

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No.: 500-11-052159-171

SUPERIOR COURT  
(Commercial Division)

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IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF:

**BCBG Max Azria Canada Inc.**, a legal person having  
its registered office at 1000 de la Gauchetière Street  
West, Suite 2100, Montréal, Québec, H3B 4W5

Debtor / Petitioner

-and-

**Deloitte Restructuring Inc.**, a legal person having a  
place of business at 1190 des Canadiens-de-Montréal  
Avenue, Suite 500, Montréal, Québec, H3B 0M7

Trustee

**APPLICATION FOR AN ORDER APPROVING A DIP FINANCING  
AND DIP CHARGE, AN ADMINISTRATION CHARGE, A D&O  
CHARGE, A CONSULTING AGREEMENT AND SALE  
GUIDELINES AND GRANTING ANCILLARY RELIEF**

(Sections 50.6, 64.1, and 64.2 of the *Bankruptcy and Insolvency  
Act*, RSC 1985, c B-3, as amended)

TO ONE OF THE HONOURABLE JUDGES OR TO THE REGISTRAR OF THE  
SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION IN AND FOR THE  
JUDICIAL DISTRICT OF MONTRÉAL, THE PETITIONER RESPECTFULLY SUBMIT  
AS FOLLOWS:

**I. INTRODUCTION**

1. On March 1, 2017 the Debtor/Petitioner BCBG Max Azria Canada Inc. (“**BCBG Canada**” or the “**Company**”) filed a Notice of intention to make a proposal (“**NOI**”) under the relevant provisions of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (“**BIA**”) and Deloitte Restructuring Inc. was appointed as trustee thereto (the “**Trustee**”), the whole as appears from a copy of the certificate of filing filed in support hereof as **Exhibit P-1**.
2. On February 28, 2017, BCBG Max Azria Global Holdings, LLC (“**BCBG Global Holdings**”) and certain of its United States affiliates (collectively, the “**Chapter 11**”

**Debtors**) commenced proceedings under Chapter 11 of the Bankruptcy Code (the **“Chapter 11 Proceedings”**) before the United States Bankruptcy Court for the Southern District of New York (the **“US Court”**), the whole as appears more fully from a copy of the Declaration of Holly Etlin, Chief Restructuring Officer of BCBG Global Holdings (the **“CRO”**), filed in support of the Chapter 11 Proceedings and filed in support hereof as **Exhibit P-2** (the **“Chapter 11 Declaration”**).

3. BCBG Canada respectfully requests that this Honourable Court render the orders sought herein to, *inter alia*:
  - (a) Authorize and approve a DIP Financing (as defined below) and grant a correlative DIP Charge (as defined below);
  - (b) Authorize BCBG Canada to continue using its current Cash Management System (as defined below);
  - (c) Confirm the appointment of FAAN Advisors Group Inc. (**“FAAN”**) as Chief Canadian Restructuring Advisor (**“CCRA”**) of BCBG Canada;
  - (d) Approve and ratify a Consulting Agreement (as defined below);
  - (e) Authorize BCBG Canada, with the assistance of the Consultant (as defined below) to conduct the Sale (as defined below) in the Stores (as defined below) in accordance with the terms of the Order to be rendered in connection with the present Application, the Consulting Agreement and the Sale Guidelines (as defined below);
  - (f) Grant an Administration Charge and a D&O Charge (as such terms are defined below); and
  - (g) Grant certain ancillary relief with a goal of facilitating the present proceedings.

## II. COMPANY OVERVIEW

### A. Background and operations

4. BCBG Canada is a company governed by the *Canada Business Corporations Act*, RSC 1985, c C-44, incorporated in 1998, as appears from a copy of its registration on the *Registre des entreprises*, a copy of which is filed in support hereof as **Exhibit P-3**. Its registered office is located in Montréal, Québec.
5. BCBG Canada is an indirect wholly-owned subsidiary of BCBG Max Azria Global Holdings, LLC, a Delaware corporation.
6. BCBG Canada is the Canadian operating entity of the BCBG Max Azria group of companies (the **“BCBG Group”**), a fashion design, wholesale and retail

conglomerate founded in 1989 and headquartered in California. The BCBG Group has retail operations across the United States, Europe, Japan and Canada.

7. BCBG Canada operates its retail business from a total of 51 retail and factory stores in Québec, Ontario, British Columbia, Alberta, Manitoba and Nova Scotia (the “**Stores**”). In addition, it operates 17 licensed departments within Hudson’s Bay Company (“**HBC**”) retail locations in Canada (the “**Partner Shops**”). The Company also has a distribution centre located in Montréal, Québec (the “**DC**”).
8. The Company does not own any immovable property. All premises occupied by BCBG Canada are leased from third party landlords.
9. The Company’s merchandise is sold and marketed under the “BCBG” brand name. All intellectual property rights in connection with the “BCBG” brand are owned by MLA Multibrand Holdings, LLC, a Delaware corporation which is part of the BCBG Group.
10. As of the date hereof, BCBG Canada has approximately 600 full-time and part-time employees. The Company’s workforce is not unionized and the Company does not maintain a pension plan.
11. Other stakeholder groups, in addition to the ABL Lender (defined and described below), include vendors of inventory, suppliers of services, landlords and other parties.

**B. Financial difficulties and pre-filing restructuring efforts**

12. The Chapter 11 Declaration provides a comprehensive overview of:
  - (a) The circumstances that compelled the commencement of the Chapter 11 Proceedings as well as the filing of the NOI;
  - (b) The corporate history and ownership structure, operations, financial affairs and restructuring initiatives of the BCBG Group; and
  - (c) The restructuring objectives and relief sought by the Chapter 11 Debtors before the US Court.

*BCBG Canada*

13. As more fully detailed in the Chapter 11 Declaration, the BCBG Group including notably the Company, like many other retail companies, fell victim in recent years to adverse macro-trends, including changing consumer preferences, expensive leases and a general shift away from brick-and-mortar to online retail channels.
14. Over the last 5 year period, BCBG Canada has incurred cumulative losses of approximately \$74.7 million. Unless otherwise stated, all monetary figures herein are in Canadian dollars.

15. Over the course of the past 24 months, BCBG Canada engaged in significant efforts to pursue a restructuring outside of a formal insolvency proceeding. The Company implemented a series of operational turnaround initiatives focused on optimizing and rationalizing store operations and implementing procurement strategies to maximize efficiencies, changing merchandising strategy, closing underperforming Stores, developing strategies to improve profitability and conducting an overhead structure review to identify potential synergies and cost savings.
16. In January 2017, BCBG Canada terminated the lease of its head office location in Montréal, Québec and ceased to maintain a Canadian head office operations centre. BCBG Max Azria Group, LLC ("**BCBG US**"), an affiliated Delaware Corporation which historically provided a significant part of the back office services for BCBG Canada, is now the exclusive provider of those services.
17. The turnaround initiatives described above were not sufficient to offset the ongoing decline in sales and margins suffered over the last several years. Despite its efforts to effect an operational turnaround, the Company continues to see a consistent decline in its financial performance.
18. The devaluation of the Canadian dollar against the American dollar continues to make the Company's business more challenging as its inventory sourcing costs are exclusively in American dollars, while all sales are in Canadian dollars.

### **III. INDEBTEDNESS AND OBLIGATIONS**

19. The material aspects of BCBG Canada's indebtedness and obligations are as follows.

#### **A. Secured Indebtedness**

20. BCBG Canada, BCBG US and certain other members of the BCBG Group are party to a Second Amended and Restated Loan Agreement dated as of February 5, 2015 with Bank of America, N.A. and other parties thereto (collectively, the "**ABL Lenders**"), a copy of which is filed in support hereof as **Exhibit P-4** (the "**SARLA**"), pursuant to which the ABL Lenders provide BCBG Canada with a secured asset-based revolving credit line of up to \$15 million.
21. The SARLA, as amended by a First Amendment to Second Amended and Restated Loan Agreement dated as of August 12, 2016 and the Forbearance Agreement (as defined below), as amended from time to time, is referred to herein as the "**ABL Agreement**".
22. BCBG Canada's obligations under the ABL Agreement are guaranteed by BCBG US and certain other members of the BCBG Group.

23. The obligations of BCBG Canada under the ABL Agreement are secured by first ranking hypothecs and liens on substantially all of the Company's assets (collectively, the "**ABL Security**").
24. The ABL Agreement is structured as a typical asset-based loan and is used by the Company to fund its working capital requirements and for general purposes. Advances are made based on the amount of available credit, which varies based on the value of the collateral, including inventory and accounts receivable.
25. As of February 27, 2017, the outstanding aggregate amount due from BCBG Canada under the ABL Agreement totalled \$13,483,923.88, excluding interest, costs, fees and expenses.
26. As a result of certain events of default that occurred under the ABL Agreement, on February 14, 2017, BCBG Canada and certain other members of the BCBG Group entered into a Forbearance Agreement (the "**Forbearance Agreement**") with the ABL Lenders, a copy of which is attached as **Exhibit P-5**.
27. The Forbearance Agreement was necessary to ensure that the ABL Lenders did not enforce the rights and any remedies available to them under the ABL Agreement.
28. As part of the Forbearance Agreement, BCBG Canada and the BCBG Group agreed to, *inter alia*:
  - (a) Reduce the maximum revolving loan facility commitment to BCBG Canada under the ABL Agreement to \$15 million;
  - (b) Provide the ABL Lenders with cash flow forecasts and budget updates;
  - (c) Not make payments in respect of inter-company debt or any subordinated debt;
  - (d) Meet certain budgetary compliance covenants; and
  - (e) Provide the ABL Lenders with updates in respect of the Sale (as defined below).
29. The Company maintains a centralized cash management system (the "**Cash Management System**") that is typical of multi-store retail operations.
30. The Cash Management System facilitates the timely and efficient collection, management and disbursement of funds used in the Company's business.
31. BCBG Canada also entered into deposit account control agreements in favour of the ABL Lenders with respect to each of its bank accounts. All sale proceeds, including credit and debit card and cash receipts, are deposited daily into blocked deposit accounts (the "**Blocked Accounts**").

32. Under the ABL Agreement, so long as excess availability is less than 15% of the then applicable borrowing base, the Company must remit all cash receipts on a daily basis to an account maintained by, and under the sole dominion and control of, the ABL Lenders, through their agent (the “**Agent Account**”). The funds on deposit in the Agent Account shall at all times continue to be collateral security for all of the Company’s obligations under the SARLA and shall be applied as provided for in the SARLA. Due to the Company’s ongoing liquidity constraints, the excess availability under the ABL Agreement was less than 15% as at the date of filing of the NOI (and for a number of months preceding the said date).
33. Accordingly, each day, any funds in the Blocked Accounts are automatically transferred to the Agent Account.
34. As will appear from the First Trustee’s Report, to be filed concurrently herewith (the “**Trustee’s Report**”), the Trustee has retained independent legal counsel, which has conducted a review of the ABL Security and has confirmed the validity of same.
35. BCBG Canada also entered into various agreements for the financing of the acquisition of certain equipment, for use in the Company’s premises. As of the date of the NOI, no amounts are outstanding under these agreements and the Company intends to continue to make payments owing thereunder going forward or terminate the agreements and return the equipment to the vendors, as applicable.
36. Because of the nature of the Company’s business and the disruption to the business that would result if it were forced to change its existing banking arrangements, it is critical that the existing Cash Management System remain in place, and BCBG Canada intends to continue using the Cash Management System during the present proceedings, subject to this Court’s approval.
37. The maintenance of the existing Cash Management System, including the Blocked Account and Agent Account arrangements, is a condition precedent to the availability of the DIP Facility (as defined below). The Trustee is of the view that the continued use of the Cash Management System is appropriate in the current circumstances.

**B. Amounts Due to Unsecured Creditors**

38. As indicated above, BCBG Canada sources its inventory almost exclusively from its affiliate BCBG US, who also provides BCBG Canada with significant management and back-office support. BCBG Canada also sources a limited amount of inventory from third party vendors.
39. BCBG US is the Company’s single largest unsecured creditor. As of December 31, 2016 BCBG Canada is indebted to BCBG US in the aggregate amount of approximately \$105 million.

40. As of January 28, 2017, BCBG Canada also owed an aggregate amount of approximately \$2 million to various unsecured trade creditors including suppliers and landlords.
41. In addition, BCBG Canada is aware of certain contingent liabilities in connection with, among other things, withholding taxes, transfer pricing adjustments, customs and duties charges. The aggregate amount of these claims is approximately \$2.3 million and may be subject to additional interest and penalties. BCBG Canada is contesting the merits of these claims.

#### **IV. RESTRUCTURING OBJECTIVES AND RELIEF SOUGHT**

42. Despite its recent out-of-court restructuring efforts and following extensive analysis and consideration, BCBG Canada concluded that its best alternative was to engage in a formal restructuring process in order to achieve the best possible outcome for its stakeholders.
43. With the assistance of the CRO, its management team and its other advisors, including the CCRA, the BCBG Group determined that the best course of action in the current circumstances is to reduce its Canadian retail footprint through the liquidation and closure of the Stores and to refocus its efforts on investing in its department store relationships, including its Partner Shop business with HBC.
44. In order to achieve its objectives, BCBG Canada, with this Court's approval, is seeking the orders required to implement the initiatives further described below.

##### **A. Chief Canadian Restructuring Advisor**

45. As part of its restructuring efforts, on or about February 9, 2017, FAAN was retained as CCRA of BCBG Canada. FAAN's mandate as CCRA includes, *inter alia*:
  - (a) Assisting BCBG Canada with the identification and implementation of restructuring initiatives, including the development of a proposal or plan for its creditors, if available; and
  - (b) Serving as BCBG Canada's representative in the present proceedings, including providing timely updates to the Trustee in respect of the Company, including its restructuring efforts.
46. The CCRA has significant experience in retail restructurings, both in and out of court, and will provide its experience and expertise to the Company throughout the course of these restructuring proceedings, for the benefit of all of its stakeholders. A copy of the redacted CCRA engagement letter with BCBG Canada is filed in support hereof as **Exhibit P-6**.

## B. Store Liquidation

47. As indicated above, the Company, in consultation with the CRO and CCRA, conducted an analysis of the performance of each of its Stores and has determined that it would be in the best interest of all of its stakeholders to proceed with the sale of all the inventory located in the Stores and DC, with the assistance and expertise of the Consultant (as defined below).
48. In order to maximize the value of its inventory and furnishings, fixtures and equipment located in the Stores (collectively, the “**FF&E**”), BCBG Canada has negotiated and executed an agreement dated February 24, 2017 (the “**Consulting Agreement**”) with Gordon Brothers Canada ULC and Merchant Retail Solutions, ULC (jointly, the “**Consultant**”), pursuant to which the Consultant will serve as BCBG Canada’s exclusive consultant to advise the Company with respect to the liquidation of BCBG Canada’s inventory and FF&E at the Stores (the “**Sale**”). The Sale is to be conducted in accordance with the Sale Guidelines (defined below).
49. The Consultant has extensive experience in conducting retail liquidations and has led numerous significant inventory dispositions for Canadian retailers, including Target Canada Co., Comark Inc., Ben Moss Jewellers Western Canada Ltd., 3499481 Canada Inc. (PJ’s Pet), Mexx Canada Company and 2473304 Ontario Inc. (Jones NYC).
50. The Consulting Agreement provides, *inter alia*, that the Consultant shall be entitled to receive a fee equal to one and one half percent (1.5%) of the aggregate net proceeds of the Sale and that the Sale shall terminate by no later than May 31, 2017 (the “**Sale Termination Date**”).
51. BCBG Canada will be responsible for all expenses of the Sale, including Store level operating expenses and the Consultant’s reasonable, documented out-of-pocket expenses. A copy of the Consulting Agreement is filed in support hereof as **Exhibit P-7**.
52. The Sale shall be subject to the sale guidelines attached to the Consulting Agreement as Exhibit B (the “**Sale Guidelines**”), which guidelines have been approved in the context of multiple court-approved closing sales, notably in Québec. Pursuant to the Consulting Agreement, the Company is seeking Court approval of the Sale Guidelines.
53. As provided under the Consulting Agreement, the Company will be honouring all gift certificates and store credits during the Sale. All sales made in the context of the Sale will be final.
54. It is in BCBG Canada’s stakeholders’ best interest that the Consulting Agreement be approved by the Court, in order to proceed with the commencement of the Sale in the briefest of delays with a view to maximizing recoveries for all stakeholders.



55. As will appear from the Trustee's Report, the Trustee is supportive of the Consulting Agreement and the transactions contemplated therein.

**C. Partner Shops**

56. As indicated above, it is currently contemplated that BCBG Canada will continue to operate the Partner Shops in the ordinary course. The Company and its advisors will continue to explore alternatives to preserve the value of its Partner Shop business.

**D. DIP Financing**

57. As indicated above, BCBG Canada has been operating under the terms of the Forbearance Agreement since February 14, 2017. The Forbearance Agreement expired, in accordance with its terms, on February 28, 2017.

58. BCBG Canada requires interim financing for working capital and general corporate purposes and for post-filing expenses and costs during the present proceedings. In order to have sufficient funds to operate during the present proceedings, BCBG Canada is negotiating the terms of a debtor-in-possession financing ("**DIP**") and further forbearance with the ABL Lenders, subject to the approval of this Court.

59. The Company and the ABL Lenders have been discussing the terms of an agreement pursuant to which the ABL Lenders would agree, subject to certain terms and conditions, to:

- (a) Forbear from exercising their rights and remedies under the ABL Agreement, until the earlier of May 31, 2017 and the occurrence of certain forbearance termination events; and
- (b) Act as DIP lender (in such capacity, collectively, the "**DIP Lender**") and to provide a revolving credit facility of up to \$15 million to BCBG Canada (the "**DIP Facility**"), in order to finance the Company's working capital requirements and other expenditures in accordance with BCBG Canada's Approved Canadian Budget (as defined in the DIP Agreement (as defined below));

the whole as more fully appears from a copy of a draft of the Canadian Forbearance Agreement (the "**Draft DIP Agreement**"), filed in support hereof as **Exhibit P-8**.

60. The Company intends to finalize the terms of the Draft DIP Agreement prior to the hearing of the present Application and shall file with the Court such finalized agreement with a blackline to the Draft DIP Agreement.

61. As appears from the Draft DIP Agreement, continued forbearance and access to the DIP Facility would be conditional upon, *inter alia*, the granting of an order by this Court providing for:

- (a) Approval by this Court of the DIP Facility;
  - (b) A Court-ordered priority charge over all of the assets and undertakings of BCBG Canada securing the DIP Facility in the amount of \$18 million (the “**DIP Charge**”);
  - (c) The DIP Lender and ABL Lenders shall be treated as unaffected creditors in the present proceedings and in any proposal filed pursuant thereto or any other insolvency, reorganization or arrangement proceeding, and shall not be subject to any applicable stay of proceedings;
  - (d) Approval of the Consulting Agreement and the Sale; and
  - (e) Authorization for the Company to pay, in accordance with the ABL Agreement, any and all amounts owing by BCBG Canada to the ABL Lenders in respect of the Company’s pre-filing obligations, provided that no advances under the DIP Facility will be used to repay pre-filing amounts due under the ABL Facility.
62. In addition, as required under the Draft DIP Agreement, prior to the filing of the NOI, the ABL Lenders delivered a notice pursuant to section 244 of the BIA to BCBG Canada and the Company consented to waive the applicable notice period. As appears from the DIP Agreement, the ABL Lenders have agreed to forbear from exercising their rights and remedies under the ABL Agreement during the forbearance period.
63. BCBG Canada will not be able to satisfy its ordinary course obligations in these proceedings without the DIP financing.
64. The DIP Facility is intended to provide the Company with liquidity to fund the costs of these proceedings and the Sale. In connection with the DIP Facility, the Company considered, among other things, the following:
- (a) The contemplated DIP Facility would be provided by the existing ABL Lenders, on substantially the same commercial terms as the existing ABL Facility, which terms were negotiated at arm’s length;
  - (b) It would be unlikely to obtain an alternate DIP financing on better commercial terms and, in any event, the existing ABL Lenders would oppose any other DIP financing arrangements which would seek to prime the ABL Lenders; and
  - (c) The DIP financing will cause no material prejudice to any of the Company’s existing creditors and is the only realistic means for BCBG Canada to keep operating while it pursues its restructuring objectives.

65. In light of the above, it is the Company's view that the DIP Facility from the DIP Lenders is the only viable source of funding currently available to the Company on an expedited basis.

**E. Administration Charge**

66. It is proposed that the Proposal Trustee and its counsel, counsel to BCBG Canada, and FAAN, as CCRA, be granted a Court-ordered charge on all of the present and future assets, property and undertaking of BCBG Canada, including any cash on hand at the day of the NOI filing as security for their respective fees and disbursements relating to services rendered in respect of BCBG Canada up to a maximum amount of \$500,000 (the "**Administration Charge**"). The Administration Charge is proposed to have first priority over all other charges.

**F. D&O Charge**

67. BCBG Canada will only be able to bring the current proceedings to fruition with the continued participation of the Company's director and officers (the "**Director and Officers**"), its management and employees. These personnel are essential to the viability of the company's restructuring efforts.
68. The amount of insurance under the Director and Officers primary and excess insurance policies is approximately \$4 million and, in light notably of the contingent claims referred to in paragraph 41, there is no certainty that this coverage will be responsive or sufficient. As well, the cost of securing any additional insurance would be prohibitive, to the extent that additional insurance would be in fact available.
69. As such, the Directors' continued service and involvement in this restructuring is conditional upon the granting of an Order that grants a charge in favour of the Director and Officers in the amount of \$500,000 (the "**D&O Charge**"). The D&O Charge would stand in priority to all other security, charges, and liens other than the Administration Charge up to an amount of \$500,000. The amount of the D&O Charge takes into account payroll obligations, vacation pay obligations, employee source deduction obligations and sales tax obligations that may arise during these proceedings. It is expected that all these amounts will be paid by the Company in the normal course.
70. The D&O Charge is necessary so that the Company may retain its Director and Officers during these proceedings, for the benefit of all stakeholders.

**V. CONCLUSION**

71. The Trustee has indicated that it will be filing the Trustee's Report which shall contain information in respect of the matters addressed in the present Application.
72. As will appear from the Trustee's Report, the Trustee supports the present Application.

73. BCBG Canada is of the view that providing the relief requested herein is appropriate in the present circumstances. Accordingly, it respectfully requests that this Honourable Court render the orders sought herein.

**FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:**

**GRANT** the Application for an order approving a DIP Financing and DIP Charge, an Administration Charge, a D&O Charge, a Consulting Agreement and Sale Guidelines and granting ancillary relief (the "**Application**");

**ISSUE** an order substantially in the form of the draft order filed in support of the Application as **Exhibit P-9**;

**THE WHOLE WITHOUT COSTS**, save in the event of contestation.

MONTREAL, March 1, 2017

*Osler, Hoskin & Harcourt LLP*

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**OSLER, HOSKIN & HARCOURT LLP**

Attorneys for the Debtor / Petitioner

**AFFIDAVIT**

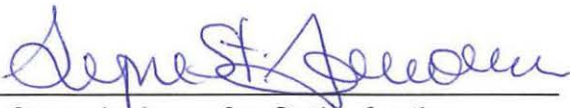
I the undersigned, Naveed Z. Manzoor, domiciled for the purpose hereof at 6 Adelaide Street East, Suite 220, Toronto, Ontario, M5C 1H6, solemnly declare the following:

1. I am the director of the Petitioner BCBG MaxAzria Canada Inc. and a duly authorized representative of the Petitioner for the purposes hereof;
2. I have taken cognizance of the attached Application for an order approving a DIP Financing and DIP Charge, an Administration Charge, a D&O Charge, a Consulting Agreement and Sale Guidelines and granting ancillary relief (the "**Application**");
3. All of the facts alleged in the Application of which I have personal knowledge are true; and
4. In respect of certain facts alleged in the Application, I have relied on information provided to me by the BCBG Group (as defined in the Application) and its CRO (as defined in the Application), in which case I believe such information to be true.

AND I HAVE SIGNED:

  
\_\_\_\_\_  
**Naveed Z. Manzoor**

SOLEMNLY DECLARED BEFORE  
ME IN MONTRÉAL, QUÉBEC, ON  
MARCH 1, 2017.

  
\_\_\_\_\_  
Commissioner for Oaths for the  
Province of Québec



## NOTICE OF PRESENTATION

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- TO : Boutique aux Élégants Inc.  
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- TO : Canapen (Halton) Limited and Ivanhoé Cambridge II Inc.  
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- TO : CF/Realty Holdings Inc.  
c/o The Cadillac Fairview Corporation Limited  
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- TO : Cominar Real Estate Investment Trust  
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- TO : Fairview Pointe-Claire Leaseholds Inc.  
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TO : First Queensborough Shopping Centres Limited  
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TO : Hartleywood Holdings Ltd.  
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TO : Ivanhoe Cambridge II Inc.  
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TO : Ivanhoe Cambridge II Inc.  
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TO : Le Carrefour Laval Leaseholds Inc.  
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TO : Les Promenades St-Bruno Leaseholds Inc.  
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TO : Marché Tremblant Properties Inc.  
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- TO : Mic Mall Limited Partnership  
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North Office Tower, 650 West 41st Avenue  
Suite 319  
Vancouver, British Columbia V5Z 2M9
- TO : Omers Realty Management Corporation and  
Square One Property Corporation  
c/o Oxford Properties Group  
Royal Bank Plaza, North Tower  
200 Bay Street, Suite 900  
Toronto, Ontario M5J 2J2
- TO : Ontrea Inc.  
c/o (Sherway Garden) Cadillac Fairview  
25 The West Mall  
P.O. Box 101  
Etobicoke, Ontario M9C 1B8
- TO : Ontrea Inc.  
c/o The Cadillac Fairview Corporation Limited  
20 Queen Street West  
Fifth Floor  
Toronto, Ontario M5H 3R4

- TO : OPB (EMTC) Inc.  
c/o 20 VIC Management Inc.  
One Queen Street East  
Suite 300, Box No. 88  
Toronto Ontario M5C 2W5
- TO : OPB Realty Inc.  
c/o 20 VIC Management Inc.  
One Queen Street East  
Suite 300, Box No. 88  
Toronto, Ontario M5C 2W5
- TO : Orchard Park Shopping Centre Holdings Inc.  
c/o Oxford Management Services Inc.  
130 Adelaide Street West  
Suite 1100  
Toronto, Ontario M5H 3P5
- TO : Orlando Corporation  
6205-B Airport Road  
5th floor  
Mississauga, Ontario L4V 1E3
- TO : Oxford Properties Group Inc.  
600 West de Maisonneuve Blvd.  
Suite 510  
Montréal, Québec H3A 3J2
- TO : Oxford Properties Group Inc. and  
CPP Investment Real Estate Board Holdings Inc.  
803 TD Tower, 10088-102 Avenue  
Edmonton, Alberta T6R 3K4
- TO : Oxford Properties Retail Holdings Inc. and  
Oxford Properties Retail Holdings II Inc.  
c/o Oxford Properties Group  
Royal Bank Plaza, North Tower  
200 Bay Street, Suite 900  
Toronto, Ontario M5J 2J2

- TO : Pacific Centre Leaseholds Limited  
c/o Cadillac Fairview Corp. Ltd.  
P.O. Box 10346 - Pacific Centre  
609 Granville Street, Suite 910  
Vancouver, British Columbia V7Y 1A1
- TO : Pensionfund Realty Limited  
c/o Morguard Investments Limited  
55 City Centre Drive  
Suite 800  
Mississauga, Ontario L5B 1M3
- TO : Place Rosemère Inc.  
c/o Centre Commercial Place Rosemere/Place Rosemere Shopping Centre  
401 Labelle Boulevard  
Rosemère, Québec J7A 3T2
- TO : Place Ste-Foy Limited Partnership  
c/o Ivanhoe Cambridge Inc.  
1001 Square Victoria  
Suite 500  
Montréal, Québec H2Z 2B5
- TO : Ravine Equities Inc.  
c/o Morguard Investments Limited  
55 City Centre Drive  
Suite 800  
Mississauga, Ontario L5B 1M3
- TO : Riocan Holdings (Québec) Inc.  
7475 Newman Blvd.  
Suite 500  
Lasalle, Québec H8N 1X3
- TO : Surrey South Shopping Centres Limited  
700 Applewood Crescent  
Suite 100  
Vaughan, Ontario L4K 5X3

TO : T.E.C. Leaseholds Ltd.  
c/o The Cadillac Fairview Corporation Limited  
220 Yonge Street  
Suite 110  
Toronto, Ontario M5B 2H1

TO : TBC Nominee Inc.  
c/o 20 Vic Management Inc.  
One Queen Street East  
Suite 300, Box No. 88  
Toronto, Ontario M5C 2W5

TO : Valeurs Prado Inc.  
1410 Stanley Street  
Suite 600  
Montréal, Québec H3A 1P8

TO : Vaughan Promenade Shopping Centre Inc.  
c/o The Cadillac Fairview Corporation Limited  
20 Queen Street West  
Fifth Floor  
Toronto, Ontario M5H 3R4

TO : Viking Rideau Corporation  
c/o Cadillac Fairview  
50 Rideau Street  
Suite 300  
Ottawa, Ontario K1N 9J7

TO : Yorkdale Shopping Centre Holdings Inc.  
c/o Oxford Properties Group  
Royal Bank Plaza, North Tower,  
200 Bay Street, Suite 900  
Toronto, Ontario M5J 2J2

**TAKE NOTICE** that the Application for an Order Approving a DIP Financing and Related Charge, an Administration Charge, a D&O Charge, a Consulting Agreement and for Ancillary Relief will be presented for hearing and allowance in the Superior Court (Commercial Division), at the Montréal Courthouse, 1 Notre-Dame Street East, Montréal, Québec, H2Y 1B6 on March 3, 2017, at 10 a.m., or so soon thereafter as counsel may be heard, and in a room to be announced.

MONTREAL, March 1, 2017

*Osler, Hoskin & Harcourt LLP*

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**OSLER, HOSKIN & HARCOURT LLP**

Attorneys for the Debtor / Petitioner

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No.: 500-11-052159-171

SUPERIOR COURT  
(Commercial Division)

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IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF:

**BCBG Max Azria Canada Inc.**

Debtor / Petitioner

-and-

**Deloitte Restructuring Inc.**

Trustee

<b>LIST OF EXHIBITS</b>
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- P-1 Copy of the certificate of filing of a Notice of intention to make a proposal
- P-2 Declaration of Holly Etlin, Chief Restructuring Officer of BCBG Global Holdings
- P-3 Copy of BCBG Canada's registration on the *Registre des entreprises*
- P-4 Second Amended and Restated Loan Agreement dated February 5, 2015
- P-5 Forbearance Agreement dated February 14, 2017
- P-6 Redacted CCRA Engagement Letter dated February 9, 2017
- P-7 Consulting Agreement dated February 24, 2017
- P-8 Draft Canadian Forbearance Agreement
- P-9 Draft Order

MONTRÉAL, March 1, 2017

*Osler, Hoskin & Harcourt LLP*

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**OSLER, HOSKIN & HARCOURT LLP**  
Attorneys for the Debtor / Petitioner

**EXHIBIT P-1**

**COPY OF THE CERTIFICATE OF FILING  
OF A NOTICE OF INTENTION TO MAKE A PROPOSAL**





Industry Canada  
Office of the Superintendent  
of Bankruptcy Canada

Industrie Canada  
Bureau du surintendant  
des faillites Canada

District of Québec  
Division No. 01 - Montreal  
Court No. 500-11-052159-171  
Estate No. 41-2223474

In the Matter of the Notice of Intention to make a  
proposal of:

**BCBG Max Azria Canada Inc.**  
Insolvent Person

**DELOITTE RESTRUCTURING INC/RESTRUCTURATION  
DELOITT**  
Licensed Insolvency Trustee

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Date of the Notice of Intention: March 01, 2017

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CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL  
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the *Bankruptcy and Insolvency Act*.

Pursuant to subsection 69(1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: March 01, 2017, 08:19

E-File/Dépôt Electronique

Official Receiver

Sun Life Building, 1155 Metcalfe Street, Suite 950, Montréal, Québec, Canada, H3B2V6, (877)376-9902

**Canada**



Industrie Canada

Industry Canada

Bureau du surintendant  
des faillites Canada

Office of the Superintendent  
of Bankruptcy Canada

District de Québec  
No division : 01 - Montreal  
No cour : 500-11-052159-171  
No dossier : 41-2223474

Dans l'affaire de l'avis d'intention de faire une  
proposition de :

**BCBG Max Azria Canada Inc.**  
Personne insolvable

**DELOITTE RESTRUCTURING INC/RESTRUCTURATION  
DELOITT**

Syndic autorisé en insolvabilité

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Date de l'avis d'intention : 01 mars 2017

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CERTIFICAT DE DÉPÔT D'UN AVIS D'INTENTION DE FAIRE UNE PROPOSITION  
paragraphe 50.4(1)

Je soussigné, séquestre officiel pour ce district de faillite, certifie par les présentes que la personne insolvable susmentionnée a déposé un avis d'intention de faire une proposition en vertu du paragraphe 50.4(1) de la *Loi sur la faillite et l'insolvabilité*.

Conformément au paragraphe 69(1) de la Loi, toutes les procédures contre la personne insolvable susmentionnée sont suspendues à compter de la date du dépôt de l'avis d'intention.

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Date: 01 mars 2017, 08:19

E-File/Dépôt Electronique

Séquestre officiel

Sun Life Building, 1155 Metcalfe Street, Suite 950, Montréal Canada, H3B2V6, (877)376-9902

**Canada**

**EXHIBIT P-2**

**DECLARATION OF HOLLY ETLIN,  
CHIEF RESTRUCTURING OFFICER OF BCBG GLOBAL HOLDINGS**

Joshua A. Sussberg, P.C.  
Christopher J. Marcus, P.C.  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
601 Lexington Avenue  
New York, New York 10022  
Telephone: (212) 446-4800  
Facsimile: (212) 446-4900

James H.M. Sprayregen, P.C.  
Benjamin M. Rhode (*pro hac vice* pending)  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
300 North LaSalle Street  
Chicago, Illinois 60654  
Telephone: (312) 862-2000  
Facsimile: (312) 862-2200

*Proposed Counsel to the Debtors and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:	)	
	)	Chapter 11
	)	
BCBG MAX AZRIA GLOBAL HOLDINGS, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 17-10466 (___)
	)	
Debtors.	)	(Joint Administration Requested)
	)	

**DECLARATION OF HOLLY FELDER ETLIN, CHIEF RESTRUCTURING  
OFFICER OF BCBG MAX AZRIA GLOBAL HOLDINGS, LLC, (I) IN  
SUPPORT OF DEBTORS’ CHAPTER 11 PETITIONS AND FIRST DAY  
MOTIONS AND (II) PURSUANT TO LOCAL BANKRUPTCY RULE 1007-2**

I, Holly Felder Etlin, Chief Restructuring Officer of BCBG Max Azria Global Holdings, LLC and certain of its subsidiaries hereby declare under penalty of perjury:

1. I am a Managing Director at AlixPartners LLP (“AlixPartners”) and have served as the Chief Restructuring Officer of BCBG Max Azria Global Holdings, LLC (“Global Holdings”) since January 12, 2017.<sup>2</sup> I have over thirty years of experience providing

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: BCBG Max Azria Global Holdings, LLC (6857); BCBG Max Azria Group, LLC (5942); BCBG Max Azria Intermediate Holdings, LLC (3673); Max Rave, LLC (9200); and MLA Multibrand Holdings, LLC (3854). The location of the Debtors’ service address is: 2761 Fruitland Avenue, Vernon, California 90058.

<sup>2</sup> Global Holdings, a debtor and debtor in possession in the above-captioned chapter 11 cases, is a limited liability company organized under the laws of the State of Delaware. I also serve as the Chief Restructuring Officer of certain subsidiaries of Global Holdings, including each of the above-referenced debtors and debtors in

restructuring and reorganization services for companies, their creditors, and other stakeholders, including extensive experience in the retail sector.

2. I am generally familiar with the Debtors' day-to-day operations, business and financial affairs, and books and records. I submit this declaration to assist the Court and parties in interest in understanding the circumstances compelling the commencement of these chapter 11 cases and in support of the Debtors' chapter 11 petitions and certain motions and applications filed today.

3. Except as otherwise indicated, all facts in this declaration are based upon my personal knowledge, my discussions with the Debtors' management team and advisors, including the AlixPartners team working under my supervision, my review of relevant documents and information concerning the Debtors' operations, financial affairs, and restructuring initiatives, or my opinions based upon my experience and knowledge. I am over the age of 18 and authorized to submit this declaration on behalf of the Debtors. If called upon to testify, I could and would testify competently to the facts set forth in this declaration.

#### **Preliminary Statement**

4. BCBG—an acronym for the French phrase “*bon chic, bon genre*,” meaning “good style, good attitude”—was founded by Max Azria in Los Angeles, California in 1989. Over the course of the next three decades, BCBG grew to well over 550 stores spread across the United States, Canada, Europe, and Japan, becoming a well-known and respected name in high-end women's apparel and accessories. Unfortunately, like many other apparel and retail companies, BCBG has fallen victim in recent years to adverse macro-trends, including a general shift away from brick-and-mortar to online retail channels, a shift in consumer demographics away from

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possession (collectively, the “Debtors,” and together with Global Holdings' non-Debtor subsidiaries, “BCBG”). Debtor BCBG Max Azria Group, LLC has principal assets located in the Southern District of New York.

branded apparel, expensive leases, under-penetration of the Debtors' wholesale and licensing segments, and expensive investments in overseas operations and distributor agreements. These trends have directly impacted BCBG's sales and operations, with consolidated net sales declining over 20 percent since fiscal year 2014 from \$785 million to approximately \$615 million in the most recent fiscal year.

5. Guggenheim Partners Investment Management, LLC ("GPIM," and together with its affiliates, "Guggenheim"), through clients and managed funds, has maintained a relationship with BCBG dating back to 2006, when GPIM first arranged financing for the company to pursue expansion projects. As operating conditions in the apparel industry became more challenging over the next decade, certain of BCBG's operational issues came into sharper focus, including a cost structure misaligned with market realities, a lagging online presence, an overextended physical store footprint, an unexploited intellectual property portfolio, and an under-developed wholesaling division.

6. When growth slowed and eventually contracted, the Debtors found themselves overleveraged and short on liquidity. After reviewing, considering, and pursuing all strategic alternatives on the heels of the "Great Recession," the confluence of issues plaguing the company necessitated an out-of-court restructuring in early 2015. The out-of-court restructuring included the equitization of more than \$300 million of secured term loans and a \$100 million equity investment. The out-of-court restructuring was followed by a secured "rescue" financing in August 2016. As part of these transactions, Max Azria relinquished his majority equity position, and, effective August 12, 2016, retired from his roles as BCBG's chief executive officer and a manager on the Global Holdings' board.<sup>3</sup>

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<sup>3</sup> Mr. Azria is a non-voting, non-participating observer on Global Holdings' board.

7. Notwithstanding its difficulties, BCBG remains a valuable and iconic brand. In an effort to ensure its longevity, BCBG has already undertaken a variety of operational initiatives to address its issues. This includes commencing the closure of 120 stores in early 2017 (to effect a downsizing of its brick-and-mortar store footprint) and preparing for near term headcount and other cost reductions. Further, BCBG has arrived in chapter 11 with a transaction structure and process that it believes will preserve and capitalize on the value inherent in its business and brand.

8. At the direction of their recently appointed independent managers, the Debtors are in negotiations with their junior secured lenders (the “Tranche B” lenders) to finalize the terms of a chapter 11 plan, a draft of which was filed today. The plan includes a “toggle” feature, contemplating either (a) the sale of the Debtors’ assets to a third party or (b) a debt for equity conversion on terms to be negotiated. Consistent with this process, the Debtors have begun marketing their assets and today filed a motion seeking approval of bidding procedures to continue these efforts. The proposed debtor-in-possession financing, the plan, and the related bidding procedures all are designed to facilitate a process that will maximize value, the likelihood of a going concern transaction for the benefit of stakeholders enterprise-wide, and the confirmation of a chapter 11, all within six months. The overall process itself will minimize the Debtors’ expected stay in chapter 11 and related costs. Moving with speed is critical to the Debtors’ ability to continue operating as a going concern.

9. Both the Debtors’ existing secured asset-based lenders—who maintain a first priority security interest in the Debtors’ inventory—and certain secured term loan lenders—who maintain a first priority security in the Debtors’ intellectual property and a second priority security interest in inventory—have agreed to provide debtor-in-possession financing to facilitate

this process. More specifically, the asset-based lenders will continue to lend money on terms similar to those under the Debtors' existing asset-based lending facility. Certain secured term lenders have agreed to provide a \$80 million junior debtor-in-possession facility, including up to \$45 million in new money. The milestones under both financing arrangements, subject in all respects to the Court's availability, contemplate the following:

- on or before March 10, 2017, the Debtors will distribute informational packages to potential bidders;
- on or before March 30, 2017, the Debtors will secure entry of an order approving their proposed bidding procedures;
- on or before May 9, 2017, any interested bidder must submit a qualified bid to participate in the auction;
- on or before May 22, 2017, the Debtors will commence the auction in accordance with the bidding procedures;
- on or before May 30, 2017, (a) the Debtors will secure entry of an order approving their disclosure statement and (b) in the absence of an acceptable third-party bid, the Debtors and the Tranche B lenders will agree to the specific terms of the debt-for-equity conversion and exit financing;
- on or before July 10, 2017, the Debtors will secure entry of an order approving their chapter 11 plan; and
- on or before July 28, 2017, the Debtors will emerge from these chapter 11 cases.

10. To familiarize the Court with the Debtors, their businesses, the circumstances leading to these chapter 11 cases, and the relief the Debtors are seeking in those certain motions and applications filed contemporaneously, I have organized this declaration as follows:

- **Part I** provides a general overview of the Debtors' corporate history and operations;
- **Part II** provides an overview of the Debtors' prepetition capital structure;



- **Part III** describes the circumstances leading to these chapter 11 cases;
- **Part IV** describes the Debtors' proposed debtor-in-possession financing, bidding procedures, and chapter 11 plan;
- **Part V** sets forth the evidentiary basis for the relief requested in each of the first day pleadings; and
- **Part VI** sets forth certain additional information about the Debtors, as required by Local Bankruptcy Rule 1007-2.

## **I. General Background.**

11. It has been said that “the difference between Fashion and Style is quality.”<sup>4</sup> For nearly 30 years, the Debtors have been famous for producing high-quality women's dresses and sportswear, including dresses frequently seen on the red carpet and runways. After years of success and growth, the Debtors now find themselves caught behind the evolution of customer tastes and the rapid decline of brick-and-mortar retail in favor of online retail. Despite these headwinds, the Debtors maintain a loyal customer base for their well-established brands. The Debtors believe that this will enable them to achieve higher sales productivity by transitioning to more efficient operations while developing a more robust online sales presence, wholesale, and licensing business.

12. After founding BCBG in 1989, Max Azria built it and affiliated brands into a billion dollar fashion empire, with hundreds of stores spread across the globe in the United States, Canada, Europe, and Japan. In 1998, the company bought the *Herve' Leger* fashion house, becoming the first American designer in history to acquire a French couturier. BCBG Max Azria and *Herve' Leger* are the Debtors' two primary brands; the brands' dresses have been a staple at New York Fashion Week and other fashion events since the mid-1990s. The Debtors

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<sup>4</sup> Giorgio Armani: <http://www.elledecor.com/design-decorate/interior-designers/interviews/a3918/10-questions-giorgio-armani-a-56509/>.

also sell apparel under the BCBGeneration brand, which is aimed at younger customers and typically sells at a lower price point.

**A. The Debtors' Business Operations.**

13. The Debtors generally specialize in women's apparel and accessories with a focus on women's dresses, most of which retail for between \$250 and \$750. The Debtors maintain control over their proprietary brands by designing, sourcing, marketing, and selling their own merchandise, with limited licensing activities. While the Debtors license the BCBG brand image to some complementary products, this license revenue makes up only a small proportion of enterprise-wide revenue.

14. BCBG operates in all fifty states, as well as in Canada, Europe, and Japan. BCBG's products are sold in more than 480 domestic locations, including more than 120 standalone retail stores, approximately 58 factory outlet stores, and approximately 290 "partner shops." The Debtors' partner shop arrangements are governed by agreements under which they lease space in large, well-known department stores from which they sell their branded merchandise (the Debtors retain title to the merchandise until it is sold). The Debtors' primary partner shop counterparties are Bloomingdale's, Inc., Dillard's, Inc., Hudson's Bay Company (Canada only), Lord & Taylor, and Macy's, Inc. Although a number of the Debtors' standalone BCBG-branded retail and factory outlet stores have struggled to meet performance goals, the partner shops generally have remained profitable. As described below, in the weeks preceding the commencement of these chapter 11 cases, the Debtors commenced store closures in approximately 120 locations, primarily standalone BCBG-branded retail and factory outlet stores.

15. The operations of the Debtors' wholly-owned foreign affiliates have historically performed at a loss. The Debtors do not intend to have any wholly-owned foreign-affiliated

operations (with the possible exception of the Hudson's Bay Company partner shops in Canada, described below) upon emergence from these chapter 11 cases. Instead, the Debtors' go-forward business plan is focused on a reduced domestic physical footprint, accompanied by increased intellectual property licensing, wholesaling, and online retail activities. International activities will be focused on certain distribution licenses and wholesale sales.

16. Through BCBG Max Azria Canada, Inc. ("BCBG Canada"), BCBG operates approximately 51 stores across Canada. BCBG Canada also operates a number of profitable partner shops in Canada under an agreement with Hudson's Bay Company. BCBG Canada is the borrower of approximately \$10.4 million in obligations under the Canadian sub-facility of the ABL Facility (the payment of which is guaranteed by each of the Debtors). BCBG Canada has simultaneously filed a "notice of intention to make a proposal" under the relevant provisions of Canada's Bankruptcy and Insolvency Act (the "Canadian Proceeding"). As part of the Canadian Proceedings, BCBG Canada intends to liquidate and wind down all of its standalone locations, while exploring alternatives to preserve the value of the Hudson's Bay Company partner shops for the benefit of the BCBG enterprise. BCBG Canada is not a Debtor in these chapter 11 cases and the Canadian Proceedings will proceed along a separate, parallel track.

17. The operations of the Debtors' Japanese affiliate ("BCBG Japan") consist of approximately 13 standalone stores. BCBG does not intend to further support the Japanese operations. BCBG's management team and advisors are exploring alternatives under which a third party will agree to assume BCBG Japan's operations, license certain BCBG intellectual property, and buy inventory from the Debtors at wholesale to sell in BCBG-branded, Japanese stores. If an arrangement cannot be secured, BCBG Japan's operations are likely to be wound down.

18. The operations of the Debtors' European affiliates (collectively, "BCBG Europe") are primarily located in France and include approximately 34 standalone stores, as well as a number of "franchise" arrangements under which third parties purchase inventory wholesale from the Debtors to sell in BCBG-branded stores. BCBG's management team and advisors are exploring alternatives in Europe similar to those in Japan.

19. The Debtors are also party to approximately 20 distribution agreements covering Central and South America, Europe, and the Middle East under which the Debtors sell inventory at wholesale to certain counterparties. The counterparties license the BCBG brand and sell the inventory either at retail or wholesale in their respective foreign jurisdictions. The Debtors intend to eliminate subscale and unprofitable distribution agreements, while focusing on the profitable agreements, as a part of their go-forward operations.

**B. The Debtors' Cost Structure.**

**1. Supply Chain.**

20. The Debtors maintain an integrated supply chain aimed at ensuring the uninterrupted flow of fresh merchandise to their brick-and-mortar locations. The Debtors design merchandise in house and contract with various foreign manufacturers, predominantly located in China and Hong Kong (the "Manufacturers").

21. The Manufacturers generally manufacture and ship inventory and other goods to the Debtors either "free on board" ("FOB") or "delivery duty paid" ("DDP"). Under an FOB arrangement, the Debtors pay freight forwarders to transport merchandise and other goods from Southeast Asia to the Debtors' U.S.-based warehouse and title passes to the Debtors when merchandise and goods are loaded for shipment to the United States. Under the DDP arrangements, the Manufacturer pays to ship the goods to the Debtors' U.S.-based warehouse and title to the manufactured goods does not pass to the Debtors until they arrive at the Debtors'

U.S.-based warehouse. The Debtors incur a range of customs/import duties in the regular operation of their supply chain.

22. The Debtors predominantly operate their own warehouses—including one warehouse in Los Angeles and one warehouse in Canada. Both warehouses are owned by Max Azria and leased to the Debtors. The Debtors also contract with a third-party warehouseman to conduct their e-commerce business. The Debtors ship inventory through various third-party shippers and freight forwarders to their U.S., Canadian, Japanese, and European operations from their U.S. and Canadian warehouses. Supply chain costs totaled \$35.8 million in 2016, with monthly costs ranging from \$2.4 million to \$4.3 million. The Debtors anticipate these costs will be substantially reduced in fiscal year 2017 due to the smaller store base and cost-reduction initiatives.

## **2. Employee Compensation and Benefits.**

23. The Debtors employ approximately 4,800 employees domestically including 1,900 full time employees and 2,900 part-time employees. The Debtors estimate that their bi-weekly gross payroll (including taxes and benefits) will be approximately \$4.0 million for domestic employees over the course of these chapter 11 cases. The Debtors currently maintain a substantially higher number of employees than similarly sized competitors. As the Debtors implement broader operational right-sizing measures, including a reduced physical store footprint, the Debtors believe that a more efficient allocation of employees will present a significant opportunity for savings.

24. The Debtors contribute to a number of employee benefit plans providing medical, pharmacy, dental, vision, workers' compensation, and other ancillary benefits to the Debtors' employees. Payments by the Debtors on account of these plans totaled approximately

\$18.5 million in 2016. The Debtors are not party to any collective bargaining agreements. The Debtors have no defined benefit pension plans.

### **3. Real Estate Obligations.**

25. The Debtors lease all of their freestanding store locations. Many of the Debtors' store leases have a fixed rental payment due in advance and require the Debtors to pay additional rent based on specified percentages of sales after the Debtors achieve certain annual sales thresholds. The Debtors estimate that the aggregate occupancy costs for the Debtors' go-forward freestanding stores will be approximately \$50 million in fiscal year 2017. In addition, the Debtors lease approximately 265,000 square feet of office space in Los Angeles, California, a building that is owned by Max Azria, as their corporate headquarters and to house certain of the Debtors' design, sourcing, and production functions. In addition, the Debtors lease a 27,000 square foot showroom in New York City, as well as office space for substantially all of the Debtors' wholesaling functions.

#### **C. The February 2015 Out-of-Court Restructuring.**

26. The Debtors historically funded various expansion projects through syndicated lending facilities organized by third-party financial institutions. The Debtors sought additional financing in early 2006 to pursue further growth opportunities. GPIM, through its clients and managed funds, provided more than \$200 million in new secured term loans to, among other things, pursue expansion opportunities in Europe and purchase G&G Retail, Inc. out of bankruptcy in February 2006. The Debtors re-branded G&G Retail as "Max Rave."

27. After a track record of sustained success since its founding, the company's acquisition strategy ultimately proved unprofitable. Additionally, the "Great Recession" had a significant negative impact on the Debtors' businesses as consumer spending tightened. By 2012, as a result of operational shortcomings, certain macro-trends, and unsuccessful expansion

efforts, the Debtors found themselves in difficult financial straits. The Debtors engaged with their existing lenders to consider all strategic alternatives. This included a nearly two-year process (between 2012 and 2014) to identify and engage potential strategic buyers or investors, while also considering other alternatives, including an initial public offering. The Debtors' liquidity position continued to deteriorate. Adverse macroeconomic trends, following the pursuit (unsuccessfully) of various strategic alternatives, which caused the company to be unable to pay interest at all, necessitated a comprehensive out-of-court restructuring in early 2015. To ease the company's cash-pay interest burden and avoid an event of default under its financing obligations so as to allow the strategic alternatives to be pursued, the term loan lenders agreed to accept interest payments in kind ("PIK") to stave off defaults. By 2015, the Debtors' aggregate funded debt had grown to nearly \$700 million—more than \$550 million of which was secured term loan debt held by GPIM clients and managed funds (comprised of original loans, purchased loans, and accrued PIK interest).

28. After other strategic alternatives proved unsuccessful, the Debtors and their key stakeholders reached agreement on a comprehensive out-of-court restructuring transaction in accordance with the terms of the Contribution Agreement dated as of January 26, 2015 (the "Contribution Agreement"). The transactions contemplated in the Contribution Agreement closed in February 2015 (the "February 2015 Restructuring").

29. As part of the February 2015 Restructuring, the Debtors entered into an exchange agreement with their existing term loan lenders. More specifically, the more than \$550 million in then-existing term loans held by GPIM clients and managed funds were exchanged for:<sup>5</sup> (a) \$250 million in junior secured "Tranche B" term loans (which include a PIK interest feature,

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<sup>5</sup> The existing term loans were aggregated into a single entity—Designer Apparel Dual Holdings, LLC ("Dual Holdings").

currently accruing at 10 percent per annum); (b) 600,000 non-convertible preferred equity units in Global Holdings, with an aggregate liquidation preference of \$150 million; and (c) 400,000 of Global Holdings' "Class C" common units, constituting a 40 percent ownership interest.

30. Midland National Life Insurance Company and North American Company for Life and Health Insurance<sup>6</sup> also provided \$35 million in new senior secured financing. In addition to the prepayment and extinguishment of certain outstanding secured term loans, the Debtors used proceeds from the transaction to pay down approximately \$73.6 million of their asset-based lending facility. Finally, to facilitate the February 2015 Restructuring, Guggenheim, though affiliated entity Fashion Funding, LLC, provided a \$100 million equity investment in return for 400,000 of Global Holdings' "Class B" common units, constituting a 40 percent ownership interest.<sup>7</sup>

31. Until early 2015, Max Azria, together with his wife Lubov Azria, owned 100 percent of BCBG's common equity. In addition to their ownership stakes, Max Azria historically served as chief executive officer of BCBG, with Lubov Azria serving as chief creative officer. As contemplated in the Contribution Agreement, and in addition to relinquishing 80 percent of their equity stake to effectuate the February 2015 Restructuring, Max and Lubov Azria agreed to:

- irrevocably transfer and assign certain "Publicity Rights" to BCBG, including the commercial use of their names and likenesses in connection with BCBG's lines of business;

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<sup>6</sup> Midland National Life Insurance Company and North American Company for Life and Health Insurance are directly or indirectly wholly owned by Sammons Financial Group, Inc. Guggenheim Partners, LLC, the parent of GPIM, is an affiliate of Sammons Enterprises, Inc., the parent company of Sammons Financial Group, Inc. and its affiliated companies.

<sup>7</sup> Fashion Funding, LLC subsequently transferred a portion of the Class B units to its subsidiaries, Fashion Funding II, LLC and Fashion Funding III, LLC, which, together with Fashion Funding LLC, currently hold all of the outstanding Class B common units.



- non-solicitation and non-compete restrictions that extend through January 3, 2022—including, for example, an agreement not to use or exploit their Publicity Rights (*e.g.*, their names or any confusingly similar variation) in connection with any competing line of business—that Max and Lubov Azria expressly acknowledged as a condition to the lenders’ willingness to enter into the Contribution Agreement;
- the terms of standalone employment agreements, each dated February 5, 2015, for three year terms;
- the exchange of mutual releases with the parties to the Contribution Agreement; and
- non-disparagement restrictions, including a prohibition against making any disparaging comments to the press or any entity with which BCBG has a business relationship.

32. The February 2015 Restructuring resulted in the substantial deleveraging of the Debtors’ balance sheet—with the Debtors’ funded-debt obligations reduced from nearly \$700 million to approximately \$325 million—extended the Debtors’ liquidity runway, and helped the Debtors to maintain important vendor relationships.

**D. The August 2016 Financing.**

33. In the summer of 2016, the Debtors once again faced a liquidity crisis in light of market conditions and operational losses. Following the February 2015 Restructuring, the Debtors had implemented various operational initiatives aimed at increasing profitability, including changes to the Debtors’ senior management, but the Debtors continued to underperform financially. In August 2016, Allerton Funding, LLC committed to provide rescue financing in the form of “New Tranche A” secured term loans through an amendment to the Debtors’ existing secured term loan facility.

34. More specifically, Allerton Funding, LLC committed to provide three separate Tranche A secured term loans: “Tranche A-1” (\$3.9 million), “Tranche A-2” (\$46.1 million), and “Tranche A-3” (\$25 million) (collectively, the “New Tranche A Loans”). Tranche A-1 (\$3.9

million) was funded in connection with the closing of the financing, and Tranche A-2 (\$46.1 million) was funded shortly thereafter. Tranche A-3 was to be made available to the Debtors only if certain conditions were satisfied.<sup>8</sup> The New Tranche A loans were made on a senior secured basis, junior in priority to the Tranche A loans but senior in priority to the Tranche B loans. The Term Loan Credit Agreement (as defined below) contains certain intercreditor provisions and an intercreditor addendum attached as Annex II governing the relative priority of the Tranche A loans, the New Tranche A loans, and the Tranche B loans. The following chart illustrates the priority waterfall between the existing Term Loan Facility tranches (amounts outstanding include PIK interest, where applicable):

<b>Funded Debt</b>	<b>Amount Outstanding</b>	<b>Payment Priority</b>
<b>Tranche A</b>	\$35.0 million	First
<b>New Tranche A (A-1)</b>	\$4.2 million	Second ( <i>pari passu</i> )
<b>New Tranche A (A-2)</b>	\$48.5 million	Second ( <i>pari passu</i> )
<b>New Tranche A (A-3)</b>	\$0 (undrawn)	Second ( <i>pari passu</i> )
<b>Tranche B</b>	\$289.4 million	Third

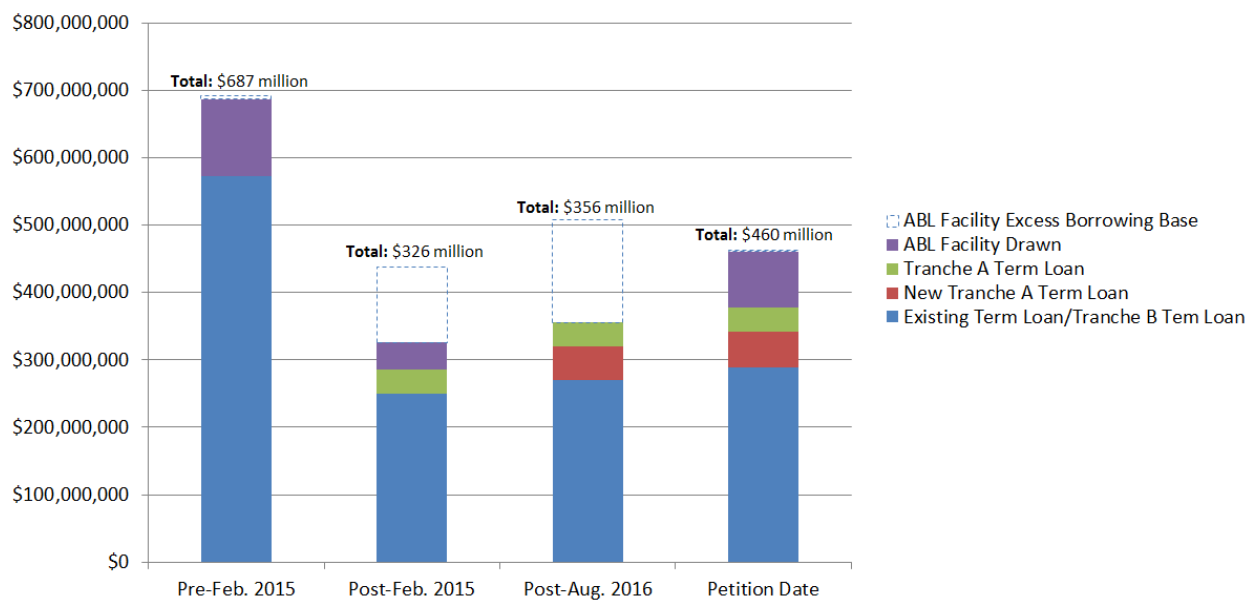
35. In connection with the provision of the New Tranche A loans, BCBG Investor LLC, Max Azria, and certain affiliated entities entered into a letter agreement, dated July 26, 2016 to memorialize certain terms with respect to the new money investment that were critical to fund ongoing operations. The transactions contemplated under the letter agreement were effectuated on August 12, 2016 (the “August 2016 Financing”). As memorialized in the letter agreement, and in consideration for the payment of \$3.9 million, Mr. Azria agreed to, among other things, retire from his roles as chief executive officer of BCBG and a member of the Global Holdings’ board of managers. This agreement relieved the company of all obligations under Mr. Azria’s Employment Agreement. Mr. Azria expressly agreed, however, that all

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<sup>8</sup> The conditions to funding this additional \$25 million have not been satisfied. Nonetheless, on February 15, 2017, the Debtors requested that the New Tranche A lender waive the applicable conditions precedent and fund the undrawn \$25 million in availability under the New Tranche A loans. No funding has been provided.

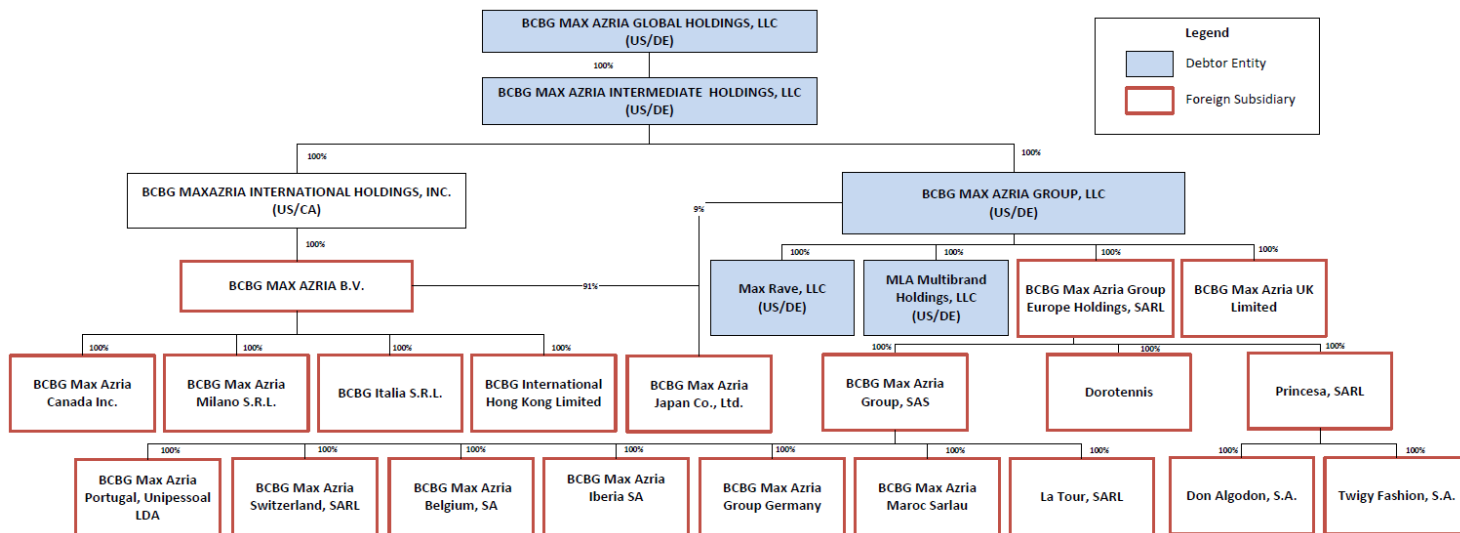
restrictive covenants were in full force and effect, that his remaining Global Holdings common equity interest would be transferred to a voting trust, and that he would agree to a release of any and all claims.

36. The graphic below depicts the Debtors’ capital structure (a) before the February 2015 Restructuring Transactions, (b) after the February 2015 Restructuring Transactions, (c) after the August 2016 Financing, and (d) as of the Petition Date (as described in detail below).



**II. The Debtors’ Prepetition Corporate and Capital Structure.**

37. The chart below depicts the Debtors’ current corporate structure. Global Holdings and each of its U.S.-incorporated subsidiaries that are obligors (either as a borrower or guarantor) under the ABL Facility and Term Loan Facility (each as defined below) are Debtors in these chapter 11 cases.



38. As of the Petition Date, the Debtors’ capital structure consisted of outstanding funded-debt obligations in the aggregate principal amount of approximately \$459.7 million, consisting of the ABL Facility and Term Loan Facility. The following table summarizes the Debtors’ outstanding funded-debt obligations, including PIK interest (where applicable).

Funded Debt	Maturity	Principal Amount
<b>ABL Facility</b>	February 2020	\$82 million
<b>Term Loan Tranche A</b>	February 2020	\$35.0 million
<b>Term Loan Tranche A-1</b>	February 2020	\$4.2 million
<b>Term Loan Tranche A-2</b>	February 2020	\$48.5 million
<b>Term Loan Tranche A-3</b>	February 2020	\$0 (undrawn)
<b>Term Loan Tranche B</b>	February 2020	\$289.4 million
	<b>Total:</b>	\$459.7 million

**A. ABL Revolving Credit Facility.**

39. BCBG Max Azria Group, LLC, as borrower, BCBG Max Azria Canada Inc., as the Canadian borrower, the guarantors party thereto, the lenders party thereto (the “ABL

Lenders”), and Bank of America, N.A. (the “ABL Agent”), as administrative agent, are parties to that certain Second Amended and Restated Loan Agreement, dated as of February 5, 2015 (as amended, amended and restated, supplemented, or otherwise modified, refinanced, or replaced from time to time prior to the Petition Date, the “ABL Credit Agreement”). The ABL Credit Agreement provides for a senior secured revolving credit facility (the “ABL Facility”) that consists of “Tranche A,” “Tranche A-1,” and a Canadian revolving credit sub-facility. The maximum availability is \$82.5 million under Tranche A, \$2.5 million under Tranche A-1, and \$15.0 million under the Canadian revolving credit facility, subject to certain terms and conditions. As of the Petition Date, the aggregate borrowing base (*i.e.*, the effective maximum availability) was approximately \$82 million. Each non-borrower Debtor has guaranteed all obligations under the ABL Facility, including the Canadian sub-facility. Obligations under the ABL Facility are secured by a first priority lien on the Debtors’ accounts receivable, inventory, deposit accounts, security accounts, cash, and cash equivalents and a second priority lien on all other property of the grantors, including the Debtors’ intellectual property (the “ABL Collateral”). As of the Petition Date, approximately \$82 million remained outstanding under the Revolving Facility.

40. The Debtors have entered into deposit account control agreements in favor of the ABL Agent with respect to each of its bank accounts. Thus, substantially all of the Debtors’ cash is subject to a perfected security interest in favor of the ABL Agent. Under the ABL Facility, so long as excess availability is less than fifteen percent of the then-applicable borrowing base, the Debtors must remit all cash receipts on a daily basis to a non-Debtor account maintained by the ABL Agent (the “Agent Account”). Due to the Debtors’ ongoing liquidity constraints, the excess availability under the ABL Facility was less than fifteen percent as of the

Petition Date (and for a number of months preceding the Petition Date). Accordingly, each day, any excess cash in the Collection Account is swept to the Agent Account.

**B. Term Loan Credit Facility.**

41. BCBG Max Azria Group, LLC, as borrower, the guarantors party thereto, the lenders party thereto, and Guggenheim Corporate Funding, LLC, as administrative agent and collateral agent (in such capacity, the "Term Loan Agent") are party to that certain Fifth Amended and Restated Credit and Guarantee Agreement, dated as of August 12, 2016 (as amended, amended and restated, supplemented, or otherwise modified, refinanced, or replaced from time to time prior to the Petition Date, the "Term Loan Credit Agreement"). The aggregate Term Loan Agreement commitment consists of the Tranche A loans, the New Tranche A loans (including the Tranche A-1, Tranche A-2, and Tranche A-3 loans), and Tranche B loans (collectively, the "Term Loan Facility"). Each non-borrower Debtor has guaranteed all obligations under the Term Loan Facility. Obligations under the Term Loan Agreement are secured by a second priority lien on the Debtors' accounts receivable, inventory, deposit accounts, security accounts, cash, and cash equivalents and a first priority lien on all other property of the borrowers and guarantors, including the Debtors' intellectual property (the "Term Loan Collateral"). As of the Petition Date, approximately \$377.0 million in aggregate principal amount remained outstanding under the Term Loan Agreement.

42. **Tranche A Term Loan.** Tranche A of the Term Loan Facility was the new money term loan financing put in place as part of the February 2015 Restructuring. As of the Petition Date, approximately \$35.0 million remained outstanding in Tranche A loans. Under the Term Loan Credit Agreement, the Tranche A loans have a first payment priority before all of the New Tranche A loans and Tranche B loans. The Tranche A loans bear an effective cash interest rate of 10 percent.

43. ***New Tranche A Term Loan.*** New Tranche A (*i.e.*, Tranches A-1, A-2, and A-3) of the Term Loan Facility was put in place as part of the August 2016 Financing. Tranches A-1 and A-2 of the New Tranche A loans were funded either contemporaneously with or shortly after the August 2016 Financing; Tranche A-3 (\$25 million) is undrawn. As of the Petition Date, \$52.6 million in New Tranche A loans are outstanding. Under the Term Loan Credit Agreement, the New Tranche A loans have a second payment priority (on a *pari passu* basis), junior to the Tranche A loans and senior to the Tranche B loans. The New Tranche A loans bear an effective PIK interest rate of 15 percent.

44. ***Tranche B Term Loan.*** Tranche B of the Term Loan Facility are the term loans put in place as part of the February 2015 Restructuring. In light of continued PIK interest accumulation since the August 2016 Financing, as of the Petition Date, an aggregate of approximately \$289.4 million was outstanding under Tranche B of the Term Loan Facility. Under the Term Loan Credit Agreement, the Tranche B loans have a third payment priority after the Tranche A loans and the New Tranche A loans. The Tranche B loans bear an effective PIK interest rate of 10 percent.

**C. Common and Preferred Equity Interests.**

45. As of the Petition Date, Guggenheim, its affiliates, and its managed funds directly or indirectly hold 80 percent of the common equity interests in Global Holdings—40 percent in Class B common units and 40 percent in Class C common units. Fashion Funding also holds 600,000 of Global Holdings' preferred units. Max and Lubov Azria directly or indirectly hold 20 percent of the common equity interests in Global Holdings in "Class A" common units. Each of the Global Holdings Class B, Class C, and preferred units have a distribution preference (totaling \$350 million) ahead of the Class A common units. In connection with his status as a

Class A common unitholder, Max Azria is designated as an observer of the board in a non-voting and non-participating capacity.

### **III. Events Leading to these Chapter 11 Cases.**

46. A confluence of factors contributed to the Debtors' need to commence these chapter 11 cases. These factors include the general downturn in the retail industry, which led to a decrease in sales and increased operating losses and the marked shift away from brick-and-mortar retail to online channels. The Debtors' cost structure has become increasingly misaligned and sales have remained depressed (exacerbated by unsuccessful acquisitions and foreign operations). All of which has impaired the Debtors' liquidity time and time again.

#### **A. Challenging Operating Environment and Operational Right-Sizing.**

47. The Debtors, and many other apparel and retail companies, have faced a challenging commercial environment over the past several years brought on by increased competition and the shift away from shopping at brick and mortar stores. Given the Debtors' substantial brick and mortar presence, and the expenses associated therewith, the Debtors' business has been heavily dependent on physical consumer traffic, and resulting sales conversion, to meet their sales and profitability targets. The combination of the above factors, and others plaguing the retail industry as a whole, contributed to the Debtors falling short of their targeted sales, profitability performance, and increasing operational losses.

48. Despite their substantial brick-and-mortar footprint, the Debtors have not established a large online presence, and online sales, which account for an increasing proportion of retail spending, make up a relatively small proportion of the Debtors' sales. The Debtors have increased their online presence—including by continuing to develop their own website—but fully exploiting the growth of online retail remains an ongoing process for the Debtors. The Debtors' lack of a fully developed online presence has put downward pressure on the Debtors'



revenue, and has hurt their comparative performance against competitors with more modern online-centric sales models.

49. In addition to the rise of online retail, the Debtors' businesses have been harmed by their failure to adapt to recent consumer trends, including lower price points due to competitive pressure. BCBG designs and manufactures high quality items meant to be worn for many years, with correspondingly higher price points. BCBG has underpenetrated its wholesale business and has not exploited its many licensing opportunities, in contrast to some of its key competitors. Instead, by focusing on unprofitable foreign operations, which lost approximately \$23 million in fiscal year 2016, the Debtors have further strained their resources by supporting those businesses.

**B. Supply Chain and Borrowing Base Challenges.**

50. As the Debtors' liquidity has tightened, the supply chain vendors have begun to place pressure on the supply chain cost structure. Vendors have begun refusing to ship inventory until the Debtors pay (which can result in completed merchandise being stuck overseas). This in turn worsens the Debtors' liquidity (including by reducing the borrowing base under the ABL Facility), creating a negative feedback loop. Without the flow of fresh inventory, the Debtors' retail business will effectively starve.

51. Additionally, as described above, due to the limited borrowing base availability under the ABL Facility, the ABL Agent sweeps all of the Debtors' available cash on a daily basis. This, combined with the Debtors' vendors' unwillingness to ship new inventory on credit, has limited the Debtors' ability to purchase new inventory. As is typical in the apparel industry, the Debtors' inventory levels form a substantial portion of the ABL Facility borrowing base—thus, the Debtors' inability to ship new inventory only exacerbates the ABL Facility borrowing

base constraints, which, in a vicious cycle, further limits the Debtors' ability to ship fresh inventory.

52. A critical component of the Debtors' proposed debtor-in-possession financing (the "Proposed DIP Financing"), described in greater detail below, is securing adequate liquidity to reverse the above-described cycle during these proceedings. The flow of fresh inventory is the lifeblood of retail and wholesale sales, and ensuring the flow of inventory to the Debtors' customers during these chapter 11 cases will maximize the value of the Debtors' estates.

**C. Board Exploration of Strategic Alternatives and Independent Investigation.**

53. Recognizing the need to explore restructuring alternatives, the Debtors retained Kirkland & Ellis LLP, as legal advisor, and AlixPartners, as restructuring and financial advisor (including Chief Restructuring Officer and Interim Chief Financial Officer) on or about January 11, 2017. In February 2017, the Debtors retained Jefferies, LLC ("Jefferies"), as their investment banker. Also, in January 2017, the holders of Global Holdings Series B and Series C common units, appointed Homi Patel, Bennett Nussbaum, and Robert Rosenberg to the Board as independent managers (the "Independent Managers") of the Board. Each of the Independent Managers has extensive experience serving on boards of managers and boards of directors, including in distressed situations.

54. In the weeks since their appointment, the Independent Managers have played a key role in the restructuring negotiations and the analysis of, among other things, operational restructuring initiatives, the Proposed DIP Financing, the Debtors' chapter 11 plan (the "Plan"), the proposed bidding procedures related thereto (the "Bidding Procedures"), and related matters. The Independent Managers have also directed Kirkland & Ellis LLP to conduct an investigation into all potential estate causes of action, including any claims or causes of action against existing

lenders or equity holders. The investigation was commenced in the weeks preceding the Petition Date and is ongoing.

55. As part of the investigation, the Independent Managers have begun to collect documents, including documents related to all dealings between the Debtors, their term lenders, and Max Azria. The Independent Managers have also begun interviewing the Debtors senior management, including the company's general counsel and interim chief executive officer.

**D. Operational Right-Sizing Initiatives and ABL Forbearance.**

56. In light of the foregoing, the Debtors began to aggressively pursue operational right-sizing initiatives in the weeks immediately preceding the Petition Date. Significantly, on February 1, 2017, the Board authorized the closing and winding down of approximately 120 brick-and-mortar store locations, predominantly standalone BCBG-branded retail and factory outlet stores. Immediately thereafter, the Debtors engaged the joint venture of Hilco Merchant Resources, LLC and Gordon Brothers Retail Partners, LLC (collectively, the "Liquidators") to begin liquidating the inventory in the closing stores and otherwise preparing the stores for turnover to the applicable landlords. The Liquidators' efforts are ongoing as of the Petition Date and the Debtors will seek to assume the fee agreement in place with the Liquidators so that the Liquidators may continue their work uninterrupted.

57. Additionally, on February 14, 2017, the Debtors and the ABL Agent entered into a forbearance agreement (the "ABL Forbearance"). Prior to entry into the ABL Forbearance, due to the Debtor's shrinking inventory base and the fact that all of the Debtors' cash was swept on a daily basis under the terms of the ABL Credit Agreement, the Debtors had very limited cash to continue to fund operations. Under the terms of the ABL Forbearance, the ABL Lenders agreed to, among other things, (a) forbear from exercising certain rights and remedies through February 28, 2017, and (b) temporarily reduce the borrowing base availability block by

\$5 million, resulting in the release of critical funds to allow the Debtors to purchase (and sell) new inventory.

58. The Debtors will continue to implement operational right-sizing measures postpetition, including store closures, a potential reduction in force, and contract renegotiations and rejections, which will maximize the value of the Debtors' estates by creating the most attractive, going concern business possible to shop to potential purchasers in accordance with the proposed bidding procedures.

#### **IV. The Proposed DIP Financing, Marketing Process, and Chapter 11 Plan.**

59. To fund the administration of these chapter 11 cases, the ABL Lenders, the Tranche A lenders, and the Tranche B lenders have agreed to fund the Proposed DIP Financing. The ABL Lenders have agreed to continue to lend money on terms similar to those under the Debtors' existing asset-based lending facility. The Tranche A lenders and the Tranche B lenders have agreed to provide a \$80 million junior debtor-in-possession facility, including up to \$45 million in new money. The Tranche A lenders will fund \$4.8 million of new money financing, while their \$35 million in outstanding Tranche A loans will convert to postpetition debtor-in-possession loans. The Tranche B lenders will fund the remaining \$40.2 million of the new money financing.

