
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): December 5, 2006 (December 1, 2006)

GENESCO INC.

(Exact Name of Registrant as Specified in Charter)

Tennessee

(State or Other
Jurisdiction of
Incorporation)

1-3083

(Commission
File Number)

62-0211340

(I.R.S. Employer
Identification No.)

1415 Murfreesboro Road
Nashville, Tennessee

(Address of Principal Executive Offices)

37217-2895

(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):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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TABLE OF CONTENTS

[ITEM 1.01. ENTRY INTO A MATERIAL DEFINITIVE AGREEMENT](#)

[ITEM 2.03. CREATION OF A DIRECT FINANCIAL OBLIGATION OR AN OBLIGATION UNDER AN OFF-BALANCE SHEET ARRANGEMENT OF A REGISTRANT](#)

[ITEM 9.01. FINANCIAL STATEMENTS AND EXHIBITS](#)

[SIGNATURES](#)

[EXHIBIT INDEX](#)

[Ex-10.1 Amended and Restated Credit Agreement](#)

ITEM 1.01. ENTRY INTO A MATERIAL DEFINITIVE AGREEMENT.

On December 1, 2006, Genesco Inc. (the “Company”) entered into an Amended and Restated Credit Agreement (the “Credit Facility”) 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. The Credit Facility effectively replaces the Company’s current \$105.0 million revolving credit facility.

The material terms of the Credit Facility are as follows:

Availability

The Credit Facility is a revolving credit facility in the aggregate principal amount of \$200.0 million, with a \$20 million swingline loan sublimit and a \$70.0 million sublimit for the issuance of standby letters of credit, and has a five-year term. Any swingline loans and letters of credit will reduce the availability under the Credit Facility on a dollar-for-dollar basis. In addition, the Company has an option to increase the availability under the Credit Facility by up to \$100.0 million (in increments no less than \$25.0 million) subject to, among other things, the receipt of commitments for the increased amount. The aggregate amount of the loans made and letters of credit issued under the Credit Facility shall at no time exceed the lesser of the facility amount (\$200 million or, if increased at the Company’s option, up to \$300 million) or the “Borrowing Base”, which generally is based on 85% of eligible inventory plus 85% of eligible accounts receivable less applicable reserves.

Collateral

The loans and other obligations under the Credit Facility are secured by substantially all of the presently owned and hereafter acquired non-real estate assets of the Company and certain subsidiaries of the Company.

Interest and Fees

The Company’s borrowings under the Credit Facility bear interest at varying rates that, at the Company’s option, can be based on either:

- a base rate generally defined as the sum of the prime rate of Bank of America, N.A. and an applicable margin.
- a LIBO rate generally defined as the sum of LIBOR (as quoted on the British Banking Association Telerate Page 3750) and an applicable margin.

The initial applicable margin for base rate loans is 0.00%, and the initial applicable margin for LIBOR loans is 1.00%. Thereafter, the applicable margin will be subject to adjustment based on “Excess Availability” for the prior quarter. The term “Excess Availability” means, as of any given

Table of Contents

date, the excess (if any) of the borrowing base over the outstanding credit extensions under the Credit Facility.

Interest on the Company's borrowings is payable monthly in arrears for base rate loans and at the end of each interest rate period (but not less often than quarterly) for LIBOR loans.

The Company is also required to pay a commitment fee on the difference between committed amounts and the aggregate amount (including the aggregate amount of letters of credit) of the credit extensions outstanding under the Credit Facility, which initially is 0.25% per annum, subject to adjustment in the same manner as the applicable margins for interest rates.

Certain Covenants

The Company is not required to comply with any financial covenants unless Adjusted Excess Availability is less than 10% of the total commitments under the Credit Facility (currently \$20.0 million). The term "Adjusted Excess Availability" means, as of any given date, the excess (if any) of (a) the lesser of the total commitments under the Credit Facility and the Borrowing Base over (b) the outstanding credit extensions under the Credit Facility. If and during such time as Adjusted Excess Availability is less than such amount, the Credit Facility requires the Company to meet a minimum fixed charge coverage ratio (EBITDA less capital expenditures less cash taxes divided by cash interest expense and schedule payments of principal indebtedness) of 1.00 to 1.00.

In addition, the Credit Facility contains certain covenants that, among other things, restrict additional indebtedness, liens and encumbrances, loans and investments, acquisitions, dividends and other restricted payments, transactions with affiliates, asset dispositions, mergers and consolidations, prepayments or material amendments of other indebtedness and other matters customarily restricted in such agreements.

Cash Dominion

The Credit Facility also contains cash dominion provisions that apply in the event that the Company's Adjusted Excess Availability fails to meet certain thresholds or there is an event of default under the Credit Facility.

Events of Default

The Credit Facility contains customary events of default, including, without limitation, payment defaults, breaches of representations and warranties, covenant defaults, cross-defaults to certain other material indebtedness in excess of specified amounts, certain events of bankruptcy and insolvency, certain ERISA events, judgments in excess of specified amounts and change in control.

Certain of the lenders under the Credit Facility or their affiliates have provided, and may in the future provide, certain commercial banking, financial advisory, and investment banking services in the ordinary course of business for the Company, its subsidiaries and certain of its affiliates, for

[Table of Contents](#)

which they receive customary fees and commissions.

The foregoing description of the Credit Facility does not purport to be complete and is qualified in its entirety by reference to the credit agreement constituting the Credit Facility, which is attached hereto as [Exhibit 10.1](#).

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 9.01. FINANCIAL STATEMENTS AND EXHIBITS.

(d) Exhibits

The following exhibits are filed or furnished herewith as noted above:

Exhibit Number	Description
10.1	Amended and Restated Credit Agreement, dated as of December 1, 2006, by and among Genesco Inc., certain subsidiaries of Genesco Inc. party thereto, as Other Borrowers, the lenders party thereto and Bank of America, N.A., as Administrative Agent.

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: December 5, 2006

By: /s/ Roger G. Sisson

Name: Roger G. Sisson

Title: Vice President, Secretary and General Counsel

EXHIBIT INDEX

<u>No.</u>	<u>Exhibit</u>
10.1	Amended and Restated Credit Agreement, dated as of December 1, 2006, by and among Genesco Inc., certain subsidiaries of Genesco Inc. party thereto, as Other Borrowers, the lenders party thereto and Bank of America, N.A., as Administrative Agent.

AMENDED AND RESTATED CREDIT AGREEMENT

dated as of
December 1, 2006

among

GENESCO INC.
a Borrower and the Lead Borrower,
GENESCO BRANDS, INC., HAT WORLD CORPORATION,
HAT WORLD, INC., FLAGG BROS. OF PUERTO RICO, INC.
as the Other Borrowers,

The LENDERS Party Hereto,

BANK OF AMERICA, N.A. and LASALLE BANK, NATIONAL ASSOCIATION
as Issuing Banks,

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

LASALLE BANK, NATIONAL ASSOCIATION and WELLS FARGO FOOTHILL, LLC, as
Co-Syndication Agents,

NATIONAL CITY BUSINESS CREDIT, INC., U.S. BANK NATIONAL ASSOCIATION and
SUNTRUST BANK,
as Co-Documentation Agents,

and

BANC OF AMERICA SECURITIES LLC
as Sole Lead Arranger and Sole Bookrunner

TABLE OF CONTENTS

1. DEFINITIONS	2
1.1 Defined Terms	2
1.2 Terms Generally	33
1.3 Accounting Terms	33
2. AMOUNT AND TERMS OF CREDIT	34
2.1 Commitments of the Lenders	34
2.2 Reserves; Changes to Reserves	36
2.3 Making of Loans	37
2.4 Overadvances	38
2.5 Swingline Loans	38
2.6 Letters of Credit	39
2.7 Settlements Among Lenders	43
2.8 Notes; Repayment of Loans	44
2.9 Interest on Loans	45
2.10 Default Interest	45
2.11 Certain Fees	46
2.12 Unused Commitment Fee	46
2.13 Letter of Credit Fees	46
2.14 Nature of Fees	47
2.15 Termination or Reduction of Commitments	47
2.16 Alternate Rate of Interest	47
2.17 Conversion and Continuation of Loans	48
2.18 Mandatory Prepayment; Cash Collateral; Commitment Termination	49
2.19 Optional Prepayment of Loans; Reimbursement of Lenders	50
2.20 Maintenance of Loan Account; Statements of Account	51
2.21 Cash Receipts	52
2.22 Application of Payments	54
2.23 Increased Costs	55
2.24 Change in Legality	56
2.25 Payments; Sharing of Setoff	57
2.26 Taxes	58
2.27 Security Interests in Collateral	60
2.28 Mitigation Obligations; Replacement of Lenders	60
3. REPRESENTATIONS AND WARRANTIES	61
3.1 Organization; Powers	61
3.2 Authorization; Enforceability	61
3.3 Governmental Approvals; No Conflicts	62
3.4 Financial Condition	62
3.5 Properties	62
3.6 Litigation and Environmental Matters	62
3.7 Compliance with Laws and Agreements	63
3.8 Investment Company or Holding Company Status	63

3.9 Taxes	63
3.10 ERISA	63
3.11 Interdependence of Credit Parties	64
3.12 Disclosure	64
3.13 Subsidiaries	64
3.14 Insurance	65
3.15 Labor Matters	65
3.16 Certain Transactions	65
3.17 Restrictions on the Credit Parties	65
3.18 Security Documents	66
3.19 Federal Reserve Regulations	66
3.20 Solvency	66
3.21 Franchises, Patents, Copyrights, Etc.	66
3.22 Designation as “Designated Senior Indebtedness”	66
4. CONDITIONS	67
4.1 Closing Date	67
4.2 Conditions Precedent to Each Loan and Each Letter of Credit	70
5. AFFIRMATIVE COVENANTS	71
5.1 Financial Statements and Other Information	71
5.2 Notices of Material Events	73
5.3 Information Regarding Collateral	74
5.4 Existence; Conduct of Business	74
5.5 Payment of Obligations	74
5.6 Maintenance of Properties	75
5.7 Insurance	75
5.8 Casualty and Condemnation	76
5.9 Books and Records; Inspection and Audit Rights	76
5.10 Fiscal Year	77
5.11 Physical Inventories	77
5.12 Compliance with Laws	78
5.13 Use of Proceeds and Letters of Credit	78
5.14 Additional Subsidiaries	78
5.15 Further Assurances	79
6. NEGATIVE COVENANTS	79
6.1 Indebtedness	79
6.2 Liens	81
6.3 Fundamental Changes	82
6.4 Investments, Loans, Advances, Guarantees and Acquisitions	82
6.5 Asset Sales	83
6.6 Restrictive Agreements	84
6.7 Restricted Payments; Certain Payments of Indebtedness	85
6.8 Transactions with Affiliates	85
6.9 Additional Subsidiaries	85
6.10 Amendment of Material Documents	85

