs and other amounts payable in relation thereto under the Finance Documents.

(b) Any transfer of rights and obligations of a Defaulting Lender pursuant to this Clause shall be subject to the following conditions:

(i) the Parent shall have no right to replace the Agent or Security Trustee;

(ii) neither the Agent nor the Defaulting Lender shall have any obligation to the Parent to find a Replacement Lender;

(iii) the transfer must take place no later than 5 days after the notice referred to in paragraph (a) above; and

(iv) in no event shall the Defaulting Lender be required to pay or surrender to the Replacement Lender any of the fees received by the Defaulting Lender pursuant to the Finance Documents.

**38. CONFIDENTIALITY**

**38.1. Confidential Information**

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 38.2 (Disclosure of Confidential Information) and Clause 38.3 (Disclosure to numbering service providers), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

**38.2. Disclosure of Confidential Information**

Any Finance Party may disclose:

(a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information

may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;

(b) to any person:

(i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;

(ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;

(iii) appointed by any Finance Party or by a person to whom paragraph (b)(i) or (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (d) of Clause 27.14 (Relationship with the Lenders));

(iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;

(v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;

(vi) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 25.9 (Security over Lenders' rights);

(vii) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;

(viii) who is a Party; or

(ix) with the consent of the Company;

in each case, such Confidential Information as that Finance Party shall consider appropriate if:

(A) in relation to paragraphs (b)(i), (b)(ii) and b(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is

subject to professional obligations to maintain the confidentiality of the Confidential Information;

(B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;

(C) in relation to paragraphs (b)(v), (b)(vi) and (b)(vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;

(c) to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Parent and the relevant Finance Party;

(d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Obligors if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

**38.3. Disclosure to numbering service providers**

(a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facilities and/or one or more Obligors the following information:

(i) names of Obligors;

(ii) country of domicile of Obligors;

(iii) place of incorporation of Obligors;

(iv) date of this Agreement;

(v) the names of the Agent and the Arranger;

(vi) date of each amendment and restatement of this Agreement;

(vii) amount of Total Commitments;

(viii) currencies of the Facilities;

(ix) type of Facilities;

(x) ranking of Facilities;

(xi) Termination Date for Facilities;

(xii) changes to any of the information previously supplied pursuant to paragraphs (i) to (xi) above; and

(xiii) such other information agreed between such Finance Party and the Parent,

to enable such numbering service provider to provide its usual syndicated loan numbering identification services.

(b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facilities and/or one or more Obligors by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.

(c) Each Obligor represents that none of the information set out in paragraphs (i) to (xiii) of paragraph (a) above is, nor will at any time be, unpublished price-sensitive information.

(d) The Agent shall notify the Parent and the other Finance Parties of:

(i) the name of any numbering service provider appointed by the Agent in respect of this Agreement, the Facilities and/or one or more Obligors; and

(ii) the number or, as the case may be, numbers assigned to this Agreement, the Facilities and/or one or more Obligors by such numbering service provider.

**38.4. Entire agreement**

This Clause 38 (Confidentiality) constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

**38.5. Inside information**

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

**38.6. Notification of disclosure**

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Company:

(a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 38.2 (Disclosure of Confidential Information) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and

(b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 38 (Confidentiality).

**38.7. Continuing obligations**

The obligations in this Clause 38 (Confidentiality) are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of twelve months from the earlier of:

(a) the date on which all amounts payable by the Obligors under or in connection with the Finance Documents have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and

(b) the date on which such Finance Party otherwise ceases to be a Finance Party.

**39. COUNTERPARTS**

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

## SECTION 12

## GOVERNING LAW AND ENFORCEMENT

### 40. GOVERNING LAW

This Agreement is governed by English law.

### 41. ENFORCEMENT

#### 41.1. Jurisdiction of English courts

(a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement) (a "**Dispute**").

(b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

(c) This Clause 41.1 is for the benefit of the Finance Parties and Secured Parties only. As a result, no Finance Party or Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties and Secured Parties may take concurrent proceedings in any number of jurisdictions.

#### 41.2. Service of process

(a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in the United Kingdom):

(i) irrevocably appoints Morton Fraser LLP, St Martin's House, 16 St. Martin's le Grand, London EC1A 4EN as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and

(ii) agrees that failure by an agent for service of process to notify the relevant Obligor of the process will not invalidate the proceedings concerned.

(b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Parent (on behalf of all the Obligors) must immediately (and in any event within 10 days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose.

The Parent expressly agrees and consents to the provisions of this Clause 41 and Clause 40 (Governing law).

**This Agreement has been entered into on the date stated at the beginning of this Agreement.**

**SCHEDULE 1**

**THE ORIGINAL PARTIES**

**Part I**

**The Obligors**

| **Name of Borrower** | **Registration number (or equivalent, if any)** |
|---|---|
| Schuh Group Limited | SC379625 |
| Schuh (Holdings) Limited | SC265833 |

| **Name of Guarantor** | **Registration number (or equivalent, if any)** |
|---|---|
| Schuh Group Limited | SC379625 |
| Schuh (Holdings) Limited | SC265833 |
| Schuh Limited | SC125327 |
| Schuh (ROI) Limited | 272987 |

**Part II**

**The Original Lenders**

| Name of Original Lender | Facility A Commitment | Facility B Commitment |
|---|---|---|
| Lloyds TSB Bank plc | £15,500,000 | £14,000,000 |

## SCHEDULE 2

## CONDITIONS PRECEDENT

### Part I

### Conditions precedent to signing of Agreement

**4. Obligors**

(a) A copy of the Constitutional Documents and of the constitutional documents of each other Obligor.

(b) A copy of a resolution of the board or, if applicable, a committee of the board of directors of each Obligor:

(i) approving the terms of, and the transactions contemplated by, Transaction Documents to which it is a party and resolving that it execute, deliver and perform Transaction Documents to which it is a party;

(ii) authorising a specified person, on its behalf to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with Transaction Documents to which it is a party.

(c) A certificate of the Parent (signed by a director) and each other Obligor (in each case signed by a director) certifying that each copy document relating to it specified in this Schedule 2 is true and complete and in full force and effect as at a date no earlier than the date of this Agreement.

(d) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above in relation to the Transaction Documents and related documents.

(e) A certificate of the Parent (signed by a director) and each other Obligor (in each case signed by a director) and each other Obligor (in each case signed by a director) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on any Obligor to be exceeded.

**5. Acquisition Documents**

(a) A copy of each of the Acquisition Documents executed by the parties to those documents.

(b) Evidence satisfactory to the Agent that Schuh Group Limited has acquired all of the shares in Holdings.

**6. Finance Documents**

(a) This Agreement executed by the members of the Group party to this Agreement.

(b) Deliberately left blank.

(c) The Intercreditor Agreement executed by the parties thereto.

(d) The Fee Letter executed by the Parent.

(e) The Working Capital Facility Letter.

(f) The Hedging Policy Letter.

(g) A floating charge over all of the assets of the Parent.

(h) A floating charge over all of the assets of Schuh (Holdings) Limited.

(i) A floating charge over all of the assets of Schuh Limited.

(j) A debenture over all of the assets of Schuh (ROI) Limited.

(k) The Standard Security.

(l) A shares pledge governed by Scots law by Schuh Group Limited in respect of all of the shares in Schuh (Holdings) Limited.

(m) A shares pledge governed by Scots law by Schuh (Holdings) Limited in respect of all of the shares in Schuh Limited.

(n) A shares pledge governed by Irish law by Schuh Limited in respect of all of the shares in Schuh (ROI) Limited.

(o) Evidence satisfactory to the Agent that Schuh (ROI) Limited has done all that is necessary under Section 60 of the Companies Act 1963 (as amended) in order to enable it to enter into the Finance Documents and perform its obligations under the Finance Documents.

(p) A certificate of Schuh (ROI) Limited (signed by a director) certifying that the provisions of Section 31 of the Irish Companies Act 1990 do not prohibit the execution by Schuh (ROI) Limited of any of the Finance Documents which it is intended that Schuh (ROI) Limited will execute by reason of the fact that Schuh (ROI) Limited and each other company whose liabilities are thereby guaranteed or secured are members of a group of companies consisting of a holding company and its subsidiaries for the purpose of Section 35 of the Irish Companies Act 1990.