60. Both the revolving and term loan portions of the Proposed DIP Financing are critical to the Debtors' ability to operate smoothly postpetition, including by providing sufficient liquidity to fund the administrative cost of these chapter 11 cases and, importantly, payments to the Manufacturers and other participants in the Debtors' supply chain to ensure the free flow of inventory to the Debtors' stores and wholesale customers. Based on my knowledge and extensive discussions with the Debtors' management team and advisors, including a team from AlixPartners acting under my supervision, I believe that the Proposed DIP Financing gives the

Debtors sufficient liquidity to stabilize their operations and fund the administration of these chapter 11 cases as the Debtors seek to implement the restructuring contemplated by the Plan. Finally, based on extensive discussions with the Debtors' advisors, including Jefferies, I understand that the Proposed DIP Financing is on the most favorable terms available in light of the circumstances of these chapter 11 cases.

61. The Debtors' current Plan includes a toggle feature, resulting in either the sale of some or all of the Debtors' assets or a debt for equity conversion on terms to be negotiated with the Tranche B lenders. The Plan toggle provides the Debtors with the latitude necessary to negotiate the precise terms of their ultimate emergence from chapter 11 and the terms of the Plan may be revised as necessary to implement the terms of an acceptable third-party bid. The Bidding Procedures and Plan provide for substantial flexibility with respect to the structure of any transaction—*e.g.*, the sale of all or only some of the Debtors' assets or the sale of the common equity interests in reorganized Global Holdings. The Bidding Procedures are designed to—and the Debtors believe the Bidding Procedures will actually operate to—maximize the likelihood of an overbid for the benefit of enterprise-wide stakeholders.

62. Preserving value for the benefit of the Debtors' estates depends in large part on the Debtors proceeding swiftly to confirmation of the Plan and minimizing the effects of the Debtors' chapter 11 cases on the value of the Debtors' "brand"—a critical component of the value of the Debtors' businesses. Due to the fact that customer sentiment shifts rapidly and stakeholders (including key suppliers and landlords) often turn swiftly against apparel and retail debtors, such debtors often do not fare well in bankruptcy—in many instances electing to liquidate as opposed to reorganize. The Debtors intend to swiftly proceed with a fair and

efficient process to preserve and maximize the value of that achievement for enterprise-wide stakeholders.

**V. Evidentiary Support for First Day Motions.**

63. Contemporaneously, the Debtors have filed a number of first day pleadings seeking relief that the Debtors believe is necessary to enable them to efficiently administer their estates with minimal disruption and loss of value during the liquidation process described herein. The Debtors request that the relief requested in each of the first day motions be granted as critical elements in ensuring the maximization of value of the Debtors' estates. I believe that the relief requested in the first day motions is necessary to allow the Debtors to operate with minimal disruption during the pendency of these chapter 11 cases. I have reviewed each of the first day motions discussed below and the facts set forth in each first day motion are true and correct to the best of my knowledge and belief with appropriate reliance on corporate officers and advisors. A description of the relief requested in and the facts supporting each of the first day motions is set forth in **Exhibit A** attached hereto and incorporated herein by reference.

**VI. Information Required by Local Bankruptcy Rule 1007-2.**

64. Local Bankruptcy Rule 1007-2 requires certain information related to the Debtors, which I have provided in the exhibits attached hereto as **Exhibit B** through **Exhibit M**. Specifically, these exhibits contain the following information with respect to the Debtors (on a consolidated basis, unless otherwise noted):<sup>9</sup>

- **Exhibit B**. Pursuant to Local Bankruptcy Rule 1007-2(a)(3), provides the names and addresses of the members of, and attorneys for, any committee organized prior to the order for relief in these chapter 11 cases, and a brief description of the circumstances

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<sup>9</sup> The information contained in **Exhibit B** through **Exhibit M** attached to this declaration does not constitute an admission of liability by, nor is it binding on, the Debtors. The Debtors reserve all rights to assert that any debt or claim listed herein is a disputed claim or debt, and to challenge the priority, nature, amount, or status of any such claim or debt.

surrounding the formation of the committee and the date of the formation.

- **Exhibit C.** Pursuant to Local Bankruptcy Rule 1007-2(a)(4), provides the following information with respect to each of the holders of the Debtors' fifty (50) largest unsecured claims, excluding claims of insiders: the creditors name; the address (including the number, street, apartment, or suite number, and zip code, if not included in the post office address); the telephone number; the name(s) of the person(s) familiar with the Debtors' account; the nature and approximate amount of the claim; and an indication of whether the claim is contingent, unliquidated, disputed, or partially secured.
- **Exhibit D.** Pursuant to Local Bankruptcy Rule 1007-2(a)(5), provides the following information with respect to each of the holders of the five largest secured claims against the Debtors: the creditor's name; address (including the number, street, apartment, or suite number, and zip code, if not included in the post office address); the amount of the claim; a brief description of the claim; an estimate of the value of the collateral securing the claim; and an indication of whether the claim or lien is disputed at this time.
- **Exhibit E.** Pursuant to Local Bankruptcy Rule 1007-2(a)(6), provides a summary of the Debtors' assets and liabilities.
- **Exhibit F.** Pursuant to Local Bankruptcy Rule 1007-2(a)(7), provides a summary of the publicly held securities of the Debtors.
- **Exhibit G.** Pursuant to Local Bankruptcy Rule 1007-2(a)(8), provides the following information with respect to any property in possession or custody of any custodian, public officer, mortgagee, pledge, assignee of rents, or secured creditors, or agent for such entity: the name; address; and telephone number of such entity and the court in which any proceeding relating thereto is pending.
- **Exhibit H.** Pursuant to Local Bankruptcy Rule 1007-2(a)(9), provides a list of property comprising the premises owned, leased, or held under other arrangement from which the Debtors operate their business.
- **Exhibit I.** Pursuant to Local Bankruptcy Rule 1007-2(a)(10), sets forth the location of the Debtors' substantial assets, the location of their books and records, and the nature, location, and value of any assets held by the Debtors outside the territorial limits of the U.S.

- **Exhibit J.** Pursuant to Local Bankruptcy Rule 1007-2(a)(11), provides a list of the nature and present status of each action or proceeding, pending or threatened, against the Debtors or their property where a judgment or seizure of their property may be imminent.
- **Exhibit K.** Pursuant to Local Bankruptcy Rule 1007-2(a)(12), sets forth a list of the names of the individuals who comprise the Debtors' existing senior management, their tenure with the Debtors, and a brief summary of their relevant responsibilities and experience.
- **Exhibit L.** Pursuant to Local Bankruptcy Rule 1007-2(b)(1)-(2)(A), provides the estimated amount of payroll to the Debtors' employees (not including officers, directors, and equityholders) and the estimated amounts to be paid to officers, equityholders, directors, and financial and business consultants retained by the Debtors, for the 30-day period following the Petition Date.
- **Exhibit M.** Pursuant to Local Bankruptcy Rule 1007-2(b)(3), provides a schedule, for the 30-day period following the Petition Date, of estimated cash receipts and disbursements, net gain or loss, obligations and receivables expected to accrue but remain unpaid, other than professional fees, for the 30-day period following the filing of the chapter 11 cases, and any other information relevant to an understanding of the foregoing.

*[Remainder of page intentionally left blank]*



Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing  
statements are true correct.

Dated: March 1, 2017  
New York, New York

*/s/ Holly Felder Etlin*

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Name: Holly Felder Etlin  
Title: Chief Restructuring Officer  
BCBG Max Azria Global Holdings, LLC

**EXHIBIT A**

**Evidentiary Support for First Day Motions**

**Evidentiary Support for First Day Motions**<sup>10</sup>

**I. Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing The Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Lenders, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief (the “DIP Motion”).**

1. Pursuant to the DIP Motion, the Debtors seek entry of interim and final orders approving the Proposed DIP Financing. The Debtors require immediate access to the Proposed DIP Financing to avoid any further harm to their business—already battered by the adverse market conditions—and preserve value enterprise-wide. As of the Petition Date, the Debtors have minimal cash on hand and they do not have readily available sources of additional financing. Accordingly, without additional financing, the Debtors lack sufficient funds to operate their businesses and continue paying their postpetition obligations as they come due.

2. In light of the Debtors’ constrained liquidity position, AlixPartners and Jefferies commenced an evaluation of the Debtors’ financing needs and funding alternatives for an in-court restructuring. AlixPartners and Jefferies worked closely with the Debtors, their management team, and their advisors to determine the Debtors’ cash requirements. Based on my knowledge and extensive discussions with the Debtors’ management team and advisors, I believe that time and an appropriate amount of additional funding will permit the Debtors to complete the restructuring transactions described herein.

3. As part of AlixPartners’ evaluation of the Debtors’ liquidity position and financing needs, AlixPartners worked with the Debtors’ management team and treasury personnel to develop and analyze the Debtors’ cash flow forecasts, which take into account

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<sup>10</sup> Capitalized terms used in this **Exhibit A** and not otherwise defined shall have the meanings given to them in *Declaration of Holly Felder Eilin, Chief Restructuring Officer of BCBG Max Azria Global Holdings, LLC, (I) in Support of Debtors’ Chapter 11 Petitions and First Day Motions and (II) Pursuant to Local Bankruptcy Rule 1007-2* or the first day motions described herein, as applicable.

anticipated cash receipts and disbursements during the projected period, and considered a number of factors, including the effect of the chapter 11 filing on the Debtors' operations, fees and interest expenses associated with the Proposed DIP Financing, professional fees, and required ordinary course operational expenses. Based upon these forecasts and extensive discussions with the Debtors' management team and advisors, I do not believe that the Debtors are able to generate sufficient levels of operating cash flow in the ordinary course of business to cover their working capital needs and the projected costs of these chapter 11 cases without debtor-in-possession financing.

4. Accordingly, since it would not be possible to administer the Debtors' chapter 11 cases solely on a "cash collateral" basis, AlixPartners and the Debtors determined that obtaining debtor-in-possession financing at the start of these chapter 11 cases is crucial to the Debtors' continued viability. Further, I understand that the Debtors have not discovered sufficient unencumbered assets to secure sufficient debtor-in-possession financing to fund a non-consensual chapter 11 case. Thus, I believe that approval of the Proposed DIP Financing is in the best interests of the Debtors and their stakeholders and provides the Debtors with sufficient liquidity to administer these chapter 11 cases.

5. Under the Proposed DIP Financing, the ABL Lenders have agreed to continue to lend money on terms similar to those under the Debtors' existing asset-based lending facility. The Tranche A lenders and the Tranche B lenders have agreed to provide a \$80 million junior debtor-in-possession facility, including up to \$45 million in new money. The Tranche A lenders will fund \$4.8 million of new money financing, while their \$35 million in outstanding Tranche A loans will convert to postpetition debtor-in-possession loans. The Tranche B lenders will fund the remaining \$40.2 million of the new money financing. AlixPartners and Jefferies worked

closely with the Debtors' management team and other advisors to determine the appropriate amount of debtor-in-possession financing that would be necessary to satisfy the foregoing obligations. After reviewing the Debtors' projected operating cash flows and working capital requirements, AlixPartners, Jefferies, and the Debtors' management team concluded that the Proposed DIP Financing would provide enough liquidity to facilitate the administration of these chapter 11 cases and fund all payments contemplated by the first day motions described herein.

6. Based on the foregoing, I believe that the amount of the Proposed DIP Financing is appropriate and justified in light of the Debtors' businesses and their liquidity needs, and will inure to the benefit of the Debtors' estates, their stakeholders, and stakeholders on an enterprise-wide basis. Accordingly, on behalf of the Debtors, I respectfully submit that the Court should approve the DIP Motion.

7. Further support for the relief requested in the DIP Motion is set forth in the *Declaration of Jeffrey Finger in Support of the Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing The Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Lenders, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* filed contemporaneously herewith.

**II. Debtors' Motion Seeking Entry of an Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief (the "Joint Administration Motion").**

8. Pursuant to the Joint Administration Motion, the Debtors request entry of an order: (a) directing procedural consolidation and joint administration of these chapter 11 cases and (b) granting related relief, including the authority to file their monthly operating reports required by the *Operating Guidelines and Reporting Requirements for Debtors in Possession*

*and Trustees* issued by the Office of the United States Trustee for the Southern District of New York by consolidating the information required for each Debtor in one report that tracks and breaks out all of the specific information (*e.g.*, receipts, disbursements, etc.) on a debtor-by-debtor basis in each monthly operating report. Given the integrated nature of the Debtors' operations, joint administration of these chapter 11 cases will provide significant administrative convenience without harming the substantive rights of any party in interest.

9. Many of the motions, hearings, and orders in these chapter 11 cases will affect each and every Debtor entity. The entry of the order directing joint administration of these chapter 11 cases will reduce fees and costs by avoiding duplicative filings and objections. Joint administration also will allow the U.S. Trustee and all parties-in-interest to monitor these chapter 11 cases with greater ease and efficiency. Moreover, joint administration will not adversely affect the Debtors' respective constituencies because this motion seeks only administrative, not substantive, consolidation of the Debtors' estates. Parties-in-interest will not be harmed by the relief requested; instead, parties-in-interest will benefit from the cost reductions associated with the joint administration of these chapter 11 cases. Accordingly, on behalf of the Debtors, I respectfully submit that the joint administration of these chapter 11 cases is in the best interests of their estates, their creditors, and all other parties-in-interest.

**III. Debtors' Motion Seeking Entry of an Order (I) Establishing Certain Notice, Case Management, and Administrative Procedures and (II) Granting Related Relief (the "Case Management Motion").**

10. Pursuant to the Case Management Motion, the Debtors seek entry of an order: (a) approving and implementing the notice, case management, and administrative procedures; and (b) granting related relief. The proposed Case Management Procedures, among other things: (a) establish requirements for filing and serving Court Filings; (b) delineate standards for notices of hearings and agenda letters; (c) fix periodic omnibus hearing dates and articulate mandatory

guidelines for the scheduling of hearings and objection deadlines; and (d) limit matters that are required to be heard by the Court. Given the size and complexity of these chapter 11 cases, I believe that implementing the Case Management Procedures will facilitate the fair and efficient administration of these cases and promote judicial economy. Accordingly, on behalf of the Debtors, I respectfully submit that the Court should approve the Case Management Motion.

**IV. Debtors' Motion for Entry of an Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Current Income and Expenditures, Schedules of Executory Contracts and Unexpired Leases, Statements of Financial Affairs, and Rule 2015.3 Financial Reports, and (II) Granting Related Relief (the "Schedules and Statements Extension Motion").**

11. Pursuant to the Schedules and Statements Extension Motion, the Debtors seek entry of an order: (a) extending the deadline by which the Debtors must file their schedules of assets and liabilities, schedules of current income and expenditures, schedules of executory contracts and unexpired leases, and statements of financial affairs by 30 days, for a total of 44 days from the Petition Date, without prejudice to the Debtors' ability to request additional extensions; (b) extending the deadline by which the Debtors must file their initial reports of financial information with respect to entities in which the Debtors hold a controlling or substantial interest as set forth in Federal Rule of Bankruptcy Procedure 2015.3 to the later of: (i) 30 days after the meeting of creditors to be held pursuant to Section 341 of the Bankruptcy Code or (ii) 44 days from the Petition Date, or to file a motion with the Court seeking a modification of such reporting requirements for cause, without prejudice to the Debtors' ability to request additional extensions; and (c) granting related relief.

12. To prepare their Schedules and Statements, the Debtors will have to compile information from books, records, and documents relating to thousands of claims, assets, and contracts from each Debtor entity. Accordingly, collection of the necessary information will require a significant expenditure of time and effort on the part of the Debtors and their

employees. Additionally, because numerous invoices related to prepetition goods and services have not yet been received and entered into the Debtors' accounting system, it may be some time before the Debtors have access to all of the information required to prepare the Schedules and Statements.

13. Although the Debtors, with the assistance of their professional advisors, are mobilizing their employees to work diligently and expeditiously on preparing the Schedules and Statements, resources are strained. Given the amount of work entailed in completing the Schedules and Statements and the competing demands on the Debtors' employees and professionals to assist in efforts to stabilize business operations during the initial postpetition period, the Debtors likely will not be able to properly and accurately complete the Schedules and Statements within the required time period.

**V. Debtors' Motion Seeking Entry of an Order (I) Authorizing the Debtors to (A) Prepare a List of Creditors in Lieu of Submitting a Formatted Mailing Matrix and (B) File a Consolidated List of the Debtors' 50 Largest Unsecured Creditors, (II) Authorizing the Debtors to Redact Certain Personal Identification for Individual Creditors, (III) Approving the Form and Manner of Notifying Creditors of Commencement of These Chapter 11 Cases, and (IV) Requesting Related Relief (the "Matrix Motion").**

14. Pursuant to the Matrix Motion, the Debtors seek entry of the order in accordance with the Rule 5075-1 of the Local Bankruptcy Rules for the Southern District of New York, (a) authorizing the Debtors to: (i) prepare a consolidated list of creditors in lieu of submitting separate mailing matrices for each Debtor, (ii) file a consolidated list of the Debtors' 50 largest unsecured creditors, and (iii) mail initial notices through their Proposed Claims and Noticing Agent; (b) authorizing the Debtors to redact certain personal identification information for individual creditors; (c) approving the form and manner of notifying creditors of commencement of these chapter 11 cases; and (d) granting related relief.



15. I believe that permitting the Debtors to maintain a single consolidated list of creditors in lieu of filing a separate creditor matrix for each Debtor is warranted under the circumstances of these chapter 11 cases. Specifically, maintaining a single consolidated list of creditors will benefit the Debtors and their estates by allowing the Debtors to more efficiently provide required notices to parties-in-interest and reduce the potential for duplicate mailings. Indeed, many of the Debtors' creditors overlap and thus, to the extent that the Debtors are required to maintain separate mailing matrices, a substantial number of parties likely would receive multiple copies of the same notice.

16. Accordingly, the Debtors, working with the proposed Claims and Noticing Agent, have prepared a single, consolidated list of the Debtors' creditors in electronic format. To ensure that no parties-in-interest are prejudiced, the Debtors will make their consolidated list of creditors available in readable electronic format to any party in interest who so requests (or in non-electronic format at such requesting party's sole cost and expense). Accordingly, I submit that the preparation and maintenance of a single consolidated creditor list is warranted under the facts and circumstances present in these chapter 11 cases.

**VI. Debtors' Application for Entry of an Order (I) Authorizing and Approving the Appointment of Donlin, Recano, & Company, Inc. as Claims and Noticing Agent and (II) Granting Related Relief (the "Claims Agent Application").**

17. Pursuant to the Claims Agent Application, the Debtors seek entry of an order appointing Donlin, Recano, & Company, Inc. as the Claims and Noticing Agent for the Debtors in their chapter 11 cases, including assuming full responsibility for the distribution of notices and the maintenance, processing, and docketing of proofs of claim filed in the Debtors' chapter 11 cases. Given the complexity of these chapter 11 cases and the number of creditors and other parties in interest involved in these chapter 11 cases, I believe that appointing Donlin, Recano, &

Company, Inc. as the notice and claims agent in these chapter 11 cases will maximize the value of the Debtors' estates for all its stakeholders.

**VII. Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, and (C) Maintain Existing Business Forms, (II) Authorizing the Debtors to Continue Intercompany Transactions, and (III) Granting Related Relief (the "Cash Management Motion").**

18. Pursuant to the Cash Management Motion, the Debtors seek entry of interim and final orders: (a) authorizing the Debtors to: (i) continue to operate their cash management system, (ii) honor certain prepetition obligations related thereto, and (iii) maintain existing business forms; (b) authorizing the Debtors to continue intercompany transactions in the ordinary course and granting superpriority administrative expense status to postpetition intercompany balances; and (c) granting related relief.

19. The Debtors operate a complex cash management system that is typical of multi-store retail operations and comparable to the centralized cash management systems used by other similarly sized retail companies to manage the cash flow of operating units in a cost-effective, efficient manner. The Debtors use their Cash Management System in the ordinary course to transfer and distribute funds and to facilitate cash monitoring, forecasting, and reporting. The Debtors' treasury department maintains daily oversight over the Cash Management System and implements cash management controls for entering, processing, and releasing funds, including in connection with intercompany transactions. Additionally, the Debtors' corporate accounting, cash forecasting, and internal audit departments regularly reconcile the Debtors' books and records to ensure that all transfers are accounted for properly.

20. The Cash Management System is comprised of approximately 253 bank accounts, each as described in more detail in the Cash Management Motion. Historically, the Debtors estimate that they pay approximately \$29,000 in Bank Fees each month, depending on

transaction volume. The Debtors estimate that approximately \$29,000 in prepetition Bank Fees remain outstanding as of the Petition Date. The Debtors estimate that cash collections average approximately \$36.6 million per month, including store cash receipts, credit card receipts, partner shop payments, and e-commerce sales. In addition, the Debtors estimate that total disbursements will range between \$16.0 million and \$59.2 million per month during these chapter 11 cases. On average, approximately \$32.0 million flows through the Cash Management System on a monthly basis.

21. Further, the banks where the Debtors hold accounts: (a) have executed a Uniform Depository Agreement with, and are designated as authorized depositories by, the U.S. Trustee pursuant to the U.S. Trustee Operating Guidelines; (b) are insured by federal agencies, such as the Federal Deposit Insurance Corporation; or (c) are otherwise well-capitalized and financially stable financial institutions. Requiring the Debtors to transfer any of the above-mentioned Bank Accounts to a designated authorized depository would place a needless administrative burden on the Debtors and impose significant costs to the Debtors' estates.

22. As part of their Cash Management System, the Debtors utilize various preprinted business forms in the ordinary course. To minimize expenses to their estates and avoid confusion during the pendency of these chapter 11 cases, the Debtors request that the Court authorize the Debtors' continued use of all existing preprinted correspondence and business forms (including, without limitation, letterhead, checks, and other business forms) as such forms were in existence immediately before the Petition Date, without reference to the Debtors' status as debtors in possession, rather than requiring the Debtors to incur the expense and delay of ordering entirely new business forms.

23. In the ordinary course of business, the Debtors engage in routine business relationships with each other resulting in intercompany receivables and payables. Accordingly, at any given time there may be Intercompany Claims owing by one Debtor to another Debtor. For example, in the normal course of business, certain of the Debtors' wholly owned subsidiaries (including certain foreign subsidiaries) purchase inventory from the wholesale segment of the Debtors' business to supply the Debtors' foreign stores. As a result, intercompany balances in favor of BCBG Max Azria Group, LLC from certain of its subsidiaries (including foreign subsidiaries) are typically outstanding at any given time. Payments from the subsidiaries are generally paid into the Collection Account. The Intercompany Claims are reflected as journal entry receivables and payables, as applicable, in the respective Debtors' accounting systems.

24. The Debtors track all fund transfers in their respective accounting system and can ascertain, trace, and account for all Intercompany Transactions. The Debtors will continue to track postpetition intercompany transfers. Discontinuing the Intercompany Transactions would unnecessarily disrupt the Cash Management System and the Debtors' operations to the detriment of the Debtors and their creditors and other stakeholders. The Debtors seek the authority to continue the Intercompany Transactions in the ordinary course of business, in a manner consistent with prepetition practice.

25. I believe that the relief requested in the Cash Management Motion is essential to the continued operation of the Debtors' business and denial of such relief would severely disrupt, if not cripple, the Debtors' business. I believe that the relief requested in the Cash Management Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their business in chapter 11.

Accordingly, on behalf of the Debtors, I respectfully submit that the Court should approve the Cash Management Motion.

**VIII. Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing, but not Directing, the Debtors to (A) Pay Prepetition Employee Wages, Salaries, Other Compensation, and Reimbursable Employee Expenses and (B) Continue Employee Benefits Programs and (II) Granting Related Relief (the "Wages Motion").**

26. Pursuant to the Wages Motion, the Debtors seek entry of interim and final orders: (a) authorizing, but not directing, the Debtors to (i) pay prepetition wages, salaries, other compensation, and reimbursable employee expenses and (ii) continue employee benefits programs in the ordinary course, including payment of certain prepetition obligations related thereto; and (b) granting related relief.

27. As set forth above, as of the Petition Date, the Debtors employ approximately 4,800 employees, including approximately 1,900 full-time and approximately 2,900 part-time. The Debtors' Employees perform a wide variety of functions critical to the administration of these chapter 11 cases. In many instances, the Employees include personnel who are intimately familiar with the Debtors' businesses, processes, and systems, who possess unique fashion design skill and experience, or who have developed relationships with wholesalers and distributors that are essential to the Debtors' business. These individuals cannot be easily replaced. Without the continued, uninterrupted services of the Employees, the ability of the Debtors maintain and administer their estates will be materially impaired.

28. To minimize the personal hardship the Employees could suffer if prepetition Employee-related obligations are not paid when due or as expected and to maintain stability in the Debtors' workforce during the administration of these chapter 11 cases, the Debtors, by this motion, seek authority, but not direction, to: (a) pay and honor certain prepetition claims relating to, among other things, wages, salaries, and other compensation, payroll services, federal and

state withholding taxes and other amounts withheld (including garnishments, Employees' share of insurance premiums, and taxes), reimbursable expenses, health insurance, workers' compensation benefits, life insurance, short- and long-term disability coverage, and certain other benefits that the Debtors have historically provided in the ordinary course; and (b) pay all costs incident to the Employee Compensation and Benefits.

29. I believe that paying prepetition wages, employee benefits, and similar obligations will benefit the Debtors' estates and their creditors by allowing the Debtors' business operations to continue without interruption. Indeed, without the relief requested herein, Employees may seek alternative employment opportunities, perhaps with the Debtors' competitors. Such a development would deplete the Debtors' workforce, thereby hindering the Debtors' ability to operate their business and, likely, diminishing stakeholder confidence in the Debtors' ability to successfully reorganize. The loss of valuable Employees and resulting need to recruit new personnel (and the costs attendant thereto) would be distracting at this crucial time when the Debtors need to focus on stabilizing their business operations. There can be no doubt that the Debtors must do their utmost to retain their workforce by, among other things, continuing to honor all wage, benefits, and related obligations, including the prepetition Employee Compensation and Benefits. Accordingly, on behalf of the Debtors, I respectfully submit that the Court should approve the Wages Motion.

**IX. Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Prepetition Claims of Lien Claimants, Import and Export Claimants, and 503(b)(9) Claimants, and (III) Granting Related Relief (the "Lien Claimants Motion").**

30. Pursuant to the Lien Claimants Motion, the Debtors seek entry of interim and final orders: (a) authorizing the Debtors to pay an aggregate amount up to \$4.1 million, absent further order of the Court, on account of prepetition claims held by (i) certain shippers and

warehousemen, (ii) certain import and export claimants, and (iii) certain 503(b)(9) claimants; and (b) granting related relief.

31. ***Lien Claimants:*** The Debtors' business depends on the uninterrupted flow of inventory and other goods through its supply chain and distribution network, including the purchase, importation, storage, and shipment of the Debtors' merchandise and other personal property. Generally, the Debtors design the Merchandise in house and contract with various foreign manufacturers, located predominantly in China and Hong Kong, to produce and inspect the Merchandise. Depending on the nature of the Debtors' arrangement with a given manufacturer, the manufacturers or the Debtors, through freight forwarders, ship the Merchandise to certain warehouses that serve as the Debtors' distribution centers. These warehouses are predominantly operated by the Debtors themselves, with the exception of certain warehouses for e-commerce that are operated by third-party warehousemen. Additionally, the flow of Merchandise from the Debtors' manufacturers, to the Warehousemen or the Debtors' owned warehouses, and ultimately to (a) stock the Debtors' domestic brick and mortar stores and partner shops, (b) fulfill orders placed with the Debtors' e-commerce provider, or (c) fulfill wholesale orders of the Debtors' distributors, wholesalers, foreign affiliates, depends on the services provided by, among others, various freight forwarders, common carriers, and custom brokers.

32. Collectively, the Debtors estimate approximately \$1.75 million of third-party shipping and storage charges are due and owing as of the Petition Date, of which approximately \$700,000 may come due within 25 days after the Petition Date.

33. ***Import Claimants:*** In the ordinary course of their businesses, the Debtors import inventory and related materials from the Foreign Vendors. In the ordinary course, the Debtors

also export inventory to foreign countries, including inventory to be sold in the Debtors' stores located in Canada, Europe, and Japan. Timely receipt or transmittal, as applicable, of the Imported Goods and Exported Goods is critical to both the Debtors' domestic and foreign business operations. Any disruption or delay would adversely affect the Debtors' business operations and affect the Debtors' ability to efficiently administer these chapter 11 cases.

34. In connection with the import and export of goods, the Debtors may be required to pay various charges, including customs duties, detention and demurrage fees, tariffs and excise taxes, freight forwarding, and other similar obligations. The Debtors pay approximately \$15.2 million annually on account of Import/Export Charges. The Debtors estimate that approximately \$1.55 million in Import/Export Charges for goods currently in transit is outstanding as of the Petition Date, approximately \$1.1 million of which may come due in the first 25 days after the Petition Date. Absent payment to parties to whom the Debtors owe Import/Export Charges may interfere with the transportation of the Imported Goods or Exported Goods.

35. **503(b)(9) Claimants:** The Debtors may have received certain inventory, goods, or materials from various foreign and domestic vendors within the 20-day period immediately preceding the Petition Date. The Debtors believe that as of the Petition Date, they owe approximately \$800,000 on account of goods delivered within the 20 days immediately preceding the Petition Date, none of which will come due in the first 25 days after the Petition Date, and the value of which may be entitled to administrative priority under section 503(b)(9) of the Bankruptcy Code. Each of the 503(b)(9) Claimants provide materials that are necessary for the Debtors' business operations. The Debtors believe a 503(b)(9) Claimant may refuse to supply new orders without payment of its prepetition claims or reduce the Debtors' existing



trade credit—or demand payment in cash on delivery—further exacerbating the Debtors’ financial constraints.

36. I believe that the relief requested in the Lien Claimants Motion is essential to the continued operation of the Debtors’ business and denial of such relief would severely disrupt, if not cripple, the Debtors’ business. I believe that the relief requested in the Lien Claimants Motion is in the best interests of the Debtors’ estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their business in chapter 11. Accordingly, on behalf of the Debtors, I respectfully submit that the Court should approve the Lien Claimants Motion.

**X. Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Maintain and Administer Their Existing Customer Programs and Honor Certain Prepetition Obligations Related Thereto and (II) Granting Related Relief (the “Customer Programs Motion”).**

37. Pursuant to the Customer Programs Motion, the Debtors seek entry of interim and final orders: (a) authorizing the Debtors to maintain and administer their customer-related programs as described in this motion and honor certain prepetition obligations related thereto; and (b) granting related relief. The Debtors estimate that, as of the Petition Date, there is approximately \$8.3 million outstanding on account of the Customer Programs.

38. The Debtors have historically provided certain incentives, discounts, and accommodations to their customers to attract and maintain positive customer relationships. The Customer Programs promote customer satisfaction and inure to the goodwill of the Debtors’ business and the value of their “brand.” Accordingly, maintaining the goodwill of their customers is important to the Debtors’ ongoing operations in these chapter 11 cases, and is necessary to maximize value for the benefit of all of the Debtors’ stakeholders. Accordingly, on

behalf of the Debtors, I respectfully submit that the Court should approve the Customer Programs Motion.

**XI. Debtors' Motion for Entry of Interim and Final Orders (I) Prohibiting Utility Providers From Altering, Refusing, or Discontinuing Utility Services, (II) Determining Adequate Assurance of Payment for Future Utility Services, (III) Establishing Procedures for Determining Adequate Assurance of Payment, and (IV) Granting Related Relief (the "Utilities Motion").**

39. Pursuant to the Utilities Motion, the Debtors seek entry of interim and final orders: (a) prohibiting utility providers from altering, refusing, or discontinuing services; (b) determining adequate assurance of payment for future utility services; (c) establishing procedures for determining adequate assurance of payment for future utility services; and (d) granting related relief.

40. In connection with the operation of their businesses, the Debtors obtain water, sewer service, electricity, waste disposal, natural gas, and other similar services from a number of utility providers or their brokers. On average, the Debtors pay approximately \$850,000 each month for third-party Utility Services, calculated as a historical average payment for the twelve-month period ended December 31, 2016. Accordingly, the Debtors estimate that their cost for Utility Services during the next 30 days (not including any deposits to be paid) will be approximately \$850,000. The Debtors estimate the amount currently held as deposits or prepayments with respect to any Utility Provider is approximately \$320,000. To provide additional assurance of payment, the Debtors propose to deposit into a segregated account \$298,421, which represents an amount equal to approximately one half of the Debtors' average monthly cost of Utility Services, calculated based on the Debtors' average utility expenses over the twelve months ended December 31, 2016.

41. Preserving Utility Services on an uninterrupted basis is essential to the Debtors' operations. The Debtors' business includes more than 195 brick and mortar locations, as well as

a showroom, warehouses, and corporate offices. These locations require electricity, telecommunications, internet, water, waste management (including sewer and trash), and other utility services to operate. Should any Utility Provider refuse or discontinue service, even for a brief period, the Debtors' business operations would be severely disrupted, and such disruption would jeopardize the Debtors' ability to administer their chapter 11 cases. Accordingly, on behalf of the Debtors, I respectfully submit that the Court should approve the Utilities Motion.

**XII. Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing, but not Directing, the Debtors to (A) Pay Their Obligations Under Insurance Policies Entered Into Prepetition, (B) Continue to Pay Brokerage Fees, (C) Renew, Supplement, Modify, or Purchase Insurance Coverage, (D) Honor the Terms of the Financing Agreements and Pay Premiums Thereunder, and (E) Enter Into New Financing Agreements in the Ordinary Course of Business and (II) Granting Related Relief (the "Insurance Motion").**

42. Pursuant to the Insurance Motion, the Debtors seek entry of interim and final orders: (a) authorizing, but not directing, the Debtors to (i) pay their obligations under insurance policies entered into prepetition, (ii) continue to pay certain brokerage fees, (iii) renew, supplement, modify, or purchase insurance coverage in the ordinary course, (iv) enter into new premium financing agreements in the ordinary course of business, and (v) honor the terms of the Financing Agreements (as defined below) and pay premiums thereunder; and (b) granting related relief.

43. In the ordinary course of business, the Debtors maintain approximately 18 insurance policies administered by multiple third-party insurance carriers. The Insurance Policies provide coverage for, among other things, the Debtors' directors' and officers' liability (including tail coverage), property, aircraft, commercial crime, marine cargo, general liability, automobile liability, and foreign commercial liability. The aggregate annual premium for the Insurance Policies is approximately \$3.1 million, plus applicable taxes and surcharges. Some, but not all, of the Insurance Policies are financed through premium financing agreements with

First Insurance Funding. Pursuant to the Financing Agreements, the Debtors are required to make 10 monthly premium payments of approximately \$230,000 in the aggregate beginning on July 1, 2016. The Financing Agreements renew in May and June. As of the Petition Date, there is approximately \$725,000 outstanding on account of the Financing Agreements, some or all of which will come due during the pendency of these chapter 11 cases.

44. In connection with the Insurance Policies, the Debtors obtain insurance brokerage services from Lockton Companies, Inc. for all insurance coverage other than the aircraft Insurance Policy, which services are obtained from Andreini & Company Inc. The Brokers assist the Debtors in obtaining comprehensive insurance coverage for their operations in the most cost-effective manner, negotiating policy terms, provisions, and premiums, assisting the Debtors with claims, and providing ongoing support throughout the applicable policy periods. The Debtors pay the Brokers aggregate annual fees in an amount equal to approximately \$300,000 and aggregate annual commissions in an amount equal to approximately \$60,000. The flat annual fee is due and payable prior to the start of the applicable service period, which generally corresponds with the start of the Insurance Policies' terms. The Brokers collect the commission payments as part of the premiums paid on the Insurance Policies. As of the Petition Date, the Debtors not believe that they owe any amounts to the Brokers on account of fees, commissions, or any other prepetition obligations.

45. I believe continuation of the Insurance Policies and the Financing Agreement and entry into new insurance policies and premium financing agreements is essential to the preservation of the value of the Debtors' properties and assets. Further, I believe that continuation of the services of the Brokers is necessary to assure the Debtors' ability to secure Insurance Policies on advantageous terms at competitive rates, facilitate the proper maintenance

of the Debtors' Insurance Policies postpetition, and ensure adequate protection of the Debtors' property postpetition. Accordingly, on behalf of the Debtors, I respectfully submit that the Court should approve the Insurance Motion.

**XIII. Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing, but not Directing, the Payment of Certain Prepetition Taxes and Fees and (II) Granting Related Relief (the "Taxes Motion").**

46. Pursuant to the Taxes Motion, the Debtors seek entry of interim and final orders: (a) authorizing, but not directing, the Debtors, in their sole discretion, to remit and pay certain accrued and outstanding prepetition taxes, including sales and use taxes, franchise taxes, and similar taxes and fees in an amount up to \$2,600,000, absent further order of the Court; and (b) granting related relief. The Debtors estimate that, as of the Petition Date, there is approximately \$2,600,000 outstanding on account of Taxes and Fees.

47. In the ordinary course of business, the Debtors collect, incur, and pay sales taxes, use taxes, annual report and licensing fees, personal property taxes, franchise taxes and fees, and various other governmental taxes, fees, and assessments. The Debtors remit the Taxes and Fees to various federal, state, and local governmental units, including taxing authorities. Taxes and Fees are remitted and paid by the Debtors through checks and electronic transfers that are processed through the financial institutions at which the Debtors maintain the bank accounts that comprise their cash management system.

48. Payment of the Taxes and Fees is critical to the Debtors' continued and uninterrupted operations. The Debtors' failure to pay prepetition Taxes and Fees may cause the Authorities to take precipitous action, including, but not limited to, conducting audits, filing liens, preventing the Debtors from doing business in certain jurisdictions, seeking to lift the automatic stay, or pursuing payment of the Taxes and Fees from the Debtors' officers and

directors, all of which would greatly disrupt the Debtors' operations and ability to focus on their reorganization efforts.

49. I believe that the relief requested in the Taxes Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their business in chapter 11 without disruption. Accordingly, on behalf of the Debtors, I respectfully submit that the Court should approve the Taxes Motion.

**EXHIBIT B**

**Committees Organized Prepetition**

None.

**EXHIBIT C**

**Consolidated List of the Holders of the Debtors’ 50 Largest Unsecured Claims**

Pursuant to Local Rule 1007-2(a)(4), the following is a consolidated list of the Debtors’ creditors holding the 50 largest unsecured claims (the “Consolidated Creditor List”) based on the Debtors’ unaudited books and records as of the Petition Date. The Consolidated Creditor List has been prepared in accordance with Bankruptcy Rule 1007(d) and does not include (i) persons who come within the definition of “insider” set forth in section 101(31) of the Bankruptcy Code or (ii) secured creditors, unless the value of the collateral is such that the unsecured deficiency places the creditor among the holders of the 50 largest unsecured claims.

The information contained herein shall not constitute an admission of liability by, nor is it binding on, the Debtors. The Debtors reserve all rights to assert that any debt or claim included herein is a disputed claim or debt, and to challenge the priority, nature, amount, or status of any such claim or debt. In the event of any inconsistencies between the summaries set forth below and the respective corporate and legal documents relating to such obligations, the descriptions in the corporate and legal documents shall control.

	Name of creditor and complete mailing address, including zipcode	Name, telephone number and email address of creditor/contact	Nature of claim	Amount of claim
1	Silvereed (Hong Kong) Limited Centennial Building, 1st Floor 926 Cheung Sha Wan Road Kowloon, Hong Kong	Attn: Nancy Yuans/Hokaki Telephone: 852 3921-1924 Email: hoKaKi@GMRHK.com nancyyuans@lifung.com	Trade	\$6,368,886.94
2	Mega Link International Holdings Limited Lladro Centre, 13th & 14th Floors 72-80 Hoi Yuen Road Kwun Tong, Kowloon, Hong Kong	Attn: Sally Chan/Jeff Wong Telephone: 011-852-2-370-8033 Email: sally.c@megalink.com.hk Jeff.w@megalink.com.hk	Trade	\$5,351,909.79
3	Dada Trading Co. Ltd. 388 21 Seokyo-Dong Mapo-Ku, Seoul, South Korea	Attn: Yumi Park Telephone: 82-2-326-1418/9 Email: yumi@dadatex.co.kr	Trade	\$4,270,789.59
4	Renaissance Fashion Ltd. New Trend Centre, 18th Floor, Room 18052 104 King Fuk St. San Po Kong, Kowloon, Hong Kong	Attn: Catherine Wong Telephone: 36166121 Email: catherine.wong@ren-fashion.com	Trade	\$2,863,544.68



	Name of creditor and complete mailing address, including zipcode	Name, telephone number and email address of creditor/contact	Nature of claim	Amount of claim
5	Trade Harvest Industrial Limited Premier Centre, 10th Floor, Room 7 20 Cheung Shun Street Kowloon, Hong Kong	Attn: Climas Lo Telephone: 852-3568-0268 Email: climas@hangluen.com.hk	Trade	\$2,686,319.67
6	Kiaterry Textile Corp. Ltd. Cambridge House, Room 1401 26-28 Cameron Road Tsimshatsui, Kowloon, Hong Kong	Attn: Linda Yip Telephone: 0086-20-38306589 Email: linda@kiaterry.com.cn	Trade	\$2,342,877.00
7	Kysazoze Limited Billion Plaza 2, 27th Floor, Flat D 10 Cheung Yue Street Cheung Sha Wan, Kowloon, Hong Kong	Attn: Fiona Chiu Telephone: 852-3188 8950 Email: fiona@kysazoze.com	Trade	\$2,241,567.23
8	Coddy Global Ltd. Tun Hwa South Road, 13th Floor, No. 2, Sec. 1 Taipei, Taiwan ROC	Attn: Angela Lee/Sherry Tsai Telephone: 886-2-2781-5550 ext 115 Email: Angela_Lee@coddy.com.tw Sherry_tsai@coddy.com.tw	Trade	\$2,134,621.83
9	Aptos, Inc. 15 Governor Drive Newburgh, NY 12550	Attn: Nathalie Roy Telephone: 514-428-2278 Email: nroy@aptos.com	Professional Services	\$2,036,108.02
10	Mystic Inc. P.O. Box 786105 Philadelphia, PA 19178-6105	Attn: Mukesh Patel Telephone: 917-339-2536 Email: mpatel@hermankay.com	Trade	\$2,026,166.54
11	Perf Star Global Limited Tun Hwa South Road, 12th Floor, No. 2 Sec. 1 Taipei, Taiwan 10506	Attn: Landy Lee Telephone: 02-27813880 Email: landy_lee@wintex.com.tw	Trade	\$1,743,089.60

	Name of creditor and complete mailing address, including zipcode	Name, telephone number and email address of creditor/contact	Nature of claim	Amount of claim
12	Polaris Handelsgesell Schaft Landstrasse Hauptstrasse 146-148/16/B2 Vienna, Austria A1030	Attn: Bettina Lichtenberger Telephone: 43 1 7105133-24 Email: blichtenberger@polarisfamily.com	Trade	\$1,564,870.07
13	A & Feng Fashion Ltd New Tech Plaza, 71st Floor, Room 702 34 Tai Yau St. San Po Kong,	Attn: Jan Lam Telephone: 2761 0390 Email: jan@fengfashion.com	Trade	\$1,441,219.66
14	Best Silk Limited Silvercord Tower 2, 5th Floor, Unit 503 30 Canadaton Rd. Tsimshatsui, Kowloon, Hong Kong	Attn: David He Wei Telephone: 852-687-63718 Email: shipment@jjajuan.com	Trade	\$1,398,623.94
15	Ernst & Young LLP P.O. Box 846793 Los Angeles, CA 90084-6793	Attn: Leslie DeHoff Telephone: 213-240-7472 Email: leslie.dehoff@ey.com	Professional Services	\$1,393,294.24
16	Simon Property Group, Inc. 225 West Washington Street Indianapolis, IN 46204	Attn: Dan Seabaugh Telephone: 317-263-7646 Email: dseabaugh@simon.com	Contracts	\$1,384,067.82
17	Collection 18 1370 Broadway, 17th Floor New York, NY 10018	Attn: Vincent Zheng Telephone: N/A Email: vzheng@collectionxiix.com	Trade	\$1,354,026.23
18	SAP Industries Inc. 3999 West Chester Pike Newton Square, PA 19073	Attn: Matt Laukaitis Telephone: 425-922-8072 Email: matt.laukaitis@sap.com	Professional Services	\$1,184,904.18

	Name of creditor and complete mailing address, including zipcode	Name, telephone number and email address of creditor/contact	Nature of claim	Amount of claim
19	Pepperjam, LLC P.O. Box 787432 Philadelphia, PA 19178	Attn: Jason Weidner Telephone: 215-272-2983 Email: jaweidner@pepperjam.com	Professional Services	\$1,169,258.39
20	Andari Fashion Inc. 9626 Telstar Avenue El Monte, CA 91731	Attn: Wei Ling Telephone: 626-575-2759 Email: Weiling.Kazuno@andari.com	Trade	\$1,149,745.74
21	US Customs Service 6650 Telecom Drive, Suite 100 Indianapolis, IN 46278	Attn: Kandace Niemi Telephone: 877-227-5511 206-592-2054 (direct) Email: kandace.niemi@apexglobe.com	Trade	\$1,038,830.12
22	RL Criss Cross Inc. 555 8th Ave., Suite 1910 New York, NY 10018	Attn: Richard Meng Telephone: 86-021-32503203*807 Email: realinues@aol.com	Trade	\$788,604.45
23	Hing Shing Looping Manufacturing Co. Ltd Wing Tai Centre, 10th Floor, Flat B 12 Hing Yip Street Kowloon, Hong Kong	Attn: Yee Wong Telephone: 2343 6072,3761 6300 Email: yee.wong@hingshing.com	Trade	\$787,305.13
24	Winston & Strawn LLP 36235 Treasury Center Chicago, IL 60694-6200	Attn: Dan Webb Telephone: 312-558-5856 Email: dwebb@winston.com	Professional Services	\$781,243.32
25	FCI Groups, Inc. 755 E. Pico Blvd. Los Angeles, CA 90021	Attn: Lente Bagunu Telephone: 213-747-3900 Email: lentefci@gmail.com	Trade	\$721,621.87

	Name of creditor and complete mailing address, including zipcode	Name, telephone number and email address of creditor/contact	Nature of claim	Amount of claim
26	Forementini SRL Via A. Volta 414 Sant'Elpidio A Mare (FM), Italy 63811	Attn: Giovanni Pierantozzi Telephone: 073486381 Email: giovanni@formentini.it	Trade	\$710,046.19
27	Rodeo Collection Ltd 9629 Brighton Way, 2nd Floor Beverly Hills, CA 90210	Attn: Bahador Mahboubi Telephone: 310-275-9700 Email: bahador@dmanage.com	Contracts	\$583,110.00
28	Shanghai Shenda (Hong Kong) Company Ltd Tung Che Commerical Center, Flat/Room 2201 246 Des Voeuz Rd West Hong Kong	Attn: Dongming Pan Telephone: 86-139-0163-5309 Email: pan@panfame.com	Trade	\$557,398.89
29	Leap Sheen Limited Wen-Hsin Road, 12th Floor, No. 306, Sec. 1 Taichung City, Taiwan 408. ROC	Attn: Janna Chen Telephone: 886-4-3283536 Email: jannac@maxgreat.com	Trade	\$504,220.97
30	Priority Fulfillment Services, Inc. P.O. Box 95420 Grapevine, TX 76099-9734	Attn: Melanie Prada Telephone: 972-881-2900 x 3683 Email: mprada@pfsweb.com	Professional Services	\$463,260.44
31	Demandware, Inc. 5 Wall Street Burlington, MA 01803	Attn: Paul DiBartolomeo Telephone: 781-425-7547 Email: pdibartolomeo@demandware.com	Professional Services	\$449,485.67
32	Gaflana Industry Limited The Third Industrial Zone, No. 8 Qing Feng 3rd Road Shijing, Baiyun District Guangzhou, China 510430	Attn: Kim Shek Telephone: 86-20-8105-0622 #813 Email: kimshek@gaflana.com	Trade	\$393,624.45

	Name of creditor and complete mailing address, including zipcode	Name, telephone number and email address of creditorcontact	Nature of claim	Amount of claim
33	Galo Shoes, Inc. 150 Pompton Plains Crossroads Box 4505 Wayne, NJ 07474-4505	Attn: Felix Galo Telephone: 201-641-0896 Email: fvg396@gmail.com	Contracts	\$373,749.18
34	Sears Holdings Corporation 12670 Collections Dr. Sublease, Unit 68738 Vernon, CA Chicago, IL 60693	Attn: Michael Dunne Sears Lease Accounting Telephone: 847-286-4927 Email: michael.dunne@searshc.com	Contracts	\$372,416.76
35	Morinda International Corporation Ltd 1522 Nan Fung Center 264-298 Canadastle Peak Tseun Wan, L New Territories, Hong Kong	Attn: Allan Xue Telephone: 0086-769-83332684 Email: morindajane@morinda- cn.com	Trade	\$371,491.33
36	T1 Atelier Company Ltd. Laford Center, 11th Floor, Units 07-08 838 Lai Chi Kok Road Cheun Sha Wan, Kowloon, Hong Kong	Attn: Kim Chun Telephone: 852-3104-1061 Email: kimchun.kh@t1atelier.com	Contracts	\$356,286.96
37	Westin St Francis Hotel 335 Powell St. San Francisco, CA 94102	Attn: Marcelo Infante Telephone: 415-774-0131 Email: marcelo.infante@westin.com	Contracts	\$341,249.90
38	VCS Group LLC 3451 Bonita Bay Blvd., Suite 200 Bonita Springs, FL 34134	Attn: Sonya Voronkova/Camuto Group Telephone: 239-301-3019 Email: sonya.voronkova@camutogroup.co m	Trade	\$323,716.53
39	Prime Apparel, Inc. 5667 Mansfield Way Bell, CA 90201	Attn: Irene Mac Telephone: 323-269-6106 Email: irenem@primeapparelinc.com	Trade	\$313,548.88

	Name of creditor and complete mailing address, including zipcode	Name, telephone number and email address of creditor/contact	Nature of claim	Amount of claim
40	Sinosky Corporation Ltd Sinosky Building Hu Zhou Street, No. 18 Gongshu District, Hangzhou, China 310015	Attn: Shelly Jiang Telephone: 86-571-89919733 Email: shellyjiang@sinoskycorp.com	Trade	\$310,469.99
41	Dave Foster Builders, Inc. 2290 Alahao Place, Unit 400 Honolulu, HI 96819	Attn: David Foster Telephone: 808-848-2101 Email: dave@davefosterbuilders.com	Trade	\$301,253.90
42	Velocity Technology Solutions, Inc. 1901 Roxborough Road, 4th Floor Charlotte, NC 28211	Attn: Theresa Prewett Telephone: 904-716-7011 Email: theresa.prewett@velocitycloud.com	Professional Services	\$300,972.41
43	Criteo Corp. P.O. Box 392422 Pittsburgh, PA 15251-9422	Attn: Julie Wu Telephone: 917-204-0562 Email: j.wu@criteo.com	Professional Services	\$300,097.21
44	FedEx 500 Ross Street, Room 154-0455 Pittsburgh, PA 15262	Attn: Belinda Nolte Telephone: 855-285-7012x3042 Email: belinda.nolte@fedex.com	Trade	\$298,090.74
45	Twitter, Inc. P.O. Box 12027 Newark, NJ 07101-5027	Attn: Joan Juan Telephone: 00632-433-6500 loc 18712 Email: joanjuan@twitter.com	Professional Services	\$294,621.27
46	Daejee Metal Co. Ltd 173-5 Sukchon Dong, Songpa Gu Seoul, South Korea	Attn: Sunny Kim Telephone: 82-2-416-9081 Email: sunny@daejee.net	Trade	\$291,181.18

	Name of creditor and complete mailing address, including zipcode	Name, telephone number and email address of creditor/contact	Nature of claim	Amount of claim
47	Westfield 11601 Wilshire Blvd., 11th Floor Los Angeles, CA 90025	Attn: John Kim Telephone: 310-478-4456 Email: jkim@westfield.com	Contracts	\$290,085.72
48	1450 Broadway, LLC 1375 Broadway, 12th Floor New York, NY 10018	Attn: Bobby Zar Telephone: 212-944-2510 Email: bobby@azrgroupny.com	Contracts	\$288,756.57
49	Huge Well (Hong Kong) Ltd Yu Feng International Building, 22nd Floor West Yan An Road, No. 777 Shanghai, China 200050	Attn: Cherry Wang Telephone: 86-216-225-6000 Email: cherrywang@generalorientltd.com	Trade	\$286,777.42
50	West Coast Distribution (Contractors) 2608 37th St. Vernon, CA 90058	Attn: Alex Francia Telephone: 323-374-6706 Email: alexf@wcdistribution.com	Trade	\$286,353.91

**EXHIBIT D**

**Consolidated List of the Holders of the Debtors’ Five Largest Secured Claims**

Pursuant to Local Rule 1007-2(a)(5), the following is a list of creditors holding the five largest secured claims against the Debtors, on a consolidated basis, as of the Petition Date.

The information contained herein shall not constitute an admission of liability by, nor is it binding on, the Debtors. The Debtors reserve all rights to assert that any debt or claim included herein is a disputed claim or debt, and to challenge the priority, nature, amount, or status of any such claim or debt. The descriptions of the collateral securing the underlying obligations are intended only as brief summaries. In the event of any inconsistencies between the summaries set forth below and the respective corporate and legal documents relating to such obligations, the descriptions in the corporate and legal documents shall control.

	<b>Name of Creditor</b>	<b>Creditor Name, and complete mailing address, including zip code of employee, agents, or department of creditor familiar with claim who may be contacted</b>	<b>Amount of Claim (as of February 28, 2017)</b>	<b>Collateral Description and Value</b>
1.	Bank of America, N.A.  (ABL Facility Agent)	Bank of America, N.A. Retail Finance Group 100 Federal Street Boston, MA 02110 Attention David R. Vega Telecopier: (617) 434-4131	\$82 million	Obligations under the ABL Facility are secured by a first priority lien on the Debtors’ accounts, inventory, deposit accounts, security accounts, cash, and cash equivalents and a second priority lien on all other property of the grantors, including the Debtors’ intellectual property.
2.	Guggenheim Corporate Funding, LLC  (Term Loan Facility Agent)	Guggenheim Corporate Funding, LLC 330 Madison Avenue, 10th Floor New York, New York 10017 Attention: Catherine Chantharaj Telecopier: (212) 918-8786	377.0 million	Obligations under the Term Loan Agreement are secured by a second priority lien on the Debtors’ accounts, inventory, deposit accounts, security accounts, cash, and cash equivalents and a first priority lien on all other property of the borrowers and guarantors, including the Debtors’ intellectual property.



**EXHIBIT E**

**Summary of the Debtors' Assets and Liabilities**

Pursuant to Local Rule 1007-2(a)(6), the following are estimates of the Debtors' total assets and liabilities on a consolidated basis. The following financial data is the latest available information and reflects the Debtors' financial condition, as consolidated with its affiliated Debtors and non-Debtors as of the Petition Date.

The information contained herein shall not constitute an admission of liability by, nor is it binding on, the Debtors. The Debtors reserve all rights to assert that any debt or claim included herein is a disputed claim or debt, and to challenge the priority, nature, amount, or status of any such claim or debt.

<b>Assets and Liabilities</b>	<b>Amount</b>
Total Assets (Book Value as of December 31, 2016)	\$223 million
Total Liabilities (Book Value as of December 31, 2016)	\$651 million

**EXHIBIT F**

**Summary of the Publicly Held Securities of the Debtors**

Pursuant to Local Rule 1007-2(a)(7), the following lists the number and classes of shares of stock, debentures, or other securities of the Debtors that are publicly held, and the number of holders thereof as of the Petition Date.

None.

**EXHIBIT G**

**Summary of Debtors' Property Held by Third Parties**

Pursuant to Local Rule 1007-2(a)(8), the following lists the Debtors' property, as of the Petition Date, that is in the possession or custody of any custodian, public officer, mortgagee, pledge, assignee of rents, secured creditor, or agent for any such entity.

Certain property of the Debtors is likely to be in the possession of various other persons, including maintenance providers, shippers, common carriers, materialmen, custodians, public officers, mortgagees, pledges, assignees of rents, secured creditors, or agents. Through these arrangements, the Debtors' ownership interest is not affected. In light of the movement of this property, providing a comprehensive list of the persons or entities in possession of the property, their addresses and telephone numbers, and the location of any court proceeding affecting such property would be impractical. The Debtors estimate that (a) the value of goods held in third-party warehouses is approximately \$8.6 million; (b) the value of goods in transit is approximately approximately \$1.3 million; (c) the aggregate value of lease security deposits is approximately \$1.0 million; and (d) the aggregate value of utilities provider deposits is approximately \$320,000.

**EXHIBIT H**

**Summary of Debtors' Property From Which the Debtors' Operate Their Business**

Pursuant to Local Rule 1007-2(a)(9), the following lists the location of the premises owned, leased, or held under other arrangement from which the Debtors operate their businesses as of the Petition Date.

<b>Property Address</b>	<b>City</b>	<b>State</b>	<b>Country</b>	<b>Owned or Leased</b>
1450 Broadway, 16th-17th Floor (Showroom)	New York	NY	USA	Leased
2761 Fruitland Avenue (Corporate Headquarters)	Vernon	CA	USA	Leased
4701 South Santa Fe Avenue (Warehouse)	Vernon	CA	USA	Leased
5525 Soto Street (Warehouse)	Vernon	CA	USA	Leased

In addition to the foregoing, the Debtors and their non-Debtor affiliates operate more than 550 stores spread across all fifty states in the United States, Canada, Japan, and Europe. The debtors conduct substantial retail operations at each of these locations. Due to the voluminous nature of such information, each store location is not listed here.

**EXHIBIT I**

**Location of the Debtors' Substantial Assets, Books and Records, and Nature and Location of Debtors' Assets Outside the United States**

Pursuant to LBR 1007-2(a)(10), the following provides the location of the Debtors' substantial assets, books and records, and the nature, location, and value of any assets held by the Debtors outside the territorial limits of the United States as of the Petition Date.

<b>Debtors' Assets</b>	<b>Location</b>
Inventory, Books and Records, and Various FF&E (Showroom)	1450 Broadway, 16th-17th Floor New York, NY 10018
Books and Records	2761 Fruitland Avenue Vernon, CA 90058
Inventory and Various FF&E (Warehouse)	4701 South Santa Fe Avenue Vernon, CA 90058
Inventory and Various FF&E (Warehouse)	5525 Soto Street Vernon, CA 90058

In addition to the foregoing, the Debtors and their non-Debtor affiliates operate more than 550 stores spread across all fifty states in the United States, Canada, Japan, and Europe. The Debtors maintain inventory, various FF&E, and other assets at each of these premises. Due to the voluminous nature of such information, each store location is not listed here.

**EXHIBIT J**

**Summary of Legal Actions against the Debtors**

Pursuant to Local Rule 1007-2(a)(11), the following lists material actions and proceedings pending or threatened against the Debtors or their properties where a judgment against the Debtors or a seizure of their property may be imminent as of the Petition Date. This list reflects actions or proceedings considered material by the Debtors and, if necessary, will be supplemented in the corresponding schedules to be filed by the Debtors in these chapter 11 cases.

<b>Entity</b>	<b>Counterparty</b>	<b>Nature of the Claim</b>	<b>Status</b>
BCBG Max Azria Group, LLC	Danielle Creacy	Hostile Work Environment	Pending
BCBG Max Azria Group, LLC	Robynette Robinson Gardenia Zuniga-Haro	Employee Wage Action	Pending
BCBG Max Azria Group, LLC	Krista Behr	Employee Wage Action	Pending
BCBG Max Azria Group, LLC	Maria Ramos	Unfair Competition	Pending
BCBG Max Azria Group, LLC	Angela Reed	Employee Discrimination	Pending
BCBG Max Azria Group, LLC	Tatiana Lukashova	Employee Discrimination	Pending
BCBG Max Azria Group, LLC	Francisca Cid	Wrongful Termination	Pending

**EXHIBIT K**

**Debtors' Senior Management**

Pursuant to Local Rule 1007-2(a)(12), the following provides the names of the individuals who constitute the Debtors' existing senior management, their tenure with the Debtors, and a brief summary of their responsibilities and relevant experience as of the Petition Date.

Name / Position	Relevant Experience / Responsibility	Tenure
Marty Staff Interim Chief Executive Officer	Mr. Staff has been the Chief Executive Officer of Global Holdings since August 2016.	Aug. 2016 - Present
Holly Felder Etlin Chief Restructuring Officer	Ms. Etlin has been the Chief Restructuring Officer of Global Holdings since January 2017.	Jan. 2017 - Present
Deborah Rieger-Paganis Interim Chief Financial Officer	Ms. Rieger-Paganis has been the Chief Financial Officer of Global Holdings since January 2017.	Jan. 2017 - Present
Erica Alterwitz Meierhans General Counsel	Ms. Meierhans has been the General Counsel of Global Holdings since October 2015.	Oct. 2015 - Present

**EXHIBIT L**

**Debtors' Payroll for the 30 Day Period Following the Filing of the Debtors' Chapter 11 Petitions**

Pursuant to Local Rules 1007-2(b)(1)-(2)(A) and (C), the following provides, for the 30-day period following the Petition Date, the estimated amount of weekly payroll to the Debtors' employees (exclusive of officers, directors, and stockholders), the estimated amount paid and proposed to be paid to officers, stockholders, and directors, and the amount paid or proposed to be paid to financial and business consultants retained by Debtors.

<b>Payments</b>	<b>Payment Amount</b>
Payments to employees (not including officers, directors, and stockholders)	\$8.9 million
Payments to officers, directors, and stockholders	\$50,000
Payments to financial and business consultants	\$1.1 million



**EXHIBIT M**

**Debtors' Estimated Cash Receipts and Disbursements for the Thirty (30) Day Period Following the Filing of the Chapter 11 Petitions**

Pursuant to Local Rule 1007-2(b)(3), the following provides, for the 30-day period following the Petition Date, the Debtors' estimated cash receipts and disbursements, net cash gain or loss, and obligations and receivables expected to accrue that remain unpaid, other than professional fees.

<b>Type</b>	<b>Amount</b>
Cash Receipts	\$45.4 million
Cash Disbursements	\$49.1 million
Net Cash Loss	\$3.7 million
Unpaid Obligations (excluding professional fees)	\$5 million
Unpaid Receivables (excluding professional fees)	\$3.5 million

**EXHIBIT P-3**

**COPY OF BCBG CANADA'S REGISTRATION  
ON THE REGISTRE DES ENTREPRISES**



## Rechercher une entreprise au registre

### État de renseignements d'une personne morale au registre des entreprises

Renseignements en date du 2017-02-27 21:02:43

#### État des informations

##### Identification de l'entreprise

Numéro d'entreprise du Québec (NEQ)	1148663512
Nom	BCBG MAX AZRIA CANADA INC.

##### Adresse du domicile

Adresse	2100-1000 rue De La Gauchetière O Montréal (Québec) H3B4W5 Canada
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##### Adresse du domicile élu

Adresse	Aucune adresse
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##### Immatriculation

Date d'immatriculation	1999-06-30
Statut	Immatriculée
Date de mise à jour du statut	2004-08-30
Date de fin de l'existence	Aucune date de fin d'existence n'est déclarée au registre.

##### Forme juridique

Forme juridique	Société par actions ou compagnie
Date de la constitution	1998-12-11 Constitution
Régime constitutif	

Régime courant

CANADA: Loi canadienne sur les sociétés par actions,  
L.R.C. (1985), c. C-44CANADA: Loi canadienne sur les sociétés par actions,  
L.R.C. (1985), c. C-44**Dates des mises à jour**

Date de mise à jour de l'état de renseignements	2017-02-15
Date de la dernière déclaration de mise à jour annuelle	2016-03-18 2016
Date de fin de la période de production de la déclaration de mise à jour annuelle de 2017	2017-07-31
Date de fin de la période de production de la déclaration de mise à jour annuelle de 2016	2016-08-05

**Faillite**

L'entreprise n'est pas en faillite.

**Fusion et scission**

Aucune fusion ou scission n'a été déclarée.

**Continuation et autre transformation**

Aucune continuation ou autre transformation n'a été déclarée.

**Liquidation ou dissolution**

Aucune intention de liquidation ou de dissolution n'a été déclarée.

**Activités économiques et nombre de salariés****1<sup>er</sup> secteur d'activité**

Code d'activité économique (CAE)	6921
Activité	Entreprises de vente directe
Précisions (facultatives)	VENTE AU DÉTAIL

**2<sup>e</sup> secteur d'activité**

Aucun renseignement n'a été déclaré.

**Nombre de salariés**

Nombre de salariés au Québec  
De 250 à 499

**Convention unanime, actionnaires, administrateurs, dirigeants et fondé de pouvoir****Actionnaires****Premier actionnaire**

Le premier actionnaire est majoritaire.

Nom	BCBG MAX AZRIA B.V.
Adresse	1725 Strawinskylaan Street Amsterdam, 107 7XX The Netherlands

**Convention unanime des actionnaires**

Il existe une convention unanime des actionnaires.

**Actionnaires ou tiers assumant les pouvoirs du conseil d'administration**

Tous les pouvoirs ont été retirés au conseil d'administration par une convention unanime des actionnaires.

Nom de l'entreprise	BCBG MAX AZRIA B.V.
Date du début de la charge	2017-02-14
Date de fin de la charge	
Adresse	1725 Strawinskylaan Street Amsterdam 1077XX The Netherlands

**Liste des administrateurs**

Nom de famille	Manzoor
Prénom	Naveed
Date du début de la charge	2017-02-13
Date de fin de la charge	
Fonctions actuelles	Administrateur
Adresse	6 Adelaide Street East, Unit 220 Toronto Ontario M5C1H6 Canada

**Dirigeants non membres du conseil d'administration**

Aucun dirigeant non membre du conseil d'administration n'a été déclaré.

**Fondé de pouvoir**

Aucun fondé de pouvoir n'a été déclaré.

**Administrateurs du bien d'autrui**

Aucun administrateur du bien d'autrui n'a été déclaré.

**Établissements**

Aucun établissement n'a été déclaré.

**Documents en traitement**

Aucun document n'est actuellement traité par le Registraire des entreprises.

**Index des documents****Documents conservés**

Type de document	Date de dépôt au registre
Déclaration de mise à jour courante	2017-02-15
Déclaration de mise à jour courante	2017-01-31
Déclaration de mise à jour courante	2017-01-31
DÉCLARATION DE MISE À JOUR ANNUELLE 2016	2016-03-18
DÉCLARATION DE MISE À JOUR ANNUELLE 2015	2015-03-24
DÉCLARATION DE MISE À JOUR ANNUELLE 2014	2014-07-17
Déclaration de mise à jour courante	2013-10-31
Déclaration de mise à jour courante	2013-07-19
DÉCLARATION DE MISE À JOUR ANNUELLE 2013	2013-02-01
DÉCLARATION DE MISE À JOUR ANNUELLE 2012	2012-02-01
Déclaration de mise à jour courante	2012-01-12
Déclaration de mise à jour courante	2011-11-22
Déclaration de mise à jour courante	2011-03-03
DÉCLARATION DE MISE À JOUR ANNUELLE 2011	2011-02-22
Déclaration annuelle 2010	2011-02-22
Déclaration annuelle 2009	2009-07-15
Déclaration annuelle 2008	2009-06-08
Déclaration modificative	2008-09-23
Déclaration annuelle 2007	2008-04-02
Déclaration modificative	2007-09-18
Modification correction / Acte de régularisation	2007-07-17
Déclaration annuelle 2006	2007-02-28
Déclaration modificative	2006-08-02
Déclaration annuelle 2005	2005-12-21
Déclaration annuelle 2004	2005-09-26
Avis de défaut	2005-06-09
Déclaration annuelle 2003	2004-08-30
Déclaration annuelle 2002	2004-08-30
Arrêté de révocation de radiation	2004-08-30
Radiation d'office	2004-05-07
Avis de défaut	2003-05-23

Type de document	Date de dépôt au registre
Déclaration annuelle 2001	2002-09-04
Déclaration annuelle 2000	2002-09-04
Déclaration modificative	2002-09-04
Déclaration modificative	2002-09-04
Arrêté de révocation de radiation	2002-09-04
Radiation d'office	2002-05-10
Avis de défaut	2001-05-23
Déclaration modificative	2000-03-08
Déclaration annuelle 1999	2000-01-28
Déclaration d'immatriculation	1999-06-30

### Index des noms

Date de mise à jour de l'index des noms	2004-08-30
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### Nom

Nom	Versions du nom dans une autre langue	Date de déclaration du nom	Date de déclaration du retrait du nom	Situation
BCBG MAX AZRIA CANADA INC.		1998-12-11		En vigueur

### Autres noms utilisés au Québec

Autre nom	Versions du nom dans une autre langue	Date de déclaration du nom	Date de déclaration du retrait du nom	Situation
BCBG MAX AZRIA		2000-03-08		En vigueur

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**EXHIBIT P-4**

**SECOND AMENDED AND RESTATED LOAN AGREEMENT  
DATED FEBRUARY 5, 2015**



[EXECUTION VERSION]

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**BCBG MAX AZRIA GROUP, LLC,**

as the Company,

**BCBG MAX AZRIA CANADA INC.**

as the Canadian Borrower,

**BCBG MAX AZRIA INTERMEDIATE HOLDINGS, LLC,**

as Holdings,

the other **Guarantors** party hereto,

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**SECOND AMENDED AND RESTATED LOAN AGREEMENT**

Dated as of February 5, 2015

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**CERTAIN FINANCIAL INSTITUTIONS,**

as Lenders

and

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

as Administrative Agent

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

as Canadian Agent

**BANK OF AMERICA, N.A. and GENERAL ELECTRIC CAPITAL CORPORATION,**

as Co-Collateral Agents

**MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED AND  
GE CAPITAL MARKETS, INC.,**

as Joint-Lead Arrangers

and the other financial institutions party hereto as Syndication Agent  
and as Co-Documentation Agents

## TABLE OF CONTENTS

	Page
SECTION 1. DEFINITIONS; RULES OF CONSTRUCTION .....	1
1.1 Definitions.....	1
1.2 Accounting Terms.....	63
1.3 Certain Matters of Construction.....	63
1.4 Letter of Credit Amounts .....	64
1.5 Times of Day; Rates.....	64
1.6 Conversions of Foreign Currencies .....	64
SECTION 2. CREDIT FACILITIES.....	65
2.1 Commitments .....	65
2.1.1 Loans.....	65
2.1.2 Notes .....	66
2.1.3 Use of Proceeds.....	66
2.1.4 Overadvances; Protective Advances.....	66
2.2 Voluntary Reduction or Termination of Commitments.....	67
2.2.1 Voluntary Reduction or Termination of Tranche A Revolver Commitments .....	67
2.2.2 Voluntary Reduction or Termination of Tranche A-1 Revolver Commitments; Mandatory Prepayments.....	68
2.2.3 Voluntary Reduction or Termination of Canadian Revolver Commitments .....	69
2.2.4 Mandatory Prepayments .....	69
2.3 Letter of Credit Facility .....	71
2.3.1 Letter of Credit Commitment.....	71
2.3.2 Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.....	73
2.3.3 Drawings and Reimbursements; Funding of Participations.....	75
2.3.4 Repayment of Participations .....	77
2.3.5 Obligations Absolute .....	77
2.3.6 Role of Issuing Bank.....	78
2.3.7 Applicability of ISP and UCP; Limitation of Liability.....	79
2.3.8 Conflict with LC Documents .....	80

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
2.3.9 Letters of Credit Issued for Subsidiaries.....	80
2.4 Increase in Tranche A Revolver Commitments.....	80
2.4.1 Increase in Commitments, Etc .....	80
2.4.2 Conditions to Effectiveness of Increase.....	81
2.5 Increase in Canadian Revolver Commitments.....	81
2.5.1 Increase in Commitments, Etc .....	81
2.5.2 Conditions to Effectiveness of Increase.....	82
2.6 Reserved.....	83
2.7 Cash Collateral.....	83
2.7.1 Certain Credit Support Events .....	83
2.7.2 Grant of Security Interest.....	83
2.7.3 Application.....	83
2.7.4 Release .....	84
2.8 Defaulting Lenders.....	84
2.8.1 Adjustments .....	84
2.8.2 Defaulting Lender Cure .....	86
SECTION 3. INTEREST, FEES AND CHARGES .....	86
3.1 Interest.....	86
3.1.1 Rates and Payment of Interest.....	86
3.1.2 Application of Eurodollar Rate and/or the Canadian BA Rate to Outstanding Loans .....	87
3.1.3 Interest Periods.....	88
3.1.4 Interest Rate Not Ascertainable .....	89
3.2 Fees .....	89
3.2.1 Commitment Fee.....	89
3.2.2 LC Facility Fees.....	90
3.2.3 Administrative Agent Fees .....	91
3.3 Computation of Interest, Fees, Yield Protection.....	91
3.4 Reimbursement Obligations.....	91
3.5 Illegality .....	92

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
3.6 Increased Costs .....	93
3.7 Capital Adequacy .....	95
3.8 Mitigation .....	95
3.9 Funding Losses .....	95
3.10 Maximum Interest .....	96
<b>SECTION 4. LOAN ADMINISTRATION .....</b>	<b>96</b>
4.1 Manner of Borrowing and Funding Loans .....	96
4.1.1 Notice of Borrowing .....	96
4.1.2 Fundings by Lenders .....	97
4.1.3 Swingline Loans; Settlement .....	98
4.1.4 Notices .....	100
4.2 Reserved .....	100
4.3 Number and Amount of LIBOR Loans and Canadian BA Rate Loans; Determination of Rate .....	100
4.4 Borrower Agent .....	101
4.5 Obligations .....	101
4.6 Effect of Termination .....	101
<b>SECTION 5. PAYMENTS .....</b>	<b>102</b>
5.1 General Payment Provisions .....	102
5.2 Repayment of Loans, Etc .....	102
5.3 Payment of Other Obligations .....	103
5.4 Marshaling; Payments Set Aside .....	103
5.5 Allocation of Payments .....	103
5.5.1 Pre-Default Allocation of Payments on Obligations (other than the Canadian Obligations) .....	103
5.5.2 Pre-Default Allocation of Payments on Canadian Obligations .....	103
5.5.3 Post-Default Allocation of Payments to the Obligations .....	104
5.5.4 Post-Default Allocation of Payments to the Canadian Obligations .....	106
5.5.5 Erroneous Application .....	107
5.6 Application of Payments .....	107
5.7 Loan Account; Account Stated .....	107

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
5.7.1 Loan Account.....	107
5.7.2 Entries Binding .....	108
5.8 Taxes.....	108
5.8.1 Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes .....	108
5.8.2 Payment of Other Taxes by the Borrower .....	109
5.8.3 Tax Indemnifications .....	109
5.8.4 Evidence of Payments.....	109
5.8.5 Status of Lenders; Tax Documentation.....	110
5.8.6 Treatment of Certain Refunds.....	112
5.8.7 Survival .....	112
5.9 Currency Matters .....	112
5.10 Nature of Each Borrower’s Liability .....	113
SECTION 6. CONDITIONS PRECEDENT .....	113
6.1 Conditions Precedent to Initial Loans.....	113
6.2 Conditions Precedent to All Credit Extensions .....	117
6.3 [Reserved].....	118
6.4 Failure to Satisfy Conditions Precedent.....	118
SECTION 7. DEPOSIT ACCOUNTS AND CASH COLLATERAL .....	118
7.1 Lien on Deposit Accounts; Cash Collateral.....	118
7.1.1 Accounts Generally.....	118
7.1.2 Company Deposit Accounts; Canadian Deposit Accounts.....	121
7.1.3 Reserved.....	121
7.1.4 Credit Card Agreements .....	121
7.2 Real Estate Collateral.....	121
7.3 Further Assurances.....	122
SECTION 8. COLLATERAL ADMINISTRATION.....	122
8.1 Borrowing Base Certificates .....	122
8.1.1 Borrowing Base Certificates .....	122
8.1.2 Weekly Election.....	122

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
8.1.3	Calculations..... 123
8.1.4	General ..... 123
8.2	Administration of Accounts ..... 123
8.2.1	Account Verification..... 123
8.2.2	[Reserved] ..... 123
8.2.3	Proceeds of Collateral ..... 123
8.3	Administration of Inventory ..... 124
8.3.1	Records and Reports of Inventory ..... 124
8.3.2	Returns of Inventory ..... 124
8.3.3	Acquisition, Sale and Maintenance..... 124
8.4	Administration of Deposit Accounts ..... 124
8.5	General Provisions ..... 125
8.5.1	Location of Collateral ..... 125
8.5.2	Insurance of Collateral; Condemnation Proceeds..... 125
8.5.3	Protection of Collateral ..... 126
8.5.4	Defense of Title to Collateral..... 126
8.5.5	Power of Attorney..... 126
SECTION 9.	REPRESENTATIONS AND WARRANTIES..... 127
9.1	General Representations and Warranties ..... 127
9.1.1	Organization and Qualification..... 127
9.1.2	Power and Authority ..... 127
9.1.3	Enforceability..... 127
9.1.4	Capital Structure ..... 127
9.1.5	Corporate Names; Locations..... 127
9.1.6	Title to Properties; Priority of Liens ..... 128
9.1.7	OFAC; Sanctions ..... 128
9.1.8	Financial Statements ..... 128
9.1.9	Surety Obligations ..... 129
9.1.10	Taxes ..... 129
9.1.11	Brokers ..... 129

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
9.1.12 Intellectual Property.....	129
9.1.13 Governmental Approvals; Other Consents .....	130
9.1.14 Compliance with Laws .....	130
9.1.15 Compliance with Environmental Laws.....	130
9.1.16 Term Debt Documents.....	130
9.1.17 Litigation.....	131
9.1.18 Insurance; No Casualty .....	131
9.1.19 No Defaults .....	131
9.1.20 ERISA .....	131
9.1.21 Trade Relations .....	132
9.1.22 Reserved.....	132
9.1.23 Not a Regulated Entity.....	132
9.1.24 Margin Stock.....	132
9.1.25 Plan Assets .....	133
9.1.26 Patriot Act; Anti-Corruption Laws .....	133
9.1.27 Complete Disclosure.....	133
9.1.28 Restricted Junior Payments.....	133
<b>SECTION 10. COVENANTS AND CONTINUING AGREEMENTS.....</b>	<b>133</b>
10.1 Affirmative Covenants.....	133
10.1.1 Inspections; Appraisals .....	133
10.1.2 Financial and Other Information.....	134
10.1.3 Notices .....	137
10.1.4 Landlord and Storage Agreements.....	139
10.1.5 Compliance with Laws; Organic Documents .....	139
10.1.6 Taxes .....	139
10.1.7 Insurance .....	139
10.1.8 Licenses.....	140
10.1.9 Future Subsidiaries.....	140
10.1.10 Payment of Obligations.....	140
10.1.11 Preservation of Existence.....	141

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
10.1.12 Maintenance of Properties .....	141
10.1.13 Compliance with Terms of Leaseholds.....	141
10.1.14 Use of Proceeds.....	141
10.1.15 Lien Waivers and Lien Priority Agreements .....	141
10.1.16 Designation of Subsidiaries .....	141
10.1.17 Anti-Corruption Laws .....	142
10.1.18 Further Assurances.....	142
10.2 Negative Covenants .....	143
10.2.1 Permitted Debt .....	143
10.2.2 Permitted Liens .....	146
10.2.3 [Reserved] .....	147
10.2.4 No Further Negative Pledges .....	147
10.2.5 Cash Accumulation .....	148
10.2.6 Restricted Junior Payments.....	148
10.2.7 Restrictions on Subsidiary Distributions .....	149
10.2.8 Canadian Pension Plans .....	150
10.2.9 Investments .....	150
10.2.10 Prepayment and Cancellation of Certain Debt.....	152
10.2.11 [Reserved] .....	152
10.2.12 Fundamental Changes, Disposition of Assets, and Acquisitions.....	153
10.2.13 Disposal of Subsidiary Interests.....	154
10.2.14 Sanctions .....	154
10.2.15 Transactions with Shareholders and Affiliates .....	155
10.2.16 Conduct of Business .....	155
10.2.17 Permitted Activities of Holdings and International Holdings.....	155
10.2.18 Amendments or Waivers of Term Debt Documents, Permitted Term Debt Refinancing, Organic Documents, Contribution Agreement and Exchange Agreement .....	156
10.2.19 Amendments or Waivers of the Services Agreement.....	156
10.2.20 Accounting Changes; Fiscal Year; Tax Consolidation.....	156
10.2.21 Margin Regulations.....	157



**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
10.2.22 Hedging Agreements .....	157
10.2.23 No Speculative Transactions.....	157
10.2.24 Alternative Transaction.....	157
10.2.25 Anti-Corruption Laws.....	157
<b>SECTION 11. EVENTS OF DEFAULT; REMEDIES ON DEFAULT.....</b>	<b>157</b>
11.1 Events of Default .....	157
11.2 Remedies upon Default.....	160
11.3 License .....	161
11.4 Setoff.....	161
11.5 Remedies Cumulative; No Waiver .....	161
11.5.1 Cumulative Rights .....	161
11.5.2 Waivers .....	161
11.6 Judgment Currency .....	162
<b>SECTION 12. ADMINISTRATIVE AGENT AND CANADIAN AGENT .....</b>	<b>162</b>
12.1 Appointment, Authority and Duties of Administrative Agent and Canadian Agent.....	162
12.1.1 Appointment and Authority of Administrative Agent and Canadian Agent.....	162
12.1.2 Duties .....	165
12.1.3 Agent Professionals .....	166
12.1.4 Instructions of Required Lenders.....	166
12.2 Agreements Regarding Collateral and Field Examination Reports.....	167
12.2.1 Lien Releases; Care of Collateral .....	167
12.2.2 Possession of Collateral .....	168
12.2.3 Reports .....	168
12.3 Reliance By Agents.....	168
12.4 Action Upon Default.....	168
12.5 Ratable Sharing.....	169
12.6 Indemnification of Agent Indemnitees and Issuing Bank Indemnitees .....	169
12.6.1 INDEMNIFICATION.....	169
12.6.2 Proceedings .....	169

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
12.7 Limitation on Responsibilities of Administrative Agent and Canadian Agent.....	170
12.8 Successor Agents .....	170
12.8.1 Resignation; Successor Agent.....	170
12.8.2 Separate Agent .....	172
12.9 Due Diligence and Non-Reliance .....	172
12.10 Replacement of Certain Lenders.....	173
12.11 Remittance of Payments and Collections .....	173
12.11.1 Remittances Generally .....	173
12.11.2 Failure to Pay .....	173
12.11.3 Recovery of Payments .....	174
12.12 Agents in their Individual Capacity .....	174
12.13 Agent Titles.....	174
12.14 No Third Party Beneficiaries .....	174
12.15 Loan Documents; Intercreditor Agreement .....	174
12.16 Administrative Agent May File Proofs of Claim; Credit Bidding.....	175
12.16.1 Proofs of Claim .....	175
12.16.2 Credit Bid.....	175
12.17 Bank Product Providers .....	176
<b>SECTION 13. BENEFIT OF AGREEMENT; ASSIGNMENTS AND PARTICIPATIONS .....</b>	<b>176</b>
13.1 Successors and Assigns.....	176
13.2 Assignments .....	177
13.2.1 Assignments by Lenders .....	177
13.2.2 Register .....	179
13.2.3 Certain Pledges .....	180
13.2.4 Electronic Execution of Assignments .....	180
13.3 Participations.....	180
13.3.1 Participations.....	180
13.3.2 Limitations upon Participant Rights .....	181
13.4 Tax Treatment.....	181

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
13.5 Representation of Lenders .....	181
<b>SECTION 14. MISCELLANEOUS .....</b>	<b>182</b>
14.1 Consents, Amendments and Waivers .....	182
14.1.1 Amendment.....	182
14.1.2 Limitations .....	183
14.1.3 Payment for Consents .....	183
14.2 Indemnity .....	184
14.3 Notices and Communications .....	185
14.3.1 Notice Address.....	185
14.3.2 Electronic Communications; Voice Mail.....	185
14.3.3 Non-Conforming Communications .....	186
14.3.4 Platform.....	186
14.3.5 Change of Address, Etc.....	186
14.4 Performance of Borrowers' Obligations.....	187
14.5 Credit Inquiries .....	187
14.6 Severability .....	187
14.7 Cumulative Effect; Conflict of Terms .....	187
14.8 Counterparts; Facsimile and Electronic Signatures .....	187
14.9 Entire Agreement.....	188
14.10 Obligations of Lenders Several.....	188
14.11 Confidentiality .....	188
14.12 GOVERNING LAW.....	189
14.13 Consent to Forum.....	189
14.13.1 Forum.....	189
14.14 Certain Waivers .....	190
14.15 Patriot Act Notice, Etc .....	191
14.15.1 Patriot Act .....	191
14.15.2 Canadian Anti-Money Laundering Legislation .....	191
14.16 Survival of Representations and Warranties.....	191
14.17 No Advisory or Fiduciary Responsibility.....	192

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
14.18 California Judicial Reference.....	192
14.19 Resignation as Issuing Bank or Provider of Swingline Loans after Assignment .....	193
14.20 Amendment and Restatement of Existing Senior Credit Agreement .....	193

## **LIST OF EXHIBITS, SCHEDULES AND ANNEX**

Exhibit A	Form of Tranche A Revolver Note
Exhibit B	Form of Tranche A-1 Revolver Note
Exhibit C	Form of Canadian Revolver Note
Exhibit D	Form of Assignment and Assumption Agreement
Exhibit E	Form of Compliance Certificate
Exhibit F	Form of Borrowing Base Certificate
Exhibit G-1	Form of Notice of Borrowing or Conversion/Continuation
Exhibit G-2	Form of Swingline Loan Notice
Exhibit H	Forms of Tax Compliance Certificates
Schedule 1.1(a)	Commitments of Lenders
Schedule 1.1(b)	Partner Shop Agreements
Schedule 2.3.1	Existing Letters of Credit and Bankers' Acceptances
Schedule 7.1.4	Credit Card Arrangements
Schedule 7.2	Mortgaged Real Estate
Schedule 8.4	Deposit Accounts
Schedule 8.5.1	Business Locations
Schedule 9.1.4	Names; Capital Structure; Warrants, Etc.
Schedule 9.1.5	Former Names and Companies
Schedule 9.1.6	Real Estate
Schedule 9.1.8	Financial Statements
Schedule 9.1.12	Patents, Trademarks, Copyrights and Licenses
Schedule 9.1.15	Environmental Matters
Schedule 9.1.17	Litigation
Schedule 9.1.20	Pension Plans
Schedule 10.2.1	Existing Debt
Schedule 10.2.2	Existing Liens
Schedule 10.2.9	Existing Investments
Schedule 10.2.15	Transactions with Shareholders and Affiliates
Annex A	Rights of Co-Collateral Agent

## **SECOND AMENDED AND RESTATED LOAN AGREEMENT**

**THIS SECOND AMENDED AND RESTATED LOAN AGREEMENT** (this “Loan Agreement” or this “Agreement”) is entered into as of February 5, 2015, among **BCBG MAX AZRIA GROUP, LLC**, a Delaware limited liability company (formerly known as BCBG Max Azria Group, Inc., the “Company”), **BCBG MAX AZRIA CANADA INC.**, a Canadian corporation (the “Canadian Borrower” and together with the Company, collectively, the “Borrowers” and each individually, a “Borrower”), **BCBG MAX AZRIA INTERMEDIATE HOLDINGS, LLC**, a Delaware limited liability company that is the direct parent company of the Company (“Holdings”), each other Guarantor (as defined below) party hereto, each lender from time to time party hereto (collectively, the “Lenders” and individually, a “Lender”), **BANK OF AMERICA, N.A.**, as Administrative Agent and Issuing Bank, **BANK OF AMERICA, N.A. (ACTING THROUGH ITS CANADA BRANCH)**, as Canadian Agent and Issuing Bank and **BANK OF AMERICA, N.A.** and **GENERAL ELECTRIC CAPITAL CORPORATION**, each as a Co-Collateral Agent.