6.11 Fixed Charge Coverage Ratio	86
6.12 Environmental Laws	86
6.13 Fiscal Year	86
7. EVENTS OF DEFAULT	86
7.1 Events of Default	86
7.2 When Continuing	89
7.3 Remedies on Default	89
7.4 Application of Proceeds	90
8. THE AGENTS	90
8.1 Administration by Administrative Agent	90
8.2 The Collateral Agent	90
8.3 Sharing of Excess Payments	91
8.4 Agreement of Required Lenders	91
8.5 Liability of Agents	91
8.6 Notice of Default	93
8.7 Lenders' Credit Decisions	93
8.8 Reimbursement and Indemnification	93
8.9 Rights of Agents	94
8.10 Notice of Transfer	94
8.11 Successor Agent	94
8.12 Reports and Financial Statements	94
8.13 Delinquent Lender	94
8.14 Co-Syndication Agents and Co-Documentation Agents	95
9. MISCELLANEOUS	95
9.1 Notices	95
9.2 Waivers; Amendments	96
9.3 Expenses; Indemnity; Damage Waiver	98
9.4 Designation of Lead Borrower as Borrowers' Agent	100
9.5 Successors and Assigns	101
9.6 Survival	103
9.7 Counterparts; Integration; Effectiveness	103
9.8 Severability	104
9.9 Right of Setoff	104
9.10 Governing Law; Jurisdiction; Consent to Service of Process	104
9.11 WAIVER OF JURY TRIAL	105
9.12 Headings	105
9.13 Interest Rate Limitation	105
9.14 Additional Waivers	105
9.15 Confidentiality	107
9.16 Release of Collateral and Guaranty Obligations	107
9.17 Amendment and Restatement	108
9.18 Commitments	109
9.19 USA Patriot Act Notice	109

EXHIBITS

- A Form of Assignment and Acceptance
- B-1 Form of Revolving Note
- B-2 Form of Swingline Note
- C Form of Facility Guaranty
- D Form of Borrowing Base Certificate
- E Form of Compliance Certificate
- F Closing Agenda
- G. Form of DDA Notification

SCHEDULES

1.1	Lenders and Commitments
2.6(j)	Existing Letters of Credit
2.21(b)	Credit Card Arrangements
2.21(c)	Concentration Accounts and Investment Accounts
3.5(b)	Properties
3.6	Litigation and Environmental Matters
3.9	Taxes
3.10	ERISA
3.13	Subsidiaries
3.14	Insurance
3.16	Certain Transactions
3.21	Franchises, Patents, Copyrights, etc.
5.1(i)	Financial Reporting Requirements
6.1	Indebtedness
6.2	Liens
6.4	Investments, Loans, Advances, Guarantees and Acquisitions

This AMENDED AND RESTATED CREDIT AGREEMENT is dated as of December 1, 2006 (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 Borrower and the Lead Borrower (as hereinafter defined); the Other Borrowers (as defined below); the LENDERS party hereto; BANK OF AMERICA, N.A., a national banking association having a place of business at 40 Broad Street, Boston, Massachusetts 02109, Administrative Agent for the Lenders, Collateral Agent for the Secured Parties (as each such term is hereinafter defined) and an Issuing Bank (as hereinafter defined); and LASALLE BANK, NATIONAL ASSOCIATION, as Co-Syndication Agent and as an Issuing Bank; WELLS FARGO FOOTHILL, LLC, as Co-Syndication Agent; and NATIONAL CITY BUSINESS CREDIT, INC., U.S. BANK NATIONAL ASSOCIATION and SUNTRUST BANK, as Co-Documentation Agents.

WITNESSETH:

WHEREAS, the Borrowers have requested that the Lenders make available to the Borrowers, as co-borrowers, a revolving credit facility (including a letter of credit sub-facility) in an initial maximum amount not to exceed \$200,000,000, 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 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 Borrowers have requested that the Agent 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, 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 the Existing Financing Agreements pursuant to which the Lenders provided the Lead Borrower with certain financial accommodations to which the Lead Borrower and the Other Borrowers (other than Flagg Bros. of Puerto Rico, Inc.) were jointly and severally liable to the Administrative Agent and the Lenders for the Existing Obligations pursuant to the terms of the Existing Credit Agreement and the other Existing Financing Agreements;

WHEREAS, by this Agreement, each Borrower (other than Flagg Bros. of Puerto Rico, Inc.) desires to acknowledge and reaffirm the Existing Obligations pursuant to the Existing

Financing Agreements (as modified and restated hereby) and acknowledge their continuing liabilities to the Agents and Lenders thereunder (as modified and restated hereby) in order to induce the Lenders to continue to make such loans, advances and financial accommodations to the Borrowers; and

WHEREAS, Flagg Bros. of Puerto Rico, Inc. desires to join as a co-obligor in respect of the Existing Obligations pursuant to the Existing Financing Agreements (as modified and restated hereby) and join in the continuing liabilities to the Agents and Lenders thereunder (as modified and restated hereby) in order to induce the Lenders to continue to make such loans and advances and financial accommodations to the Borrowers;

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 Lenders, the Administrative Agent, the Collateral Agent, the Co-Syndication Agents, the Co-Documentation Agents, and the Borrowers hereby agree as follows::

1. DEFINITIONS.

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

“**ACH**” shall mean automated clearing house transfers.

“**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, which agreements shall be in form and substance reasonably satisfactory to the Administrative Agent.

“**Accounts**” shall mean “**accounts**” as defined in the UCC, 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) a policy of insurance issued or to be issued; (iv) 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.

“**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. Account Reserves shall be established and calculated in a manner and methodology consistent with the Administrative Agent’s practices as of the Closing Date with other similarly situated borrowers.

“**Act**” has the meaning provided therefor in Section 9.19.

“**Additional Commitment Lender**” has the meaning provided therefor in Section 2.1(c).

“**Adjusted Excess Availability**” means, as of any date of determination, the excess, if any, of (a) the lesser of (i) the Total Commitments and (ii) the Borrowing Base, over (b) the outstanding Credit Extensions.

“**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.

“**Administrative Agent**” means Bank of America, in its capacity as administrative agent for the Lenders hereunder.

“**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 10% 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 10% 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 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 quarter covered by the quarterly or annual financial statement most recently required to be delivered to the Administrative Agent pursuant to Section 5.1(a) and 5.1(b) or, following the occurrence and during the continuance of a Cash Dominion Event, the period of twelve (12) fiscal months ended as of the end of the last fiscal month covered by the financial statement most recently required to be delivered pursuant to Section 5.1(f).

“**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 Margin**” means the rates for Prime Rate Loans and LIBO Loans set forth below:

Level	Excess Availability	LIBOR Margin	Prime Rate Margin	Commitment Fee
I	<\$40,000,000	1.50%	0.00%	0.25%
II	³ \$40,000,000 and <\$80,000,000	1.25%	0.00%	0.25%
III	³ \$80,000,000 and <\$120,000,000	1.00%	0.00%	0.25%
IV	³ \$120,000,000	0.75%	0.00%	0.25%

Initially, as of the Closing Date Level III pricing will be applicable. Thereafter, the Applicable Margin shall be subject to adjustment each fiscal quarter commencing February 4, 2007, based upon (A) the calculation of the average daily Excess Availability during the immediately preceding fiscal quarter as determined by the Administrative Agent, and (B) in the case of Level IV and in the event average daily Excess Availability during the immediately preceding fiscal quarter equals or exceeds \$120,000,000, the maintenance by the Borrowers of Consolidated EBITDA for the most recently ended Applicable Fiscal Period that is equal to or greater than \$160,000,000. Average daily Excess Availability shall be determined based upon Borrowing Base Certificate(s) received by the Administrative Agent pursuant to Section 5.1(e) and Consolidated EBITDA shall be determined based upon the most recent financial statements received by the Administrative Agent pursuant to Sections 5.1(a), 5.1(b), or 5.1(f) as applicable. In the event that the Borrowers fail to timely deliver financial statements in accordance with Sections 5.1(a), 5.1(b), or 5.1(f), as applicable, during a period in which the Borrowers are afforded Level IV pricing, the Applicable Margin for such fiscal quarter shall be adjusted based solely upon the calculation of the average daily Excess Availability and, in the event that average daily Excess Availability for such fiscal quarter is equal to or greater \$120,000,000, the Applicable Margin shall nonetheless be set at Level III pricing.

Notwithstanding the foregoing (A) Level IV pricing above will only be accessible to the Borrowers (i) from and after December 1, 2007 and (ii) at such times that the Borrowers have achieved the requisite average daily Excess Availability and have maintained Consolidated EBITDA for the most recently ended Applicable Fiscal Period equal to or greater than \$160,000,000, and (B) upon the occurrence of an Event of Default, at the option of the Administrative Agent or at the direction of the Required Lenders, interest shall be determined in the manner set forth in Section 2.10.

“**Appraised Value**” means the net appraised orderly liquidation value of the Borrowers’ Inventory as set forth in the Borrowers’ inventory stock ledger as determined from time to time by the Administrative Agent with the assistance of an independent appraiser satisfactory to the Administrative Agent.

“**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 9.5), and accepted by the Administrative Agent, in the form of Exhibit A or any other form approved by the Administrative Agent.

“**Availability Reserves**” means such reserves 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 to reflect the impediments to the Agents’ ability to realize upon the Collateral, but without duplication of any Account Reserves or Inventory Reserves. Without limiting the generality of the foregoing, Availability Reserves may include (but are not limited to) reserves based on (i) rent; (ii) Customer Credit Liabilities and (iii) outstanding taxes and other governmental charges, including, ad valorem, real estate, personal property, and other taxes which might have priority over the interests of the Collateral Agent in the Collateral. Availability Reserves shall be established and calculated in a manner and methodology consistent with the Administrative Agent’s practices as of the Closing Date with other similarly situated borrowers.

“**Bank of America**” shall mean Bank of America, N.A., a national banking association.

“**Bank of America Concentration Account**” has the meaning provided therefor in Section 2.21(d).

“**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.

“**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.

“**Borrowers**” means, individually and collectively, the Lead Borrower, the Other Borrowers and any other Person who subsequently becomes a Borrower hereunder.

“**Borrowing**” shall mean the incurrence of (a) Loans of a single Type, on a single date and having, in the case of LIBO Loans, a single Interest Period, or (b) a Swingline Loan.

“**Borrowing Base**” means, at any time of calculation, an amount equal to:

(a) the Inventory Advance Rate *multiplied by* (i) the Appraised Value of Eligible Inventory, minus (ii) Inventory Reserves; plus

(b) eighty-five (85%) percent *multiplied by* (i) the then Eligible Wholesale Receivables, minus (ii) Account Reserves related to Eligible Wholesale Receivables; plus

(c) eighty-five (85%) percent *multiplied by* (i) the then Eligible Credit Card and Debit Card Receivables, minus (ii) Account Reserves related to Eligible Credit Card and Debit Card Receivables; minus

(d) the then amount of all Availability Reserves.