(q) Letter of reliance from Morton Fraser LLP addressed to Dickson Minto W.S. in terms entitling the Original Lender to rely on the report on title by Morton Fraser LLP in respect of the Livingston Property addressed to the Bank of Scotland plc.

(r) A search in the Register of Charges and Company File in respect of Schuh Limited as the granter of the Standard Security, such Search disclosing no entries prejudicial to the grant of the Standard Security and brought down to a date being as practicable to the date of completion.

(s) A form 12 over the Livingston Property brought down to a date as near practicable to the date of this Agreement disclosing no entries adverse to the grantor of the Standard Security's interest in the property secured.

(t) A cheque made payable to Dickson Minto W.S. in reimbursement of

Registers of Scotland registration dues payable on the Standard Security, which will have been paid on behalf of Schuh Limited.

**7. Insurance**

(a) The Insurance Adequacy Letter.

(b) All insurance policies subject to or expressed to be subject to the Transaction Security relating to the Charged Property.

(c) Written evidence that the insurance policy(ies) relating to the Charged Property contain (in form and substance reasonably satisfactory to the Security Trustee) an endorsement naming the Security Trustee as sole loss payee.

**8. Other documents and evidence**

(a) The Group Structure Chart.

(b) The Business Plan.

(c) The Financial Due Diligence Report.

(d) The Funds Flow and evidence that the payments referred to in the Funds Flow have been instructed.

(e) The Tax Letter.

(f) A copy, certified by an authorised signatory of the Parent to be a true copy, of the Original Financial Statements of each Obligor, in the case of the unaudited management accounts being in a format agreed between the Parent and the Agent.

(g) A letter of engagement with Lloyds TSB Bank plc as Original Lender from the authors of the Financial Due Diligence Report.

(h) A copy of any other Authorisation or other document, opinion or assurance which the Agent notifies the Parent is necessary or desirable in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.

(i) Evidence that the fees, costs and expenses then due from the Parent pursuant to Clause 13 (Fees), Clause 14.7 (Stamp taxes) and Clause 18 (Costs and expenses) have been paid or will be paid on or around the date of this Agreement.

(j) A Certificate of the Parent (signed by a director) detailing the estimated Deal Costs.

(k) Utilisation Requests relating to any Utilisations to be made on the date of this Agreement.

(l) A legal opinion from Matheson Ormsby Prentice addressed to the Finance Parties.

(m) Signed copies of the ISDA master agreement and schedule between the Original Lender and the Parent.

(n) Evidence satisfactory to the Agent that all of the share options issued in respect of Schuh (Holdings) Limited have been rolled over.

(o) Evidence satisfactory to the Agent that all of the existing debt of Schuh (Holdings) Limited and it subsidiaries is to be repaid from the facilities being made available under the terms of this Agreement.

(p) A counter indemnity from Schuh Limited in favour of the Working Capital Lender in respect of the indemnity by it in favour of Bank of Scotland plc.

(q) A copy of the Shareholders Agreement and the termination agreement in respect of the shareholders agreement dated 2 February 2008.

**Part II**

**Conditions precedent required to be delivered by an Additional Obligor**

1. An Accession Letter executed by the Additional Obligor and the Parent.
2. A copy of the constitutional documents of the Additional Obligor.
3. A copy of a resolution of the board or, if applicable, a committee of the board of directors of the Additional Obligor:
   (a) approving the terms of, and the transactions contemplated by, the Accession Letter and the Finance Documents and resolving that it execute, deliver and perform the Accession Letter and any other Finance Document to which it is party;
   (b) authorising a specified person or persons to execute the Accession Letter and other Finance Documents on its behalf;
   (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices (including, in relation to an Additional Borrower, any Utilisation Request or Selection Notice) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
   (d) authorising the Parent to act as its agent in connection with the Finance Documents
4. If applicable, a copy of a resolution of the board of directors of the Additional Obligor, establishing the committee referred to in paragraph 3 above.
5. A specimen of the signature of each person authorised by the resolution referred to in paragraph 3 above.
6. A copy of a resolution signed by all the holders of the issued shares of the Additional Guarantor, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Additional Guarantor is a party.
7. A copy of a resolution of the board of directors of each corporate shareholder of each Additional Guarantor approving the terms of the resolution referred to in paragraph 6 above.
8. A certificate of the Additional Obligor (signed by a director) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on it to be exceeded.
9. A certificate of an authorised signatory of the Additional Obligor certifying that each copy document listed in this Part II of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of the Accession Letter.
10. If available, the latest audited financial statements of the Additional Obligor.
11. The following legal opinions, each addressed to the Agent, the Security Trustee and

the Lenders:

(a) a legal opinion of the legal advisers to the Agent in England, as to English law in the form distributed to the Lenders prior to signing the Accession Letter; and

(b) if the Additional Obligor is incorporated in or has its "centre of main interest" or "establishment" (as referred to in Clause 20.28 (Centre of main interests and establishments)) in a jurisdiction other than England and Wales or is executing a Finance Document which is governed by a law other than English law, a legal opinion of the legal advisers to the Agent in the jurisdiction of its incorporation, "centre of main interest" or "establishment" (as applicable) or, as the case may be, the jurisdiction of the governing law of that Finance Document (the "**Applicable Jurisdiction**") as to the law of the Applicable Jurisdiction and in the form distributed to the Lenders prior to signing the Accession Letter.

12. If the proposed Additional Obligor is incorporated in a jurisdiction other than England and Wales, evidence that the process agent specified in Clause 41.2 (Service of process), if not an Obligor, has accepted its appointment in relation to the proposed Additional Obligor.

13. Any security documents which are required by the Agent to be executed by the proposed Additional Obligor.

14. Any notices or documents required to be given or executed under the terms of those security documents.

15. In relation to financial assistance (or overseas equivalent), such documentary evidence as legal counsel to the Agent may require, that such Additional Obligor has complied with any law in its jurisdiction relating to financial assistance or analogous process.

**SCHEDULE 3**

**REQUEST**

**Part 1**

**Utilisation Request**

**Loans**

From: [Borrower] [Parent]

To: Lloyds TSB Bank plc

Dated:

Dear Sirs

**Schuh Group Limited — £29,500,000 Senior Facilities Agreement**
**dated [ ] (the "Facilities Agreement")**

1. We refer to the Facilities Agreement. This is a Utilisation Request. Terms defined in the Facilities Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to borrow a Loan on the following terms:
   (a) Borrower: [ ]
   (b) Proposed Utilisation Date: [ ] (or, if that is not a Business Day, the next Business Day)
   (c) Facility to be utilised: [Facility A]/[Facility B]**
   (d) Amount: [ ] or, if less, the Available Facility
   (e) Interest Period: [ ]
3. We confirm that each condition specified in Clause 4.2 (Further conditions precedent) is satisfied on the date of this Utilisation Request.
4. [The proceeds of this Loan should be credited to [account]].
5. This Utilisation Request is irrevocable.

Yours faithfully

.....

authorised signatory for

[the Parent on behalf of [insert name of relevant Borrower]]/ [insert name of Borrower]

NOTES:

* Amend as appropriate. The Utilisation Request can be given by the Borrower or by the Parent.

** Select the Facility to be utilised and delete references to the other Facilities.

**Part II**

**Selection Notice**

**Applicable to a Term Loan**

From: Schuh Group Limited

To: Lloyds TSB Bank plc

Dated:

Dear Sirs

**Schuh Group Limited — £29,500,000 Senior Facilities Agreement**
**dated [ ] (the "Facilities Agreement")**

1. We refer to the Facilities Agreement. This is a Selection Notice. Terms defined in the Facilities Agreement have the same meaning in this Selection Notice unless given a different meaning in this Selection Notice.
2. We refer to the following Facility [A]/[B] Loan[s] with an Interest Period ending on [ ]*.
3. [We request that the above Facility A Loan[s] be divided into l Facility A Loans with the following amounts and Interest Periods:]**

   [We request that the next Interest Period for the above Facility [A]/[B] Loan[s] is [ ].]***
4. This Selection Notice is irrevocable.