### **RECITALS:**

Borrowers have requested that Agents and Lenders make available certain credit facilities pursuant to an amendment and restatement of the Existing Senior Credit Agreement to finance their mutual and collective business enterprise. Lenders are willing to provide such credit facilities on the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, for valuable consideration hereby acknowledged, the parties agree as follows:

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

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

Accelerated Reporting Period - any period (a) commencing on the first date on which the Excess Availability Ratio for five (5) consecutive Business Days is less than 15%; and (b) ending on the first date on which the Excess Availability Ratio for a period of thirty (30) consecutive days is equal to or greater than 15% (such date described in clause (b) being hereinafter referred to as an “Accelerated Reporting Termination Date”).

Accelerated Reporting Termination Date - as defined in the definition of Accelerated Reporting Period.

Acceptance Credit - a documentary Letter of Credit in which the Issuing Bank engages with the beneficiary of such Letter of Credit to accept a time draft.

Acceptance Documents - such general acceptance agreements, applications, certificates and other documents as the Issuing Bank may require in connection with the creation of Bankers’ Acceptances.

Account(s) - collectively, (i) “accounts” as defined in the UCC or, if applicable, the PPSA, (ii) all Payment Intangibles consisting of amounts owing from credit card and debit card issuers and processors and all rights under contracts relating to the creation or collection of such Payment Intangibles and (iii) a right to payment of a monetary obligation, whether or not earned by performance, (a) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (b) for services rendered or to be rendered, or (c) arising out of the use of a credit or charge card or information contained on or for use with the card.

Account Control Agreements - each Deposit Account Control Agreement, Securities Account Control Agreement and each other account control agreement required pursuant to this Agreement, in each case in form and substance reasonably satisfactory to the Applicable Agent.

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

Acquired Debt - (i) with respect to any Person, Debt existing at the time such Person becomes a Subsidiary of a Borrower or (ii) Debt assumed by a Borrower or a Subsidiary of the Borrower in a Permitted Acquisition; provided that such Debt (A) is unsecured or secured only by collateral of such Person granted prior to the consummation of any such Permitted Acquisition and (B) was not incurred in anticipation of such Permitted Acquisition.

Administrative Agent - Bank of America, N.A., in its capacity as administrative agent under the Loan Documents and as collateral agent regarding all matters concerning Collateral of the Company and the Guarantors and Collateral of the Canadian Borrower and the Canadian Guarantor Subsidiaries situated in the United States, or any successor Administrative Agent.

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

Agent Account - an account maintained by the Applicable Agent at Bank of America or Bank of America-Canada Branch, as applicable, which shall at all times be under the sole dominion and control of the Applicable Agent.

Agent Indemnitees - Each of the Agents and Co-Collateral Agents and its respective Affiliates and branches, and each such Person’s respective partners, officers, directors, employees, agents, trustees, advisors (including Agent Professionals) and attorneys.

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

Agents - collectively, the Administrative Agent and the Canadian Agent.

Alternative Transaction - as defined in the Global Holdings Operating Agreement.

AML Legislation – as defined in Section 14.15.2.

Anti-Terrorism Laws - any Applicable Laws relating to terrorism or money laundering, including the Patriot Act and the AML Legislation.

Applicable Agent - with respect to (a) the Company, all Loans and Letters of Credit issued for the account or benefit of the Company, and all matters concerning Collateral of the Company and the Guarantors and Collateral of the Canadian Borrower and the Canadian Guarantor Subsidiaries situated in the United States, the Administrative Agent, and (b) the Canadian Borrower, all Loans and Letters of Credit issued for the account or benefit of the Canadian Borrower, and all matters concerning Collateral of the Canadian Borrower and the Canadian Guarantor Subsidiaries and Collateral of the Company and the Guarantors situated in Canada, the Canadian Agent.

Applicable Commitment Fee Rate - means, for any calendar quarter, 0.25% per annum.

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

Applicable Margin - with respect to any Tranche A Revolver Loans, Tranche A-1 Revolver Loans, Canadian Revolver Loans, Standby Letter of Credit Fees and Documentary Letter of Credit Fees, the applicable percentage per annum set forth below:

Pricing Level	Excess Availability Ratio	Base Rate Tranche A Revolver Loans / Canadian Prime Rate Loans	LIBOR Tranche A Revolver Loans / Canadian BA Rate Loans	Standby Letter of Credit Fees	Documentary Letter of Credit Fees	Base Rate Tranche A-1 Revolver Loan	LIBOR Tranche A-1 Revolver Loan
I	<b>Greater than or equal to 66 2/3%</b>	0.50%	1.50%	1.50%	0.750%	1.50%	2.50%



II	<b>Less than 66 2/3% but greater than or equal to 33 1/3%</b>	0.75%	1.75%	1.75%	0.875%	1.75%	2.75%
III	<b>Less than 33 1/3%</b>	1.00%	2.00%	2.00%	1.00%	2.00%	3.00%

From the Closing Date through the end of the Fiscal Quarter in which the Closing Date occurs, margins shall be determined based on Pricing Level II. Thereafter, the margins shall be subject to increase or decrease on a quarterly basis. Not more than ten (10) Business Days after the first day of each Fiscal Quarter, the Administrative Agent shall determine the Applicable Margin for such Fiscal Quarter (which shall be effective as of the first calendar day of such Fiscal Quarter) based on the average daily Excess Availability Ratio for the prior Fiscal Quarter.

Approved Deposit Account - a Deposit Account that is the subject of an effective Account Control Agreement and that is maintained by any Obligor with a Deposit Account Bank.

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

Approved Securities Intermediary - a “securities intermediary” or “commodity intermediary” (as such terms are defined in the UCC or, if applicable, the PPSA) selected or approved by the Administrative Agent in its sole discretion exercised reasonably.

Asset Sale - a sale, lease or sublease (as lessor or sublessor), sale and leaseback, assignment, conveyance, transfer or other disposition to, or any exchange of property with, any Person, in one transaction or a series of transactions, of all or any part of Holdings’ or any Restricted Subsidiaries’ businesses, assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, including, without limitation, the Capital Stock of the Canadian Borrower, any Guarantor or any of their Restricted Subsidiaries, other than (i) inventory (or other assets) sold or leased in the Ordinary Course of Business, (ii) the non-exclusive licensing of patents, trademarks and other intellectual property rights granted by any of Holdings or any Restricted Subsidiary in the Ordinary Course of Business and not interfering in any respect with the ordinary conduct of the business of Holdings or such Restricted Subsidiary, (iii) the exclusive licensing (as to geographic areas excluding the United States and Canada) of patents, trademarks and other intellectual property rights granted by Holdings or any Restricted Subsidiary in the Ordinary Course of Business and not interfering in any respect with the ordinary conduct of the business of Holdings or such Restricted Subsidiary, (iv) dispositions of surplus, obsolete or worn out property, whether now owned or hereafter acquired, in the Ordinary Course of Business, (v) dispositions of property (including Capital Stock) by any Subsidiary to a Borrower or to another Subsidiary; provided that if the transferor of such property is (A) a U.S. Guarantor Subsidiary, the transferee thereof

must either be the Company or another U.S. Guarantor Subsidiary and (B) a Canadian Guarantor Subsidiary, the transferee thereof must either be a Borrower or another Guarantor Subsidiary; (vi) dispositions of property by the Company to any U.S. Guarantor Subsidiary; (vii) dispositions of property by the Canadian Borrower to the Company or any Guarantor Subsidiary; (viii) leases or subleases of interests in real property entered into in the Ordinary Course of Business; (ix) any issuance of Capital Stock of Holdings that do not cause a Change of Control; (x) the surrender or waiver of contractual rights or the settlement, release or surrender of contract or tort claims in the Ordinary Course of Business, (xi) dispositions of cash and Cash Equivalents; and (xii) sales of other assets (other than Revolving Credit Priority Collateral and Canadian Collateral) that generate Net Proceeds of less than \$2,500,000 with respect to any transaction or series of related transactions and less than \$10,000,000 in the aggregate during any Fiscal Year.

Assignment and Assumption Agreement - an assignment and assumption agreement between a Lender and Eligible Assignee (with the consent of any party whose consent is required by Section 13.2.1), and accepted by the Administrative Agent, in substantially the form of **Exhibit D** or any other form (including electronic documentation generated by use of an electronic platform) approved by the Administrative Agent.

Auto-Extension Letter of Credit - as defined in **Section 2.3.2(c)**.

Availability Block - an amount equal to equal to the greater of (i) ten percent (10%) of the Maximum Borrowing Amount (without giving effect to any deduction of the Availability Block from the calculation of the Tranche A Borrowing Base, the Tranche A-1 Borrowing Base and the Canadian Borrowing Base) at such time and (ii) the sum of (x) \$12,500,000, plus (y) an amount equal to 10% of any increases in the Tranche A Revolver Commitments effected under Section 2.4 or the Canadian Revolver Commitment effected under Section 2.5.

Availability Reserves - the sum (without duplication) of (a) the Rent and Charges Reserve; (b) the Bank Product Reserve; (c) the aggregate amount of liabilities secured by Liens upon Revolving Credit Primary Collateral or Canadian Collateral that are senior to Agents' Liens (but imposition of any such reserve shall not waive an Event of Default arising therefrom), other than Liens of the type which are addressed in the Rent and Charges Reserve; (d) reserves determined by the Administrative Agent in its Permitted Discretion in respect of gift certificates and store credits; (e) reserves established by the Administrative Agent in its Permitted Discretion based on appraisals and field exams of the Collateral and commercial finance exams of Obligors' books and records, (f) with regards to the Canadian Borrower and the Canadian Guarantor Subsidiaries, the Canadian Priority Payables Reserve, and (g) such additional reserves, in such amounts and with respect to such matters, as Administrative Agent in its Permitted Discretion may elect to impose from time to time. For the avoidance of doubt, the parties hereto agree and acknowledge that the Administrative Agent may, in its discretion and without the consent of the Company, implement an Availability Reserve under the Tranche A Borrowing Base in lieu of taking a corresponding Availability Reserve in the Canadian Borrowing Base or the Tranche A-1 Borrowing Base.

Azria - all or any of Max Azria, Lubov Azria, any of their spouses, parents, siblings, children or heirs (and the spouses, parents, siblings, children or heirs of any of them),

and any trust established by any of the foregoing for estate planning purposes, including, without limitation, the Azria Family Trust Dated August 11, 1995, as amended, supplemented or modified from time to time.

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

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

Bank of America Indemnites - Bank of America and its Affiliates (including Bank of America-Canada Branch) and each such Person's respective partners, officers, directors, employees, agents, trustees, advisors and attorneys.

Bank Product - any of the following products, services or facilities extended to any Obligor or any Subsidiary by any Lender or any of its branches or Affiliates: (a) Cash Management Services; (b) Hedging Agreements and related products; (c) commercial credit card, purchase card and merchant card services extended to such Obligor or such Subsidiary; and (d) supply chain financing, leases and other banking products or services as may be requested by any Obligor or any Subsidiary, other than Letters of Credit; provided, however, that for any of the foregoing to be included as an "Obligation" for purposes of a distribution under **Section 5.5**, the applicable bank product provider must have previously provided written notice to Administrative Agent of (x) the existence of such Bank Product and (y) the Bank Product Amount with respect thereto. Notwithstanding the foregoing, Bank Products provided by Bank of America or any of its branches or Affiliates shall not be subject to the requirements in the proviso of the immediate preceding sentence in order for such Bank Products to be included as an "Obligation" for purposes of a distribution under **Section 5.5**.

Bank Product Amount - at any time with respect to any Bank Product, the amount of Bank Product Debt outstanding thereunder.

Bank Product Debt - Debt and other obligations of an Obligor relating to Bank Products.

Bank Product Notice - as defined in the definition of the term "Bank Product Reserve".

Bank Product Reserve - the aggregate amount of reserves established by Administrative Agent from time to time, in its Permitted Discretion, in respect of Bank Product Debt; provided that (a) prior to the occurrence of a Liquidity Event Period and (b) except with respect to Bank Products provided by Bank of America or any of its branches or Affiliates, no Bank Product Reserve shall be taken in respect of Bank Products unless the applicable bank product provider and the applicable Obligor have previously provided written notice (a "Bank Product Notice") to the Administrative Agent of (x) the existence of such Bank Product, (y) the maximum dollar amount of obligations arising thereunder that may be included as a Bank Product Reserve and (z) when such Bank Product Reserve may be taken in respect thereof. The information provided in any Bank Product Notice may be changed from time to time upon

written notice to the Administrative Agent by the provider of the Bank Product and the applicable Obligor.

Bankers' Acceptance - a time draft, drawn by the applicable Borrower and accepted by the Issuing Bank upon presentation of documents by the beneficiary of a Letter of Credit, in the standard form for bankers' acceptances of such Issuing Bank.

Bankruptcy Code - Title 11 of the United States Code.

Base Rate - for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its "prime rate," and (c) the Eurodollar Rate for Base Rate Loans plus 1.00%; and if the Base Rate shall be less than zero, such rate shall be deemed zero for such purposes of this Agreement. The "prime rate" is a rate set by Bank of America based upon various factors including Bank of America's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in the Base Rate due to a change in any of the foregoing shall take effect at the opening of business on the day specified in the public announcement of such change.

Base Rate Loan - any Loan that bears interest based on the Base Rate (including Base Rate Tranche A Revolver Loan and Base Rate Tranche A-1 Revolver Loan).

Base Rate Tranche A Revolver Loan - a Tranche A Revolver Loan that bears interest at the Base Rate plus the Applicable Margin for Base Rate Tranche A Revolver Loans.

Base Rate Tranche A-1 Revolver Loan - a Tranche A-1 Revolver Loan that bears interest at the Base Rate plus the Applicable Margin for Base Rate Tranche A-1 Revolver Loans.

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

Borrower and Borrowers - as defined in the preamble hereto.

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

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

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

Business Day - any day (a) excluding Saturday, Sunday and any other day on which banks are permitted to be closed under the laws of the State of New York, (b) when used with reference to a Canadian Revolver Loan, also excluding any other day on which banks are permitted to be closed under the laws of the province of Ontario and the federal laws of Canada

and (c) when used with reference to a LIBOR Loan, any day on which dealings in Dollar deposits are conducted by and between banks on the London interbank eurodollar market.

Canada Guaranty - each Guaranty by the Company, Holdings, and the U.S. Guarantor Subsidiaries providing for a guarantee of all of the Canadian Obligations.

Canadian Agent - Bank of America-Canada Branch having a branch in Toronto, Ontario, Canada, in its capacity as Canadian agent under the Loan Documents, or any successor Canadian agent.

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

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

Canadian Borrower - as defined in the preamble hereto. The Canadian Borrower is an Affiliate of the Company.

Canadian Borrowing Base - on any date of determination, an amount equal to the lesser of (a) the aggregate amount of the Canadian Revolver Commitments, and (b) the result of (i) 90% of the NRV Percentage of the Value of Eligible Inventory of the Canadian Borrower and the Canadian Guarantor Subsidiaries *plus* (ii) 90% of Eligible Credit Card Receivables of the Canadian Borrower and the Canadian Guarantor Subsidiaries, *plus* (iii) 90% of Eligible Wholesale Receivables of the Canadian Borrower and the Canadian Guarantor Subsidiaries, net of the amount of the Dilution Reserve, if any, in respect thereof, *minus* (iv) the sum of (x) the Availability Reserves in respect of the Canadian Borrowing Base and (y) the Availability Block allocated by the Administrative Agent to the Canadian Borrowing Base. Notwithstanding the foregoing, in no event shall the aggregate amount of Eligible In-Transit Inventory and Eligible LC Inventory included in the Tranche A Borrowing Base, Tranche A-1 Borrowing Base and the Canadian Borrowing Base exceed 20.0% of the aggregate of the Tranche A Borrowing Base, Tranche A-1 Borrowing Base and the Canadian Borrowing Base.

Canadian Collateral - all Property and interests in Property and proceeds thereof now owned or hereafter acquired by the Canadian Borrower or any Canadian Guarantor

Subsidiary that is described in any Canadian Collateral Documents as security for any Canadian Obligations.

Canadian Collateral Documents - any and all security agreements, deeds of hypothec, pledge agreements or other collateral security agreements, instruments or documents (including Lien Waivers and Lien Priority Agreements) entered into or to be entered into by the Canadian Borrower or any Canadian Guarantor Subsidiary pursuant to which such Person grants or perfects a security interest in its personal property assets to the Applicable Agent to secure the Canadian Obligations, in each case in form and substance reasonably satisfactory to the Applicable Agent, including, without limitation PPSA and UCC financing statements and certified statements issued by the Québec Register of Personal and Movable Real Rights, required to be executed or delivered pursuant to any Canadian Collateral Document.

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

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

Canadian Excess Availability - determined as of any date, the amount that the Canadian Borrower is entitled to borrow as Canadian Revolver Loans, being the result (but not less than zero) of (a) the Canadian Borrowing Base, *minus* (b) the Canadian Usage.

Canadian Guarantor Subsidiaries - as defined in the definition of Guarantor Subsidiaries.

Canadian Increase Effective Date - as defined in **Section 2.5.1**.

Canadian LC Conditions - the following conditions necessary for issuance, extension, renewal or amendment of a Letter of Credit for the account or benefit of the Canadian Borrower: (a) each of the conditions set forth in **Section 6**; (b) after giving effect to such issuance, extension, renewal or amendment, (i) total Canadian LC Obligations do not exceed the Canadian Letter of Credit Subline and (ii) no Canadian Overadvance exists; (c) the expiration date of such Letter of Credit (or the maturity date of any Bankers' Acceptance issued under such requested Acceptance Credit) is (i) subject to **Section 2.3.2(c)** in respect of Auto-Extension Letters of Credit, no more than 365 days from issuance, extension, renewal or amendment, in the case of standby Letters of Credit (unless otherwise agreed by the Administrative Agent and Issuing Bank in their sole discretion), (ii) no more than 180 days from issuance, extension, renewal or amendment, in the case of documentary Letters of Credit (unless otherwise agreed by the Administrative Agent and Issuing Bank in their sole discretion), and (iii) on or prior to the Letter of Credit Expiration Date (unless, in the case of this clause (c)(iii), all Canadian LC Obligations (including those anticipated to accrue) in respect of such Letter of Credit are Cash Collateralized); (d) the Letter of Credit and payments thereunder are denominated in Canadian Dollars; and (e) the form of the proposed Letter of Credit is reasonably satisfactory to Issuing Bank.

Canadian LC Obligations - the sum (without duplication) of (a) all amounts owing by the Canadian Borrower for any drawings under Letters of Credit (including in respect of any payment made by Issuing Bank under any LC Guaranty) and payments under any Bankers' Acceptance issued for the account or on behalf of the Canadian Borrower or any of its Subsidiaries; (b) the aggregate undrawn amount of all outstanding Letters of Credit and Bankers' Acceptances issued for the account or on behalf of the Canadian Borrower or any of its Subsidiaries; and (c) all fees and other amounts owing with respect to Letters of Credit and Bankers' Acceptances issued for the account or on behalf of the Canadian Borrower or any of its Subsidiaries.

Canadian Lender - the Lenders indicated on **Schedule 1.1(a)** as Lenders of Canadian Revolver Loans, Canadian Agent in its capacity as a provider of Swingline Loans for the account of the Canadian Borrower and any other Person who hereafter becomes a "Canadian Lender" pursuant to an Assignment and Assumption Agreement. It is acknowledged and understood that, unless otherwise permitted hereunder, each Canadian Lender shall be required to be a Canadian Qualified Lender.

Canadian Letter of Credit Subline - Cdn. \$5,000,000.

Canadian Obligations - all (a) principal of and premium, if any, on the Canadian Revolver Loans, (b) Canadian LC Obligations and other obligations of the Canadian Borrower or any of its Subsidiaries with respect to Letters of Credit and Bankers' Acceptances issued for its account or benefit, (c) interest, expenses, fees and other sums payable by the Canadian Borrower under the Loan Documents, (d) obligations of the Canadian Borrower under any indemnity for Claims, (e) Extraordinary Expenses incurred in connection with the Canadian Borrower, the Canadian Guarantor Subsidiaries or the Canadian Obligations, (f) Bank Product Debt of the Canadian Borrower or any of its Subsidiaries, and (g) other Debts, obligations and liabilities of any kind owing by the Canadian Borrower or any Canadian Guarantor Subsidiaries pursuant to the Loan Documents, whether now existing or hereafter arising, whether evidenced by a note or other writing, whether accrued during or allowed in any Insolvency Proceeding, whether arising from an extension of credit, issuance of a letter of credit, bankers' acceptance, acceptance, loan, guaranty, indemnification or otherwise, and whether direct or indirect, absolute or contingent, due or to become due, primary or secondary, or joint or several.

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

Canadian Pension Plan - a plan, multi-employer plan, program or arrangement which is required to be registered as a pension plan under any applicable pension benefits standards or statute or tax statute or regulation in Canada maintained or contributed to by, or to which there is or may be an obligation to contribute by, any Obligor in respect of its Canadian employees or former employees.

Canadian Prime Rate - means for any day a fluctuating rate per annum equal to the highest of (a) the Canadian BA Rate for a one month Interest Period, plus 1.00% per annum, and (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America-Canada Branch as its "prime rate" for loans in Canadian Dollars. The "prime rate" is a rate set by Bank of America-Canada Branch based upon various factors including Bank

of America-Canada Branch's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by Bank of America-Canada Branch shall take effect at the opening of business on the day specified in the public announcement of such change.

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

Canadian Priority Payables Reserve - at any time of calculation, an Availability Reserve established by the Administrative Agent in its Permitted Discretion for amounts payable by the Canadian Borrower and the Canadian Guarantor Subsidiaries and secured by any Liens, choate or inchoate, which rank or which would reasonably be expected to rank in priority to or *pari passu* with the Applicable Agent's Liens and/or for amounts which represent costs in connection with the preservation, protection, collection or realization of the Canadian Collateral, including, without limitation, any such amounts due and not paid for wages, vacation pay, severance pay, amounts payable under the Wage Earner Protection Program Act (Canada), amounts due and not paid under any legislation relating to workers' compensation or to employment insurance, all amounts deducted or withheld and not paid and remitted when due under the ITA, sales tax, goods and services tax, value added tax, harmonized tax, excise tax, tax payable pursuant to Part IX of the Excise Tax Act (Canada) or similar applicable provincial legislation, government royalties, amounts currently or past due and not paid for realty, municipal or similar taxes and all amounts currently or past due and not contributed, remitted or paid to any Canadian Pension Plan or under the Canada Pension Plan, the PBA or otherwise as required to be contributed pursuant to any Applicable Law relating to Canadian Pension Plans, or any similar statutory or other claims that would have or would reasonably be expected to have priority over or be *pari passu* with any Liens granted to the Applicable Agent now or in the future.

Canadian Qualified Lender - a financial institution that is not prohibited by Applicable Law, including under the Bank Act (Canada), from having a Canadian Revolver Commitment or making any Canadian Revolver Loans or issuing any Letters of Credit (or participating in any Canadian LC Obligations) to the Canadian Borrower hereunder, and if such financial institution is not resident in Canada and is not deemed to be resident in Canada for purposes of the ITA, that financial institution deals at arm's length with the Canadian Borrower and each of the Canadian Guarantor Subsidiaries for purposes of the ITA.

Canadian Revolver Commitment - for any Canadian Lender, its obligation to make Canadian Revolver Loans and to participate in Canadian LC Obligations up to the maximum principal amount shown for such Canadian Lender on Schedule 1.1(a), or as specified hereafter in the most recent Assignment and Assumption Agreement to which it is a party.

Canadian Revolver Commitments - means the aggregate amount of such commitments of all Canadian Lenders. On the Closing Date, the Canadian Revolver Commitments are Cdn. \$24,000,000.



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

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

Canadian Subsidiary – a Subsidiary of the Canadian Borrower organized under the laws of Canada (or any province or territory thereof).

Canadian Usage - at any time of calculation, an amount equal to the sum of (a) the principal balance of all Canadian Revolver Loans, plus (b) the Canadian LC Obligations.

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

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

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

Captive Insurance Subsidiary - any Subsidiary of Holdings that is subject to regulation as an insurance company (or any Subsidiary thereof).

Cash Collateral - cash or deposit account balances or, if the Issuing Bank or Applicable Agent, benefiting from such collateral shall agree in its sole discretion, other credit support, and any interest or other income earned thereon, that is delivered to Applicable Agent to Cash Collateralize any Obligations.

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

Cash Collateralize or Cash Collateralized - to pledge and deposit with or deliver to the Applicable Agent, for the benefit of the Applicable Agent, the applicable Issuing Bank or the Applicable Agent, in its capacity as provider of Swingline Loans (as applicable) and the Lenders, as collateral for LC Obligations, the Canadian LC Obligations, Obligations in respect of Swingline Loans, or obligations of Lenders to fund participations in respect of any thereof (as the context may require), cash or deposit account balances or, if the Issuing Bank or Applicable

Agent, in its capacity as provider of Swingline Loans, benefiting from such collateral shall agree in its sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to (a) the Applicable Agent and (b) the applicable Issuing Bank or the Applicable Agent, in its capacity as provider of Swingline Loans (as applicable). “Cash Collateralization” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support. Except as otherwise provided herein, in the event that Cash Collateralization of LC Obligations or Canadian LC Obligations is required, the amount of cash collateral so required shall equal 105% (or, with respect to any Letter of Credit with an expiry date that is after the Termination Date, such greater percentage as is reasonably acceptable to the Administrative Agent and the Issuing Bank) of the applicable LC Obligation or Canadian LC Obligation, less the amount of cash collateral deposited to collateralize obligations of Defaulting Lenders to purchase participations in such LC Obligation or such Canadian LC Obligation. Where Cash Collateralization of any obligations of a Defaulting Lender is required, the amount of cash collateral so required shall equal 100% of such obligations.

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

Cash Interest Expense - with respect to the Borrowers and the Guarantor Subsidiaries for any period, the Consolidated Interest Expense of the Borrowers and the Guarantor Subsidiaries for such period, less the Non-Cash Interest Expense of the Borrowers and the Guarantor Subsidiaries for such period.

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

Cash Receipts - as defined in **Section 7.1.1**.

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

CFC - any Foreign Subsidiary that is a controlled foreign corporation as defined in Section 957 of the Internal Revenue Code.

Change in Law - means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

Change of Control - (i) at any time prior to consummation of a Qualified IPO, any Person (other than a Permitted Holder) shall have acquired control, directly or indirectly, of at least a majority on a fully diluted basis of the voting interests in the Capital Stock of Holdings; (ii) at any time on or after consummation of a Qualified IPO, any Person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act), other than Permitted Holders, (x) shall have acquired beneficial ownership, directly or indirectly, of 35% or more on a fully diluted basis of the voting Capital Stock of Holdings, and a greater percentage of such Capital Stock than that owned by Permitted Holders or (y) shall have obtained the power, directly or indirectly, (whether or not exercised) to elect a majority of the members of the board of directors (or similar governing body) of Holdings; (iii) the majority of the seats (other than vacant seats) on the board of directors (or similar governing body) of Holdings cease to be occupied by Continuing Members; (iv) Holdings ceases to own, directly, 100% of the Capital Stock of the Company, (v) Holdings ceases to own, directly or indirectly, 100% of the Capital Stock of the Canadian Borrower or, subject to **Section 10.2.12**, International; (vi) any “change of control” or similar event under the Term Debt Documents or any documents evidencing any other Material Debt shall occur or (vii) the Alternative Transaction shall occur.

Chattel Paper - as defined in the UCC (and/or with respect to any Chattel Paper of the Canadian Borrower or the Canadian Guarantor Subsidiaries, as defined in the PPSA).

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

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

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

Co-Collateral Agents - Bank of America and General Electric Capital Corporation (or any Affiliate thereof designated by Bank of America or General Electric Capital Corporation, as the case may be, in writing to the Administrative Agent from time to time as a Co-Collateral Agent), in its respective capacity as a co-collateral agent under the Loan Documents.

Code - means the Internal Revenue Code of 1986.

Collateral - all Property and interests in Property and proceeds thereof now owned or hereafter acquired by any Obligor that is described in any Security Documents as security for any Obligations, and all other Property that now or hereafter secures (or is intended to secure) any Obligations. For the avoidance of doubt, Collateral shall include (i) all “Revolving Credit Primary Collateral” and “Term Loan Primary Collateral” (or any similar term) under and as defined in the Intercreditor Agreement and (ii) all Canadian Collateral.

Commercial Tort Claim - as defined in the UCC.

Commitment - for any Lender, the aggregate amount of such Lender’s Tranche A Revolver Commitment, Tranche A-1 Revolver Commitment and Canadian Revolver Commitment.

Commitments - means the aggregate amount of all Tranche A Revolver Commitments, the Tranche A-1 Revolver Commitments and Canadian Revolver Commitments.

Commitment Fees - as defined in **Section 3.2.1**.

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

Commodity Exchange Act - means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

Company - as defined in the preamble hereto.

Compliance Certificate - a certificate, substantially in the form of **Exhibit E** hereto or such other form approved by Administrative Agent, by which Borrowers certify (i) compliance with **Section 10.3**, and attaching reasonably detailed calculations evidencing such compliance, and (ii) the absence of Defaults or Events of Default or, to the extent either exist, describing the nature of such Default or Event of Default and the Borrower’s plan to address such Default or Event of Default.

Connection Income Taxes – Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profit Taxes.

Consolidated Capital Expenditures - for any period, the aggregate of all expenditures of the Borrowers and the Guarantor Subsidiaries on a consolidated and combined basis, during such period that, in accordance with GAAP, are or should be capitalized in

accordance with GAAP, but excluding therefrom expenditures funded with (i) amounts constituting Net Proceeds or Net Insurance/Condemnation Proceeds which are not required to prepay the Loans (or Cash Collateralize Letters of Credit) under **Section 2.2.4(a)**, (ii) any tenant improvement allowance or landlord contribution relating to a retail store or (iii) Net Equity Proceeds which are (x) designated to be used for such expenditures prior to the receipt thereof, (y) used to make such expenditures within six (6) months after the receipt thereof and (z) at all times prior to the making of such expenditures, held in a segregated Deposit Account which is subject to a Deposit Account Control Agreement.

Consolidated EBITDA - for any period, an amount determined for the Borrowers and the Guarantor Subsidiaries, on a consolidated and combined basis, equal to (i) the sum, without duplication, of the amounts for such period of (a) Consolidated Net Income, (b) Consolidated Interest Expense, (c) provisions for taxes based on income, (d) total depreciation expense, (e) total amortization expense (including amortization of deferred fees and the accretion of original issue discount), (f) other non-cash items reducing Consolidated Net Income (including any non-cash compensation charge arising from any grant of stock, stock options or other equity-based awards of the Borrowers or any Guarantor Subsidiaries and non-cash losses or charges related to impairment of goodwill and other intangible assets, but excluding any such non-cash item to the extent that it represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period), (g) out-of-pocket costs and expenses incurred in connection the preparation, negotiation and execution of this Credit Agreement, any other Loan Document or any amendment thereto, any Term Debt Document, any acquisition or disposition permitted by the terms hereof, a Qualifying IPO, or the Transactions, including, without limitation, the Transaction Expenses, in each case without regard to whether such transaction is consummated, and (h) other non-recurring or extraordinary expenses, losses or charges (excluding any expenses, losses or charges from abandoned, closed or discontinued operations) as are reasonably approved by the Administrative Agent, and in each case under clauses (b) through (h) above only to the extent such items reduce Consolidated Net Income for such period, minus (ii) other non-cash items increasing Consolidated Net Income for such period (excluding any such non-cash item to the extent it represents the reversal of an accrual or reserve for potential cash item in any prior period).

Consolidated Interest Expense - for any period, total interest expense (including that portion attributable to Capital Leases in accordance with GAAP and capitalized interest) of the Borrowers and the Guarantor Subsidiaries, on a consolidated and combined basis, with respect to all outstanding Debt of the Borrowers and the Guarantor Subsidiaries, including all commissions, discounts and other fees and charges owed with respect to letters of credit and net costs or losses under Interest Rate Hedging Agreements (including losses in connection with the termination thereof) minus net income or gain under Interest Rate Hedging Agreements (including gains in connection with the termination thereof).

Consolidated Net Income - for any period, (i) the net income (or loss) of the Borrowers and the Guarantor Subsidiaries for such period taken as a single accounting period determined in conformity with GAAP, excluding, to the extent reflected in determining such net income (or loss), any extraordinary gains and losses for such period, minus, (ii) to the extent increasing the amount described in clause (i) above and without duplication, (a) the income (or loss) of any Person (other than a Subsidiary of the Borrowers) in which any other Person (other

than any Borrower or any of its Subsidiaries) has a joint interest, except to the extent of the amount of dividends or other distributions actually paid to the Borrowers or any Guarantor Subsidiary by such Person during such period, (b) the income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of a Borrower or is merged into or consolidated with a Borrower or any of the Guarantor Subsidiaries or that Person's assets are acquired by a Borrower or any of the Guarantor Subsidiaries, and (c) any after-tax gains or losses attributable to Asset Sales or returned surplus assets of any Pension Plan.

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

Continuing Member - as of any date of determination any member of the board of directors of Holdings who (i) was a member of such board on the Closing Date, (ii) was nominated for election or elected to such board with the affirmative vote of a majority of the members who were either members of such board on the Closing Date or whose nomination or election was previously so approved or (iii) was elected to such governing body by Permitted Holders.

Contribution Agreement – that certain Contribution Agreement, dated January 26, 2015, by and among Global Holdings, each member of Global Holdings party thereto, Max Azria and Lubov Azria, as amended and in effect on the Closing Date, and all related agreements and documents, true and correct copies of which have been delivered to the Agents pursuant to **Section 6.1(c)**.

Copyright Security Agreements - each memorandum of grant of security interest in copyrights or other copyright security agreement pursuant to which an Obligor grants to the Applicable Agent, for the benefit of Secured Parties, a Lien on such Obligor's interests in copyrights, as security for the Obligations.

Credit Card Agreement - agreements, instructing each Credit Card Processor or Credit Card Issuer of the Obligors to transfer all amounts owing to an Obligor by such Credit Card Processor or such Credit Card Issuer directly to the Agent Account or other Approved Deposit Account reasonably acceptable to Administrative Agent and subject to control

arrangements reasonably satisfactory to the Administrative Agent, with such agreements to be (x) in form and substance reasonably acceptable to Administrative Agent, and (y) executed by each relevant Obligor and the relevant Credit Card Processor or Credit Card Issuer.

Credit Card Issuer - collectively MasterCard or Visa bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., Visa, U.S.A., Inc. or Visa International and American Express, World Financial Network National Bank and Discover.

Credit Card Processor - any Person that acts as a credit card clearinghouse or processor with respect to any sales transactions involving credit card purchases by customers using credit cards issued by any Credit Card Issuer.

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

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

Default - an event or condition that, with the lapse of time or giving of notice, would constitute an Event of Default.

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

Defaulting Lender - subject to **Section 2.8.2**, any Lender that (a) has failed to (i) fund all or any portion of its funding obligations hereunder, including in respect of its Loans or participations in respect of Letters of Credit or Swingline Loans, within two Business Days of the date such obligations were required to be funded hereunder unless such Lender notifies the Administrative Agent and Borrower Agent in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Applicable Agent, including in its capacity as provider of Swingline Loans, any Issuing Bank or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two Business Days of the date when due, (b) has notified Borrower Agent, the Administrative Agent or any Issuing Bank in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower Agent, to confirm in writing to the Administrative Agent and the Borrower Agent that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower Agent), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of an Insolvency Proceeding, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state, federal or foreign regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or Canada or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to **Section 2.8.2**)) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower Agent, each Issuing Bank and each other Lender promptly following such determination.

Deposit Account - as defined in the UCC (and/or with respect to any Deposit Account located in Canada, any bank account with a deposit function).

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



Deposit Account Control Agreement - an agreement, in form and substance reasonably acceptable to the Applicable Agent, executed by the relevant Obligor, the Administrative Agent, the relevant Deposit Account Bank and any other party thereto (if any).

Designated Jurisdiction - means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

Dilution Reserve - means, as of any date determination, the aggregate amount of reserves established in respect of returned goods, bad debt write-downs, discounts, advertising, credits or other similar account adjustments, or other dilutive items with respect to the Borrowers' and the Guarantor Subsidiaries' Accounts, as reported by Borrowers based on historical results and as adjusted from time to time by the Applicable Agent, in its Permitted Discretion.

Direct Competitor - means a Person whose primary business is the development and marketing of clothing or accessories for women, or any Person who, at the time of any proposed assignment, known to the Transferee or the Administrative Agent to hold at least a majority of the voting securities of a Direct Competitor.

Disregarded Domestic Subsidiary - any Subsidiary incorporated or organized under the laws of the United States of America, any State thereof or the District of Columbia (a) substantially all of the assets of which consist for U.S. income tax purposes of Capital Stock of, and other investments in, one or more CFCs (for which any Subsidiary is a United States shareholder as defined in Section 951(b) of the Code) or (b) treated as a disregarded entity for U.S. federal income tax purposes that holds the equity of one or more CFCs (for which any Subsidiary is a United States shareholder as defined in Section 951(b) of the Code).

Document - as defined in the UCC (and/or with respect to the Canadian Borrower or the Canadian Guarantor Subsidiaries, a "document of title" as defined in the PPSA).

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

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

Dollars - lawful money of the United States.

Domestic Subsidiary - any Subsidiary that is organized under the laws of any political subdivision of the United States, other than a Subsidiary in which a Foreign Subsidiary directly or indirectly owns a majority of the voting Capital Stock.

Eligible Assignee - a Person that is (a) a Lender or U.S.-based or Canadian-based Affiliate or branch of a Lender; (b) any other financial institution or Approved Fund approved by Administrative Agent (such approval not to be unreasonably withheld or delayed) and, so long as no Specified Event of Default has occurred and is continuing, (x) with respect to assignments of

the Tranche A Revolver Commitments or the Tranche A-1 Revolver Commitments, the Company and (y) with respect to assignments of the Canadian Revolver Commitments, the Canadian Borrower (which approval by such Borrower shall not be unreasonably withheld or delayed); and (c) during any Specified Event of Default, any Person acceptable to Administrative Agent in its discretion; provided that notwithstanding the foregoing, "Eligible Assignee" shall not include (i) any Direct Competitor (unless approved by the Company and the Administrative Agent, each acting in its respective sole discretion), (ii) any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (ii), (iii) a natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person), (iv) any Obligor or any Obligor's Affiliates or Subsidiaries or (v) Azria or any of its Affiliates. It is acknowledged and understood that either Administrative Agent or, provided no Specified Event of Default has occurred and is continuing, the Canadian Borrower may, in its discretion, decline to give its approval to any Person as an assignee of any Canadian Lender (and a Canadian Lender may not assign to a non-Canadian Affiliate, branch or Approved Fund in such circumstance) if such Person is not a Canadian Qualified Lender.

Eligible Credit Card Receivables - Accounts due to the Borrowers or the Guarantor Subsidiaries from a Credit Card Issuer or Credit Card Processor that (a) are subject to a First Priority Lien (subject to such matters as may be permitted to exist under the terms of the applicable Credit Card Agreement), (b) the applicable Obligor and such Credit Card Issuer or Credit Card Processor have entered into a Credit Card Agreement and (c) are not excluded as ineligible by virtue of one or more of the criteria set forth below (without duplication of any Availability Reserves established by the Administrative Agent). None of the following shall be deemed to be Eligible Credit Card Receivables: (i) Accounts due from a Credit Card Issuer or Credit Card Processor that have been outstanding for more than five (5) Business Days from the date of sale, or for such longer periods as may be approved by the Administrative Agent in its Permitted Discretion; (ii) Accounts due from a Credit Card Issuer or Credit Card Processor with respect to which a Borrower or a Guarantor Subsidiary does not have good, valid and marketable title thereto, (iii) Accounts due from a Credit Card Issuer or Credit Card Processor which are disputed, or with respect to which a claim, counterclaim, offset or chargeback (other than chargebacks in the Ordinary Course of Business) has been asserted, by the related Credit Card Issuer or Credit Card Processor (but only to the extent of such dispute, counterclaim, offset or chargeback), (iv) except as otherwise approved by the Administrative Agent, Accounts due from a Credit Card Issuer or Credit Card Processor as to which such Credit Card Issuer or Credit Card Processor has the right under certain circumstances to require a Borrower or a Guarantor Subsidiary to repurchase the Accounts from such Credit Card Issuer or Credit Card Processor, (v) except as otherwise approved by the Agent, Accounts arising from any private label credit card program of a Borrower or a Guarantor Subsidiary, and (vi) Accounts that the Administrative Agent and the Co-Collateral Agents have determined, in their Permitted Discretion, to exclude from Eligible Credit Card Receivables; *provided* that any such exclusions determined by the Administrative Agent and the Co-Collateral Agents under this **clause (vi)** after the Closing Date shall not be effective except upon not less than three (3) Business Days' written notice to the Borrower Agent.

Eligible Factory Outlet Store Inventory - the Inventory of any Borrower or any Guarantor Subsidiary that is classified, consistent with past practice, on the Borrowers' accounting system as "*factory outlet store inventory*".

Eligible In-Transit Inventory - means all Inventory owned by a Borrower or any Guarantor Subsidiary, which is in transit for not more than forty five (45) or, with respect to the Specified Origin In-Transit Inventory (defined below), not more than sixty (60), days directly from the point of shipment to one of the domestic owned or leased locations (and if leased, as to which a Lien Waiver acceptable to the Applicable Agent shall have been obtained from the lessor of such leased location) of a Borrower or any Guarantor Subsidiary, provided, that (a) a Borrower or any Guarantor Subsidiary has title to such Inventory, (b) either (i) such Inventory is not subject to a negotiable bill of lading or other document of title, the shipping documents relating to such Inventory (including, without limitation, so-called "forwarders cargo receipts" or "non-negotiable express bills of lading") are acceptable to the Applicable Agent and have been delivered to the Applicable Agent or an agent acting on behalf of the Applicable Agent or an agent of such agent and such shipping documents name a Borrower or a Guarantor Subsidiary as consignee and shipper (or such other arrangements satisfactory to the Applicable Agent relating to such shipping documents in respect of such Inventory shall have been made) or (ii) in the event such Inventory is subject to negotiable bills of lading or other documents of title, such negotiable bills of lading or other documents of title have been (x) issued with the Applicable Agent as consignee and a Borrower or a Guarantor Subsidiary as shipper and (y) delivered to the Applicable Agent or an agent acting on behalf of the Applicable Agent or an agent of such agent (or such other arrangements satisfactory to the Applicable Agent relating to such negotiable bills of lading or other documents of title in respect of such Inventory shall have been made), (c) such Inventory is subject, to the reasonable satisfaction of the Applicable Agent, to a First Priority Lien, (d) the vendor or the supplier of such Inventory has agreed to waive its claims in or to such Inventory (including any right to stop such Inventory in transit), in a manner reasonably acceptable to the Applicable Agent, once such Inventory is delivered to a freight forwarder or other representative of a Borrower and the Guarantor Subsidiaries who has entered into an agreement of the type described in clause (f) below, (e) such Inventory is covered by insurance reasonably acceptable to the Applicable Agent, (f) each relevant freight carrier, freight forwarder, customs broker and shipping company in possession of such in-transit Inventory shall have (x) entered into bailee arrangements satisfactory to the Applicable Agent, for the benefit of the Secured Parties and (y) indicated or otherwise acknowledged the Applicable Agent's security interest in such Inventory in any shipping documents issued or carried by such freight carrier or shipping company (including, without limitation, waybills, airway bills, seaway bills, receipts, or any similar document), in each case, in a manner reasonably satisfactory to the Applicable Agent, (g) such Inventory would otherwise satisfy all of the requirements of "Eligible Inventory" hereunder, (h) in no event shall the aggregate amount of Eligible In-Transit Inventory and Eligible LC Inventory included in the Tranche A Borrowing Base, Tranche A-1 Borrowing Base and the Canadian Borrowing Base exceed 20.0% of the aggregate of the Tranche A Borrowing Base, Tranche A-1 Borrowing Base and the Canadian Borrowing Base; and (i) in no event shall the aggregate amount of Specified Origin In-Transit Inventory included in the Tranche A Borrowing Base, Tranche A-1 Borrowing Base and Canadian Borrowing Base exceed \$3,000,000. For purposes of the foregoing definition, the term Specified Origin In-Transit Inventory means Inventory which is in transit directly from the point of shipment in Vietnam or

Bangladesh. For the avoidance of doubt, Eligible In-Transit Inventory is without duplication of Eligible LC Inventory.

Eligible Inventory - the Inventory of any Borrower or any Guarantor Subsidiary (other than any Inventory that has been consigned by such Borrower or such Guarantor Subsidiary) including Eligible Retail Store Inventory, Eligible Partner Shop Inventory, Eligible Factory Outlet Store Inventory, Eligible Wholesale Finished Goods and Eligible Wholesale Raw Materials (a) that is owned solely by such Borrower or such Guarantor Subsidiary, (b) which is subject, to the reasonable satisfaction of the Applicable Agent, to a First Priority Lien, (c) with respect to which no representation or warranty contained in any Loan Document has been breached in any material respect, (d) that is not obsolete or unmerchantable, (e) with respect to which (in respect of any Inventory labeled with a brand name or trademark and sold by a Borrower or Guarantor Subsidiary pursuant to a trademark owned by a Borrower or a Guarantor Subsidiary or a license granted to a Borrower or a Guarantor Subsidiary) the Applicable Agent would have rights under such trademark or license pursuant to the Security Documents or other agreement satisfactory to Administrative Agent to sell such Inventory in connection with a liquidation thereof, and (f) the Administrative Agent and the Co-Collateral Agents have not determined, in their Permitted Discretion, to exclude such Inventory from Eligible Inventory; *provided* that any such exclusions determined by the Administrative Agent and the Co-Collateral Agents under this **clause (f)** after the Closing Date shall not be effective except upon not less than three (3) Business Days' written notice to the Borrower Agent. No Inventory of any Borrower or any Guarantor Subsidiary shall be Eligible Inventory if such Inventory consists of (i) goods returned or rejected by customers other than goods that are undamaged or are resalable in the Ordinary Course of Business, (ii) goods to be returned to suppliers, (iii) goods in transit (except to the extent constituting (x) Eligible LC Inventory, (y) Eligible In-Transit Inventory, or (z) Inventory of a Borrower or any Guarantor Subsidiary that has been received by such Borrower or such Guarantor Subsidiary at one of its distribution centers, warehouse or storage facilities, in each case, located in the United States and which Inventory has been entered into such Person's warehouse inventory system), (iv) work-in-process, (v) parts and supplies (including, but not limited to, loose fabric, trims and lining material, in each case to the extent it does not constitute a full or partial roll and buttons and other like items), (vi) employee store inventory, (vii) obsolete wholesale shoe inventory, or (viii) Inventory and goods located, stored, used or held at the premises of a third party constituting a Large Inventory Location unless a Lien Waiver shall have been received by the Applicable Agent or with respect to which a reserve has been taken in accordance with clause (d) of the definition of Rent and Charges Reserve. "Eligible Inventory" shall include, without duplication, Eligible LC Inventory and Eligible In-Transit Inventory.

Eligible LC Inventory - with respect to any Borrower or any Guarantor Subsidiary, all raw materials and finished goods Inventory owned or to be owned by such Borrower or such Guarantor Subsidiary and covered by Letters of Credit issued by the Issuing Bank for the account of such Borrower or such Guarantor Subsidiary; provided that (a) such raw materials and finished goods Inventory are or will be in transit to one of such Borrower's or such Guarantor Subsidiary's locations in the continental United States or Canada, (b) such raw materials and finished goods Inventory are, as of the date such Inventory is owned by such Borrower or such Guarantor Subsidiary, fully insured and subject to a First Priority Lien, (c) all documents, notices, instruments, statements, and bills of lading related to such goods Inventory

that the Administrative Agent may reasonably deem necessary or reasonably desirable to evidence ownership by such Borrower or such Guarantor Subsidiary and/or to give effect to and protect the Liens and other rights of the Applicable Agent in connection therewith, are delivered to the Applicable Agent, and are and remain acceptable to Administrative Agent for lending purposes in its reasonable discretion, (d) such Inventory is subject to a Letter of Credit (other than any banker's acceptance) with an expiry date that is not more than sixty (60) days from the date of the most recently delivered Borrowing Base Certificate of the Borrowers, and (e) such Inventory would otherwise satisfy all of the requirements of "Eligible Inventory" hereunder. For the avoidance of doubt, Eligible LC Inventory is without duplication of Eligible In-Transit Inventory.

Eligible Partner Shop Inventory - the Inventory of the Borrowers and Guarantor Subsidiaries that is classified, consistent with past practice, on the Borrowers' accounting system as "*partner shop inventory*".

Eligible Retail Store Inventory - the Inventory of the Borrowers and the Guarantor Subsidiaries that is classified, consistent with past practice, on the Borrowers' accounting system as "*retail store inventory*".

Eligible Wholesale Finished Goods - the Inventory of the Borrowers and the Guarantor Subsidiaries that is classified, consistent with past practice, on the Borrowers' accounting system as "*wholesale finished goods*".

Eligible Wholesale Raw Materials - the Inventory of the Borrowers and the Guarantor Subsidiaries that is classified, consistent with past practice, on the Borrowers' accounting system as "*wholesale raw materials*".

Eligible Wholesale Receivables - shall mean and include with respect to any Borrower or any Guarantor Subsidiary, each Account (other than Accounts constituting Eligible Credit Card Receivables) of such Borrower or such Guarantor Subsidiary arising in the Ordinary Course of Business of such Borrower's or such Guarantor Subsidiary's business which the Administrative Agent has not determined, in its Permitted Discretion, to exclude from Eligible Wholesale Receivables (which Eligible Wholesale Receivables may include, without limitation, Accounts (other than Accounts constituting Eligible Credit Card Receivables) which arise from the sale of Eligible Partner Shop Inventory pursuant to a Partner Shop Agreement); *provided* that any such exclusions determined by the Administrative Agent and the Co-Collateral Agents under this **clause** after the Closing Date shall not be effective except upon not less than three (3) Business Days' written notice to the Borrower Agent. An Account shall not be deemed eligible unless such Account is subject to a First Priority Lien. In addition, no Account shall be an Eligible Wholesale Receivable if any of the conditions identified below exist:

(a) such Account arises out of a sale made by such Borrower or such Guarantor Subsidiary to an Affiliate of such Borrower or such Guarantor Subsidiary or to a Person controlled by an Affiliate of such Borrower or such Guarantor Subsidiary;

(b) such Account is (i) more than sixty (60) days past due according to the original terms of sale or (ii) more than one hundred and twenty (120) days past the original invoice date;

(c) 50% or more of the outstanding Accounts of the Account Debtor have become ineligible pursuant to the preceding clause (b) or the Administrative Agent has determined, in its Permitted Discretion, to exclude all Accounts of such Account Debtor from Eligible Wholesale Receivables;

(d) the total Accounts of the Account Debtor to the Borrowers and the Guarantor Subsidiaries represent more than twenty percent (20%) of the Eligible Wholesale Receivables of the Borrowers at such time, but only to the extent of such excess; provided that (i) in the case where (A) a store owned by Federated Department Stores, Inc. or any of its Subsidiaries (all such stores in the aggregate being referred to as the “Federated Group”), (B) Dillard’s, Inc. (“Dillard’s”), or (C) a store owned by any of Target Corporation, Kohl’s Corporation, Hudson’s Bay Company, The TJX Companies, Inc. or any of their respective Subsidiaries (all such stores in the aggregate being referred to as the “Designated Mass Marketers”), respectively, is the Account Debtor, such percentage with respect to the Federated Group, Dillard’s, or such Designated Mass Marketer (if applicable), as the case may be, would be as set forth under the applicable caption below, based upon the rating of the Federated Group, Dillard’s, or such Designated Mass Marketer, as applicable, by Moody’s and S&P, and provided further that any of the foregoing percentages may, from time to time, be increased in the Administrative Agent’s and the Co-Collateral Agents’ discretion (as indicated in writing by the Administrative Agent), or decreased in the Administrative Agent’s and the Co-Collateral Agents’ Permitted Discretion:

FEDERATED GROUP OR ANY DESIGNATED MASS MARKETER	
RATING	MAXIMUM PERCENTAGE OF ELIGIBLE WHOLESALE RECEIVABLES (FOR ALL STORES IN THE AGGREGATE)
BBB- or greater by S&P and Baa3 or greater by Moody’s	60%
BB+ or greater by S&P or Bal or greater by Moody’s	45%
BB or greater by S&P or Ba2 or greater by Moody’s	40%
BB- or greater by S&P or Ba3 or greater by Moody’s	35%
B+ or greater by S&P or B 1 or greater by Moody’s	30%
B or greater by S&P or B2 or greater by Moody’s	25%
All other ratings or unrated	20%

DILLARD’S	
RATING	MAXIMUM PERCENTAGE OF

	ELIGIBLE WHOLESALE RECEIVABLES (FOR ALL STORES IN THE AGGREGATE)
B+ or greater by S&P or B 1 or greater by Moody's	35%
B or greater by S&P or B2 or greater by Moody's	30%
All other ratings or unrated	20%

provided that if there is a rating level difference between the two ratings, such lower rating shall govern; provided, further, that the limitations of this clause (d) shall not be applicable to the extent the Accounts of such Account Debtor are supported by credit insurance or another form of third party guaranty, in each case on terms, including, without limitation, assignment terms in favor of the Applicable Agent, acceptable to Administrative Agent and the Required Lenders and

(e) (i) any representation or warranty contained in the Loan Documents with respect to such Account has been breached in any material respect or (ii) any covenant contained in the Loan Documents with respect to such Account has been breached in any material respect;

(f) the applicable Account Debtor shall (i) apply for, suffer, or consent to the appointment of, or the taking possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property or call a meeting of its creditors, (ii) admit in writing its inability, or be generally unable, to pay its debts as they become due or cease operations of its present business, (iii) make a general assignment for the benefit of creditors, (iv) commence a voluntary case under any state or federal bankruptcy laws (as now or hereafter in effect), (v) be adjudicated bankrupt or insolvent, (vi) file a petition seeking to take advantage of any other law providing for the relief of debtors, (vii) acquiesce to, or fail to have dismissed, any petition which is filed against it in any involuntary case under such bankruptcy laws, or (viii) take any action for the purpose of effecting any of the foregoing, in each case unless, (x) such Account is supported by a letter of credit satisfactory to the Administrative Agent, in its Permitted Discretion (as to form, substance, amount, and issuer or domestic confirming bank), that has been delivered to the Administrative Agent and is directly drawable by the Administrative Agent, (y) with respect to post-petition Accounts of the applicable Account Debtor, such Account Debtor has received debtor-in-possession financing sufficient as determined by the Administrative Agent in its sole discretion (as indicated in writing by the Administrative Agent) to finance the ongoing business activities of such Account Debtor or (z) such Account constitutes an administrative claim under Section 503 of the Bankruptcy Code and the Administrative Agent has determined in its sole discretion (as indicated in writing by the Administrative Agent) to include such Account as an Eligible Wholesale Receivable;

(g) the chief executive office or other principal office of the Account Debtor with respect to such Account is not located in the United States of America or Canada, provided, however, that at Administrative Agent's option, if the chief executive office and principal place of business of such Account Debtor is located other than in the United States of America or Canada, such Account shall be an Eligible Wholesale Receivable if such Account Debtor has delivered to such Borrower or such Guarantor Subsidiary an irrevocable letter of credit issued or

confirmed by a bank satisfactory to Administrative Agent and payable only in the United States of America or Canada and in United States Dollars or Canadian Dollars, respectively, sufficient to cover such Account, in form and substance satisfactory to Administrative Agent and if required by Administrative Agent, the original of such letter of credit has been delivered to Administrative Agent or Administrative Agent's agent and such Borrower or such Guarantor Subsidiary has complied with Administrative Agent's requirements with respect to the assignment of the proceeds of such letter of credit to Administrative Agent or naming Administrative Agent as transferee beneficiary, as Administrative Agent may specify; provided that, notwithstanding the foregoing, the Administrative Agent and the Co-Collateral Agents may determine (in their discretion as indicated in writing by the Administrative Agent) to include Accounts which would otherwise be excluded pursuant to this clause (g) in Eligible Wholesale Receivables, up to an aggregate amount for the Tranche A Borrowing Base, Tranche A-1 Borrowing Base and the Canadian Borrowing Base not exceeding \$5,000,000;

(h) the sale to the applicable Account Debtor is on a bill-and-hold, guaranteed sale, sale-and-return, sale on approval, consignment or any other repurchase or return basis or is evidenced by chattel paper;

(i) Administrative Agent believes, in its reasonable judgment, that collection of such Account is insecure or that such Account may not be paid by reason of the applicable Account Debtor's financial inability to pay;

(j) the applicable Account Debtor is the United States of America, the Government of Canada, or any state, province, territory, municipality or any department, agency or instrumentality of any of them, unless such Borrower or such Guarantor Subsidiary assigns its right to payment of such Account to Administrative Agent pursuant to the Assignment of Claims Act of 1940, as amended (31 U.S.C. Sub-Section 3727 et seq. and 41 U.S.C. Sub-Section 15 et seq.) or the Financial Administration Act (Canada) or has otherwise complied with other Applicable Laws;

(k) the goods giving rise to such Account have not been shipped to and accepted by the applicable Account Debtor or the services giving rise to such Account have not been performed by such Borrower or such Guarantor Subsidiary and accepted by such Account Debtor or the Account otherwise does not represent a final sale;

(l) the Account of the applicable Account Debtor exceeds a credit limit determined by Administrative Agent, in its Permitted Discretion, as indicated in writing by the Administrative Agent, to the extent such Account exceeds such limit;

(m) the Account is subject to any offset, deduction, defense, dispute, or counterclaim, the applicable Account Debtor is also a creditor or supplier of such Borrower or such Guarantor Subsidiary or the Account is contingent in any respect for any reason; provided, however, that such Account shall be ineligible pursuant to this clause (m) only to the extent (i) of such offset, deduction, defense, dispute, counterclaim or contingency and (ii) in the case the applicable Account Debtor is also a creditor or supplier of such Borrower or such Guarantor Subsidiary, of the amount owed to such creditor or supplier by such Borrower or such Guarantor Subsidiary;



(n) such Account is acquired by such Borrower or such Guarantor Subsidiary pursuant to a Permitted Acquisition and such Account has not been subject to a field examination and appraisal by Administrative Agent (it being understood that the Administrative Agent and the Borrower shall reasonably cooperate to have such field examination and appraisal completed in a timely manner);

(o) the Company has made any agreement with any Account Debtor for any deduction therefrom, but only to the extent of any such deduction;

(p) shipment of the merchandise or the rendition of services with respect to such Account has not been completed;

(q) any return, rejection or repossession of the merchandise with respect to such Account has occurred, but only to the extent of the amount of such Account attributable to the returned, rejected or repossessed merchandise;

(r) such Account is not payable to such Borrower or such Guarantor Subsidiary;

(s) the sale represented by such Account is denominated in a currency other than Dollars or Canadian Dollars;

(t) such Account is not evidenced by an invoice or other writing in form reasonably acceptable to Administrative Agent;

(u) Accounts with respect to which the applicable Account Debtor is located in New Jersey, Minnesota, or any other jurisdiction denying creditors access to its courts in the absence of a Notice of Business Activities Report or other similar filing, unless such Borrower or such Guarantor Subsidiary is incorporated under the laws of such jurisdiction or has either qualified as a foreign corporation authorized to transact business in such jurisdiction or has filed a Notice of Business Activities Report or similar filing with the applicable Governmental Authority for the then current year; or

(v) with respect to Accounts which arise from the sale of Eligible Partner Shop Inventory pursuant to a Partner Shop Agreement, the relevant Partner Shop Agreement is terminated.

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

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

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

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

Environmental Release - a release as defined in CERCLA.

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

ERISA - the Employee Retirement Income Security Act of 1974, as amended.

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

ERISA Event - (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of the Borrowers or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a "substantial employer" (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrowers or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk

plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrowers or any ERISA Affiliate.

Eurodollar Rate - (i) for any Interest Period, with respect to LIBOR Loans, the rate per annum equal to the London Interbank Offered Rate (“LIBOR”) or a comparable or successor rate, which rate is approved by the Administrative Agent, as published on the applicable Reuters or Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period; and if the Eurodollar Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement; and

(ii) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to LIBOR, at or about 11:00 a.m., London time determined two Business Days prior to such date for U.S. Dollar deposits with a term of one month commencing that day,

provided that to the extent a comparable or successor rate is approved by the Administrative Agent in connection herewith, the approved rate shall be applied in a manner consistent with market practice; provided, further that to the extent such market practice is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

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

Excess Availability - determined as of any date, the sum of (a) the amount of Tranche A Excess Availability, *plus* (b) Tranche A-1 Excess Availability *plus* (c) the amount of Canadian Excess Availability. For the purposes of determining Excess Availability, the Canadian Excess Availability shall be converted from Canadian Dollars to the Dollars Equivalent thereof.

Excess Availability Ratio - determined as of any date, the ratio, expressed as a percentage, of (a) the Excess Availability at such time *to* (b) the Maximum Borrowing Amount at such time (without, in the case of each of clause (a) and clause (b) above, giving effect to any deduction of the Availability Block from the calculation of the Tranche A Borrowing Base, the Tranche A-1 Borrowing Base and the Canadian Borrowing Base).

Exchange Agreement – that certain Exchange Agreement, dated February 5, 2015, by and among the Company, Global Holdings, Intermediate Holdings, the other Affiliates of the Company party thereto, the “Lenders” (or certain of them) under the Existing Guggenheim Credit Facility and the “Administrative Agent” under the Existing Guggenheim Credit Facility, as amended and in effect on the Closing Date, and all related agreements and documents, true and correct copies of which have been delivered to the Agents pursuant to **Section 6.1(c)**.

Excluded Account - as defined in **Section 7.1.1**.

Excluded Subsidiary - (a) any Immaterial Subsidiary, (b) any Domestic Subsidiary that is prohibited by law, regulation or contractual obligations from providing a Guaranty or that would require a governmental (including regulatory) consent, approval, license or authorization to provide such Guaranty, (c) any not-for-profit Subsidiary, (d) any Captive Insurance Company, (e) any Unrestricted Subsidiary, (f) any Disregarded Domestic Subsidiary and (g) any Foreign Subsidiary (other than the Canadian Borrower or any Canadian Subsidiary); provided that Excluded Subsidiaries shall not include any Subsidiary of Holdings that guarantees or is otherwise liable for any Debt under the Term Debt Documents or any Subordinated Debt.

Excluded Swap Obligation - with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guaranty of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act (determined after giving effect each "keepwell, support or other agreement" for the benefit of such Guarantor and any and all guarantees of such Guarantor's Swap Obligations by other Obligor (other than the Canadian Borrower or the Canadian Guarantor Subsidiaries)) at the time the Guaranty of such Guarantor, or a grant by such Guarantor of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guaranty or security interest is or becomes excluded in accordance with the first sentence of this definition.

Excluded Tax - means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Tranche A Lender or Tranche A-1 Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under **Section 3.6**) or such Lender changes its Lending Office, except in each case to the extent that, pursuant to **Section 5.8**, amounts with respect to such Taxes were payable either to such Lender's assignor with respect to such interest in a Loan or a Commitment immediately before such Lender acquired the applicable interest in a Loan or Commitment or to such Lender with respect to such interest in a Loan or a Commitment immediately before it changed its Lending Office, (c) in the case of a Canadian Lender, Canadian federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower Agent under **Section 3.6**) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to **Section 5.8**, amounts with respect to such Taxes were payable either to such Lender's assignor

with respect to such interest in a Loan or a Commitment immediately before such Lender acquired the applicable interest in a Loan or Commitment or to such Lender with respect to such interest in a Loan or a Commitment immediately before it changed its Lending Office, (d) Taxes attributable to such Recipient's failure to comply with **Section 5.8.5** and (e) any U.S. federal withholding Taxes imposed pursuant to FATCA.

Existing Guggenheim Credit Facility - the credit facilities provided to the Company under that certain the Third Amended and Restated Credit and Guaranty Agreement dated as August 28, 2012 by and among the Company, the guarantors set forth therein, the lenders party thereto and Guggenheim Corporate Funding, LLC, as lead arranger, sole book runner, administrative agent and collateral agent, as the same may be amended or otherwise modified from time to time and in existence on the Closing Date.

Existing Letters of Credit - those Letters of Credit and Bankers' Acceptances issued by Bank of America or Bank of America-Canada Branch and described on **Schedule 2.3.1**.

Existing Senior Credit Agreement - that certain Amended and Restated Loan Agreement, dated as of August 3, 2010, by and among the Company, the Canadian Borrower, Holdings, Bank of America, as administrative agent, Bank of America-Canada Branch, as Canadian administrative agent and the lenders and other parties thereto (as amended or otherwise modified and in effect as of the Closing Date).

Extraordinary Expenses - all reasonable and documented costs, expenses or advances that any Agent or Co-Collateral Agent may incur during a Default or Event of Default, or during the pendency of an Insolvency Proceeding of an Obligor, including those relating to (a) any audit, inspection, repossession, storage, repair, appraisal, insurance, manufacture, preparation or advertising for sale, sale, collection, or other preservation of or realization upon any Collateral; (b) any action, arbitration or other proceeding (whether instituted by or against any Agent, any Lender, any Obligor, any representative of creditors of an Obligor or any other Person) in any way relating to any Collateral (including the validity, perfection, priority or avoidability of any Agent's Liens with respect to any Collateral), Loan Documents or Obligations, including any lender liability or other Claims; (c) the exercise, protection or enforcement of any rights or remedies of any Agent in, or the monitoring of, any Insolvency Proceeding; (d) settlement or satisfaction of any taxes, charges or Liens with respect to any Collateral; (e) any Enforcement Action; (f) negotiation and documentation of any modification, waiver, workout, restructuring or forbearance with respect to any Loan Documents or Obligations; or (g) Protective Advances. Such costs, expenses and advances include transfer fees, taxes, storage fees, insurance costs, permit fees, utility reservation and standby fees, legal fees, appraisal fees, brokers' fees and commissions, auctioneers' fees and commissions, accountants' fees, environmental study fees, wages and salaries paid to employees of any Obligor or independent contractors in liquidating any Collateral, and travel expenses.

FATCA - Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official

interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code.

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

Fee Letter - the fee letter agreement dated as of February 5, 2015 between the Borrowers, Bank of America, General Electric Capital Corporation, GE Capital Markets, Inc. and MLPFS.

Financial Covenant Debt - of any Person means Debt of the type specified in clauses (a), (d), (e), (f) (excluding therefrom Debt comprised of synthetic lease obligations), (g) and, without duplication, (h) of the definition of “Debt” and non-contingent obligations of the type specified in clause (b) of such definition.

Financial Officer Certification - with respect to the financial statements for which such certification is required, the certification of the chief financial officer of the Borrowers that such financial statements fairly present, in all material respects, the financial condition of such Borrower and its Restricted Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments.

First Priority Lien - a Lien (a) created on any Collateral pursuant to a Security Document in favor of the Applicable Agent for its own benefit and the benefit of the applicable Secured Parties, (b) which is valid, perfected and enforceable and (c) prior in right to any other Lien on such Collateral, other than (i) any Permitted Liens described in **Sections 10.2.2(b), (c), (i) or (o)**, and (ii) Liens which the Administrative Agent has determined (in its sole discretion) to be adequately addressed by the Availability Reserves or the eligibility criteria included in the definitions of the Tranche A Borrowing Base, the Tranche A-1 Borrowing Base and/or the Canadian Borrowing Base, as applicable.

Fiscal Quarter - for the first three Fiscal Quarters of each year, each 13 week period commencing on the day after the last day of the preceding Fiscal Quarter and for the fourth Fiscal Quarter of each year, the period commencing on the day after the last day of the third Fiscal Quarter and ending on the Saturday closest to January 31 of each year.

Fiscal Year - the 52/53 week period commencing on the day after the last day of the preceding Fiscal Year and ending on the Saturday closest to January 31 of each year.

Fixed Charge Coverage Ratio - with respect to the Borrowers and the Guarantor Subsidiaries for any period, the ratio of (a) Consolidated EBITDA of the Borrowers and the Guarantor Subsidiaries for such period, minus Consolidated Capital Expenditures of the Borrowers and the Guarantor Subsidiaries for such period, minus the amount of cash taxes (or Permitted Tax Distributions) paid or tax reserves set aside or payable (without duplication) in such period to (b) the Fixed Charges of the Borrowers and the Guarantor Subsidiaries for such period.