“**Borrowing Base Certificate**” has the meaning assigned to such term in Section 5.1(e).

“**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 2.18(c).

“**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, provided that, when used in connection with a 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.

“**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, however, that expenditures for or in respect of a Permitted Acquisition shall not constitute Capital Expenditures.

“**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 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**”.

“**Cash Dominion Event**” means either (i) the occurrence and continuance of any Event of Default, or (ii) the failure of the Borrowers to maintain Adjusted Excess Availability in an amount equal to not less than \$30,000,000. For purposes of this Agreement, the occurrence of a Cash Dominion Event shall be deemed continuing (i) so long as such Event of Default continues and has not been waived by the Administrative Agent, or (ii) if the Cash Dominion Event arises as a result of the Borrowers’ failure to maintain Adjusted Excess Availability in an amount equal

to \$30,000,000, until such time as (x) the Borrowers maintain \$30,000,000 in Adjusted Excess Availability for twenty-five (25) consecutive Business Days, and (y) the Administrative Agent receives a written request from the Borrowers to terminate the Cash Dominion Event, at which time such Cash Dominion Event shall be deemed to have been cured for purposes of this Agreement; provided that no Cash Dominion Event shall be curable after the occurrence of three (3) Cash Dominion Events during the term of this Agreement. Notwithstanding the foregoing, in the event that there are no Obligations outstanding, a Cash Dominion Event shall be deemed not to have occurred and be continuing and/or shall be deemed cured for purposes of this Agreement and the other Loan Documents.

“**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 (as such term is 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%)), or (d) there occurs a “Change in Control” (or any comparable term) under and as determined in the Convertible Note Indenture, which in accordance therewith gives each Convertible Noteholder the right to require the Lead Borrower to repurchase the Convertible Notes held by such Person.

“**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 Banks (or, for purposes of Section 2.23, by any lending office of such Lender or by such Lender’s or any 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).

“**Charges**” has the meaning provided therefor in Section 9.13.

“**Chattel Paper**” has the meaning ascribed to such term in the UCC.

“Closing Date” means the date on which the conditions specified in Section 4.1 are satisfied (or waived by the Agents).

“Closing Projections” shall mean a business plan for the Borrower Consolidated Group including without limitation financial projections prepared on an annual basis for each of the fiscal years ended February 3, 2007 through and including January 29, 2011, in each case including a projected balance sheet, a projected statement of income and a projected statement of cash flows and in each case in form and substance satisfactory to the Agents.

“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 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.

“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 commitment of such Lender hereunder in the amount set forth opposite its name on Schedule 1.1 hereto or as may subsequently be set forth in the Register from time to time, 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).

“Commitment Fee” has the meaning provided therefor in Section 2.12.

“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 each Lender, that percentage of the Commitments of all Lenders hereunder in the amount set forth opposite its name on Schedule 1.1 hereto or as may subsequently be set forth in the Register from time to time, 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 the Bank of America Concentration Account 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 twelve fiscal month 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. Each calculation of Consolidated EBITDA under this Agreement shall be made for the twelve fiscal month period ending on the date of such calculation.

“**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 Domestic 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 Domestic 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 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.

“**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 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.

“Convertible Notes Indenture” means that Indenture dated as of June 24, 2003 by and among the Lead Borrower and The Bank of New York, as trustee for the holders of the Convertible Notes, as such Indenture may be amended, modified, restated or supplemented in accordance with the Agreement.

“Convertible Notes” means the 4.125% Convertible Subordinated Debentures due 2023 issued by the Lead Borrower pursuant to the Convertible Notes Indenture, as such Convertible Notes may be amended, modified, restated or supplemented and in effect from time to time.

“Credit Card Notifications” has the meaning provided therefor in Section 2.21(a).

“Credit Extensions” as of any day, shall be equal to the sum of (a) the principal balance of all Loans then outstanding, and (b) the then amount of the Letter of Credit Outstandings.

“Credit Parties” shall mean, collectively, (i) the Borrowers (ii) the Facility Guarantors, if any, and (a) each of the Material Domestic Subsidiaries of the Borrowers in existence from time to time (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 and customer deposits of the Borrowers.

“DDA” means any checking or other demand deposit account maintained by any Borrower.

“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, the Bankruptcy Code and all other applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief laws 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 8.13.

“Delinquent Lender’s Future Commitment” has the meaning given that term in Section 8.13.

“Dollars” or **“\$”** refers to lawful money of the United States of America.

“Domestic Subsidiary.” means any Subsidiary other than a Foreign Subsidiary.

“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 reasonable discretion, as arise in the ordinary course of business, that have been earned by performance and are deemed by the Administrative Agent in its reasonable discretion to be eligible for inclusion in the calculation of the Borrowing Base. Without limiting the foregoing, unless the Administrative Agent otherwise agrees, none of the following shall be deemed to be Eligible Credit Card 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 Secured Parties and Permitted Encumbrances for which the Administrative Agent, in its Permitted Discretion, has established 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 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, in its Permitted Discretion, has established 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 Wholesale Inventory, (e) Eligible Underground Station Inventory and (f) 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 reasonable discretion to be eligible for inclusion in the calculation of the Borrowing Base. 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 (including any portion thereof in transit from vendors) 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);

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

(i) Inventory which is acquired in a Permitted Acquisition or which is owned by a Borrower created after the Closing 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.

“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 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 and/or the Johnston & Murphy wholesale operations of the Borrowers and which would otherwise constitute Eligible Inventory.

“Eligible Wholesale Receivables” shall mean each Account arising in the ordinary course of business of the Borrowers from the sale of finished goods inventory or rendering of services by the Borrowers to wholesale customers unless:

(a) it is not subject to a valid perfected first priority security interest in favor of the Collateral Agent, for the benefit of the Agents and the Lenders, 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 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 original invoice date;

(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 original invoice date;

(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 do not 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 that have their principal place of business or chief executive offices outside the continental United States;

(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 has been reduced to judgment;

(l) the applicable Account Debtor for such Account is any Governmental Authority, unless 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, and 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 Accounts do 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; or

(aa) 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.

“**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 unless and until that Event of Default has been duly waived by the Administrative Agent in writing or cured to the reasonable satisfaction of the Administrative Agent.

“**Excess Availability**” means, as of any date of determination, the excess, if any, of (a) the Borrowing Base, over (b) the outstanding Credit Extensions.

“**Excluded Taxes**” means, with respect to the Agents, any Lender, the Issuing Banks 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 or former connection between such Agent, Lender or 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, Lender or 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 and (c) in the case of a Foreign 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.

"Existing Credit Agreement" shall mean the Credit Agreement dated as of April 1, 2004, as amended, by and among Genesco Inc. and certain of its Subsidiaries, 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.

"Existing Obligations" shall mean all Obligations, as defined in the Existing Credit Agreement.

"Facility Guarantors" means any Material Domestic Subsidiary that is not a Borrower.

"Facility Guaranty" means the Guaranty executed by the Facility Guarantors, if any, in favor of the Agents, the Issuing Banks and the Lenders substantially in the form of Exhibit C hereto.

"Federal Funds Effective Rate" means, for any day, 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 Lead Borrower and the Administrative Agent dated as of September 21, 2006, 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.

"Fixed Charge Coverage Ratio" means, as of the last day of any fiscal month, for the Lead Borrower on a Consolidated basis for the twelve-month 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 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 but excluding principal payments to be made by the Lead Borrower following the Lead Borrower's call of the Convertible Notes pursuant to the Convertible Notes Indenture; provided that, at all times during the period following the call to the closing of the exchange of the Convertible Notes for the Lead Borrower's common stock, the trading price of the Lead Borrower's common stock exceeds the exchange price.

“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.

“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.

“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, any other nation or any political subdivision thereof, whether state or local, 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.

“**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, and (k) 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. To the extent that the rights and remedies of the obligee of any Indebtedness are limited to certain property and are otherwise non-recourse to such Person, the amount of such Indebtedness shall be limited to the value of the Person’s interest in such property (valued at the higher of book value or market value as of such date of determination).

“Indemnified Taxes” means Taxes other than Excluded Taxes.

“Indemnitee” has the meaning provided therefor in Section 9.3(b).

“Instrument” has the meaning ascribed to such term in the UCC.

“Interest Payment Date” means (a) with respect to any Prime Rate Loan (including a Swingline Loan), the first day of each calendar month, and (b) with respect to any LIBO 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 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, 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 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 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 85% 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.

“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 Closing 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 Closing Date and thereafter opened by any of the Credit Parties and consented to by the Administrative Agent.

"Issuing Bank" or "Issuing Banks" means each of LaSalle Bank, N.A., Bank of America and any other non-defaulting Lender selected by the Lead Borrower, in the capacity of an issuer of Letters of Credit hereunder, and who is in compliance with Section 2.6(k), and any successor to such banks reasonably acceptable to the Administrative Agent in such capacity, provided, that, following the occurrence and during the continuance of an Event of Default, Bank of America shall be the sole Issuing Bank with respect to each Letter of Credit issued thereafter. Each Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such Issuing Bank, in which case the term **"Issuing Banks"** 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 Facility Guarantor, as the Administrative Agent may determine.

"L/C Disbursement" means a payment made by an Issuing Bank pursuant to a Letter of Credit.

"Lead Arranger" means Banc of America Securities LLC.

"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.

"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 9.5(b).

"Letter of Credit" shall mean a Standby Letter of Credit or Commercial Letter of Credit that is (i) issued pursuant to this Agreement for the account of any Borrower or any Facility Guarantor, (ii) issued in connection with the purchase of Inventory by any Borrower or any Facility Guarantor or for any other purpose that is reasonably acceptable to the Administrative Agent, and (iii) in form and substance reasonably satisfactory to the applicable Issuing Bank.

"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, at any time, the sum of (a) with respect to 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 Letters of Credit for which the applicable Issuing Bank has not then been reimbursed.

“**LIBO Borrowing**” shall mean a Borrowing comprised of 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, with respect to any LIBO Borrowing for any Interest Period, a rate per annum determined on the basis of the offered rates for deposits in Dollars, for a period of time comparable to such Interest Period, which appears on the Telerate page 3750 as of 11:00 a.m. (London time) on the day that is two Business Days preceding the first day of such Interest Period; provided, however, if the rate described above does not appear on the Telerate System on any applicable interest determination date, the LIBO Rate shall be the rate (rounded upwards, if necessary, to the nearest one hundred thousandth of a percentage point) determined on the basis of the offered rates for deposits in Dollars for a period of time comparable to such Interest Period which are offered to the Administrative Agent by four major banks in the London interbank market at approximately 11:00 a.m. (London time), on the day that is two Business Days preceding the first day of such Interest Period as selected by the Administrative Agent. The principal London office of each of the four major London banks will be requested to provide a quotation of its Dollar deposit offered rate to the Administrative Agent. If at least two such quotations are provided, the rate for that date will be the arithmetic mean of the quotations. If fewer than two quotations are provided as requested, the rate for that date will be determined on the basis of the rates quoted for loans in Dollars to leading European banks for a period of time comparable to such Interest Period offered by major banks in New York, New York at approximately 11:00 a.m. (New York time), on the day that is two Business Days preceding the first day of such Interest Period.