Yours faithfully

.....

authorised signatory for the Parent

NOTES:

* Insert details of all Term Loans for the relevant Facility which have an Interest Period ending on the same date.

** Use this option if division of Facility A Loans is requested.

*** Use this option if sub-division is not required or if Selection Notice relates to Facility B Loans.

**SCHEDULE 4**

**MANDATORY COST FORMULA**

1. The Mandatory Cost is an addition to the interest rate to compensate Lenders for the cost of compliance with (a) the requirements of the Bank of England and/or the Financial Services Authority (or, in either case, any other authority which replaces all or any of its functions) or (b) the requirements of the European Central Bank.

2. On the first day of each Interest Period (or as soon as possible thereafter) the Agent shall calculate, as a percentage rate, a rate (the "**Additional Cost Rate**") for each Lender, in accordance with the paragraphs set out below. The Mandatory Cost will be calculated by the Agent as a weighted average of the Lenders' Additional Cost Rates (weighted in proportion to the percentage participation of each Lender in the relevant Loan) and will be expressed as a percentage rate per annum.

3. The Additional Cost Rate for any Lender lending from a Facility Office in a Participating Member State will be the percentage notified by that Lender to the Agent. This percentage will be certified by that Lender in its notice to the Agent to be its reasonable determination of the cost (expressed as a percentage of that Lender's participation in all Loans made from that Facility Office) of complying with the minimum reserve requirements of the European Central Bank in respect of loans made from that Facility Office.

4. The Additional Cost Rate for any Lender lending from a Facility Office in the United Kingdom will be calculated by the Agent as follows:

   (a) in relation to a Sterling Loan:

$$\frac{AB + C(B - D) + E \times 0.01}{100 - (A + C)}$$ per cent. per annum

   (b) in relation to a Loan in any currency other than Sterling:

$$\frac{E \times 0.01}{300}$$ per cent. per annum.

   Where:

   A is the percentage of Eligible Liabilities (assuming these to be in excess of any stated minimum) which that Lender is from time to time required to maintain as an interest free cash ratio deposit with the Bank of England to comply with cash ratio requirements.

   B is the percentage rate of interest (excluding the Margin and the Mandatory Cost and, if the Loan is an Unpaid Sum, the additional rate of interest specified in paragraph (a) of Clause 10.3 (Default interest)) payable for the relevant Interest Period on the Loan.

   C is the percentage (if any) of Eligible Liabilities which that Lender is required from time to time to maintain as interest bearing Special Deposits with the Bank of England.

   D is the percentage rate per annum payable by the Bank of England to the Agent on interest bearing Special Deposits.

E is designed to compensate Lenders for amounts payable under the Fees Rules and is calculated by the Agent as being the average of the most recent rates of charge supplied by the Reference Banks to the Agent pursuant to paragraph 7 below and expressed in pounds per £1,000,000.

5. For the purposes of this Schedule:

   (a) "**Eligible Liabilities**" and "**Special Deposits**" have the meanings given to them from time to time under or pursuant to the Bank of England Act 1998 or (as may be appropriate) by the Bank of England;

   (b) "**Fees Rules**" means the rules on periodic fees contained in the FSA Supervision Manual or such other law or regulation as may be in force from time to time in respect of the payment of fees for the acceptance of deposits;

   (c) "**Fee Tariffs**" means the fee tariffs specified in the Fees Rules under the activity group A.1 Deposit acceptors (ignoring any minimum fee or zero rated fee required pursuant to the Fees Rules but taking into account any applicable discount rate); and

   (d) "**Tariff Base**" has the meaning given to it in, and will be calculated in accordance with, the Fees Rules.

6. In application of the above formulae, A, B, C and D will be included in the formulae as percentages (i.e. 5 per cent. will be included in the formula as 5 and not as 0.05). A negative result obtained by subtracting D from B shall be taken as zero. The resulting figures shall be rounded to four decimal places.

7. If requested by the Agent, each Reference Bank shall, as soon as practicable after publication by the Financial Services Authority, supply to the Agent, the rate of charge payable by that Reference Bank to the Financial Services Authority pursuant to the Fees Rules in respect of the relevant financial year of the Financial Services Authority (calculated for this purpose by that Reference Bank as being the average of the Fee Tariffs applicable to that Reference Bank for that financial year) and expressed in pounds per £1,000,000 of the Tariff Base of that Reference Bank.

8. Each Lender shall supply any information required by the Agent for the purpose of calculating its Additional Cost Rate. In particular, but without limitation, each Lender shall supply the following information on or prior to the date on which it becomes a Lender:

   (a) the jurisdiction of its Facility Office; and

   (b) any other information that the Agent may reasonably require for such purpose.

   Each Lender shall promptly notify the Agent of any change to the information provided by it pursuant to this paragraph.

9. The percentages of each Lender for the purpose of A and C above and the rates of charge of each Reference Bank for the purpose of E above shall be determined by the Agent based upon the information supplied to it pursuant to paragraphs 7 and 8 above and on the assumption that, unless a Lender notifies the Agent to the contrary, each Lender's obligations in relation to cash ratio deposits and Special Deposits are

the same as those of a typical bank from its jurisdiction of incorporation with a Facility Office in the same jurisdiction as its Facility Office.

10. The Agent shall have no liability to any person if such determination results in an Additional Cost Rate which over or under compensates any Lender and shall be entitled to assume that the information provided by any Lender or Reference Bank pursuant to paragraphs 3, 7 and 8 above is true and correct in all respects.

11. The Agent shall distribute the additional amounts received as a result of the Mandatory Cost to the Lenders on the basis of the Additional Cost Rate for each Lender based on the information provided by each Lender and each Reference Bank pursuant to paragraphs 3, 7 and 8 above.

12. Any determination by the Agent pursuant to this Schedule in relation to a formula, the Mandatory Cost, an Additional Cost Rate or any amount payable to a Lender shall, in the absence of manifest error, be conclusive and binding on all Parties.

13. The Agent may from time to time, after consultation with the Parent and the Lenders, determine and notify to all Parties any amendments which are required to be made to this Schedule in order to comply with any change in law, regulation or any requirements from time to time imposed by the Bank of England, the Financial Services Authority or the European Central Bank (or, in any case, any other authority which replaces all or any of its functions) and any such determination shall, in the absence of manifest error, be conclusive and binding on all Parties.

**SCHEDULE 5**

**FORM OF TRANSFER CERTIFICATE**

To: Lloyds TSB Bank plc as Agent

From: [The Existing Lender] (the "**Existing Lender**") and [The New Lender] (the "**New Lender**")

Dated:

**Schuh Group Limited — £29,500,000 Senior Facilities Agreement**
**dated [ ] (the "Facilities Agreement")**

1. We refer to the Facilities Agreement. This is a Transfer Certificate. Terms defined in the Facilities Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.

2. We refer to Clause 25.5 (Procedure for transfer):

   (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation all or part of the Existing Lender's Commitment, rights and obligations referred to in the Schedule in accordance with Clause 25.5 (Procedure for transfer).

   (b) The proposed Transfer Date is [ ].

   (c) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 33.2 (Addresses) are set out in the Schedule.

3. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 25.4 (Limitation of responsibility of Existing Lenders).

4. [The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:

   (a) a company resident in the United Kingdom for United Kingdom tax purposes; or

   (b) a partnership each member of which is:

      (i) a company so resident in the United Kingdom; or

      (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which is required to bring into account in computing its chargeable profits (for the purposes of section 11(2) of the Taxes Act) the whole of any share of interest payable in respect of that advance that falls to it by reason of sections 114 and 115 of the Taxes Act; or

   (c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of an advance under a Finance Document in computing the chargeable profits (for the purposes of section

11(2) of the Taxes Act) of that company; or]

(d) [a Treaty Lender].

[4/5]. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.

5. This Transfer Certificate is governed by English law.

**Note: The execution of this Transfer Certificate may not transfer a proportionate share of the Existing Lender's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.**

**THE SCHEDULE**

**Commitment/rights and obligations to be transferred**

[insert relevant details]

[Facility Office address, fax number and attention details for notices and account details for payments,]

[Existing Lender] [New Lender]

By: By:

This Transfer Certificate is accepted by the Agent and the Transfer Date is confirmed as [ ].