Fixed Charges - with respect to the Borrowers and the Guarantor Subsidiaries for any period, the sum, determined on a consolidated basis, of (a) Cash Interest Expense of the Borrowers and the Guarantor Subsidiaries for such period, (b) the principal amount of Financial Covenant Debt of the Borrowers and the Guarantor Subsidiaries having a scheduled due date during such period, and (c) all Restricted Junior Payments made in cash by Holdings in respect of such period (other than Permitted Tax Distributions and Restricted Junior Payments described in **Section 10.2.6 (f)**).

Fixtures - as such term is defined in the UCC or, if applicable, as referenced in the PPSA, now owned or hereafter acquired by any Obligor, including fixtures located at a parcel of Real Estate subject to a Mortgage.

FLSA - the Fair Labor Standards Act of 1938.

Foreign Designated Entities - any Subsidiary of Holdings that is not an Obligor on the Closing Date.

Foreign Entity Cap - (i) on any date of determination during the Initial Measurement Period, the (a) amount by which Foreign Entity EBITDA for the most recently ended trailing twelve month period reduces Consolidated Adjusted EBITDA (as defined in the Guggenheim Credit Agreement as in effect on the Closing Date) for such period minus (b) the aggregate amount of Investments made in Foreign Designated Entities (other than another Foreign Designated Entity) from the start of such period until the Closing Date; and (ii) thereafter, \$5,000,000 for each trailing twelve full month period following the Initial Measurement Period.

Foreign Entity EBITDA - the amount (which may be negative) of Consolidated Adjusted EBITDA (as defined in the Guggenheim Credit Agreement as in effect on the Closing Date) attributable to the Foreign Designated Entities (without giving effect to any consolidating adjustments related to the Guarantors); provided, however that: (i) Foreign Entity EBITDA shall not include increases of more than \$5,000,000 pursuant to subclauses (vii), (xi) and (xiv) of clause (b) of the definition of Consolidated Adjusted EBITDA (as defined in the Guggenheim Credit Agreement as in effect on the Closing Date), (ii) any increase included pursuant to subclause (xiv) of such definition, shall only include amounts described therein to the extent attributable to actions that have been actually taken or implemented by the Company and (iii) Foreign Entity EBITDA reflect transfer pricing among Holdings and its Restricted Subsidiaries that is reasonably consistent with industry practice.

Foreign Lender - means (a) if the relevant Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the relevant Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which such Borrower is resident for tax purposes, or is otherwise not a Canadian Qualified Lender, in the case of the Canadian Borrower. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction. For the avoidance of doubt, the Canadian Lenders are not Foreign Lenders with respect to the Canadian Borrower.

Foreign Plan - any employee benefit plan or arrangement maintained or contributed to by any Obligor or Subsidiary that is not subject to the laws of the United States, or any employee benefit plan or arrangement mandated by a government other than the United States for employees of any Obligor or Subsidiary, including any Canadian Pension Plan.

Foreign Subsidiary – (i) any Subsidiary that is not a Domestic Subsidiary or (ii) any Disregarded Domestic Subsidiary.

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

Fronting Exposure - at any time there is a Defaulting Lender, (a) with respect to the Issuing Bank, such Defaulting Lender's Pro Rata share of the outstanding LC Obligations other than LC Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Administrative Agent and the Canadian Agent, in their capacities as providers of Swingline Loans, such Defaulting Lender's Pro Rata share of Swingline Loans other than Swingline Loans as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders in accordance with the terms hereof.

Full Payment - with respect to any Obligations, (a) the full and complete cash payment thereof, including any interest, fees and other charges accruing during an Insolvency Proceeding (whether or not allowed in the proceeding); and (b) if such Obligations are LC Obligations, Canadian LC Obligations or inchoate or contingent in nature, such Obligations are Cash Collateralized (or a standby letter of credit acceptable to the Applicable Agent in its reasonable discretion is delivered in the amount of required Cash Collateral). No Loans shall be deemed to have been paid in full until all Commitments related to such Loans have expired or been terminated.

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

GAAP - (a) with respect to the Company and its Subsidiaries, generally accepted accounting principles in the United States in effect from time to time ("U.S. GAAP") and (b) with respect to the Canadian Borrower and its Subsidiaries, generally accepted accounting principles in Canada in effect from time to time; provided that in each case referred to above in this definition of "GAAP" a certified public accountant would, insofar as the use of such accounting principles is pertinent, be in a position to deliver an unqualified opinion (other than a



qualification regarding changes in GAAP) as to financial statements in which such principles have been properly applied. With respect to all consolidated and combined financial statements of the Borrowers, “GAAP” will be U.S. GAAP.

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

Global Holdings - BCBG Max Azria Global Holdings, LLC, a Delaware limited liability company.

Global Holdings Operating Agreement – that certain Amended and Restated Operating Agreement of Global Holdings, dated February 5, 2015, by and among each of the members of Global Holdings, as amended and in effect on the Closing Date, and all related agreements and documents, true and correct copies of which have been delivered to the Agents pursuant to **Section 6.1(c)**.

Goods - as defined in the UCC (and/or with respect to any Goods of the Canadian Borrower or the Canadian Guarantor Subsidiaries, as defined in the PPSA).

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

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

Guarantor Subsidiaries - (a) each Domestic Subsidiary (other than a Disregarded Domestic Subsidiary) of the Company party to or that becomes a party to a Guaranty (the “U.S. Guarantor Subsidiaries”), (b) each Canadian Subsidiary party to or that becomes a party to a Guaranty (the “Canadian Guarantor Subsidiaries”) and (c) each Subsidiary of Holdings (other than any Excluded Subsidiary) that thereafter guarantees the Obligations pursuant to the terms of this Agreement (including, for the avoidance of doubt, Section 10.1.9), in each case, until such time as the respective Subsidiary is released from its obligations under the applicable Guaranty in accordance with the terms and provisions hereof. On the Closing Date, the Guarantor Subsidiaries are MLA Multibrand Holdings, LLC, a Delaware limited liability company, and Max Rave, LLC, a Delaware limited liability company.

Guarantors - each of (a) Holdings, (b) the Guarantor Subsidiaries, and (c) the Company in respect of (i) the Canadian Obligations and (ii) the payment and performance by

each Specified Obligor of its obligations under its Guaranty with respect to all Swap Obligations and (d) each other Person who guarantees payment or performance of any Obligations.

Guaranty - each guaranty agreement executed by a Guarantor in favor of any Agent for the benefit of the Secured Parties.

Guggenheim - Guggenheim Corporate Funding, LLC or affiliates thereof (and includes, without limitation, Fashion Funding LLC, a Delaware limited liability company).

Guggenheim Credit Agreement - the Fourth Amended and Restated Credit and Guaranty Agreement dated as February 5, 2015 by and among the Company, the Guarantors set forth therein, the lenders party thereto and Guggenheim Corporate Funding, LLC, as lead arranger, sole book runner, administrative agent and collateral agent, as the same may be amended or otherwise modified from time to time in accordance with the terms of this Agreement and the Intercreditor Agreement.

Guggenheim Credit Facility - collectively, the credit facilities provided to the Company by the Guggenheim Credit Facility Lenders under the Guggenheim Credit Agreement.

Guggenheim Credit Facility Lenders - the agents and the lenders under the Guggenheim Credit Agreement and the other Guggenheim Credit Agreement.

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

Holdings - as defined in the preamble hereto.

Honor Date - as defined in **Section 2.3.3(a)**.

Immaterial Subsidiary - any Restricted Subsidiary (other than a Borrower or a Guarantor Subsidiary that has assets included in the determination of the Tranche A Borrowing Base, the Tranche A-1 Borrowing Base or the Canadian Borrowing Base) that, (a) as of the last day of the most recent completed fiscal quarter of Holdings for which financial statements have been delivered pursuant to Section 5.1(c), did not account for more than 1.00% of the consolidated revenue of Holdings and its Restricted Subsidiaries on a consolidated basis, (b) as at the end of such period, was the owner of less than 1.00% of the total assets of the Holdings and its Restricted Subsidiaries on a consolidated basis and (c) when taken together with all other Immaterial Subsidiaries, (i) did not account for more than 2.5% of the consolidated revenue of the Holdings and its Restricted Subsidiaries on a consolidated basis for such period and (ii) was the owner of less than 2.5% of the total assets of the Holdings and its Restricted Subsidiaries on a consolidated basis at the end of such period.

Increasing Canadian Lender - as defined in **Section 2.5.1**.

Increasing Lender - as defined in **Section 2.4.1**.

Indemnified Taxes - means (a) Taxes other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Obligor under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

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

Initial Measurement Period - the first twelve full month period ending after the Closing Date.

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

Instrument - as defined in the UCC (and/or with respect to any Instruments of the Canadian Borrower or the Canadian Guarantor Subsidiaries, as defined in the PPSA).

Intellectual Property - all intellectual Property of a Person, including patents, patent applications, copyrights, trademarks, service marks, trade names, trade secrets; all embodiments thereof and all related documentation and registrations; and all licenses or other rights to use any of the foregoing.

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

Intercreditor Agreement - collectively, (a) Fourth Amended and Restated Intercreditor Agreement dated as of February 5, 2015, by and among Administrative Agent, the agents for the Guggenheim Credit Facility Lenders and each Obligor, as it may be amended, supplemented or otherwise modified from time to time and (b) any intercreditor agreement or similar agreement entered into by the Applicable Agent(s) and the representative of the holders of any Permitted Term Debt Refinancing; provided that any such intercreditor agreement shall (i) provide for (as among the parties thereto) the first priority status of the Applicable Agent's Lien on, and the Applicable Agent's control of the disposition of, all Revolving Credit Primary Collateral and Canadian Collateral, in each case, to the reasonable satisfaction of the Administrative Agent and the Co-Collateral Agents and (ii) be otherwise no less favorable to the Agents and Lenders than the intercreditor agreement referred to in clause (a) above, taken as a whole, as reasonably determined by the Administrative Agent and the Co-Collateral Agents.

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

Interest Rate Hedging Agreement - a Hedging Agreement entered into for the purpose of managing interest rate risk.

International Holdings - BCBG MaxAzria International Holdings, Inc., a California corporation.

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

Investment - (i) any direct or indirect purchase or other acquisition by Holdings or any of its Restricted Subsidiaries of, or of a beneficial interest in, any of the Securities of any other Person (other than a Guarantor Subsidiary); (ii) any direct or indirect purchase or other acquisition for value, by Holdings or any of its Restricted Subsidiaries from any Person (other than an Obligor), of any Capital Stock of such Person; and (iii) any direct or indirect loan, advance (other than advances to employees for moving, entertainment and travel expenses, drawing accounts and similar expenditures in the Ordinary Course of Business), extension of trade credit or capital contribution by a Person to any other Person, including, without limitation, any trade credit extended or otherwise provided by any Obligor to any Non-Guarantor Subsidiary or any Affiliate of the Borrower or any Guarantor; provided, however, that the portion of any trade credit or trade accounts receivable constituting an "Investment" shall be limited to the amounts (without duplication) that are (a) more than sixty (60) days past due according to the original terms of sale or (b) outstanding more than one hundred and twenty (120) days past the original invoice date (in each case, sold or invoiced in accordance with the Obligors' usual and customary historical practices). The amount of any Investment outstanding at any time shall be the original cost or original principal amount of such Investment (i) plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment, and (ii) minus any payment of dividends or distributions, return of capital or repayment of any debt received from the relevant Person.

Investment Property - as defined in the UCC or, if applicable, the PPSA.

IPO Issuer - the Affiliate of, or successor to, Global Holdings formed for the purpose of issuing Capital Stock in the Qualified IPO.

Issuing Bank - with respect to (a) the Company, Bank of America in its capacity as issuer of Letters of Credit for the account or benefit of the Company hereunder and each other Tranche A Lender acceptable to the Administrative Agent and the Company designated from time to time as an "Issuing Bank", and (b) the Canadian Borrower, Bank of America-Canada Branch, in its capacity as issuer of Letters of Credit for the account or benefit of the Canadian Borrower hereunder and each other Canadian Lender acceptable to the Administrative Agent and the Canadian Borrower designated as an "Issuing Bank", in each case, or any permitted successor issuer of Letters of Credit hereunder.

Issuing Bank Indemnitees - Each Issuing Bank and its branches and Affiliates and each such Person's respective partners, officers, directors, employees, agents, trustees, advisors and attorneys.

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

Joint Lead Arrangers - Merrill Lynch, Pierce, Fenner & Smith Incorporated (“MLPFS”) and GE Capital Markets, Inc., each in its capacity as joint-lead arranger and joint-book runner.

Landlord Lien State - (i) the states of Washington, Virginia, Pennsylvania, (ii) any province or territory of Canada where a landlord’s claim for rent or other obligations has priority over the Lien of the Applicable Agent on any of the Collateral (which, for the avoidance of doubt, in the absence of a prior-registered contractual Lien granted to a landlord by the tenant, does not include the province of Québec, Canada as of the Closing Date) and (iii) such other state(s) or jurisdictions in which a landlord’s claim for rent or other obligations has priority over the Lien of the Applicable Agent on any of the Collateral due to (x) any Obligor opening a location in a new jurisdiction after the Closing Date or (y) a change in Applicable Law after the Closing Date.

Large Inventory Location - any distribution center, warehouse or storage facility at which Inventory is located and other inventory location leased by any Obligor at which location Obligor has Inventory in excess of \$1,000,000.

LC Advance - with respect to each Lender, such Lender’s funding of its participation in any LC Borrowing in accordance with its Pro Rata share.

LC Application - an application by Borrower Agent to Issuing Bank for issuance of a Letter of Credit and, in the case of any Acceptance Credit, shall include the related Acceptance Documents, in form and substance reasonably satisfactory to Issuing Bank.

LC Borrowing - an extension of credit resulting from (i) a drawing under any Letter of Credit (other than an Acceptance Credit) or (ii) a payment of a Bankers’ Acceptance upon presentation, in each case, which has not been reimbursed on the date when made or refinanced as a Borrowing.

LC Conditions - the following conditions necessary for issuance, extension, renewal or amendment of a Letter of Credit for the account of the Company: (a) each of the conditions set forth in **Section 6**; (b) after giving effect to such issuance, extension, renewal or amendment, (i) total LC Obligations do not exceed the Tranche A Letter of Credit Subline, (ii) no Tranche A Overadvance exists; (c) the expiration date of such Letter of Credit (or the maturity date of any Bankers’ Acceptance issued under such requested Acceptance Credit) is (i) subject to **Section 2.3.2(c)** in respect of Auto-Extension Letters of Credit, no more than 365 days from issuance, extension, renewal or amendment, in the case of standby Letters of Credit (unless otherwise agreed by the Administrative Agent and Issuing Bank in their sole discretion), (ii) no more than 180 days from issuance, extension, renewal or amendment, in the case of documentary Letters of Credit (unless otherwise agreed by the Administrative Agent and Issuing Bank in their sole discretion), and (iii) on or prior to the Letter of Credit Expiration Date (unless, in the case of this clause (c)(iii), all LC Obligations (including those anticipated to accrue) in respect of such Letter of Credit are Cash Collateralized); (d) the Letter of Credit and payments thereunder are

denominated in Dollars; and (e) the form of the proposed Letter of Credit is reasonably satisfactory to Issuing Bank.

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

LC Guaranty - a guaranty issued by an Issuing Bank to another Person in connection with the issuance by such other Person of Letters of Credit and/or Bankers' Acceptances hereunder.

LC Obligations - the sum (without duplication) of (a) all amounts owing by Company for any drawings under Letters of Credit (including in respect of any payment made by Issuing Bank under any LC Guaranty) and payments under any Bankers' Acceptance issued for the account or on behalf of the Company or any of its Subsidiaries; (b) the aggregate undrawn amount of all outstanding Letters of Credit and Bankers' Acceptances issued for the account or on behalf of the Company or any of its Subsidiaries; and (c) all fees and other amounts owing with respect to Letters of Credit and Bankers' Acceptances issued for the account or on behalf of the Company or any of its Subsidiaries.

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

Lender Indemnitees - each Lender and its branches and Affiliates and each such Person's respective partners, officers, directors, employees, agents, trustees, advisors and attorneys.

Lenders - as defined in the preamble to this Agreement, including the Tranche A Lenders, the Tranche A-1 Lenders, the Canadian Lenders, Administrative Agent and Canadian Agent in their capacities as providers of Swingline Loans and any other Person who hereafter becomes a "Lender" pursuant to an Assignment and Assumption Agreement.

Lending Office - means, as to any Lender, the office or offices of such Lender described as such in such Lender's administrative questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower Agent and the Agents, which office may include any Affiliate of such Lender or any domestic or foreign branch of such Lender or such Affiliate. Unless the context otherwise requires each reference to a Lender shall include its applicable Lending Office.

Letter of Credit - any standby letter of credit or documentary letter of credit (including, without limitation, any documentary letter of credit providing for payment thereunder upon presentation of drafts payable no later than 60 days after sight and the Existing Letters of Credit) issued by an Issuing Bank for the account or benefit of a Borrower or any indemnity, guarantee, exposure transmittal memorandum or similar form of credit support issued by the Applicable Agent or an Issuing Bank for the benefit of a Borrower (including, without limitation, any banker's acceptance issued on account of any letter of credit).

Letter of Credit Expiration Date - the day that is 7 Business Days prior to the Termination Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

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

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

LIBOR - has the meaning specified in the definition of Eurodollar Rate.

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

LIBOR Tranche A Revolver Loan - a Tranche A Revolver Loan that bears interest at the Eurodollar Rate plus the Applicable Margin for LIBOR Tranche A Revolver Loans.

LIBOR Tranche A-1 Revolver Loan - a Tranche A-1 Revolver Loan that bears interest at the Eurodollar Rate plus the Applicable Margin for LIBOR Tranche A-1 Revolver Loans.

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

Licensor - any Person from whom an Obligor obtains the right to use any Intellectual Property.

Lien - any Person's interest in Property securing an obligation owed to, or a claim by, such Person, whether such interest is based on common law, statute or contract, including liens, security interests, pledges, hypothecations, prior claims, encumbrances, rights or retention, statutory trusts, deemed trusts or security agreements, in any case, of any kind or nature whatsoever.

Lien Priority Agreement - an agreement, in form and substance reasonably satisfactory to the Applicable Agent, by which for any Collateral located in the province of Québec, Canada on premises not owned by the owner of such Collateral, subject to customary exceptions approved by the Applicable Agent in its reasonable discretion, the owner of the premises waives or subordinates or cedes priority of preference and rank in any Lien it may have on any part of the Collateral in favor of the Applicable Agent.

Lien Waiver - an agreement, in form and substance reasonably satisfactory to the Applicable Agent, by which, subject to customary exceptions approved by the Applicable Agent in its reasonable discretion, (a) for any Collateral located on leased premises, the lessor waives or subordinates any Lien it may have on the Collateral, and agrees to permit such Agent to gain access to and enter upon the premises and remove the Collateral or to use the premises to store or dispose of the Collateral; (b) for any Collateral held by a warehouseman, processor, shipper or

freight forwarder, such Person waives or subordinates (other than with respect to certain unpaid fees of logistics providers as to which the Administrative Agent may implement a reserve) any Lien it may have on the Collateral, agrees to hold any Documents in its possession relating to the Collateral as agent for the Applicable Agent, agrees to permit such Agent to gain access to and enter upon the premises and remove the Collateral or to use the premises to store or dispose of the Collateral and/or agrees to deliver the Collateral to such Agent upon request; (c) for any Collateral held by a repairman, mechanic or bailee, such Person acknowledges the Applicable Agent's Lien, waives or subordinates any Lien it may have on the Collateral, and agrees to deliver the Collateral to such Agent upon request; and (d) for any Collateral subject to a Licensor's Intellectual Property rights, the Licensor grants to the Applicable Agent the right, vis-à-vis such Licensor, to enforce such Agent's Liens with respect to the Collateral, including the right to dispose of it with the benefit of the Intellectual Property, whether or not a default exists under any applicable License.

Liquidation - the exercise by the Administrative Agent of those rights and remedies accorded to the Administrative Agent under the Loan Documents and Applicable Law as a creditor of the Obligors with respect to the realization on the Collateral, including (after the occurrence and during the continuation of an Event of Default) the conduct by the Obligors acting with the consent of the Administrative Agent, of any public, private or going-out-of-business sale or other disposition of the Collateral for the purposes of liquidating the Collateral.

Liquidity Event Period - any period (a)(i) commencing upon the occurrence of an Specified Event of Default and (ii) ending on the first date when all Specified Events of Default have been waived or remedied in accordance with the terms of the Loan Documents or (b)(i) commencing on the first date on which the Excess Availability Ratio for five (5) consecutive Business Days is less than 15%; and (ii) ending on the first date on which the Excess Availability Ratio for a period of thirty (30) consecutive days is not less than 15% (such date described in clause (a)(ii) or (b)(ii), as applicable, being hereinafter referred to as a "Liquidity Event Termination Date"); provided, however, that in no event shall a Liquidity Event Termination Date be deemed to have occurred more than (x) twice during any period of twelve (12) consecutive months or (y) five times during the term of this Agreement.

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

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

Loan Documents - this Agreement, the Other Agreements, the Security Documents and all other documents, certificates, instruments or agreements executed and delivered by or on behalf of an Obligor for the benefit of any Agent or any Lender in connection herewith on or after the date hereof.

Loan Year - each calendar year commencing on the Closing Date and on each anniversary of the Closing Date.



London Banking Day - any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

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

Material Adverse Effect - means the effect of any event or circumstance occurring after February 1, 2014 that, taken alone or in conjunction with other events or circumstances, has or could be reasonably expected to have a material adverse change in or a material adverse effect on: (a) the business, operations, liabilities (actual or contingent), Properties or condition (financial or otherwise) of Holdings and its Restricted Subsidiaries considered as a whole, the Company and its Restricted Subsidiaries considered as a whole or the Canadian Borrower and its Restricted Subsidiaries considered as a whole, or on the validity or priority of Applicable Agent's Liens on a material portion of the Collateral; (b) the ability of any Obligor to perform any obligations under the Loan Documents, including repayment of any Obligations; (c) the rights and remedies of the Agents or the Lenders under the Loan Documents or the ability of any Agent or any Lender to enforce or collect the Obligations or to realize upon the Collateral; or (d) the realizable value of the Collateral, taken as a whole.

Material Debt - means (i) Term Debt and (ii) any Debt of Holdings or any Restricted Subsidiary incurred in an aggregate outstanding principal amount of \$10,000,000 or more.

Material Real Estate - each fee owned Real Estate having a fair market value in excess of \$2,000,000 as of the date of the acquisition thereof and (ii) all leasehold properties other than those with respect to which the aggregate rental expense under the lease (with such rent expense calculated consistently with the rent expense set forth in the footnotes to the audited financial statements each fiscal year) is less than \$2,000,000 per annum, in the case of this clause (ii) to the extent that such leasehold properties are subject to Lien securing the obligations under any of the Term Debt Documents.

Maximum Borrowing Amount - on any date of determination, the sum of (i) the Tranche A Borrowing Base on such date, plus (ii) the Tranche A-1 Borrowing Base on such date plus (iii) the Canadian Borrowing Base on such date.

Max Rave - Max Rave, LLC, a Delaware limited liability company.

Minimum Collateral Amount - at any time, (i) with respect to Cash Collateral consisting of cash or deposit account balances provided to reduce or eliminate Fronting Exposure during the existence of a Defaulting Lender, an amount equal to 105% of the Fronting Exposure of the Issuing Banks with respect to Letters of Credit issued and outstanding at such time, (ii) with respect to Cash Collateral consisting of cash or deposit account balances provided in accordance with the provisions of **Section 2.7.1**(i), (ii) or (iii), an amount equal to 105% of the then outstanding amount of all LC Obligations and/or Canadian LC Obligations, and (iii) otherwise, an amount determined by the Applicable Agent and the Issuing Bank in their sole discretion.

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

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

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

Multiple Employer Plan - a Plan which has two or more contributing sponsors (including the Borrower or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

Narrative Report - with respect to the financial statements for which such narrative report is required, a narrative report describing the operations of the Borrowers and the Guarantors for the applicable fiscal month, Fiscal Quarter or Fiscal Year and for the period from the beginning of the then current Fiscal Year to the end of such period to which such financial statements relate and a comparison to the Borrowers' budget for such periods.

Net Equity Proceeds - with respect to the sale or issuance of Capital Stock of Holdings or any of its Restricted Subsidiaries, the excess of (a) the sum of cash and Cash Equivalents received in connection with such transaction over (b) underwriting discounts and commissions, investment banking fees and costs, arranger fees and costs and other reasonable bona fide out-of-pocket costs and expenses associated therewith, including reasonable legal fees and expenses.

Net Proceeds - with respect to (A) any Asset Sale or (B) any sale or other disposition of Collateral during the continuance of an Event of Default, an amount equal to: (i) cash payments (including any cash received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) received by any Borrower or any of its Subsidiaries from such sale or disposition, minus (ii) any bona fide costs incurred in connection with such sale or disposition, including (a) income or gains taxes payable as a result of any gain recognized in connection with such sale or disposition, including Permitted Tax Distributions, if any, associated with such sale or disposition, (b) selling expenses (including reasonable brokers' fees or commissions, legal fees, transfer and similar taxes), (c) payment of the outstanding principal amount of, premium or penalty, if any, and interest on any Debt (other than the Loans) that is secured by a Lien on the stock or assets in question and that is required to be repaid under the terms thereof as a result of such sale or disposition and (d) a reasonable reserve for any indemnification payments (fixed or contingent) attributable to seller's indemnities and representations and warranties to purchaser in respect of such sale or disposition undertaken by any Borrower or any of its Subsidiaries in connection with such sale or disposition.

Net Insurance/Condemnation Proceeds - an amount equal to: (i) any cash payments or proceeds received by any of Holdings or its Restricted Subsidiaries (a) under any casualty insurance policy in respect of a covered loss thereunder or (b) as a result of the taking of

any assets of any of Holdings or its Restricted Subsidiaries by any Person pursuant to the power of eminent domain, condemnation, expropriation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking, minus (ii) (a) any bona fide costs incurred by any of Holdings or its Restricted Subsidiaries in connection with the adjustment or settlement of any claims of such Holdings or such Subsidiary in respect thereof, and (b) any bona fide costs incurred in connection with any sale of such assets as referred to in clause (i)(b) of this definition, including income taxes payable as a result of any gain recognized in connection therewith. Notwithstanding the foregoing, but subject to the Intercreditor Agreement, Net Insurance/Condemnation Proceeds shall not include any amounts received by Holdings or its Restricted Subsidiaries under any casualty insurance policy or as a result of a taking with respect to any assets of any Borrower or any of its Subsidiaries constituting Term Loan Primary Collateral (under and as defined in the Intercreditor Agreement).

Non-Cash Interest Expense - with respect to any Obligor for any period, the sum of the following amounts to the extent included in the definition of Consolidated Interest Expense: (a) the amount of debt discount and debt issuance costs amortized, (b) charges relating to writeups or write-downs in the book or carrying value of existing Financial Covenant Debt, (c) interest payable in kind or by addition to the principal of the related Debt and (d) other non-cash interest.

Non-Defaulting Lender - at any time, each Lender that is not a Defaulting Lender at such time.

Non-Extension Notice Date - as defined in **Section 2.3.2(c)**.

Non-Guarantor Subsidiary - any Subsidiary of Holdings that is not required to become a Guarantor Subsidiary; provided that, for greater certainty, the Canadian Guarantor Subsidiaries shall not constitute Non-Guarantor Subsidiaries.

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

Notice of Borrowing - a Notice of Borrowing or Continuation/Conversation to be provided by a Borrower to request the funding of a Borrowing of Loans, which shall be substantially in the form of **Exhibit G** or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Senior Officer of a Borrower.

NRV Percentage - the net recovery value of Inventory of each Borrower or Guarantor Subsidiary, expressed as a percentage (which shall be an average recovery value based on seasonality), expected to be realized at an orderly, negotiated sale held within a reasonable period of time, net of all liquidation expenses, as determined from the most recent appraisal of Borrowers' and Guarantor Subsidiaries' Inventory performed by an appraiser and on terms reasonably satisfactory to Administrative Agent.

Obligations - all (a) principal of and premium, if any, on the Loans, (b) LC Obligations, Canadian LC Obligations and other obligations of Obligors with respect to Letters

of Credit and Bankers' Acceptances, (c) interest, expenses, fees and other sums payable by Obligors under the Loan Documents, (d) obligations of Obligors under any indemnity for Claims, (e) Extraordinary Expenses, (f) Bank Product Debt and (g) other Debts, obligations and liabilities of any kind owing by Obligors (or any of them) pursuant to the Loan Documents, in any case, whether now existing or hereafter arising, whether evidenced by a note or other writing, whether accrued during or allowed in any Insolvency Proceeding, whether arising from an extension of credit, issuance of a letter of credit, bankers' acceptance, acceptance, loan, guaranty, indemnification or otherwise, and whether direct or indirect, absolute or contingent, due or to become due, primary or secondary, or joint or several, provided that the Obligations shall exclude any Excluded Swap Obligations. For the avoidance of doubt, the term "Obligations" includes the Canadian Obligations.

Obligor - each Borrower, Guarantor, or other Person that is liable for payment of any Obligations or that has granted a Lien in favor of Administrative Agent or the Canadian Agent, as applicable, on its assets to secure any Obligations (or any of them).

OFAC - means the Office of Foreign Assets Control of the United States Department of the Treasury.

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

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

OSHA - the Occupational Safety and Hazard Act of 1970.

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

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

Other Taxes - means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to any Loan Document, except any such Taxes that are

Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to **Section 3.6**).

Overadvance Loan - a (a) Base Rate Tranche A Revolver Loan made when a Tranche A Overadvance exists or is caused by the funding of a Tranche A Revolver Loan or (b) Canadian Prime Rate Loan made when a Canadian Overadvance exists or is caused by the funding of a Canadian Revolver Loan.

Partner Shop Agreement - each agreement entered into between the relevant Obligor and a partner shop relating to Eligible Partner Shop Inventory set forth on Schedule 1.1(b) and any other agreement entered into between the relevant Obligor and a partner shop relating to Eligible Partner Shop Inventory, in all cases, approved by the Administrative Agent in writing and in all cases which is reasonably acceptable in form and substance to the Administrative Agent.

Participant - as defined in **Section 13.3.1**.

Participant Register - as defined in **Section 13.3.1**.

Patent Security Agreements - each patent collateral security and pledge agreement or other patent security agreement pursuant to which an Obligor grants to Applicable Agent, for the benefit of Secured Parties, a Lien on such Obligor's interests in patents, as security for the Obligations.

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

Payment Intangible - as defined in the UCC.

Payment Item - each check, draft or other item of payment payable to a Borrower, including those constituting proceeds of any Collateral.

PBA - the Pension Benefits Act (Ontario) or any other Canadian federal or provincial statute in relation to Canadian Pension Plans, and any regulations thereunder, as amended from time to time.

PBGC - the Pension Benefit Guaranty Corporation.

Pension Funding Rules - the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Protection Act of 2006, Section 412 of the Internal Revenue Code and Section 302 of ERISA, each as in effect prior to the Pension Protection Act of 2006 and, thereafter, Section 412, 430, 431, 432 and 436 of the Internal Revenue Code and Sections 302, 303, 304 and 305 of ERISA.

Pension Plan - means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by any Borrower

and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

Permitted Acquisition - any acquisition by any Borrower or any of its Restricted Subsidiaries, whether by purchase, merger or otherwise, of all or substantially all of the assets of, the Capital Stock of, or a business line or unit or a division of, any Person (other than an Affiliate of the Obligors); provided that:

(i) immediately prior to the consummation of the acquisition and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or would result therefrom;

(ii) all transactions in connection therewith shall be consummated, in all material respects, in accordance with all Applicable Laws and in conformity with all applicable Governmental Approvals;

(iii) such acquisition shall be consensual and shall have been approved by the board of directors of such Person;

(iv) in the case of the acquisition of Capital Stock, the acquired Person shall become a Restricted Subsidiary of the applicable Borrower immediately after consummation of the applicable transaction, and such Borrower shall have taken, or caused to be taken, as of the date such Person becomes a Subsidiary of such Borrower, the actions set forth in **Section 10.1.9**;

(v) on a pro forma basis after giving effect to such Permitted Acquisition, either (x) (I) the Excess Availability Ratio immediately after giving effect to such Permitted Acquisition and (II) the projected monthly Excess Availability Ratio during the 6-month period following such Permitted Acquisition (as of the end of each such month), in each case with respect to clauses I and II, is greater than or equal to 20% and (III) the Fixed Charge Coverage Ratio for the most-recently ended period of twelve (12) consecutive Fiscal Months (as if such Permitted Acquisition occurred as of the first day of such period) is greater than 1.00 to 1.00 or (y) (I) the Excess Availability Ratio immediately after giving effect to such Permitted Acquisition and (II) the monthly projected Excess Availability Ratio during the 6-month period following such Permitted Acquisition (as of the end of each such month), in each case with respect to clauses I and II, is greater than or equal to 25%;

(vi) any Person or assets or division as acquired in accordance herewith shall be in the same business or lines of business in which the Borrower and/or its Subsidiaries are engaged as of the Closing Date or a line of business reasonably related or incidental thereto; and

(vii) Holdings shall have delivered to Administrative Agent a certificate, in form and substance reasonably satisfactory to it, from the chief financial officer of each Borrower certifying that the conditions set forth in clauses (i) through (vi) above are satisfied (which certificate shall attach supporting projections, information and calculations with respect to the requirements set forth in clause (v) above (all based on projections of the financial performance of the Obligors made in good faith based on assumptions reasonably believed to be reasonable at the time made)).

In no event shall any Property acquired in connection with a Permitted Acquisition be deemed eligible for inclusion in the Tranche A Borrowing Base, Tranche A-1 Borrowing Base or the Canadian Borrowing Base unless and until the Applicable Agent has completed (at the expense of the Company) collateral audits and appraisals of such Property so acquired or to be acquired, which audits and appraisals shall be conducted in a manner that is consistent with the audits and appraisals conducted pursuant to **Section 10.1.1**; provided that any such audit and appraisal shall not be subject to (and shall not be included in) the limitations set forth in **Section 10.1.1** on the number of audits and appraisals for which each Agent is entitled to be reimbursed in any Loan Year.

Permitted Acquisition Debt - any Debt of Holdings or its Restricted Subsidiaries incurred to finance a Permitted Acquisition, provided that:

(a) the requirements set forth in the definition for Permitted Acquisition are satisfied;

(b) the final maturity date of such Permitted Acquisition Debt shall be no earlier than the Stated Maturity Date or, in respect of Debt not incurred under the Guggenheim Credit Agreement, at least 90 days after the Stated Maturity Date and the weighted average life to maturity of all Permitted Acquisition Debt shall be no shorter than the then remaining weighted average life to maturity of the “Loans” under and as defined in the Guggenheim Credit Agreement as in effect on the date hereof;

(c) if secured, such Permitted Acquisition Debt shall be secured and guaranteed on a pari passu or junior lien basis with the Term Debt and shall be subject to the Intercreditor Agreement or other intercreditor terms reasonably satisfactory to the Administrative Agent and the Co-Collateral Agents; and provided that, for certainty, the Liens of the Administrative Agent on Revolving Credit Primary Collateral securing the Obligations shall be senior to the Liens on Revolving Credit Primary Collateral securing such Permitted Acquisition Debt;

(d) such Permitted Acquisition Debt shall constitute “Permitted Acquisition Indebtedness” under the Term Debt Documents as in effect on the date hereof; and

(e) such Permitted Indebtedness shall be subject to customary market terms and any mandatory prepayment or early redemption provisions shall be reasonably satisfactory to the Administrative Agent and the Co-Collateral Agents.

Permitted Discretion - the exercise of the Applicable Agent’s reasonable discretion (from the perspective of a secured asset-based lender) in consideration of any factor which (a) may adversely affect the value of any Revolving Credit Primary Collateral or Canadian Collateral, the enforceability or priority of the Applicable Agent’s Liens thereon, any priority or pari passu claims with respect to Revolving Credit Primary Collateral or Canadian Collateral or interests therein or the amount that the Agents and the Lenders could receive (after giving consideration to delays in payment and costs of enforcement) in the liquidation thereof, (b) reflects any adverse claim against any Borrower, any Guarantor or any of their Subsidiaries, (c) may suggest that any collateral report or financial information delivered to the Applicable Agent or the Lenders by any Person on behalf of any Borrower, Holdings or any of their respective

Subsidiaries is incomplete, inaccurate or misleading, (d) may increase the likelihood that the Secured Parties would not receive timely payment in full in cash for all of the Obligations, or (e) reflects an event, condition, contingency or risk which could reasonably be expected to have an adverse effect on the business or assets of any Borrower or any other Obligor. In exercising such judgment, the Applicable Agent may consider factors already included in or tested by the definition of the Tranche A Borrowing Base, Tranche A-1 Borrowing Base or the Canadian Borrowing Base, as applicable (or any defined terms used therein), as well as any other factors it determines in its good faith judgment (from the perspective of a secured asset-based lender), including, without limitation: (i) the changes in collection history and dilution or collectability with respect to Accounts; (ii) changes in demand for, pricing of, or product mix of Inventory; (iii) changes in any concentration of risk with respect to Accounts or Inventory; (iv) any factors described in any examinations, inspections, audits or appraisals of, or relating to, any Obligor or any financial matters or Collateral matters and (v) any other considerations or factors that could change the credit risk of lending to any Borrower on the security of any Revolving Credit Primary Collateral or Canadian Collateral. The burden of establishing lack of good faith hereunder shall be on the Borrowers. The exercise of Permitted Discretion shall not be limited to matters which constitute a breach of, or default under, any of the provisions hereof.

Permitted Earn-Out Distributions - distributions made pursuant to Section 7.1(c) of the Global Holdings Operating Agreement.

Permitted Holders - the holders of Capital Stock of Global Holdings on the Closing Date, after giving effect to the Recapitalization Transactions, excluding Azria and Affiliates thereof.

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

Permitted Refinancing Debt - any Debt incurred to refinance, extend or replace any Debt provided that (i) the terms and conditions thereof are not materially less favorable (taken as a whole) to the obligor thereon or to the Agents and the Lenders than such Debt (it being agreed that such determination to be made without regard to rates or fees, so long as such rates and fees reflect then-current market conditions for similarly situated companies), (ii) the average life to maturity thereof is greater than or equal to that of such Debt; (iii) such Debt shall have a maturity no earlier than the Debt being refinanced, extended or replaced and (iv) such Debt shall (A) not be supported by Liens or Contingent Obligations other than those supporting such Debt which are permitted under the Loan Documents (it being agreed that a Permitted Encumbrance over a category of assets shall not violate this requirement if the categories of collateral described in such grant is not increased, notwithstanding any growth in the pool of collateral covered by such grant) and, in the case of Debt refinancing the Guggenheim Credit Facility, shall be secured only by Collateral and shall be subject to the Intercreditor Agreement, (B) have the same the obligors as the refinanced Debt and in the case of Debt refinancing the Guggenheim Credit Facility, the Obligations shall be guaranteed by, and secured by the assets of, any obligors party to such Permitted Debt Refinancing (to the extent such obligor is not already a Borrower or a Guarantor hereunder), (C) not exceed the greater of the principal amount (or accreted value, if applicable) of the Debt being refinanced and the maximum principal amount of such Debt permitted to be incurred under the applicable exception to **Section 10.2.1**, (D) if the refinanced Debt is subordinated in right of payment to the Obligations, such Debt shall be



subordinated to the same extent, on terms at least as favorable to the Agents and the Lenders as those applicable to the refinanced debtor, (E) if the refinanced Debt was subject to an intercreditor agreement, such Debt shall be subject to the same intercreditor agreement (or a replacement thereof on substantially similar terms or otherwise reasonably acceptable to the Administrative Agent and the Co-Collateral Agents); and (F) not be incurred, created or assumed if any Default or Event of Default has occurred and is continuing or would result therefrom; it being agreed, however, that the provider of such Permitted Refinancing Debt may rely, without verification, upon a certification by the obligor thereunder to the effect that the foregoing requirements are met).

Permitted Tax Distributions - with respect to each of Holdings and its Restricted Subsidiaries that is a pass-through entity (including an entity classified as a partnership or disregarded entity) for U.S. federal income tax purposes, Restricted Junior Payments in an aggregate amount equal to the amount of “Tax Distributions” for such applicable time period set forth in Section 7.3 of the Global Holdings Operating Agreement (as in effect on the date of this Agreement) attributable to income from Holdings and its Restricted Subsidiaries (and its Unrestricted Subsidiaries solely to the extent amounts are actually distributed in cash from such Unrestricted Subsidiary to Holdings and its Restricted Subsidiaries) for such period allocated to the holders of Capital Stock of the Global Holdings.

Permitted Term Debt Refinancing - a financing of the Guggenheim Credit Facility with proceeds of Permitted Refinancing Debt.

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

Plan - any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of any Borrower or any ERISA Affiliate of such Borrower or any such Plan to which any Borrower or any ERISA Affiliate of such Borrower is required to contribute on behalf of any of its employees.

Pledge and Security Agreement - the Second Amended and Restated Pledge and Security Agreement(s) to be executed by Company and each Guarantor substantially in form and substance satisfactory to the Administrative Agent, as it may be amended, supplemented or otherwise modified from time to time.

Post-Closing Agreement - the Post-Closing Agreement dated as of the Closing Date, among the Obligor and the Agents with respect to certain documents and actions to be delivered or taken after the Closing Date (including, without limitation, Account Control Agreements and Credit Card Agreements), as amended, restated, supplemented or otherwise modified from time to time.

PPSA - the Personal Property Security Act of Ontario (or any successor statute) or similar legislation of any other Canadian jurisdiction, including, without limitation, the Civil Code of Québec, the laws of which are required by such legislation to be applied in connection

with the issue, perfection, enforcement, opposability, enforceability, validity or effect of security interests or hypothecs.

Pro Rata - (a) with respect to any Tranche A Lender, a percentage (expressed as a decimal, rounded to the ninth decimal place) determined (i) while the Tranche A Revolver Commitments are outstanding, by dividing the amount of such Tranche A Lender's Tranche A Revolver Commitment by the aggregate amount of all Tranche A Revolver Commitments; and (ii) at any other time, by dividing the amount of such Tranche A Lender's Tranche A Revolver Loans and LC Obligations by the aggregate amount of all outstanding Tranche A Revolver Loans and LC Obligations, (b) with respect to any Tranche A-1 Lender, a percentage (expressed as a decimal, rounded to the ninth decimal place) determined (i) while the Tranche A-1 Revolver Commitments are outstanding, by dividing the amount of such Tranche A-1 Lender's Tranche A-1 Revolver Commitment by the aggregate amount of all Tranche A-1 Revolver Commitments; and (ii) at any other time, by dividing the amount of such Tranche A-1 Lender's Tranche A-1 Revolver Loans by the aggregate amount of all outstanding Tranche A-1 Revolver Loans, and (c) with respect to any Canadian Lender, a percentage (expressed as a decimal, rounded to the ninth decimal place) determined (i) while the Canadian Revolver Commitments are outstanding, by dividing the amount of such Canadian Lender's Canadian Revolver Commitment by the aggregate amount of all Canadian Revolver Commitments; and (ii) at any other time, by dividing the amount of such Canadian Lender's Canadian Revolver Loans and Canadian LC Obligations by the aggregate amount of all outstanding Canadian Revolver Loans and Canadian LC Obligations. The Pro Rata share of any Lender is subject to adjustment as provided in **Section 2.8**.

Properly Contested - with respect to any obligation of an Obligor, (a) the obligation is subject to a bona fide dispute regarding amount or the Obligor's liability to pay; (b) the obligation is being properly contested in good faith by appropriate proceedings promptly instituted and diligently pursued; (c) appropriate reserves have been established in accordance with GAAP; (d) non-payment could not reasonably be expected to have a Material Adverse Effect, nor is reasonably expected to result in forfeiture or sale of any assets of the Obligor; (e) no Lien is imposed on assets of the Obligor, unless bonded and stayed to the satisfaction of Agents; and (f) if the obligation results from entry of a judgment or other order, such judgment or order is stayed pending appeal or other judicial review.

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

Property Loss Event - (a) any loss of or damage to property of any Obligor that results in the receipt by such Person of proceeds of insurance which exceeds \$5,000,000 (individually or in the aggregate) or (b) any taking of property of any Obligor that results in the receipt by such Person of a compensation payment in respect thereof which exceeds \$5,000,000 (individually or in the aggregate).

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

Qualifying IPO - the first underwritten public offering by the Global Holdings or IPO Issuer of its Capital Stock after the Closing Date pursuant to a registration statement that has

been declared effective by the United States Securities and Exchange Commission, the aggregate net proceeds of which are at least \$75,000,000.

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

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

Recapitalization Transaction – the “Recapitalization Transactions” as defined in the Exchange Agreement.

Recapitalization Documents – collectively, the Contribution Agreement, the Exchange Agreement and the Global Holdings Operating Agreement, in each case, together with all exhibits, schedules and annexes thereto.

Recipient - means any Agent, any Lender, any Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of any Obligor hereunder.

Register - as defined in **Section 13.2.2**.

Related Parties - with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

Related Real Estate Documents - with respect to any Real Estate subject to a Mortgage, the following, in form and substance reasonably satisfactory to Administrative Agent and received by Administrative Agent for review at least 15 days prior to the effective date of the Mortgage (or such shorter length of time acceptable to Administrative Agent in its reasonable discretion), but only to the extent required by the collateral agent under the Term Debt Documents: (a) a mortgagee title policy (or binder therefor) covering Applicable Agent’s interest under the Mortgage, in a form and amount and by an insurer reasonably acceptable to Applicable Agent, which must be fully paid on such effective date; (b) such assignments of leases, rents, estoppel letters, attornment agreements, consents, waivers and releases as Administrative Agent may require with respect to other Persons having an interest in the Real Estate; (c) if otherwise in the possession of an Obligor, a current, as-built survey of the Real Estate, containing a metes-and-bounds property description and flood plain certification, and certified by a licensed surveyor reasonably acceptable to Administrative Agent; (d) notwithstanding the requirements of the collateral agent under the Term Debt Documents, flood determinations reasonably acceptable to Administrative Agent and, if necessary, flood insurance in an amount, with endorsements and by an insurer reasonably acceptable to Administrative Agent, and (e) if otherwise in the possession of an Obligor, or if reasonably requested by Administrative Agent to assess Obligor’s risk of liability under Environmental Laws, a Phase I (and to the extent appropriate, Phase II) environmental assessment report, prepared by an environmental consulting firm reasonably satisfactory to Administrative Agent, and accompanied by such reports, certificates, studies or data as Administrative Agent may reasonably require, which shall all be in form and substance reasonably satisfactory to Administrative Agent.

Removal Effective Date - as defined in **Section 12.8.1(b)**.

Rent and Charges Reserve - the aggregate amount of Availability Reserves established by the Administrative Agent, in its discretion, from time to time in respect of (a) all past due rent and other amounts owing by an Obligor to any landlord, warehouseman, processor, repairman, mechanic, shipper, freight forwarder or other Person who possesses any Inventory or could assert a Lien on any Inventory; (b) in the case of Inventory located at a leased premise located in a Landlord Lien State (not constituting a Large Inventory Location) for which a Lien Waiver has not been executed, an amount equal to one month's rent, (c) in the case of Inventory located at a premise located in the province of Québec, Canada for which a Lien Priority Agreement has not been executed, an Availability Reserve reasonably determined by the Administrative Agent as its good faith estimate of claims in respect of registered hypothecs that have priority over the Lien of the Applicable Agent in any of the Inventory shall have been established with respect thereto; provided that in lieu of a reserve under this clause (c), the applicable Borrower may remove the inventory subject to the registered hypothec from Eligible Inventory, and (d) in the case of Inventory located, stored, used or held at the premises of a third party constituting a Large Inventory Location for which a Lien Waiver has not been executed, an amount equal to three month's rent. In determining any Rent and Charges Reserve under clauses (b) and (d) of this definition, the Administrative Agent may take into account any security deposits paid, or letters of credit or other credit support provided, by the applicable Obligor to the relevant landlord.

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

Reportable Event - any event set forth in Section 4043(b) of ERISA, with respect to which an advance notice to the PBGC is required under ERISA and for which there is no applicable waiver.

Required Canadian Lenders - at any time (a) there shall be less than four non-Affiliated Canadian Lenders, all Canadian Lenders and (b) there shall be four or more non-Affiliated Canadian Lenders, at least three non-Affiliated Canadian Lenders having (i) Canadian Revolver Commitments in excess of 50% of the aggregate Canadian Revolver Commitments or (ii) if the Canadian Revolver Commitments have terminated, Canadian Revolver Loans and Canadian LC Obligations in excess of 50% of all outstanding Canadian Revolver Loans and Canadian LC Obligations. The Canadian Revolver Commitments or Canadian Revolver Loans, and Canadian LC Obligations, as applicable, of any Defaulting Lender shall be disregarded in determining Required Canadian Lenders at any time; provided that, the amount of any participation in any Swingline Loan and Unreimbursed Amounts that such Defaulting Lender has failed to fund that have not been reallocated to and funded by another Canadian Lender shall be deemed to be held by the Lender that is the Swingline Lender or Issuing Bank, as the case may be, in making such determination.

Required Lenders - at any time (a) there shall be less than four non-Affiliated Lenders, all Lenders and (b) there shall be four or more non-Affiliated Lenders, at least three non-Affiliated Lenders having (i) Commitments in excess of 50% of the aggregate Commitments or (ii) if the Commitments have terminated, Loans, LC Obligations and Canadian LC Obligations in excess of 50% of all outstanding Loans, LC Obligations and Canadian LC

Obligations. The Commitments or Loans, LC Obligations and Canadian LC Obligations, as applicable, of any Defaulting Lender shall be disregarded in determining Required Lenders at any time; provided that, the amount of any participation in any Swingline Loan and Unreimbursed Amounts that such Defaulting Lender has failed to fund that have not been reallocated to and funded by another Lender shall be deemed to be held by the Lender that is the Swingline Lender or Issuing Bank, as the case may be, in making such determination.

Required Tranche A Revolver Lenders – at any time (a) there shall be less than four non-Affiliated Tranche A Revolver Lenders, all Tranche A Revolver Lenders and (b) there shall be four or more non-Affiliated Tranche A Revolver Lenders, at least three non-Affiliated Tranche A Revolver Lenders having (i) Tranche A Revolver Commitments in excess of 50% of the aggregate Tranche A Revolver Commitments or (ii) if the Tranche A Revolver Commitments have terminated, Tranche A Revolver Loans and LC Obligations in excess of 50% of all outstanding Tranche A Revolver Loans and LC Obligations. The Tranche A Revolver Commitments or Tranche A Revolver Loans, and LC Obligations, as applicable, of any Defaulting Lender shall be disregarded in determining Required Tranche A Revolver Lenders at any time; provided that, the amount of any participation in any Swingline Loan and Unreimbursed Amounts that such Defaulting Lender has failed to fund that have not been reallocated to and funded by another Lender shall be deemed to be held by the Lender that is the Swingline Lender or Issuing Bank, as the case may be, in making such determination.

Resignation Effective Date - as defined in **Section 12.8.1(a)**.

Restricted Junior Payment - (i) any dividend or other distribution, direct or indirect, on account of any shares of any class of stock or other ownership interest of an Obligor now or hereafter outstanding, except a dividend payable solely in shares of that class of stock to the holders of that class; (ii) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of stock or other ownership interest of an Obligor now or hereafter outstanding; (iii) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of stock or other ownership interest of an Obligor now or hereafter outstanding; (iv) any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in-substance or legal defeasance), sinking fund or similar payment with respect to, any Subordinated Debt; (v) any payment of any management, consulting, monitoring, advisory and other fees, indemnities, expenses or other amounts to any Permitted Holder, Azria or any other holder of any class of Capital Stock of an Obligor (pursuant to the Services Agreement or otherwise) and (vi) any Investment by a Subsidiary in Holdings or any Person holding, directly or indirectly, Capital Stock of Holdings.

Restricted Subsidiary - any Subsidiary of Holdings other than an Unrestricted Subsidiary.

Revolving Credit Primary Collateral - has the meaning specified in the Intercreditor Agreement.

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

Sanctions - means any sanction administered or enforced by the United States Government (including without limitation, OFAC), the Government of Canada, the United Nations Security Council, the European Union, Her Majesty's Treasury or other relevant sanctions authority.

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

Securities - any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

Securities Account - the meaning given to such term in the UCC or, if applicable, the PPSA.

Securities Account Control Agreement - an agreement, in form and substance reasonably acceptable to the Applicable Agent, executed by the relevant Obligor, the relevant Approved Securities Intermediary and any other party thereto (if any).

Securities Laws - the Securities Act of 1933, the Securities Exchange Act of 1934, Sarbanes-Oxley and the applicable accounting and auditing principles, rules, standards and practices promulgated, approved or incorporated by the SEC or the Public Company Accounting Oversight Board, as each of the foregoing may be amended and in effect on any applicable date hereunder.

Secured Parties - Administrative Agent, Canadian Agent, the Co-Collateral Agents, the Issuing Banks, Lenders and providers of Bank Products.

Security Agreements - each pledge and security agreement (including the Pledge and Security Agreement) or other security agreement pursuant to which an Obligor grants to Administrative Agent, for the benefit of Secured Parties, a Lien on such Obligor's interests in the Collateral, as security for the Obligations.

Security Documents - the Guaranties (including the Canada Guaranty), the Security Agreements, the Intercreditor Agreement, Lien Waivers, Credit Card Agreements, the Mortgages, the Trademark Security Agreements, the Copyright Security Agreements, Patent Security Agreements, the Account Control Agreements, the Canadian Collateral Documents and all other documents, instruments and agreements now or hereafter securing (or given with the intent to secure) any Obligations.

Senior Officer - the chairman of the board, president, chief executive officer, treasurer or chief financial officer or other responsible financial officer acceptable to the Co-Collateral Agents, in each case, of a Borrower or, if the context requires, an Obligor and, solely for purposes of notices given under Section 4, any other officer or employee of the applicable Obligor so designated by any of the foregoing officers in a notice to the Administrative Agent or

any other officer or employee of the applicable Obligor designated in or pursuant to an agreement between the applicable Obligor and the Administrative Agent. Any document delivered hereunder that is signed by a Senior Officer of an Obligor shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Obligor and such Senior Officer shall be conclusively presumed to have acted on behalf of such Obligor.

Services Agreement - the services agreement, dated as of the Closing Date, by and among Fashion Funding LLC and Global Holdings, as the same may be amended, modified, supplemented or otherwise modified from time to time in accordance with its terms and the terms of this Agreement.

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

Software - as defined in the UCC.

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

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

Specified Event of Default - any Event of Default of the type described in Section 11.1(a), 11.1(b)(i), 11.1(b)(ii) (with respect to financial reporting or Borrowing Base Certificate), 11.1(c) (with respect to any of Section 7.1, 8.1, 8.5.2, 10.1.1, 10.1.2 or 10.3), 11.1(g)(i) or 11.1(j).

Specified Obligor - any Obligor (other than the Canadian Borrower or the Canadian Guarantor Subsidiaries) that is not an “eligible contract participant” under the Commodity Exchange Act (determined prior to giving effect to any “keepwell, support or other

agreement” for the benefit of such Obligor and any and all guarantees of such Obligor’s Swap Obligation by the other Obligors (other than the Canadian Borrower or the Canadian Guarantor Subsidiaries).

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

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

Stated Maturity Date - February 5, 2020.

Subordinated Debt - Debt which is expressly subordinated in right of payment to the prior payment in full of the Obligations on terms acceptable to the Administrative Agent and the Co-Collateral Agents.

Subordinated Provisions - as defined in **Section 11.1(o)**.

Subsidiary - with respect to any Person, any corporation, partnership, limited liability company, unlimited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; provided, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a “qualifying share” of the former Person shall be deemed to be outstanding. Unless otherwise qualified, all references to a “Subsidiary” or to “Subsidiaries” in this Agreement shall refer to a Subsidiary or Subsidiaries of Holdings.

Supporting Obligation - as defined in the UCC.

Swap Obligations - with respect to any Guarantor any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of **Section 1a(47)** of the Commodity Exchange Act.

Swingline Loan - any (i) Borrowing of Base Rate Tranche A Revolver Loans funded with Administrative Agent’s funds, until such Borrowing is settled among Lenders pursuant to **Section 4.1.3** and (ii) Borrowing of Canadian Prime Rate Loans funded with Canadian Agent’s funds, until such Borrowing is settled among Lenders pursuant to **Section 4.1.3**, as applicable.



Swingline Loan Notice - means a notice of a Swingline Loan borrowing pursuant to Section 4.1.3, which shall be substantially in the form of Exhibit G-2 or such other form as approved by the Applicable Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Applicable Agent), appropriately completed and signed by a Senior Officer of a Borrower.

Syndication Agent - General Electric Capital Corporation, in its capacity as a syndication agent under the Loan Documents.

Taxes - means all present or future taxes, levies, imposts, duties, fees, assessments, deductions, withholdings (including backup withholding), or other charges of whatever nature imposed by any Governmental Authority, including any interest, additions to tax or penalties and similar liabilities applicable thereto. For greater certainty, Taxes shall include all Taxes imposed pursuant to Part XIII of the ITA or any successor provisions thereto.

Term Debt – the Guggenheim Credit Facility or any Permitted Term Debt Refinancing.

Term Debt Documents - the “Credit Documents” under and as defined in the Guggenheim Credit Agreement, and any agreements or instruments executed in connection with any Term Debt.

Termination Date - The date that is the earlier to occur of (a) Stated Maturity Date and (b) the date that is 90 days prior to the earliest maturity date (as in effect from time to time) of any Material Debt.

Trademark Security Agreements - each trademark collateral security and pledge agreement or other trademark security agreement pursuant to which an Obligor grants to Applicable Agent, for the benefit of Secured Parties, a Lien on such Obligor’s interests in trademarks, as security for the Obligations.

Tranche A Borrowing Base - on any date of determination, an amount equal to the lesser of (a) the aggregate amount of the Tranche A Revolver Commitments, and (b) the result of (i) 90% of the NRV Percentage of the Value of Eligible Inventory of the Company and the U.S. Guarantor Subsidiaries, *plus* (ii) 90% of Eligible Wholesale Receivables of the Company and the U.S. Guarantor Subsidiaries, net of the amount of the Dilution Reserve, if any, in respect thereof, *plus* (iii) 90% of Eligible Credit Card Receivables of the Company and the U.S. Guarantor Subsidiaries, *minus* (iv) the sum of (x) the Availability Reserves in respect of the Tranche A Borrowing Base and (y) the Availability Block allocated by the Administrative Agent to the Tranche A Borrowing Base. Notwithstanding the foregoing, in no event shall the aggregate amount of Eligible In-Transit Inventory and Eligible LC Inventory included in the Tranche A Borrowing Base, Tranche A-1 Borrowing Base and the Canadian Borrowing Base exceed 20.0% of the aggregate of the Tranche A Borrowing Base, Tranche A-1 Borrowing Base and the Canadian Borrowing Base.

Tranche A Excess Availability - determined as of any date, the amount that Company is entitled to borrow as Tranche A Revolver Loans, being the result (but not less than

zero) of (a) Tranche A Borrowing Base, *minus* (b) the sum of (i) the principal balance of all Tranche A Revolver Loans, *plus* (ii) the LC Obligations.

Tranche A Increase Effective Date - as defined in **Section 2.4.1**.

Tranche A Lenders - the Lenders indicated on **Schedule 1.1(a)** as Lenders of Tranche A Revolver Loans, Administrative Agent in its capacity as a provider of Swingline Loans for the account of the Company and any other Person who hereafter becomes a “Tranche A Lender” pursuant to an Assignment and Assumption Agreement.

Tranche A Letter of Credit Subline - \$25,000,000.

Tranche A Overadvance - as defined in **Section 2.1.4**.

Tranche A Revolver Commitment - for any Tranche A Lender, its obligation to make Tranche A Revolver Loans and to participate in LC Obligations up to the maximum principal amount shown on **Schedule 1.1(a)**, or as specified hereafter in the most recent Assignment and Assumption Agreement to which it is a party. “Tranche A Revolver Commitments” means the aggregate amount of such commitments of all Lenders. As of the Closing Date, the Tranche A Revolver Commitments are \$125,000,000.

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

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

Tranche A-1 Borrowing Base - on any date of determination, an amount equal to the lesser of (a) the aggregate amount of the Tranche A-1 Revolver Commitments, and (b) the result of (i) 2.5% of the NRV Percentage of the Value of Eligible Inventory of the Company and the U.S. Guarantor Subsidiaries, *minus* (ii) the sum of (x) the Availability Reserves in respect of the Tranche A-1 Borrowing Base and (y) the Availability Block allocated by the Administrative Agent to Tranche A-1 Borrowing Base. Notwithstanding the foregoing, in no event shall the aggregate amount of Eligible In-Transit Inventory and Eligible LC Inventory included in the Tranche A Borrowing Base, Tranche A-1 Borrowing Base and the Canadian Borrowing Base exceed 20.0% of the aggregate of the Tranche A Borrowing Base, Tranche A-1 Borrowing Base and the Canadian Borrowing Base.

Tranche A-1 Excess Availability - determined as of any date, the amount that Company is entitled to borrow as Tranche A-1 Revolver Loans, being the result (but not less than zero) of (a) Tranche A-1 Borrowing Base, *minus* (b) the principal balance of all Tranche A-1 Revolver Loans.

Tranche A-1 Lenders - the Lenders indicated on **Schedule 1.1(a)** as Lenders of Tranche A-1 Revolver Loans and any other Person who hereafter becomes a “Tranche A-1 Lender” pursuant to an Assignment and Assumption Agreement.

Tranche A-1 Revolver Commitment - for any Tranche A-1 Lender, its obligation to make Tranche A-1 Revolver Loans up to the maximum principal amount shown on **Schedule 1.1(a)**, or as specified hereafter in the most recent Assignment and Assumption Agreement to which it is a party. “Tranche A-1 Revolver Commitments” means the aggregate amount of such commitments of all Lenders. As of the Closing Date, the Tranche A-1 Revolver Commitments are \$4,000,000.

Tranche A-1 Revolver Loan - a Loan made pursuant to **Section 2.1.1(c)**.

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

Transaction Expenses - any fees or expenses incurred or paid by the Company in connection with the Transactions (including in connection with this Agreement and the other Loan Documents).

Transactions - collectively, (a) the consummation of the Recapitalization Transactions and the other transactions contemplated by the Recapitalization Documents on or prior to the Closing Date, (b) the execution and delivery by the Obligors of the Loan Documents to which they are a party and the making of the initial Revolving Credit Loans and the issuance or deemed issuance of Letters of Credit (if any) on the Closing Date, and (c) the payment of the Transaction Expenses.

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

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

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

UCP - with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce (“ICC”) Publication No. 600 (or such later version thereof as may be in effect at the time of issuance).

Unreimbursed Amount - as defined in **Section 2.3.3(a)**.

Unrestricted Subsidiary - each Subsidiary designated by the board of directors (or equivalent governing body) of the Borrower as an Unrestricted Subsidiary, pursuant to **Section**

**10.1.16**, in each case together with its Subsidiaries and other than any such Subsidiary that has been redesignated as a Restricted Subsidiary pursuant to **Section 10.1.16**.

U.S. GAAP - as defined in the definition of GAAP.

U.S. Guarantor Subsidiaries - as defined in the definition of Guarantor Subsidiaries.

U.S. Person - means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

Value - for Inventory, its value determined on the basis of the lower of cost or market, calculated on a first-in, first out basis.

Voting Collateral Agent - the Administrative Agent and any Co-Collateral Agent (but not its respective assigns) for so long as, and during such time, that General Electric Capital Corporation and its Affiliates, or Bank of America and its Affiliates, as the case may be, each in its capacity as a Lender, shall, in the aggregate (a) have Commitments in excess of 20% of the aggregate Commitments of all Lenders; or (b) if the Commitments of the Lenders have terminated, have Loans, LC Obligations and Canadian LC Obligations in excess of 20% of all outstanding Loans, LC Obligations and Canadian LC Obligations of all Lenders.

**1.2** Accounting Terms. Under the Loan Documents (except as otherwise specified herein), all accounting terms shall be interpreted, all accounting determinations shall be made, and all financial statements shall be prepared, in accordance with GAAP applied on a basis consistent with the most recent audited financial statements of the applicable Borrower(s) delivered to Administrative Agent before the Closing Date and using the same inventory valuation method as used in such financial statements, except for any change required or permitted by GAAP if such Borrower’s certified public or chartered accountants concur in such change and the change is disclosed to Administrative Agent. If any such accounting change results in a change in any of the calculations required by **Section 10.3** that would not have resulted had such accounting change not occurred, the parties hereto agree to enter into negotiations in order to amend such provisions so as to equitably reflect such change such that the criteria for evaluating compliance with such covenants by the Borrowers shall be the same after such change as if such change had not been made; provided, however, that no change in GAAP that would affect a calculation that measures compliance with any covenant contained in **Section 10.3** shall be given effect until such provisions are amended to reflect such changes in GAAP.

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

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

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

**1.5 Times of Day; Rates.** Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable). The Agents do not warrant, nor accept responsibility, nor shall any Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of “Eurodollar Rate”, “Canadian BA Rate” or with respect to any comparable or successor rate thereto.

**1.6 Conversions of Foreign Currencies.** Financial Covenant Debt denominated in any currency other than Dollars shall be calculated using the Dollar Equivalent thereof as of the date of the financial statements on which such Financial Covenant Debt is reflected. Administrative Agent shall determine the Dollar Equivalent of any amount as required hereby, and a determination thereof by Administrative Agent shall be conclusive absent manifest error. Any Agent may, but shall not be obligated to, rely on any determination made by any Obligor in any document delivered to Administrative Agent. Any Agent may determine or redetermine the Dollar Equivalent of any amount on any date either in its own discretion or upon the request of any Lender or Issuing Bank. Any Agent may set up appropriate rounding off mechanisms or otherwise round-off amounts hereunder to the nearest higher or lower amount in whole Dollar or cents to ensure amounts owing by any party hereunder or that otherwise need to be calculated or converted hereunder are expressed in whole Dollars or in whole cents, as may be necessary or appropriate.

## **SECTION 2. CREDIT FACILITIES**

### **2.1 Commitments.**

2.1.1 **Loans.** (a) **Tranche A Revolver Loans.** Each Tranche A Lender agrees, severally on a Pro Rata basis up to its Tranche A Revolver Commitment, on the terms set forth herein, to make Tranche A Revolver Loans to the Company in Dollars from time to time through the Commitment Termination Date. The Tranche A Revolver Loans may be repaid and reborrowed as provided herein. The Company shall not request, and the Tranche A Lenders shall not advance any Tranche A Revolver Loans (other than (i) Swingline Loans as provided in **Section 4.1.3** and (ii) Tranche A Revolver Loans used to reimburse a draw on a Letter of Credit as provided in **Section 2.3.3**) at any time when the outstanding Tranche A-1 Revolver Loans are less than Tranche A-1 Borrowing Base. Other than as set forth in **Section 2.1.4**, the Company shall not request, and the Tranche A Lenders shall not have any obligation to honor a request for, a Tranche A Revolver Loan if (i) the sum of (x) the unpaid balance of Tranche A Revolver Loans outstanding at such time (including the requested Tranche A Revolver Loan), plus (y) the LC Obligations at such time, would exceed the Tranche A Borrowing Base or (ii) the aggregate unpaid balance of all Tranche A Revolver Loans (including the requested Tranche A Revolver Loan), Tranche A-1 Revolver Loans and the LC Obligations at such time would exceed the aggregate of the Tranche A Borrowing Base and Tranche A-1 Borrowing Base. Each request for a Tranche A Revolver Loan by the Company shall be deemed to be a representation by the Company that such Tranche A Revolver Loan so requested complies with the conditions set forth in this **Section 2.1.1(a)**.

(b) **Canadian Revolver Loans.** Each Canadian Lender agrees, severally on a Pro Rata basis up to its Canadian Revolver Commitment, on the terms set forth herein, to make Canadian Revolver Loans to Canadian Borrower in Canadian Dollars from time to time through

the Commitment Termination Date. The Canadian Revolver Loans may be repaid and reborrowed as provided herein. Other than as set forth in **Section 2.1.4**, the Canadian Borrower shall not request, and the Canadian Lenders shall not have any obligation to honor a request for, a Canadian Revolver Loan if the sum of (i) the unpaid balance of Canadian Revolver Loans outstanding at such time (including the requested Canadian Revolver Loan), plus (ii) the Canadian LC Obligations at such time, would exceed the Canadian Borrowing Base. Each request for a Canadian Revolver Loan by the Canadian Borrower shall be deemed to be a representation by the Canadian Borrower that such Canadian Revolver Loan so requested complies with the conditions set forth in this **Section 2.1.1(b)**.

(c) Tranche A-1 Revolver Loans. Each Tranche A-1 Lender agrees, severally on a Pro Rata basis up to its Tranche A-1 Revolver Commitment, on the terms set forth herein, to make Tranche A-1 Revolver Loans to the Company in Dollars from time to time through the Commitment Termination Date. The Company shall borrow the Tranche A-1 Revolver Loans up to the amount of the Tranche A-1 Borrowing Base prior to requesting any Tranche A Revolver Loans. The Tranche A-1 Revolver Loans may be repaid and reborrowed as provided herein; provided that, except as provided in **Section 2.2.4(e)**, the Tranche A-1 Revolver Loans may only be prepaid if there are no Tranche A Revolver Loans outstanding at such time. In no event shall the Company request, and the Tranche A-1 Lenders shall have no obligation to honor a request for, a Tranche A-1 Revolver Loan if (i) the aggregate unpaid balance of all Tranche A Revolver Loans and Tranche A-1 Revolver Loans (including the requested Tranche A-1 Revolver Loan) and all LC Obligations at such time would exceed the aggregate of the Tranche A Borrowing Base and Tranche A-1 Borrowing Base or (ii) the aggregate unpaid balance of all Tranche A-1 Revolver Loans outstanding at such time (including the requested Tranche A-1 Revolver Loan) would exceed the Tranche A-1 Borrowing Base. Each request for a Tranche A-1 Revolver Loan by the Company shall be deemed to be a representation by the Company that such Tranche A-1 Revolver Loan so requested complies with the conditions set forth in this **Section 2.1.1(c)**.

(d) Tranche A Borrowing Base, Tranche A-1 Borrowing Base and the Canadian Borrowing Base. The Tranche A Borrowing Base, the Tranche A-1 Borrowing Base and the Canadian Borrowing Base shall be determined from time to time by Administrative Agent by reference to the most recent Borrowing Base Certificate delivered by the Borrowers. Administrative Agent may from time to time establish and modify the Availability Reserves in accordance with the definition thereto in respect of the Tranche A Borrowing Base, the Tranche A-1 Borrowing Base and the Canadian Borrowing Base, as the case may be; *provided* that, except for Availability Reserves established as of the Closing Date (as to which no advance notice shall be required), any new Availability Reserves shall not be established except upon not less than three (3) Business Days' written notice to the Borrower Agent; *provided further* that no such written notice shall be required for changes to any Availability Reserves resulting solely by virtue of mathematical calculations of the amount of the Availability Reserves in accordance with the methodology of calculation previously utilized.

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

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

2.1.4 **Overadvances; Protective Advances.** If the sum of (i) the aggregate Tranche A Revolver Loans, plus (ii) the LC Obligations, exceeds the Tranche A Borrowing Base (“Tranche A Overadvance”) at any time, the excess amount shall be payable by the Company on demand by Administrative Agent or the Required Tranche A Revolver Lenders, but all such Loans shall nevertheless constitute Obligations secured by the Collateral and entitled to all benefits of the Loan Documents. If the sum of (i) the unpaid balance of Canadian Revolver Loans outstanding, plus (ii) the Canadian LC Obligations, exceeds the Canadian Borrowing Base (“Canadian Overadvance”) at any time, the excess amount shall be payable by the Canadian Borrower on demand by Administrative Agent, Canadian Agent or the Required Canadian Lenders, but all such Loans shall nevertheless constitute Obligations secured by the Collateral and be entitled to all benefits of the Loan Documents. Applicable Agent shall be authorized, in its discretion, at any time (including any time that a Default or Event of Default exists or any conditions in **Section 6.2** are not satisfied) to make Tranche A Revolver Loans or Canadian Revolver Loans (“Protective Advances”) (so long as at the time of the making of any Protective Advance, Protective Advances which constitute Overadvance Loans have not been outstanding for more than ninety (90) total days in the preceding 365 day period) up to an aggregate amount equal to (a) with respect to the Company, (i) 5% of the Tranche A Borrowing Base (without giving effect to any deduction of the Availability Block from the calculation of the Tranche A Borrowing Base) minus (ii) the aggregate amount of all Overadvance Loans in respect of Tranche A Overadvances or (b) with respect to the Canadian Borrower, (i) 5% of the Canadian Borrowing Base (without giving effect to any deduction of the Availability Block from the calculation of the Canadian Borrowing Base) minus (ii) the aggregate amount of all Overadvance Loans in respect of Canadian Overadvances, in each case, if Applicable Agent deems such Loans necessary or desirable to (A) preserve or protect any Collateral, or to enhance the collectibility or repayment of Obligations; or (B) pay any other amounts chargeable to Obligor under any Loan Documents, including costs, fees and expenses. All Protective Advances shall be Obligations, secured by the Collateral, and shall be treated for all purposes as Extraordinary Expenses. Protective Advances shall be funded as Base Rate Tranche A Revolver Loans or Canadian Prime Rate Loans, as applicable. Each Tranche A Lender shall participate in each Protective Advance in respect of the Tranche A Borrowing Base on a Pro Rata basis. Each Canadian Lender shall participate in each Protective Advance in respect of the Canadian Borrowing Base on a Pro Rata basis. In no event shall Protective Advances be required that would cause (x) the sum of the outstanding Tranche A Revolver Loans and LC Obligations to exceed the aggregate Tranche A Revolver Commitments, or (y) the sum of the outstanding Canadian Revolver Loans and Canadian LC Obligations to exceed the Canadian Revolver Commitments. Any funding of an Overadvance Loan or sufferance of a Protective Advance, Tranche A Overadvance or a Canadian Overadvance shall not constitute a waiver by Agents or Lenders of the Event of Default caused thereby. In no event shall any Borrower or other Obligor be deemed a beneficiary of this Section nor be authorized to enforce any of its terms. Notwithstanding anything herein to the contrary, no event or circumstance shall result in any claim or liability against any Agent for “inadvertent Overadvances” (i.e., where a Tranche A Overadvance or Canadian Overadvance results from changed circumstances beyond the control of the Applicable



Agent (such as a reduction in Collateral value)), and such “inadvertent Overadvances” shall not reduce the amount of Protective Advances allowed hereunder.

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

### **2.2.1 Voluntary Reduction or Termination of Tranche A Revolver Commitments.**

(a) The Tranche A Revolver Commitments shall terminate on the Termination Date, unless sooner terminated in accordance with this Agreement. Upon at least five (5) Business Days (or such shorter period as may be agreed by the Administrative Agent) prior written notice to Administrative Agent at any time, the Company may, at its option, terminate the Tranche A Revolver Commitments. Any notice of termination given by the Company shall be irrevocable; provided that such notice may state that it is conditioned upon the effectiveness of other credit facilities, the consummation of a particular sale or other disposition, the occurrence of a Change of Control or other events, in which case such notice may be revoked by the Company (by notice to Administrative Agent prior to the specified prepayment date) if such condition is not satisfied. On the termination date specified in such notice of termination, the Company shall make payment in full, in cash, of Tranche A Revolver Loans and all interest thereon and all Obligations due and owing to Administrative Agent or any Tranche A Lender, in its capacity as a Tranche A Lender.

(b) Company may permanently reduce the Tranche A Revolver Commitments, on a Pro Rata basis for each Tranche A Lender, from time to time upon written notice to Administrative Agent, which notice shall specify the amount of the reduction, shall be irrevocable once given and shall be given at least five (5) Business Days prior to the requested reduction date (or such shorter period as may be agreed by the Administrative Agent). Each reduction shall be in a minimum amount of \$10,000,000, or an increment of \$5,000,000 in excess thereof.

### **2.2.2 Voluntary Reduction or Termination of Tranche A-1 Revolver Commitments; Mandatory Prepayments.**

(a) The Tranche A-1 Revolver Commitments shall terminate on the Termination Date, unless sooner terminated in accordance with this Agreement. Upon at least five (5) Business Days (or such shorter period as may be agreed by the Administrative Agent) prior written notice to Administrative Agent, the Company may, at its option, terminate the Tranche A-1 Revolver Commitments so long as the Tranche A Revolver Commitments have been terminated or are concurrently terminated, or the Company has (i) certified in writing (pursuant to a certificate signed on its behalf by a Senior Officer) that there are no Tranche A Revolver Loans outstanding as of the date of such notice or the date of such termination, (ii) certified in writing that no Default or Event of Default exists or would result from such termination and (iii) has provided Administrative Agent with a Borrowing Base Certificate, in form and substance reasonably satisfactory to Administrative Agent, demonstrating that average Tranche A Excess Availability for the twelve-month period following such termination, calculated on a pro forma basis after giving effect to such termination, will be greater than or equal to twenty percent (20%) of the Tranche A Borrowing Base (without giving effect to any

deduction of the Availability Block from the calculation of the Tranche A Borrowing Base). Any notice of termination given by the Company shall be irrevocable; provided that such notice may state that it is conditioned upon the effectiveness of other credit facilities, the consummation of a particular sale or other disposition or the occurrence of a Change of Control, in which case such notice may be revoked by the Company (by notice to Administrative Agent prior to the specified prepayment date) if such condition is not satisfied. On the termination date specified in such notice of termination, the Company shall make payment in full, in cash of Tranche A-1 Revolver Loans and all interest thereon and all Obligations due and owing to Administrative Agent or any Tranche A-1 Lender, in its capacity as a Tranche A-1 Lender.