“**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.

“**Loan Account**” has the meaning assigned to such term in Section 2.20(a).

“**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 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.

“**Loans**” shall mean all loans (including, without limitation, Revolving Loans and Swingline Loans) at any time made to the Borrowers or for account of the Borrowers pursuant to this Agreement.

“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 or the Lenders hereunder or thereunder.

“Material Domestic Subsidiary” means, as of any date of determination, any 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 Subsidiary” shall include, without limitation, any Subsidiary whose principal assets are one or more Material 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 \$3,000,000.

“Material Subsidiary” means a Material Domestic Subsidiary or a Material Foreign Subsidiary.

“Maturity Date” means December 1, 2011.

“Maximum Rate” has the meaning provided therefor in Section 9.13.

“**Minority Lenders**” has the meaning provided therefor in Section 9.2(c).

“**Moody’s**” means Moody’s Investors Service, Inc.

“**Multiemployer Plan**” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“**Noncompliance Notice**” has the meaning provided therefor in Section 2.5(b).

“**Notes**” shall mean (i) promissory notes of the Borrowers substantially in the form of Exhibit B-1, payable to the order of Lenders requesting same as herein provided, evidencing the Revolving Loans, and (ii) the promissory note of the Borrowers substantially in the form of Exhibit B-2, payable to the Swingline Lender if requested by the Swingline Lender, evidencing the Swingline Loans.

“**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 or state 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 or the Lead Arranger under this Agreement and the other Loan Documents, (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 or depository service or letter of credit provided by any such Person, (ii) any debt or credit card products provided by any such Person, or (iii) any investment, Hedging Agreement or other banking or financial services provided by any such Person.

“**Other 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; and any other Material Domestic Subsidiary that is not a Facility Guarantor.

“**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 exceed the lesser of (a) the Total Commitments or (b) the Borrowing Base.

“**Participant**” has the meaning provided therefore in Section 9.5(e).

“Patent Security Agreement” shall mean the Patent Security Agreement dated as of the date hereof and executed and delivered by the Borrowers to the Collateral Agent for the benefit of the Secured Parties.

“Payment Conditions” means, as of the date of the making of a Restricted Payment or consummation of an Acquisition, as applicable, 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 Adjusted Excess Availability equal to or greater than \$50,000,000, after giving effect to such Restricted Payment or Acquisition *or* (ii) (A) the Borrowers have Adjusted Excess Availability equal to or greater than \$30,000,000 but less than \$50,000,000, after giving effect to the Restricted Payment or Acquisition, *and* (B) the Fixed Charge Coverage Ratio shall be equal to or greater than 1.00 to 1.00 for the Applicable Fiscal Period computed on a pro forma basis in accordance with Section 503(d) of SEC Regulation S-K, after giving effect to such Restricted Payment or Acquisition *and* (c) after giving effect to such Restricted Payment or consummation of such Acquisition, the Borrowers are Solvent. In the event that the aggregate amount of any Restricted Payments or consideration paid by the Borrowers in connection with an Acquisition or a series of related Acquisitions could equal or exceed \$5,000,000 during any consecutive thirty (30) day period, then the Borrowers shall provide a certificate signed by a Financial Officer, no earlier than ten (10) days and no later than five (5) days prior to the date of such payment or consummation of such transaction (or the first such payment or transaction, if in connection with a series of payments or transactions) certifying as to the satisfaction of the applicable Payment Conditions 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, and to the extent not previously delivered.

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“Perfection Certificate” means a certificate of the Borrowers in the form approved by the Collateral Agent as to certain matters regarding the Collateral.

“Permitted Acquisition” means the acquisition of not less than eighty percent (80%) of the capital stock of, or the acquisition 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 (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 Facility Guarantor 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 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) Each applicable Payment Condition shall have been satisfied; and
- (vi) In the case of the Acquisition of capital stock 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 Liens thereon in favor of the Secured Parties or the amount which the Collateral Agent and the 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 the Administrative 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;

(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) Liens arising in favor of The Bank of New York, as trustee (together with any successor thereto, the "Trustee"), under Section 7.07 of the Convertible Notes Indenture; provided that such Liens shall be limited only to property and funds held by the Trustee and such liens shall secure only the Lead Borrower's obligation to pay reasonable compensation to the Trustee for its services under the Convertible Notes Indenture, reasonable costs and expenses of the Trustee in connection with the performance of such services and indemnification of the Trustee with respect to the performance of such services under the Convertible Notes Indenture;

(xi) 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;

(xii) 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;

(xiii) Liens deemed to exist in connection with Investments in repurchase agreements permitted under Section 6.4; and

(xiv) Liens of a collecting bank arising under Section 4-210 of the UCC on items in the course of collection.

provided that, except as provided in any one or more of clauses (i) through (xiv) 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 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), 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 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, 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 Administrative Agent 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 Borrowing Base in the aggregate outstanding at any time or (ii) 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 “inadvertent Overadvances” (i.e. where an Overadvance results from changed circumstances beyond the control of the Administrative Agent such as a reduction in the collateral value), and 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 (including any Overadvance or proposed Overadvance) would exceed the Total Commitments.

“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.

“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, 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 of initially, the Borrowers 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 of all Foreign Subsidiaries is pledged to the Collateral Agent (in each case, other than Subsidiaries that are not directly or indirectly wholly owned by such Borrower) as security for the Obligations.

“Post Closing DDA” means any DDA (other than a store-level DDA) opened after the Closing Date.

“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 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 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.

“Prime Rate Loan” shall mean any Loan bearing interest at a rate determined by reference to the Prime Rate in accordance with the provisions of Section 2.3.

“Proceeds” shall have the meaning ascribed to it in the UCC, and shall include proceeds of all Collateral.

“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 9.5(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 Letters of Credit aggregate greater than 50% of all such Loans and Letters of Credit Outstanding, 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 8.13 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 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 of any of the Credit Parties or any option, warrant or other right to acquire any such shares of capital stock 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

(including, without limitation, any amounts due and payable in respect of the Convertible Notes at their stated maturity or as a consequence of the exercise of any right or obligation of the Lead Borrower to purchase or redeem the Convertible Notes pursuant to any of the provisions of Article 3 or Article 10 of the Convertible Notes Indenture).

“**Revolving Loans**” means all 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.

“**SEC**” means the United States Securities and Exchange Commission.

“**Secured Parties**” has the meaning assigned to such term in the Security Agreement.

“**Security Agreement**” means the Amended and Restated Security Agreement dated as of the date hereof and executed and delivered by each of the 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 Agreement, the Facility Guaranty (if any), 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.

“**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.

“**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.

"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 Borrowers pursuant to Section 2.5 hereof.

"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.

"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).

"Total Commitments" shall mean, at any time, the sum of the Commitments at such time.

"Trademark Security Agreement" shall mean the Trademark Security Agreement dated as of the date hereof and executed and delivered by the Borrowers to the Collateral Agent for the ratable benefit of the Secured Parties.

"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 or the Prime Rate.

"UCC" shall mean the Uniform Commercial Code as in effect from time to time in the State of New York.

"Unused Commitment" shall mean, on any day, (a) the then Total Commitments minus (b) the sum of (i) the principal amount of Loans then outstanding (including the principal amount of Swingline Loans then outstanding), and (ii) the then Letter of Credit Outstandings.

“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.** 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 Administrative Agent 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 Administrative Agent or any of the Lenders merely on account of the Administrative Agent’s or any Lender’s involvement in the preparation of such documents.

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 Closing Date, on a basis consistent with the financial statements referred to in Section 4.1(h) 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.

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 participations in Letters of Credit 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 Borrowing Base or (y) the Total Commitments, subject to the following limitations:

(i) The aggregate outstanding amount of the Credit Extensions shall not at any time exceed the lower of (i) (x) the Total Commitments, or (y) such lesser amount to which the Total Commitments have then been decreased by the Borrowers pursuant to Section 2.15 and subject to adjustment as provided in Section 2.1(c), or (ii) the then current amount of the Borrowing Base.

(ii) No Lender shall be obligated to issue any Letter of Credit, and Letters of Credit shall be available from the Issuing Banks, subject to the ratable participation of all Lenders, as set forth in Section 2.6. The aggregate Letter of Credit Outstandings shall not at any time exceed \$70,000,000.

(iii) 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, however, shall be made to the Borrowers after the Termination Date.

(b) Each Borrowing of Revolving Loans (other than Swingline Loans) shall be made by the Lenders pro rata in accordance with their respective Commitment Percentages. The failure of any Lender to make any Loan shall neither relieve any other Lender of its obligation to fund its Loan in accordance with the provisions of this Agreement nor increase the obligation of any such other Lender.

(c) 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 by an additional amount of no more than \$100,000,000. Any such request shall be first made to all existing Lenders on a pro rata basis. 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 Banks and the Lead Borrower (which approval shall not be unreasonably withheld). Each Commitment Increase shall be in a minimum amount of \$25,000,000 and integral multiples of \$5,000,000 above such amount. No Commitment Increase shall become effective unless and until each of the following conditions have been satisfied:

(i) 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;

(ii) 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;

(iii) 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;

(iv) 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;

(v) 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

(vi) 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) The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Commitment Increase (with each date of such effectiveness being referred to herein as a "**Commitment Increase Date**"), 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 date of this Agreement 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 Borrowing Base): 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, which would have a Lien senior to the Liens of the Collateral Agent.

(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 which provides a lien for landlords which may have priority over the Collateral Agent's Lien (except for those locations for which the Agents have received a landlord's waiver satisfactory in form to the Agents).

(b) The Administrative Agent may hereafter, establish additional Reserves or change any of the foregoing Reserves, in the exercise of the Permitted Discretion of the Administrative Agent.

2.3 **Making of Loans.**

(a) Except as set forth in Sections 2.16 and 2.24, Loans (other than Swingline Loans) by the Lenders shall be either Prime Rate Loans or LIBO Loans as the Lead Borrower on behalf of the Borrowers may request subject to and in accordance with this Section 2.3, and all Swingline Loans shall be only Prime Rate Loans. 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 may be outstanding at any time.