[Agent]

By:

**SCHEDULE 6**

**FORM OF ASSIGNMENT AGREEMENT**

To: Lloyds TSB Bank plc as Agent

From: [the *Existing Lender*] (the "**Existing Lender**") and [the *New Lender*] (the "**New Lender**")

Dated:

**Schuh Group Limited — £29,500,000 Senior Facilities Agreement**
**dated [ ] (the "Facilities Agreement")**

1. We refer to the Facilities Agreement. This is an Assignment Agreement.

2.

   (a) We refer to Clause 25.6 (Procedure for assignment).

   (b) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Facilities Agreement, the other Finance Documents and in respect of the Transaction Security which correspond to that portion of the Existing Lender's Commitments and participations in Utilisations under the Facilities Agreement as specified in the Schedule.

   (c) The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender's Commitments and participations in Utilisations under the Facilities Agreement specified in the Schedule.

   (d) The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (c) above.

3. The proposed Transfer Date is [ ].

4. On the Transfer Date the New Lender becomes:

   (a) Party to the Finance Documents as a Lender; and

   (b) Party to [*other relevant agreements in other relevant capacity*].

5. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 25.4 (Limitation of responsibility of Existing Lenders).

6. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 33.2 (Addresses) are set out in the Schedule.

7. [The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:

   (a) a company resident in the United Kingdom for United Kingdom tax purposes; or

(b) a partnership each member of which is:

(i) a company so resident in the United Kingdom; or

(ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which is required to bring into account in computing its chargeable profits (for the purposes of section 11(2) of the Taxes Act) the whole of any share of interest payable in respect of that advance that falls to it by reason of sections 114 and 115 of the Taxes Act; or

(c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of an advance under a Finance Document in computing the chargeable profits (for the purposes of section 11(2) of the Taxes Act) of that company; or]

(d) [a Treaty Lender].

[7/8]. This Assignment Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Assignment Agreement.

[9/10]. This Assignment Agreement is governed by English law.

[10/11]. This Assignment Agreement has been [executed and delivered as a deed] [entered into] on the date stated at the beginning of this Assignment Agreement.

**Note: The execution of this Assignment Agreement may not transfer a proportionate share of the Existing Lender's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.**

**THE SCHEDULE**

**Commitment/rights and obligations to be transferred by assignment, release and accession**

[*insert relevant details*]

[*Facility office address, fax number and attention details for notices and account details for payments*]

[Existing Lender] [New Lender]

By: By:

This Assignment Agreement is accepted by the Agent and the Transfer Date is confirmed as [ ].

[Signature of this Assignment Agreement by the Agent constitutes confirmation by the Agent of receipt of notice of the assignment referred to herein, which notice the Agent receives on behalf of each Finance Party.]

[Agent]

By:

**SCHEDULE 7**

**FORM OF ACCESSION LETTER**

To: Lloyds TSB Bank plc as Agent

From: [Subsidiary] and [Parent]

Dated:

Dear Sirs

**Schuh Group Limited — £29,500,000 Senior Facilities Agreement**
**dated [ ] (the "Facilities Agreement")**

1. We refer to the Facilities Agreement. This is an Accession Letter. Terms defined in the Facilities Agreement have the same meaning in this Accession Letter unless given a different meaning in this Accession Letter.

2. [Subsidiary] agrees to become an Additional [Borrower]/[Guarantor] and to be bound by the terms of the Facilities Agreement and the other Finance Documents as an Additional [Borrower]/[Guarantor] pursuant to Clause [26.2 (Additional Borrowers)]/[Clause 26.4 (Additional Guarantors)] of the Facilities Agreement. [Subsidiary] is a company duly incorporated under the laws of [name of relevant jurisdiction] and is a limited liability company and registered number [ ].

3. [Subsidiary's] administrative details are as follows:

   Address:

   Fax No.:

   Attention:

4. This Accession Letter is governed by English law.

   [This Accession Letter is entered into by deed.]

[Parent] [Subsidiary]

**SCHEDULE 8**

**FORM OF RESIGNATION LETTER**

To: Lloyds TSB Bank plc as Agent

From: [resigning Obligor] and [Parent]

Dated:

Dear Sirs

**Schuh Group Limited — £29,500,000 Senior Facilities Agreement**
**dated [ ] (the "Facilities Agreement")**

1. We refer to the Facilities Agreement. This is a Resignation Letter. Terms defined in the Facilities Agreement have the same meaning in this Resignation Letter unless given a different meaning in this Resignation Letter.

2. Pursuant to [Clause 26.3 (Resignation of a Borrower)]/[Clause 26.5 (Resignation of a Guarantor)], we request that [resigning Obligor] be released from its obligations as a [Borrower]/[Guarantor] under the Facilities Agreement and the Finance Documents.

3. We confirm that:

   (a) no Default is continuing or would result from the acceptance of this request; and

   (b) *[[this request is given in relation to a Third Party Disposal of [resigning Obligor];

   (c) [the Disposal Proceeds have been or will be applied in accordance with Clause 8.2 (Disposal and Insurance Proceeds and Excess Cashflow);]**]

   (d) [ ]***

4. This letter is governed by English law.

| | |
|---|---|
| [Parent] | [resigning Obligor] |
| By: | By: |

NOTES:

* Insert where resignation only permitted in case of a Third Party Disposal.

** Amend as appropriate, e.g. to reflect agreed procedure for payment of proceeds into a specified account.

*** Insert any other conditions required by the Facilities Agreement.

**SCHEDULE 9**

**FORM OF COMPLIANCE CERTIFICATE**

To: Lloyds TSB Bank plc as Agent

From: [Parent] Dated:

Dear Sirs

**Schuh Group Limited — £29,500,000 Senior Facilities Agreement**
**dated [ ] (the "Facilities Agreement")**

1. We refer to the Facilities Agreement. This is a Compliance Certificate. Terms defined in the Facilities Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
2. We confirm that:

   [Insert details of covenants to be certified].
3. [We confirm that no Default is continuing.]**

Signed _____ _____

Director of [Parent] Director of [Parent]

**SCHEDULE 10**

**FORM OF INCREASE CONFIRMATION**

To: Lloyds TSB Bank plc as Agent, Lloyds TSB Bank plc as Security Trustee and Schuh Group Limited as Parent, for and on behalf of each Obligor

From: [the *Increase Lender*] (the "**Increase Lender**")

Dated:

**Schuh Group Limited — £29,500,000 Senior Facilities Agreement dated [ ] (the "Facilities Agreement")**

1. We refer to the Facilities Agreement. This agreement (the "**Agreement**") shall take effect as an Increase Confirmation for the purpose of the Facilities Agreement. Terms defined in the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to clause 2.2 (Increase) of the Facilities Agreement.
3. The Increase Lender agrees to assume and will assume all of the obligations corresponding to the Commitment specified in the Schedule (the "**Relevant Commitment**") as if it was an Original Lender under the Facilities Agreement.
4. The proposed date on which the increase in relation to the Increase Lender and the Relevant Commitment is to take effect (the "**Increase Date**") is [ ].
5. On the Increase Date, the Increase Lender becomes party to the relevant Finance Documents.
6. The Facility Office and address, fax number and attention details for notices to the Increase Lender for the purposes of Clause 33 (Notices) are set out in the Schedule.
7. The Increase Lender expressly acknowledges the limitations on the Lenders' obligations referred to in paragraph (f) of Clause 2.2 (Increase).
8. The Increase Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:
   (a) [a Qualifying Lender (other than a Treaty Lender);]
   (b) [a Treaty Lender;]
   (c) [not a Qualifying Lender].[2]
9. [The Increase Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
   (a) a company resident in the United Kingdom for United Kingdom tax purposes; or

[2] Delete as applicable — each Increase Lender is required to confirm which of these three categories it falls within.