(b) The Company may permanently reduce the Tranche A-1 Revolver Commitments, on a Pro Rata basis for each Tranche A-1 Lender, upon at least five (5) Business Days prior written notice to Administrative Agent (or such shorter period as may be agreed by the Administrative Agent), so long as the Tranche A Revolver Commitments have been terminated or are concurrently terminated, or a Senior Officer of the Company has (i) certified in writing that there are no Tranche A Revolver Loans outstanding as of the date of such notice or the date of such reduction, (ii) certified in writing that no Default or Event of Default exists or would result from such termination and (iii) has provided Administrative Agent with a Borrowing Base Certificate, in form and substance reasonably satisfactory to Administrative Agent, demonstrating that average Tranche A Excess Availability for the twelve-month period following such termination, calculated on a pro forma basis after giving effect to such termination, will be greater than or equal to twenty percent (20%) of the Tranche A Borrowing Base (without giving effect to any deduction of the Availability Block from the calculation of the Tranche A Borrowing Base). Any such notice of reduction shall specify the amount of the reduction, shall be irrevocable once given, and shall be given at least five Business Days prior to the requested reduction date. Each reduction shall be in a minimum amount of \$1,000,000, or an increment of \$1,000,000 in excess thereof.

### **2.2.3 Voluntary Reduction or Termination of Canadian Revolver Commitments.**

(a) The Canadian Revolver Commitments shall terminate on the Termination Date, unless sooner terminated in accordance with this Agreement. Upon at least five (5) Business Days (or such shorter period as may be agreed by the Canadian Agent) prior written notice to Agents at any time, the Canadian Borrower may, at its option, terminate the Canadian Revolver Commitments. Any notice of termination given by the Canadian Borrower shall be irrevocable; provided that such notice may state that it is conditioned upon the effectiveness of other credit facilities, the consummation of a particular sale or other disposition or the occurrence of a Change of Control, in which case such notice may be revoked by the Canadian Borrower (by notice to the Agents prior to the specified prepayment date) if such condition is not satisfied. On the termination date specified in such notice of termination, Canadian Borrower shall make payment in full, in cash, of Canadian Revolver Loans and all interest thereon and all Obligations due and owing to the Canadian Agent or any Canadian Lender, in its capacity as a Canadian Lender.

(b) Canadian Borrower may permanently reduce the Canadian Revolver Commitments, on a Pro Rata basis for each Canadian Lender, from time to time upon written

notice to Agents, which notice shall specify the amount of the reduction, shall be irrevocable once given and shall be given at least five (5) Business Days prior to the requested reduction date (or such shorter period as may be agreed by the Administrative Agent). Each reduction shall be in a minimum amount of Cdn. \$2,000,000, or an increment of Cdn. \$1,000,000 in excess thereof.

#### 2.2.4 **Mandatory Prepayments.**

(a) Upon receipt by Holdings or any Restricted Subsidiary of (i) Net Proceeds of Revolving Credit Primary Collateral or Canadian Collateral or (ii) Net Insurance/Condemnation Proceeds in connection with a Property Loss Event affecting the Revolving Credit Primary Collateral or Canadian Collateral, in each case, the relevant Borrower shall immediately prepay its Loans (or, upon the request of the Applicable Agent acting in its sole discretion, Cash Collateralize Letters of Credit) in an amount equal to 100% of such Net Proceeds or such Net Insurance/Condemnation Proceeds, as the case may be. Net Proceeds and Net Insurance/Condemnation Proceeds received in respect of Revolving Credit Primary Collateral or Canadian Collateral shall be applied, if in respect of Collateral of the Company or any of its Subsidiaries, to the Tranche A Loans and, at the option of the Co-Collateral Agents, to the Cash Collateralization of the LC Obligations in accordance with the first sentence of **Section 2.2.4(c)**, and if in respect of Collateral of the Canadian Borrower or any of its Subsidiaries, to the Canadian Revolver Loans or, at the option of the Co-Collateral Agents, Cash Collateralization of Canadian LC Obligations in accordance with **Section 2.2.4(d)**. If no Tranche A Revolver Loans are outstanding and all LC Obligations have been Cash Collateralized, then Net Proceeds and Net Insurance/Condemnation Proceeds received in respect of Revolving Credit Primary Collateral shall be applied to the Tranche A-1 Revolver Loans in accordance with the last sentence of **Section 2.2.4(c)**.

(b) Other than with respect to Tranche A Overadvances, Canadian Overadvances and Protective Overadvances made pursuant to **Section 2.1.4**, in each case, permitted to remain outstanding, if at any time, (i) the sum of (x) the amount of outstanding Tranche A Revolver Loans, plus (y) the LC Obligations exceeds the Tranche A Borrowing Base at such time, (ii) the aggregate amount of outstanding Tranche A Revolver Loans and Tranche A-1 Revolver Loans and all LC Obligations exceeds the aggregate of the Tranche A Borrowing Base and the Tranche A-1 Borrowing Base at such time, (iii) the amount of outstanding Tranche A-1 Revolver Loans exceeds the Tranche A-1 Borrowing Base at such time or (iv) the sum of (x) the unpaid balance of Canadian Revolver Loans outstanding at such time, plus (y) the Canadian LC Obligations at such time, exceeds the Canadian Borrowing Base, then the relevant Borrower shall immediately pay the amount of such excess to the Applicable Agent for the respective accounts of the applicable Lenders for application to the Tranche A Revolver Loans, the Tranche A-1 Revolver Loans or the Canadian Revolver Loans, as the case may be, and, in the case of clauses (i) and (iii) above, if no Tranche A Revolver Loans or the Canadian Revolver Loans, as applicable, are then outstanding, as Cash Collateral for LC Obligations or Canadian LC Obligations, as the case may be, and, in the case of clause (ii) above, if no Tranche A Revolver Loans are outstanding and all LC Obligations have been Cash Collateralized, then to the Tranche A-1 Revolver Loans.

(c) Any prepayments required to be made by the Company in respect of the Tranche A Revolver Loans or the Cash Collateralization of the LC Obligations (or, if applicable,

the Tranche A-1 Revolver Loans) shall be applied first, to repay the outstanding principal balance of the Swingline Loans made to the Company until such Swingline Loans shall have been repaid in full; second, to repay the outstanding principal balance of the Tranche A Revolver Loans until such Tranche A Revolver Loans shall have been paid in full, third, to provide Cash Collateral for outstanding Letters of Credit and Bankers' Acceptances issued for the account or benefit of the Company until such Letters of Credit and Bankers' Acceptances have been Cash Collateralized in full and, fourth, to repay the outstanding principal balance of the Tranche A-1 Revolver Loans until such Tranche A-1 Revolver Loans shall have been paid in full. Any prepayments required to be made by the Company in respect of the Tranche A-1 Revolver Loans shall be applied to repay the outstanding principal balance of the Tranche A-1 Revolver Loans until such Tranche A-1 Revolver Loans shall have been paid in full.

(d) Any prepayments required to be made by the Canadian Borrower in respect of the Canadian Revolver Loans or Cash Collateralization of Canadian LC Obligations pursuant to this **Section 2.2.4** shall be applied first, to repay the outstanding principal balance of the Swingline Loans made to the Canadian Borrower until such Swingline Loans shall have been repaid in full; second, to repay the outstanding principal balance of the Canadian Revolver Loans until such Canadian Revolver Loans shall have been paid in full, and third, to provide Cash Collateral for outstanding Letters of Credit and Bankers' Acceptances issued for the account or benefit of the Canadian Borrower until such Letters of Credit and Bankers' Acceptances have been Cash Collateralized in full.

(e) At the time of delivery of each Borrowing Base Certificate, unless the conditions precedent to the making of a Tranche A Loan Revolver Loan have not been satisfied or a Liquidation has commenced, the Company shall be deemed to have requested, and the Tranche A Lenders shall make, a Base Rate Tranche A Revolver Loan to repay the Tranche A-1 Revolver Loans to the extent that the Tranche A-1 Revolver Loans exceed the Tranche A-1 Borrowing Base. Such Tranche A Revolver Loans (i) shall be applied to the outstanding Tranche A-1 Revolver Loans and (ii) shall be made (x) without regard to the minimum and multiples specified in **Section 4.1** for the principal amount of Base Rate Tranche A Revolver Loans and (y) without the requirement that the Company deliver a Notice of Borrowing in respect thereof.

## **2.3 Letter of Credit Facility.**

### **2.3.1 Letter of Credit Commitment.**

(a) Subject to the terms and conditions set forth herein, (i) Issuing Bank agrees, in reliance upon the agreements of the Lenders set forth in this **Section 2.3**, (A) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date (or (x) in the case of a Letter of Credit issued for the account of the Company, until the date of termination of the Tranche A Revolver Commitments, if earlier or (y) in the case of a Letter of Credit issued for the account of the Canadian Borrower, until the date of termination of the Canadian Revolver Commitments, if earlier), to issue or cause the issuance of Letters of Credit (1) for the account of the Company (or the joint account of the Company and any of its Subsidiaries) denominated in Dollars or (2) for the account of the Canadian Borrower (or the joint account of the Canadian Borrower and any of its Subsidiaries) denominated in

Canadian Dollars, and to amend or extend Letters of Credit previously issued by it in accordance with **Section 2.3.2** below, (B) to honor drawings under the Letters of Credit and (C) with respect to Acceptance Credits, to create Bankers' Acceptances in accordance with the terms thereof and hereof; and (ii) the Lenders severally agree to participate in Letters of Credit and Bankers' Acceptances issued for the account of the Borrowers (or the account of either Borrower or any of such Borrower's respective Subsidiaries) and any drawings thereunder; provided that the LC Conditions and/or the Canadian LC Conditions, as applicable, shall have been satisfied. Each request by any Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by such Borrower that the issuance of the Letter of Credit or Bankers' Acceptance so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrowers' ability to obtain Letters of Credit and Bankers' Acceptances shall be fully revolving, and accordingly the Borrowers may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. All Existing Letters of Credit as set forth on **Schedule 2.3.1** shall be deemed to have been issued pursuant hereto, and from and after the Closing Date shall be subject to and governed by the terms and conditions hereof.

(b) The Issuing Bank shall not be under any obligation to issue any Letter of Credit, if the LC Conditions and/or the Canadian LC Conditions, as applicable, have not been satisfied in full.

(c) The Issuing Bank shall not be under any obligation to issue any Letter of Credit if:

(i) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Issuing Bank from issuing the Letter of Credit or any related Bankers' Acceptance, or any law applicable to the Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Bank shall prohibit, or request that the Issuing Bank refrain from, the issuance of letters of credit or any related bankers' acceptance generally or the Letter of Credit or any related Bankers' Acceptance in particular or shall impose upon the Issuing Bank with respect to the Letter of Credit or any related Bankers' Acceptance any restriction, reserve or capital requirement (for which the Issuing Bank is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the Issuing Bank in good faith deems material to it;

(ii) the issuance of such Letter of Credit or any related Bankers' Acceptance would violate one or more policies of such Issuing Bank applicable to letters of credit generally, or the creation of any related Bankers' Acceptance would cause the Issuing Bank to exceed the maximum amount of outstanding bankers' acceptances permitted by Applicable Law;

(iii) any Lender is at such time a Defaulting Lender, unless the Issuing Bank has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the Issuing Bank (in its sole discretion) with the Borrowers or such Defaulting

Lender to eliminate the Issuing Bank's actual or potential Fronting Exposure (after giving effect to Section 2.8.1(d)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other LC Obligations as to which the Issuing Bank has actual or potential Fronting Exposure, as it may elect in its sole discretion;

(iv) such Letter of Credit or any related Bankers' Acceptance contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder;

(v) as to Acceptance Credits, the Bankers' Acceptance created or to be created thereunder shall not be an eligible bankers' acceptance under Section 13 of the Federal Reserve Act (12 U.S.C. § 372); or

(vi) the maturity date of any Bankers' Acceptance issued under any such requested Acceptance Credit would occur earlier than 30 days or later than 180 days from date of issuance.

(d) The Issuing Bank shall not amend any Letter of Credit if the Issuing Bank would not be permitted at such time to issue the Letter of Credit in its amended form under the terms hereof.

(e) The Issuing Bank shall be under no obligation to amend any Letter of Credit if (A) the Issuing Bank would have no obligation at such time to issue the Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of the Letter of Credit does not accept the proposed amendment to the Letter of Credit.

(f) The Issuing Bank shall act on behalf of the Lenders with respect to any Letters of Credit or any Bankers' Acceptance issued by it and the documents associated therewith, and the Issuing Bank shall have all of the benefits and immunities (A) provided to the Administrative Agent in **Section 12** with respect to any acts taken or omissions suffered by the Issuing Bank in connection with Letters of Credit or any Bankers' Acceptance issued by it or proposed to be issued by it and LC Documents pertaining to such Letters of Credit or such Bankers' Acceptance as fully as if the term "Administrative Agent" as used in **Section 12** included the Issuing Bank with respect to such acts or omissions, and (B) as additionally provided herein with respect to the Issuing Bank.

### **2.3.2 Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.**

(a) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the applicable Borrower delivered to the Issuing Bank (with a copy to the Administrative Agent) in the form of a LC Application, appropriately completed and signed (or, where such LC Application is completed online, such LC Application shall be submitted in accordance with the instructions provided by the applicable website) by a Senior Officer of such Borrower. Such LC Application may be sent by facsimile, by registered or certified mail, by overnight courier, by electronic transmission using the system provided by the Issuing Bank, by personal delivery or by any other means acceptable to the Issuing Bank. Such LC Application must be received by the Issuing Bank and the Administrative Agent not later than 1:00 p.m. at

least two Business Days (or such later date and time as the Issuing Bank may agree in a particular instance in its sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such LC Application shall specify in form and detail satisfactory to the Issuing Bank: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing or presentation thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing or presentation thereunder; (G) the purpose and nature of the requested Letter of Credit; and (H) such other matters as the Issuing Bank may reasonably require. In the case of a request for an amendment of any outstanding Letter of Credit, such LC Application shall specify in form and detail satisfactory to the Issuing Bank (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as the Issuing Bank may reasonably require. Additionally, the applicable Borrower shall furnish to the Issuing Bank and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any LC Documents, as the Issuing Bank or the Administrative Agent may reasonably require. Notwithstanding anything to the contrary in the foregoing, each Borrower may comply with the stated procedures of the Issuing Bank in lieu of the foregoing procedures set forth in this **Section 2.3.2(a)**.

(b) Promptly after receipt of any LC Application, the Issuing Bank will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such LC Application from the applicable Borrower and, if not, the Issuing Bank will provide the Administrative Agent with a copy thereof. Unless the Issuing Bank has received written notice from any Lender, the Administrative Agent or the applicable Borrower (or any Subsidiary of such Borrower, as applicable), at least one (1) Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in **Section 6** shall not then be satisfied, then, subject to the terms and conditions hereof, the Issuing Bank shall, on the requested date, issue a Letter of Credit for the account of the applicable Borrower (or for the joint account of such Borrower and any of such Borrower's Subsidiaries) or enter into the applicable amendment, as the case may be, in each case in accordance with the Issuing Bank's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Tranche A Lender or Canadian Lender, as the case may be, shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Issuing Bank a risk participation in such Letter of Credit in an amount equal to the product of such Lender's Pro Rata share times the amount of such Letter of Credit. Immediately upon the creation of each Bankers' Acceptance, each Tranche A Lender or Canadian Lender, as the case may be, shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Issuing Bank a risk participation in such Bankers' Acceptance in an amount equal to the product of such Lender's Pro Rata share times the amount of such Bankers' Acceptance.

(c) If any Borrower so requests in any applicable LC Application, the Issuing Bank may, in its sole and absolute discretion, agree to issue a standby Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); provided that any such Auto-Extension Letter of Credit must permit the Issuing Bank to prevent any such

extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the “Non-Extension Notice Date”) in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the Issuing Bank, the applicable Borrower shall not be required to make a specific request to the Issuing Bank for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Tranche A Revolver Lenders or the Canadian Lenders, as applicable, shall be deemed to have authorized (but may not require) the Issuing Bank to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date (unless all LC Obligations (including those anticipated to accrue) in respect of such Letter of Credit are (upon the request of the Issuing Bank or Required Lenders) Cash Collateralized); provided, however, that the Issuing Bank shall not permit any such extension if (A) the Issuing Bank has determined that it would not be permitted, or would have no obligation at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof, or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven Business Days before the Non-Extension Notice Date (1) from the Applicable Agent that the Required Tranche A Revolver Lenders or Required Canadian Lenders, as the case may be, have elected not to permit such extension or (2) from the Applicable Agent, any Lender or any Obligor that one or more of the LC Conditions or Canadian LC Conditions, as applicable, or one or more of the conditions set forth in **Section 6.2** is not then satisfied, and in each such case directing the Issuing Bank not to permit such extension.

(d) Each Issuing Bank agrees that, at least one (1) Business Date prior to the issuance or amendment of any Letter of Credit and at other time upon the reasonable request of the Administrative Agent, it shall from time to time provide the Administrative Agent with updated and complete information regarding Letters of Credit and Bankers’ Acceptances issued by such Issuing Bank in order to facilitate the Administrative Agent’s administration of the credit facilities hereunder (it being understood that upon any failure of any Issuing Bank to provide such information with respect to any Letter of Credit or Bankers’ Acceptance at the times required, the Administrative Agent may, in its discretion, exclude such Letter(s) of Credit or Bankers’ Acceptances issued by such Issuing Bank from the “Obligations” and from distributions under **Section 5.5**).

(e) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the Issuing Bank will also deliver to the applicable Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

### 2.3.3 **Drawings and Reimbursements; Funding of Participations.**

(a) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit or, with respect to any Acceptance Credit, presentation of documents, or any presentation for payment of a Bankers’ Acceptance, the Issuing Bank shall notify the applicable Borrower and the Administrative Agent thereof. Not later than 2:00 p.m. on the date of any payment by the Issuing Bank under a Letter of Credit or Bankers’ Acceptance (each such date, an “Honor Date”), the applicable Borrower shall reimburse the Issuing Bank through the Administrative Agent in an amount equal to the amount of such drawing or payment.



If the applicable Borrower fails to so reimburse the Issuing Bank by such time, the Administrative Agent shall promptly notify each Tranche A Lender or Canadian Lender, as the case may be, of the Honor Date, the amount of the unreimbursed drawing or payment (the “Unreimbursed Amount”), and the amount of such Lender’s Pro Rata share thereof. In such event, the applicable Borrower shall be deemed to have requested a Borrowing of Base Rate Tranche A Revolver Loan or a Canadian Prime Rate Loan, as the case may be, to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to (x) the minimum and multiples specified in **Section 4.1** for the principal amount of Base Rate Tranche A Revolver Loan or a Canadian Prime Rate Loan, as the case may be, and (y) in the case of a Base Rate Tranche A Revolver Loan, any requirement that the Tranche A-1 Revolver Loans be drawn in the full amount of the Tranche A-1 Borrowing Base prior to the making of such Base Rate Tranche A Revolver Loan, but subject to the amount of the unutilized portion of the relevant Commitments and the conditions set forth in **Section 6.2** (other than the delivery of a Notice of Borrowing), but subject to the amount of the unutilized portion of the relevant Commitments and the conditions set forth in **Section 6.2** (other than the delivery of a Notice of Borrowing). Any notice given by the Issuing Bank or the Administrative Agent pursuant to this **Section 2.3.3** may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(b) Each Tranche A Lender or Canadian Lender, as the case may be, shall upon any notice pursuant to **Section 2.3.3(a)** make funds available (and the Administrative Agent may apply Cash Collateral provided for this purpose) for the account of the Issuing Bank at the Administrative Agent’s Office in an amount equal to its Pro Rata share of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of **Section 2.3.3(c)**, each Lender that so makes funds available shall be deemed to have made a Base Rate Tranche A Revolver Loan or a Canadian Prime Rate Loan, as the case may be, to the applicable Borrower in such amount. The Administrative Agent shall remit the funds so received to the Issuing Bank.

(c) With respect to any Unreimbursed Amount that is not fully refinanced by a Borrowing of Base Rate Tranche A Revolver Loan or a Canadian Prime Rate Loan, as the case may be, because the conditions set forth in **Section 6.2** cannot be satisfied or for any other reason, the applicable Borrower shall be deemed to have incurred from the Issuing Bank an LC Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which LC Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each applicable Lender’s payment to the Administrative Agent for the account of the Issuing Bank pursuant to **Section 2.3.3(b)** shall be deemed payment in respect of its participation in such LC Borrowing and shall constitute an LC Advance from such Lender in satisfaction of its participation obligation under this **Section 2.3.3**.

(d) Until each applicable Lender funds its Pro Rata share of any Loan or LC Advance pursuant to this **Section 2.3.3** to reimburse the Issuing Bank for any amount drawn under any Letter of Credit or payment made under any Bankers’ Acceptance, interest in respect of such Lender’s Pro Rata share of such amount shall be solely for the account of the Issuing Bank.

(e) Each Lender's obligation to make Loans or LC Advances to reimburse the Issuing Bank for amounts drawn under Letters of Credit or payments of Bankers' Acceptances, as contemplated by this **Section 2.3.3**, shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Issuing Bank, any Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Lender's obligation to make Loans pursuant to this **Section 2.3.3** is subject to the conditions set forth in **Section 6.2** (other than delivery by the Borrowers of a Notice of Borrowing). No such making of an LC Advance shall relieve or otherwise impair the obligation of the applicable Borrower to reimburse the Issuing Bank for the amount of any payment made by the Issuing Bank under any Letter of Credit or Bankers' Acceptance, together with interest as provided herein.

(f) If any Lender fails to make available to the Administrative Agent for the account of the Issuing Bank any amount required to be paid by such Lender pursuant to the foregoing provisions of this **Section 2.3.3** by the time specified in **Section 2.3.3(b)**, then, without limiting the other provisions of this Agreement, the Issuing Bank shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Issuing Bank at a rate per annum equal to the greater of the Federal Funds Rate (or, with respect to Canadian Lenders, the Bank of Canada overnight rate) and a rate determined by the Issuing Bank in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Issuing Bank in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Pro Rata share of the Loan included in the relevant Borrowing or LC Advance in respect of the relevant LC Borrowing, as the case may be. A certificate of the Issuing Bank submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (f) shall be conclusive absent manifest error.

#### 2.3.4 **Repayment of Participations.**

(a) At any time after the Issuing Bank has made a payment under any Letter of Credit or Bankers' Acceptance and has received from any applicable Lender such Lender's LC Advance in respect of such payment in accordance with **Section 2.3.3**, if the Administrative Agent receives for the account of the Issuing Bank any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the applicable Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Pro Rata share thereof in the same funds as those received by the Administrative Agent.

(b) If any payment received by the Administrative Agent for the account of the Issuing Bank pursuant to **Section 2.3.3(a)** is required to be returned under any of the circumstances described in **Section 5.4** (including pursuant to any settlement entered into by the Issuing Bank in its discretion), each Lender shall pay to the Administrative Agent for the account of the Issuing Bank its Pro Rata share thereof on demand of the Administrative Agent, plus

interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the Federal Funds Rate (or, with respect to Canadian Lenders, the Bank of Canada overnight rate) from time to time in effect. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

2.3.5 **Obligations Absolute.** The obligation of the Borrowers to reimburse the Issuing Bank for each drawing under each Letter of Credit, each payment under any Bankers' Acceptance and to repay each LC Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(a) any lack of validity or enforceability of such Letter of Credit or Bankers' Acceptance, this Agreement, or any other Loan Document;

(b) the existence of any claim, counterclaim, setoff, defense or other right that the Borrowers or any of their respective Subsidiaries may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the Issuing Bank or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or Bankers' Acceptance or any agreement or instrument relating thereto, or any unrelated transaction;

(c) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit or Bankers' Acceptance;

(d) waiver by the Issuing Bank of any requirement that exists for the Issuing Bank's protection and not the protection of the Borrowers or any waiver by the Issuing Bank which does not in fact materially prejudice the Borrowers;

(e) honor of a demand for payment presented electronically even if such Letter of Credit or Bankers' Acceptance requires that demand be in the form of a draft;

(f) any payment made by the Issuing Bank in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under such Letter of Credit or Bankers' Acceptance if presentation after such date is authorized by the UCC, the ISP or the UCP, as applicable;

(g) any payment by the Issuing Bank under such Letter of Credit or Bankers' Acceptance against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the Issuing Bank under such Letter of Credit or Bankers' Acceptance to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver, interim receiver, national receiver, monitor or other representative of or successor to any beneficiary or any transferee of

such Letter of Credit or Bankers' Acceptance, including any arising in connection with any proceeding under the Bankruptcy Code or any Canadian Debtor Relief Law, as applicable; or

(h) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrowers or any of their respective Subsidiaries.

Each Borrower shall promptly examine a copy of each Letter of Credit and each Bankers' Acceptance and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with such Borrower's instructions or other irregularity, such Borrower will notify the Issuing Bank promptly after such examination. The applicable Borrower shall be conclusively deemed to have waived any such claim against the Issuing Bank and its correspondents unless such notice is given as aforesaid.

2.3.6 **Role of Issuing Bank.** Each Lender and each Borrower agree that, in paying any drawing under a Letter of Credit or making any payment under a Bankers' Acceptance, the Issuing Bank shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the Issuing Bank, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the Issuing Bank shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit, Bankers' Acceptance or LC Document. Each Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit or Bankers' Acceptance; provided, however, that this assumption is not intended to, and shall not, preclude such Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the Issuing Bank, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the Issuing Bank shall be liable or responsible for any of the matters described in clauses (a) through (h) of **Section 2.3.5**; provided, however, that anything in such clauses to the contrary notwithstanding, such Borrower may have a claim against the Issuing Bank, and the Issuing Bank may be liable to such Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by such Borrower which such Borrower proves were caused by the Issuing Bank's willful misconduct or gross negligence or the Issuing Bank's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit or to honor any Bankers' Acceptance presented for payment in strict compliance with its terms and conditions. In furtherance and not in limitation of the foregoing, the Issuing Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the Issuing Bank shall not be responsible for the validity or sufficiency of any instrument endorsing, transferring or assigning or purporting to endorse, transfer or assign a Letter of Credit or Bankers' Acceptance or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective

for any reason. The Issuing Bank may send a Letter of Credit or Bankers' Acceptance or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication ("SWIFT") message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

2.3.7 **Applicability of ISP and UCP; Limitation of Liability.** Unless otherwise expressly agreed by the Issuing Bank and the Borrower when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), (i) the rules of the ISP shall apply to each standby Letter of Credit, and (ii) the rules of the UCP shall apply to each commercial Letter of Credit. Notwithstanding the foregoing, the Issuing Bank shall not be responsible to the Borrowers for, and the Issuing Bank's rights and remedies against the Borrowers shall not be impaired by, any action or inaction of the Issuing Bank required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit, Banker's Acceptance or this Agreement, including the law or any order of a jurisdiction where the Issuing Bank or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade - International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit or Bankers' Acceptance chooses such law or practice.

2.3.8 **Conflict with LC Documents.** In the event of any conflict between the terms hereof and the terms of any LC Document, the terms hereof shall control.

2.3.9 **Letters of Credit Issued for Subsidiaries.** Notwithstanding that a Letter of Credit or Bankers' Acceptance issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary of the Company, the Company shall be obligated to reimburse the Issuing Bank hereunder for any and all drawings under such Letter of Credit or payments of such Bankers' Acceptance. Notwithstanding that a Letter of Credit or Bankers' Acceptance issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary of the Canadian Borrower, the Canadian Borrower shall be obligated to reimburse the Issuing Bank hereunder for any and all drawings under such Letter of Credit or payments of such Bankers' Acceptance. Each Borrower hereby acknowledges that the issuance of Letters of Credit and Bankers' Acceptances for the account of its respective Subsidiaries inures to the benefit of such Borrower, and that such Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

## **2.4 Increase in Tranche A Revolver Commitments.**

2.4.1 **Increase in Commitments, Etc.** Provided no Default or Event of Default has occurred and is continuing, upon notice to the Administrative Agent (which shall promptly notify the Lenders or such subset of Lenders as requested by the Company), the Company may increase the aggregate Tranche A Revolver Commitments up to a maximum amount of \$155,000,000; provided that (i) any such increase shall be in a minimum amount of \$10,000,000, (ii) in no event shall the aggregate Tranche A Revolver Commitments (after giving effect to all requested increases therein) exceed \$155,000,000 and (iii) in no event shall the amount of the increases in respect of the Tranche A Revolver Commitments effected under this

**Section 2.4**, plus the Dollar Equivalent of the increases in respect of the Canadian Revolver Commitments effected under **Section 2.5** exceed \$30,000,000 in the aggregate. Any such increase in the aggregate Tranche A Revolver Commitments may be provided by any Tranche A Lender willing to participate in such increase or, subject to the approval of the Administrative Agent, Eligible Assignees designated by the Borrowers that are willing to participate in such increase (each, an “Increasing Lender”) and to become Tranche A Lenders pursuant to a joinder agreement in form and substance reasonably satisfactory to the Administrative Agent, pursuant to which such Eligible Assignees shall become a party to this Agreement; provided that the terms and conditions of such Increasing Lender’s Tranche A Revolver Commitment will be the same as those applicable to the other Tranche A Lenders (other than closing and arrangement fees that may be agreed among the Company, MLPFS and the applicable Increasing Lender). The Administrative Agent and the Company shall determine (A) the final allocation of such increase among the Increasing Lenders and Schedule 1.1(a) attached hereto shall be automatically updated to reflect the same and (B) the effective date (the “Tranche A Increase Effective Date”) of any such increase. Nothing contained herein shall constitute, or otherwise be deemed to be, a commitment on the part of any Lender to increase its Tranche A Revolver Commitment hereunder.

2.4.2 **Conditions to Effectiveness of Increase**. As conditions precedent to any such increase, the Company shall (i) deliver to the Administrative Agent a certificate of each Obligor dated as of the Tranche A Increase Effective Date signed by a Senior Officer of such Obligor (A) certifying and attaching the resolutions adopted by such Obligor approving or consenting to such increase and (B) certifying that, before and after giving effect to such increase, (x) the representations and warranties contained in **Section 9** and the other Loan Documents are true and correct in all material respects on and as of the Tranche A Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects as of such earlier date, and except that for purposes of this **Section 2.4**, the representations and warranties contained in **Section 9.1.8** shall be deemed to refer to the most recent financial statements furnished to the Administrative Agent under this Agreement, and (y) no Default or Event of Default has occurred and is continuing and (ii) to the extent required or desirable in the reasonable opinion of the Administrative Agent or any Co-Collateral Agent, the Administrative Agent and the Co-Collateral Agents shall have received a certification from the Company, together with evidence reasonable satisfactory to the Administrative Agent and the Co-Collateral Agents, that the Term Debt Documents and the Intercreditor Agreement permits such increase (with the same rights and priority as the existing Tranche A Revolver Commitments). The Increasing Lenders shall purchase from the existing Tranche A Revolver Lenders any Tranche A Revolver Loans outstanding on the Tranche A Increase Effective Date (and in connection therewith the Company shall pay to such existing Tranche A Revolving Lenders any additional amounts that would be required pursuant to **Section 3.9** if such purchased Loans had been repaid on such date) to the extent necessary to keep the outstanding Tranche A Revolver Loans ratable with any revised Pro Rata shares arising from any nonratable increase in the Tranche A Revolver Commitments under this **Section 2.4**. The Administrative Agent and each Increasing Lender may rely, without verification, on the certification made by the Obligors pursuant to this **Section 2.4.2**, and any Commitments provided in reliance thereon, and any Obligations incurred by the Obligors pursuant thereto, shall be deemed Commitments and Obligations, respectively, under this Agreement, regardless of any actual failure to satisfy the conditions to such increase in

Commitments set forth in this **Section 2.4** (it being agreed, however, that any such increase in Commitments effected without satisfying such conditions shall, for so long as such conditions remain unsatisfied, constitute an Event of Default under this Agreement).

## **2.5 Increase in Canadian Revolver Commitments.**

2.5.1 **Increase in Commitments, Etc.** Provided no Default or Event of Default has occurred and is continuing, upon notice to the Administrative Agent and the Canadian Agent (which shall promptly notify the Lenders or such subset of Lenders as requested by the Company and the Canadian Borrower), the Company and the Canadian Borrower may increase the aggregate Canadian Revolver Commitments up to a maximum amount of Cdn. \$34,000,000; provided that (i) any such request for an increase shall be in a minimum amount of Cdn. \$5,000,000, (ii) in no event shall the aggregate Canadian Revolver Commitments (after giving effect to all requested increases therein) exceed Cdn. \$34,000,000 and (iii) in no event shall the amount of the increases in respect of the Tranche A Revolver Commitments effected under **Section 2.4**, plus the Dollar Equivalent of the increases in respect of the Canadian Revolver Commitments effected under this **Section 2.5** exceed \$30,000,000 in the aggregate. Any such increase in the aggregate Canadian Revolver Commitments may be provided by any Canadian Lender willing to participate in such increase or, subject to the approval of the Agents, Eligible Assignees designated by the Canadian Borrower that are willing to participate in such increase (each, an “Increasing Canadian Lender”) and to become Canadian Lenders pursuant to a joinder agreement in form and substance reasonably satisfactory to the Administrative Agent, pursuant to which such Eligible Assignees shall become a party to this Agreement; provided that the terms and conditions of such Increasing Canadian Lender’s Canadian Revolver Commitment will be the same as those applicable to the other Canadian Revolving Lenders (other than closing and arrangement fees that may be agreed among the Company, MLPFS and the applicable Increasing Canadian Lender). The Agents, the Company and the Canadian Borrower shall determine (A) the final allocation of such increase among the Increasing Canadian Lenders and Schedule 1.1(a) attached hereto shall be automatically updated to reflect the same and (B) the effective date (the “Canadian Increase Effective Date”) of any such increase. Nothing contained herein shall constitute, or otherwise be deemed to be, a commitment on the part of any Lender to increase its Canadian Revolver Commitments hereunder.

2.5.2 **Conditions to Effectiveness of Increase.** As conditions precedent to any such increase, the Company and the Canadian Borrower shall (i) deliver to the Agents a certificate of each Obligor dated as of the Canadian Increase Effective Date (in sufficient copies for each Lender) signed by a Senior Officer of such Obligor (A) certifying and attaching the resolutions adopted by such Obligor approving or consenting to such increase, and (B) certifying that, before and after giving effect to such increase, (x) the representations and warranties contained in **Section 9** and the other Loan Documents are true and correct in all material respects on and as of the Canadian Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects as of such earlier date, and except that for purposes of this **Section 2.5**, the representations and warranties contained in **Section 9.1.8** shall be deemed to refer to the most recent financial statements furnished in connection with the statements furnished to the Administrative Agent under this Agreement, and (y) no Default or Event of Default has occurred and is continuing and (ii) to the extent required or desirable in the reasonable opinion of the

Administrative Agent or any Co-Collateral Agent, the Administrative Agent and the Co-Collateral Agents shall have received a certification from the Company, together with evidence reasonable satisfactory to the Administrative Agent and the Co-Collateral Agents, that the Term Debt Documents and the Intercreditor Agreement permits such increase (with the same rights and priority as the existing Canadian Revolver Commitments). The Increasing Canadian Lenders shall purchase from the existing Canadian Lenders any Canadian Revolver Loans outstanding on the Canadian Increase Effective Date (and in connection therewith the Canadian Borrower shall pay to such existing Canadian Lenders any additional amounts that would be required pursuant to **Section 3.9** if such purchased Loans had been repaid on such date) to the extent necessary to keep the outstanding Canadian Revolver Loans ratable with any revised Pro Rata shares arising from any nonratable increase in the Canadian Revolver Commitments under this **Section 2.5**. Each Agent and each Increasing Canadian Lender may rely, without verification, on the certification made by the Obligors pursuant to this **Section 2.5.2**, and any Commitments provided in reliance thereon, and any Obligations incurred by the Obligors pursuant thereto, shall be deemed Canadian Revolver Commitments and Canadian Obligations, respectively, under this Agreement, regardless of any actual failure to satisfy the conditions to such increase in the Canadian Revolver Commitments set forth in this **Section 2.5** (it being agreed, however, that any such increase in Canadian Revolver Commitments effected without satisfying such conditions shall, for so long as such conditions remain unsatisfied, constitute an Event of Default under this Agreement).

**2.6 Reserved.**

**2.7 Cash Collateral.**

2.7.1 **Certain Credit Support Events.** If (i) the Issuing Bank has honored any full or partial drawing request under any Letter of Credit or made any payment under any Bankers' Acceptances and such drawing has resulted in an LC Borrowing, (ii) as of the Letter of Credit Expiration Date, any LC Obligation and/or Canadian LC Obligation for any reason remains outstanding, or (iii) the Borrowers shall be required to provide Cash Collateral pursuant to **Section 11.2(c)**, the applicable Borrower shall, in each case, immediately Cash Collateralize all LC Obligations and/or Canadian LC Obligations in an amount not less than the applicable Minimum Collateral Amount, as applicable. At any time that there shall exist a Defaulting Lender, promptly (and in any event within one (1) Business Day) upon the request of the Applicable Agent or the Issuing Bank, the applicable Borrower shall deliver to the Applicable Agent Cash Collateral in an amount not less than the applicable Minimum Collateral Amount (after giving effect to **Section 2.8.1(d)** and any Cash Collateral provided by the Defaulting Lender).

2.7.2 **Grant of Security Interest.** All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in a Cash Collateral Account. Each Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to (and subjects to the control of) the Applicable Agent, for the benefit of the Applicable Agent, the Issuing Bank and the applicable Lenders (including, (i) in the case of any such grant by the Company or any of the U.S. Guarantor Subsidiaries, the Administrative Agent, in its capacity as provider of Swingline Loans, and (ii) in the case of any such grant by the Canadian Borrower or any of the Canadian Guarantor Subsidiaries, the Canadian Agent, in



its capacity as provider of Swingline Loans), and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to **Section 2.7.3**. If at any time the Applicable Agent or Issuing Bank determines that Cash Collateral is subject to any right or claim of any Person other than the Applicable Agent as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the applicable Borrower will, promptly upon demand by the Applicable Agent, pay or provide to the Applicable Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency. The Borrowers shall pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of Cash Collateral.

2.7.3 **Application.** Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this **Section 2.7.3** or **Sections 2.3, 2.2.4, 2.8** or **11.2** in respect of Letters of Credit, Bankers' Acceptances shall be held and applied to the satisfaction of the specific LC Obligations and/or Canadian LC Obligations, as applicable, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

2.7.4 **Release.** Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or to secure other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with **Section 13.2.1(vii)**) or (ii) the determination by the Administrative Agent and the Issuing Bank that there exists excess cash collateral (including cash collateral provided pursuant to **Section 2.8.1(b)**); provided, however, that (x) Cash Collateral furnished by or on behalf of an Obligor shall not be released during the continuance of a Default or Event of Default (and following application as provided in this **Section 2.7** may be otherwise applied in accordance with **Sections 5.5.3** and **5.5.4**, as applicable) and (y) the Person providing Cash Collateral and the Issuing Bank may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

## **2.8 Defaulting Lenders.**

2.8.1 **Adjustments.** Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by Applicable Law:

(a) **Waivers and Amendments.** Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders" and **Section 14.1.1**.

(b) **Reallocation of Payments.** Any payment of principal, interest, fees or other amounts received by the Applicable Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to **Section 11** or otherwise, or received by the Administrative Agent from a Defaulting Lender pursuant to **Section 11.4**), shall be applied at such time or times as may be determined by the Applicable Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Applicable Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the Issuing Bank or Applicable Agent, in its capacity as provider of Swingline Loans, hereunder; third, to Cash Collateralize the Issuing Bank's Fronting Exposure with respect to such Defaulting Lender in accordance with **Section 2.7**; fourth, (a) if no Default or Event of Default then exists or would result therefrom, to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement or (b), otherwise, to the prepayment of Loans funded by other Lenders pursuant to any Notice of Borrowing which was not honored by such Defaulting Lender; fifth, if so determined by the Applicable Agent or (so long as no Event of Default exists) the applicable Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the Issuing Bank's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with **Section 2.7**; sixth, to the payment of any amounts owing to the Lenders, the Issuing Bank or Applicable Agent, in its capacity as provider of Swingline Loans, as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the Issuing Bank or Applicable Agent, in its capacity as provider of Swingline Loans, against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the applicable Borrower as a result of any judgment of a court of competent jurisdiction obtained by such Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or LC Borrowings in respect of which such Defaulting Lender has not fully funded its appropriate share and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in **Section 6.2** were satisfied or waived, such payment shall be applied solely to pay the Loans of, and LC Obligations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or LC Obligations owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations and Swingline Loans are held by the Lenders pro rata in accordance with the Commitments hereunder without giving effect to **Section 2.8.1(d)**. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this **Section 2.8.1(b)** shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(c) **Certain Fees.** That Defaulting Lender (x) shall not be entitled to receive any commitment fee pursuant to **Section 3.2.1** for any period during which that Lender is a Defaulting Lender (and the Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender) and (y) shall be limited in its right to receive Letter of Credit Fees as provided in **Section 3.2.2**.

(d) **Reallocation of Pro Rata Shares to Reduce Fronting Exposure.**

During any period in which there is a Defaulting Lender, for purposes of computing the amount of the obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit, Bankers' Acceptances or Swingline Loans pursuant to **Sections 2.3** and **4.1.3**, the Pro Rata share of each non-Defaulting Lender shall be computed without giving effect to the Commitment of that Defaulting Lender; provided, that, (i) each such reallocation shall be given effect only if no Event of Default exists; and (ii) the aggregate obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit, Bankers' Acceptances and Swingline Loans shall not exceed the positive difference, if any, of (1) the Commitment of that non-Defaulting Lender minus (2) the aggregate outstanding amount of that Lender's Pro Rata share of the Loans. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(e) **Cash Collateral, Repayment of Swingline Loans.** If the reallocation described in clause (d) above cannot, or can only partially, be effected, the Borrowers shall, without prejudice to any right or remedy available to it hereunder or under Applicable Law, (x) first, prepay Swingline Loans in an amount equal to the Applicable Agent's, in its capacity as a provider of Swingline Loans, Fronting Exposure and (y) second, Cash Collateralize the Issuing Bank's Fronting Exposure in accordance with the procedures set forth in **Section 2.7**.

2.8.2 **Defaulting Lender Cure.** If the applicable Borrower, the Applicable Agent, the Applicable Agent, in its capacity as provider of Swingline Loans and the Issuing Bank agree in writing that a Lender is no longer a Defaulting Lender, the Applicable Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Applicable Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit, Bankers' Acceptances and Swingline Loans to be held on a Pro Rata basis by the Lenders in accordance with their respective Pro Rata shares (without giving effect to **Section 2.8.1(d)**), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the applicable Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

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

#### **3.1 Interest.**

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

(a) The Obligations shall bear interest (i) if a Base Rate Tranche A Revolver Loan, at the Base Rate in effect from time to time, plus the Applicable Margin for Base Rate

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

(b) During any Event of Default arising from the failure to repay principal when due, and during any other Event of Default to which Required Lenders have elected to apply Default Rate interest, Obligations shall bear interest at the Default Rate. Each Borrower acknowledges that the cost, expense and risk to each Agent and each Lender due to an Event of Default are difficult to ascertain and that the Default Rate is a fair and reasonable estimate to compensate Agents and Lenders for such added cost, expense and risk.

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

### **3.1.2 Application of Eurodollar Rate and/or the Canadian BA Rate to Outstanding Loans.**

(a) Company may on any Business Day, subject to delivery of a Notice of Borrowing under clause (b) below, elect to convert any portion of the Base Rate Tranche A Revolver Loans to, or to continue any LIBOR Tranche A Revolver Loan at the end of its Interest Period as, a LIBOR Tranche A Revolver Loan. Company may on any Business Day, subject to delivery of a Notice of Borrowing under clause (b) below, elect to convert any portion of the

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

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

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

3.1.3 **Interest Periods.** The term “Interest Period” means as to (a) each LIBOR Loan, the period commencing on the date such LIBOR Loan is disbursed or converted to or continued as a LIBOR Loan and ending on the date one, two, three or six months thereafter (in each case, subject to availability), as selected by the Borrower Agent in its Notice of Borrowing and (b) each Canadian BA Rate Loan, the period commencing on the date such Canadian BA Rate Loan is disbursed or converted to or continued as a Canadian BA Rate Loan and ending on

the date one, two, three or six months thereafter (in each case, subject to availability), as selected by the Borrower Agent in its Committed Loan Notice; provided that:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless, in the case of a LIBOR Loan or a Canadian BA Rate Loan, as the case may be, such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(b) any Interest Period pertaining to a LIBOR Loan or a Canadian BA Rate Loan, as the case may be, that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

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

#### 3.1.4 **Interest Rate Not Ascertainable.**

(a) If in connection with any request for a LIBOR Loan, a Canadian BA Rate Loan or a conversion to or continuation thereof, (i) the Applicable Agent determines that (A) deposits (whether in Dollars or Canadian Dollars) are not being offered to banks in the applicable offshore interbank market for such currency for the applicable amount and Interest Period of such LIBOR Loan or Canadian BA Rate Loan, or (B) adequate and reasonable means do not exist for determining Eurodollar Rate or the Canadian BA Rate for any requested Interest Period with respect to a proposed LIBOR Loan or Canadian BA Rate Loan (whether in Dollars or Canadian Dollars) in connection with an existing or proposed Base Rate Loan (in each case with respect to clause (a)(i) above, "Impacted Loans"), or (ii) the Applicable Agent or the affected Lenders determines that for any reason Eurodollar Rate or the Canadian BA Rate for any requested Interest Period with respect to a proposed LIBOR Loan or Canadian BA Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such LIBOR Loan or Canadian BA Rate Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain LIBOR Loans or Canadian BA Rate Loans shall be suspended, (to the extent of the affected LIBOR Loans, Canadian BA Rate Loans or Interest Periods), and (y) in the event of a determination described in the preceding sentence with respect to the Eurodollar Rate component of the Base Rate, the utilization of the Eurodollar Rate component in determining the Base Rate shall be suspended, in each case until the Applicable Agent upon the instruction of the affected Lenders revokes such notice. Upon receipt of such notice, the Borrowers may revoke any pending request for a Borrowing of, conversion to or continuation of LIBOR Loans or Canadian BA Rate Loans (to the extent of the affected LIBOR Loans, Canadian BA Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans or Canadian Prime Rate Loans in the amount specified therein.

(b) Notwithstanding the foregoing, if the Applicable Agent has made the determination described in clause (a)(i) of this section, the Applicable Agent, in consultation with the Borrowers and the affected Lenders, may establish an alternative interest rate for the

Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (1) the Applicable Agent revokes the notice delivered with respect to the Impacted Loans under clause (a)(i) of this section, (2) the Administrative Agent or the affected Lenders notify the Administrative Agent and the Borrowers that such alternative interest rate does not adequately and fairly reflect the cost to such Lenders of funding the Impacted Loans, or (3) any Lender determines that any Applicable Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable lending office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Applicable Agent and the Borrowers written notice thereof.

### 3.2 Fees.

3.2.1 **Commitment Fee.** The relevant Borrower shall pay to Applicable Agent (i) for the Pro Rata benefit of the Tranche A Lenders, a commitment fee equal to the Applicable Commitment Fee Rate then in effect times the actual daily amount by which the Tranche A Revolver Commitments exceed the balance of Tranche A Revolver Loans (excluding Swingline Loans) and stated amount of Letters of Credit and Bankers' Acceptances issued for the account or benefit of the Company, (ii) for the Pro Rata benefit of the Tranche A-1 Lenders, a commitment fee equal to the Applicable Commitment Fee Rate then in effect times the actual daily amount by which the Tranche A-1 Revolver Commitments exceed the balance of Tranche A-1 Revolver Loans and (iii) for the Pro Rata benefit of the Canadian Lenders, a commitment fee equal to the Applicable Commitment Fee Rate then in effect times the actual daily amount by which the Canadian Revolver Commitments exceed the balance of Canadian Revolver Loans (excluding Swingline Loans) and stated amount of Letters of Credit and Bankers' Acceptances issued for the account or benefit of the Canadian Borrower. The fees payable under this **Section 3.2.1** (collectively, the "**Commitment Fees**") shall be payable in arrears on the first Business Day of each calendar quarter and on the Commitment Termination Date.

3.2.2 **LC Facility Fees.** The relevant Borrower shall pay (i) to Applicable Agent, for the Pro Rata benefit of the Tranche A Lenders or the Canadian Lenders, as applicable, a fee equal to the Applicable Margin in effect for Standby Letter of Credit Fees times the average daily stated amount of standby Letters of Credit issued for the account or benefit of such Borrower, which fee (a "**Standby Letter of Credit Fee**") shall be payable quarterly in arrears, on the first Business Day of each calendar quarter; (ii) to Applicable Agent, for the Pro Rata benefit of the Tranche A Lenders or the Canadian Lenders, as applicable, a fee equal to the Applicable Margin in effect for Documentary Letter of Credit Fees times the average daily stated amount of documentary Letters of Credit and Bankers' Acceptances issued for the account or benefit of such Borrower, which fee (a "**Documentary Letter of Credit Fee**") shall be payable quarterly in arrears, on the first Business Day of each calendar quarter; (iii) to each Issuing Bank, a fronting fee, for the account of such Issuing Bank, with respect to each Letter of Credit and Bankers' Acceptance issued for the account or benefit of such Borrower by such Issuing Bank in the amount equal to 0.125% per annum (or another amount as agreed to between such Issuing Bank and the Borrowers), which fee shall be payable quarterly in arrears, on the first Business Day of each calendar quarter; and (iv) to Issuing Bank, for its own account, all customary charges

associated with the issuance, amending, negotiating, payment, processing, transfer and administration of Letters of Credit and Bankers' Acceptances, which charges shall be paid as and when incurred; provided, however, any Letter of Credit Fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit or Bankers' Acceptance as to which such Defaulting Lender has not provided Cash Collateral satisfactory to the Issuing Bank pursuant to **Section 2.3** shall be payable, to the maximum extent permitted by Applicable Law, to the other Tranche A Lenders or the Canadian Lenders, as applicable, in accordance with the upward adjustments in their respective Pro Rata shares of such Letter of Credit pursuant to **Section 2.8.1(d)**, with the balance of such fee, if any, payable to the Issuing Bank for its own account. If there is any change in the Applicable Margin during any quarter, the daily amount available to be drawn under each Letter of Credit or Bankers' Acceptance shall be computed and multiplied by the Applicable Margin relevant to such Letter of Credit separately for each period during such quarter that such Applicable Margin was in effect. Notwithstanding anything to the contrary contained herein, upon the request of the Required Lenders, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

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

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



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

**3.5 Illegality.** If any Lender determines that any Applicable Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to perform any of its obligations hereunder or make, maintain or fund or charge interest with respect to any Loan, LC Obligation or other credit extension or to determine or charge interest rates based upon the Eurodollar Rate or the Canadian BA Rate, or any Governmental Authority has imposed material restrictions on the Canadian market for bankers' acceptances or on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (i) any obligation of such Lender to issue, make, maintain, fund or charge interest with respect to any such Loan, LC Obligation or other credit extension or continue LIBOR Loans or Canadian BA Rate Loans or to convert Base Rate Loans to LIBOR Loans or convert Canadian Prime Rate Loans to Canadian BA Rate Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans or Canadian Prime Rate Loans, the interest rate on which is determined by reference to the Eurodollar Rate or the Canadian BA Rate component of the Base Rate or the Canadian Prime Rate, as applicable, the interest rate on which Base Rate Loans or Canadian Prime Rate Loans, as applicable, of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate or the Canadian BA Rate component of the Canadian Prime Rate, as applicable, in

each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the applicable Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate) and/or all Canadian BA Rate Loans of such Lender to Canadian Prime Rate Loans (the interest rate on which Canadian Prime Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Canadian BA Rate component of the Canadian Prime Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurodollar Rate or the Canadian BA Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurodollar Rate component thereof (or the Canadian Prime Rate to such Lender without reference to the Canadian BA Rate component thereof) until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurodollar Rate or the Canadian BA Rate, as applicable. Upon any such prepayment or conversion, the applicable Borrower shall also pay accrued interest on the amount so prepaid or converted.

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

(i) a Lender shall be subject to any Tax with respect to any LIBOR Loan, Canadian BA Rate Loan or Letter of Credit or Bankers' Acceptance or its obligation to make LIBOR Loans, Canadian BA Rate Loans, issue Letters of Credit or Bankers' Acceptances or participate in LC Obligations and/or Canadian LC Obligations or its deposits, reserves, other liabilities or capital attributable thereto, or a change shall result in the basis of taxation of any payment to a Lender with respect to its LIBOR Loans, Canadian BA Rate Loans or its obligation to make LIBOR Loans, Canadian BA Rate Loans, issue Letters of Credit or Bankers' Acceptances or participate in LC Obligations and/or Canadian LC Obligations (except for (x) Indemnified Taxes (y) Taxes that are described in clauses (b) through (e) of the definition of Excluded Taxes and (z) Connection Income Taxes); or

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

shall be imposed on such Lender or the London interbank market or such other relevant interbank market;

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

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

Within fifteen (15) days after receipt by Borrower Agent of written notice and/or demand from any Lender (an "Affected Lender") (i) stating that, pursuant to **Section 3.5**, such Lender can no longer make LIBOR Loans or Canadian BA Rate Loans or (ii) demanding payment of additional amounts or increased costs pursuant to **Section 3.6**, Borrower Agent may, at its option, notify Applicable Agent and such Affected Lender of its intention to replace the Affected Lender. So long as no Default or Event of Default shall have occurred and be continuing, Borrower Agent, with the consent of Administrative Agent, may obtain, at Borrowers' expense, a replacement Lender ("Replacement Lender") for the Affected Lender, which Replacement Lender must be (i) an Eligible Assignee and (ii) satisfactory to Administrative Agent. If Borrowers obtain a Replacement Lender within ninety (90) days following notice of their intention to do so, the Affected Lender must sell and assign its Loans and Commitments to such Replacement Lender for an amount equal to the principal balance of all Loans held by the

Affected Lender and all accrued interest and fees with respect thereto through the date of such sale; provided that Borrowers shall have reimbursed such Affected Lender for the additional amounts or increased costs that it is entitled to receive under this Agreement through the date of such sale and assignment. Notwithstanding the foregoing, Borrowers shall not have the right to obtain a Replacement Lender if the Affected Lender (i) in the case of a notice under **Section 3.5**, rescinds its notice that it can no longer fund LIBOR Loans or Canadian BA Rate Loans or (ii) in the case of a demand under **Section 3.6**, rescinds its demand for increased costs or additional amounts, within fifteen (15) days following its receipt of Borrower Agent's notice of intention to replace such Affected Lender. Furthermore, if Borrower Agent gives a notice of intention to replace and does not so replace such Affected Lender within ninety (90) days thereafter, Borrowers' rights under this paragraph as to such noticed replacement shall terminate.

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

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

**3.8 Mitigation.** Each Lender agrees that, upon becoming aware that it is subject to **Section 3.5, 3.6, 3.7 or 5.8**, it will take reasonable measures to reduce Borrowers' obligations

under such Sections, including funding or maintaining its Commitments or Loans through another office, as long as use of such measures would not adversely affect the Lender's Commitments, Loans, business or interests, and would not be inconsistent with any applicable legal or regulatory restriction. To the extent permitted by Applicable Law, each Lender may make any credit extension to the applicable Borrowers through any Lending Office, provided that the exercise of this option shall not affect the obligation of such Borrowers to repay the credit extension in accordance with the terms of this Agreement.

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

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

interest at any time charged or received from Borrowers in connection with the Loan Documents shall, to the extent permitted by Applicable Law, be amortized, prorated, allocated and spread in equal parts throughout the full term of the Obligations.

## **SECTION 4. LOAN ADMINISTRATION**

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

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

(a) Whenever Borrowers desire funding of a Borrowing of Loans, Borrower Agent shall give Administrative Agent irrevocable notice, which may be given by (A) telephone, or (B) a Notice of Borrowing; provided that any telephone notice must be confirmed immediately by delivery to the Administrative Agent of a Notice of Borrowing. Such Notice of Borrowing must be received by Administrative Agent no later than 11:00 a.m. (i) on the Business Day of the requested funding date, in the case of Base Rate Loans or Canadian Prime Rate Loans, and (ii) at least three Business Days prior to the requested funding date, in the case of LIBOR Loans or Canadian BA Rate Loans. Notices received after 11:00 a.m. shall be deemed received on the next Business Day. Each Notice of Borrowing shall be irrevocable and shall specify (A) the principal amount of the Borrowing, (B) the requested funding date (which must be a Business Day), (C) whether the Borrowing is to be made as (x) with respect to the Company, Base Rate Tranche A Revolver Loans, Base Rate Tranche A-1 Revolver Loans, LIBOR Tranche A Revolver Loans or LIBOR Tranche A-1 Revolver Loans or (y) with respect to the Canadian Borrower, a Canadian Prime Rate Loan or a Canadian BA Rate Loan and (D) in the case of LIBOR Loans or Canadian BA Rate Loans, the duration of the applicable Interest Period (which shall be deemed to be one month if not specified). Each borrowing shall be in an aggregate amount of not less than (i) in the case of Base Rate Loans, \$1,000,000 or an integral multiple of \$500,000 in excess thereof, (ii) in the case of LIBOR Loans, \$2,500,000 or an integral multiple of \$1,000,000 in excess thereof, (iii) in the case of Canadian Prime Rate Loans, Cdn. \$100,000 or an integral multiple of Cdn. \$50,000 in excess thereof and (iv) in the case of Canadian BA Rate Loans, Cdn. \$500,000 or an integral multiple of Cdn. \$250,000 in excess thereof,

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

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

The proceeds of such Loans may be disbursed directly to the controlled disbursement account or other appropriate account.

4.1.2 **Fundings by Lenders.** Each Tranche A Lender shall timely honor its Tranche A Revolver Commitment by funding its Pro Rata share of each Borrowing of Tranche A Revolver Loans that is properly requested hereunder. Each Tranche A-1 Lender shall timely honor its Tranche A-1 Revolver Commitment by funding its Pro Rata share of each Borrowing of Tranche A-1 Revolver Loans that is properly requested hereunder. Each Canadian Lender shall timely honor its Canadian Revolver Commitment by funding its Pro Rata share of each Borrowing of Canadian Revolver Loans that is properly requested hereunder. Except for Borrowings to be made as Swingline Loans, Applicable Agent shall endeavor to notify Lenders of each Notice of Borrowing (or deemed request for a Borrowing) by 2:00 p.m. on the proposed funding date for Base Rate Loans or Canadian Prime Rate Loans or by 3:00 p.m. at least three Business Days before any proposed funding of LIBOR Loans or Canadian BA Rate Loans. Each Lender shall fund to Applicable Agent such Lender's Pro Rata share of the Borrowing to the account specified by such Agent in immediately available funds not later than 3:00 p.m. on the requested funding date, unless such Agent's notice is received after the times provided above, in which event Lender shall fund its Pro Rata share by 11:00 a.m. on the next Business Day. Subject to its receipt of such amounts from Lenders, Applicable Agent shall disburse the proceeds of the Loans as directed by Borrowers. Unless Applicable Agent shall have received (in sufficient time to act) written notice prior to the proposed date of any Borrowing of a LIBOR Loan (or, in the case of any Borrowing of Base Rate Loans, 12:00 noon on the date of such Borrowing) from a Lender that it does not intend to fund its Pro Rata share of a Borrowing, such Agent may assume that such Lender has deposited or promptly will deposit its share with such Agent, and such Agent may, in reliance of such assumption, disburse a corresponding amount to Borrowers. If a Lender's share of any Borrowing is not in fact received by Applicable Agent, then such Lender and the Borrowers severally agree to repay to Applicable Agent **on demand** the amount of such share, together with interest thereon from the date disbursed until repaid, at the rate applicable to such Borrowing. If a Borrower and such Lender shall pay such interest to the Applicable Agent for the same or an overlapping period, the Applicable Agent shall promptly remit to such Borrower the amount of such interest paid by such Borrower for such period. If such Lender pays its share of the applicable borrowing to the Applicable Agent, then the amount so paid shall constitute such Lender's Loan included in such borrowing. Any payment by a Borrower shall be without prejudice to any claim such Borrower may have against a Lender that shall have failed to make such payment to the Applicable Agent. A notice of any Agent to any Lender with respect to any amount owing under this **Section 4.1.2** shall be conclusive, absent manifest error.

4.1.3 **Swingline Loans; Settlement.**

(a) In reliance upon the agreements of the Tranche A Lenders set forth in this **Section 4.1.3**, and without regard to any requirement that the Tranche A-1 Revolver Commitments be drawn in the full amount of the Tranche A-1 Borrowing Base, Administrative Agent may advance Swingline Loans denominated in Dollars to the Company out of Administrative Agent's own funds, up to an aggregate outstanding amount of \$15,000,000, unless the funding is specifically required to be made by all Tranche A Lenders hereunder; provided, however, that (i) all Swingline Loans shall be made at the sole and absolute discretion

of the Administrative Agent and (ii) the Administrative Agent may deduct from the amount funded under any Swingline Loans the Pro Rata share thereof belonging to any Defaulting Lender (after giving effect to **Section 2.8.1(d)** and to the extent such Defaulting Lender's Pro Rata share is not Cash Collateralized). Each Swingline Loan shall constitute a Base Rate Tranche A Revolver Loan for all purposes, except that payments thereon (including interest thereon) shall be made to Administrative Agent for its own account. The obligation of the Company to repay Swingline Loans shall be evidenced by the records of Administrative Agent and need not be evidenced by any promissory note. Any Swingline Loan requested by the Company shall be in a minimum amount of \$100,000 and shall be made upon the Company's irrevocable notice to the Administrative Agent, which may be given by (A) telephone or (B) by a Swingline Loan Notice; provided that any telephonic notice must be confirmed promptly by delivery to the Administrative Agent of a Swingline Loan Notice. Any notice from the Company requesting a Swingline Loan must be received by Administrative Agent no later than 11:00 a.m. on the Business Day of the requested funding date (or such later time as may be acceptable to the Administrative Agent in its sole discretion).

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

(c) In reliance upon the agreements of the Canadian Lenders set forth in this **Section 4.1.3**, Canadian Agent may advance Swingline Loans denominated in Canadian Dollars to the Canadian Borrower out of Canadian Agent's own funds, up to an aggregate outstanding amount of Cdn. \$2,000,000, unless the funding is specifically required to be made by all Canadian Lenders hereunder; provided, however, that (i) all Swingline Loans shall be made at the sole and absolute discretion of the Canadian Agent and (ii) the Canadian Agent may deduct from the amount funded under any Swingline Loans the Pro Rata share thereof belonging to any Defaulting Lender (after giving effect to **Section 2.8.1(d)** and to the extent such Defaulting Lender's Pro Rata share is not Cash Collateralized). Each Swingline Loan shall constitute a Canadian Prime Rate Loan for all purposes, except that payments thereon (including interest thereon) shall be made to Canadian Agent for its own account. The obligation of the Canadian Borrower to repay Swingline Loans shall be evidenced by the records of Canadian Agent and



need not be evidenced by any promissory note. Any Swingline Loan requested by the Canadian Borrower shall be in a minimum amount of Cdn. \$100,000 and shall be made upon the Canadian Borrower's irrevocable notice to the Canadian Agent, which may be given by (A) telephone or (B) by a Swingline Loan Notice; provided that any telephonic notice must be confirmed promptly by delivery to the Canadian Agent of a Swingline Loan Notice. Any notice from the Canadian Borrower requesting a Swingline Loan must be received by Canadian Agent no later than 11:00 a.m. on the Business Day of the requested funding date (or such later time as may be acceptable to the Canadian Agent in its sole discretion).

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

(e) In the event that the Tranche A-1 Revolver Commitments are not drawn in the full amount of the Tranche A-1 Borrowing Base, the Administrative Agent may (notwithstanding any contrary provision of this Agreement) require a settlement of any Swingline Loan *first*, from the making of Tranche A-1 Revolver Loans, and thereupon the settlement provisions of **Section 4.1.3(b)** shall apply to such settlement by Tranche A-1 Lenders, *mutatis mutandis*, and *second*, from the making of Tranche A Revolver Loans.

4.1.4 **Notices.** Each Borrower authorizes Applicable Agent and Lenders to extend, convert or continue Loans, effect selections of interest rates, and transfer funds to or on behalf of Borrowers based on Borrower Agent's irrevocable notice to the Administrative Agent, which may be given by (A) telephone, or (B) a Notice of Borrowing; provided that any telephone notice must be confirmed immediately by delivery to the Administrative Agent of a Notice of Borrowing, but if it differs in any material respect from the action taken by Applicable Agent or the applicable Lenders, the records of Applicable Agent and such Lenders shall govern. Neither any Agent nor any Lender shall have any liability for any loss suffered by a Borrower as a result of any Agent or any Lender acting upon its understanding of telephonic or other e-mailed, electronic or internet-based instructions in form, in each case, reasonably acceptable to the Applicable Agent and the Borrowers, from a person believed in good faith by any Agent or any Lender to be a person authorized to give such instructions on a Borrower's behalf.

#### **4.2 Reserved.**

**4.3 Number and Amount of LIBOR Loans and Canadian BA Rate Loans; Determination of Rate.** For ease of administration, (a) all LIBOR Tranche A Revolver Loans having the same length and beginning date of their Interest Periods shall be aggregated together, and such Loans shall be allocated among Tranche A Lenders on a Pro Rata basis, (b) all LIBOR Tranche A-1 Revolver Loans having the same length and beginning date of their Interest Periods shall be aggregated together, and such Loans shall be allocated among Tranche A-1 Lenders on a Pro Rata basis and (c) all Canadian BA Rate Loans having the same length and beginning date of their Interest Periods shall be aggregated together, and such Loans shall be allocated among Canadian Lenders on a Pro Rata basis. No more than six (6) LIBOR Tranche A Revolver Loans may be outstanding at any time, no more than one (1) LIBOR Tranche A-1 Revolver Loans may be outstanding at any time and no more than three (3) Canadian BA Rate Loans may be outstanding at any time, and (i) each aggregate LIBOR Loan when made, continued or converted shall be in a minimum amount of \$2,500,000, or an increment of \$1,000,000 in excess thereof and (ii) each aggregate Canadian BA Rate Loan when made, continued or converted shall be in a minimum amount of Cdn. \$500,000, or an increment of Cdn. \$250,000 in excess thereof. Upon determining Eurodollar Rate or the Canadian BA Rate for any Interest Period requested by Borrowers, Applicable Agent shall promptly notify Borrowers thereof by telephone or electronically and, if requested by Borrowers, shall confirm any telephonic notice in writing.

**4.4 Borrower Agent.** Each Obligor hereby designates the Company (“Borrower Agent”) as its representative and agent for all purposes under the Loan Documents, including requests for Loans and Letters of Credit, designation of interest rates, delivery or receipt of communications with any Agent, Issuing Bank or any Lender, preparation and delivery of Borrowing Base Certificates and financial reports, receipt and payment of Obligations, requests for waivers, amendments or other accommodations, actions under the Loan Documents (including in respect of compliance with covenants), and all other dealings with any Agent, Issuing Bank or any Lender. Borrower Agent hereby accepts such appointment. Agents, Issuing Bank and Lenders shall be entitled to rely upon, and shall be fully protected in relying upon, any notice or communication (including any Notice of Borrowing) delivered by Borrower Agent on behalf of any Borrower. Agents, Issuing Bank and Lenders may give any notice or communication with a Borrower hereunder to Borrower Agent on behalf of such Obligor. Agents shall have the right, in their discretion, to deal exclusively with Borrower Agent for any or all purposes under the Loan Documents. Each Obligor agrees that any notice, election, communication, representation, agreement or undertaking made on its behalf by Borrower Agent shall be binding upon and enforceable against it.

**4.5 Obligations.** The Loans (other than Canadian Revolver Loans), LC Obligations and other Obligations (including the Canada Guaranty but excluding all Canadian Obligations) shall constitute one general obligation of the Company. The Canadian Revolver Loans and other Canadian Obligations shall constitute one general obligation of the Canadian Borrower.

**4.6 Effect of Termination.** On the effective date of any termination of the Commitments, all Obligations (other than contingent Obligations which by their terms survive such termination) shall be immediately due and payable, and any Lender may terminate its and its Affiliates’ Bank Products (including, with the consent of Administrative Agent, any Cash

Management Services). All undertakings of Borrowers contained in the Loan Documents shall survive any termination, and Applicable Agent shall retain its Liens in the Collateral and all of its rights and remedies under the Loan Documents until the occurrence of payment in full, in cash of all accrued and unpaid principal, interest and fees, and any other Obligations then due and owing, the payment of any appropriate collateral deposits in connection with other Obligations and the occurrence of the Commitment Termination Date. Notwithstanding such payment in full, in cash, of all accrued and unpaid principal, interest and fees, and any other Obligations then due and owing, the payment of any appropriate collateral deposits in connection with other Obligations and the occurrence of the Commitment Termination Date, no Agent shall be required to terminate its Liens in any Collateral unless, with respect to any damages such Agent may incur as a result of the dishonor or return of Payment Items applied to Obligations, such Agent receives (a) a written agreement, executed by Borrowers and any Person whose advances are used in whole or in part to satisfy the Obligations, indemnifying Agents, Issuing Bank and Lenders from any such damages; or (b) such Cash Collateral as such Agent, in its discretion, deems necessary to protect against any such damages. The provisions of **Sections 2.3, 3.4, 3.6, 3.7, 3.9, 4.6, 5.4, 5.8, 12, and 14.2**, and the obligation of each Obligor and Lender with respect to each indemnity given by it in any Loan Document, shall survive Full Payment of the Obligations and any release relating to this credit facility.

## **SECTION 5. PAYMENTS**

**5.1 General Payment Provisions.** All payments of Obligations shall be made in Dollars (except as otherwise provided in **Section 5.9**), free and clear of and without condition, offset, counterclaim, recoupment or defense of any kind, free of (and without deduction for) any Taxes, except as required by Applicable Law and subject to **Section 5.8**, and in immediately available funds, not later than 2:00 p.m. on the due date. Any payment after such time shall be deemed made on the next Business Day. Borrowers may, at the time of payment, specify to Applicable Agent the Obligations to which such payment is to be applied, but Applicable Agent shall in all events retain the right to apply such payment in such manner as Applicable Agent, subject to the provisions hereof, may determine to be appropriate. If any payment under the Loan Documents shall be stated to be due on a day other than a Business Day, the due date shall be extended to the next Business Day and such extension of time shall be included in any computation of interest and fees. Any payment of a LIBOR Loan or a Canadian BA Rate Loan prior to the end of its Interest Period shall be accompanied by all amounts due under **Section 3.9**. Any prepayment of the Tranche A Revolver Loans shall be applied first to Base Rate Tranche A Revolver Loans and then to LIBOR Tranche A Revolver Loans. Any prepayment of the Tranche A-1 Revolver Loans shall be applied first to Base Rate Tranche A-1 Revolver Loans and then to LIBOR Tranche A-1 Revolver Loans; provided that, except as provided in **Section 2.2.4(e)**, the Tranche A-1 Revolver Loans may only be prepaid if there are no Tranche A Revolver Loans outstanding at such time. Any prepayment of the Canadian Revolver Loans shall be applied first to Canadian Prime Rate Loans and then to Canadian BA Rate Loans. Unless the Applicable Agent shall have received notice from a Borrower prior to the time at which any payment is due to the Applicable Agent for the account of the relevant Lenders or the Issuing Bank hereunder that such Borrower will not make such payment, the Applicable Agent may assume that such Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the appropriate Lenders or the Issuing Bank, as the case may be, the amount due. In such event, if a Borrower has not in fact made such payment, then each of

the appropriate Lenders or the Issuing Bank, as the case may be, severally agrees to repay to the Applicable Agent forthwith on demand the amount so distributed to such Lender or the Issuing Bank, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Applicable Agent, at the greater of the Federal Funds Rate (or, with respect to Canadian Lenders, the Bank of Canada overnight rate) and a rate determined by the Applicable Agent in accordance with banking industry rules on interbank compensation. A notice of any Agent to any Borrower with respect to any amount owing under this **Section 5.1** shall be conclusive, absent manifest error.

**5.2 Repayment of Loans, Etc.** The Loans and all other Obligations (other than contingent Obligations which by their terms survive such termination) shall be due and payable in full on the Termination Date, unless payment is sooner required hereunder. The Company promises to pay on the Termination Date, or on such earlier date as payment is required hereunder, and there shall become absolutely due and payable on such date, all of the Tranche A Revolver Loans, the LC Obligations and the Tranche A-1 Revolver Loans outstanding on such date, together with any and all accrued and unpaid interest thereon and all other fees and other amounts then accrued and outstanding with respect thereto. The Canadian Borrower promises to pay on the Termination Date, or on such earlier date as payment is required hereunder, and there shall become absolutely due and payable on such date, all of the Canadian Revolver Loans and the Canadian LC Obligations outstanding on such date, together with any and all accrued and unpaid interest thereon and all other fees and other amounts then accrued and outstanding with respect thereto. The Loans may be prepaid in accordance with **Section 5.1** and **Section 5.5**; provided that, except as provided in **Section 2.2.4(e)**, the Tranche A-1 Revolver Loans may only be prepaid if there are no Tranche A Revolver Loans outstanding at such time.

**5.3 Payment of Other Obligations.** Obligations other than Loans, including LC Obligations, Canadian LC Obligations and Extraordinary Expenses, shall be paid by Borrowers as provided in the Loan Documents or, if no payment date is specified, **on demand**.

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

**5.5 Allocation of Payments.**

**5.5.1 Pre-Default Allocation of Payments on Obligations (other than the Canadian Obligations).** At all times when no Liquidity Event Period has occurred and is continuing and **Section 5.5.3** does not apply, all payments to be applied to the Obligations (other than the Canadian Obligations) arising from payments by the Obligors (other than the Canadian Borrower or the Canadian Guarantor Subsidiaries) shall be applied to the Obligations (other than the Canadian Obligations) as directed by the Company (or, absent such direction, as set forth in the following sentence); provided that, except as provided in **Section 2.2.4(e)**, the Tranche A-1

Revolver Loans may only be prepaid if there are no Tranche A Revolver Loans outstanding at such time. Notwithstanding anything herein to the contrary, at all times during a Liquidity Event Period which is continuing (other than during the times described in **Section 5.5.3**), all payments to be applied to the Obligations (other than the Canadian Obligations), whether arising from payments by Obligors (other than the Canadian Borrower or the Canadian Guarantor Subsidiaries), realization on Collateral (other than Canadian Collateral), setoff or otherwise, may be allocated in accordance with **Section 5.5.3**, subject to the Administrative Agent's sole discretion.

5.5.2 **Pre-Default Allocation of Payments on Canadian Obligations.** At all times when no Liquidity Event Period has occurred and is continuing and **Section 5.5.4** does not apply, all payments to be applied to the Canadian Obligations arising from payments by the Canadian Borrower or the Canadian Guarantor Subsidiaries shall be applied to the Canadian Obligations as directed by the Canadian Borrower (or, absent such direction, as set forth in the following sentence). Notwithstanding anything herein to the contrary, at all times during a Liquidity Event Period which is continuing (other than during the times described in **Section 5.5.4**), all payments to be applied to the Canadian Obligations, whether arising from payments by the Canadian Borrower or the Canadian Guarantor Subsidiaries, realization on Canadian Collateral, setoff or otherwise, may be allocated in accordance with **Section 5.5.4**, subject to the Administrative Agent's sole discretion.

5.5.3 **Post-Default Allocation of Payments to the Obligations.** Notwithstanding anything herein to the contrary, at the election of the Administrative Agent (in its discretion) or the Required Lenders, after the occurrence and during the continuation of an Event of Default, monies to be applied to the Obligations, whether arising from payments by Obligors (other than the Canadian Borrower or the Canadian Guarantor Subsidiaries), realization on Collateral (other than the Canadian Collateral), setoff or otherwise, shall be allocated as follows:

- (a) first, to all costs and expenses, including Extraordinary Expenses (other than those constituting Canadian Obligations), owing to Administrative Agent;
- (b) second, to all amounts owing to Administrative Agent on Swingline Loans or Protective Advances (other than those constituting Canadian Obligations);
- (c) third, to all amounts owing to Issuing Bank on LC Obligations;
- (d) fourth, to all costs and expenses, including Extraordinary Expenses (other than those constituting Canadian Obligations), owing to the Co-Collateral Agents and Lenders;
- (e) fifth, to all Obligations constituting fees owing to the Tranche A Lenders in their capacity as Tranche A Lenders (excluding amounts relating to Bank Products or amounts payable under the Canada Guaranty);

(f) sixth, to all Obligations constituting interest on Tranche A Revolver Loans (excluding amounts relating to Bank Products or amounts payable under the Canada Guaranty);

(g) seventh, to provide Cash Collateral for outstanding Letters of Credit and Bankers' Acceptances issued for the account or benefit of the Company, to the extent not otherwise Cash Collateralized by the Company pursuant to **Sections 2.3** and **2.7**;

(h) eighth, to Obligations consisting of principal on the Tranche A Revolver Loans;

(i) ninth, to all Obligations constituting fees owing to the Tranche A-1 Lenders in their capacity as Tranche A-1 Lenders (excluding amounts relating to Bank Products or amounts payable under the Canada Guaranty);

(j) tenth, to all Obligations constituting interest on Tranche A-1 Revolver Loans (excluding amounts relating to Bank Products or amounts payable under the Canada Guaranty);

(k) eleventh, to all other Obligations (including principal) owing to the Tranche A-1 Lenders in their capacity as Tranche A-1 Lenders (other than Bank Product Debt or amounts payable under the Canada Guaranty);

(l) twelfth, to amounts owing to the Canadian Agent in respect of the Canada Guaranty (other than Bank Product Debt);

(m) thirteenth, to amounts owing to the Canadian Lenders in respect of the Canada Guaranty (other than Bank Product Debt);

(n) fourteenth, to Obligations consisting of Bank Product Debt in respect of Hedging Agreements, (x) solely to the extent a Bank Product Reserve has been taken in respect of such Hedging Agreement and (y) exclusive of any such Bank Product Debt constituting Canadian Obligations;

(o) fifteenth, to Bank Product Debt owing to the Lenders and their Affiliates for which a Bank Product Reserve has been established (other than Hedging Agreements for which a distribution has been made pursuant to clause eleventh above);

(p) sixteenth, to Bank Product Debt owing to the Lenders and their Affiliates for which a Bank Product Reserve has not been established; and

(q) seventeenth, to any other Obligations then due and owing.