(b) The Lead Borrower shall give the Administrative Agent three (3) Business Days' prior telephonic notice (thereafter confirmed in writing) of each LIBO Borrowing and prior telephonic notice on the same Business Day of each Borrowing of Prime Rate Loans. Any such 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 in the case of LIBO Loans prior to, and by 11:00 a.m. on the same Business Day in the case of Prime Rate Loans prior to, 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 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 Prime Rate Loans or LIBO Loans and, if LIBO 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, 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 Prime Rate Loans. The Administrative Agent 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 office of the Administrative Agent at 40 Broad Street, Boston, Massachusetts 02109, no later than 2:00 p.m., New York time, in immediately available funds. Unless the Administrative Agent 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 such Lender's share of such Borrowing, the

Administrative Agent may assume that such Lender has made such share available on such date in accordance with this Section and may, in reliance upon such assumption, make available to the Borrowers a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrowers severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrowers to but excluding the date of payment to the Administrative Agent, at (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 Prime Rate Loans. If such Lender pays such amount to the Administrative Agent, 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 shall disburse such funds in the manner specified in the notice of borrowing delivered by the Lead Borrower and shall use commercially reasonable efforts to make the funds so received from the Lenders available to the Borrowers no later than 3:00 p.m., New York time.

(c) The Administrative Agent, without the request of the Lead 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. 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 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 Prime Rate Loans.

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.

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 \$20,000,000 in the aggregate outstanding at any time consisting of only 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). 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 9.2. 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 Non-Compliance 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 would exceed the limitation set forth in Section 2.1(a)(i).

2.6 Letters of Credit.

(a) Upon the terms and subject to the conditions herein set forth, the Lead Borrower on behalf of the Borrowers, may request an 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, such 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 Letter of Credit Outstandings shall exceed \$70,000,000, or (ii) the aggregate Credit Extensions would exceed the limitation set forth in Section 2.1(a)(i); and provided, further, that no Letter of Credit shall be issued if such Issuing Bank shall have received notice from the Administrative Agent or the Required Lenders that the conditions to such issuance have not been met.

(b) 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).

(c) Drafts drawn under any Letter of Credit shall be reimbursed by the Borrowers in dollars on the same Business Day of any such payment thereof by the applicable Issuing Bank by paying to the Administrative Agent 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 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 Prime Rate Loan or a Swingline Loan in an equivalent amount and, to the extent so financed, the Borrowers' obligation to make such payment shall be discharged and replaced by the resulting Prime Rate Loan or Swingline Loan. Each 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 such Issuing Bank. Such Issuing Bank shall promptly notify the Administrative Agent and Borrower by telephone (confirmed by telecopy) of such demand for payment and whether such Issuing Bank has made or will make payment thereunder (which payment shall not be made until two (2) Business Days after such notice from such Issuing Bank to Borrower), provided that any failure to give or delay in giving such notice shall not relieve the Borrowers of their obligation to reimburse such Issuing Bank and the Lenders with respect to any such payment.

(d) If an Issuing Bank shall make any L/C Disbursement, then, unless the Borrowers shall reimburse such 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 such Issuing Bank therefor, at the rate per annum then applicable to Prime Rate Loans, provided that if the Borrowers fail to reimburse such 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 such Issuing Bank, except that interest accrued on and after the date of payment by any Lender pursuant to paragraph (f) of this Section to reimburse such Issuing Bank shall be for the account of such Lender to the extent of such payment.

(e) Immediately upon the issuance of any Letter of Credit by an Issuing Bank (or the amendment of a Letter of Credit increasing the amount thereof), and without any further action on the part of such Issuing Bank, such Issuing Bank shall be deemed to have sold to each Lender, and each such Lender shall be deemed unconditionally and irrevocably to have purchased from such Issuing Bank, without recourse or warranty, an undivided interest and participation, to the extent of such Lender's Commitment Percentage, 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

9.5, 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 an Issuing Bank under or in connection with a Letter of Credit issued by such Issuing Bank, if taken or omitted in the absence of gross negligence, bad faith or willful misconduct, shall not create for such Issuing Bank any resulting liability to any Lender.

(f) In the event that an Issuing Bank makes any L/C Disbursement and the Borrowers shall not have reimbursed such amount in full to such Issuing Bank pursuant to Section 2.6(c), such Issuing Bank shall promptly notify the Administrative Agent, which shall promptly notify each Lender of such failure, and each Lender shall promptly and unconditionally pay to the Administrative Agent for the account of such Issuing Bank the amount of such Lender's Commitment Percentage of such unreimbursed payment in dollars and in same day funds. If an Issuing Bank so notifies the Administrative Agent, and the Administrative Agent so notifies the Lenders prior to 11:00 a.m., New York time, on any Business Day, each such Lender shall make available to such Issuing Bank such Lender's Commitment Percentage of the amount of such payment on such Business Day in same day funds (or if such notice is received by the 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 Commitment Percentage of the amount of such payment available to such Issuing Bank, such Lender agrees to pay to such 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 for the account of such Issuing Bank at the Federal Funds Effective Rate. Each Lender agrees to fund its Commitment Percentage 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 an Issuing Bank its Commitment Percentage of any payment under any Letter of Credit shall neither relieve any Lender of its obligation hereunder to make available to such Issuing Bank its Commitment Percentage 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 an 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 Commitment Percentage, in all payments and collections thereafter received on account of such reimbursement obligation.

(g) Whenever any Borrower desires that an Issuing Bank issue a Letter of Credit (or amend, renew or extend an outstanding Letter of Credit), the Lead Borrower shall give to such Issuing Bank and the Administrative Agent 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 such Issuing Bank and 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 an Issuing Bank, the applicable Borrower shall also submit a letter of credit application on such Issuing Bank's standard form in connection with any request for the issuance, amendment, renewal or extension of a Letter of Credit.

(h) The obligations of the Borrowers to reimburse an 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 any 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 any Issuing Bank of any Letter of Credit issued by such 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 Lenders, the Issuing Banks 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 any Issuing Bank, provided that the foregoing shall not be construed to excuse an 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 such Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence, bad faith or willful misconduct on the part of an Issuing Bank (as finally determined by a court of competent jurisdiction), such 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, an 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.

(i) If any Event of Default shall occur and be continuing, on the Business Day that the Lead Borrower receives notice from the Administrative Agent or the Required Lenders demanding the deposit of cash collateral pursuant to this paragraph, the 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 as collateral for the payment and performance of the Obligations of the Borrowers under this Agreement. The Collateral Agent 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 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 to reimburse an 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 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 of the Borrowers under this Agreement.

(j) The Borrowers, the Administrative 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.

(k) Each 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 such Issuer (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.

2.7 Settlements Among Lenders.

(a) The Swingline Lender may (but shall not be obligated to), at any time, on behalf of the Borrowers (which hereby authorize the Swingline Lender to act in their behalf in that regard) request the Administrative Agent to cause the Lenders to make a Revolving Loan (which shall be a Prime Rate Loan) in an amount equal to such Lender's 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 Lender shall make available to the Administrative Agent 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 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 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 Lender shall not have so made its transfer to the Administrative Agent, such Lender agrees to pay to the Administrative Agent, forthwith on demand, such amount together with interest thereon for each day from such date until the date such amount is paid to the Administrative Agent at the Federal Funds Effective Rate.

(b) The amount of each Lender's 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 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: each Lender shall transfer to the Administrative Agent (as provided below), or the Administrative Agent shall transfer to each Lender, such amounts as are necessary to 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 by the Lenders 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. If and to the extent any Lender shall not have so made its transfer to the Administrative Agent, such Lender agrees to pay to the Administrative Agent, forthwith on demand, such amount together with interest thereon for each day from such date until the date such amount is paid to the Administrative Agent at the Federal Funds Effective Rate.

2.8 Notes; Repayment of Loans.

(a) The Credit Extensions 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 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, dated the Closing Date, in substantially the form attached hereto as Exhibit B-1 or Exhibit B-2, 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 Commitment (or, in the case of the Note evidencing the Swingline Loans, \$20,000,000).

(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 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, each 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 Prime Rate, plus the Applicable Margin for Prime Rate Loans.

(b) Subject to Section 2.10, 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.

(c) 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) upon any repayment or prepayment thereof (on the amount prepaid).

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, for the account of the Administrative Agent, 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.** The Borrowers shall pay to the Administrative Agent for the account of the Lenders in accordance with their respective Commitment Percentages, a commitment fee (the "**Commitment Fee**") computed at a rate per annum in accordance with the table set forth in the definition of "Applicable Margin" (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 Closing Date and ending on but excluding the Termination Date.

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.

The Commitment Fee accrued in any calendar quarter shall be payable on the first day of each calendar quarter, in arrears for the immediately preceding calendar quarter, commencing January 1, 2007, 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 based upon their Commitment Percentage.

2.13 **Letter of Credit Fees.** The Borrowers shall pay the Administrative Agent, for the account of the Lenders, 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 face 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 outstanding amount of such Standby Letter of Credit for such period.

(b) Each Commercial Letter of Credit: Fifty percent (50%) of the then Applicable Margin per annum for LIBO Loans based upon the average outstanding amount of such 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) Reserved.

(e) The Borrowers shall pay to the applicable 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 such Issuing Bank as are customarily imposed by such Issuing Bank and agreed to by the Lead Borrower from time to time in connection with letter of credit transactions.

(f) 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 Issuing Banks, 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.

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 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 Commitments of each Lender and (ii) be irrevocable when given. At the effective time of each such reduction, the Borrowers shall pay to the Administrative Agent for application as provided herein (i) all Commitment Fees accrued on the amount of the Commitments so reduced through the date thereof, (ii) any amount by which the Credit Extensions outstanding on such date exceed the amount to which the 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, the Lead Borrower may at any time terminate the Commitments. At the effective time of each such termination specified in such notice, the Borrowers shall repay to the Administrative Agent for application as provided herein all Obligations.

2.16 **Alternate Rate of Interest.** If prior to the commencement of any Interest Period for a LIBO 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 for such Interest Period; or

(b) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO 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 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 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 shall be ineffective and (ii) if any Borrowing Request requests a LIBO Borrowing, such Borrowing shall be made as a Borrowing of Prime Rate Loans.

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) to convert any outstanding Borrowings of Prime Rate Loans (but in no event Swingline Loans) to Borrowings of LIBO Loans, or (y) to continue an outstanding Borrowing of LIBO Loans 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 Prime Rate Loans,

subject to the following:

(i) no Borrowing of Loans may be converted into, or continued as, LIBO 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 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 shall be in an integral of \$100,000 and at least \$1,000,000;

(iv) each Lender shall effect each conversion by applying the proceeds of its new LIBO Loan or 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 effected by a conversion or with respect to a Borrowing of LIBO Loans being continued as LIBO Loans 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 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 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 may be outstanding at any time.

If the Lead Borrower does not give notice to convert any Borrowing of Prime Rate Loans, or does not give notice to continue, or does not have the right to continue, any Borrowing as LIBO Loans, in each case as provided above, such Borrowing shall automatically be converted to, or continued as, as applicable, a Borrowing of Prime Rate Loans at the expiration of the then current Interest Period. The Administrative Agent shall, after it receives notice from the 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 exceeds the lower of (i) the then current amount of the Total Commitments, and (ii) the then current amount of the Borrowing Base, 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 Letters of Credit Outstanding.

(b) 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.