(b) a partnership each member of which is:

(i) a company so resident in the United Kingdom; or

(ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or

(c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.][3]

10. [The Increase Lender confirms (for the benefit of the Agent and without liability to any Obligor) that it is a Treaty Lender that holds a passport under the HMRC DT Treaty Passport scheme (reference number [ ]) and is tax resident in [ ][4], so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax and notifies the Parent that:

(a) [each Borrower which is a Party as a Borrower as at the Increase Date must, to the extent that the Increase Lender becomes a Lender under a Facility which is made available to that Borrower pursuant to clause 2 (The Facilities) of the Facilities Agreement, make an application to HM Revenue & Customs under form DTTP2 within 30 days of the Increase Date; and]*

(b) each Additional Borrower which becomes an Additional Borrower after the Increase Date must, to the extent that the Increase Lender is a Lender under a Facility which is made available to that Additional Borrower pursuant to clause 2.1 (The Facilities) of the Facilities Agreement, make an application to HM Revenue & Customs under form DTTP2 within 30 days of becoming an Additional Borrower.]***

[12]. This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

[13]. This Agreement is governed by English law.

[14]. This Agreement has been entered into on the date stated at the beginning of this Agreement.

**Note: The execution of this Increase Confirmation may not be sufficient for the Increase**

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3 Include only if New Lender is a UK Non-Bank Lender ie falls within paragraph (i)(B) of the definition of Qualifying Lender in Clause 18.

4 Insert jurisdiction of tax residence.

*** This confirmation must be included if the Increase Lender holds a passport under the HMRC DT Treaty Passport scheme and wishes that scheme to apply to the Facilities Agreement.

**Lender to obtain the benefit of the Transaction Security in all jurisdictions. It is the responsibility of the Increase Lender to ascertain whether any other documents or other formalities are required to obtain the benefit of the Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.**

**THE PARENT**

**SCHUH GROUP LIMITED**

By: *Mark Crutchley* *Adrian Bell (witness)*

Address: 1 Neilson Square
Deans Industrial Estate
Livingston EH54 8RQ

Attention: Mark Crutchley

Fax: 01506 460 250

**THE BORROWERS**

**SCHUH GROUP LIMITED**

By: *Mark Crutchley* *Adrian Bell (witness)*

Address: As above

Attention: As above

Fax: As above

**SCHUH (HOLDINGS) LIMITED**

By: *Mark Crutchley* *Adrian Bell (witness)*

Address: As above

Attention: As above

Fax: As above

**THE GUARANTORS**

**SCHUH GROUP LIMITED**

By: *Mark Crutchley* *Adrian Bell (witness)*

Address: As above

Attention: As above

Fax: As above

**SCHUH (HOLDINGS) LIMITED**

By: *Mark Crutchley* *Adrian Bell (witness)*

Address: As above

Attention: As above

Fax: As above

**SCHUH LIMITED**

By: *Mark Crutchley* *Adrian Bell (witness)*

Address: As above

Attention: As above

Fax: As above

*PRESENT WHEN THE COMMON SEAL OF*
**SCHUH (ROI) LIMITED**
*WAS AFFIXED HERETO:*

By: *Mark Crutchley* *Adrian Bell (witness)*
*Director*

Address: As above

Attention: As above

Fax: As above

*David Reid*
*COMPANY SECRETARY*

**THE ARRANGER**

**LLOYDS TSB BANK PLC**

By: *Simon Sweeney*

Address: Level 6
110 St Vincent Street
Glasgow
G2 5ER

Fax: 0844 984 1546

Attention: Simon Sweeney

**THE AGENT**

**LLOYDS TSB BANK PLC**

By: *Simon Sweeney*

Address: As above

Fax: As above

Attention: As above

**THE SECURITY TRUSTEE**

**LLOYDS TSB BANK PLC**

By: *Simon Sweeney*

Address: As above

Fax: As above

Attention: As above

**THE LENDER**

**LLOYDS TSB BANK PLC**

By: *Simon Sweeney*

Address: As above

Fax: As above

Attention: As above

**SIGNATURES**

**THE PARENT**

**SCHUH GROUP LIMITED**

By:

Address: 1 Nielson Square
Deans Industrial Estate
Livingston

Fax: 01506 460250

**THE BORROWERS**

**SCHUH GROUP LIMITED**

By:

Address: As above

Fax: As above

**SCHUH (HOLDINGS) LIMITED**

By:

Address: As above

Fax: As above

**THE GUARANTORS**

**SCHUH GROUP LIMITED**

By:

Address: As above

Fax: As above

**SCHUH (HOLDINGS) LIMITED**

By:

Address: As above

Fax: As above

**SCHUH LIMITED**

By:

Address: As above

Fax: As above

**SCHUH (ROI) LIMITED**

By:

Address: As above

Fax: As above

**THE ARRANGER**

**LLOYDS TSB BANK PLC**

By:

Address: New Uberior House
Third Floor
11 Earl Grey Street
Edinburgh
EH3 9BN

Fax: 0844 984 1546

**THE AGENT**

**LLOYDS TSB BANK PLC**

By:

Address: As above

Fax: As above

**THE ORIGINAL LENDER**

**LLOYDS TSB BANK PLC**

By:

Address: As above

Fax: As above

**THE SECURITY TRUSTEE**

**LLOYDS TSB BANK PLC**

By:

Address: As above

Fax: As above

**Lloyds TSB Bank PLC**
Edinburgh
Lloyds TSB Bank PLC
New Uberior House
3rd Floor
11 Earl Grey Street
Edinburgh EH3 9BN

Telephone: 0131 659 0726
Facsimile: 0131 659 1144

Reference: CMC/PL

23rd June 2011

The Directors
Schuh Group Limited
1 Neilson Square
Deans Industrial Estate
Livingston EH54 8RQ

Dear Sirs

**OVERDRAFT AND OTHER FACILITIES**

We Lloyds TSB Bank plc (the "**Bank**") are pleased to offer to Schuh Group Limited (the "**Company**") and to each of Schuh Limited, and Schuh (Holdings) Limited an overdraft facility in sterling on account numbers 02034684, 02044434, 02044906, 02045120, 02045236, 02045023 on sort code 30-00-02 and/or in US dollars and euro on account numbers 86406932, 86406924, 11673750, 11673742 on sort code 30-12-18 and/or in such other currencies and on such other accounts as we may from time to time agree on the following terms and conditions. The terms of this facility are supplemental to the general terms and conditions governing your accounts and, in the event of any inconsistency between these terms and conditions and the general terms and conditions, these terms and conditions shall prevail.

For the avoidance of doubt, this letter is:

1. the Working Capital Facility Letter defined in Clause 1.1 of the Senior Term Facilities Agreement (the "**Senior Facilities Agreement**") among Schuh Group Limited, the Borrowers, the Guarantors, Lloyds TSB Bank plc (as Arranger Agent and Security Trustee) and the Original Lenders dated 23rd June 2011 under which sterling term loan facilities of (a) up to £15,500,000 are to be made available to the Company and Schuh (Holdings) Limited under Facility A, and (b) up to £14,000,000 are to made available to Schuh (Holdings) Limited under Facility B: and
2. a Finance Document as defined in the Senior Facilities Agreement.

Terms defined in the Senior Facilities Agreement shall have the same meaning in this letter, unless otherwise defined in this letter

Amount

The maximum aggregate amount outstanding under the facility at any time (calculated on the basis of cleared available funds) shall not exceed £5,000,000. For the purpose of determining whether the total amount owing is at any particular time within or in excess of the agreed limit, amounts owing in a currency other than sterling shall be notionally converted into sterling on the basis of the rate at which the Bank would sell that currency for sterling at that time.

You should note that the above limit applies collectively to the overdraft facility and to the indemnity line referred to below. Because of this, utilisations of each such facility will be taken into account to determine the amount available for utilisation by the other facility.

Utilisations of the indemnity line are also subject to the lower limit set out in the Other Facility section below.

Availability

The Bank's present intention is to make the facility available until 30th June 2012 and all moneys from time to time owing to the Bank under the facility shall be repaid no later than this date or such later date as may from time to time be advised in writing by the Bank. The Bank may, nevertheless subject to the Bank having given at least 5 days Business Days prior notice of its intention to do so to the Company, terminate the facility at any time and may, at such time or at any time thereafter, demand immediate payment of all amounts owing under or in connection with the facility. The amounts owing at any time may include interest, costs or charges which have been debited to the account in accordance with the terms of this letter or in accordance with any other terms relevant to the account.