Amounts shall be applied to each category of Obligations set forth above until Full Payment thereof and then to the next category. If amounts are insufficient to satisfy a category, they shall be applied on a pro rata basis among the Obligations in the category. Amounts distributed with respect to any Bank Product Debt or LC Obligations shall be the lesser of the applicable LC

Obligations or Bank Product Amount last reported to Administrative Agent or the actual LC Obligations or Bank Product Debt as calculated by the methodology reported to Administrative Agent for determining the amount due. Subject to **Sections 2.3.3**, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit and Bankers' Acceptances pursuant to clause Seventh above shall be applied to satisfy drawings under such Letters of Credit and payments of Bankers' Acceptances as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit and Bankers' Acceptances have either been fully drawn, paid or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above. Administrative Agent shall have no obligation to calculate the amount to be distributed with respect to any Bank Product Debt, but may rely upon written notice of the amount (setting forth a reasonably detailed calculation) from the Secured Party. In the absence of such notice, Administrative Agent may assume the amount to be distributed is the Bank Product Amount last reported to it. The allocations set forth in this **Section 5.5.3** are solely to determine the rights and priorities of Administrative Agent and Lenders as among themselves, may be changed by agreement among them without the consent of any Obligor and is subject to **Section 2.8** (regarding Defaulting Lenders). Excluded Swap Obligations with respect to any Guarantor shall not be paid with amounts received from such Guarantor or its assets, but appropriate adjustments shall be made with respect to payments from other Obligors (other than the Canadian Borrower or the Canadian Guarantor Subsidiaries) to preserve the allocation to Obligations (other than the Canadian Obligations) otherwise set forth above in this **Section 5.5.3**. This **Section 5.5.3** is not for the benefit of or enforceable by any Obligor.

5.5.4 **Post-Default Allocation of Payments to the Canadian Obligations.**

Notwithstanding anything herein to the contrary, at the election of the Canadian Agent (in its discretion) or the Required Canadian Lenders, after the occurrence and during the continuation of an Event of Default, monies to be applied to the Canadian Obligations, whether arising from payments by the Canadian Borrower or any Canadian Guarantor Subsidiary, realization on Canadian Collateral, setoff or otherwise, shall be allocated as follows:

- (a) first, to all costs and expenses, including Extraordinary Expenses constituting Canadian Obligations, owing to Agents;
- (b) second, to all amounts owing to Canadian Agent on Swingline Loans or Protective Advances constituting Canadian Obligations;
- (c) third, to all amounts owing to Issuing Bank on Canadian LC Obligations;
- (d) fourth, to all costs and expenses, including Extraordinary Expenses constituting Canadian Obligations, owing to the Co-Collateral Agents and the Lenders;
- (e) fifth, to all Obligations constituting fees owing to the Canadian Lenders in their capacity as Canadian Lenders (excluding amounts relating to Bank Products);
- (f) sixth, to all Obligations constituting interest on Canadian Revolver Loans (excluding amounts relating to Bank Products);

(g) seventh, to provide Cash Collateral for outstanding Letters of Credit and Bankers' Acceptances issued for the account or benefit of the Canadian Borrower, to the extent not otherwise Cash Collateralized by the Canadian Borrower pursuant to **Sections 2.3** and **2.7**;

(h) eighth, to Obligations consisting of principal on the Canadian Revolver Loans;

(i) ninth, to Obligations consisting of Bank Product Debt of the Canadian Borrower or any Canadian Guarantor Subsidiary in respect of Hedging Agreements, solely to the extent a Bank Product Reserve has been taken in respect of such Hedging Agreement;

(j) tenth, to Bank Product Debt constituting Canadian Obligations owing to the Canadian Lenders and their Affiliates or branches for which a Bank Product Reserve has been established (other than Hedging Agreements for which a distribution has been made pursuant to clause ninth above); and

(k) eleventh, to Bank Product Debt constituting Canadian Obligations owing to the Canadian Lenders and their Affiliates or branches for which a Bank Product Reserve has not been established.

Amounts shall be applied to each category of Canadian Obligations set forth above until Full Payment thereof and then to the next category. If amounts are insufficient to satisfy a category, they shall be applied on a pro rata basis among the Canadian Obligations in the category. Amounts distributed with respect to any Bank Product Debt or Canadian LC Obligations shall be the lesser of the applicable Canadian LC Obligations or Bank Product Amount last reported to Agents or the actual Canadian LC Obligations or Bank Product Debt as calculated by the methodology reported to Agents for determining the amount due. Subject to **Sections 2.3.3**, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit and Bankers' Acceptances pursuant to clause Seventh above shall be applied to satisfy drawings under such Letters of Credit and payment of Bankers' Acceptances as they occur. Agents shall have no obligation to calculate the amount to be distributed with respect to any Bank Product Debt, but may rely upon written notice of the amount (setting forth a reasonably detailed calculation) from the Secured Party. In the absence of such notice, Agents may assume the amount to be distributed is the Bank Product Amount last reported to it. The allocations set forth in this **Section 5.5.4** are solely to determine the rights and priorities of Agents and Lenders as among themselves, may be changed by agreement among them without the consent of any Obligor and is subject to **Section 2.8** (regarding Defaulting Lenders). This **Section 5.5.4** is not for the benefit of or enforceable by any Obligor.

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



competent jurisdiction that such error was a result of the gross negligence or willful misconduct of such Agent) shall be to recover the amount from the Person that actually received it (and, if such amount was received by any Lender, such Lender hereby agrees to return it).

**5.6 Application of Payments.** Each Obligor irrevocably waives the right at all times during the continuation of the Liquidity Event Period to direct the application of any payments or Collateral proceeds, and agrees that Applicable Agent (subject to **Section 5.5**) shall have the continuing, exclusive right to apply and reapply same against the Obligations, in such manner as Applicable Agent deems advisable, notwithstanding any entry by Applicable Agent in its records.

**5.7 Loan Account; Account Stated.**

5.7.1 **Loan Account.** Applicable Agent shall maintain in accordance with its usual and customary practices an account or accounts ("Loan Account") evidencing the Debt of Borrowers resulting from each Loan or issuance of a Letter of Credit or any Bankers' Acceptance from time to time. Any failure of any Agent to record anything in the Loan Account, or any error in doing so, shall not limit or otherwise affect the obligation of Borrowers to pay any amount owing hereunder. Agents may maintain a single Loan Account in the name of Borrower Agent; provided, however, that each Agent and each Lender confirms that such arrangement does not constitute nor imply that the Obligations of each Borrower are joint and several in nature.

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

**5.8 Taxes.**

**5.8.1 Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.**

(a) Any and all payments by or on account of any obligation of any Obligor hereunder or under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Laws. If any Applicable Laws (as determined in the good faith discretion of the Applicable Agent or an Obligor) require the deduction or withholding of any Tax from any such payment by the Applicable Agent or an Obligor, then the Applicable Agent or such Obligor shall be entitled to make such deduction or withholding.

(b) If any Obligor or the Applicable Agent shall be required by the Code to withhold or deduct any Taxes, including both United States federal backup withholding and withholding taxes, from any payment, then (A) the Applicable Agent shall withhold or make such deductions as are determined by the Applicable Agent or Obligor to be required, (B) the Applicable Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code, and (C) to the extent that the withholding

or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Obligor shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this **Section 5.8**) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(c) If any Obligor or the Applicable Agent shall be required by any Applicable Laws other than the Code to withhold or deduct any Taxes from any payment, then (A) such Obligor or the Applicable Agent, as required by such Applicable Laws, shall withhold or make such deductions as are determined by it to be required, (B) such Obligor or the Applicable Agent, to the extent required by such Applicable Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Applicable Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Obligor shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this **Section 5.8**) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

5.8.2 **Payment of Other Taxes by the Borrower.** Without limiting the provisions of **subsection 5.8.1** above, the Obligors shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of the Applicable Agent timely reimburse it for the payment of, any Other Taxes.

5.8.3 **Tax Indemnifications.**

(a) Each of the Obligors shall, and does hereby, jointly and severally, indemnify each Recipient, and shall make payment in respect thereof within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this **Section 5.8**) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower Agent by a Lender or the Issuing Bank (with a copy to the Applicable Agent, or by the Applicable Agent on its own behalf or on behalf of a Lender or the Issuing Bank, shall be conclusive absent manifest error. Each of the Obligors shall, and does hereby, jointly and severally, indemnify the Agents, and shall make payment in respect thereof within 10 days after demand therefor, for any amount which a Lender or the Issuing Bank for any reason fails to pay indefeasibly to the Applicable Agent as required pursuant to **Section 5.8.3(b)** below.

(b) Each Lender and Issuing Bank shall, and does hereby, severally indemnify, and shall make payment in respect thereof within 10 days after demand therefor, (x) the Agents against any Indemnified Taxes attributable to such Lender or the Issuing Bank (but only to the extent that any Obligor has not already indemnified the Applicable Agent for such Indemnified Taxes and without limiting the obligation of the Obligors to do so), (y) the Agents and the Obligors, as applicable, against any Taxes attributable to such Lender's failure to comply

with the provisions of **Section 13.3.1** relating to the maintenance of a Participant Register and (z) the Agents and the Obligors, as applicable, against any Excluded Taxes attributable to such Lender or the Issuing Bank, in each case, that are payable or paid by the Applicable Agent or an Obligor in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Applicable Agent shall be conclusive absent manifest error. Each Lender and Issuing Bank hereby authorizes the Applicable Agent to set off and apply any and all amounts at any time owing to such Lender or the Issuing Bank, as the case may be, under this Agreement or any other Loan Document against any amount due to the Applicable Agent under this clause **5.8.3(b)**.

5.8.4 **Evidence of Payments.** Upon request by the Borrower Agent or the Applicable Agent, as the case may be, after any payment of Taxes by the Obligors or by the Applicable Agent to a Governmental Authority as provided in this **Section 5.8**, the Borrower Agent shall deliver to the Applicable Agent or the Applicable Agent shall deliver to the Borrower Agent, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Applicable Laws to report such payment or other evidence of such payment reasonably satisfactory to the Borrower Agent or the Applicable Agent, as the case may be.

5.8.5 **Status of Lenders; Tax Documentation.**

(a) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower Agent and the Applicable Agent, at the time or times reasonably requested by the Borrower Agent or the Applicable Agent, such properly completed and executed documentation reasonably requested by the Borrower Agent or the Applicable Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower Agent or the Applicable Agent, shall deliver such other documentation prescribed by Applicable Laws or reasonably requested by the Borrower Agent or the Applicable Agent as will enable the Borrower Agent or the Applicable Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in **Section 5.8.5(b)(i)**, **(b)(ii)** and **(b)(iv)** below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(b) Without limiting the generality of the foregoing, in the event that the relevant Borrower is a U.S. Person,

(i) any Lender that is a U.S. Person shall deliver to the Borrower Agent and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable

request of the Borrower Agent or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(ii) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower Agent and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Agent or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit H-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of Holdings within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed copies of IRS Form W-8BEN or W-8BEN-E, as applicable; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, W-8BEN or W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit H-2 or Exhibit H-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit H-4 on behalf of each such direct and indirect partner;

(iii) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower Agent and the Applicable Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Agent or the Applicable Agent), executed originals of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. federal with-holding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit the Borrower Agent or the Applicable Agent to determine the withholding or deduction required to be made; and

(iv) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower Agent and the Applicable Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower Agent or the Applicable Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower Agent or the Applicable Agent as may be necessary for the Borrowers and the Agents to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (iv), "FATCA" shall include any amendments made to FATCA after the date of this Agreement. For purposes of determining withholding Taxes imposed under the FATCA, the Obligors and the Agents shall treat (and the Lenders hereby authorize the Agents to treat) the Loans and the Loan Agreement as not qualifying as a "grandfathered obligation" within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

(v) Each Recipient agrees that if any form or certification it previously delivered pursuant to this **Section 5.8** expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower Agent and the Agents in writing of its legal inability to do so.

5.8.6 **Treatment of Certain Refunds.** Unless required by Applicable Laws, at no time shall any Agent have any obligation to file for or otherwise pursue on behalf of a Lender or an Issuing Bank, or have any obligation to pay to any Lender or any Issuing Bank, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or Issuing Bank, as the case may be. If any Recipient determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified by any Obligor or with respect to which any Obligor has paid additional amounts pursuant to this **Section 5.8**, it shall pay to such Obligor an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such Obligor under this **Section 5.8** with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Obligor, upon the request of the Recipient, agrees to repay the amount paid over to the Obligor (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection 5.8.6, in no event will the applicable Recipient be required to pay any amount to any Obligor pursuant to this subsection the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient would have been in if Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such tax had never been paid. This subsection 5.8.6 shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Obligor or any other Person.

5.8.7 **Survival.** Each party's obligations under this **Section 5.8** shall survive the resignation or replacement of one or more of the Agents or any assignment of rights by, or the replacement of, a Lender or the Issuing Bank, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations and the termination of this Agreement.

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

(a) except as expressly provided in this Loan Agreement, each repayment of a Loan or a part thereof shall be made in the currency in which such Loan is denominated at the time of that repayment;

(b) each payment of interest shall be made in the currency in which such principal or other sum in respect of which such interest is payable, is denominated;

(c) each payment of any Letter of Credit Fees payable by the Company (and any other fees payable by the Company under **Section 3.2.2**), Commitment Fees payable by the Company and all other amounts due hereunder (unless the provisions of the Loan Agreement require otherwise) shall be in Dollars;

(d) each payment of any Letter of Credit Fees payable by the Canadian Borrower (and any other fees payable by the Canadian Borrower under **Section 3.2.2**) and Commitment Fees payable by the Canadian Borrower shall be in Canadian Dollars;

(e) each payment in respect of costs, expenses and indemnities shall be made in the currency in which the same were incurred; and

(f) any amount expressed to be payable in Canadian Dollars shall be paid in Canadian Dollars.

No payment to any Agent or any Lender (whether under any judgment or court order or otherwise) shall discharge the obligation or liability in respect of which it was made unless and until such Agent or such Lender shall have received payment in full in the currency in which such obligation or liability was incurred, and to the extent that the amount of any such payment shall, on actual conversion into such currency, fall short of such obligation or liability actual or contingent expressed in that currency, each Borrower, severally and not jointly, agrees to indemnify and hold harmless such Agent or such Lender, as the case may be, with respect to the amount of the shortfall with respect to amounts payable by such Borrower hereunder, with such indemnity surviving the termination of this Loan Agreement and any legal proceeding, judgment or court order pursuant to which the original payment was made which resulted in the shortfall.

**5.10 Nature of Each Borrower's Liability.** Each Borrower agrees that it is severally (and not jointly) liable for all Obligations and all agreements under the Loan Documents payable by such Borrower. For greater certainty, any collections received from the Canadian Borrower, property of the Canadian Borrower (or any of its Subsidiaries) and proceeds of the Collateral that is the property of the Canadian Borrower (or any of its Subsidiaries) shall be applied solely and exclusively to the payment of the Canadian Obligations and not the obligations of the Company.

Notwithstanding anything herein or any Loan Document to the contrary, including without limitation, in Section 2.7.2 and Article 7 herein, none of the Canadian Collateral or property of any Foreign Subsidiary shall be used as security for the Obligations of a Borrower that is a U.S. Person (but, for greater certainty, Canadian Collateral or property of any Foreign Subsidiary may be used as security for the Obligations of a Canadian Borrower).

## **SECTION 6. CONDITIONS PRECEDENT**

**6.1 Conditions Precedent to Initial Loans.** In addition to the conditions set forth in **Section 6.2**, Lenders shall not be required to fund any requested Loan, issue any Letter of Credit, or otherwise extend credit to Borrowers hereunder until the date (“Closing Date”) that each of the following conditions has been satisfied (in each case, in form and substance satisfactory to the Agents and each of the Lenders), except to the extent such conditions are subject to the Post-Closing Agreement:

(a) Notes shall have been executed by Borrowers and delivered to each Lender that requests issuance of a Note. Each other Loan Document to be delivered on or prior to the Closing Date shall have been duly executed and delivered to Administrative Agent by each of the signatories thereto, and each Obligor shall be in compliance with all terms thereof, including, without limitation, an Intercreditor Agreement with the collateral agent under the Term Debt Documents, which shall be in full force and effect.

(b) Subject to the Intercreditor Agreement with the collateral agent under the Term Debt Documents, Administrative Agent shall be satisfied that the Security Documents shall be effective to create in favor of the Applicable Agent a legal, valid and enforceable first priority security interest in and Lien upon the Collateral and shall have received (i) evidence that all filings, recordings, and other actions necessary or desirable to protect and preserve such security interests shall have been duly effected, (ii) Lien searches and other evidence reasonably satisfactory to Agents that such Liens are the only Liens upon the Collateral, except Permitted Liens, and (iii) a completed and fully executed perfection certificate in form and substance reasonably satisfactory to Administrative Agent;

(c) Administrative Agent shall have received a certificate, from the chief financial officer of the Company and the president (or other Senior Officer) of the Canadian Borrower, certifying that:

(i) after giving effect to the initial Loans and transactions hereunder, (A) the Obligors, taken as a whole, are Solvent (and as to the Canadian Borrower, the Canadian Borrower is Solvent); (B) no Default or Event of Default exists; (C) the representations and warranties set forth in **Section 9** are true and correct in all material respects (except for representations and warranties that expressly relate to an earlier date, in which case such representations and warranties were true and correct in all material respects as of such earlier date); and (D) each Borrower has complied in all material respects with all agreements and conditions to be satisfied by it under the Loan Documents;

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

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

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

(v) no Material Adverse Effect shall exist; and

(vi) attached are complete and correct copies of (i) the material Term Debt Documents, and (ii) the material Recapitalization Documents, all of which documents shall be in full force and effect and without amendment except attached thereto.

(d) Administrative Agent shall have received a certificate of a duly authorized officer of each Obligor, certifying (i) that attached copies of such Obligor's Organic Documents are true and complete, and in full force and effect, without amendment except as shown and certified as appropriate by the Secretary of State or other appropriate official of such Obligor's jurisdiction of organization, (ii) that an attached copy of resolutions authorizing execution and delivery of the Loan Documents and the transactions contemplated thereby, is true and complete, and that such resolutions are in full force and effect, were duly adopted, have not been amended, modified or revoked, and constitute all resolutions adopted with respect to this credit facility, (iii) to the title, name and signature of each Person authorized to sign the Loan Documents and (iv) that attached are copies of good standing or subsistence certificates, as applicable, for each Obligor, issued by the Secretary of State or other appropriate official of such Obligor's jurisdiction of organization and, if required by the Applicable Agent, of its chief executive office. Administrative Agent may conclusively rely on this certificate until it is otherwise notified by the applicable Obligor in writing.

(e) Administrative Agent shall have received favorable written opinions of Skadden, Arps, Slate, Meagher & Flom, LLP, and Stikeman Elliott LLP as counsel and Canadian counsel to Obligors (and from any other special counsel to the Obligors), covering such matters relating to the Loan Documents and the transactions contemplated thereby as the Agents and the Lenders shall reasonably request.

(f) Administrative Agent shall (i) be satisfied with the amount, types and terms and conditions of all insurance maintained by the Obligors and their Subsidiaries, and (ii) have received certificates of insurance with endorsements naming Applicable Agent, for the benefit of the Lenders, as loss payee or additional insured, as applicable, with respect to each insurance policy required to be maintained with respect to the Collateral.

(g) Borrowers shall have paid all fees and expenses to be paid to Joint Lead Arrangers, Agents, any Co-Collateral Agent and Lenders on the Closing Date (including, without



limitation, all fees, charges and disbursements of counsel, including local counsel, to Agents to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrowers and Agents and the Co-Collateral Agents)).

(h) Administrative Agent shall have received all inventory and asset appraisals, commercial finance audits, field audits and such other reports, audits and other information or certifications as it may reasonably request with respect to the Collateral.

(i) Administrative Agent shall have received a Borrowing Base Certificate indicating that Excess Availability as of the Closing Date, after giving effect to the Transactions contemplated hereby and determined with trade payables being paid in accordance with the usual and customary payment practices of the Borrowers, expenses and liabilities being paid in the Ordinary Course of Business and without acceleration of sales and without material deterioration of working capital, is not less than \$70,000,000.

(j) Administrative Agent shall have received a certificate of a duly authorized officer of each Obligor, either (i) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by such Obligor and the validity against such Obligor of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (ii) stating that no such consents, licenses or approvals are so required.

(k) Administrative Agent shall have received copies, reflecting the revised capital structure contemplated by the Transactions, of (i) the financial statements, reports, management letters and projections described in **Sections 10.1.2(a)** and **(e)** and (ii) a consolidated business plan and projections of Obligors' consolidated balance sheets, results of operations, cash flow, budgets and availability under the credit facilities (including, without limitation, projections of Excess Availability, the Excess Availability Ratio, the Tranche A Excess Availability, the Tranche A-1 Excess Availability and the Canadian Excess Availability and prepared on a *pro forma* basis for the Transactions) for the 12-month period following the Closing Date, on a month by month basis, in each case for (i) the Company and the U.S. Guarantor Subsidiaries and (ii) the Canadian Borrower and the Canadian Guarantor Subsidiaries.

(l) Administrative Agent shall have received evidence, in form and substance satisfactory to the Administrative Agent that, concurrently with the effectiveness of this Agreement, (x) all obligations under the Existing Senior Credit Agreement and the "Loan Documents" (as defined therein) shall be amended and restated, or otherwise supplemented, in the form of this Agreement and the other Loan Documents, (y) all obligations under the Existing Guggenheim Credit Facility shall be repaid, converted into equity of any parent company of the Borrowers, amended and restated pursuant to the terms of the Guggenheim Credit Facility or otherwise extinguished on the terms provided for in the Exchange Agreement, all in a manner and on terms and conditions reasonably acceptable to the Administrative Agent and the Co-Collateral Agents and (z) the Borrowers shall have no funded indebtedness, other than

indebtedness under this Agreement, the Guggenheim Credit Facility and Indebtedness permitted under and subject to **Section 10.2.1**.

(m) Administrative Agent shall have received evidence, in form and substance satisfactory to the Administrative Agent that, concurrently with the effectiveness of this Agreement, (A) pursuant to the Recapitalization Transaction, Guggenheim shall acquire direct or indirect ownership of certain voting and economic equity interests of Global Holdings and the Company shall receive aggregate net cash proceeds from such Recapitalization Transaction in accordance with a funds flow memorandum approved by Agents and the Co-Collateral Agents, all as provided for in the Recapitalization Documents as in effect on the Closing Date; (B) the Guggenheim Credit Facility and Term Debt Documents shall become effective and (C) the Transactions shall have been consummated in accordance with their terms.

(n) Administrative Agent shall have received such other certificates, documents, agreements and information in respect of any Obligor as Administrative Agent may reasonably request.

(o) The Co-Collateral Agents shall have received a duly executed termination and release agreement in a form and substance reasonably satisfactory to the Co-Collateral Agents whereby the Company is released from all future obligations under the that certain Exclusive Debt Advisory Agreement dated June 12, 2012 between The Carlton Group, Ltd and BCBG Max Azria Group, Inc.

(p) The Joint Lead Arrangers shall have received at a reasonable time prior to the Closing Date all documentation and other information relating to the Obligors and their Affiliates reasonably requested in order to allow the Joint Lead Arrangers and the Lenders to comply with applicable “know your customer” and anti-money laundering rules and regulations, including the Patriot Act or any AML Legislation.

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

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

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

(c) The representations and warranties of each Obligor in the Loan Documents shall be true and correct in all material respects on the date of, and upon giving effect to, such funding, issuance or grant (except for representations and warranties that expressly relate to an earlier date);

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

(e) The aggregate principal amount of (i) the sum of (x) the unpaid balance of Tranche A Revolver Loans outstanding at such time, plus (y) the LC Obligations at such time, after giving effect to the applicable borrowing or issuance or renewal of a Letter of Credit, shall not exceed the Tranche A Borrowing Base, (ii) the Tranche A-1 Revolver Loans on such date, after giving effect to the applicable borrowing or issuance or renewal of a Letter of Credit, shall not exceed the Tranche A-1 Borrowing Base, (iii) Tranche A Revolver Loans, Tranche A-1 Revolver Loans and all LC Obligations on such date, after giving effect to the applicable borrowing or issuance or renewal of a Letter of Credit, shall not exceed the aggregate of the Tranche A Borrowing Base and the Tranche A-1 Borrowing Base, or (iv) the sum of (x) the unpaid balance of Canadian Revolver Loans outstanding at such time, plus (y) the Canadian LC Obligations at such time, after giving effect to the applicable borrowing or issuance or renewal of a Letter of Credit, shall not exceed the Canadian Borrowing Base.

(f) The Administrative Agent shall have received a certification of the relevant Obligor and its Affiliates as to the ratification of the board resolutions provided under Section 6.1(d)(ii) promptly upon any change in the sole member, sole manager, board of directors, board of managers (or other similar governing body) of such Obligor or any change in the officers of any Obligor together with an incumbency certificate in respect of such new officers authorized to act under the Loan Documents, all in form and substance satisfactory to the Administrative Agent.

Each request (or deemed request) by Borrowers for funding of a Loan, issuance of a Letter of Credit or grant of an accommodation shall constitute a representation by Borrowers that the foregoing conditions are satisfied on the date of such request and on the date of such funding, issuance or grant. The conditions set forth in this Section 6.2 are for the sole benefit of the Agents, Issuing Banks, Lenders and each other Secured Party, but until the Required Lenders or any Co-Collateral Agent otherwise direct the Applicable Agent to cease making Loans and issuing Letters of Credit, the Lenders will fund their Pro Rata share of all Loans and LC Advances and participate in all Swingline Loans and Letters of Credit whenever made or issued, which are requested by the Borrowers and which, notwithstanding the failure of the Obligor to comply with the provisions of this **Section 6**, are agreed to by the Applicable Agent in its sole discretion, provided, however, the making of any such Loans or the issuance of any Letters of Credit (regardless of whether the lack of satisfaction was known or unknown at the time), shall not be deemed a modification or waiver by any Agent, Issuing Bank, Lender or other Secured Party of the provisions of this **Section 6** on any future occasion or operate as a waiver of (i) the right of Agents, Issuing Bank and Lenders to insist upon satisfaction of all conditions precedent with respect to any subsequent funding or issuance, (ii) any Default or Event of Default due to such failure of conditions or otherwise or (iii) any rights of any Agent, Issuing Bank, Lender or other Secured Party as a result of any such failure of the Obligor to comply.

**6.3**     [Reserved].

**6.4**     Failure to Satisfy Conditions Precedent. If any Lender makes available to the Applicable Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this **Section 6**, and such funds are not made available to the applicable Borrower by the Applicable Agent because the conditions to the applicable credit extension set forth in this **Section 6** are not satisfied or waived in accordance with the terms hereof, the Applicable Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

**SECTION 7. DEPOSIT ACCOUNTS AND CASH COLLATERAL.**

**7.1**     Lien on Deposit Accounts; Cash Collateral.

7.1.1     Accounts Generally.

(a)     The Obligors shall at all times establish and maintain cash management arrangements and procedures, including Approved Deposit Accounts, reasonably satisfactory to the Agents. The Obligors shall deliver to the Administrative Agent a schedule of Deposit Accounts and Securities Account in accordance with **Section 8.4**, which schedule shall include, with respect to each depository (i) the name and address of such depository; (ii) the account number(s) maintained with such depository; and (iii) a contact person at such depository.

(b)     Each Obligor shall (i) enter into Account Control Agreements with each Deposit Account Bank and Approved Securities Intermediary, with respect to each Deposit Account and Securities Account into which any funds such Obligor receives which constitutes (or constitutes proceeds of) Revolving Credit Primary Collateral or Canadian Collateral, (ii) not establish or maintain any Securities Account that is not subject to an Account Control Agreement, (iii) not establish or maintain any Deposit Account or lockbox arrangements other than with a Deposit Account Bank and (iv) take all actions necessary to establish Applicable Agent's control of and Lien on each Deposit Account and lockbox requested by the Administrative Agent (other than Excluded Accounts).

(c)     Each Credit Card Agreement and Account Control Agreement entered into by an Obligor requires, during the continuance of a Liquidity Event Period (and delivery of notice thereof from the Applicable Agent), the ACH or wire transfer on each Business Day (and whether or not there is then an outstanding balance in the Loan Account) of all available cash receipts (the "Cash Receipts") to the Applicable Agent's Agent Account.

(d)     If any cash or Cash Equivalents owned by any Obligor (other than cash or Cash Equivalents in (i) local store depository accounts as long as the average daily balance in any such account is less than \$50,000 and the aggregate average daily balances in all such accounts do not exceed \$2,000,000, and (ii) payroll, withholding tax and other fiduciary accounts funded in the Ordinary Course of Business and required by Applicable Law (collectively, "Excluded Accounts")) are deposited to any account, or held or invested in any manner, otherwise than in an Approved Deposit Account, then the Obligors shall cause all funds in such accounts or so held or so invested to be transferred with such frequency as may be required by the Agents to an Approved Deposit Account.

(e) Subject to the notification provision of **Section 8.4**, the Obligors may close Deposit Accounts or Securities Accounts and/or open new Deposit Accounts or Securities Accounts, subject to the execution and delivery to the Administrative Agent of appropriate Account Control Agreements (except with respect to Excluded Accounts or unless expressly waived by the Agents) consistent with the provisions of this **Section 7.1** and otherwise reasonably satisfactory to the Agents. The Obligors shall furnish the Agents with prior written notice of their intention to open or close a Deposit Accounts or Securities Accounts and the Agents shall promptly notify the Obligors as to whether the Agents shall require a Account Control Agreement with the Person with whom such account will be maintained. The Obligors may also maintain one or more disbursement accounts to be used by the Obligors for disbursements and payments (including payroll) in the Ordinary Course of Business or as otherwise permitted hereunder.

(f) The Agent Account of each Agent shall at all times be under the sole dominion and control of the Applicable Agent. The Obligors hereby acknowledge and agree that (i) they have no right of withdrawal from any Agent Account, (ii) the funds on deposit in each Agent Account shall at all times continue to be collateral security for all of the applicable Obligations, and (iii) the funds on deposit in each Agent Account shall be applied as provided in this Agreement. In the event that, notwithstanding the provisions of this **Section 7.1**, during the continuation of a Liquidity Event Period, any Obligor receives or otherwise has dominion and control of any such proceeds or collections, such proceeds and collections shall be held in trust by the Obligors for the Applicable Agent, shall not be commingled with any of the Obligor's other funds or deposited in any account of the Obligors and shall promptly be deposited into the Applicable Agent's Agent Account or dealt with in such other fashion as the Obligors may be instructed by the Agents.

(g) Any amounts received in the Applicable Agent's Agent Account at any time when all of the Obligations then due have been and remain fully repaid shall be remitted to the operating account of the Company or Canadian Borrower, as applicable.

(h) The Agents shall promptly furnish written notice to each Person with whom an Approved Deposit Account is maintained of the occurrence of a Liquidity Event Termination Date.

(i) The following shall apply to deposits and payments under and pursuant to this Agreement:

(A) Funds shall be deemed to have been deposited to the Applicable Agent's Agent Account on the Business Day on which deposited, provided that such deposit is available to the Applicable Agent by 2:00 p.m. on that Business Day;

(B) If a deposit to the Applicable Agent's Agent Account or payment is not available to the Applicable Agent until after 2:00 p.m. on a Business Day, such deposit or payment shall be deemed to have been made at 9:00 a.m. on the next Business Day;

(C) If any item deposited to the Applicable Agent's Agent 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 Applicable Agent shall have the right to reverse such credit and charge the amount of such item to the applicable Loan Account and the applicable Obligors shall indemnify the applicable Secured Parties against all out-of-pocket claims and losses resulting from such dishonor or return;

(D) All amounts received under this Section 7.1.1 shall be applied in the manner set forth in Section 5.5.

(j) The Borrowers shall, and shall cause each of the other Obligors to (i) instruct each Account Debtor or other Person obligated to make a payment to any of them under any Account or General Intangible attributable to Revolving Credit Primary Collateral or Canadian Collateral to make payment, or to continue to make payment, to an Approved Deposit Account, and (ii) deposit in an Approved Deposit Account or, subject to the definition of Excluded Account, any other Deposit Account, in each case immediately upon receipt all proceeds of such Accounts and General Intangibles constituting Revolving Credit Primary Collateral or Canadian Collateral received by any Obligor from any other Person.

**7.1.2 Company Deposit Accounts; Canadian Deposit Accounts.**

(a) Without limiting the provisions of this Agreement or the Security Documents, to secure the prompt payment and performance of all Obligations, each of the Company and the Guarantors hereby grants to Administrative Agent, for the benefit of Secured Parties, a continuing security interest in and Lien upon all of such Obligor's right, title and interest in and to each Deposit Account and Securities Account of such Obligor and any deposits or other sums at any time credited to any such Deposit Account or Securities Account, including any sums in any blocked or lockbox accounts or in any accounts into which such sums are swept.

(b) Without limiting the provisions of this Agreement or the Security Documents, to secure the prompt payment and performance of all Canadian Obligations, the Canadian Borrower and each Canadian Guarantor Subsidiary hereby grants to Canadian Agent, for the benefit of Secured Parties, a continuing security interest in and Lien upon all of such Obligor's right, title and interest in and to each Deposit Account and Securities Account of Canadian Borrower and each Canadian Guarantor Subsidiary and any deposits or other sums at any time credited to any such Deposit Account or Securities Account, including any sums in any blocked or lockbox accounts or in any accounts into which such sums are swept.

**7.1.3 Reserved.**

**7.1.4 Credit Card Agreements.** Schedule 7.1.4 sets forth, as of the Closing Date, all arrangements to which any Borrower or any Guarantor is a party with respect to the payment to any Borrower or any Guarantor of the proceeds of credit card charges for sales by such Borrower or such Guarantor. The Obligors shall deliver to Applicable Agent Credit Card Agreements instructing each of their Credit Card Issuers or Credit Card Processors to transfer all amounts owing by such processor or issuer to an Obligor directly to a Approved Deposit

Account, with such Credit Card Agreements to be executed by each relevant Obligor and the applicable Credit Card Issuer or Credit Card Processor, subject to the Post-Closing Agreement.

**7.2 Real Estate Collateral.** To the extent Mortgages are required by the collateral agent under the Term Debt Documents, the Administrative Agent or any Co-Collateral Agent may, in its discretion, require the Obligations to be secured by Mortgages upon all Real Estate described on Schedule 7.2, if any. Each such Mortgage shall be duly recorded, at Borrowers' expense, in each office where such recording is required to constitute a fully perfected Lien on the Real Estate covered thereby, if any. If any Obligor acquires any Material Real Estate hereafter such Obligor shall upon request by the Administrative Agent or any Co-Collateral Agent, in its discretion, (or, in the case of any Material Real Estate that is a leasehold interest, use commercially reasonable efforts to) within 45 days (or such longer time agreed by the Administrative Agent or the Co-Collateral Agents, as applicable), execute, deliver and record a Mortgage sufficient to create a first priority Lien in favor of Applicable Agent on such Material Real Estate, and shall (or, in the case of any Material Real Estate that is a leasehold interest, use commercially reasonable efforts to) deliver all Related Real Estate Documents.

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

## **SECTION 8. COLLATERAL ADMINISTRATION**

### **8.1 Borrowing Base Certificates.**

8.1.1 Borrowing Base Certificates. Each Borrower shall deliver to the Administrative Agent (and the Administrative Agent shall promptly deliver same to the Canadian Agent and the appropriate Lenders) not later than the 15th calendar day (or if the 15th calendar day is not a Business Day, the next succeeding Business Day) of each fiscal month, a Borrowing Base Certificate (reflecting, in the case of the Borrowing Base Certificate delivered by the Company, the Tranche A Borrowing Base and the Tranche A-1 Borrowing Base and, in the case of the Canadian Borrower, the Canadian Borrowing Base) prepared as of the close of business of the previous fiscal month or such other date so requested by Administrative Agent; provided, however, that at all times (x) after the occurrence and during the continuation of an Accelerated Reporting Period or (y) after the occurrence and during the continuation of Specified Event of Default, each Borrower shall deliver to the Applicable Agent a Borrowing Base Certificate (containing available updated figures for Eligible Wholesale Receivables, Eligible Credit Card Receivables and Eligible Inventory; it being understood that any updated figures for Eligible Inventory will be estimated in good faith by the applicable Borrower based on sales and receipts information available to it at such time) not later than the third Business Day of each week, and at such other times as Administrative Agent may request, prepared as of the close of business of the previous week or such other date so requested by Administrative Agent;

8.1.2 Weekly Election. Notwithstanding the foregoing, if the Borrowers provide Administrative Agent with written notice three (3) Business Days prior to the commencement of any fiscal month, the Borrowers may, at their option, elect to furnish such Borrowing Base Certificate three (3) Business Days after the closing of the first fiscal week of such fiscal month, as of the end of such fiscal week, and shall continue to furnish such Borrowing Base Certificate updating the Eligible LC Inventory set forth therein, three (3) Business Days after each fiscal week closing, as of the end of the immediately preceding fiscal week, for the remainder of the fiscal month in which such election is made by the Borrowers. At the end of any fiscal month in which the Borrowers elect to furnish a Borrowing Base Certificate on a weekly basis, the Borrowers shall return to providing Administrative Agent with a Borrowing Base Certificate on the fifteenth (15th) day of each fiscal month (including, without limitation, on the fifteenth (15th) day of the fiscal month immediately succeeding any fiscal month in which the Borrowers had elected to furnish Borrowing Base Certificates on a weekly basis, which shall reflect the closure and reconciliation of the Borrowers' books for such preceding month), unless another such election is made by the Borrowers or the Borrowers are otherwise required to provide a Borrowing Base Certificate on a weekly basis due to the occurrence of one or more of the conditions set forth in clauses (x) or (y) of **Section 8.1.1** above.

8.1.3 Calculations. All calculations of Tranche A Excess Availability, Tranche A-1 Excess Availability, Canadian Excess Availability, Excess Availability and the Excess Availability Ratio in any Borrowing Base Certificate shall originally be made by Borrowers and certified by a Senior Officer (with such certification to be in such Person's capacity as a Senior Officer of an Obligor and not in such Person's individual capacity); provided that Administrative Agent may from time to time review and adjust any such calculation to the extent the calculation is not made in accordance with this Agreement (including adjustments relating to Collateral ineligible to be included in any of the in the Tranche A Borrowing Base, the Tranche A-1 Borrowing Base or the Canadian Borrowing Base, as applicable) or does not accurately reflect the Availability Reserves.

8.1.4 General. For purposes of submitting any Borrowing Base Certificate, the applicable Borrower may assume (and its Senior Officer may assume, for purposes of its certification thereof), with respect to any items included in the Tranche A Borrowing Base, the Tranche A-1 Borrowing Base or the Canadian Borrowing Base, as applicable, that are expressly subject to approval by the Applicable Agent, that such items will be approved by such Applicable Agent, unless (a) the Borrower does not have a good faith belief that that such items will be approved by such Applicable Agent or (b) such Borrower has been made aware by the Applicable Agent prior to the delivery of such Borrowing Base Certificate that such items will not be approved. The foregoing assumption (i) only applies to enable each Borrower and its respective Senior Officer to make the necessary certification of the Borrowing Base Certificate, (ii) only applies to those items which must be "satisfactory" or "acceptable" to the Administrative Agent and which have not been previously disapproved by the Administrative Agent, (iii) does not apply to those items which are in the Administrative Agent's "sole discretion" (including clauses (d), (f), and (g) of Eligible Wholesale Receivables), (iv) except as expressly set forth above, does not authorize either Borrower to deviate from the express terms hereof, and (v) does not in any way limit the ability of the Administrative Agent to review and adjust any calculations or determinations made by the Borrowers in any Borrowing Base Certificate as provided in **Section 8.1.3**, or impair the obligation of the Borrowers to



immediately revise and re-submit any Borrowing Base Certificate which the Administrative Agent has disapproved in accordance with the discretion granted to it hereunder (including any determination by the Administrative Agent in accordance with the discretion granted to it hereunder that any item included in a Borrowing Base Certificate submitted by the Borrowers is not acceptable or satisfactory to, or approved by, the Administrative Agent).

## **8.2 Administration of Accounts.**

8.2.1 **Account Verification.** Whether or not a Default or Event of Default exists, each Agent shall have the right at any time, in the name of Applicable Agent, any designee of such Agent or any Obligor to verify the validity, amount or any other matter relating to any Accounts of Obligors by mail, telephone or otherwise. Obligors shall cooperate fully with any Agent in an effort to facilitate and promptly conclude any such verification process.

8.2.2 **[Reserved].**

8.2.3 **Proceeds of Collateral.** Obligors shall request in writing and otherwise take all reasonable steps to ensure that all payments on Accounts or otherwise relating to Revolving Credit Primary Collateral or Canadian Collateral are made directly to an Approved Deposit Account (or a lockbox relating to an Approved Deposit Account). If any Obligor or Subsidiary receives cash or Payment Items with respect to any Revolving Credit Primary Collateral or Canadian Collateral, it shall hold same in trust for Applicable Agent and promptly (not later than the next Business Day) deposit same into an Approved Deposit Account.

## **8.3 Administration of Inventory.**

8.3.1 **Records and Reports of Inventory.** Each Obligor shall keep accurate and complete records of its Inventory and shall submit to Administrative Agent inventory reports in form reasonably satisfactory to Administrative Agent, on such periodic basis as Administrative Agent may reasonably request. Each Obligor shall conduct a physical inventory at least once per calendar year (and on a more frequent basis if requested by Administrative Agent when an Event of Default exists) and periodic cycle counts consistent with historical practices, and shall provide to Administrative Agent a report based on each such inventory and count promptly upon completion thereof, together with such supporting information as Administrative Agent may request. Administrative Agent may participate in and observe each inventory or physical count.

8.3.2 **Returns of Inventory.** No Obligor shall return any Inventory to a supplier, vendor or other Person, whether for cash, credit or otherwise, unless (a) such return is in the Ordinary Course of Business or (b) no Event of Default, Tranche A Overadvance or Canadian Overadvance exists or would result therefrom.

8.3.3 **Acquisition, Sale and Maintenance.** No Obligor shall acquire or accept any Inventory which is part of the Borrowing Base on consignment or approval. Obligors shall use, store and maintain all Inventory with reasonable care and caution, in accordance with applicable standards of any insurance and in conformity with all Applicable Law, and shall make current rent payments (within applicable grace periods provided for in leases) at all locations

where Collateral is located, stored, used or held at the premises of a third party constituting a Large Inventory Location.

**8.4 Administration of Deposit Accounts.** Schedule 8.4 sets forth all Deposit Accounts and Securities Account maintained by Obligors as of the Closing Date, including all Approved Deposit Accounts, and such schedule shall include, with respect to each depository (i) the name and address of such depository; (ii) the account number(s) maintained with such depository; and (iii) a contact person at such depository. Each Obligor shall be the sole account holder of each Deposit Account or Securities Account, and shall not allow any other Person (other than the Applicable Agent and, subject to the Intercreditor Agreement with the collateral agent under the Term Debt Documents, the collateral agent under the Term Debt Documents) to have control over a Deposit Account or Securities Account. Contemporaneously with the delivery of quarterly financial statements, each Obligor shall notify Administrative Agent of any opening or closing of an individual store Deposit Account since the last such report (or, in the case of the first such report, since the Closing Date) and will provide an updated Schedule 8.4 to reflect same; provided, however, that the Borrower Agent shall provide the Administrative Agent with 15 Business Days prior written notice before the opening or closing of any concentration account into which Revolving Credit Primary Collateral or Canadian Collateral may be deposited or otherwise held.

#### **8.5 General Provisions.**

8.5.1 **Location of Collateral.** All tangible items of Revolving Credit Primary Collateral or Canadian Collateral, other than Inventory in transit and certificated securities (which shall be in the possession of the Applicable Agent), shall at all times be kept by Obligors at the business locations set forth in Schedule 8.5.1, except that Obligors may move Collateral to another location in the United States (or, with respect to Collateral owned by the Canadian Borrower, Canada), provided, however, that if any such Collateral is to be kept at a Large Inventory Location or at a location in a jurisdiction with respect to which the Applicable Agent has not been granted a first priority perfected Lien (subject only to Permitted Liens) not set forth in Schedule 8.5.1, the Borrower Agent shall provide Administrative Agent with 15 Business Days prior written notice thereof. Contemporaneously with the delivery of quarterly financial statements, each Obligor shall provide the Administrative Agent with an updated Schedule 8.5.1 to reflect the locations of all tangible items of Revolving Credit Primary Collateral and Canadian Collateral, other than Inventory in transit and certificated securities.

#### 8.5.2 **Insurance of Collateral; Condemnation Proceeds.**

(a) Each Obligor shall maintain insurance with respect to the Collateral, covering casualty, hazard, public liability, theft, malicious mischief, and such other risks, in such amounts, with such endorsements, and with such insurers (rated A or better by A.M. Best Rating Guide) as are reasonably satisfactory to Administrative Agent. Subject to the Intercreditor Agreement, all proceeds of Revolving Credit Primary Collateral and Canadian Collateral under each policy shall be payable to Applicable Agent. From time to time upon request, Obligors shall deliver to Administrative Agent the originals or certified copies of their insurance policies and updated flood plain searches. As soon as practicable and in any event by the last day of each Fiscal Year, Obligors shall deliver to Administrative Agent a report in form and substance

reasonably satisfactory to Administrative Agent outlining all material insurance coverage maintained as of the date of such report by the Obligors and all material insurance coverage planned to be maintained by the Obligors in the immediately succeeding Fiscal Year. Unless Administrative Agent shall agree otherwise, each policy shall include reasonably satisfactory endorsements (i) showing Applicable Agent as loss payee or additional insured, as appropriate; (ii), requiring 30 days prior written notice to Applicable Agent in the event of cancellation of the policy for any reason whatsoever, unless waived by the Administrative Agent (such waiver not to be unreasonably withheld); and (iii) specifying that the interest of Applicable Agent shall not be impaired or invalidated by any act or neglect of any Obligor or the owner of the Property, nor by the occupation of the premises for purposes more hazardous than are permitted by the policy. If any Obligor fails to provide and pay for such insurance, Applicable Agent may, at its option, but shall not be required to, procure the insurance and charge Obligors therefor. Each Obligor agrees to deliver to Applicable Agent, promptly as rendered, copies of all reports made to insurance companies. While no Event of Default exists, Obligors may settle, adjust or compromise any insurance claim, as long as the proceeds are, subject to the Intercreditor Agreement, delivered to Applicable Agent. If an Event of Default exists, subject to the Intercreditor Agreement, only Applicable Agent shall be authorized to settle, adjust and compromise such claims.

(b) Subject to the Intercreditor Agreement, any proceeds of insurance (other than proceeds from workers' compensation or D&O insurance) and any awards arising from condemnation of any Collateral shall be paid to Applicable Agent.

8.5.3 **Protection of Collateral.** All expenses of protecting, storing, warehousing, insuring, handling, maintaining and shipping any Collateral, all Taxes (other than Excluded Taxes) payable with respect to any Collateral (including any sale thereof), and all other payments required to be made by Agents to any Person to realize upon any Collateral, shall be borne and paid by Obligors. No Agent shall be liable or responsible in any way for the safekeeping of any Collateral, for any loss or damage thereto (except for reasonable care in its custody while Collateral is in such Agent's actual possession), for any diminution in the value thereof, or for any act or default of any warehouseman, carrier, forwarding agency or other Person whatsoever, but the same shall be at Obligors' sole risk.

8.5.4 **Defense of Title to Collateral.** Each Obligor shall at all times defend its title to Collateral and Applicable Agent's Liens therein against all Persons, claims and demands whatsoever, except Permitted Liens.

8.5.5 **Power of Attorney.** Each Obligor hereby irrevocably constitutes and appoints Applicable Agent (and all Persons designated by any Agent) as such Obligor's true and lawful attorney (and agent-in-fact) for the purposes provided in this **Section 8.5**. Applicable Agent, or such Agent's designee, may, without notice and in either its or an Obligor's name, but at the cost and expense of Obligors:

(a) During an Event of Default, endorse an Obligor's name on any Payment Item or other proceeds of Collateral (including proceeds of insurance) that come into Applicable Agent's possession or control; and

(b) During an Event of Default, (i) notify any Account Debtors of the assignment of their Accounts, demand and enforce payment of Accounts, by legal proceedings or otherwise, and generally exercise any rights and remedies with respect to Accounts; (ii) settle, adjust, modify, compromise, discharge or release any Accounts or other Collateral, or any legal proceedings brought to collect Accounts or Collateral; (iii) sell or assign any Accounts and other Collateral upon such terms, for such amounts and at such times as Applicable Agent deems advisable; (iv) take control, in any manner, of any proceeds of Collateral; (v) prepare, file and sign an Obligor's name to a proof of claim or other document in a bankruptcy of an Account Debtor, or to any notice, assignment or satisfaction of Lien or similar document; (vi) receive, open and dispose of mail addressed to an Obligor, and notify postal authorities to change the address for delivery thereof to such address as Applicable Agent may designate; (vii) endorse any Chattel Paper, Document, Instrument, invoice, freight bill, bill of lading, or similar document or agreement relating to any Accounts, Inventory or other Collateral; (viii) use an Obligor's stationery and sign its name to verifications of Accounts and notices to Account Debtors; (ix) use the information recorded on or contained in any data processing equipment and computer hardware and software relating to any Collateral; (x) make and adjust claims under policies of insurance; (xi) take any action as may be necessary or appropriate to obtain payment under any letter of credit or banker's acceptance for which an Obligor is a beneficiary; and (xii) take all other actions as Applicable Agent deems appropriate to fulfill any Obligor's obligations under the Loan Documents.

## **SECTION 9. REPRESENTATIONS AND WARRANTIES**

**9.1 General Representations and Warranties.** To induce Agents and Lenders to enter into this Agreement and to make available the Commitments, Loans and Letters of Credit, each Obligor represents and warrants that:

9.1.1 **Organization and Qualification.** Each Obligor and Restricted Subsidiary is duly organized, validly existing and in good standing or subsisting, as applicable under the laws of the jurisdiction of its organization. Each Obligor and Restricted Subsidiary is duly qualified, authorized to do business and in good standing as a foreign corporation in each jurisdiction where failure to be so qualified could reasonably be expected to have a Material Adverse Effect.

9.1.2 **Power and Authority.** Each Obligor is duly authorized to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, and to execute, deliver and perform its Loan Documents. The execution, delivery and performance of the Loan Documents by each Obligor have been duly authorized by all necessary action, and do not (a) require any consent or approval of any holders of Capital Stock of any Obligor, other than those already obtained; (b) contravene the Organic Documents of any Obligor; (c) violate or cause a material default under any Applicable Law or any Term Debt Document; (d) result in or require the imposition of any Lien (other than Permitted Liens and Liens granted hereunder) on any Property of any Obligor or (e) violate any Applicable Laws.

9.1.3 **Enforceability.** Each Loan Document is a legal, valid and binding obligation of each Obligor party thereto, enforceable against each Obligor in accordance with its

terms, except as enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles.

9.1.4 **Capital Structure.** Schedule 9.1.4 shows, for each Obligor and Subsidiary as of the Closing Date (after giving effect to the Recapitalization Transactions), its name, its jurisdiction of organization, its authorized and issued Capital Stock, the holders of its Capital Stock, whether such entity is an Obligor and all agreements binding on such holders with respect to their Capital Stock. Each Obligor has good title in its interest in the Capital Stock of its Subsidiaries, subject only to Agents' Lien and Permitted Liens that are expressly allowed to have priority over Applicable Agent's Liens, and all such Capital Stock is duly issued, fully paid and non-assessable. Except as set forth in Schedule 9.1.4, there are no outstanding options to purchase, warrants, subscription rights, agreements to issue or sell, convertible interests, phantom rights or powers of attorney relating to any Capital Stock of any Obligor or Subsidiary.

9.1.5 **Corporate Names; Locations.** During the five years preceding the Closing Date, except as shown on Schedule 9.1.5, no Obligor has been known as or used any corporate, fictitious or trade names, has been the surviving corporation of a merger, amalgamation or combination, or has acquired any substantial part of the assets of any Person. The chief executive offices and other places of business of each Obligor as of the Closing Date are shown on Schedule 8.5.1. In the event of any change in the chief executive offices and other places of business of any Obligor, the Company shall deliver to the Administrative Agent an updated Schedule 8.5.1.

9.1.6 **Title to Properties; Priority of Liens.** Each Obligor has good and marketable title to (or valid leasehold interests in) all of its Real Estate, and good title to all of its personal Property, including all Property reflected in any financial statements delivered to Agents or Lenders, in each case free of Liens except Permitted Liens. Each Obligor has paid and discharged all lawful claims that are due and payable and that, if unpaid, could become a Lien on its Properties, other than Permitted Liens and except for such claims as are being Properly Contested. All Liens of Agents in the Collateral are duly created and perfected first priority Liens, subject only to Permitted Liens that are expressly permitted by the Loan Documents to have priority over the Applicable Agent's Liens, to the extent the filing of financing statements, the granting of control (in the case of Deposit Accounts), the taking of possession of any such Collateral or the recordation of the security interests with the appropriate intellectual property office, in each case subject to exceptions expressly permitted under the Loan Documents, will perfect the security interests granted pursuant to the Security Documents. As of the Closing Date, Schedule 9.1.6 contains a true, accurate and complete list of each Obligor's Real Estate assets and indicating which such Real Estate Assets constitute Material Real Estate Assets, and including all leases, subleases or assignments of leases (together with all amendments, modifications, supplements, renewals or extensions of any thereof) affecting Material Real Estate Assets. The Borrowers do not have knowledge of any default that has occurred and is continuing under any agreement listed on Schedule 9.1.6 (except where the consequences, direct or indirect, of such default, if any, could not reasonably be expected to have a Material Adverse Effect).

9.1.7 **OFAC; Sanctions.** Neither Holdings, nor any of its Subsidiaries, nor, to the knowledge of Holdings and its Subsidiaries, any director, officer, employee, agent,

affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (i) currently the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated nationals, Her Majesty's Treasury's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by the Government of Canada or any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction.

9.1.8 **Financial Statements.** The consolidated and, if applicable, combined balance sheets, and related statements of income, cash flow and shareholder's equity, of Obligors and Restricted Subsidiaries that have been and are hereafter delivered to Agents and Lenders, pursuant to **Section 10.1.2** or otherwise, are, in the case of audited financial statements, prepared in accordance with GAAP, and, in any case, fairly present the financial positions and results of operations of, in the case of audited financial statements, the Obligors, Restricted Subsidiaries and certain Affiliates, and in the case of interim financial statements, the Company and U.S. Guarantor Subsidiaries or the Canadian Borrower and Canadian Guarantor Subsidiaries, as the case may be, in each case at the dates and for the periods indicated, subject, in the case of interim statements, to normal year-end adjustments and the absence of footnotes. All projections and other pro forma financial information delivered from time to time to Agents and Lenders (including those delivered in connection with the syndication of the Commitments) have been prepared in good faith, based on reasonable assumptions in light of the circumstances at such time. Since February 1, 2014 there has been no change in the condition, financial or otherwise, of any Obligor or Subsidiary, and no event shall have occurred or circumstance exist, that could reasonably be expected to have a Material Adverse Effect. Each of the Borrowers, individually, is Solvent, and the Obligors, taken as a whole, are Solvent. As of the Closing Date and except for obligations set forth on Schedule 9.1.8 or as otherwise disclosed to the Agents, neither the Obligors nor any of their respective Subsidiaries have any contingent liability or liability for taxes, long-term lease or unusual forward or long-term commitment that is not reflected in financial statements referred to in this **Section 9.1.8** or the notes thereto and which in any such case is material in relation to the business, operations, properties, assets, condition (financial or otherwise) or prospects of the Obligors and their Subsidiaries taken as a whole.

9.1.9 **Surety Obligations.** No Obligor or Restricted Subsidiary is obligated as surety or indemnitor under any bond or other contract that assures payment or performance of any obligation of any Person, except as permitted hereunder.

9.1.10 **Taxes.** The Obligors and their respective Restricted Subsidiaries have filed all material United States Federal and state, Canadian federal and provincial, and other material tax returns and reports required to be filed, and have paid all material federal, state, provincial, local, foreign and other Taxes (whether or not shown on a tax return), including in their capacity as a withholding agent, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being Properly Contested. No taxing authority has given written notice to any Obligor of any proposed tax assessment against the Obligors or any of their respective Subsidiaries that would, if made, have a Material Adverse Effect. Neither any Obligor nor any Restricted Subsidiary thereof is party to any tax sharing agreement. The provision for Taxes on the books of each Obligor and Restricted Subsidiary is adequate for its current Fiscal Year. With respect to the immediately preceding six taxable years or, if shorter, the period during which such entity

was in existence, the Company, Holdings and Global Holdings have been an S corporation, a partnership and/or an entity treated as a disregarded entity for U.S. federal income tax purposes. No request by the Canada Revenue Agency for payment pursuant to Section 224(1.1) or any successor section of the ITA or any comparable provision of any other taxing statute shall have been received by any Person in respect of the Obligors.

9.1.11 **Brokers.** There are no brokerage commissions, finder's fees or investment banking fees payable in connection with any transactions contemplated by the Loan Documents.

9.1.12 **Intellectual Property.** Each Obligor and Restricted Subsidiary owns or has the lawful right to use all Intellectual Property necessary for the conduct of its business, without conflict with any rights of others that could reasonably be expected to result in a Material Adverse Effect. There is no pending or, to any Obligor's knowledge, threatened material Intellectual Property Claim with respect to any Obligor, any Restricted Subsidiary or any of their Property (including any Intellectual Property) that could reasonably be expected to result in a Material Adverse Effect. All Intellectual Property registered with the U.S. Patent and Trademark Office and the Canadian Intellectual Property Office which is owned by any Obligor on the Closing Date is shown on Schedule 9.1.12.

9.1.13 **Governmental Approvals; Other Consents.** Each Obligor and Restricted Subsidiary has, is in compliance with, and is in good standing with respect to, all Governmental Approvals necessary to conduct its business and to own, lease and operate its Properties, except to the extent compliance with such Governmental Approvals could not reasonably be expected to result in a Material Adverse Effect. All necessary material import, export or other licenses, permits or certificates for the import or handling of any goods or other Collateral have been procured and are in effect, and Obligors and Restricted Subsidiaries have complied with all foreign and domestic laws with respect to the shipment and importation of any goods or Collateral, except where noncompliance could not reasonably be expected to have a Material Adverse Effect. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Obligor of this Loan Agreement or any other Loan Document, or for the consummation of the transactions contemplated hereby, (b) the grant by any Obligor of the Liens granted by it pursuant to the Security Documents, (c) the perfection or maintenance of the Liens created under the Security Documents, other than UCC and PPSA filings that will be made on or prior to the Closing Date or on such future date as may be necessary to maintain such perfection, or (d) except for such matters as are required in connection with the exercise of default remedies in respect of securities, the exercise by any Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Security Documents.

9.1.14 **Compliance with Laws.** Each Obligor and Subsidiary has duly complied, and its Properties and business operations are in compliance with all Applicable Law, except where noncompliance could not reasonably be expected to have a Material Adverse Effect. There have been no citations, notices or orders of noncompliance issued to any Obligor or Subsidiary under any Applicable Law, the receipt of which could reasonably be expected to have a Material Adverse Effect.

9.1.15 **Compliance with Environmental Laws.** Except as disclosed on Schedule 9.1.15 and except to the extent any of the following could not reasonably be expected to result in a Material Adverse Effect, no Obligor's or Restricted Subsidiary's past or present operations, Real Estate or other Properties are subject to any federal, state, provincial or local investigation to determine whether any remedial action is needed to address any environmental pollution, hazardous material or environmental clean-up. No Obligor or Restricted Subsidiary has received any Environmental Notice the receipt of which could reasonably be expected to result in a Material Adverse Effect. No Obligor or Restricted Subsidiary has any material liability with respect to any Environmental Release, environmental pollution or hazardous material on any Real Estate now or previously owned, leased or operated by it in any case that could reasonably be expected to result in a Material Adverse Effect.

9.1.16 **Term Debt Documents.** No Term Debt Document prohibits the execution or delivery of any Loan Documents by an Obligor nor the performance by an Obligor of any obligations hereunder or thereunder.

9.1.17 **Litigation.** Except as shown on Schedule 9.1.17, there are no proceedings or investigations pending or, to any Obligor's knowledge, threatened against any Obligor or Restricted Subsidiary, or any of their businesses, operations, Properties, prospects or conditions, that (a) relate to any Loan Documents or transactions contemplated thereby; or (b) could reasonably be expected to have a Material Adverse Effect. No Obligor or Restricted Subsidiary is in default with respect to any order, injunction or judgment of any Governmental Authority that could reasonably be expected to have a Material Adverse Effect.

9.1.18 **Insurance; No Casualty.** The properties of the Obligor and Restricted Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Obligor, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Obligor or the applicable Subsidiary operates. Neither the businesses nor the properties of any Obligor or any of its Restricted Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

9.1.19 **No Defaults.** No Default or Event of Default has occurred and is continuing.

9.1.20 **ERISA.** (a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Internal Revenue Code and other Federal or state laws. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Internal Revenue Code has received a favorable determination letter from the Internal Revenue Service to the effect that the form of such Plan is qualified under Section 401(a) of the Internal Revenue Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Internal Revenue Code, or an application for such a letter is currently being processed by the Internal Revenue Service, or is subject to an opinion letter issued by the Internal Revenue Service to the effect that such Pension Plan complies in form with the requirements of Section 401(a) of the Internal Revenue Code. To



the best knowledge of any Borrower, nothing has occurred that would prevent, or cause the loss of such tax-qualified status.

(b) There are no pending or, to the best knowledge of the Borrowers, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. To the best knowledge of the Borrowers, there has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred, and neither the Borrowers nor any of their respective ERISA Affiliates are aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan; (ii) the Borrowers and each of their respective ERISA Affiliates have met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Internal Revenue Code) is 60% or higher and neither the Borrowers nor any of their respective ERISA Affiliates know of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such Pension Plan to drop below 60% as of the most recent valuation date; (iv) neither the Borrowers nor any of their respective ERISA Affiliates have incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (v) neither the Borrowers nor any of their respective ERISA Affiliates have engaged in a transaction that could be subject to **Section 4069** or Section 4212(c) of ERISA; and (vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

(ii) Neither the Borrowers nor any of their respective ERISA Affiliates maintain or contribute to, or have any unsatisfied obligation to contribute to, or liability under, any active or terminated Pension Plan other than (A) on the Closing Date, those listed on Schedule 9.1.20 hereto and (B) thereafter, Pension Plans not otherwise prohibited by this Agreement.

(iii) No Obligor or Restricted Subsidiary has, or is liable under, any Multiemployer Plan or Foreign Plan.

9.1.21 **Trade Relations.** There exists no actual or threatened termination, limitation or modification of any business relationship between any Obligor or Restricted Subsidiary and any customer or supplier, or any group of customers or suppliers, individually or in the aggregate the consequence of which could reasonably be expected to result in a Material Adverse Effect.

9.1.22 **Reserved.**

9.1.23 **Not a Regulated Entity.** No Obligor is (a) an “investment company” or a “person directly or indirectly controlled by or acting on behalf of an investment company” within the meaning of the Investment Company Act of 1940; (b) a “holding company”, or a “subsidiary company” of a “holding company”, or an “affiliate” of a “holding company”, as such terms are defined in the Public Utility Holding Company Act of 2005; or (c) subject to regulation under the Federal Power Act, the Interstate Commerce Act, any public utilities code or any other Applicable Law regarding its authority to incur Debt.

9.1.24 **Margin Stock.** No Obligor or Restricted Subsidiary is engaged, principally or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No Loan proceeds or Letters of Credit will be used by Obligors, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

9.1.25 **Plan Assets.** No Obligor is an entity deemed to hold “plan assets” within the meaning of 29 C.F.R. §2510.3-101, as modified by Section 3(42) of ERISA, of any “employee benefit plan” (as defined in Section 3(3) of ERISA) that is subject to Title I of ERISA or any “plan” (within the meaning of Section 4975 of the Internal Revenue Code) that is subject to Section 4975 of the Internal Revenue Code, and, assuming the accuracy of the representations set forth in Section 13.5, neither the execution of this Agreement nor the funding of any Loans gives rise to a non-exempt prohibited transaction within the meaning of Section 406 of ERISA or Section 4975 of the Internal Revenue Code.

9.1.26 **Patriot Act; Anti-Corruption Laws.** To the extent applicable, each Obligor is in compliance, in all material respects, with the (i) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (ii) the Patriot Act or the AML Legislation. No part of the proceeds of the Loans or Letters of Credit will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended or similar foreign Applicable Laws. Holdings and its Subsidiaries have conducted their businesses in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, the Corruption of Foreign Public Officials Act (Canada) and other similar anti-corruption legislation in other jurisdictions and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

9.1.27 **Complete Disclosure.** No (x) Loan Document or (y) information (except any financial projections and other pro forma financial information) provided by or on behalf of any Obligor and delivered to the Lenders in connection with the syndication of the Commitments, contains, as and when delivered, any untrue statement of a material fact, nor fails to disclose any material fact necessary to make the statements contained therein not materially misleading.

9.1.28 **Restricted Junior Payments.** Since February 1, 2014, neither the Obligor nor any of their respective Restricted Subsidiaries have directly or indirectly declared, ordered, paid or made, or set apart any sum or property for, any Restricted Junior Payment except as permitted pursuant to **Section 10.2.6.**

## **SECTION 10. COVENANTS AND CONTINUING AGREEMENTS**

**10.1 Affirmative Covenants.** For so long as any Commitments or Obligations (other than contingent Obligations which by their terms survive such termination) are outstanding, each Obligor shall, and shall cause each Restricted Subsidiary to:

10.1.1 **Inspections; Appraisals.** (a) Permit Agents (or their agents) from time to time, subject (except when a Default or Event of Default exists) to reasonable notice and normal business hours, to visit and inspect the Properties of any Obligor, conduct field examinations and Inventory appraisals, inspect, audit and make extracts from any Obligor's books and records, and discuss with its officers, employees, agents, advisors and independent accountants such Obligor's business, financial condition, assets, prospects and results of operations, provided that no more than four such inspections may be conducted during any Fiscal Year (except that such inspections will not be limited while an Event of Default exists). Lenders may participate in any such visit or inspection, at their own expense. Neither any Agent nor any Lender shall have any duty to any Obligor to make any inspection, nor to share any results of any inspection, appraisal or report with any Obligor. To the extent any appraisal or other information is shared by an Agent or a Lender with any Obligor, such Obligor acknowledges that it was prepared by Agents and Lenders for their purposes and Obligor shall not be entitled to rely upon it.

(b) Reimburse each Agent for all charges, costs and expenses of such Agent in connection with visits and inspections of the Properties of any Obligor, examinations, inspections and audits of any Obligor's books and records, field examinations, appraisals of Inventory and any other financial or Collateral matters as such Agent deems appropriate, (i) if the Excess Availability Ratio is greater 30% at all times during any twelve (12) consecutive month period, one (1) time during such twelve (12) consecutive month period, (ii) if the Excess Availability Ratio is less than or equal to 30% at any time during any twelve (12) consecutive month period, two (2) times during such twelve (12) consecutive month period and (iii) after the occurrence and during the continuation of an Event of Default, as frequently as required by such Agent in its discretion. The Obligor shall pay each Agent's then standard charges for each day that an employee of such Agent or its Affiliates is engaged in any examination activities, and shall pay the standard charges of such Agent's internal appraisal group, provided that such charges are competitive with the rates of third party examiners for similar work. This Section shall not be construed to limit any Agent's right to conduct examinations and/or obtain appraisals one (1) additional time per twelve (12) consecutive month period at the expense of Lenders, nor to use third parties for such purposes.

10.1.2 **Financial and Other Information.** Keep adequate records and books of account with respect to its business activities, in which proper entries are made in accordance with GAAP reflecting all financial transactions; and furnish to Agents and Lenders:

(a) within 120 days after the end of each Fiscal Year, the consolidated and combined balance sheets of the Company, its Subsidiaries and certain Affiliates (including the Canadian Borrower and its Subsidiaries) as required by GAAP as at the end of such Fiscal Year and the related consolidated and combined statements of income, stockholders' equity and cash flows (including information regarding discontinued operations) of the Company, its Subsidiaries and certain Affiliates (including the Canadian Borrower and its Subsidiaries) as required by GAAP for such Fiscal Year, which consolidated and combined statements shall all be in reasonable detail and prepared in accordance with GAAP and shall set forth in comparative form corresponding figures for the preceding Fiscal Year and other information reasonably acceptable to Administrative Agent, audited and accompanied by (i) a Financial Officer Certification and a Narrative Report with respect thereto, (ii) a report and opinion (which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit) by a firm of independent certified public accountants of recognized standing selected by the Company and reasonably acceptable to Administrative Agent (with Administrative Agent hereby acknowledging and agreeing that each of PricewaterhouseCoopers, Ernst & Young, KPMG, Boisjoli Sabbag (with respect to the Canadian Borrower) and Deloitte & Touche are acceptable), which certification shall be prepared in accordance with GAAP, (iii) a schedule that sets forth the financial results of the Company and the U.S. Guarantor Subsidiaries for such Fiscal Year consistent in presentation with the financial statements delivered pursuant to **Section 10.1.2(b)** and (iv) a schedule that sets forth the financial results of the Canadian Borrower and the Canadian Guarantor Subsidiaries for such Fiscal Year consistent in presentation with the financial statements delivered pursuant to **Section 10.1.2(b)**;

(b) within 60 days after the end of each of the first three Fiscal Quarters of each Fiscal Year, unaudited balance sheets as of the end of such fiscal quarter and the related statements of income and cash flows for such fiscal quarter and for the portion of the Fiscal Year then elapsed, on a (i) consolidated basis for the Company and its Subsidiaries and (ii) consolidated basis for the Canadian Borrower and its Subsidiaries, in each case, setting forth in comparative form corresponding figures for the preceding Fiscal Year and accompanied by (x) a Narrative Report (which shall include information regarding discontinued operations) with respect thereto, (y) a Financial Officer Certification of the Company or the Canadian Borrower, as the case may be, pursuant to which the chief financial officer of such Borrower certifies that the relevant financial statements were prepared in accordance with GAAP and fairly present the financial position and results of operations for such quarterly period, subject to normal year-end adjustments and (z) a certificate of the chief financial officer of the Company certifying the amount of Investments made in Non-Guarantor Subsidiaries (including those described in **Sections 10.2.9(g)** and **(l)**) during such fiscal month and for the period since the Closing Date;

(c) within 30 days after the end of each fiscal month (but within 60 days after the end of each Fiscal Quarter), unaudited balance sheets as of the end of such fiscal month and the related statements of income and cash flows (and, if otherwise produced by the Company, the consolidated and combined statement of stockholders' equity) (including information regarding discontinued operations) for such fiscal month and for the portion of the Fiscal Year then elapsed, (i) on a consolidated basis for the Company and its Subsidiaries and (ii) on a consolidated basis for the Canadian Borrower and its Subsidiaries, in each case, setting forth in comparative form corresponding figures for the preceding Fiscal Year and accompanied by a

Narrative Report with respect thereto, and a Financial Officer Certification of the Company or the Canadian Borrower, as the case may be, pursuant to which the chief financial officer of such Borrower certifies that the relevant financial statements were prepared in accordance with GAAP and fairly present the financial position and results of operations for such month and period, subject to normal year-end adjustments;

(d) concurrently with delivery of financial statements under clauses (a) and (b) above, or more frequently if requested by Administrative Agent while an Event of Default exists, a Compliance Certificate executed by the chief financial officer of each Borrower (with such certification to be in such Person's capacity as chief financial officer of such Borrower and not in such Person's individual capacity);

(e) concurrently with delivery of financial statements under clause (a) above, and otherwise promptly after the request by Administrative Agent, copies of any detailed audit reports or management letters submitted to the board of directors (or the audit committee of the board of directors) of any Obligor by independent accountants in connection with the accounts or books of any Obligor or any Subsidiary, or any audit of any of them;

(f) concurrently with delivery of financial statements under clause (a) above, and otherwise promptly after the request by Administrative Agent, a certificate of a duly authorized officer of each Borrower either confirming that there has been no change in such information since the date of the perfection certificates delivered on the Closing Date or the date of the most recent perfection certificate delivered pursuant to this Section and/or identifying such changes;

(g) not later than 60 days after the beginning of each Fiscal Year, a consolidated business plan and projections of Obligors' consolidated balance sheets, results of operations, cash flow, budgets and availability under the credit facilities (including, without limitation, projections of Excess Availability, the Excess Availability Ratio, the Tranche A Excess Availability, Tranche A-1 Excess Availability and the Canadian Excess Availability) for the next three Fiscal Years, year by year, and for such Fiscal Year, on a month by month basis, in each case for (i) the Company and the U.S. Guarantor Subsidiaries and (ii) the Canadian Borrower and the Canadian Guarantor Subsidiaries, all of the forgoing to be in form and substance reasonably satisfactory to the Administrative Agent;

(h) concurrently with delivery of financial statements under clause (b) above, a report setting forth a listing of new stores, offices or places of business since the delivery of the last such report and the information required to be delivered under **Section 8.4**;

(i) [reserved];

(j) promptly after the sending or filing thereof, copies of any proxy statements, financial statements or reports that any Obligor has made generally available to its shareholders; copies of any regular, periodic and special reports or registration statements or prospectuses that any Obligor files with the Securities and Exchange Commission or any other Governmental Authority, or any securities exchange; and copies of any press releases or other statements made available by an Obligor to the public concerning material changes to or

developments in the business of such Obligor, if and to the extent such information is not available on the SEC's or the Company's website (at www.bcbg.com);

(k) [reserved];

(l) promptly after the sending or filing thereof, copies of any annual report to be filed in connection with each Plan or Foreign Plan;

(m) promptly upon request therefor, all information pertaining to the Obligors and their Subsidiaries reasonably requested by any Lender in order for such Lender to comply with the provisions of the Patriot Act and the AML Legislation; and

(n) such other reports and information (financial or otherwise) as any Agent may request from time to time in connection with any Collateral or any Obligor's or Subsidiary's financial condition or business.

Documents required to be delivered pursuant to **Section 10.1.2(a)** or **Section 10.1.2(b)** (to the extent any such documents are included in materials otherwise filed with the Securities and Exchange Commission) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the applicable Borrower posts such documents, or provides a link thereto on such Borrower's website on the Internet at the website address indicated in writing to Agents and Lenders by the Borrower Agent; or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and each Agent have access (whether a commercial, third-party website or whether sponsored by any Agent); provided that: (i) such Borrower shall deliver paper copies of such documents to any Agent or any Lender that requests such Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by such Agent or such Lender and (ii) such Borrower shall notify each Agent and each Lender (by telecopier or electronic mail) of the posting of any such documents and provide to Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Except for such Compliance Certificates, no Agent shall have any obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrowers with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

Financial statements delivered pursuant to **Section 10.1.2(a)**, **Section 10.1.2(b)** or **Section 10.1.2(c)** shall exclude the financial results and position of all Unrestricted Subsidiaries.

The Obligors hereby acknowledge that (a) Agents and/or MLPFS may, but shall not be obligated to, make available to the Lenders and the Issuing Bank materials and/or information provided by or on behalf of the Obligors hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks, Syndtrak, ClearPar or a similar electronic transmission system (the "Platform") and (b) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Obligors or their securities) (each, a "Public Lender"). The Obligors hereby agree that (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC"

shall appear prominently on the first page thereof; (x) by marking Borrower Materials “PUBLIC,” the Obligor shall be deemed to have authorized the Agents, the Joint Lead Arrangers, the Issuing Bank and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to the Obligor or their securities for purposes of Securities Laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in **Section 14.11**); (y) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Investor;” and (z) Agents and Joint Lead Arrangers shall be entitled to treat any Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Investor.”

10.1.3 **Notices.** Notify Agents and Lenders in writing, promptly after any Senior Officer of any Obligor obtains knowledge thereof, of any of the following that affects an Obligor: (a) the threat or commencement of any proceeding or investigation, whether or not covered by insurance, reasonably likely to result in a Material Adverse Effect; (b) the existence of any Default or Event of Default; (c) the occurrence of a Reportable Event; (d) any judgment in an amount exceeding \$3,000,000 (net of insurance coverage therefor); (e) any violation or asserted violation of any Applicable Law (including ERISA, OSHA, FLSA, or any Environmental Laws), if an adverse resolution is reasonably likely to result therefrom that is reasonably likely to result in a Material Adverse Effect; (f) any material Environmental Release by an Obligor or on any Property owned, leased or occupied by an Obligor; or receipt of any Environmental Notice; (g) any circumstance or occurrence reasonably likely to result in a Material Adverse Effect (as determined in the reasonable judgment of the Company); (h) the occurrence of a Qualifying IPO or any issuance of equity interests in any of the Obligor; (j) the discharge of or any withdrawal or resignation by Obligor’s independent accountants; (k) any incurrence of Debt in excess of \$5,000,000 or dispositions of Property (other than in the Ordinary Course of Business) with a fair market value in excess of \$5,000,000, in each case, by any Obligor; (l) contemporaneously with the delivery of each Borrowing Base Certificate, a report setting forth any opening of a new store, office or place of business where Revolving Credit Primary Collateral or Canadian Collateral with a fair market value of \$1,000,000 or more will be located, provided, however, that if any such new store, office or place of business shall be a Large Inventory Location or at a location in a jurisdiction with respect to which the Applicable Agent has not been granted a First Priority Lien, the Borrower Agent shall provide the Administrative Agent with 15 Business Days prior written notice thereof; (m) any material change in any Obligor’s accounting or financial reporting practices with respect to Revolving Credit Primary Collateral or Canadian Collateral; (n) any damage to, or destruction of, all or any material portion of the Revolving Credit Primary Collateral or Canadian Collateral; (o) any time the Tranche A Borrowing Base, the Tranche A-1 Borrowing Base or the Canadian Borrowing Base is less than 90% of the Tranche A Borrowing Base or the Canadian Borrowing Base, as applicable, reflected in the most recent Borrowing Base Certificate delivered by the Borrowers pursuant to **Section 8.1** because of misreported or incorrect information being included in such Borrowing Base Certificate; (p) the existence of a Tranche A Overadvance or a Canadian Overadvance as a result of a decrease in the Tranche A Borrowing Base, the Tranche A-1 Borrowing Base or the Canadian Borrowing Base, as applicable, since the most recent Borrowing Base Certificate delivered by the Borrowers pursuant to **Section 8.1** because of misreported or incorrect information being included in such Borrowing Base Certificate, in which case such notice shall also include the amount of such overadvance; (q) a Liquidity Event

Period or Accelerated Reporting Period has begun; (r) any change in any Obligor's corporate name, identity, corporate structure, location of registered office or chief executive office or Federal Taxpayer Identification Number, (s) any notices, materials or other information provided outside the Ordinary Course of Business to the agents and/or lenders under the Term Debt Documents, (t) notices of any material withholding or claim made by a partner shop under any Partner Shop Agreement; (u) notices of any amendments, modifications or renewals of any Partner Shop Agreement, together with copies of any documentation relating thereto, (v) Liens for Taxes; (w) the creation of any new Subsidiary (x) notices required by **Section 8.5.5** or (x) any material information, documents or pleadings relating to the so-called "Carlton litigation". The Obligors hereby agree not to effect or permit any change referred to in clause (r) above unless all filings have been made under the UCC, the PPSA or otherwise that are required in order for Administrative Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral as contemplated in the Security Documents.