(c) Subject to the foregoing, outstanding Prime Rate Loans shall be prepaid before outstanding LIBO Loans are prepaid. Each partial prepayment of LIBO Loans shall be in an integral multiple of \$100,000. No prepayment of LIBO 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 shall hold all amounts required to be applied to LIBO Loans in the Cash Collateral Account and will apply such funds to the applicable LIBO Loans at the end of the then pending Interest Period therefor and such LIBO Loans shall continue to bear interest at the rate set forth in Section 2.9 until the amounts in the 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 shall result in the aggregate principal amount of the LIBO Loans remaining

outstanding pursuant to such Borrowing being less than \$1,000,000 (unless all such outstanding LIBO Loans are being prepaid in full). Any prepayment of the Revolving Loans shall not permanently reduce the Commitments.

(d) All amounts required to be applied to Loans hereunder (other than Swingline Loans) shall be applied ratably in accordance with each Lender's Commitment Percentage.

(e) Upon the Termination Date, the Commitments and the credit facility provided hereunder shall be terminated in full and the Borrowers shall pay, in full and in cash, all outstanding Loans and all other outstanding Obligations.

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, 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 Prime 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 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 Commitment Percentage, and third, to the funding of a cash collateral deposit in the Cash Collateral Account in an amount equal to 102% of all Letter of Credit Outstandings.

(ii) Subject to the foregoing, outstanding Prime Rate Loans shall be prepaid before outstanding LIBO Loans are prepaid. Each partial prepayment of LIBO Loans shall be in an integral multiple of \$100,000. No prepayment of LIBO 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 shall result in the aggregate principal amount of the LIBO Loans remaining outstanding pursuant to such Borrowing being less than \$1,000,000 (unless all such outstanding LIBO 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, 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) 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 Prime Rate Loans or acceleration by virtue of, and after, the occurrence of an Event of Default) of any LIBO 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, 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 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 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 which would have commenced on the date of such failure to borrow, over (B) 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 (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.

(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.

(d) Whenever any partial prepayment of Loans are to be applied to LIBO Loans, such LIBO 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 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 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) and (b). After the end of each month, the Administrative Agent shall send to the Lead Borrower a statement accounting for the charges, loans, advances and other transactions occurring among and between the Administrative Agent, 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 Closing 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 and address 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 Closing 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 Closing Date, the Borrowers shall enter into an Account Control Agreement with the Controlled Account Banks for the Concentration Accounts, in each case in form and substance reasonably satisfactory to the Administrative Agent. In the event that Adjusted Excess Availability becomes less than \$75,000,000 the Borrowers shall within thirty (30) days thereof deliver Account Control Agreements with the Controlled Account Banks for the Investment Accounts existing at the time of such delivery, 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 an Event of Default (in the case of the DDA Notifications) and after the occurrence and during the continuance of a Cash Dominion Event (in the case of the Credit Card Notifications), 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 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. Notwithstanding any provision of this Agreement or any other Loan Document to the contrary, the Administrative Agent shall not send a notice of exclusive control regarding or otherwise exercise control over 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 provided that no Event of Default is then in existence.

(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 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.

(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 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, 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.

(h) The Bank of America Concentration Account is and shall remain under the sole dominion and control of the Collateral Agent. 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, (ii) the funds on deposit in the Bank of America Concentration Account shall continue to be collateral security for all of the Obligations and (iii) the funds on deposit in the Bank of America Concentration Account shall be applied as provided in Section 2.22(a).

(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 DDA Accounts 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 instruction, any Controlled Account or other DDA, 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, each such transfer to be net of any minimum balance, not to exceed \$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.

(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 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.

(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, such proceeds and collections shall be held in trust by the Borrowers for the Administrative Agent 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.

(m) After the occurrence and during the continuation of a Cash Dominion Event, the Borrowers shall deliver to the Administrative Agent annually after the Closing Date (or at such 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, 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 Banks, and the Collateral Agent; second, to pay interest then due and payable on Credit Extensions; third, to repay any

outstanding Swingline Loans; fourth, to repay any outstanding Revolving Loans that are Prime Rate Loans and any outstanding reimbursement obligations under 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; 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; seventh, to pay all other Obligations 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 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 clause fifth above to the Borrowers upon the Lead Borrower's request.

(b) 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 Banks 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 any Issuing Bank; or

(ii) impose on any Lender or any Issuing Bank or the London interbank market any other condition affecting this Agreement or LIBO 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 (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or such 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 such Issuing Bank hereunder (whether of principal, interest or otherwise) other than Taxes, which shall be governed by Section 2.26 hereof ,

then the Borrowers will pay to such Lender or such Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or such Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender or any 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 such Issuing Bank's capital or on the capital of such Lender's or such 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 such Issuing Bank, to a level below that which such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such Issuing Bank's policies and the policies of such Lender's or such Issuing Bank's holding company with respect to capital adequacy), then from time to time the Borrowers will pay to such Lender or such Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company for any such reduction suffered.

(c) A certificate of a Lender or an Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or such 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 such 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 any 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 such 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 or to give effect to its obligations as contemplated hereby with respect to a LIBO Loan or (y) at any time any Lender determines that the making or continuance of any of its LIBO Loans has become impracticable as a result of a contingency occurring after the date hereof which adversely affects the London interbank market or the position of such Lender in the London interbank market, then, by written notice to the Lead Borrower, such Lender may (i) declare that LIBO Loans will not thereafter be made by such Lender hereunder, whereupon any request by the Borrowers for a LIBO Borrowing shall, as to such Lender only, be deemed a request for a Prime Rate Loan unless such declaration shall be subsequently withdrawn; and (ii) require that all outstanding LIBO Loans made by it be converted to Prime Rate Loans, in which event all such LIBO Loans shall be automatically converted to Prime Rate Loans

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 that would have been made by such Lender or the converted LIBO Loans of such Lender shall instead be applied to repay the Prime Rate Loans made by such Lender in lieu of, or resulting from the conversion of, such LIBO 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 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 9.3, 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, 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 at its offices at 40 Broad Street, Boston, Massachusetts, except payments to be made directly to an Issuing Bank or Swingline Lender as expressly provided herein and except that payments pursuant to Sections 2.19(b), 2.23, 2.26 or 9.3 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 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) 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 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 dollars.

(b) If at any time insufficient funds are received by and available to the Administrative Agent 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 Section 2.22(a) hereof.

(c) If any 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 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 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 Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders 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 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.

(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 an 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 Lenders or such 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 such 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 such 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.

(e) 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, provided that 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 any 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 each Issuing Bank, within ten (10) Business Days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by such Agent, such Lender or such 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 an Issuing Bank, or by any Agent on its own behalf or on behalf of a Lender or an 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.

(e) Any Foreign 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 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 Credit Party to grant, to the Collateral Agent, for its benefit and the ratable benefit of the other Secured Parties, a first-priority security interest in all of the Collateral pursuant hereto and to the Security Documents.

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 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 Closing 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 9.5), 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 Banks and the Swingline 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. The Lead Borrower has heretofore furnished to the Lenders the balance sheet, and statements of income, stockholders' equity, and cash flows for the Lead Borrower (on a Consolidated basis) for the fiscal year ended January 28, 2006 and for the fiscal quarter ended July 29, 2006. Such financial statements present fairly, in all material respects, the financial position, results of operations and cash flows of the Borrower Consolidated Group, in each case, as of such dates and for such periods in accordance with GAAP, subject to year-end adjustments and the absence of footnotes.

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 Closing 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 Closing 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.

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 date of this Agreement, 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. 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 has been filed, 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. 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 (based on 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. Schedule 3.10 sets forth the amount of underfunding for all Plans as of the date of the most recent financial statements, and nothing has occurred that could materially increase the amount

of such underfunding 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.

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 is undertaking joint and several liability for the Obligations on the terms and conditions set forth herein and in the Facility 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 Closing Date, the authorized capital stock or other equity, and the number of issued and outstanding shares of capital stock or other equity 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 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, 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, 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 Closing Date. Each of such policies is in full force and effect. As of the Closing 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 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 Secured Parties, 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, the creation of a fully perfected first priority Lien on, and security interest in, all right, title and interest of the Borrowers and each Facility 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.** The Credit Parties, taken as a whole, are Solvent. The Credit Parties and the Material Foreign Subsidiaries, taken as a whole, are 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 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 **Designation as “Designated Senior Indebtedness”.** All Obligations owing hereunder shall constitute “Designated Senior Indebtedness” and/or “Senior Indebtedness” (or such other comparable terms) for purposes of the Convertible Notes Indenture or any other

subordinated indebtedness to which such terms are applicable and the subordination provisions set forth in all such agreements are legally valid and enforceable against the parties thereto.

4. CONDITIONS.

4.1 **Closing Date.** The obligation of the Lenders to make the initial Loans and of the Issuing Banks 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 the Closing Date, signed on behalf of such party or (ii) written evidence satisfactory to the Agents and the Lead Arranger (which may include telecopy transmission 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 the Closing Date.

(b) The Agents shall have received a favorable written opinion (addressed to each Agent and the Lenders on the Closing Date and dated the Closing Date) of (i) Bass Berry & Sims PLC, counsel for the Credit Parties, (ii) Hodgson Russ LLP and (iii) Larkin Hoffman Daly & Lindgren Ltd., 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 opinion.

(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 Closing Date, relating to the fiscal month ended on October 28, 2006, 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 Closing Date (i) the Credit Parties, on a Consolidated basis, are Solvent, and (ii) 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 could reasonably be expected to materially restrain, prevent or impose burdensome conditions on the transactions contemplated hereby.

(g) The absence of any change, effect, event, occurrence or state of facts that is materially adverse to the business, financial condition, or results of operations of the Credit Parties taken as a whole, other than any changes, effects, events, occurrences or state of facts relating to (i) the economy or financial markets in general, and (ii) the transactions contemplated hereby; provided, that with respect to clause (i) such changes, effects, events, occurrences or state of facts do not disproportionately affect such Persons relative to the other participants in the industries in which such Persons operate.

(h) The Administrative Agent shall have received and be satisfied with (a), (x) audited Consolidated balance sheets and related Consolidated statements of income, stockholders' equity and cash flows of the Lead Borrower for the three fiscal years ended January 28, 2006 and (y) unaudited Consolidated balance sheets and related Consolidated statements of income, stockholders' equity and cash flows of the Lead Borrower for the fiscal quarter ended July 29, 2006 (which audited and unaudited financial statements shall be prepared in accordance with, or reconciled to, GAAP, except with respect to the unaudited financial statements, for absence of footnotes and subject to year-end adjustments), and (b) such other information (financial or otherwise) reasonably requested by the Administrative Agent in form and substance reasonably satisfactory to the Administrative Agent. The Agents shall be reasonably satisfied that any financial statements delivered to them 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.

(i) 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.

(j) 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.

(k) 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, except for Permitted Encumbrances and Liens for which termination statements and releases reasonably satisfactory to the Collateral Agent are being tendered concurrently with such extension of credit.