The Bank shall have the right at the time of making demand or at any time thereafter to convert all amounts then due and payable in a currency other than sterling into sterling at the Bank's exchange rate for selling that currency against sterling at that time. The Bank shall as soon as possible after such conversion advise you of the sterling amount then owing.

Interest

Interest is calculated as follows:

(a) for each currency (other than sterling) that has a net debit balance, interest will be payable by you on the net debit balance in that currency at the Bank's reference rate for that currency from time to time;

(b) if there is a net debit balance in sterling, interest will be payable by you on such net debit balance at Base Rate from time to time;

(c) for each currency (other than sterling) that has a net credit balance, interest will be payable by the Bank on the net credit balance in that currency at 0.35% per annum;

(d) if there is a net credit balance in sterling, interest will be payable by the Bank on the net credit balance at 0.35% per annum; and

(e) if there is a net amount owing by you, interest will be payable by you on the net amount owing at 2.25% per annum;

where:

(i) the "**net amount owing**" is the position arrived at by totalling the net balance on the sterling accounts and the notional sterling equivalent of the net balances on the relevant currency accounts, and

(ii) the "**sterling equivalent**" of any debit balance in a currency other than sterling shall be determined by using the Bank's exchange rate for selling that currency against sterling at that time and of any credit balance in a currency other than sterling shall be determined by using the Bank's exchange rate for buying that currency with sterling at that time.

Amounts owing in excess of the agreed limit (if the Bank allows any such excess at any time) will be deemed to be amounts owing in sterling and further interest will be payable on the excess so that the total interest payable on the excess is at a rate equal to the Bank's Unauthorised Overdraft Rate (presently 2.2% per month / 26.4% per annum). If there are no amounts owing in sterling, or the amounts owing in sterling are less than the excess, interest will be payable on an amount or amounts equivalent to the excess, or, as the case may be, on the amount by which the excess exceeds the overdrawn balance of the sterling account on such currency account or accounts as the Bank shall determine so that the total interest payable on such amount is at the Bank's unauthorised currency borrowing rate from time to time (currently 12% per annum over the Bank's relevant short term offered rate(s)).

Interest will be calculated quarterly in arrear, normally to the 10th of each of March, June, September and December (or the next working day). Interest may also be calculated on the date on which the facility

ceases to be available. Unless the Bank advises the Company otherwise or the Company requests otherwise, the Company will be notified of any interest payable in sterling.

Interest payable in a currency other than sterling shall be converted to sterling by the Bank (at rates determined by the Bank at that time) and such sterling amounts together with interest payable in sterling, and will be credited or, as the case may be, debited to the account numbered 02044906 of Schuh Limited on sort code 30-00-02 not earlier than the date which is 14 days after the date of the Bank's notice of interest payable.

Interest will be calculated on the basis of the actual number of days elapsed and a 360 day year or a 365 day year as is in the Bank's reasonable opinion usual market practice for the relevant currency.

The Base Rate of Lloyds TSB Bank plc and the Unauthorised Overdraft Rate may be varied (either up or down) at any time. Notice of changes will be displayed in branches of the Bank and/or in a number of daily newspapers and may be found through the website (www.lloydstsb.com). You can contact your relationship manager to check the rates applicable at any time.

The reference rate used by the Bank for each currency may vary from day to day and upon request the Bank will advise you of the rates then applicable. The reference bank rates used by the Bank at any time can be advised by your relationship manager.

Costs and Charges

All costs and expenses incurred by the Bank in preserving or enforcing the security referred to below shall be payable on demand.

Security

It is a condition of the facility and of the other facility referred to below that amounts owing shall be secured by the security listed below. Any security which is not already in place is to be provided to the Bank in a form acceptable to the Bank and, if so requested by the Bank, shall be accompanied by evidence of the value of the security and any evidence that the Bank may require to confirm that the security is in full force and effect.

(a) the Transaction Security created or expressed to be created in favour of the Security Trustee pursuant to the Transaction Security Documents under or pursuant to the Senior Facilities Agreement, and

(b) the Guarantee and Indemnity set out in Clause 19 of the Senior Facilities Agreement

(c) the Set-Off set out in Clause 32 of the Senior Facilities Agreement.

Financial Information

Whilst the facility and the other facility referred to below remain available the Company shall procure that the Bank is provided with:

(a) the financial information set out in Clause 21.1 of the Senior Facilities Agreement;

(b) the financial information set out in Clause 21.4 of the Senior Facilities Agreement; and

(c) such other financial information or information regarding any security that the Bank may from time to time reasonably request promptly on request and within any timescale reasonably required by the Bank.

Other Facilities

In addition to the overdraft facility we are pleased to offer tthe facilities detailed in the Schedule of Other Facilities. Except when reference is made to another agreement, each additional facility will be available upon such terms and conditions and subject to such changes as shall from time to time be specified by the Bank. The facilities may be cancelled by the Bank at any time, but it is the Bank's present intention to keep

the facilities in place for the period of availability of the overdraft facility and the liability in respect of any utilisation may extend beyond such period of availability.

If upon termination of the overdraft facility (or earlier cancellation of any of these additional facilities) there are any contingent liabilities existing under or in connection with these additional facilities (or any of them) an amount equal to the value of such contingent liabilities shall, upon any request from the Bank, be deposited with the Bank with the intent that such deposit shall be held by the Bank as security for those liabilities and that such documentation and other things (including the payment of any associated costs) as the Bank may require in order to perfect such security shall be completed.

The Bank may debit any amount owing in connection with these additional facilities to the account of the relevant company with the Bank whether or not that would cause the account to become overdrawn or the agreed overdraft limit on the account to be breached

Other Terms of Offer

This letter is for the benefit of the contracting parties only and shall not confer any benefit on or be enforceable by a third party.

This letter and any non-contractual obligations arising from or connected with this letter shall be governed by and construed in accordance with English law and you agree to submit to the non-exclusive jurisdiction of the Scottish Courts. The Bank may take action in any other jurisdiction where proceedings may be lawfully commenced.

Please confirm your acceptance of the facilities offered by returning the attached duplicate of this letter with the acknowledgement signed in accordance with the bank mandate currently held by the Bank or a specific resolution acceptable to the Bank. The Bank may withdraw the facilities if such confirmation is not received by the Bank (at the address given at the heading of this letter) by 23rd July 2011 (or such later date as the Bank may agree).

Yours faithfully
For and on behalf of Lloyds TSB Bank plc

Elaine Banks
Relationship Manager

We hereby acknowledge and accept the terms of your offer dated 23rd June 2011 of which this is a duplicate and agree all the terms and conditions therein contained. In accepting this letter we all confirm (as regards ourselves) that neither the execution by us of this letter nor the utilisation by us of the facilities being made available will conflict with or breach any requirement or limitation set out in our Memorandum and Articles of Association.

For and on behalf of Schuh Group Limited (company registered number SC379625)

Signed by _____(name)

_____(signature)

_____2011 (date)

Continuation of a letter from
Lloyds TSB Bank plc to:
Schuh Group Limited

We hereby acknowledge and accept the terms of your offer dated 23rd June 2011 of which this is a duplicate and agree all the terms and conditions therein contained. In accepting this letter we all confirm (as regards ourselves) that neither the execution by us of this letter nor the utilisation by us of the facilities being made available will conflict with or breach any requirement or limitation set out in our Memorandum and Articles of Association.

For and on behalf of Schuh Limited (company registered number SC125327)

Signed by _____(name)

_____(signature)

_____2011 (date)

We hereby acknowledge and accept the terms of your offer dated 23rd June 2011 of which this is a duplicate and agree all the terms and conditions therein contained. In accepting this letter we all confirm (as regards ourselves) that neither the execution by us of this letter nor the utilisation by us of the facilities being made available will conflict with or breach any requirement or limitation set out in our Memorandum and Articles of Association.