10.1.4 **Landlord and Storage Agreements.** Upon request, provide Administrative Agent with copies of all existing agreements, and promptly after execution thereof provide Administrative Agent upon request with copies of all future agreements, between an Obligor and any landlord, warehouseman, processor, shipper, bailee or other Person that owns any premises at which any Collateral having an aggregate value of more than \$1,000,000 may be kept or that otherwise may possess or handle any Collateral.

10.1.5 **Compliance with Laws; Organic Documents.** Comply (a) with all Applicable Laws, including ERISA, Environmental Laws, FLSA, OSHA, Anti-Terrorism Laws, and laws regarding collection and payment of Taxes, and maintain all Governmental Approvals necessary to the ownership of its Properties or conduct of its business, unless failure to comply or maintain could not reasonably be expected to have a Material Adverse Effect, and (b) with all Organic Documents unless failure to comply therewith could not (x) be reasonably expected to have a Material Adverse Effect and (y) be reasonably expected to have a materially adverse effect on any Agent or any Lender. Without limiting the generality of the foregoing, if any material Environmental Release occurs at or on any Properties of any Obligor or Restricted Subsidiary for which the Obligor or Restricted Subsidiary is legally responsible, it shall act promptly and diligently to investigate and report to Administrative Agent and all appropriate Governmental Authorities the extent of, and to make appropriate remedial action to eliminate, such Environmental Release, whether or not directed to do so by any Governmental Authority, to the extent required under Environmental Laws.

10.1.6 **Taxes.** Pay, remit and discharge all material Taxes prior to the date on which they become delinquent or penalties attach, unless such Taxes are being Properly Contested.

10.1.7 **Insurance.** In addition to the insurance required hereunder with respect to Collateral, maintain insurance with insurers (rated A or better by Best Rating Guide) reasonably satisfactory to Administrative Agent, with respect to the Properties, business and business interruption of Obligors and Restricted Subsidiaries of such type (including product liability, workers' compensation, larceny, embezzlement, or other criminal misappropriation insurance), in each case, in such amounts, and with such coverages and deductibles as are



customary for companies similarly situated. All such insurance shall (i) provide for not less than 30 days' prior notice to the Administrative Agent of termination, lapse or cancellation of such insurance, (ii) name the Applicable Agent as mortgagee (in the case of property insurance) or additional insured on behalf of the Secured Parties (in the case of liability insurance) or loss payee (in the case of property insurance), as applicable, (iii) if reasonably requested by the Administrative Agent, include a breach of warranty clause and (iv) be reasonably satisfactory in all other respects to the Administrative Agent. If any portion of any real property of the Obligor that is subject to a Mortgage is at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a Special Flood Hazard Area with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968 (as now or hereafter in effect or successor act thereto), then the Borrowers shall, or shall cause each other Obligor to (i) maintain, or cause to be maintained, with a financially sound and reputable insurer, federal flood insurance (or, if not available, flood insurance) in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and (ii) deliver to the Administrative Agent evidence of such compliance in form and substance reasonably acceptable to the Administrative Agent.

10.1.8 **Licenses.** Keep each License affecting any Collateral (including the manufacture, distribution or disposition of Inventory) or any other material Property of Obligor and Restricted Subsidiaries in full force and effect, if the failure to maintain such License is reasonably likely to result in a Material Adverse Effect.

10.1.9 **Subsidiaries.**

(a) Promptly notify Administrative Agent upon any Person becoming a Subsidiary (which notice shall state whether and why the Subsidiary is an Excluded Subsidiary or Canadian Subsidiary), and cause each Subsidiary that is not an Excluded Subsidiary to guaranty the Obligations (or, with respect to a Canadian Subsidiary, to guaranty the Canadian Obligations), in a manner reasonably satisfactory to Administrative Agent, and to execute and deliver such documents, instruments and agreements and to take such other actions as Administrative Agent shall require to evidence and perfect a First Priority Lien (subject to the Intercreditor Agreement) in favor of Applicable Agent (for the benefit of Secured Parties) on all assets and Capital Stock of such Person, including delivery of such legal opinions and such other information, in form and substance reasonably satisfactory to Administrative Agent, as it shall deem appropriate; provided that (w) no more than 66% of the total combined voting power of all classes of stock entitled to vote in or of any Foreign Subsidiary shall be pledged or similarly hypothecated to guarantee or support any Obligation of the Company, (x) no Foreign Subsidiary shall guarantee or support any Obligation of the Company, (y) no security or similar interest shall be granted in the assets of any Foreign Subsidiary which security or similar interest guarantees or supports any Obligation of the Company, to the extent that it would result in material adverse tax consequences, and (z) no Obligor or Subsidiary shall be required to execute any documents in respect of Term Loan Primary Collateral (under and as defined in the Intercreditor Agreement (and including any analogous terms under an Intercreditor Agreement relating to any Permitted Term Debt Refinancing)) governed by the laws of any jurisdiction, other than the laws of the United States of America, Canada or any state, province, territory or other political subdivisions thereof, unless the lenders under the Term Debt Documents so require.

(b) Notwithstanding anything to the contrary contained in any Loan Documents (including this **Section 10.1.9**), (i) the Obligors shall, at all times, provide the Administrative Agent with a pledge of 66% (and not more than 66%) of the voting equity interests and 100% of the non-voting equity interests of (A) the Canadian Borrower (either directly, or indirectly through a pledge of the Capital Stock of a parent company of the Canadian Borrower which, for the avoidance of doubt, shall include a pledge in the equity interests in International Holdings) and (B) any first tier Foreign Subsidiary of the Obligors (to the extent such Obligors are U.S. Persons) and (ii) no Obligor shall cause a Foreign Subsidiary to provide a guarantee of any obligation of the Company, or grant any security interests, mortgages or deeds of trust in the assets of any Foreign Subsidiary in support of any Obligation of the Company.

10.1.10 **Payment of Obligations.** Pay and discharge as the same shall become due and payable all its material obligations and liabilities, including (a) all material lawful claims which, if unpaid, would by law become a Lien upon its property, except to the extent Properly Contested; and (b) all Debt, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Debt to the extent the failure to pay any such Debt would result in an Event of Default.

10.1.11 **Preservation of Existence.** Preserve, renew and maintain in full force and effect its legal existence and good standing under the laws of the jurisdiction of its organization except in a transaction permitted by **Section 10.2.12** or **Section 10.2.13**.

10.1.12 **Maintenance of Properties.** Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in working order and condition, ordinary wear and tear excepted and make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

10.1.13 **Compliance with Terms of Leaseholds.** Make all payments and otherwise perform all obligations in respect of all leases of real property to which any Obligor or any of its Restricted Subsidiaries is a party, keep such leases in full force and effect and not allow such leases to lapse or be terminated or any rights to renew such leases to be forfeited or cancelled, notify Administrative Agent of any default by any party with respect to such leases and cooperate with Administrative Agent in all respects to cure any such default, and cause each of its Restricted Subsidiaries to do so, except, in any case, where the failure to do so, either individually or in the aggregate, could not be reasonably likely to have a Material Adverse Effect.

10.1.14 **Use of Proceeds.** Use the proceeds of Loans and the issuance of Letters of Credit solely for the purposes set forth in **Section 2.1.3**.

10.1.15 **Lien Waivers and Lien Priority Agreements.** Use commercially reasonable efforts to deliver not later than 45 days after the Closing Date or, in respect of any new locations, not later than 45 days after the opening of such new location (or, in each case, such later date as shall be acceptable to the Administrative Agent in its sole discretion) Lien Waivers for each of the Obligor's locations that constitutes a Large Inventory Location. Each Obligor shall, and shall cause each of its Restricted Subsidiaries to, use commercially reasonable

efforts to deliver not later than 45 days after the Closing Date or, in respect of any new locations, not later than 45 days after the opening of such new location (or, in each case, such later date as shall be acceptable to the Administrative Agent in its sole discretion) Lien Waivers for each of the Obligor's locations in a Landlord Lien State. Each Obligor shall, and shall cause each of its Restricted Subsidiaries to, use commercially reasonable efforts to deliver a Lien Priority Agreement for each of the Obligor's locations in the province of Québec, Canada with respect to which registered hypothecs have priority over the Lien of the Applicable Agent in any of the Collateral.

**10.1.16 Designation of Subsidiaries.** The board of directors (or equivalent governing body) of Holdings may at any time, by written notice to the Administrative Agent (which notice shall include a certification of Holdings that the conditions under this Section 10.1.16 are satisfied and attach appropriate board resolutions making such designation), designate any Subsidiary of Holdings (other than the Company or the Canadian Borrower) acquired or formed after the Closing Date as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary; provided that (a) immediately before and after such designation, no Default or Event of Default shall have occurred and be continuing, (b) immediately before and after giving effect to such designation, the Secured Leverage Ratio (as defined in the Guggenheim Credit Agreement as in effect on the date hereof) shall not be greater than 4.00:1.00, calculated on a Pro Forma Basis (as defined in the Guggenheim Credit Agreement as in effect on the date hereof), as if such ratio is calculated as of the last day of the Test Period (as defined in the Guggenheim Credit Agreement as in effect on the date hereof) most recently ended on or prior to the date of such designation (and, as a condition precedent to the effectiveness of any such designation, the Borrower shall deliver to the Administrative Agent a certificate setting forth in reasonable detail the calculations demonstrating such compliance), (c) no Subsidiary may be designated as an Unrestricted Subsidiary if it is a "Restricted Subsidiary" for the purpose of the Term Debt Documents or any Subordinated Debt, (d) no Unrestricted Subsidiary that has been re-designated as a Restricted Subsidiary may subsequently be designated as an Unrestricted Subsidiary, (e) no Unrestricted Subsidiary shall own any Capital Stock in Holdings or its Restricted Subsidiaries or hold any Debt of, or any Lien on any property of Holdings or its Restricted Subsidiaries, (f) the holder of any Debt of any Unrestricted Subsidiary shall not have any recourse to Holdings or its Subsidiaries with respect to such indebtedness, (g) no Subsidiary may be designated as an Unrestricted Subsidiary if it has assets included in the determination of any of the Tranche A Borrowing Base, the Tranche A-1 Borrowing Base and the Canadian Borrowing Base, (h) no assets of an Unrestricted Subsidiary which is designated as a Restricted Subsidiary may be included in the Tranche A Borrowing Base, the Tranche A-1 Borrowing Base or the Canadian Borrowing Base unless such assets have been subject to a field examination and appraisal by Administrative Agent (it being understood that the Administrative Agent and the Borrower shall reasonably cooperate to have such field examination and appraisal completed in a timely manner), (i) no Obligor may be designated as an Unrestricted Subsidiary and (j) immediately before and after such designation, the aggregate outstanding amount of Investments made by Holdings and its Restricted Subsidiaries in Unrestricted Subsidiaries shall not exceed the amount permitted under **Section 10.2.9(l)** or **(m)**. The designation of any Subsidiary as an Unrestricted Subsidiary shall constitute an Investment by Holdings or the relevant Restricted Subsidiary (as applicable) therein and in any Subsidiary thereof at the date of designation in an amount equal to the fair market value of the net assets of such Unrestricted Subsidiary and the Investment resulting from such designation must not be

prohibited by **Section 10.2.9**. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute the incurrence at the time of designation of any Indebtedness or Liens of such Subsidiary existing at such time.

10.1.17 **Anti-Corruption Laws**. Conduct its businesses in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, the Corruption of Foreign Public Officials Act (Canada) and other similar anti-corruption legislation in other jurisdictions, and maintain policies and procedures designed to promote and achieve compliance with such laws.

10.1.18 **Further Assurances**. Promptly upon request by Administrative Agent, or any Lender through Administrative Agent, (a) correct any material unintended defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as Administrative Agent, or any Lender through Administrative Agent, may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) to the fullest extent permitted by Applicable Law, subject any Obligor's or any of its Subsidiaries' properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Security Documents, (iii) perfect and maintain the validity, effectiveness and priority of any of the Security Documents and any of the Liens intended to be created thereunder (subject to the limitations on such perfection requirements set forth in the Loan Documents) and (iv) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Obligor or any of its Subsidiaries is or is to be a party, and cause each of its Subsidiaries to do so (in each case, subject to the limitations on such perfection requirements set forth in the Loan Documents).

**10.2 Negative Covenants**. For so long as any Commitments or Obligations (other than contingent Obligations which by their terms survive such termination) are outstanding, each Obligor shall not, and shall cause each Restricted Subsidiary not to:

10.2.1 **Permitted Debt**. Create, incur, guarantee or suffer to exist any Debt, except:

(a) the Obligations and all Contingent Obligations in support thereof (including the guaranty incurred by the Company and the U.S. Guarantor Subsidiaries pursuant to the Canada Guaranty);

(b) Debt of (i) any U.S. Guarantor Subsidiary to the Company or to any other U.S. Guarantor Subsidiary, (ii) any Canadian Guarantor Subsidiary to the Canadian Borrower or to any other Canadian Guarantor Subsidiary, (iii) the Company to any U.S. Guarantor Subsidiary, (iv) the Canadian Borrower to any Canadian Guarantor Subsidiary, (v) any Non-Guarantor Subsidiary to any other Non-Guarantor Subsidiary and (vi) Debt of any Foreign Subsidiary or the Canadian Borrower or any of its Subsidiaries as a result of Investments permitted under **Section 10.2.9**; provided that (x) all such Debt under this **Section 10.2.1(b)** shall

be evidenced by promissory notes and all such notes held by Obligors shall be subject to a First Priority Lien in favor of Applicable Agent pursuant to the Security Documents, (y) all such Debt of an Obligor shall be unsecured and subordinated in right of payment to the payment in full of the Obligations pursuant to the terms of the applicable promissory notes or an intercompany subordination agreement that in any such case, is reasonably satisfactory to Administrative Agent (it being agreed, however, that such subordination terms shall not include any block on payments so long as no Event of Default exists), and (z) any payment by any such Guarantor Subsidiary under any guaranty of the Obligations shall result in a pro tanto reduction of the amount of any Debt owed by such Guarantor Subsidiary to such Borrower or to any of its Subsidiaries for whose benefit such payment is made;

(c) Debt incurred to finance the payment of insurance premiums of Holdings or any Restricted Subsidiary;

(d) Debt incurred by any Borrower or any Restricted Subsidiaries arising from agreements providing for indemnification, adjustment of purchase price or similar obligations, or from guaranties or letters of credit, surety bonds or performance bonds securing the performance of such Borrower or any such Restricted Subsidiary pursuant to such agreements, in connection with Permitted Acquisitions or permitted dispositions of any business, assets or Subsidiary of such Borrower or any of its Restricted Subsidiaries;

(e) Debt which may be deemed to exist pursuant to any guaranties, performance, surety, statutory, appeal or similar obligations incurred in the Ordinary Course of Business;

(f) Debt in respect of cash management obligations and Debt in respect of netting services, overdraft protections automated clearing-house arrangements, employee credit card programs and similar arrangements in connection with cash management and deposit accounts;

(g) (i) guaranties by the Company of Debt or other obligations of a Borrower or Guarantor Subsidiary or guaranties by a Subsidiary of the Company of Debt or other obligations of any Borrower or Guarantor Subsidiary and (ii) guaranties by the Canadian Borrower of Debt or other obligations of a Canadian Guarantor Subsidiary or guaranties by a Subsidiary of the Canadian Borrower of Debt or other obligations of the Canadian Borrower or a Canadian Guarantor Subsidiary, in each case, with respect to Debt or other obligations otherwise permitted to be incurred pursuant to this Agreement; provided, that if the Debt that is being guarantied is unsecured and/or subordinated to the Obligations, the guaranty shall also be unsecured and/or subordinated to the Obligations;

(h) Debt described in Schedule 10.2.1, and Permitted Refinancing Debt incurred for the purpose of refinancing, extending or replacing such Debt;

(i) guaranties in the Ordinary Course of Business of the obligations of suppliers, customers, franchisees and licensees of Holdings and its Restricted Subsidiaries;

(j) purchase money Debt of Borrowers or their Restricted Subsidiaries and Debt of Borrowers or their Restricted Subsidiaries with respect to Capital Leases in an aggregate

amount, together with Debt under Sections 10.2.1(p), not to exceed at any time \$15,000,000; provided that if a Secured Leverage Ratio (as defined in the Guggenheim Credit Agreement as in effect on the date hereof), calculated on a Pro Forma Basis, as such ratio is calculated as of the last day of the Test Period most recently ended on or prior to the date of such incurrence of such Debt, is no greater than 4.00:1.00 such amount shall be increased by \$10,000,000; and provided further that any such Debt under this clause (j) shall be secured only by the asset acquired in connection with the incurrence of such Debt, and (ii) shall have a principal amount (exclusive of interest payable in kind which shall have been capitalized and added to the principal amount of such facility) not in excess of the aggregate consideration paid with respect to such asset;

(k) (i) Debt under the Guggenheim Credit Agreement in an aggregate principal amount not to exceed \$322,500,000 plus (x) an additional principal amount in excess of \$37,500,000 incurred pursuant to Section 2.22 of the Guggenheim Credit Agreement (as in effect on the date hereof) and (y) the amount of any capitalized interest, fees and refinancing costs and (ii) renewals, refinancings and extensions of any such Debt that constitutes a Permitted Term Debt Refinancing;

(l) Acquired Debt, in an aggregate principal amount not to exceed \$5,000,000 at any time outstanding (it being agreed that the principal amount of such Acquired Debt shall be deemed to include Debt incurred after the applicable acquisition pursuant to unfunded commitments in effect at the time of such acquisition) so long as no Event of Default exists immediately after giving effect to the relevant acquisition resulting in such Acquired Debt, together with Permitted Refinancing Debt incurred for the purpose of refinancing, extending or replacing such Acquired Debt;

(m) Obligations (contingent or otherwise) of the Obligors or any Restricted Subsidiary existing or arising under any agreement or instrument entered into in connection with Hedging Agreements permitted under **Section 10.2.22**;

(n) Debt representing (i) deferred compensation to directors, officers, employees, members of management and consultants of Holdings or any Restricted Subsidiary in the Ordinary Course of Business and (ii) deferred compensation or other similar arrangements in connection with the Recapitalization Transactions, any Permitted Acquisition or any Investment permitted hereby;

(o) Debt of Holdings consisting of (x) repurchase obligations in respect of Capital Stock of Holdings (or a parent company of Holdings) issued to directors, consultants, managers, officers and employees of Holdings and its Restricted Subsidiaries arising upon the death, disability or termination of employment of such director, consultant, manager, officer or employee to the extent such repurchase is permitted by **Section 10.2.6(g)** and (y) promissory notes issued by Holdings to directors, consultants, managers, officers or employees (or their spouses or estates) of Holdings and its Restricted Subsidiaries to purchase or redeem capital stock of Holdings issued to such director, consultant, manager, officer or employee to the extent such purchase or redemption is permitted under **Section 10.2.6(g)**, in each case, so long as such Debt is unsecured;

(p) Debt owed for the deferred purchase price of information technology products and services (including equipment, licenses, and IT services) in an aggregate principal amount, together with Debt under Sections 10.2.1(j), not to exceed \$15,000,000; provided that (i) if a Secured Leverage Ratio (as defined in the Guggenheim Credit Agreement as in effect on the date hereof), calculated on a Pro Forma Basis, as such ratio is calculated as of the last day of the Test Period most recently ended on or prior to the date of such incurrence of such Debt, is no greater than 4.00:1.00 such amount shall be increased by \$10,000,000 and (ii) the holders of such Debt shall provide the Administrative Agent, for the benefit of the Secured Parties, a use and access right agreement with respect to such information technology products and services, in form and substance reasonably satisfactory to the Co-Collateral Agents;

(q) Debt of Foreign Subsidiaries (other than any Obligors) owing to a Person who is not an Affiliate of the Borrowers in an aggregate principal amount not to exceed \$7,500,000 at any time outstanding;

(r) Debt of the Obligors constituting Permitted Acquisition Debt; and

(s) other Debt of the Borrowers and/or their Restricted Subsidiaries in an aggregate principal amount not to exceed at any time \$5,000,000, which may constitute Material Debt, subject to the terms hereof.

For all purposes of this Section 10.2.1, the term “guarantee” shall be deemed to include all Debt described in clause (h) of the definition of such term.

10.2.2 **Permitted Liens.** Create or suffer to exist any Lien upon any of its Property, except the following (collectively, “Permitted Liens”):

(a) Liens granted pursuant to any Loan Document securing any Obligations;

(b) Liens for Taxes (i) if obligations with respect to such Taxes are being contested in good faith by appropriate proceedings or (ii) are not delinquent; provided that adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(c) Liens of landlords, banks (and rights of setoff), of carriers, shipping companies, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by Applicable Law (other than any such Lien imposed pursuant to Section 401(a)(29) or 412(n) of the Internal Revenue Code or by ERISA), in each case incurred in the Ordinary Course of Business (i) for amounts not yet delinquent or (ii) for amounts that are delinquent, amounts that are being contested in good faith by appropriate proceedings, so long as such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts, or remain payable without penalty;

(d) Liens incurred in the Ordinary Course of Business in connection with (x) workers’ compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, trade contracts, performance and return of money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money or other Debt), so long

as no foreclosure, sale or similar proceedings have been commenced with respect to any portion of the Collateral on account thereof or (y) any treasury services agreement, netting services, the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds;

(e) [reserved];

(f) any interest or title of a lessor or sublessor under any lease of real estate permitted hereunder; and Liens that have been placed by a lessor, sublessor or other third party on property over which any Borrower or any Restricted Subsidiary has easement or servitude rights or on any real property leased by any Borrower or any Restricted Subsidiary and subordination or similar agreements relating thereto that do not materially impair the value of the interests of such Borrower or such Restricted Subsidiary, as the case may be, in such property;

(g) Liens solely on any cash earnest money deposits made by any Borrower or any of its Restricted Subsidiaries in connection with any letter of intent or purchase agreement permitted hereunder;

(h) purported Liens evidenced by the filing of precautionary UCC or PPSA financing statements relating solely to operating leases entered into in the Ordinary Course of Business;

(i) 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;

(j) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property;

(k) (i) licenses of patents, trademarks and other intellectual property rights granted by any Borrower or any of its Restricted Subsidiaries in the Ordinary Course of Business and (ii) Liens arising under leases and subleases granted to others and, in any case, that do not interfere in any material respect with the ordinary conduct of the business of Holdings or such Restricted Subsidiary;

(l) Liens described in Schedule 10.2.2 or on a title report delivered in connection with Real Estate subject to a Mortgage;

(m) Liens securing Debt permitted pursuant to **Sections 10.2.1(j)** and **(p)**; provided that in each case, (x) the Lien does not extend to any additional property and the amount of Debt secured thereby is not increased other than by (A) after-acquired property that is affixed or incorporated into the property covered by such Lien or financed by Debt permitted under Section 10.2.1 and (B) proceeds and products thereof and accessions thereto and improvements thereon (it being understood that individual financings of the type permitted under **Sections 10.2.1(j)** and **(p)** provided by any lender may be cross-collateralized to other financings of such type provided by such lender or its affiliates);

(n) Liens on assets of Foreign Subsidiaries (other than any Obligor) securing Debt permitted by **Section 10.2.1**;



(o) Liens securing Debt permitted pursuant to **Section 10.2.1(k) and (r)**; provided that such Liens are subject to, and have the priority set forth in, the Intercreditor Agreement in all respects;

(p) [reserved]; and

(q) Liens securing Debt and other obligations in an aggregate principal amount outstanding not to exceed at any time \$5,000,000; provided that such Liens (x) shall not extend to any Revolving Credit Primary Collateral or Canadian Collateral and (y) shall (if secured by Collateral other than Revolving Credit Primary Collateral or Canadian Collateral) be subject to an intercreditor agreement in form and substance reasonably acceptable to the Administrative Agent and the Co-Collateral Agents in all respects.

10.2.3 **[Reserved]**.

10.2.4 **No Further Negative Pledges.** None of Holdings or any of its Restricted Subsidiaries shall enter into any agreement prohibiting the creation or assumption of any Lien upon any of the properties or assets of any such entity, whether now owned or hereafter acquired, to secure the Obligations, except with respect to (a) specific property encumbered to secure payment of particular Debt (including purchase money Debt and any Debt incurred pursuant to a Capital Lease), property of any Foreign Subsidiary (other than an Obligor) securing Debt or other obligations thereof, and property to the extent permitted thereunder to be sold pursuant to an executed agreement with respect to a permitted Asset Sale (or in connection with a disposition not constituting an Asset Sale), (b) restrictions by reason of customary provisions restricting assignments, subletting, Liens or other transfers contained in leases, licenses and similar agreements entered into in the Ordinary Course of Business (provided that such restrictions are limited to the property or assets secured by such Liens or the property or assets subject to such leases, licenses or similar agreements, as the case may be) and (c) restrictions contained in the Term Loan Documents.

10.2.5 **Cash Accumulation.** Permit cash or Cash Equivalents in an aggregate amount in excess of \$50,000,000 (other than cash necessary for the Borrowers and their Restricted Subsidiaries to satisfy the current liabilities incurred by them in the Ordinary Course of their Business and without acceleration of the satisfaction of such current liabilities) to accumulate and be maintained in the Deposit Accounts and Securities Accounts of the Obligors and their Restricted Subsidiaries; provided, however, that the Obligors' obligations under this **Section 10.2.5** shall be suspended if and for so long as there are no Loans outstanding.

10.2.6 **Restricted Junior Payments.** Through any manner or means or through any other Person, directly or indirectly, declare, order, pay, make or set apart, or agree to declare, order, pay, make or set apart, any sum for any Restricted Junior Payment except that:

(a) The Company and International Holdings may make to Holdings, and Holdings may make to holders of its Capital Stock, (i) Permitted Tax Distributions and (ii) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, Permitted Earn-Out Distributions;

(b) Holdings and its Restricted Subsidiaries may make Restricted Junior Payments of any net proceeds of any substantially concurrent issuance of Capital Stock (or capital contributions in respect thereof) Not Otherwise Applied (as defined in the Guggenheim Credit Agreement as in effect on the date hereof), in order to refinance or redeem the Lender Preferred Units (as defined in the Guggenheim Credit Agreement as in effect on the date hereof);

(c) the Company and International Holdings may make to Holdings, and Holdings may make, Restricted Junior Payments in amounts sufficient to pay (i) franchise taxes and other costs and expenses required to maintain the legal existence of Holdings or Global Holdings (or any direct or indirect parent thereof), and (ii) out-of-pocket legal, accounting and filing costs and other expenses in the nature of overhead in the ordinary course of business, to the extent such expenses are attributable to the ownership or operation of Restricted Subsidiaries of Holdings, provided that the aggregate amount of such Restricted Junior Payments by Holdings shall not exceed \$1,000,000 in any Fiscal Year, and provided, further, that any portion of any such Restricted Junior Payments not applied to the foregoing purposes shall be returned by way of equity contribution;

(d) to the extent constituting Restricted Junior Payments, transactions expressly permitted by **Section 10.2.9**, **Section 10.2.12**, or any transactions with affiliates permitted under **Section 10.2.15** (in each case, other than by reference to this **Section 10.2.6**);

(e) Holdings and its Restricted Subsidiaries may make Restricted Junior Payments to an Obligor;

(f) The Company or International Holdings may make Restricted Junior Payments to Holdings in connection with, and in amounts sufficient to fund, (i) any Restricted Junior Payment by Holdings explicitly permitted under this **Section 10.2.6** or (ii) a substantially contemporaneous Investment by Holdings in the Company or International Holdings, provided that, with respect to any such Investment in International Holdings, such Investment would be permitted to be made by the Company under **Section 10.2.9** (and to the extent relying on any limited exception, such Investment shall be counted against such limit);

(g) (i) Holdings may make repurchases of its Capital Stock deemed to occur upon the cashless exercise of stock options and warrants held by directors, officers or employees, or (ii) Holdings and its Restricted Subsidiaries may make Restricted Junior Payments to Holdings or any parent thereof so that Holdings or its direct or indirect parent may repurchase its Capital Stock owned by directors, officers or employees of Holdings or its Restricted Subsidiaries upon termination of employment in connection with restricted stock or the exercise of stock options, stock appreciation rights or similar equity incentives or equity based incentives in the amount not to exceed \$3,000,000;

(h) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, payments under the Services Agreement permitted by **Section 10.2.15**; and

(i) the Company may make other Restricted Junior Payments; provided, that (i) no Default or Event of Default exists and is continuing or would result therefrom, (ii) on a pro

forma basis after giving effect to such Restricted Junior Payment, either (x) (I) the Excess Availability Ratio immediately after giving effect to such Restricted Junior Payment and (II) the projected monthly Excess Availability Ratio during the 6-month period following such Restricted Junior Payment (as of the end of each such month), in each case with respect to clauses I and II, is greater than or equal to 20% and (III) the Fixed Charge Coverage Ratio for the most-recently ended period of twelve (12) consecutive Fiscal Months (as if such Restricted Junior Payment occurred as of the first day of such period) is greater than 1.10 to 1.00, or (y) (I) the Excess Availability Ratio immediately after giving effect to such Restricted Junior Payment and (II) the monthly projected Excess Availability Ratio during the 6-month period following such Restricted Junior Payment (as of the end of each such month), in each case with respect to clauses I and II, is greater than or equal to 25% and (iii) the Administrative Agent shall have received a certificate, in form and substance reasonably satisfactory to it, from the chief financial officer of each Borrower certifying that the conditions listed in clauses (i) and (ii) immediately preceding have been satisfied (which certificate shall attach supporting projections, information and calculations with respect thereto (all based on projections of the financial performance of the Obligors made in good faith based on assumptions reasonably believed to be reasonable at the time made)).

10.2.7 **Restrictions on Subsidiary Distributions.** Except as provided herein, in the Guggenheim Credit Agreement and in any Permitted Term Debt Refinancing, the Borrowers shall not, and shall not permit any Restricted Subsidiary of Holdings to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Restricted Subsidiary of Holdings to (a) pay dividends or make any other distributions on any of such Subsidiary's Capital Stock owned by any Borrower or any other Restricted Subsidiary of Holdings, (b) repay or prepay any Debt owed by such Subsidiary to any Borrower or any other Restricted Subsidiary of Holdings, (c) make loans or advances to the Borrowers or any other Restricted Subsidiary of Holdings, or (d) transfer any of its property or assets to the Borrowers or any other Restricted Subsidiary of Holdings other than restrictions (i) in agreements evidencing Debt permitted by **Sections 10.2.1(j), (l) or (q)** that impose restrictions on the property so acquired, (ii) by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses, joint venture agreements and similar agreements entered into in the Ordinary Course of Business, (iii) that are or were created by virtue of any transfer of, agreement to transfer or option or right with respect to any property, assets or Capital Stock not otherwise prohibited under this Loan Agreement, (iv) arising under Applicable Law, (v) customary provisions in agreements evidencing Debt permitted by **Sections 10.2.1(h) or (p)** relating solely to the obligors thereunder, (vi) customary provisions in partnership, joint venture and other similar agreements relating solely to the securities, assets and revenues of such partnership, joint venture or similar arrangement, and (vii) customary provisions in disposition agreements and other similar agreements relating solely to the assets contracted to be sold.

10.2.8 **Canadian Pension Plans.** Without the prior written consent of the Administrative Agent and the Co-Collateral Agents, no Obligor shall establish or otherwise incur any obligation or liabilities under or in connection with any Canadian Pension Plan.

10.2.9 **Investments.** Directly or indirectly, make or have outstanding, or permit to be made or be outstanding, any Investment in any Person, except:

(a) Investments in cash and Cash Equivalents;

(b) Investments (i) by Holdings or any Restricted Subsidiary of the Company made after the Closing Date in any wholly-owned U.S. Guarantor Subsidiaries of the Company, (ii) by the Canadian Borrower made after the Closing Date in any wholly-owned Canadian Guarantor Subsidiaries, (iii) by any Non-Guarantor Subsidiary in any Restricted Subsidiary of Holdings, (v) by Holdings in the Company, (vi) by Holdings in International Holdings in an amount not to exceed the net proceeds of any substantially concurrent issuance of Capital Stock (or capital contributions in respect thereof) Not Otherwise Applied (as defined in the Guggenheim Credit Agreement as in effect on the date hereof), and (vii) Investments by Obligor in any Restricted Subsidiary that is not an Obligor; provided that, the aggregate amount of all Investments made pursuant to this **clause (vii)** after the Closing Date shall not exceed, during any consecutive period of four Fiscal Quarters, the greater of \$5,000,000 and 1% of consolidated total assets (as reflected in the financial statements most recently delivered under **Section 10.1.2** as of the date any such Investment is made);

(c) Investments (i) received in satisfaction or partial satisfaction thereof from financially troubled account debtors or in satisfaction of judgments, (ii) constituting deposits, prepayments and other credits to suppliers made in the Ordinary Course of Business consistent with the past practices of the Borrowers and their Restricted Subsidiaries, (iii) constituting extensions of credit (whether constituting loans or an equity Investment) in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the Ordinary Course of Business to non-Affiliates, and (iv) consisting of workers compensation, utility, lease and similar deposits made in the Ordinary Course of Business;

(d) intercompany loans to the extent permitted under **Sections 10.2.1.(b)(i)** through (v);

(e) Investments constituting capital expenditures;

(f) loans and advances to directors, officers and employees of the Obligor and their Restricted Subsidiaries made in the Ordinary Course of Business in an aggregate principal amount not to exceed \$1,200,000 at any time outstanding, other than any loans or advances that would be in violation of Section 402 of Sarbanes-Oxley;

(g) Investments made in any Foreign Designated Entity; provided that at the time of each such Investment, the aggregate amount of such Investments, (other than by another Foreign Designated Entity) together with all prior Investments made pursuant to this **clause (f)**, does not exceed the Foreign Entity Cap;

(h) (i) Investments constituting Permitted Acquisitions permitted pursuant to **Section 10.2.12** and (ii) Investments made in connection with Permitted Acquisitions permitted pursuant to **Section 10.2.12**; provided that (x) the making of any such Investment would have been permitted under another clause of this **Section 10.2.9** after giving effect to such Permitted Acquisition (and such Investment shall thereafter be measured under such other clause) and (y) any Investment made under this clause (h)(ii) by any Obligor in connection with a Permitted

Acquisition shall be in the form of an intercompany loan subject to the requirements set forth in the proviso of **Section 10.2.1(b)**.

(i) Investments by Restricted Subsidiaries that are not Obligor; provided that Investments in an Affiliate of an Obligor shall not be permitted under this clause (i) unless (x) the affiliation arises only from such Investment or (y) such Affiliate is a Restricted Subsidiary of an Obligor;

(j) Investments received as consideration in connection with any Asset Sale permitted hereunder or pursuant to any disposition to a non-Affiliate not constituting an Asset Sale that is otherwise permitted hereunder;

(k) Investments arising in connection with Hedging Agreements permitted under **Section 10.2.22**;

(l) other Investments in an aggregate amount not to exceed \$15,000,000; and

(m) additional Investments so long as (i) no Default or Event of Default exists and is continuing or would result therefrom, (ii) on a pro forma basis after giving effect to such Investment, either (x) (I) the Excess Availability Ratio immediately after giving effect to such Investment and (II) the projected monthly Excess Availability Ratio during the 6-month period following such Investment (as of the end of each such month), in each case with respect to clauses I and II, is greater than or equal to 20%, and (III) the Fixed Charge Coverage Ratio for the most-recently ended period of twelve (12) consecutive Fiscal Months (as if such Investment occurred as of the first day of such period) is greater than 1.00 to 1.00 or (y) (I) the Excess Availability Ratio immediately after giving effect to such Investment and (II) the monthly projected Excess Availability Ratio during the 6-month period following such Investment (as of the end of each such month), in each case with respect to clauses I and II, is greater than or equal to 25% and (iv) the Administrative Agent shall have received a certificate, in form and substance reasonably satisfactory to it, from the chief financial officer of each Borrower certifying that the conditions listed in clauses (i) and (ii) immediately preceding have been satisfied (which certificate shall attach supporting projections, information and calculations with respect thereto (all based on projections of the financial performance of the Obligor made in good faith based on assumptions reasonably believed to be reasonable at the time made)); and

(n) Investments existing on the Closing Date and set forth on Schedule 10.2.9.

**10.2.10 Prepayment and Cancellation of Certain Debt.** Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner, any Debt under the Guggenheim Credit Facility, or any Permitted Term Debt Refinancing or any Debt permitted under **Section 10.2.1(k)**, unless after giving effect to such cancellation, prepayment, redemption, purchase, defeasance or satisfaction, (i) no Default or Event of Default exists and is continuing or would result therefrom, (ii) on a pro forma basis after giving effect to such cancellation, prepayment, redemption, purchase, defeasance or satisfaction, either (x) (I) the Excess Availability Ratio immediately after giving effect to such cancellation, prepayment, redemption, purchase, defeasance or satisfaction and (II) the projected monthly Excess Availability Ratio during the 6-month period following such cancellation, prepayment,

redemption, purchase, defeasance or satisfaction (as of the end of each such month), in each case with respect to clauses I and II, is greater than or equal to 20%, and (III) the Fixed Charge Coverage Ratio for the most-recently ended period of twelve (12) consecutive Fiscal Months (as if such cancellation, prepayment, redemption, purchase, defeasance or satisfaction occurred as of the first day of such period) is greater than 1.00 to 1.00 or (y) (I) the Excess Availability Ratio immediately after giving effect to such cancellation, prepayment, redemption, purchase, defeasance or satisfaction and (II) the monthly projected Excess Availability Ratio during the 6-month period following such cancellation, prepayment, redemption, purchase, defeasance or satisfaction (as of the end of each such month), in each case with respect to clauses I and II, is greater than or equal to 25% and (iii) the Administrative Agent shall have received a certificate, in form and substance reasonably satisfactory to it, from the chief financial officer of each Borrower certifying that the conditions listed in clauses (i) and (ii) immediately preceding have been satisfied (which certificate shall attach supporting projections, information and calculations with respect thereto (all based on projections of the financial performance of the Obligors made in good faith based on assumptions reasonably believed to be reasonable at the time made)); provided, however, that the Borrowers and each Restricted Subsidiary of Holdings may (i) make regularly scheduled or otherwise required repayments or redemptions of such Debt, (ii) renew, extend, refinance and refund such Debt, as long as such renewal, extension, refinancing or refunding is permitted under **Section 10.2.1** and (iii) repay, in full or in part, the Guggenheim Credit Facility with the proceeds of a Permitted Term Debt Refinancing.

10.2.11 **[Reserved]**

10.2.12 **Fundamental Changes, Disposition of Assets, and Acquisitions.**

Enter into any transaction of merger or consolidation, or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution), or convey, sell, lease or sub-lease (as lessor or sublessor), exchange, transfer or otherwise dispose of, in one transaction or a series of transactions, all or any part of its business, assets or property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, whether now owned or hereafter acquired, or acquire all or substantially all of the assets of, or stock or other evidence of beneficial ownership of, any Person or any division or line of business or other business unit of any Person, except:

(a) (i) any Restricted Subsidiary of the Company may be merged with or into the Company or any U.S. Guarantor Subsidiary, or be liquidated, wound up or dissolved, or all or any part of its business, property or assets may be conveyed, sold, leased, transferred or otherwise disposed of, in one transaction or a series of transactions, to the Company or any U.S. Guarantor Subsidiary and (ii) any Canadian Subsidiary may be merged or amalgamated with or into the Canadian Borrower or any other Canadian Guarantor Subsidiary, or be liquidated, wound up or dissolved, or all or any part of its business, property or assets may be conveyed, sold, leased, transferred or otherwise disposed of, in one transaction or a series of transactions, to the Canadian Borrower or any Canadian Guarantor Subsidiary; provided that, in the case of such a merger or amalgamation with or into a Borrower or a Guarantor Subsidiary, such Borrower or Guarantor Subsidiary shall be the continuing or surviving Person;

(b) so long as no Default or Event of Default exists or would result therefrom, any Non-Guarantor Subsidiary may be merged or amalgamated with or into (x) the Company or any Restricted Subsidiary or (y) any other Non-Guarantor Subsidiary, or be liquidated, wound up

or dissolved, or all or any part of its Capital Stock, business, property or assets may be conveyed, sold, leased, transferred or otherwise disposed of, in one transaction or a series of transactions, to the Company or any Restricted Subsidiary; provided that, in the case of such a merger or amalgamation with or into the Company or a Guarantor, the Company or such Guarantor shall be the continuing or surviving Person;

(c) so long as no Default or Event of Default exists or would result therefrom, Holdings, or any other Restricted Subsidiary of Holdings (other than the Canadian Borrower or any of its Restricted Subsidiaries) may be merged into the Company or any U.S. Guarantor Subsidiary or all or any part of its Capital Stock, business, property or assets may be conveyed, sold, leased, transferred or otherwise disposed of, in one transaction or a series of transactions, to the Company or any U.S. Guarantor Subsidiary, provided that, in the case of such a merger with the Company, the Company shall be the continuing or surviving Person and in the case of a merger of with a U.S. Guarantor Subsidiary, such U.S. Guarantor Subsidiary shall be the continuing or surviving Person;

(d) sales or other dispositions of assets that do not constitute Asset Sales;

(e) Asset Sales, the proceeds of which (valued at the principal amount thereof in the case of non cash proceeds consisting of notes or other debt Securities and valued at fair market value in the case of other non cash proceeds) when aggregated with the proceeds of all other Asset Sales made within the same Fiscal Year, are less than \$15,000,000; provided that (1) the consideration received for such assets shall be in an amount at least equal to the fair market value thereof (determined in good faith by the senior management of the Company (or similar governing body)), (2) no less than 75% thereof shall be paid in cash, and (3) the Net Proceeds thereof shall be applied as required by **Section 2.2.4**; provided, further, that if the Borrowers and their Restricted Subsidiaries sell or otherwise dispose of more than 10% of their total stores in any Fiscal Year (determined by reference to the aggregate number of stores closed, sold or otherwise disposed of during such Fiscal Year divided by the total number of stores at the commencement of such Fiscal Year) either (i) such sales or other dispositions shall be conducted by a liquidator or under the supervision of a consultant (as acceptable to the Administrative Agent) and pursuant to liquidation or consulting arrangements acceptable to Administrative Agent or (ii) immediately upon the commencement of the liquidation, sale or other disposition of such stores, all Inventory at such stores shall be excluded from “Eligible Inventory” (i.e., shall be considered Inventory ineligible for inclusion in the determination of the Tranche A Borrowing Base, the Tranche A-1 Borrowing Base and/or the Canadian Borrowing Base and shall automatically be deemed not to meet the requirements of “Eligible Inventory” under this Agreement) for the purposes of this Agreement and the other Loan Documents (including, without limitation, for the purposes of determining the Tranche A Borrowing Base, the Tranche A-1 Borrowing Base or the Canadian Borrowing Base, as applicable) and the Borrowers shall promptly deliver to the Administrative Agent an updated Borrowing Base Certificate prepared after giving effect to the exclusion of all such Inventory at such stores; and

(f) [reserved];

(g) Permitted Acquisitions;

(h) the Obligors and their Restricted Subsidiaries may make other acquisitions (in addition to the Permitted Acquisitions described in clause (g) of this **Section 10.2.12**) so long as (i) no Default or Event of Default shall have occurred and be continuing or shall be caused thereby and (ii) the aggregate amount of acquisitions made under this **Section 10.2.12(h)** does not exceed \$10,000,000 over the term of this Agreement; or

(i) Investments made in accordance with **Section 10.2.9**.

10.2.13 **Disposal of Subsidiary Interests**. Except for any sale or other disposition of its interests in the Capital Stock of any of its Restricted Subsidiaries in compliance with the provisions of **Section 10.2.12**, directly or indirectly sell, assign, pledge or otherwise encumber or dispose of any Capital Stock of any of its Restricted Subsidiaries, or permit any of its Restricted Subsidiaries to do the same, except (i) to qualify directors if required by Applicable Law, (ii) in connection with the Lien in favor of any Agent for the benefit of Secured Parties granted pursuant to the Loan Documents, (iii) in connection with any Lien permitted by **Section 10.2.2** and (iv) sales, transfers or other dispositions that do not constitute Asset Sales.

10.2.14 **Sanctions**. Directly or indirectly, use the proceeds of any Loans or other credit extension, or lend, contribute or otherwise make available such proceeds to any Subsidiary or Affiliate, joint venture partner or other individual or entity, to fund any activities of or business with any individual or entity, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any individual or entity (including any individual or entity participating in the transaction, whether as a Lender, a Joint Lead Arranger, an Agent, an Issuing Bank, or otherwise) of Sanctions.

10.2.15 **Transactions with Shareholders and Affiliates**. Directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any holder of 5% or more of any class of Capital Stock of any Borrower or any of its Subsidiaries or with any Affiliate of any Borrower or of any such holder, on terms that are less favorable to that Borrower or that Subsidiary, as the case may be, than those that might reasonably be obtained at the time from a Person who is not such a holder or Affiliate; provided that the foregoing restriction shall not apply to (a) any transaction among Obligors; (b) reasonable and customary fees paid to (including customary indemnities in respect of) members of the board of directors (or similar governing body) of any Borrower and its Restricted Subsidiaries; (c) compensation arrangements for officers and other employees of any Borrower and its Restricted Subsidiaries entered into in the Ordinary Course of Business; (d) transactions described in Schedule 10.2.15 (including pursuant to any amendment thereto or any replacement thereof so long as such amendment or replacement is not more financially adverse to the Lenders or the Obligors or otherwise materially more adverse to the Lenders or the Obligors (when considered as a whole) than the transaction as in effect on the Closing Date, as determined in good faith by the board of directors (or similar governing body) of such Borrower or such Restricted Subsidiary); (e) the performance of obligations under any employment contract, collective bargaining agreement, employee benefit plan or similar arrangement approved by the board of directors (or similar governing body) of such Borrower or such Restricted Subsidiary; (f) the payment of Restricted Junior Payments to the extent permitted by **Section 10.2.6** (including, to the extent so permitted,



the payment of expenses on behalf of any direct or indirect parent of Holdings) and the making of Investments to the extent permitted by **Section 10.2.9** (other than clause (m)); (g) transactions pursuant to the Services Agreement, including payments of fees, indemnities and expenses thereunder (as in effect on the date hereof and as amended, restated, amended and restated, supplemented, modified or replaced, so long as the amount of the fees or other compensation required thereunder are not increased); and (h) loans or advances to officers, directors and employees of any Borrower or any Subsidiary to the extent permitted hereby.

10.2.16 **Conduct of Business.** From and after the Closing Date, neither Borrowers nor any Restricted Subsidiary shall, nor shall they permit any of their respective Subsidiaries to, engage in any business other than (i) the businesses engaged in by Holdings and its Subsidiaries on the Closing Date and businesses incidental or related thereto and (ii) such other lines of business as may be consented to by Required Lenders

10.2.17 **Permitted Activities of Holdings and International Holdings.**

(a) Holdings shall not (i) create or suffer to exist any Lien upon any property or assets now owned or hereafter acquired by it other than the Liens created under the Security Documents to which it is a party or permitted pursuant to **Section 10.2.2**; (ii) sell all or substantially all of its assets (other than to the Company or a U.S. Guarantor Subsidiary); or (iii) fail to hold itself out to the public as a legal entity separate and distinct from all other Persons (except in connection with a merger with and into the Company or a U.S. Guarantor Subsidiary).

(b) International Holdings shall not (i) create or suffer to exist any Lien upon any property or assets now owned or hereafter acquired by it other than the Liens created under the Security Documents to which it is a party or permitted pursuant to **Section 10.2.2**; (ii) sell all or substantially all of its assets; or (iii) fail to hold itself out to the public as a legal entity separate and distinct from all other Persons.

10.2.18 **Amendments or Waivers of Term Debt Documents, Permitted Term Debt Refinancing, Organic Documents, Contribution Agreement and Exchange Agreement.** (a) Agree to any amendment, restatement, supplement or other modification to, or waiver of, any of its material rights under the Term Debt Documents or any agreements or documents entered into in connection with, or relating to, any Permitted Term Debt Refinancing, without obtaining the prior written consent of Required Lenders to such amendment, restatement, supplement or other modification or waiver; (b) agree to any amendment, restatement, supplement or other modification to, or waiver of, any of its material rights under any of the Contribution Agreement, the Exchange Agreement or any agreements or documents entered into in connection with, without obtaining the prior written consent of Required Lenders to such amendment, restatement, supplement or other modification or waiver; or (c) amend, modify or change any of its Organic Documents (including by the filing or modification of any certificate of designation), other than any such amendments, modifications or changes which are not adverse in any material respect to the interests of the Lenders. Each Obligor shall deliver to the Administrative Agent complete and correct copies of any material amendment, restatement, supplement or other modification to or waiver of the Term Debt Documents, any agreements or documents entered into in connection with, or relating to, any Permitted Term Debt Refinancing,

Organic Documents, Contribution Agreement or the Exchange Agreement . Nothing in this **Section 10.2.18** shall be deemed to prohibit a Permitted Term Debt Refinancing.

10.2.19 **Amendments or Waivers of the Services Agreement.** No Obligor shall, and no Obligor shall permit any of its Subsidiaries to, agree to any amendment, restatement, supplement or other modification to, or waiver of any of its material rights under, the Services Agreement, if such amendment, restatement, supplement or other modification to, or waiver of material rights, would either (i) reasonably likely have a Material Adverse Effect or (ii) be materially adverse to the interests of the Obligors (it being understood and agreed that that any such amendment, modification, supplement or other modification which, directly or indirectly, increases the obligation of any Obligor or any of their respective Subsidiaries to make any payments thereunder shall be deemed to be materially adverse to the interests of the Obligors).

10.2.20 **Accounting Changes; Fiscal Year; Tax Consolidation.** (a) Make or permit any material change, any change which would have a material impact on the results of operations or financial condition or financial statements or make any change which would be determinative as to whether or not the Holdings and Restricted Subsidiaries would be in compliance with any of the covenants set forth in **Section 10.2** and **Section 10.3** hereof, in accounting policies or reporting practices, without the consent of Administrative Agent, which consent shall not be unreasonably withheld, except changes that are required by or permitted under GAAP or (b) change its Fiscal Quarter or change its Fiscal Year without the written consent of the Administrative Agent.

10.2.21 **Margin Regulations.** Use all or any portion of the proceeds of any credit extended hereunder to purchase or carry margin stock (within the meaning of Regulation U of the Federal Reserve Board) in contravention of Regulation U of the Federal Reserve Board.

10.2.22 **Hedging Agreements.** Enter into any Hedging Agreement, except to hedge risks arising in the Ordinary Course of Business and not for speculative purposes.

10.2.23 **No Speculative Transactions.** Engage in any transaction involving commodity options, futures contracts or similar transactions, except Hedging Agreements permitted under **Section 10.2.22** and transactions entered into solely to hedge against fluctuations in the prices of commodities owned or purchased by it and the values of foreign currencies receivable or payable by it and interest swaps, caps or collars.

10.2.24 **Alternative Transaction.** Notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, no Obligor shall engage in any Alternative Transaction, for the avoidance of doubt, no repayments of the Guggenheim Credit Facility or redemption or other distribution in respect of equity interests in Global Holdings or any Obligor held by Guggenheim will be permitted in connection with any such Alternative Transaction, in each case without the written approval of the Administrative Agent and the Co-Collateral Agents.

10.2.25 **Anti-Corruption Laws.** Directly or indirectly use the proceeds of any Loan, Letter of Credit or other credit extension under the Loan Documents for any purpose

which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, the Corruption of Foreign Public Officials Act (Canada) and other similar anti-corruption legislation in other jurisdictions.

## **SECTION 11. EVENTS OF DEFAULT; REMEDIES ON DEFAULT**

**11.1 Events of Default.** Each of the following shall be an “Event of Default” hereunder, if the same shall occur for any reason whatsoever, whether voluntary or involuntary, by operation of law or otherwise:

(a) Any Borrower fails to pay (i) any principal of the Loans or any LC Obligation or Canadian LC Obligation when due (whether at stated maturity, on demand, upon acceleration or otherwise) or (ii) any interest on the Loans or any fee or any other amount (other than an amount payable under clause (i) of this Article) payable under this Agreement or any other Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of **five (5) Business Days**;

(b) (i) Any information contained in any Compliance Certificate or Borrowing Base Certificate was untrue or incorrect in any material respect when made or (ii) any representation or warranty made or delivered to any Agent or any Lender by any Obligor herein, in connection with any Loan Document or transaction contemplated thereby, or in any written statement, report, financial statement or certificate, is untrue, incorrect or misleading in any material respect when given or confirmed;

(c) Any Obligor breaches or fails to perform any covenant contained in **Section 7** (other than inadvertent breaches of such covenant) or in **Sections 8.1, 8.5.2, 10.1.1, 10.1.2, 10.1.3(b), 10.1.9, 10.1.11** (with respect to a Borrower), **10.1.14, 10.1.16, 10.1.17, or 10.2**; or

(d) Any Obligor breaches or fails to perform any other covenant contained in any Loan Documents, and such breach or failure is not waived or cured within 30 days after a Senior Officer of such Obligor has knowledge thereof or receives notice thereof from any Agent, whichever is sooner; provided, however, that such notice and opportunity to obtain a waiver or cure such breach or failure shall not apply if the breach or failure to perform is not capable of being cured within such period; or

(e) Any Guarantor repudiates, revokes or attempts to revoke its Guaranty; any Obligor denies or contests the validity or enforceability of any Loan Documents, Obligations or the perfection or priority of any Lien granted to any Agent; or the Agent’s or Lenders’ rights to enforce any material provision of any Loan Document is materially impaired for any reason (other than a waiver or release by, or act or omission on the part of, Agents and Lenders) or any Obligor shall state in writing that any Loan Document shall cease to be in full force or effect for any reason (other than a waiver or release by Agents and Lenders); or

(f) (i) Any judgment or order for the payment of money is entered against an Obligor in an amount that exceeds, individually or cumulatively with all unsatisfied judgments or orders against all Obligors, \$10,000,000 (net of any insurance coverage therefor acknowledged in writing by the insurer), and shall remain unsatisfied, undischarged, unvacated, unbonded or

unstayed for a period of sixty days (or in any event later than five days prior to the date of any proposed sale thereunder) or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of ten (10) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(g) (i) Any Obligor becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process in an amount that exceeds, individually or cumulatively, \$10,000,000 is issued or levied against all or any material part of the Revolving Credit Primary Collateral or the Canadian Collateral and is not released, vacated or fully bonded within 45 days after its issue or levy; or

(h) Any loss, theft, damage or destruction occurs with respect to any Collateral if such theft, damage or destruction could reasonably be expected to have a Materially Adverse Effect; or

(i) Holdings or its Restricted Subsidiaries are enjoined, restrained or prevented by any Governmental Authority from conducting their business, taken as a whole; any Obligor suffers the loss, revocation or termination of any material license, permit, lease or agreement without which such Obligor cannot conduct their business, taken as whole; there is a cessation of any material part of the Obligors' business (taken as a whole) for fifteen (15) days or more; or any Obligor agrees to, or commences, any liquidation, dissolution or winding up of the affairs of the Obligors (taken as a whole); or

(j) Any Insolvency Proceeding is commenced by any Obligor; an Insolvency Proceeding is commenced against any Obligor and such Obligor consents to the institution of the proceeding against it, the petition, filing or other proceeding commencing the proceeding is not timely controverted by such Obligor, such petition, filing or other proceeding is not dismissed or stayed within 45 days after its filing or institution, or an order for relief is entered in the proceeding; a trustee (including an interim trustee) is appointed to take possession of any substantial Property of or to operate any of the business of any Obligor; or any Obligor makes an offer of settlement, extension or composition to its unsecured creditors generally; or

(k) (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any Borrower under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of \$10,000,000; (ii) any Borrower or any ERISA Affiliate of such Borrower fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of the \$10,000,000; or (iii) any event similar to the foregoing occurs or exists with respect to a Foreign Plan or any Obligor fails to make a required regular contribution with respect to any Foreign Plan, in each case, where the liability associated with the foregoing is reasonably expected to be in excess of \$10,000,000; or

(l) Any Obligor is criminally indicted, charged or convicted under any state, provincial, federal or foreign Applicable Law (including the Controlled Substances Act, Money Laundering Control Act of 1986 and Illegal Exportation of War Materials Act), and such indictment, charge or conviction remains in existence for a period of 90 days or more, unless the Administrative Agent reasonably determines that such indictment, charge or conviction could not reasonably be expected to have a Material Adverse Effect; or

(m) (i) Holdings, any Borrower, any other Obligor or any of their respective Restricted Subsidiaries shall fail to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) on any Debt of Holdings, such Borrower, such other Obligor or any such Restricted Subsidiary (other than the Obligations), in each case beyond the grace period, if any, provided therefor and, in each case, such failure relates to Debt having an aggregate outstanding principal amount of \$10,000,000 or more, (ii) any other event shall occur or condition shall exist under any agreement or instrument relating to any such Debt, if the effect of such event or condition is to accelerate, or to permit the acceleration of, the maturity of such Debt or (iii) any such Debt shall become or be declared to be due and payable, or be required to be prepaid or repurchased (other than by a regularly scheduled or required prepayment), prior to the stated maturity thereof; or

(n) any Security Document shall for any reason fail or cease to create valid and enforceable Liens on any material portion of the Collateral purported to be covered thereby or, except as permitted by the Loan Documents, such Liens shall fail or cease, with respect to any material portion of the Collateral purported to be covered thereby, to be perfected with the priorities contemplated by the Intercreditor Agreement and the other Security Documents, except to the extent that any such loss of perfection or priority results from the failure of the Administrative Agent to take measures required of it to maintain such Liens or the perfection thereof, or any Obligor shall seek to cause the failure or termination of any Liens granted under any Security Document, or to subordinate or terminate the perfection thereof, where such Obligor is not entitled to the release or subordination of such Lien pursuant to the Loan Documents; or

(o) [reserved]; or

(p) A Change of Control occurs.

**11.2 Remedies upon Default.** If an Event of Default described in **Section 11.1(j)** occurs with respect to any Obligor, then to the extent permitted by Applicable Law, all Obligations shall become automatically due and payable and all Commitments shall terminate, without any action by any Agent or notice of any kind. In addition, or if any other Event of Default exists, each Agent may in its discretion (and shall upon written direction of Required Lenders or the Voting Collateral Agent, as the case may be) do any one or more of the following from time to time:

(a) declare any Obligations immediately due and payable, whereupon they shall be due and payable without diligence, presentment, demand, protest or notice of any kind, all of which are hereby waived by Obligors to the fullest extent permitted by law;

(b) terminate, reduce or condition any of the Commitments, or make any adjustment to the Tranche A Borrowing Base, to the Tranche A-1 Borrowing Base or to the Canadian Borrowing Base;

(c) require Obligors to Cash Collateralize LC Obligations, the Canadian LC Obligations, Bank Product Debt and other Obligations that are contingent or not yet due and payable (in an amount equal to the Minimum Collateral Amount with respect thereto), and, if Obligors fail promptly to deposit such Cash Collateral, Applicable Agent may (and shall upon the direction of Required Lenders) advance the required Cash Collateral as Tranche A Revolver Loans or, as applicable, Canadian Revolver Loans (whether or not an Overadvance exists or is created thereby, or the conditions in **Section 6** are satisfied); and

(d) exercise any other rights or remedies afforded under any agreement, by law, at equity or otherwise, including the rights and remedies of a secured party under the UCC, the PPSA, the Civil Code of Québec or other Applicable Law. Such rights and remedies include the rights to (i) take possession of any Collateral; (ii) require Obligors to assemble Collateral, at Borrowers' expense, and make it available to Applicable Agent at a place designated by such Agent; (iii) enter any premises where Collateral is located and store Collateral on such premises until sold (and if the premises are owned or leased by an Obligor, Obligors agree not to charge for such storage); and (iv) sell or otherwise dispose of any Collateral in its then condition, or after any further manufacturing or processing thereof, at public or private sale, with such notice as may be required by Applicable Law, in lots or in bulk, at such locations, all as Applicable Agent, in its discretion, deems advisable. Each Obligor agrees that 10 days notice of any proposed sale or other disposition of Collateral by Applicable Agent shall be reasonable. Applicable Agent shall have the right to conduct such sales on any Obligor's premises, without charge, and such sales may be adjourned from time to time in accordance with Applicable Law. Applicable Agent shall have the right to sell, lease or otherwise dispose of any Collateral for cash, credit or any combination thereof, and Applicable Agent may purchase any Collateral at public or, if permitted by law, private sale and, in lieu of actual payment of the purchase price, may setoff the amount of such price against the Obligations.

**11.3 License.** Each Agent is hereby granted an irrevocable, non-exclusive license or other right to use, license or sub-license (without payment of royalty or other compensation to any Person) any or all Intellectual Property of Obligors, computer hardware and software, trade secrets, brochures, customer lists, promotional and advertising materials, labels, packaging materials and other Property, in advertising for sale, marketing, selling, collecting, completing manufacture of, or otherwise exercising any rights or remedies with respect to, any Collateral in each case after the occurrence, and during the continuance, of an Event of Default.

**11.4 Setoff.** Agents, Lenders and their Affiliates are each authorized by Obligors at any time that an Event of Default has occurred and is continuing, without notice to Obligors or any other Person, to setoff and to appropriate and apply any deposits (general or special), funds, claims, obligations, liabilities or other Debt at any time held or owing by any Agent, any Lender or any such Affiliate to or for the account of any Obligor against any Obligations, whether or not demand for payment of such Obligation has been made, any Obligations have been declared due and payable, are then due, or are contingent or unmatured, or the Collateral or any guaranty or other security for the Obligations is adequate; provided, that in the event that any Defaulting

Lender shall exercise any such right of setoff, (x) all amounts so setoff shall be paid over immediately to the Applicable Agent for further application in accordance with the provisions of **Section 2.8** and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Applicable Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff.

### **11.5 Remedies Cumulative; No Waiver.**

11.5.1 **Cumulative Rights.** All covenants, conditions, provisions, warranties, guaranties, indemnities and other undertakings of Borrowers contained in the Loan Documents are cumulative and not in derogation or substitution of each other. In particular, the rights and remedies of Agents and Lenders are cumulative, may be exercised at any time and from time to time, concurrently or in any order, and shall not be exclusive of any other rights or remedies that Agents and Lenders may have, whether under any agreement, by law, at equity or otherwise.

11.5.2 **Waivers.** The failure or delay of any party hereto to require strict performance by any other party thereto with any terms of the Loan Documents, or to exercise any rights or remedies with respect to Collateral or otherwise, shall not operate as a waiver thereof nor as establishment of a course of dealing. All rights and remedies shall continue in full force and effect until the payment in full, in cash of all Obligations and the occurrence of the Commitment Termination Date. No modification of any terms of any Loan Documents (including any waiver thereof) shall be effective, unless such modification is specifically provided in a writing directed to Borrowers and executed by Borrowers and Applicable Agent(s) or the requisite Lenders, and such modification shall be applicable only to the matter specified. No waiver of any Default or Event of Default shall constitute a waiver of any other Default or Event of Default that may exist at such time, unless expressly stated. If any Agent or any Lender accepts performance by any Obligor under any Loan Documents in a manner other than that specified therein, or during any Default or Event of Default, or if any Agent or any Lender shall delay or exercise any right or remedy under any Loan Documents, such acceptance, delay or exercise shall not operate to waive any Default or Event of Default nor to preclude exercise of any other right or remedy. It is expressly acknowledged by Obligors that any failure to satisfy a financial covenant on a measurement date shall not be cured or remedied by satisfaction of such covenant on a subsequent date.

**11.6 Judgment Currency.** If, for the purpose of obtaining judgment in any court or obtaining an order enforcing a judgment, it becomes necessary to convert any amount due under this Loan Agreement in Dollars or in any other currency (hereinafter in this **Section 11.6** called the “first currency”) into any other currency (hereinafter in this **Section 11.6** called the “second currency”), then the conversion shall be made at the Applicable Agent’s spot rate of exchange for buying the first currency with the second currency prevailing at Applicable Agent’s close of business on the Business Day next preceding the day on which the judgment is given or (as the case may be) the order is made. Any payment made to any Agent or any Lender pursuant to this Loan Agreement in the second currency shall constitute a discharge of the obligations of the Borrowers to pay to the Agents and the Lenders any amount originally due to the Agents and the Lenders in the first currency under this Loan Agreement only to the extent of the amount of the

first currency which each Agent and each of the Lenders is able, on the date of the receipt by it of such payment in any second currency, to purchase, in accordance with such Agent's and such Lender's normal banking procedures, with the amount of such second currency so received. If the amount of the first currency falls short of the amount originally due to the Agents and the Lenders in the first currency under this Loan Agreement, each of the Borrowers, with respect to itself and its Subsidiaries, agrees that it will indemnify each Agent and each of the Lenders against and save each Agent and each of the Lenders harmless from any shortfall so arising. This indemnity shall constitute an obligation of each such Borrower separate and independent from the other obligations contained in this Loan Agreement, shall give rise to a separate and independent cause of action and shall continue in full force and effect notwithstanding any judgment or order for a liquidated sum or sums in respect of amounts due to any Agent or any Lender under this Loan Agreement or under any such judgment or order. Any such shortfall shall be deemed to constitute a loss suffered by each Agent and each such Lender, as the case may be, and the Borrowers shall not be entitled to require any proof or evidence of any actual loss. The covenant contained in this **Section 11.6** shall survive the payment in full of all of the other obligations of the Borrowers under this Loan Agreement.

## **SECTION 12. ADMINISTRATIVE AGENT AND CANADIAN AGENT**

### **12.1 Appointment, Authority and Duties of Administrative Agent and Canadian Agent.**

#### **12.1.1 Appointment and Authority of Administrative Agent and Canadian Agent.**

(a) Each Lender and Issuing Bank appoints and designates Bank of America as Administrative Agent hereunder. Administrative Agent may, and each Lender authorizes Administrative Agent to, enter into all Loan Documents (including, without limitation, the Intercreditor Agreement) to which Administrative Agent is intended to be a party and accept all Security Documents, for Administrative Agent's benefit and the benefit of Secured Parties. Each Lender agrees that any action taken by Administrative Agent or Required Tranche A Lenders or Required Lenders, in accordance with the provisions of the Loan Documents, and the exercise by Administrative Agent or Required Lenders of any rights or remedies set forth therein, together with all other powers reasonably incidental thereto, shall be authorized and binding upon all Lenders. Without limiting the generality of the foregoing, Administrative Agent shall have the sole and exclusive authority (subject to the authority of the Canadian Agent set forth in clause (b) below) to (a) act as the disbursing and collecting agent for Lenders with respect to all payments and collections arising in connection with the Loan Documents; (b) execute and deliver as Administrative Agent each Loan Document to which it is intended to be a party, including any intercreditor or subordination agreement, and accept delivery of each Loan Document from any Obligor or other Person (including, without limitation, the Intercreditor Agreement and amendment and replacements thereof in connection with a Permitted Term Debt Refinancing); (c) act as collateral agent for Secured Parties for purposes of perfecting and administering Liens under the Loan Documents and all other matters concerning Collateral of the Company and the Guarantors and Collateral of the Canadian Borrower situated in the United States, and for all other purposes stated therein; and (d) exercise all rights and remedies given to Administrative Agent with respect to any Collateral under the Loan Documents, Applicable Law or otherwise.



The duties of Administrative Agent shall be ministerial and administrative in nature, and Administrative Agent shall not have a fiduciary relationship with any Lender, Secured Party, Participant or other Person, by reason of any Loan Document or any transaction relating thereto. Administrative Agent alone shall be authorized to determine whether any Accounts or Inventory constitutes Eligible Wholesale Receivables, Eligible Credit Card Receivables or Eligible Inventory, as the case may be, or whether to impose or release any reserve, which determinations and judgments, if exercised in good faith, shall exonerate Administrative Agent from liability to any Lender or other Person for any error in judgment. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) Each Lender and Issuing Bank appoints and designates Bank of America-Canada Branch as Canadian Agent hereunder. Canadian Agent may, and each Lender authorizes Canadian Agent to, enter into all Loan Documents (including, without limitation, the Intercreditor Agreement) to which Canadian Agent is intended to be a party and accept all Security Documents, for Canadian Agent’s benefit and the benefit of Secured Parties. Each Lender agrees that any action taken by Canadian Agent or the Required Canadian Lenders or Required Lenders, in accordance with the provisions of the Loan Documents, and the exercise by Canadian Agent or the Required Lenders of any rights or remedies set forth therein, together with all other powers reasonably incidental thereto, shall be authorized and binding upon all Lenders. Without limiting the generality of the foregoing, Canadian Agent shall have the sole and exclusive authority (subject to the authority of Administrative Agent set forth in clause (a) above) to (a) act as the disbursing and collecting agent for Lenders with respect to all payments and collections arising in connection with the Loan Documents concerning the Canadian Borrower; (b) execute and deliver as Canadian Agent each Loan Document to which it is intended to be a party, including any intercreditor or subordination agreement, and accept delivery of each Loan Document from any Obligor or other Person; (c) act as collateral agent for Secured Parties for purposes of perfecting and administering Liens under the Loan Documents and all other matters concerning Collateral of the Canadian Borrower and Collateral of the Company and the Guarantors situated in Canada, and for all other purposes stated therein; and (d) exercise all rights and remedies given to Canadian Agent with respect to any Collateral under the Loan Documents, Applicable Law or otherwise. The duties of Canadian Agent shall be ministerial and administrative in nature, and Canadian Agent shall not have a fiduciary relationship with any Lender, Secured Party, Participant or other Person, by reason of any Loan Document or any transaction relating thereto. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Canadian Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(c) For the purposes of creating a solidarité active in accordance with Article 1541 of the Civil Code of Québec between each Secured Party, taken individually, on the one hand, and the Canadian Agent, on the other hand, each Obligor and each such Secured Party

acknowledges and agrees with the Canadian Agent that such Secured Party and the Canadian Agent are hereby conferred the legal status of solidary creditors of each such Obligor in respect of all Obligations owed by each such Obligor to the Canadian Agent and such Secured Party hereunder and under the other Loan Documents (collectively, the “Solidary Claim”) and that, accordingly, but subject (for the avoidance of doubt) to Article 1542 of the Civil Code of Québec, each such Obligor is irrevocably bound towards the Canadian Agent and each Secured Party in respect of the entire Solidary Claim of the Canadian Agent and such Secured Party. As a result of the foregoing, the parties hereto acknowledge that the Canadian Agent and each Secured Party shall at all times have a valid and effective right of action for the entire Solidary Claim of the Canadian Agent and such Secured Party and the right to give full acquittance for it. Accordingly, and without limiting the generality of the foregoing, the Canadian Agent, as solidary creditor with each Secured Party, shall at all times have a valid and effective right of action in respect of the Solidary Claim and the right to give a full acquittance for same. By its execution of the Loan Documents to which it is a party, each such Obligor not a party hereto shall also be deemed to have accepted the stipulations hereinabove provided. The parties further agree and acknowledge that such Liens (hypothecs) under the Security Documents and the other Loan Documents shall be granted to the Canadian Agent, for its own benefit and for the benefit of the Secured Parties, as solidary creditor as hereinabove set forth.

(d) The relationship between each Agent and each of the Secured Parties is that of an independent contractor. The use of the terms “Administrative Agent” or “Canadian Agent” is for convenience only and is used to describe, as a form of convention, the independent contractual relationship between Administrative Agent or Canadian Agent, as applicable and each of the Secured Parties. Nothing contained in this Agreement or the other Loan Documents shall be construed to create an agency, trust or other fiduciary relationship between Administrative Agent or the Canadian Agent, as applicable, and any of the Secured Parties.

(e) As an independent contractor empowered by the Secured Parties to exercise certain rights and perform certain duties and responsibilities hereunder and under the other Loan Documents, the Applicable Agent is nevertheless a “representative” of the Secured Parties, as that term is defined in Article 1 of the Uniform Commercial Code, for purposes of actions for the benefit of the Lenders and the Agents with respect to all collateral security and guaranties contemplated by the Loan Documents. Such actions include the designation of the Applicable Agent as “secured party”, “mortgagee” or the like on all financing statements and other documents and instruments, whether recorded, filed, registered or otherwise, relating to the attachment, perfection, enforceability, priority or enforcement of any security interests, mortgages, hypothecs or deeds of trust in collateral security intended to secure the payment or performance of any of the Obligations, all for the benefit of the Secured Parties and the Agents.

(f) Each Lender appoints and designates each of Bank of America and General Electric Capital Corporation as a Co-Collateral Agent hereunder. The Co-Collateral Agents shall have the rights and obligations described in Annex A. All references in **Sections 12.1.1(d), 12.1.1(e), 12.1.2, 12.1.3, 12.3, 12.7, 12.8, 12.9, 12.12, and 12.13** and the last sentence of **Section 12.1.1(a)** to any or all of the Agents shall be deemed to include the Co-Collateral Agents acting in such capacity. It is understood and agreed that the use of the term “agent” herein or in any other Loan Document (or any other similar term) with reference to any Co-Collateral Agent is not intended to connote any fiduciary or other implied (or express)

obligations arising under agency doctrine of any Applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

12.1.2 **Duties.** No Agent shall have any duties except those expressly set forth in the Loan Documents, nor be required to initiate or conduct any Enforcement Action except to the extent directed to do so by Required Lenders while an Event of Default exists. The conferral upon any Agent of any right shall not imply a duty on such Agent's part to exercise such right, unless instructed to do so by Required Lenders in accordance with this Agreement. Without limiting the generality of the foregoing, the Agents:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agents are required to exercise as directed in writing by (i) the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) or (ii) solely with respect to matters as to which any Co-Collateral Agent may direct the Agents, a Co-Collateral Agent, provided that the Agents shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agents to liability or that is contrary to any Loan Document or Applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any debtor relief law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any debtor relief law;

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as an Agent or any of its Affiliates in any capacity.

(d) The Agents shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in **Sections 14.1** and **11.2**) or at the request of any Co-Collateral Agent, or (ii) in the absence of its own gross negligence or willful misconduct, as determined by a court of competent jurisdiction by a final and nonappealable judgment. No Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to such Agent by a Borrower, a Lender or an Issuing Bank.

(e) The Agents shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability,

effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in **Section 6** or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Agents.

12.1.3 **Agent Professionals.** Each Agent may perform its duties through agents, sub-agents and employees. Each Agent may consult with and employ Agent Professionals, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by an Agent Professional. No Agent shall be responsible for the negligence or misconduct of any agents, sub-agents, employees or Agent Professionals selected by it with reasonable care. Each Agent, as a “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by such Agent for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Loan Documents, or for exercising any rights and remedies thereunder at the direction of such Agent), shall be entitled to the benefits of all provisions of this **Section 12**, **Section 3.4** and **Section 14** (including **Section 14.2**, as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto.

12.1.4 **Instructions of Required Lenders.** The rights and remedies conferred upon each Agent under the Loan Documents may be exercised without the necessity of joinder of any other party, unless required by Applicable Law. Any Agent may request instructions from Required Lenders with respect to any act (including the failure to act) in connection with any Loan Documents, and may seek assurances to its satisfaction from Lenders of their indemnification obligations under **Section 12.6** against all Claims that could be incurred by such Agent in connection with any act. Each Agent shall be entitled to refrain from any act until it has received such instructions or assurances, and such Agent shall not incur liability to any Person by reason of so refraining. Instructions of Required Lenders shall be binding upon all Lenders, and no Lender shall have any right of action whatsoever against any Agent as a result of such Agent acting or refraining from acting in accordance with the instructions of Required Lenders. Notwithstanding the foregoing, instructions by and consent of all Lenders shall be required in the circumstances described in **Section 14.1.1**, and in no event shall, and in no event shall Required Lenders, without the prior written consent of each Lender, direct any Agent to accelerate and demand payment of Loans held by one Lender without accelerating and demanding payment of all other Loans, nor to terminate the Commitments of one Lender without terminating the Commitments of all Lenders. In no event shall Agent be required to take any action that, in its opinion, is contrary to Applicable Law or any Loan Documents or could subject any Agent Indemnitee to personal liability.

## **12.2 Agreements Regarding Collateral and Field Examination Reports.**

12.2.1 **Lien Releases; Care of Collateral.** Lenders and Issuing Banks authorize each Agent, at such Agent’s option and in its discretion,

(a) Lenders authorize each Agent to release any Lien with respect to any Collateral (i) upon the occurrence of both payment, in full, in cash of the Obligations (other than contingent Obligations that by their terms survive the Commitment Termination Date) and the

occurrence of the Commitment Termination Date, (ii) that is the subject of a disposition which Borrower Agent certifies in writing to Administrative Agent is permitted under this Loan Agreement (including under 10.2.12) or a Lien which Borrowers certify is a Permitted Lien entitled to priority over Applicable Agent's Liens (and Applicable Agent may rely conclusively on any such certificate without further inquiry), (iii) that does not constitute a material part of the Collateral, (iv) in compliance with **Section 10.1.9** or (v) with the written consent of all Lenders; and

(b) to release any Guarantor from its obligations under the Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents.