(l) The Collateral Agent shall have received all documents and instruments, including Uniform Commercial Code financing statements, required by law or reasonably requested by the Collateral Agent to be filed, registered or recorded to create or perfect the first priority Liens intended to be created under the Loan Documents and, to the extent required by the Collateral Agent, all such documents and instruments shall have been so filed, registered or recorded to the satisfaction of the Collateral Agent.

(m) The Collateral Agent 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 Closing Date.

(n) The Agents shall have received the results of a commercial financial examination and inventory appraisal, which results shall be satisfactory to the Agents.

(o) All fees due at or immediately after the Closing 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.

(p) 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.

(q) No material changes in governmental regulations or policies affecting the Borrowers, the Agents, or any Lender involved in this transaction shall have occurred prior to the Closing Date which could, individually or in the aggregate, materially and adversely affect the transaction contemplated by this Agreement.

(r) There shall be no Default or Event of Default on the Closing Date.

(s) 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.

(t) Reserved.

(u) The Agents shall have received all of the items set forth on the Closing Agenda attached hereto as Exhibit F.

(v) The Agents shall have received the Closing Projections.

(w) The Borrowers shall have Adjusted Excess Availability on the Closing Date, after giving effect to any Credit Extensions made on the Closing Date, of not less than \$50,000,000.

(x) 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 Closing Date, and such notice shall be conclusive and binding. Notwithstanding the foregoing, the obligations of the Lenders to make Loans and of the Issuing Banks to issue Letters of Credit hereunder shall not become effective unless each of the foregoing conditions is satisfied (or waived pursuant to Section 9.2) at or prior to 5:00 p.m., New York time, on December 1, 2006 (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 Closing 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, other than representations and warranties that relate solely to an earlier date.

(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 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) concurrently with any delivery of financial statements under clause (a) or (b) 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) if a Cash Dominion 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;

(d) 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;

(e) 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 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 and so long as an Event of Default exists or Adjusted Excess Availability is less than the lesser of (i) \$30,000,000 and (ii) ten (10%) percent of the then current Borrowing Base, the Administrative Agent may require that Borrowers furnish such Borrowing Base Certificate (showing the Borrowing Base as of the close of business on the last day of the immediately preceding week) weekly on Wednesday of each week;

(f) after the occurrence and during the continuance of a Cash Dominion Event, within fifteen (15) days after the end of each fiscal month, a Consolidated balance sheet and related Consolidated statements of income, stockholders’ equity and cash flows for the Lead Borrower 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 on a Consolidated basis in accordance with GAAP consistently applied, subject to normal year end audit adjustments and the absence of footnotes;

(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 fifteen (15) days prior the consummation of a Permitted Acquisition, (A) copies of the purchase and sale agreements or other material acquisition documents to be executed in connection with the 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 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(e) hereof promptly following the date of consummation such sale or disposition or (ii) incurrence of any Indebtedness permitted under Section 6.1(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.

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 Banks and the Collateral Agent) 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 that, alone or together with any other ERISA 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; and

(h) the discharge by any of the Credit Parties of its present independent accountants or any withdrawal or resignation by such independent accountants.

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) into which any amount is deposited that would result in the aggregate balance in all Post Closing 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, 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 lenders’ loss payable clause, 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 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 Closing 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 and during the continuance of an Event of Default or a Cash Dominion

Event, the Agents shall remit all proceeds received by Agents under the policies to Borrowers, provided further that after the occurrence of an Event of Default or a Cash Dominion Event, the Agents shall apply any proceeds received in accordance with Section 2.22 hereof, (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 Borrowing Base and (ii) the assets included in the Borrowing Base and related financial information such as, but not limited to, sales, gross margins, payables, accruals and reserves, and pay the reasonable fees and expenses of the Agents or such professionals with respect to such evaluations and appraisals, provided that (w) so long as Excess Availability, at any time tested, is greater than \$75,000,000, no more than one such appraisal and one commercial finance examination shall be required during any twelve month period following the Closing Date, and (x) so long as Excess

Availability, at any time tested, is less than \$75,000,000 but greater than or equal to \$30,000,000, no more than two such appraisals and two commercial finance examinations shall be required during any twelve month period following the Closing Date, and (y) so long as Excess Availability, at any time tested, is less than \$30,000,000, no more than three such appraisals and three commercial finance examinations shall be required during any twelve month period following the Closing Date, all at the expense of the Borrowers and (z) 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, after the occurrence and during the continuance of a Cash Dominion Event, the Administrative Agent may undertake such additional appraisals and commercial finance audits 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 Closing 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) and shall post such results 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 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 Existing Indebtedness, (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 Closing 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 Facility 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 (s) 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 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.

(b) If any additional Material Foreign Subsidiary of any Borrower is formed or acquired after the Closing 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.

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.

6. NEGATIVE COVENANTS.

Until the Commitments have expired or 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 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, except:

(a) Indebtedness created under the Loan Documents;

(b) RESERVED;

(c) Indebtedness set forth in Schedule 6.1 and extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof or result in an earlier maturity date or decreased weighted average life thereof and, in the case of the Convertible Notes Indenture and the Convertible Notes are not materially more burdensome to the Lead Borrower as determined by the Administrative Agent in its Permitted Discretion;

(d) 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 (d) that is owed to any Borrower by Subsidiaries that are not Borrowers or Facility Guarantors, when combined with the amount of Investments in such Subsidiaries set forth in Section 6.4(e), shall not at any time exceed \$5,000,000 in the aggregate from and after the Closing Date, and further provided that with respect to

each incurrence of Indebtedness pursuant to this paragraph (d), (A) no Default or Event of Default has occurred and is continuing or would result from the incurrence of such Indebtedness, and (B) immediately after giving effect to the incurrence of such Indebtedness and on a pro forma basis for a period of ninety (90) days thereafter, Excess Availability shall be not less than \$30,000,000;

(e) Indebtedness of the Credit Parties 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 extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof or result in an earlier maturity date or decreased weighted average life thereof, provided that the aggregate principal amount of Indebtedness permitted by this clause (e) shall not exceed \$10,000,000 at any time outstanding;

(f) 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;

(g) Indebtedness under Hedging Agreements, other than those entered into for speculative purposes, entered into in the ordinary course of business;

(h) Contingent liabilities under surety bonds or similar instruments incurred in the ordinary course of business in connection with the construction or improvement of stores;

(i) 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;

(j) Indebtedness of any Person that becomes a Subsidiary after the Closing Date, provided that (i) such Indebtedness exists at the time such Person becomes a Subsidiary and is not created in contemplation of or in connection with such Person becoming a Subsidiary and (ii) the aggregate outstanding principal amount of Indebtedness permitted by this subsection (k) shall not, without duplication, exceed \$25,000,000 at any time;

(k) Indebtedness arising under the Convertible Notes Indenture and the Convertible Notes in an aggregate principal amount not to exceed \$86,250,000 at any time outstanding;

(l) financed insurance premiums not past due; and

(m) other unsecured Indebtedness in an aggregate principal amount not exceeding \$50,000,000 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 Closing Date, and extensions, renewals and replacements thereof that do not increase the outstanding principal amount 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(e), (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 Closing 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(f), 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 after the Closing Date prior to the time such Person becomes a Subsidiary, provided that (i) such security interests secure Indebtedness permitted by Section 6.1(j), (ii) such security interests are not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, as applicable, (iii) such security interests shall not apply to any other property or assets of any Borrower or any Subsidiary 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, as applicable, and any extensions, renewals and replacements thereof that do not increase the outstanding principal amount 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.

6.3 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 or consolidate into or with any other Person or enter into or undertake any plan or agreement of liquidation, merger or consolidation with any other Person, provided that (i) a Borrower may merge with another company in connection with a Permitted Acquisition if such Borrower is the surviving company, (ii) any wholly-owned Subsidiary may merge 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 and if a Borrower is the surviving company in any merger or consolidation to which it is a party, (iii) a Subsidiary may merge or consolidate into or with another entity in connection with a Permitted Acquisition if, upon consummation of such merger 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 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.

(a) 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 with any Person that was not a wholly owned Subsidiary prior to such merger) any capital stock, 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 Closing 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) Investments in Subsidiaries, provided, however, that the aggregate amount of Investments pursuant to this paragraph (e) in Subsidiaries that are not Borrowers or Facility Guarantors, including the amount of Indebtedness due from such Subsidiaries set forth in Section 6.1(d), may not at any time exceed \$5,000,000 in the aggregate from and after the Closing Date, and further provided that 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;

(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 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 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 may make and own other Investments (including acquisitions of stock or assets of another Person other than Acquisitions) not to exceed in the aggregate \$10,000,000 during the term of this Agreement.

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 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) RESERVED;

(d) 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;

(e) 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 \$10,000,000, Excess Availability shall not have been less than \$30,000,000 at any time during the ninety (90) day period immediately preceding such sale, transfer or disposition and would not be less than \$30,000,000 after giving effect to such sale, transfer or disposition.

(f) sales or issuances by the Lead Borrower of any of its capital stock that does not result in a Change of Control; and

(g) sales or issuances of capital stock to any Borrower.

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), (d) and (e) 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 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 (iv) clause (a) of the foregoing shall not apply to customary provisions in leases restricting the assignment or subleasing thereof and (v) clause (b) of the foregoing in respect to the payment of dividends or other distributions with respect to any

shares of its capital stock shall not apply to provisions in the Convertible Note Indenture and the Convertible Notes, in each case in effect as of the Closing Date.

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, except that the Borrowers shall be permitted to

(a) 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;

(b) refinance Indebtedness, to the extent permitted by Section 6.1, including without limitation, any refinancing as a result of any rollover loans or any publicly issued or privately placed notes or exchange notes issued in exchange for such Indebtedness provided that any such refinancing of the Convertible Notes is not on terms materially more burdensome to the Borrowers as determined by the Administrative Agent in its Permitted Discretion; and

(c) make payment of the Convertible Notes in the form of an exchange of the Convertible Notes for shares of the Lead Borrower's common stock.

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, (b) the Convertible Notes Indenture to the extent such amendment, modification, or waiver would be materially more burdensome to the Credit Parties as determined by the Administrative Agent in its Permitted Discretion, or (c) any other instruments, documents or agreements, in each case to the extent that such amendment, modification or waiver would result in a Material Adverse Effect.