For and on behalf of Schuh (Holdings) Ltd (company registered number SC265833)

Signed by _____(name)

_____(signature)

_____2011 (date)

**This letter creates legal obligations. Before signing you may wish to take independent advice.**

SCHEDULE OF OTHER FACILITIES

The following additional facilities are available:

1 an indemnity line of £175,000 to cover bonds, indemnities and guarantees ("**BIGs**") issued by the Bank or its correspondents. The total value of all BIGs that may be outstanding at any one time may not exceed the limit detailed above.

Please note that the total liability of the Bank under certain customs and excise guarantees is twice the amount quoted on the guarantee.

The Bank shall be under no obligation to issue any BIG unless the terms of the BIG and the expiry date of the BIG (or means by which the Bank can terminate its liability) are acceptable to the Bank. The Bank is to be indemnified to its complete satisfaction in connection with each BIG issued.

The facility may be used by Schuh Limited.

2 a BACS facility of £20,000,000 to cover computerised sterling payment instructions that may be delivered direct or through an agreed intermediary to Voca Limited (formerly BACS Limited). The limit detailed above is the maximum total value of such instructions for payment during any one month.

The facility may be used by Schuh Limited.

3 a LloydsLink facility under and subject to the terms and conditions set out in an agreement dated 31st December 2000 (and subject to such charges as shall from time to time be specified by the Bank) to cover the transfer of funds from agreed accounts by automated means initiated by Schuh Limited. The following limit applies to the facility:

£3,000,000; the maximum total calue of LloydsLink transactions that have been initiated through the PC Pay module, but have not been debited to the agreed accounts ("**three day value payments**"). This is the total payments submitted over a two day rolling period.

Continuation of a letter from
Lloyds TSB Bank plc to:
Schuh Group Limited

Minutes relating to a Facility Letter

SCHUH GROUP LIMITED (company registered number SC379625)

Extract from the Minutes of a meeting of the Board of Directors of the above mentioned company (the "**Company**") duly convened, held and constituted on_____ at_____

Present:

An independent quorum was present.

The Chairman reported that the Company had been offered by its bankers, Lloyds TSB Bank plc (the "**Bank**"), overdraft and the other facility (the "Facilities") as detailed within a letter from the Bank dated 23rd June 2011 (the "**Facility Letter**"), a copy of which was granted to the meeting.

It was noted that acceptance of the Facilities would provide for the Company to grant security, in the form detailed within the Facility Letter, to secure the Facilities detailed therein.

The Directors considered carefully the terms of the Facility Letter and were unanimously of the opinion that it would be in the commercial interest of and would promote the success of the Company for the benefit of its members as a whole to enter into the Facility Letter and that the value to the Company, in money or money's worth, of accepting the offer of the Facilities, would not be significantly less than the value in money or money's worth of the consideration provided by the Company.

IT WAS UNANIMOUSLY RESOLVED that:

1. it was to the commercial benefit and advantage and in the best interests of the Company to accept the offer of the Facilities;

2. the form of the Facility Letter now produced to the meeting be and the same is hereby approved, subject to any amendments detailed below;

3. _____ and _____ being Directors of the Company are hereby authorised to sign and deliver the Facility Letter on behalf of the Company incorporating such amendments to the form of Facility Letter produced to the meeting as may in the absolute discretion of such officers be agreed by them, their signatures being conclusive evidence of their agreement to such amendments; and

4. _____ and _____ being Directors of the Company are hereby authorised to sign and deliver or, as appropriate, affix the Common Seal of the Company to the security documents detailed within the Facility Letter.

IT IS HEREBY CERTIFIED that:

(1) the foregoing is a true extract from the Minutes of the Board of Directors of the Company;

(2) the foregoing resolutions were duly passed in accordance with the Memorandum and Articles of Association of the Company; and

(3) the passing of the resolutions and the completion of the transactions hereby contemplated do not, and when completed will not, contravene any provision of the Memorandum and Articles of Association of the Company or of any loan agreement, trust deed, bond, mortgage, charge, contract or other instrument binding upon the Company or its Directors.

Chairman

Secretary

Continuation of a letter from
Lloyds TSB Bank plc to:
Schuh Group Limited

Minutes relating to a Facility Letter

SCHUH LIMITED (company registered number SC125327)

Extract from the Minutes of a meeting of the Board of Directors of the above mentioned company (the "**Company**") duly convened, held and constituted on_____ at_____

Present:

An independent quorum was present.

The Chairman reported that the Company had been offered by its bankers, Lloyds TSB Bank plc (the "**Bank**"), overdraft and the other facility (the "Facilities") as detailed within a letter from the Bank dated 23rd June 2011 (the "**Facility Letter**"), a copy of which was granted to the meeting.

It was noted that acceptance of the Facilities would provide for the Company to grant security, in the form detailed within the Facility Letter, to secure the Facilities detailed therein.

The Directors considered carefully the terms of the Facility Letter and were unanimously of the opinion that it would be in the commercial interest of and would promote the success of the Company for the benefit of its members as a whole to enter into the Facility Letter and that the value to the Company, in money or money's worth, of accepting the offer of the Facilities, would not be significantly less than the value in money or money's worth of the consideration provided by the Company.

IT WAS UNANIMOUSLY RESOLVED that:

1. it was to the commercial benefit and advantage and in the best interests of the Company to accept the offer of the Facilities;

2. the form of the Facility Letter now produced to the meeting be and the same is hereby approved, subject to any amendments detailed below;

3. _____ and_____ being Directors of the Company are hereby authorised to sign and deliver the Facility Letter on behalf of the Company incorporating such amendments to the form of Facility Letter produced to the meeting as may in the absolute discretion of such officers be agreed by them, their signatures being conclusive evidence of their agreement to such amendments; and

4. _____ and_____ being Directors of the Company are hereby authorised to sign and deliver or, as appropriate, affix the Common Seal of the Company to the security documents detailed within the Facility Letter.

IT IS HEREBY CERTIFIED that:

(1) the foregoing is a true extract from the Minutes of the Board of Directors of the Company;

(2) the foregoing resolutions were duly passed in accordance with the Memorandum and Articles of Association of the Company; and

(3) the passing of the resolutions and the completion of the transactions hereby contemplated do not, and when completed will not, contravene any provision of the Memorandum and Articles of Association of the Company or of any loan agreement, trust deed, bond, mortgage, charge, contract or other instrument binding upon the Company or its Directors.

Chairman

Secretary

Continuation of a letter from
Lloyds TSB Bank plc to:
Schuh Group Limited

Minutes relating to a Facility Letter

SCHUH (HOLDINGS) LIMITED (company registered number SC265833)

Extract from the Minutes of a meeting of the Board of Directors of the above mentioned company (the "**Company**") duly convened, held and constituted on_____ at_____

Present:

An independent quorum was present.

The Chairman reported that the Company had been offered by its bankers, Lloyds TSB Bank plc (the "**Bank**"), overdraft and the other facility (the "Facilities") as detailed within a letter from the Bank dated 23rd June 2011 (the "**Facility Letter**"), a copy of which was granted to the meeting.

It was noted that acceptance of the Facilities would provide for the Company to grant security, in the form detailed within the Facility Letter, to secure the Facilities detailed therein.

The Directors considered carefully the terms of the Facility Letter and were unanimously of the opinion that it would be in the commercial interest of and would promote the success of the Company for the benefit of its members as a whole to enter into the Facility Letter and that the value to the Company, in money or money's worth, of accepting the offer of the Facilities, would not be significantly less than the value in money or money's worth of the consideration provided by the Company.

IT WAS UNANIMOUSLY RESOLVED that:

1. it was to the commercial benefit and advantage and in the best interests of the Company to accept the offer of the Facilities;
2. the form of the Facility Letter now produced to the meeting be and the same is hereby approved, subject to any amendments detailed below;
3. _____ and _____ being Directors of the Company are hereby authorised to sign and deliver the Facility Letter on behalf of the Company incorporating such amendments to the form of Facility Letter produced to the meeting as may in the absolute discretion of such officers be agreed by them, their signatures being conclusive evidence of their agreement to such amendments; and
4. _____ and _____ being Directors of the Company are hereby authorised to sign and deliver or, as appropriate, affix the Common Seal of the Company to the security documents detailed within the Facility Letter.

IT IS HEREBY CERTIFIED that:

(1) the foregoing is a true extract from the Minutes of the Board of Directors of the Company;

(2) the foregoing resolutions were duly passed in accordance with the Memorandum and Articles of Association of the Company; and

(3) the passing of the resolutions and the completion of the transactions hereby contemplated do not, and when completed will not, contravene any provision of the Memorandum and Articles of Association of the Company or of any loan agreement, trust deed, bond, mortgage, charge, contract or other instrument binding upon the Company or its Directors.

Chairman

Secretary

***Financial Contact:*** ***James S. Gulmi (615) 367-8325***
***Media Contact:*** ***Claire S. McCall (615) 367-8283***

**GENESCO ACQUIRES SCHUH**
**—Schuh Currently Operates 59 Stores and 16 Concessions**
**in the U.K. and Republic of Ireland—**
**—Conference Call Scheduled for Thursday, June 23, 2011 at 8:30 am ET—**

NASHVILLE, Tenn., June 23, 2011 — Genesco Inc. (NYSE: GCO) today announced that it has acquired Schuh Group Ltd., a specialty retailer of casual and athletic footwear based in the United Kingdom. The purchase price paid at closing was £100 million, subject to closing adjustments, less £29.5 million outstanding under existing Schuh credit facilities, which remain in place. The purchase agreement also provides for deferred purchase price payments totaling £25 million, payable £15 million and £10 million on the third and fourth anniversaries of the closing, respectively, subject to the payees' not having terminated their employment with Schuh under certain specified circumstances. Genesco has also agreed to implement a bonus plan for certain members of Schuh management which will pay a total of up to £25 million in cash bonuses in 2015 subject to the Schuh business having achieved specified performance targets.

Genesco funded the initial payment and associated expenses with borrowings under an existing U.S. credit facility of $89 million and the balance from cash on hand. Genesco expects the acquisition will be accretive to earnings per share in its current fiscal year, excluding any merger and integration expenses and compensation expense attributable to the deferred purchase price payments because they are contingent upon the continued employment of the payees.

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**GENESCO ACQUIRES SCHUH — Add One**

Headquartered in Scotland, Schuh operates 59 stores in the United Kingdom and Republic of Ireland, 16 concessions in Republic apparel stores and one of the U.K.'s largest online shoe websites, www.schuh.co.uk. The company's core product selection consists of a broad range of branded casual and athletic footwear complemented by a meaningful private label offering targeted at its 15- to 24- year old core customer. For the fiscal year ended March 27, 2011, Schuh generated net sales of approximately £164 million with an operating margin above 9% adjusted for goodwill amortization.

Robert J. Dennis, chairman, president and chief executive officer of Genesco, said, "Schuh provides us with an immediate and established retail presence in the United Kingdom, a highly experienced international management team, and improved insight into global fashion trends. The concept is similar to Journeys in customer demographics, product offering and operating philosophy, so it is a business we know and understand. At the same time, we believe that the combined businesses will benefit from significant merchandising synergies and from many opportunities to share best practices to our mutual benefit. Financially, the Schuh business is compelling, with attractive store economics and solid growth prospects."

Managing Director of Schuh Colin Temple and Finance Director Mark Crutchley will continue in their current leadership of the Schuh management team, which includes seven division heads overseeing store operations, buying, IT, human resources, ecommerce, merchandising, and logistics.

Colin Temple commented, "Schuh has gained market share in recent years due to a strong product assortment and a growing store base. Like Journeys, we specialize in providing our customers with branded casual and athletic footwear styles that are in line with current fashion trends and with a breadth and depth of assortment that is difficult to find elsewhere. We are excited to join the Genesco family and believe the combination of our talented organizations will help to further distinguish our concepts from the competition and accelerate our future growth plans."

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Genesco was advised in the transaction by Jefferies & Company and Schuh was advised by Noble Grossart Limited.

**Second Quarter Same Store Sales**

Genesco also said that same store sales for its retail stores other than Schuh had increased 14% in the second quarter to date through June 18, 2011, with the Journeys Group up 15%, the Lids Sports Group up 10%, the Johnston & Murphy Group up 20% and the Underground Station Group up 9%.

"We are pleased with the strength of our U.S. based businesses and look forward to presenting an updated outlook for the balance of the year, including Schuh, when we announce our second quarter results in August," Dennis concluded.

**Conference Call**

Genesco will host a conference call today, Thursday June 23, 2011, at 8:30 am (Eastern Time) to discuss the acquisition. The live webcast may be accessed at (719) 325-2363 or through the Company's internet website, www.genesco.com. The call will refer to a slide presentation available at www.genesco.com under the "investor relations" section. To listen live, please go to the website at least 15 minutes early to register, download and install any necessary software.

**Cautionary Note Concerning Forward-Looking Statements**

This release contains forward-looking statements, including those regarding expectations with respect to the acquisition's effect on the Company's performance and financial results, and all other statements not addressing solely historical facts or present conditions. Actual results could vary materially from the expectations reflected in these statements. A number of factors could cause differences. These factors include the Company's ability to integrate Schuh's operations as planned and realize expected

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efficiencies in Schuh's business, Schuh's ability to recognize same stores sales increases as projected and its ability to open new stores on its projected schedule and at acceptable expense levels. In addition, the actual cost to the Company of the deferred participation and management bonus payments will depend on foreign exchange rates at the time the payments are made. Other factors that could change expected outcomes include all those affecting the Company's or its subsidiaries business and financial condition generally, including weakness in the consumer economy, inability of customers to obtain credit, fashion trends that affect the sales or product margins of the Company's retail product offerings, changes in buying patterns by significant wholesale customers, bankruptcies or deterioration in financial condition of significant wholesale customers, disruptions in product supply or distribution, unfavorable trends in fuel costs, foreign exchange rates, foreign labor and materials costs, and other factors affecting the cost of products, competition in the Company's markets and changes in the timing of holidays or in the onset of seasonal weather affecting period-to-period sales comparisons. Additional factors that could affect the Company's prospects and cause differences from expectations include the ability to build, open, staff and support additional retail stores and to renew leases in existing stores and to conduct required remodeling or refurbishment on schedule and at expected expense levels, deterioration in the performance of individual businesses or of the Company's market value relative to its book value, resulting in impairments of fixed assets or intangible assets or other adverse financial consequences, unexpected changes to the market for its shares, variations from expected pension-related charges caused by conditions in the financial markets, and the outcome of litigation, investigations and environmental matters involving the Company. Additional factors are cited in the "Risk Factors," "Legal Proceedings" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" sections of, and elsewhere, in our SEC filings, copies of which may be obtained from the SEC website, www.sec.gov, or by contacting the investor relations department of Genesco via our website, www.genesco.com. Many of the factors that will

determine the outcome of the subject matter of this release are beyond Genesco's ability to control or predict. Genesco undertakes no obligation to release publicly the results of any revisions to these forward-looking statements that may be made to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events. Forward-looking statements reflect the expectations of the Company at the time they are made. The Company disclaims any obligation to update such statements.

**About Genesco Inc**.

Genesco Inc., a Nashville-based specialty retailer, sells footwear, headwear, sports apparel and accessories in more than 2,285 retail stores throughout the U.S. and Canada, principally under the names Journeys, Journeys Kidz, Shi by Journeys, Lids and Lids Locker Room, Johnston & Murphy, and Underground Station, and on internet websites www.journeys.com, www.journeyskidz.com, www.shibyjourneys.com, www.undergroundstation.com, www.johnstonmurphy.com, www.dockersshoes.com, and www.lids.com. The Company's Lids Sports Group operates the Lids headwear stores and the lids.com website, the Lids Locker Room and other team sports fan shops and single team clubhouse stores, and the Lids Team Sports team dealer business. In addition, Genesco sells wholesale footwear under its Johnston & Murphy brand, the licensed Dockers brand and other brands. For more information on Genesco and its operating divisions, please visit www.genesco.com.

**About Schuh**

Schuh Group Ltd., based in Livingston, Scotland, is the U.K.'s leading fashion footwear retailer, operating from 75 stores across the U.K. and Ireland and online at www.schuh.co.uk.