6.11 **Fixed Charge Coverage Ratio.** If, and during such time as, Adjusted Excess Availability is less than 10% of the Total Commitments, 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 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(e), 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(i), 5.2, 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) (i) 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 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 federal or state bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, 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 seeking liquidation, reorganization or other relief under any federal or state bankruptcy, insolvency, receivership or similar 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, trustee, custodian, 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 \$3,000,000 shall be rendered against any Borrower, any of the other Credit Parties or any Material Foreign Subsidiary or any combination thereof and 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 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 shall have occurred that when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrowers in an aggregate amount exceeding \$3,000,000;

(s) the occurrence of any uninsured loss to any material portion of the Collateral;

(t) the indictment of any Borrower, any of the other Credit Parties or any Material Foreign Subsidiary under any federal, state, municipal, and other civil or criminal statute, rule, regulation, order, or other requirement having the force of law where the relief, penalties, or remedies sought or available include the forfeiture of any assets of any Borrower, any of the other Credit Parties or any Material Foreign Subsidiary having a fair market value in excess of \$3,000,000;

(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; or

(v) except as otherwise permitted hereunder, the determination by any Borrower, any of the other Credit Parties or any Material Foreign Subsidiary, whether by vote of such Person's board of directors or otherwise to: suspend the operation of such Person's business in the ordinary course, liquidate all or a material portion of such Person's assets or store locations, or employ an agent or other third party to conduct any so-called store closing, store liquidation or "**Going-Out-Of-Business**" sales.

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 9.2, or (b) is waived in writing by the Lenders in accordance with Section 9.2.

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.** After the occurrence of an Event of Default and acceleration of the Obligations, all proceeds realized from any Borrower or on account of any Collateral shall be applied in the manner set forth in Section 2.22(a) hereof. All amounts required to be applied to Loans hereunder (other than Swingline Loans) shall be applied ratably in accordance with each Lender's Commitment Percentage.

8. THE AGENTS.

8.1 **Administration by Administrative Agent.** Each Lender, the Collateral Agent and the Issuing Banks 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 and the Issuing Banks 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, and no implied covenants, responsibilities, duties, obligations, or liabilities shall be read into the Loan Documents or otherwise exist against the Administrative Agent.

8.2 **The Collateral Agent.** Each Lender, the Administrative Agent and the Issuing Banks 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 registered in jurisdictions outside of the United States as of the Closing 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.

8.3 **Sharing of Excess Payments.** Each of the Lenders, the Agents and the Issuing Banks 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 any 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 such 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, Agent or Issuing Bank shall promptly purchase at par (and shall be deemed to have thereupon purchased) from the other Lenders, such Agent and such 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). The Borrowers expressly consent to the foregoing arrangements and agree that any Lender, any Agent or any 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 such Issuing Bank as fully as if such Lender, Agent or such Issuing Bank held a Note and was the original obligee thereon, in the amount of such participation.

8.4 **Agreement of Required Lenders.** Upon any occasion requiring or permitting an approval, consent, waiver, election or other action on the part of only the Required Lenders, action shall be taken by the Agents for and on behalf or for the benefit of all Lenders upon the direction of the Required 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 9.2.

Upon the occurrence of an Event of Default, the Agents shall (subject to the provisions of Section 9.2) take such action with respect thereto as may be reasonably directed by the Required 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 Banks, 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 Banks 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 Banks 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 Banks or to any of them for any action taken or omitted to be taken by them pursuant to instructions received by them from the Required 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 any 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 any 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 any 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 any 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 any 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 Required 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 receives such a notice, the Agents shall give prompt notice thereof 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 Banks 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 Banks, 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 Banks that the Borrowers have agreed to reimburse pursuant to Section 9.3 and has 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 9.5(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 Banks, 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 Banks, 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 **Delinquent Lender.** 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 ten (10) days 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, and (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. 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.

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.

8.14 **Co-Syndication Agents and Co-Documentation Agents.** Neither the Co-Syndication Agents, Co-Documentation Agents, nor 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 Co-Documentation Agents, 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., 40 Broad Street, Boston, Massachusetts 02109, Attention of Alexis MacElhiney (Telecopy No. (617) 434-3817), with a copy to Proskauer Rose LLP, One International Place, Boston, Massachusetts 02108, Attention: Peter J. Antoszyk, Esquire (Telecopy No. (617) 526-9899);

(c) if to any other Lender, to it at its address (or telecopy number) set forth on the signature pages hereto or on any Assignment and Acceptance for such Lender.

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 Banks 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 Issuing Bank pursuant to Section 2 if such Lender or Issuing Bank, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication.

9.2 **Waivers; Amendments.**

(a) No failure or delay by the Agents, any 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 Banks 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 any 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 or the Total Commitments (other than as provided in Section 2.1(c)) without the written consent of each Lender affected thereby, (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 9.2 or the definition of the term “**Required 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 Facility 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 any material portion of the Collateral from the Liens of the Security Documents, without the written consent of each Lender, (viii) change the definition of the term “**Borrowing Base**” or any component definition thereof if as a result thereof the amounts available to be borrowed by the Borrowers would be increased, without the written consent of each Lender, provided that the foregoing shall not limit the discretion of the Administrative Agent to change, establish or eliminate any Reserves, (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, or (xi) 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 Banks without the prior written consent of the affected Agent or Issuing Bank, as the case may be.

(c) Notwithstanding anything to the contrary contained in this Section 9.2, 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 9.2(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.

9.3 **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, as well as the Co-Syndication Agents and the Co-Documentation Agents (each in such capacity) and their Affiliates, including the reasonable fees, charges and disbursements of counsel for the Agents, and the Co-Syndication Agents and the Co-Documentation Agents (each in such capacity), 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 any 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, any Issuing Bank or any Lender, including the reasonable fees, charges and disbursements of any counsel and any outside consultants for the Agents, any 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 Banks 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 Banks 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 an 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 any Issuing Bank under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the Agents or such 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 such 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.

9.4 **Designation of Lead Borrower as Borrowers' Agent.**

(a) Each Borrower hereby irrevocably designates and appoints the Lead Borrower as that Borrower's agent to obtain Loans and Letters of Credit hereunder, the proceeds of which shall be available to each Borrower for those uses as those set forth herein. As the disclosed principal for its agent, each 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 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 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.

(c) The Lead Borrower shall act as a conduit for each Borrower (including itself, as a "Borrower") on whose behalf the Lead Borrower has requested a Loan. The Lead Borrower shall cause the transfer of the proceeds of each Loan to the (those) 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.

(e) The authority of the Lead Borrower to request Loans on behalf of, and to bind, the 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 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 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.

9.5 **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 an 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 an 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 Banks 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 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, each of the Lead Borrower (but only if no Event of Default then exists), the Agents and the Issuing Banks 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 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. 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 9.3). 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 one of its offices in Boston, Massachusetts 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 Banks 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 Banks 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 Banks, 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 Banks 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 9.2(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 9.9 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 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.

9.6 **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, any 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 9.3 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.

9.7 **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.

9.8 **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.

9.9 **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.

9.10 **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.

(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.

9.11 **WAIVER OF JURY TRIAL.** EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN 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.

9.12 **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.

9.13 **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.

9.14 **Additional Waivers.**

(a) The Obligations are joint and several obligations of each Borrower. 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.

9.15 **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 9.15 shall not relieve the Borrowers of any of their obligations to such Lender under this Agreement and the other Loan Documents.

9.16 **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.

9.17 **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 Agreement and each Existing Financing Agreement (excluding any deed of trust, mortgage or similar instrument encumbering Real Estate) 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 Closing 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 Administrative 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.

9.18 **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.

9.19 **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 USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)(the "Act"), it is required to obtain, verify and record information that identifies 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.

[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 a sealed instrument as of the day and year first above written.

GENESCO INC.
as Lead Borrower

By _____
Name:
Title:

GENESCO BRANDS, INC.
as a Borrower

By _____
Name:
Title:

HAT WORLD CORPORATION
as a Borrower

By _____
Name:
Title:

HAT WORLD, INC.
as a Borrower

By _____
Name:
Title:

FLAGG BROS. OF PUERTO RICO, INC.
as a 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: Alexis MacElhiney
Title: Director
Address: 40 Broad Street, 10th Floor
Boston, Massachusetts 02109
Attn: Ms. Alexis MacElhiney
Telephone: (617) 434-3817
Telecopy: (617) 434-2615

[SIGNATURE PAGES TO FOLLOW]

LASALLE BANK, NATIONAL ASSOCIATION
as a Co-Syndication Agent, an Issuing Bank and a Lender

By: _____
Name: W. Pat Fischer
Title: Senior Vice President & Senior Banker
Address: 3343 Peachtree Rd, NE., Suite 500
Atlanta, GA 30326
Attn: W. Pat Fischer
Telephone: (404) 732-1230
Telecopy: (404) 732-1234

[SIGNATURE PAGES TO FOLLOW]

WELLS FARGO FOOTHILL, LLC
as a Co-Syndication Agent and a Lender

By: _____
Name: Rina Shinoda
Title: Vice President
Address: 2450 Colorado Avenue
Suite 3000 West
Santa Monica, CA 90404
Attn: Rina Shinoda
Telephone: (310) 453-7300
Telecopy: (310) 453-7446

[SIGNATURE PAGES TO FOLLOW]

NATIONAL CITY BUSINESS CREDIT, INC.,
as a Lender and a Co-Documentation Agent

By: _____
Name: Joseph Kwasny
Title: Director
Address: 1965 E. 6th Street, 4th Floor
Locator: 01-3049
Cleveland, OH 44114
Attn: Joseph Kwasny
Telephone: (216) 222-2508
Telecopy: (216) 222-9555

[SIGNATURE PAGES TO FOLLOW]

U.S. BANK NATIONAL ASSOCIATION
as a Lender and a Co-Documentation Agent

By: _____
Name: Matthew Kasper
Title: Assistant Vice President
Address: 425 Walnut Street, 14th Floor
Cincinnati, Ohio 45202
Attn: Matthew Kasper
Telephone: (513) 632-4226
Telecopy: (513) 632-2040

[SIGNATURE PAGES TO FOLLOW]

SUNTRUST BANK,
as a Lender and a Co-Documentation Agent

By: _____

Name: Patrick Wiggins

Title: Vice President

Address: 303 Peachtree Street, 2nd Floor
Atlanta, Georgia 30308

Attn: Patrick Wiggins

Telecopy: (404) 588-7061

[SIGNATURE PAGES TO FOLLOW]

FIFTH THIRD BANK,
as a Lender

By: _____
Name: John K. Perez
Title: Vice President – Large Corporate Banking
Address: 424 Church Street, Suite 600
Nashville, TN 37219
Attn: John K. Perez
Telephone: (615) 687-3043
Telecopy: (615) 687-3089

[SIGNATURE PAGES TO FOLLOW]

BRANCH BANKING & TRUST CO.
as a Lender

By: _____
Name: Natalie Ruggiero
Title: Assistant Vice President
Address: 4400 Harding Rd., Suite 204
Nashville, TN 37205
Attn: Natalie Ruggiero
Telephone: (615) 279-4283

[SIGNATURE PAGES TO FOLLOW]

PNC BANK, NATIONAL ASSOCIATION
as a Lender

By: _____
Name: David Weaver
Title: Vice President
Address: 201 South Tryon Street, Suite 900
Charlotte, NC 28202
Attn: David Weaver
Telephone: (704) 342-8420
Telecopy: (704) 342-8450

[SIGNATURE PAGES TO FOLLOW]