Upon request by any Agent at any time, the Required Lenders will confirm in writing such Agent's authority to release its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this **Section 12.2.1**. In each case as specified in this **Section 12.2.1**, each Agent will, at the Borrowers' expense, execute and deliver to the applicable Obligor such documents as such Obligor may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Loan Documents, or to release such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this **Section 12.2.1**.

No Agent shall have any obligation whatsoever to any Lenders to assure that any Collateral exists or is owned by an Obligor, or is cared for, protected, insured or encumbered, nor to assure that Applicable Agent's Liens have been properly created, perfected or enforced, or are entitled to any particular priority, nor to exercise any duty of care with respect to any Collateral or be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

12.2.2 **Possession of Collateral.** Agents and Lenders appoint each other Agent and Lender as agent for the purpose of perfecting Liens (for the benefit of Secured Parties) in any Collateral that, under the UCC, PPSA or other Applicable Law, can be perfected by possession. If any Lender obtains possession of any such Collateral, it shall notify Agent thereof and, promptly upon Agent's request, deliver such Collateral to Applicable Agent or otherwise deal with such Collateral in accordance with Applicable Agent's instructions or as required by the Intercreditor Agreement.

12.2.3 **Reports.** Administrative Agent shall promptly, upon receipt thereof, forward to each Lender copies of the results of any field audit or other examination or any appraisal prepared by or on behalf of any Agent with respect to any Obligor or Collateral ("**Report**"). Each Lender agrees (a) that neither Bank of America nor any Agent makes any representation or warranty as to the accuracy or completeness of any Report, and shall not be liable for any information contained in or omitted from any Report; (b) that the Reports are not intended to be comprehensive audits or examinations, and that any Agent or any other Person performing any audit or examination will inspect only specific information regarding Obligations or the Collateral and will rely significantly upon Obligors' books and records as well as upon representations of Obligors' officers and employees; and (c) to keep all Reports confidential and strictly for such Lender's internal use, and not to distribute any Report (or the contents thereof)

to any Person (except to such Lender's Participants, attorneys and accountants) or use any Report in any manner other than administration of the Loans and other Obligations. Each Lender agrees to indemnify and hold harmless each Agent and any other Person preparing a Report from any action such Lender may take as a result of or any conclusion it may draw from any Report, as well as any Claims arising in connection with any third parties that obtain all or any part of a Report through such Lender.

**12.3 Reliance By Agents.** Each Agent shall be entitled to rely, and shall be fully protected in relying, upon any certification, notice or other communication (including those by telephone, telex, telegram, telecopy, electronic transmission or e-mail, Internet or intranet website posting or other distribution) believed by it to be genuine and correct and to have been signed, sent or made by the proper Person, and upon the advice and statements of Agent Professionals. Each Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the Issuing Bank, each Agent may presume that such condition is satisfactory to such Lender or the Issuing Bank unless such Agent shall have received notice to the contrary from such Lender or the Issuing Bank prior to the making of such Loan or the issuance of such Letter of Credit.

**12.4 Action Upon Default.** No Agent shall be deemed to have knowledge of any Default or Event of Default unless it has received written notice from a Lender or Borrower specifying the occurrence and nature thereof. If any Lender acquires knowledge of a Default or Event of Default, it shall promptly notify Agents and the other Lenders thereof in writing. Each Lender agrees that, except as otherwise provided in any Loan Documents or with the written consent of Applicable Agent and Required Lenders, it will not take any Enforcement Action, accelerate its Obligations, or exercise any right that it might otherwise have under Applicable Law to credit bid at foreclosure sales, UCC sales or other similar dispositions of Collateral. Notwithstanding the foregoing, however, a Lender may take action to preserve or enforce its rights against an Obligor where a deadline or limitation period is applicable that would, absent such action, bar enforcement of Obligations held by such Lender, including the filing of proofs of claim in an Insolvency Proceeding.

**12.5 Ratable Sharing.** If any Lender shall obtain any payment or reduction of any Obligation, whether through set-off or otherwise, in excess of its share of such Obligation, determined on a Pro Rata basis or in accordance with **Section 5.5**, as applicable, such Lender shall forthwith purchase from Applicable Agent, Issuing Bank and the other applicable Lenders such participations in the affected Obligation as are necessary to cause the purchasing Lender to share the excess payment or reduction on a Pro Rata basis or in accordance with **Section 5.5**, as applicable. If any of such payment or reduction is thereafter recovered from the purchasing Lender, the purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest.

**12.6 Indemnification of Agent Indemnitees and Issuing Bank Indemnitees.**

12.6.1 INDEMNIFICATION. EACH LENDER SHALL INDEMNIFY AND HOLD HARMLESS EACH OF THE AGENT INDEMNITEES AND ISSUING BANK INDEMNITEES, TO THE EXTENT NOT REIMBURSED BY OBLIGORS (BUT WITHOUT LIMITING THE INDEMNIFICATION OBLIGATIONS OF OBLIGORS UNDER ANY LOAN DOCUMENTS), ON A PRO RATA BASIS (DETERMINED AS OF THE TIME THAT THE APPLICABLE UNREIMBURSED EXPENSE OR INDEMNITY PAYMENT IS SOUGHT BASED ON EACH LENDER'S SHARE OF THE TOTAL CREDIT EXPOSURE AT SUCH TIME), AGAINST ALL CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST SUCH AGENT INDEMNITEE OR ISSUING BANK INDEMNITEE (INCLUDING ANY SUCH UNPAID AMOUNT IN RESPECT OF A CLAIM ASSERTED BY SUCH LENDER); PROVIDED THAT NO LENDER SHALL HAVE ANY OBLIGATION TO INDEMNIFY OR HOLD HARMLESS ANY AGENT INDEMNITEES OR ISSUING BANK INDEMNITEE FOR ANY CLAIM THAT IS DETERMINED IN A FINAL, NON-APPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION TO RESULT FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH AGENT INDEMNITEE OR ISSUING BANK INDEMNITEE. If any Agent or Issuing Bank is sued by any receiver, trustee in bankruptcy, debtor-in-possession or other Person for any alleged preference from an Obligor or fraudulent transfer, then any monies paid by such Agent in settlement or satisfaction of such proceeding, together with all interest, costs and expenses (including attorneys' fees) incurred in the defense of same, shall be promptly reimbursed to such Agent by Lenders to the extent of each Lender's Pro Rata share.

12.6.2 **Proceedings.** Without limiting the generality of the foregoing, if at any time (whether prior to or after the Commitment Termination Date) any proceeding is brought against any Agent Indemnitees by an Obligor, or any Person claiming through an Obligor, to recover damages for any act taken or omitted by any Agent in connection with any Obligations, Collateral, Loan Documents or matters relating thereto, or otherwise to obtain any other relief of any kind on account of any transaction relating to any Loan Documents, each Lender agrees to indemnify and hold harmless Agent Indemnitees with respect thereto and to pay to Agent Indemnitees such Lender's Pro Rata share of any amount that any Agent Indemnitee is required to pay under any judgment or other order entered in such proceeding or by reason of any settlement, including all interest, costs and expenses (including attorneys' fees) incurred in defending same; provided that no Lender shall be liable for payment of any such amount to the extent that it is determined in a final, non-appealable judgment by a court of competent jurisdiction that such judgment, order or settlement resulted from any Agent Indemnitees' gross negligence or willful misconduct. In Applicable Agent's discretion, such Agent may reserve for any such proceeding, and may satisfy any judgment, order or settlement, from proceeds of Collateral prior to making any distributions of Collateral proceeds to Lenders provided that it has not been determined in a final, non-appealable judgment by a court of competent jurisdiction that such judgment, order or settlement resulted from any Agent Indemnitees' gross negligence or willful misconduct.

**12.7 Limitation on Responsibilities of Administrative Agent and Canadian Agent.** No Agent shall be liable to Lenders for any action taken or omitted to be taken under the Loan Documents, except for losses directly and solely caused by such Agent's gross negligence or willful misconduct. No Agent assumes any responsibility for any failure or delay in performance or any breach by any Obligor or Lender of any obligations under the Loan Documents. No

Agent makes to Lenders any express or implied warranty, representation or guarantee with respect to any Obligations, Collateral, Loan Documents or Obligor. No Agent Indemnitee shall be responsible to Lenders for any recitals, statements, information, representations or warranties contained in any Loan Documents; the execution, validity, genuineness, effectiveness or enforceability of any Loan Documents; the genuineness, enforceability, collectibility, value, sufficiency, location or existence of any Collateral, or the validity, extent, perfection or priority of any Lien therein; the validity, enforceability or collectibility of any Obligations; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Obligor or Account Debtor. No Agent Indemnitee shall have any obligation to any Lender to ascertain or inquire into the existence of any Default or Event of Default, the observance or performance by any Obligor of any terms of the Loan Documents, or the satisfaction of any conditions precedent contained in any Loan Documents.

## **12.8 Successor Agents.**

### **12.8.1 Resignation; Successor Agent.**

(a) The Administrative Agent or Canadian Agent may at any time give notice of its resignation to the Lenders, the Issuing Banks and the Borrowers. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrowers, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate or branch of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent or Canadian Agent, as applicable, gives notice of its resignation, (or such earlier day as shall be agreed by the Required Lenders) (the “Resignation Effective Date”), then the retiring Applicable Agent or Canadian Agent, as applicable, may (but shall not be obligated to) on behalf of the Lenders and the Issuing Banks, appoint a successor Administrative Agent or Canadian Agent, as applicable, meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent or Canadian Agent, as applicable, is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by Applicable Law, by notice in writing to the Borrower Agent and such Person remove such Person as Administrative Agent or Canadian Agent, as applicable, and, in consultation with the Borrower Agent, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the “Removal Effective Date”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent or Canadian Agent, as applicable, shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent or Canadian Agent, as applicable, on behalf of the Lenders or the Issuing Banks under any of the Loan Documents, the retiring Administrative Agent or Canadian Agent, as applicable,



shall continue to hold such collateral security until such time as a successor Administrative Agent or Canadian Agent, as applicable, is appointed) and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent or Canadian Agent, as applicable, all payments, communications and determinations provided to be made by, to or through the Administrative Agent or Canadian Agent, as applicable, shall instead be made by or to each Lender and Issuing Bank directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent or Canadian Agent, as applicable, as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent or Canadian Agent, as applicable, hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent or Canadian Agent, as applicable, (other than as provided in **Section 5.8.3** and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent or Canadian Agent, as applicable, as of the Resignation Effective Date or the Removal Effective Date, as applicable) and the retiring or removed Administrative Agent or Canadian Agent, as applicable, shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrowers to a successor Administrative Agent or Canadian Agent, as applicable, shall be the same as those payable to its predecessor unless otherwise agreed between the Borrowers and such successor. After the retiring or removed Administrative Agent's or Canadian Agent's, as applicable, resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and **Section 14.2** shall continue in effect for the benefit of such retiring or removed Administrative Agent or Canadian Agent, as applicable, their sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent or Canadian Agent, as applicable, was acting as Administrative Agent or Canadian Agent.

(d) Any resignation by or removal of Bank of America as Administrative Agent or Bank of America-Canada Branch as Canadian Agent, as applicable, pursuant to this Section shall also constitute its resignation as Issuing Bank and as provider of Swingline Loans. If Bank of America or Bank of America-Canada Branch, as applicable, resigns as an Issuing Bank, it shall retain all the rights, powers, privileges and duties of the Issuing Bank hereunder with respect to all Letters of Credit issued by it and that are outstanding as of the effective date of its resignation as Issuing Bank and all LC Obligations with respect thereto. If Bank of America or Bank of America-Canada Branch, as applicable, resigns as the provider of Swingline Loans, it shall retain all the rights of the provider of Swingline Loans provided for hereunder with respect to Swingline Loans made by it and outstanding as of the effective date of such resignation. Upon the appointment by the Borrowers of a successor Issuing Bank or provider of Swingline Loans hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Bank or provider of Swingline Loans, as applicable, (b) the retiring Issuing Bank or provider of Swingline Loans shall be discharged from all of its respective duties and obligations hereunder or under the other Loan Documents, and (c) the successor Issuing Bank shall issue Letters of Credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America and/or Bank of America-Canada Branch, as applicable, to effectively assume the obligations of Bank of America and/or Bank of America-Canada Branch with respect to such Letters of Credit. Any successor by merger, amalgamation or acquisition of the stock or assets

of Bank of America or Bank of America-Canada Branch shall continue to be Administrative Agent and Canadian Agent hereunder (respectively) without further act on the part of the parties hereto, unless such successor resigns as provided above.

12.8.2 **Separate Agent.** It is the intent of the parties that there shall be no violation of any Applicable Law denying or restricting the right of financial institutions to transact business in any jurisdiction. If any Agent believes that it may be limited in the exercise of any rights or remedies under the Loan Documents due to any Applicable Law, such Agent may appoint an additional Person who is not so limited, as a separate collateral agent or co-collateral agent. If any Agent so appoints a collateral agent or co-collateral agent, each right and remedy intended to be available to such Agent under the Loan Documents shall also be vested in such separate agent. Every covenant and obligation necessary to the exercise thereof by such agent shall run to and be enforceable by it as well as such Agent. Lenders shall execute and deliver such documents as each Agent deems appropriate to vest any rights or remedies in such agent. If any collateral agent or co-collateral agent shall die or dissolve, become incapable of acting, resign or be removed, then all the rights and remedies of such agent, to the extent permitted by Applicable Law, shall vest in and be exercised by the Applicable Agent until appointment of a new agent.

12.9 **Due Diligence and Non-Reliance.** Each Lender acknowledges and agrees that it has, independently and without reliance upon any Agent or any other Lenders, and based upon such documents, information and analyses as it has deemed appropriate, made its own credit analysis of each Obligor and its own decision to enter into this Agreement and to fund Loans and participate in LC Obligations and/or Canadian LC Obligations hereunder. Each Lender has made such inquiries concerning the Loan Documents, the Collateral and each Obligor as such Lender feels necessary. Each Lender further acknowledges and agrees that the other Lenders and Agents have made no representations or warranties concerning any Obligor, any Collateral or the legality, validity, sufficiency or enforceability of any Loan Documents or Obligations. Each Lender will, independently and without reliance upon the other Lenders or Agents, and based upon such financial statements, documents and information as it deems appropriate at the time, continue to make and rely upon its own credit decisions in making Loans and participating in LC Obligations and/or Canadian LC Obligations, and in taking or refraining from any action under any Loan Documents. Except for notices, reports and other information expressly requested by a Lender, no Agent shall have any duty or responsibility to provide any Lender with any notices, reports or certificates furnished to any Agent by any Obligor or any credit or other information concerning the affairs, financial condition, business or Properties of any Obligor (or any of its Affiliates) which may come into possession of the Applicable Agent or any of such Agent's Affiliates.

12.10 **Replacement of Certain Lenders.** In the event that any Lender (a) fails to fund its Pro Rata share of any Loan, LC Obligation or Canadian LC Obligation hereunder, and such failure is not cured within two Business Days, (b) defaults in performing any of its obligations under the Loan Documents, or (c) fails to give its consent to any amendment, waiver or action for which consent of all Lenders was required and Required Lenders consented, then, in addition to any other rights and remedies that any Person may have, Administrative Agent may, by notice to such Lender within 120 days after such event, require such Lender to assign all of its rights and obligations under the Loan Documents to Eligible Assignee(s) specified by Administrative

Agent, pursuant to appropriate Assignment and Assumption Agreement(s) and within 20 days after Administrative Agent's notice. Administrative Agent is irrevocably appointed as attorney-in-fact to execute any such Assignment and Assumption Agreement if the Lender fails to execute same. Such Lender shall be entitled to receive, in cash, concurrently with such assignment, all amounts owed to it under the Loan Documents, including all principal, interest and fees through the date of assignment (but excluding any prepayment charge).

## **12.11 Remittance of Payments and Collections.**

12.11.1 **Remittances Generally.** All payments by any Lender to Applicable Agent shall be made by the time and on the day set forth in this Agreement, in immediately available funds. If no time for payment is specified or if payment is due on demand by Applicable Agent and request for payment is made by Applicable Agent by 11:00 a.m. on a Business Day, payment shall be made by Lender not later than 2:00 p.m. on such day, and if request is made after 11:00 a.m., then payment shall be made by 11:00 a.m. on the next Business Day. Payment by Applicable Agent to any Lender shall be made by wire transfer, in the type of funds received by Applicable Agent. Any such payment shall be subject to Applicable Agent's right of offset for any amounts due from such Lender under the Loan Documents.

12.11.2 **Failure to Pay.** If any Lender fails to pay any amount when due by it to Applicable Agent pursuant to the terms hereof, such amount shall bear interest from the due date until paid at the rate determined by Applicable Agent as customary in the banking industry for interbank compensation. In no event shall Borrowers be entitled to receive credit for any interest paid by a Lender to Applicable Agent.

12.11.3 **Recovery of Payments.** If Applicable Agent pays any amount to a Lender in the expectation that a related payment will be received by Applicable Agent from an Obligor and such related payment is not received, then Applicable Agent may recover such amount from each Lender that received it. If Applicable Agent determines at any time that an amount received under any Loan Document must be returned to an Obligor or paid to any other Person pursuant to Applicable Law or otherwise, then, notwithstanding any other term of any Loan Document, Applicable Agent shall not be required to distribute such amount to any Lender. If any amounts received and applied by Applicable Agent to any Obligations are later required to be returned by Agent pursuant to Applicable Law, Lenders shall pay to Applicable Agent, on demand, such Lender's Pro Rata share of the amounts required to be returned.

**12.12 Agents in their Individual Capacity.** As a Lender, each of Bank of America and Bank of America-Canada Branch shall have the same rights and remedies under the other Loan Documents as any other Lender, and the terms "Lenders," and "Required Lenders" or any similar term shall include each of Bank of America and Bank of America-Canada Branch, respectively, in its capacity as a Lender. Each of Bank of America, Bank of America-Canada Branch and their Affiliates may accept deposits from, maintain deposits or credit balances for, invest in, lend money to, provide Bank Products to, act as trustee under indentures of, own securities of, serve as financial or other advisor to, and generally engage in any kind of business with, Obligors and their Affiliates, as if Bank of America and Bank of America-Canada Branch were any other bank, without any duty to account therefor (including any fees or other consideration received in connection therewith) to the other Lenders. In its individual capacity, each of Bank of America,

Bank of America-Canada Branch and its Affiliates may receive information regarding Obligors, their Affiliates and their Account Debtors (including information subject to confidentiality obligations), and each Lender agrees that each of Bank of America, Bank of America-Canada Branch and its Affiliates shall be under no obligation to provide such information to Lenders, if acquired in such individual capacity and not as an Agent hereunder.

**12.13 Agent Titles.** Each Lender (if any), other than Bank of America, Bank of America-Canada Branch and General Electric Capital Corporation, that is designated (on the cover page of this Agreement or otherwise) by Bank of America as an “agent”, “book runner” or “arranger” of any type shall not have any right, power, responsibility or duty under any Loan Documents other than those applicable to all Lenders, and shall in no event be deemed to have any fiduciary relationship with any other Lender.

**12.14 No Third Party Beneficiaries.** This **Section 12** is an agreement solely among Lenders and Agents, and does not confer any rights or benefits upon Obligors or any other Person. As between Obligors and Agents, any action that any Agent may take under any Loan Documents shall be conclusively presumed to have been authorized and directed by Lenders as herein provided.

**12.15 Loan Documents; Intercreditor Agreement.** Each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto. Without limiting the generality of the foregoing, the Lenders hereby irrevocably authorize the Agents (or any of them) to enter into any Intercreditor Agreement (or amendment or acknowledgement thereto) and agree to be bound by the provisions thereof.

**12.16 Administrative Agent May File Proofs of Claim; Credit Bidding.**

12.16.1 Proofs of Claim. In case of the pendency of any proceeding under any debtor relief law or any other judicial proceeding relative to any Obligor, each Agent (irrespective of whether the principal of any Loan or LC Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the such Agent shall have made any demand on the Borrowers) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, LC Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Banks, the Agents and the other Secured Parties (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Banks, the Agents and the other Secured Parties and their respective agents and counsel) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

(c) and any custodian, receiver, assignee, interim receiver, trustee, liquidator, monitor, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Secured Party to make such payments to such Agent and, if such Agent shall consent to the making of such payments directly to the Secured Party, to pay to such Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agent and its agents and counsel, and any other amounts due the Agents under **Sections 3.2 and 3.4**.

(d) Nothing contained herein shall be deemed to authorize the Agents to authorize or consent to or accept or adopt on behalf of any Secured Party any plan of reorganization, arrangement, adjustment or composition or any proposal affecting the Obligations or the rights of any Secured Party to authorize the Agents to vote in respect of the claim of any Secured Party or in any such proceeding.

**12.16.2 Credit Bid.** The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Sections 363, 1123 or 1129 of the Bankruptcy Code of the United States, or any similar Applicable Laws in any other jurisdictions to which an Obligor is subject, or (b) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any Applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Capital Stock or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (ii) to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Capital Stock thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in clauses (a) through (e) of **Section 14.1.1** of this Agreement, and (iii) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Capital Stock and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

**12.17 Bank Product Providers.** No Lender or any of its branches or Affiliates that provides Bank Products and obtains the benefits of **Section 5.5.3** and **5.5.4**, any Guaranty or any Collateral by virtue of the provisions hereof or of any Guaranty or any Loan Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this **Section 12** to the contrary, no Agent shall be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising in respect of Bank Product Debt unless such Agent has received written notice of such Obligations, together with such supporting documentation as the such Agent may request, from the applicable provider of such Bank Products, as the case may be.

## **SECTION 13. BENEFIT OF AGREEMENT; ASSIGNMENTS AND PARTICIPATIONS**

**13.1 Successors and Assigns.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Obligor may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of **Section 13.2**, (ii) by way of participation in accordance with the provisions of **Section 13.3** or (iii) by way of pledge or assignment of a security interest subject to the restrictions of **Sections 13.2.3** (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 13.3 and, to the extent expressly contemplated hereby, the Related Parties of each of Agent, the Issuing Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

### **13.2 Assignments.**

**13.2.1 Assignments by Lenders.** Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this **Section 13.2.1**, participations in LC Obligations, Canadian LC Obligations and in Swingline Loans) at the time owing to it); provided that:

(i) the aggregate amount of the Tranche A Revolver Commitment (which for this purpose includes Tranche A Revolver Loans outstanding thereunder) or, if the Tranche A Revolver Commitment is not then in effect, the principal outstanding balance of the Tranche A Revolver Loans of the assigning Tranche A Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if “Trade Date” is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000 (unless such assignment is of the entire remaining amount of the assigning Lender’s Tranche A Revolver Commitment and Tranche A Revolver Loans at the time owing to), and shall be subject to the

consent of each of (A) Administrative Agent and, (B) so long as no Event of Default has occurred and is continuing, the Borrower Agent (each such consent not to be unreasonably withheld or delayed), provided that the Borrower Agent shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof, provided further that no consent shall be required in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund with respect to a Lender,

(ii) the aggregate amount of the Tranche A-1 Revolver Commitment (which for this purpose includes Tranche A Revolver Loans outstanding thereunder) or, if the Tranche A-1 Revolver Commitment is not then in effect, the principal outstanding balance of the Tranche A-1 Revolver Loans of the assigning Tranche A-1 Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if “Trade Date” is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$500,000 (unless such assignment is of the entire remaining amount of the assigning Lender’s Tranche A-1 Revolver Commitment and Tranche A-1 Revolver Loans at the time owing to), and shall be subject to the consent of each of (A) Administrative Agent and, (B) so long as no Event of Default has occurred and is continuing, the Borrower Agent (each such consent not to be unreasonably withheld or delayed), provided that the Borrower Agent shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof, provided further that no consent shall be required in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund with respect to a Lender, and

(iii) the aggregate amount of the Canadian Revolver Commitment (which for this purpose includes Canadian Revolver Loans outstanding thereunder) or, if the Canadian Revolver Commitment is not then in effect, the principal outstanding balance of the Canadian Revolver Loans of the assigning Canadian Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to Administrative Agent or, if “Trade Date” is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than Cnd. \$1,000,000 (unless such assignment is of the entire remaining amount of the assigning Lender’s Canadian Revolver Commitment and Canadian Revolver Loans at the time owing to it) and shall be subject to the consent of each of (A) the Agents and, (B) so long as no Event of Default has occurred and is continuing, the Borrower Agent (each such consent not to be unreasonably withheld or delayed), provided that the Borrower Agent shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Agents within five (5) Business Days after having received notice thereof, provided further that no consent shall be required in the case of an assignment to a Canadian Lender, an Affiliate of a Canadian Lender or an Approved Fund with respect to a Canadian Lender;

(iv) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender’s rights and obligations under this Agreement with respect to the Loans or the Commitment assigned, except that this clause (iv) shall not apply to rights in respect of Swingline Loans;

(v) (A) any assignment of a Commitment must be approved by Administrative Agent (and any assignment of a Canadian Revolver Commitment must also be approved by the Canadian Agent), (B) any assignment of a Tranche A Revolver Commitment must be approved by the Issuing Bank and the provider of Swingline Loans thereunder and (C) any assignment of a Canadian Revolver Commitment must be approved by the Issuing Bank and the provider of Swingline Loans thereunder, in each case, unless the Person that is the proposed assignee is itself a Lender (whether or not the proposed assignee would otherwise qualify as an Eligible Assignee);

(vi) the parties to each assignment shall execute and deliver to Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, however, that Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to Administrative Agent an administrative questionnaire in Administrative Agent's customary form; and

(vii) in connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Applicable Agent in an aggregate amount sufficient, upon distribution thereof, as appropriate (which may be outright payment, purchases by the assignee of participations or sub-participations, or other compensating actions, including funding, with the consent of the applicable Borrower and the Applicable Agent, the applicable Pro Rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (A) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Applicable Agent or any Lender hereunder (and interest accrued thereon) and (B) acquire (and fund as appropriate) its full Pro Rata share of all Loans and participations in Letters of Credit, Bankers' Acceptances and Swingline Loans; provided, however, that notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under Applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by Administrative Agent pursuant to **Section 13.2**, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of **Sections 3.4, 3.6, 3.7, 3.9, 5.8, 5.9 and 14.2** with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, the applicable Borrower (at



such Borrower's expense) shall execute and deliver a Note to the assignee Lender, provided that the assignor Lender has returned to the Borrower any Note issued to it in respect of the Loans and Commitments assigned to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with **Section 13.3**.

13.2.2 **Register**. Administrative Agent, acting solely for this purpose as an agent of the Borrowers, shall maintain at Administrative Agent's office a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans, LC Obligations and Canadian LC Obligations owing to, each Lender pursuant to the terms hereof from time to time, and information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrowers, Agents and the Lenders shall 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. The Register shall be available for inspection by each of the Borrowers and the Issuing Bank at any reasonable time and from time to time upon reasonable prior notice. In addition, at any time that a request for a consent for a material or substantive change to the Loan Documents is pending, any Lender may request and receive from Administrative Agent a copy of the Register.

13.2.3 **Certain Pledges**. Nothing herein shall limit the right of a Lender to pledge or assign any rights under the Loan Documents to (i) any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors and any Operating Circular issued by such Federal Reserve Bank, or (ii) counterparties to swap agreements relating to any Loans; provided that any payment by Borrowers to the assigning Lender in respect of any Obligations assigned as described in this sentence shall satisfy Borrowers' obligations hereunder to the extent of such payment, and no such assignment shall release the assigning Lender from its obligations hereunder.

13.2.4 **Electronic Execution of Assignments**. The words "execute," "execution," "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including, without limitation, Assignment and Assumptions, amendments or other Borrowing Notices, Swingline Loan Notices, waivers and consents), shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that notwithstanding anything contained herein to the contrary no Agent is under any obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by such Agent pursuant to procedures approved by it.

### **13.3 Participations.**

13.3.1 **Participations.** Any Lender may at any time, without the consent of, or notice to, any Borrowers or any Agent, sell participations to any Person (other than a natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person) or any Obligor or any Affiliate or Subsidiary of any Obligor or any Direct Competitor) (each, a “Participant”) in all or a portion of such Lender’s rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender’s participations in LC Obligations and/or Swingline Loans or Canadian LC Obligations, as the case may be) 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, (iii) the Borrowers, Agents, the Lenders and the Issuing Bank shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement and (iv) the Lender shall maintain a register with respect to any such Participant in a manner substantially similar to that provided under **Section 13.2**. For the avoidance of doubt, each Lender shall be responsible for the indemnity under **Section 12.6.1** without regard to the existence of any participation. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in **Section 14.1.1** that affects such Participant. Subject to **Section 13.3.2**, the Obligors agree that each Participant shall be entitled to the benefits of **Sections 3.6, 3.9, 5.8 and 5.9** to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **Section 13.2** (it being understood that the documentation required under **Section 5.8.5** shall be delivered to the Lender who sells the participation); provided that such Participant agrees to be subject to the provisions of **Sections 3.6** as if it were an assignee under **Section 13.3.2**. Each Lender that sells a participation agrees, at the Borrowers’ request and expense, to use reasonable efforts to cooperate with the Borrowers to effectuate the provisions of **Section 3.6** with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of **Section 11.4** as though it were a Lender, provided that such Participant agrees to be subject to **Section 5.5** as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant’s interest in the Loans or other obligations under the Loan Documents (the “Participant Register”); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant’s interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Agents (in their capacity as Agents) shall have no responsibility for maintaining a Participant Register.

13.3.2 **Limitations upon Participant Rights.** A Participant shall not be entitled to receive any greater payment under **Section 3.6, 5.8** or **5.9** 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 Borrowers' 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 5.8** unless the Borrowers are notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with **Section 5.8** as though it were a Lender.

**13.4 Tax Treatment.** If any interest in a Loan Document is transferred to a Transferee that is organized under the laws of any jurisdiction other than the United States or any state or district thereof, the transferor Lender shall cause such Transferee, concurrently with the effectiveness of such transfer, to comply with the provisions of **Section 5.8**.

**13.5 Representation of Lenders.** Each Lender represents and warrants to each Borrower, each Agent and each of the other Lenders that neither the consideration used by it to fund its Loans or to participate in any other transactions under this Agreement nor the interests of such Lender in and under the Loan Documents shall constitute "plan assets" within the meaning of 29 C.F.R. §2510.3-101, as modified by Section 3(42) of ERISA, of any "employee benefit plan" (as defined in Section 3(3) of ERISA) that is subject to Title I of ERISA or any "plan" (within the meaning of Section 4975 of the Internal Revenue Code) that is subject to Section 4975 of the Internal Revenue Code.

## **SECTION 14. MISCELLANEOUS**

### **14.1 Consents, Amendments and Waivers.**

14.1.1 **Amendment.** No modification of any Loan Document, including any extension or amendment of a Loan Document or any waiver of a Default or Event of Default, shall be effective without the prior written agreement of Agent, with the consent of Required Lenders, and each Obligor party to such Loan Document; provided, however, that

(a) without the prior written consent of (i) Administrative Agent, no modification shall be effective with respect to any provision in a Loan Document that relates to any rights, duties or discretion of Administrative Agent, (ii) Canadian Agent, no modification shall be effective with respect to any provision in a Loan Document that relates to any rights, duties or discretion of Canadian Agent or (iii) each Co-Collateral Agent, no modification shall be effective with respect to any provision in a Loan Document that relates to any rights, duties or discretion of the such Co-Collateral Agent;

(b) without the prior written consent of applicable Issuing Bank, no modification shall be effective with respect to any LC Obligations, Canadian LC Obligations, Section 2.3 or any other provision in a Loan Document that relates to any rights or duties of the Issuing Bank;

(c) without the prior written consent of each affected Lender, no modification shall be effective that would (i) increase any of the Tranche A Revolver Commitment, the Tranche A-1 Revolver Commitment or the Canadian Revolver Commitment of such Lender; (ii)

reduce the amount of, or waive, postpone or delay payment of, any scheduled payment of principal, interest, fees or other amounts payable to such Lender (excluding mandatory prepayments under **Section 2.2.4**); (iii) amend the definition of Pro Rata (except in connection with any increase in the Commitments); (iv) amend the definitions of Tranche A Borrowing Base, the Tranche A-1 Borrowing Base or Canadian Borrowing Base (and the defined terms used, directly or indirectly, in such definitions), or the definitions of or Maximum Borrowing Amount if as a result thereof the amounts available to be borrowed by the Borrowers would be increased (it being understood that amendments to the Tranche A Borrowing Base (and the defined terms used, directly or indirectly, in such definition) that result in any increase in amounts available to be borrowed by the Borrowers affect the Tranche A-1 Lenders); provided, however, that the foregoing shall not limit the discretion of the Administrative Agent to change, establish or eliminate any Availability Reserves; and provided, further, that changes to the “Availability Block” shall only require the written consent of the Required Lenders and the Tranche A-1 Lenders; (v) increase any advance rate (it being understood that any increase in the advance rates under the Tranche A Borrowing Base affects the Tranche A-1 Lenders); or (vi) waive any condition set forth, in the case of the initial credit extensions on the Closing Date, in **Section 6.1** (other than **Section 6.1(g)**) with respect to fees payable to or for the account of any Agent);

(d) change (i) any provision of this **Section 14.1.1** or the definition of “Required Lenders” without the written consent of each Lender, (ii) the definition of “Required Tranche A Lenders” without the written consent of each Tranche A Lender; or (iii) the definition of “Required Canadian Lenders” without the written consent of each Canadian Lender;

(e) without the prior written consent of all Lenders (except a Defaulting Lender as provided in clause (f) below), no modification shall be effective that would (i) extend the Termination Date; (ii) alter **Section 5.5** or **Section 7**; (iii) release all or substantially all of the Collateral (excluding, if any Obligor or any Subsidiary of any Obligor becomes a debtor under the federal Bankruptcy code, the release of “cash collateral”, as defined in Section 363(a) of the federal Bankruptcy Code pursuant to a cash collateral stipulation with the debtor approved by Required Lenders); (iv) release all or substantially all of the value of the Guaranties of the Guarantors; or (v) release all or substantially all of the value of the Canada Guaranty; and

(f) notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

14.1.2 **Limitations.** The agreement of Borrowers shall not be necessary to the effectiveness of any modification of a Loan Document that deals solely with the rights and duties of Lenders, Agents and/or Issuing Bank as among themselves. Only the consent of the parties to the Fee Letter or any agreement relating to a Bank Product shall be required for any modification

of such agreement, and no Affiliate of a Lender that is party to a Bank Product agreement shall have any other right to consent to or participate in any manner in modification of any other Loan Document. The making of any Loans or the issuance of Letters of Credit during the existence of a Default or Event of Default shall not be deemed to constitute a waiver of such Default or Event of Default, nor to establish a course of dealing. Any waiver or consent granted by Lenders hereunder shall be effective only if in writing, and then only in the specific instance and for the specific purpose for which it is given. Notwithstanding anything to the contrary herein, this Agreement may be amended by the written agreement of the applicable Borrower, the Applicable Agent and the applicable Increasing Lenders, and without the consent of any other Lenders, for the sole purpose of implementing and giving effect to any increase in Commitments pursuant to **Section 2.4, 2.5 or 2.6**, the resulting adjustment of Lenders' Pro Rata shares, and other changes deemed necessary or advisable by the Applicable Agent, in its sole discretion, in connection with such increase in Commitments.

14.1.3 **Payment for Consents.** No Borrower will, directly or indirectly, pay any remuneration or other thing of value, whether by way of additional interest, fee or otherwise, to any Lender (in its capacity as a Lender hereunder) as consideration for agreement by such Lender with any modification of any Loan Documents, unless such remuneration or value is concurrently paid, on the same terms, on a Pro Rata basis to all Lenders providing their consent.

**14.2 Indemnity.** EACH BORROWER, SEVERALLY BUT NOT JOINTLY, SHALL INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES AGAINST ANY AND ALL LIABILITIES, OBLIGATIONS, LOSSES, CLAIMS, DAMAGES, PENALTIES, JUDGMENTS, PROCEEDINGS, COSTS AND EXPENSES OF ANY KIND (INCLUDING REMEDIAL RESPONSE COSTS, REASONABLE ATTORNEYS' FEES AND EXTRAORDINARY EXPENSES) AT ANY TIME (INCLUDING AFTER FULL PAYMENT OF THE OBLIGATIONS, RESIGNATION OR REPLACEMENT OF ANY AGENT, OR REPLACEMENT OF ANY LENDER) INCURRED BY OR ASSERTED AGAINST ANY INDEMNITEE IN ANY WAY RELATING TO (A) ANY LOAN DOCUMENTS, THE TRANSACTIONS OR TRANSACTIONS RELATING THERETO, (B) ANY ACTION TAKEN OR OMITTED TO BE TAKEN BY ANY INDEMNITEE IN CONNECTION WITH ANY LOAN DOCUMENTS, OR, IN THE CASE OF THE AGENT INDEMNITEES ONLY, THE ADMINISTRATION OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (INCLUDING IN RESPECT OF ANY MATTERS ADDRESSED IN **SECTION 5.8**), (C) THE EXISTENCE OR PERFECTION OF ANY LIENS, OR REALIZATION UPON ANY COLLATERAL, (D) EXERCISE OF ANY RIGHTS OR REMEDIES UNDER ANY LOAN DOCUMENTS OR APPLICABLE LAW, (E) FAILURE BY ANY OBLIGOR TO PERFORM OR OBSERVE ANY TERMS OF ANY LOAN DOCUMENT, IN EACH CASE INCLUDING ALL COSTS AND EXPENSES RELATING TO ANY INVESTIGATION, LITIGATION, ARBITRATION OR OTHER PROCEEDING (INCLUDING AN INSOLVENCY PROCEEDING OR APPELLATE PROCEEDINGS), WHETHER OR NOT THE APPLICABLE INDEMNITEE IS A PARTY THERETO, (F) ANY LOAN OR LETTER OF CREDIT OR THE USE OR PROPOSED USE OF THE PROCEEDS THEREFROM (INCLUDING ANY REFUSAL BY THE ISSUING BANK TO HONOR A DEMAND FOR PAYMENT UNDER A LETTER OF CREDIT IF THE DOCUMENTS PRESENTED IN CONNECTION WITH SUCH DEMAND DO NOT STRICTLY COMPLY WITH THE TERMS OF SUCH LETTER OF CREDIT), (G) ANY ACTUAL OR ALLEGED ENVIRONMENTAL

RELEASE ON OR FROM ANY PROPERTY OWNED OR OPERATED BY ANY BORROWER OR ANY OF ITS SUBSIDIARIES, OR ANY LIABILITY IN CONNECTION WITH ANY ACTUAL OR ALLEGED VIOLATION OF ANY ENVIRONMENTAL LAW RELATED IN ANY WAY TO ANY OBLIGOR OR ANY OF ITS SUBSIDIARIES, OR (H) ANY ACTUAL OR PROSPECTIVE CLAIM, LITIGATION, INVESTIGATION OR PROCEEDING RELATING TO ANY OF THE FOREGOING, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY, WHETHER BROUGHT BY A THIRD PARTY OR BY A BORROWER OR ANY OTHER OBLIGOR (ALL OF THE FOREGOING HEREINAFTER, "CLAIMS") THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY INDEMNITEE, INCLUDING CLAIMS ARISING FROM THE NEGLIGENCE OF AN INDEMNITEE. In no event shall any party to a Loan Document have any obligation thereunder to indemnify or hold harmless an Indemnitee with respect to a Claim that is determined in a final, non-appealable judgment by a court of competent jurisdiction to result from the gross negligence or willful misconduct of such Indemnitee. If any claim is made against any Indemnitee which may result in a claim under this **Section 14.2** against Borrowers, such Indemnitee or the Administrative Agent shall reasonably promptly send to Borrower Agent written notice thereof, and Borrower Agent shall have the right, at its expense and with counsel reasonably satisfactory to the Administrative Agent, to defend such claim. Neither any Indemnitee nor any Borrower shall settle any such claim without the consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the failure of such prompt notice shall not negate or impair the obligation of the Borrowers under this **Section 14.2**, but shall give Borrowers the right to withhold against any indemnity payment the amount of any actual damages incurred by Borrowers as a result of the failure to give such reasonably prompt notice.

### **14.3 Notices and Communications.**

14.3.1 **Notice Address.** Subject to **Section 4.1.4**, all notices, requests and other communications by or to a party hereto shall be in writing and shall be given to any Borrower, at Borrower Agent's address shown on the signature pages hereof, and to any other Person at its address shown on the signature pages hereof (or, in the case of a Person who becomes a Lender after the Closing Date, at the address shown on its Assignment and Assumption Agreement), or at such other address as a party may hereafter specify by notice in accordance with this **Section 14.3**. Each such notice, request or other communication shall be effective only (a) if given by facsimile transmission, when transmitted to the applicable facsimile number, if confirmation of receipt is received; (b) if given by mail, three Business Days after deposit in the mail, with first-class postage pre-paid, addressed to the applicable address; (c) if given by personal delivery, when duly delivered to the notice address with receipt acknowledged; or (d) if given by electronic mail, to the extent provided in **Section 14.3.2**. Notwithstanding the foregoing, no notice to any Agent pursuant to **Section 2.2, 2.3, 3.1.2** or **4.1.1** shall be effective until actually received by the individual to whose attention at such Agent such notice is required to be sent. Any written notice, request or other communication that is not sent in conformity with the foregoing provisions shall nevertheless be effective on the date actually received by the noticed party. Any notice received by Borrower Agent shall be deemed received by all Borrowers.

### **14.3.2 Electronic Communications; Voice Mail.**

(a) Notices and other communications to the Lenders and the Issuing Bank hereunder may be delivered or furnished by electronic communication (including e-mail, FpML messaging, and Internet or intranet websites) pursuant to procedures approved by the Agents, provided that the foregoing shall not apply to notices to any Lender or the Issuing Bank pursuant to **Section 2** if such Lender or the Issuing Bank, as applicable, has notified the relevant Agent that it is incapable of receiving notices under such Article by electronic communication. The Agents, the Issuing Bank or the Borrower Agent may each, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

(b) Unless the Agents otherwise prescribe, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii), if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient. Voice mail may not be used as effective notice under the Loan Documents.

14.3.3 **Non-Conforming Communications.** Agents and Lenders may rely upon any notices (including telephonic notices, Borrowing Notices, LC Applications and Swingline Loan Notices) purportedly given by or on behalf of any Borrower even if such notices were not made in a manner specified herein, were incomplete or were not confirmed, or if the terms thereof, as understood by the recipient, varied from a later confirmation. Each Obligor shall indemnify and hold harmless each Indemnitee from any liabilities, losses, costs and expenses arising from any telephonic communication purportedly given by or on behalf of a Borrower. All telephonic notices to and other telephonic communications with the Agents may be recorded by the Agents, and each of the parties hereto hereby consents to such recording.

14.3.4 **Platform.** THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall any Agent or any of their Related Parties (collectively, the "Agent Parties") have any liability to any Borrower, any Lender, any issuing Bank or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of any Borrower's, any Obligor's

or any Agent's transmission of Borrower Materials or notices through the Platform, any other electronic messaging service, or through the Internet.

14.3.5 **Change of Address, Etc.** Each of the Obligors, the Agents, and the Issuing Banks may change their address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the Borrower Agent, the Applicable Agent and the Issuing Bank. In addition, each Lender agrees to notify the Applicable Agent from time to time to ensure that the Applicable Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and Applicable Law, including Securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of Securities Laws.

**14.4 Performance of Borrowers' Obligations.** Any Agent may, in its discretion at any time and from time to time after the occurrence, and during the continuance, of an Event of Default, at Borrowers' expense, pay any amount or do any act required of an Obligor under any Loan Documents or otherwise lawfully requested by such Agent to (a) enforce any Loan Documents or collect any Obligations; (b) protect, insure, maintain or realize upon any Collateral; or (c) defend or maintain the validity or priority of such Agent's Liens in any Collateral, including any payment of a judgment, insurance premium, warehouse charge, finishing or processing charge, or landlord claim, or any discharge of a Lien. All payments, costs and expenses (including Extraordinary Expenses) of each Agent under this **Section 14.4** shall be reimbursed to such Agent by Borrowers, on demand, with interest from the date incurred to the date of payment thereof at the Default Rate applicable to Base Rate Tranche A-1 Revolver Loans. Any payment made or action taken by any Agent under this Section 14.4 shall be without prejudice to any right to assert an Event of Default or to exercise any other rights or remedies under the Loan Documents.

**14.5 Credit Inquiries.** Each Obligor hereby authorizes Agents and Lenders (but they shall have no obligation) to respond to usual and customary credit inquiries from third parties concerning any Obligor or Subsidiary.

**14.6 Severability.** Wherever possible, each provision of the Loan Documents shall be interpreted in such manner as to be valid under Applicable Law. If any provision is found to be invalid under Applicable Law, it shall be ineffective only to the extent of such invalidity and the remaining provisions of the Loan Documents shall remain in full force and effect. Without limiting the foregoing provisions of this **Section 14.6**, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by the Bankruptcy Code or any Canadian Debtor Relief Laws, as determined in good faith by the Applicable Agent, the Issuing Bank or the Applicable Agent, in its capacity as a provider of



Swingline Loans, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

**14.7 Cumulative Effect; Conflict of Terms.** The provisions of the Loan Documents are cumulative. The parties acknowledge that the Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters, and they agree that these are cumulative and that each must be performed as provided. Except as otherwise specifically provided in another Loan Document (by specific reference to the applicable provision of this Agreement), if any provision contained herein is in direct conflict with any provision in another Loan Document, the provision herein shall govern and control.

**14.8 Counterparts; Facsimile and Electronic Signatures.** Any Loan Document may be executed in counterparts, each of which taken together shall constitute one instrument. Loan Documents may be executed and delivered by facsimile or electronic communication, and they shall have the same force and effect as manually signed originals. Any Agent may require confirmation by a manually-signed original, but failure to request or deliver same shall not limit the effectiveness of any such facsimile signature or signature received by electronic communications.

**14.9 Entire Agreement.** Time is of the essence of the Loan Documents. The Loan Documents, and any separate letter agreements with respect to fees payable to the Agents or the Issuing Bank, embody the entire understanding of the parties with respect to the subject matter thereof and supersede all prior understandings regarding the same subject matter.

**14.10 Obligations of Lenders Several.** The obligations of each Lender hereunder are several and not joint, and no Lender shall be responsible for the obligations or Commitments of any other Lender. The failure of any Lender to make any Loan, to fund any participation in any Letter of Credit, Bankers' Acceptance or Loan or to make any payment under **Section 12.6** on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under **Section 12.6**. Nothing in this Agreement and no action of any Agent or Lenders pursuant to the Loan Documents shall be deemed to constitute Agents and Lenders to be a partnership, association, joint venture or any other kind of entity, nor to constitute control of any Obligor.

**14.11 Confidentiality.** During the term of this Agreement, Agents and Lenders agree to take reasonable precautions to maintain the confidentiality of any Information (as defined below) that Obligors deliver to Agents and Lenders, except that any Agent and any Lender may disclose such Information (a) to their respective officers, directors, employees, trustees, Affiliates, agents and other Related Parties, including legal counsel, auditors and other professional advisors; (b) to any party to the Loan Documents from time to time; (c) pursuant to the order of any court or administrative agency; (d) to the extent required or requested by any Governmental Authority or other regulatory authority exercising regulatory authority over such Agent or such Lender or their Related Persons; (e) which ceases to be confidential, other than by an act or omission of any Agent or any Lender, or which becomes available to any Agent or any Lender on a nonconfidential basis; (f) to the extent reasonably required in connection with any litigation relating to any Loan Documents or transactions contemplated thereby, or otherwise as required

by Applicable Law; (g) to the extent reasonably required for the exercise of any rights or remedies under the Loan Documents; (h) to any actual or proposed party (or its Related Parties) to a Bank Product or to any Transferee, as long as such Person agrees to be bound by the provisions of this **Section 14.11**; (i) to the National Association of Insurance Commissioners or any similar organization, or to any nationally recognized rating agency that requires access to information about a Lender's portfolio in connection with ratings issued with respect to such Lender; (j) to any investor or potential investor in an Approved Fund that is a Lender or Transferee, but solely for use by such investor to evaluate an investment in such Approved Fund, or to any manager, servicer or other Person in connection with its administration of any such Approved Fund; (k) on a confidential basis to (i) any rating agency in connection with rating the Borrowers or their Subsidiaries or the credit facilities provided hereunder or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, (l) with the consent of Borrower Agent. (m) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to any Agent, any Lender, any Issuing Bank or any of their respective Affiliates or branches on a nonconfidential basis from a source other than the Borrowers. In addition, the Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Agents and the Lenders in connection with the administration of this Agreement, the other Loan Documents, and the Commitments. Notwithstanding the foregoing, Agents and Lenders may issue and disseminate to the public general information describing this credit facility, including the names and addresses of Obligor and a general description of Obligor's businesses, and may (so long as the Borrower Agent has previously reviewed and approved the form of such advertisement or promotional materials) use Obligor's names in advertising and other promotional materials. Notwithstanding any other provision in this Agreement, each Agent hereby agrees that the Borrowers (and each of their officers, directors, employees, accountants, attorneys and other advisors) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the credit facilities provided for hereunder and the transactions contemplated hereby and all materials of any kind (including opinions and other tax analyses) that are provided to it relating to such tax treatment and tax structure. For purposes of this **Section 14.11**, "Information" means all information received from any Obligor or any Subsidiary thereof relating to any Obligor or any Subsidiary thereof or their respective businesses, other than any such information that is available to any Agent, any Lender or any Issuing Bank on a nonconfidential basis prior to disclosure by any Obligor or any Subsidiary thereof, provided that, in the case of information received from a Obligor or any such Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Agents, the Lenders and the Issuing Banks acknowledges that (a) the Information may include material non-public information concerning the Borrowers, other Obligor or their Subsidiaries, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with Applicable Law, including Securities Laws.

**14.12 GOVERNING LAW.** THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, INCLUDING, WITHOUT LIMITATION, NEW YORK GENERAL OBLIGATIONS LAW SECTIONS 5-1401 AND 5-1402 (BUT GIVING EFFECT TO FEDERAL LAWS RELATING TO NATIONAL BANKS).

**14.13 Consent to Forum.**

14.13.1 **Forum.** EACH OBLIGOR PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST ANY AGENT, ANY LENDER, ISSUING BANK, OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. Nothing herein shall limit the right of any Agent or any Lender to bring proceedings against any Obligor in any other court. Nothing in this Agreement shall be deemed to preclude enforcement by any Agent of any judgment or order obtained in any forum or jurisdiction.

**14.14 Certain Waivers.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN

INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION. To the fullest extent permitted by Applicable Law, each Obligor party hereto waives (a) presentment, demand, protest, notice of presentment, default, non-payment, maturity, release, compromise, settlement, extension or renewal of any commercial paper, accounts, contract rights, documents, instruments, chattel paper and guaranties at any time held by any Agent on which a Borrower or such Obligor may in any way be liable, and hereby ratifies anything such Agent may do in this regard; (b) notice prior to taking possession or control of any Collateral; (c) any bond or security that might be required by a court prior to allowing any Agent to exercise any rights or remedies; (d) the benefit of all valuation, appraisal and exemption laws; (e) any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential, exemplary or punitive damages (as opposed to direct or actual damages) in any way relating to any Enforcement Action, Obligations, Loan Documents or the transactions contemplated thereby or relating thereto; and (f) notice of acceptance hereof. No Indemnitee referred to in **Section 14.2** shall be liable for any damages arising from the use by others of any information or other materials distributed to such party by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby. Each Obligor party hereto acknowledges that the foregoing waivers are a material inducement to Agents and Lenders entering into this Agreement and that Agents and Lenders are relying upon the foregoing in their dealings with the Borrowers and the other Obligors. Each Obligor has reviewed the foregoing waivers with its legal counsel and has knowingly and voluntarily waived its jury trial and other rights following consultation with legal counsel. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

#### **14.15 Patriot Act Notice, Etc.**

14.15.1 **Patriot Act.** Each Lender that is subject to the Act (as hereinafter defined) and the Agents (for itself and not on behalf of any Lender) hereby notifies the Obligors that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies each Obligor, which information includes the name and address of each Obligor and other information that will allow such Lender or such Agent, as applicable, to identify each Obligor in accordance with the Act. The Obligors shall, promptly following a request by any Agent or any Lender, provide all documentation and other information that such Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” any anti-money laundering rules and regulations, including the Act.

14.15.2 **Canadian Anti-Money Laundering Legislation.** If any Agent has ascertained the identity of any Obligor or any authorized signatories of any Obligor for the purposes of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada) and other anti-terrorism laws and “know your client” policies, regulations, laws or rules applicable in Canada (the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada) and such other anti-terrorism laws, applicable policies, regulations, laws or rules in Canada, collectively, including any guidelines or orders thereunder, “AML Legislation”), then such Agent:

(a) shall be deemed to have done so as an agent for each Lender and this Agreement shall constitute a “written agreement” in such regard between each Lender and the Administrative Agent within the meaning of the applicable AML Legislation; and

(b) shall provide to the Lenders, copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness.

Notwithstanding the preceding sentence and except as may otherwise be agreed in writing, each Lender agrees that each Agent has no obligation to ascertain the identity of the Obligor or any authorized signatories of the Obligor on behalf of any Lender, or to confirm the completeness or accuracy of any information it obtains from any Obligor or any such authorized signatory in doing so.

**14.16 Survival of Representations and Warranties.** All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by each Agent and each Lender, regardless of any investigation made by any Agent or any Lender or on their behalf and notwithstanding that any Agent or any Lender may have had notice or knowledge of any Default or Event of Default at the time of any credit extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit or Bankers’ Acceptances shall remain outstanding.

**14.17 No Advisory or Fiduciary Responsibility.** In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each of the Obligors acknowledges and agrees, and acknowledges its Affiliates’ understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Agents, the Joint Lead Arrangers and the Lenders are arm’s-length commercial transactions between the Obligors and their respective Affiliates, on the one hand, and the Agents, the Joint Lead Arrangers and the Lenders, on the other hand, (B) each of the Obligors has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each of the Obligors is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Agents, the Joint Lead Arrangers and each Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Obligors or any of their respective Affiliates, or any other Person and (B) neither the Agents nor the Joint Lead Arrangers nor any Lender has any obligation to the Obligors or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Agents and the Joint Lead Arrangers and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Obligors and their respective Affiliates, and neither the Agents nor the Joint Lead Arrangers nor any Lender has any obligation to disclose any of such interests to the Obligors or any of their respective Affiliates. To the fullest extent permitted by law, each of the Obligors hereby waives and releases any claims that it may have against the Agents, the Joint Lead Arrangers or any

Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby. Each Obligor acknowledges and agrees that in connection with all aspects of any transaction contemplated by the Loan Documents, Obligors, Agent, Issuing Bank and Lenders have an arms-length business relationship that creates no fiduciary duty on the part of any Agent, Issuing Bank or any Lender, and each Obligor, Agent, Issuing Bank and Lender expressly disclaims any fiduciary relationship.

**14.18 California Judicial Reference.** If any action or proceeding is filed in a court of the State of California by or against any party hereto in connection with any of the transactions contemplated by this Loan Agreement or any other Loan Document, (a) the court shall, and is hereby directed to, make a general reference pursuant to California Code of Civil Procedure Section 638 to a referee (who shall be a single active or retired judge) to hear and determine all of the issues in such action or proceeding (whether of fact or of law) and to report a statement of decision, provided that at the option of any party to such proceeding, any such issues pertaining to a “provisional remedy” as defined in California Code of Civil Procedure Section 1281.8 shall be heard and determined by the court, and (b) without limiting the generality of **Section 3.4**, the Borrowers shall be solely responsible to pay all fees and expenses of any referee appointed in such action or proceeding.

**14.19 Resignation as Issuing Bank or Provider of Swingline Loans after Assignment.** Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Tranche A Revolver Commitment and Tranche A Loans, Bank of America may, (i) upon 30 days’ notice to the Company and the Tranche A Lenders, resign as Issuing Bank and/or (ii) upon 30 days’ notice to the Company, resign as provider of Swingline Loans for the account of the Company. Notwithstanding anything to the contrary contained herein, if at any time Bank of America-Canada Branch or any Affiliate assigns all of its Canadian Revolver Commitment and Canadian Revolver Loans, Bank of America-Canada Branch or such Affiliate may, (i) upon 30 days’ notice to the Canadian Borrower and the Canadian Lenders, resign as Issuing Bank of Letters of Credit and Bankers’ Acceptances issued for the account or benefit of the Canadian Borrower and/or (ii) upon 30 days’ notice to the Canadian Borrower, resign as provider of Swingline Loans for the account of the Canadian Borrower. In the event of any such resignation as Issuing Bank or provider of Swingline Loans, the Borrowers shall be entitled to appoint from among the Lenders a successor Issuing Bank or provider of Swingline Loans; provided, however, that no failure by the Borrowers to appoint any such successor shall affect the resignation of Bank of America or Bank of America-Canada Branch (or any Affiliate or branch) as Issuing Bank or provider of Swingline Loans, as the case may be. If Bank of America or Bank of America-Canada Branch (or any Affiliate or branch) resigns as Issuing Bank, it shall retain all the rights, powers, privileges and duties of Issuing Bank hereunder with respect to all Letters of Credit and Bankers’ Acceptances outstanding, and all Bankers’ Acceptances issuable under any Acceptance Credit outstanding, as of the effective date of its resignation as Issuing Bank and all LC Obligations or Canadian LC Obligations, as the case may be, with respect thereto (including the right to require the Lenders to make Base Rate Tranche A Revolver Loans or Canadian Prime Rate Loans, as applicable, or fund risk participations in unreimbursed drawings of Letters of Credit and payments of Bankers’ Acceptances). If Bank of America or Bank of America-Canada Branch resigns as provider of Swingline Loans, it shall retain all the rights of provider of Swingline Loans provided for hereunder with respect to Swingline Loans made by it and outstanding as of the effective date of

such resignation, (including the right to require the Lenders to make Base Rate Tranche A Revolver Loans or Canadian Prime Rate Loans, as applicable, or fund risk participations in outstanding Swingline Loans). Upon the appointment of a successor Issuing Bank and/or provider of Swingline Loans, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Bank or provider of Swingline Loans, as the case may be, and (b) the successor Issuing Bank shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America and/or Bank of America-Canada Branch to effectively assume the obligations of Bank of America and/or Bank of America-Canada Branch (or any Affiliate or branch) with respect to such Letters of Credit.


**14.20 Amendment and Restatement of Existing Senior Credit Agreement.** On the Closing Date, this Loan Agreement shall amend, restate and supersede the Existing Senior Credit Agreement in its entirety, except as provided in this **Section 14.20**. On the Closing Date, the rights and obligations of the parties evidenced by the Existing Senior Credit Agreement shall be evidenced by this Loan Agreement and the other Loan Documents and the giving of guarantees and the grant of security interests in and Liens on the Collateral by the relevant Obligors under the “Loan Documents” (as defined in the Existing Senior Credit Agreement) shall continue under but as amended by this Loan Agreement and the other Loan Documents, and shall not in any event be terminated, extinguished or annulled but shall hereafter be governed by this Loan Agreement and the other Loan Documents. All references to the Existing Senior Credit Agreement in any Loan Document or other document or instrument delivered in connection therewith shall be deemed to refer to this Loan Agreement and the provisions hereof. All Existing Letters of Credit shall be deemed to have been issued pursuant hereto. Nothing contained herein shall be construed as a novation of the “Obligations” outstanding under and as defined in the Existing Senior Credit Agreement, which shall remain in full force and effect, except as modified hereby.

[Remainder of page intentionally left blank; signatures begin on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

**Borrowers:**

**BCBG MAX AZRIA GROUP, LLC**

By:   
Name: Brian Fleming  
Title: Chief Financial Officer and Secretary

**BCBG MAX AZRIA CANADA INC.**

By: \_\_\_\_\_  
Name: Corinne Lagueux  
Title: Director and Secretary

**Address for notices:**

BCBG Max Azria Group, LLC  
2761 Fruitland Avenue  
Vernon, CA 90058  
Attention: General Counsel  
Telecopier: 323.277.5463

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP  
300 South Grand Avenue Suite 3400  
Los Angeles, CA 90071  
Attention: David Kitchen  
Telecopier: 213.621.5280



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

Borrowers:

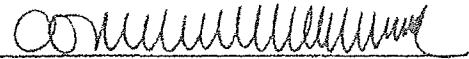
**BCBG MAX AZRIA GROUP, LLC**

By: \_\_\_\_\_

Name: Brian Fleming

Title: Chief Financial Officer and Secretary

**BCBG MAX AZRIA CANADA INC.**

By: 

Name: Corinne Lagueux

Title: Director and Secretary

**Address for notices:**

BCBG Max Azria Group, LLC

2761 Fruitland Avenue

Vernon, CA 90058

Attention: General Counsel

Telecopier: 323.277.5463

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP

300 South Grand Avenue Suite 3400

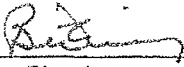
Los Angeles, CA 90071

Attention: David Kitchen

Telecopier: 213.621.5280

Guarantor:

MLA MULTIBRAND HOLDINGS, LLC

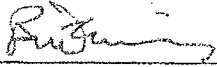
By: 

Name: Brian Fleming

Title: Chief Financial Officer and Secretary

Guarantor:

MAX RAVE, LLC

By:   
Name: Brian Fleming  
Title: Chief Financial Officer and Secretary

Guarantor:

BCBG MAX AZRIA INTERMEDIATE  
HOLDINGS, LLC

By: BCBG Max Azria Global Holdings, LLC

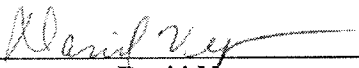
By: \_\_\_\_\_

Name: Max Azria

Title: Chief Executive Officer, President, Secretary and Treasurer

**Agents:**

**BANK OF AMERICA, N.A., as  
Administrative Agent and a Co-Collateral Agent**

By:   
Name: David Vega  
Title: Managing Director

**Address for notices:**


Bank of America, N.A.  
Retail Finance Group  
MA5-100-09-09  
100 Federal Street  
Boston, MA 02110  
Attention: David R. Vega  
Telecopier: 617.434.4131

with a copy to:

Morgan, Lewis & Bockius LLP  
1 Federal Street  
Boston, MA 02110  
Attention: Matthew F. Furlong  
Telecopier: 617.341.7701

**Canadian Agent:**

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

By:   
Name: Sylwia Durkiewicz  
Title: Vice President

**Address for notices:**

Bank of America, N.A. (acting through its Canada branch)  
181 Front Street, 4<sup>th</sup> Floor  
Toronto, Ontario M5J 2V8, Canada  
Attention: Dita Kumadewati  
Telecopier: 312.453.4041

with a copy to:


Morgan, Lewis & Bockius LLP  
1 Federal Street  
Boston, MA 02110  
Attention: Matthew F. Furlong  
Telecopier: 617.341.7701

**Lenders:**

**BANK OF AMERICA, N.A., as  
a Lender and Issuing Bank**

By: David Vega  
Name: David Vega  
Title: Managing Director

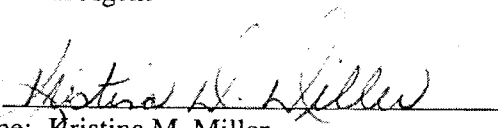
**BANK OF AMERICA, N.A. (acting  
through its Canada branch), as a Lender  
and Issuing Bank**

By:   
Name: Sylwia Durkiewicz  
Title: Vice President



**GENERAL ELECTRIC CAPITAL  
CORPORATION**, as a Lender and a Co-  
Collateral Agent


By: \_\_\_\_\_



Name: Kristina M. Miller

Title: Duly Authorized Signatory

**GE CANADA FINANCE HOLDING  
COMPANY, as a Lender**

By: 

Name:

Title:

**RICHARD ZENI**  
DULY AUTHORIZED SIGNATORY

**FORM OF TRANCHE A REVOLVER NOTE**

FOR VALUE RECEIVED, the undersigned (the "Borrower") hereby promises to pay to [NAME OF LENDER] or registered assigns (the "Lender"), in accordance with the provisions of the Loan Agreement (as hereinafter defined), the principal amount of each Tranche A Revolver Loan from time to time made by the Lender to the Borrower under that certain Second Amended and Restated Loan Agreement, dated as of February 5, 2015 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Loan Agreement," the terms defined therein being used herein as therein defined), among the Borrower, BCBG Max Azria Canada Inc., a Canadian corporation (the "Canadian Borrower" and together with the Company, collectively, the "Borrowers" and each individually, a "Borrower"), each Guarantor party thereto from time to time, each lender from time to time party thereto (collectively, the "Lenders" and individually, a "Lender"), Bank of America, N.A., as Administrative Agent and Issuing Bank, Bank of America, N.A. (acting through its Canada branch), as Canadian Agent and Issuing Bank and Bank of America, N.A. and General Electric Capital Corporation, each as a Co-Collateral Agent.

The Borrower promises to pay interest on the unpaid principal amount of each Tranche A Revolver Loan from the date of such Loan until such principal amount is paid in full, at such interest rates and at such times as provided in the Loan Agreement. Except as otherwise provided in Section 4.1.3 of the Loan Agreement with respect to Swingline Loans, all payments of principal and interest shall be made to the Administrative Agent for the account of the Lender in Dollars in immediately available funds at the Administrative Agent's office. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Loan Agreement.

This Tranche A Revolver Note is one of the Notes referred to in the Loan Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein. This Tranche A Revolver Note is also entitled to the benefits of the Guaranty and is secured by the Collateral. Upon the occurrence and continuation of one or more of the Events of Default specified in the Loan Agreement, all amounts then remaining unpaid on this Tranche A Revolver Note shall become, or may be declared to be, immediately due and payable all as provided in the Loan Agreement. Loans made by the Lender shall be evidenced by one or more loan accounts or records maintained by the Lender in the ordinary course of business. The Lender may also attach schedules to this Tranche A Revolver Note and endorse thereon the date, amount and maturity of its Tranche A Revolver Loans and payments with respect thereto.

The Borrower, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Note.

*[Remainder of Page Left Intentionally Blank]*

THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

**BCBG MAX AZRIA GROUP, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**LOANS AND PAYMENTS WITH RESPECT THERETO**

<b>Date</b>	<b>Type of Loan Made</b>	<b>Amount of Loan Made</b>	<b>End of Interest Period</b>	<b>Amount of Principal or Interest Paid This Date</b>	<b>Outstanding Principal Balance This Date</b>	<b>Notation Made By</b>

**FORM OF TRANCHE A-1 REVOLVER NOTE**

FOR VALUE RECEIVED, the undersigned (the "Borrower") hereby promises to pay to [NAME OF LENDER] or registered assigns (the "Lender"), in accordance with the provisions of the Loan Agreement (as hereinafter defined), the principal amount of each Tranche A-1 Revolver Loan from time to time made by the Lender to the Borrower under that certain Second Amended and Restated Loan Agreement, dated as of February 5, 2015 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Loan Agreement;" the terms defined therein being used herein as therein defined), among the Borrower, BCBG Max Azria Canada Inc., a Canadian corporation (the "Canadian Borrower" and together with the Company, collectively, the "Borrowers" and each individually, a "Borrower"), each Guarantor party from time to time party thereto, each lender from time to time party thereto (collectively, the "Lenders" and individually, a "Lender"), Bank of America, N.A., as Administrative Agent and Issuing Bank, Bank of America, N.A. (acting through its Canada branch), as Canadian Agent and Issuing Bank and Bank of America, N.A. and General Electric Capital Corporation, each as a Co-Collateral Agent.

The Borrower promises to pay interest on the unpaid principal amount of each Tranche A-1 Revolver Loan from the date of such Loan until such principal amount is paid in full, at such interest rates and at such times as provided in the Loan Agreement. All payments of principal and interest shall be made to the Administrative Agent for the account of the Lender in Dollars in immediately available funds at the Administrative Agent's office. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Loan Agreement.

This Tranche A-1 Revolver Note is one of the Notes referred to in the Loan Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein. This Tranche A-1 Revolver Note is also entitled to the benefits of the Guaranty and is secured by the Collateral. Upon the occurrence and continuation of one or more of the Events of Default specified in the Loan Agreement, all amounts then remaining unpaid on this Tranche A-1 Revolver Note shall become, or may be declared to be, immediately due and payable all as provided in the Loan Agreement. Loans made by the Lender shall be evidenced by one or more loan accounts or records maintained by the Lender in the ordinary course of business. The Lender may also attach schedules to this Tranche A-1 Revolver Note and endorse thereon the date, amount and maturity of its Tranche A-1 Revolver Loans and payments with respect thereto.

The Borrower, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Note.

*[Remainder of Page Left Intentionally Blank]*

THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

**BCBG MAX AZRIA GROUP, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**LOANS AND PAYMENTS WITH RESPECT THERETO**

<b>Date</b>	<b>Type of Loan Made</b>	<b>Amount of Loan Made</b>	<b>End of Interest Period</b>	<b>Amount of Principal or Interest Paid This Date</b>	<b>Outstanding Principal Balance This Date</b>	<b>Notation Made By</b>



**FORM OF CANADIAN REVOLVER NOTE**

FOR VALUE RECEIVED, the undersigned (the "Canadian Borrower") hereby promises to pay to [NAME OF LENDER] or registered assigns (the "Canadian Lender"), in accordance with the provisions of the Loan Agreement (as hereinafter defined), the principal amount of each Canadian Revolver Loan from time to time made by the Lender to the Borrower under that certain Second Amended and Restated Loan Agreement, dated as of February 5, 2015 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Loan Agreement;" the terms defined therein being used herein as therein defined), among the Canadian Borrower, BCBG Max Azria Group, LLC, a Delaware limited liability company (the "Company", together with the Canadian Borrower, collectively, the "Borrowers" and each individually, a "Borrower"), each Guarantor from time to time party thereto, each lender from time to time party thereto (collectively, the "Lenders" and individually, a "Lender"), Bank of America, N.A., as Administrative Agent and Issuing Bank, Bank of America, N.A. (acting through its Canada branch), as Canadian Agent and Issuing Bank and Bank of America, N.A. and General Electric Capital Corporation, each as a Co-Collateral Agent.

The Canadian Borrower promises to pay interest on the unpaid principal amount of each Canadian Revolver Loan from the date of such Loan until such principal amount is paid in full, at such interest rates and at such times as provided in the Loan Agreement. All payments of principal and interest shall be made to the Canadian Agent for the account of the Canadian Lender in Canadian Dollars in immediately available funds at the Canadian Agent's office. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Loan Agreement.

This Canadian Revolver Note is one of the Notes referred to in the Loan Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein. This Canadian Revolver Note is also entitled to the benefits of the Canada Guaranty and is secured by the Canadian Collateral. Upon the occurrence and continuation of one or more of the Events of Default specified in the Loan Agreement, all amounts then remaining unpaid on this Canadian Revolver Note shall become, or may be declared to be, immediately due and payable all as provided in the Loan Agreement. Loans made by the Canadian Lender shall be evidenced by one or more loan accounts or records maintained by the Lender in the ordinary course of business. The Lender may also attach schedules to this Canadian Revolver Note and endorse thereon the date, amount and maturity of its Canadian Revolver Loans and payments with respect thereto.

The Canadian Borrower, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Note.

*[Remainder of Page Left Intentionally Blank]*

THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

**BCBG MAX AZRIA CANADA, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**LOANS AND PAYMENTS WITH RESPECT THERETO**

<b>Date</b>	<b>Type of Loan Made</b>	<b>Amount of Loan Made</b>	<b>End of Interest Period</b>	<b>Amount of Principal or Interest Paid This Date</b>	<b>Outstanding Principal Balance This Date</b>	<b>Notation Made By</b>

**FORM OF ASSIGNMENT AND ASSUMPTION**

This Assignment and Assumption (this “Assignment and Assumption”) is dated as of the Effective Date set forth below and is entered into by and between [the][each]<sup>1</sup> Assignor identified in item 1 below ([the][each, an] “Assignor”) and [the][each]<sup>2</sup> Assignee identified in item 2 below ([the][each, an] “Assignee”). [It is understood and agreed that the rights and obligations of [the Assignors][the Assignees]<sup>3</sup> hereunder are several and not joint.]<sup>4</sup> Capitalized terms used but not defined herein shall have the meanings given to them in the Second Amended and Restated Loan Agreement identified below (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “Loan Agreement”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, [the][each] Assignor hereby irrevocably sells and assigns to [the Assignee][the respective Assignees], and [the][each] Assignee hereby irrevocably purchases and assumes from [the Assignor][the respective Assignors], subject to and in accordance with the Standard Terms and Conditions and the Loan Agreement, as of the Effective Date inserted by the [Administrative][Canadian] Agent as contemplated below (i) all of [the Assignor’s][the respective Assignors’] rights and obligations in [its capacity as a Lender][their respective capacities as Lenders] under the Loan Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of [the Assignor][the respective Assignors] under the respective facilities identified below (including, without limitation, the Letters of Credit and the Swingline Loans included in such facilities) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of [the Assignor (in its capacity as a Lender)][the respective Assignors (in their respective capacities as Lenders)] against any Person, whether known or unknown, arising under or in connection with the Loan Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by [the][any] Assignor to [the][any] Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as [the][an] “Assigned Interest”). Each such sale and assignment is without recourse to [the][any] Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by [the][any] Assignor.

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<sup>1</sup> For bracketed language here and elsewhere in this form relating to the Assignor(s), if the assignment is from a single Assignor, choose the first bracketed language. If the assignment is from multiple Assignors, choose the second bracketed language.

<sup>2</sup> For bracketed language here and elsewhere in this form relating to the Assignee(s), if the assignment is to a single Assignee, choose the first bracketed language. If the assignment is to multiple Assignees, choose the second bracketed language.

<sup>3</sup> Select as appropriate.

<sup>4</sup> Include bracketed language if there are either multiple Assignors or multiple Assignees.

1. Assignor[s]: \_\_\_\_\_

\_\_\_\_\_

2. Assignee[s]: \_\_\_\_\_

\_\_\_\_\_

[for each Assignee, indicate [Affiliate][Approved Fund] of [*identify Lender*]]

3. Borrowers: BCBG Max Azria Group, LLC and BCBG Max Azria Canada, Inc.

4. Administrative Agent: Bank of America, N.A., as the administrative agent under the Loan Agreement

5. Canadian Agent: Bank of America, N.A. (acting through its Canada branch) as the Canadian agent under the Loan Agreement

6. Loan Agreement: Second Amended and Restated Loan Agreement, dated as of February 5, 2015, among the Borrowers, each Guarantor from time to time party thereto, each Lender from time to time party thereto, the Administrative Agent, the Canadian Agent and the Issuing Bank and Bank of America, N.A. and General Electric Capital Corporation, each as a Co-Collateral Agent.

7. Assigned Interest[s]:

<u>Assignor[s]</u> <sup>5</sup>	<u>Assignee[s]</u> <sup>6</sup>	<u>Facility Assigned</u> <sup>7</sup>	<u>Aggregate Amount of Commitment/Loans for all Lenders</u> <sup>8</sup>	<u>Amount of Commitment/Loans Assigned</u>	<u>Percentage Assigned of Commitment / Loans</u> <sup>9</sup>	<u>CUSIP Number</u>
		_____	\$ _____	\$ _____	_____%	
		_____	\$ _____	\$ _____	_____%	
		_____	\$ _____	\$ _____	_____%	

[8. Trade Date: \_\_\_\_\_]<sup>10</sup>

<sup>5</sup> List each Assignor, as appropriate.

<sup>6</sup> List each Assignee, as appropriate.

<sup>7</sup> Fill in the appropriate terminology for the types of facilities under the Loan Agreement that are being assigned under this Assignment (e.g. "Revolving Credit Commitment", etc.).

<sup>8</sup> Amounts in this column and in the column immediately to the right to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

<sup>9</sup> Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

Effective Date: \_\_\_\_\_, 20\_\_ [TO BE INSERTED BY  
[ADMINISTRATIVE][CANADIAN] AGENT AND WHICH SHALL BE THE EFFECTIVE  
DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

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<sup>10</sup> To be completed if the Assignor and the Assignee intend that the minimum assignment amount is to be determined as of the Trade Date.

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR  
[NAME OF ASSIGNOR]

By: \_\_\_\_\_  
Name:  
Title:

ASSIGNEE  
[NAME OF ASSIGNEE]

By: \_\_\_\_\_  
Name:  
Title:

Notice Address:

Consented to and Accepted:

BANK OF AMERICA, N.A.,  
[as Administrative][acting through its Canada  
branch) as Canadian] Agent [and as an Issuing  
Bank[ and provider of Swingline Loans]]

By: \_\_\_\_\_  
Name:  
Title:

[BCBG MAX AZRIA GROUP, LLC, as  
Borrower Agent

By: \_\_\_\_\_  
Name:  
Title:]<sup>11</sup>

[ADDITIONAL CONSENTS

By: \_\_\_\_\_  
Name:  
Title:]

<sup>11</sup> Consent shall not be required if an Event of Default shall have occurred and is continuing.

*ANNEX 1 TO ASSIGNMENT AND ASSUMPTION*

**STANDARD TERMS AND CONDITIONS FOR  
ASSIGNMENT AND ASSUMPTION**

1. Representations and Warranties.

1.1. Assignor. [The][Each] Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of [the][the relevant] Assigned Interest, (ii) [the][such] Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Loan Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the [Company][Canadian Borrower], any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the [Company][Canadian Borrower], any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. [The][Each] Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Loan Agreement, (ii) it meets all the requirements to be an assignee under Section 13.2.1 of the Loan Agreement (subject to such consents, if any, as may be required under Section 13.2.1 of the Loan Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Loan Agreement as a Lender thereunder and, to the extent of [the][the relevant] Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by [the][such] Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire [the][such] Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Loan Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 10.1.2 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, (vi) it has, independently and without reliance upon the [Administrative][Canadian] Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, and (vii) if it is a Foreign Lender, attached hereto is any documentation required to be delivered by it pursuant to the terms of the Loan Agreement, duly completed and executed by [the][such] Assignee; and (b) agrees that (i) it will, independently and without reliance upon the [Administrative][Canadian] Agent, [the][any] Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms



all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the [Administrative][Canadian] Agent shall make all payments in respect of [the][each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the][the relevant] Assignor for amounts which have accrued to but excluding the Effective Date and to [the][the relevant] Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

**FORM OF COMPLIANCE CERTIFICATE**

Financial Statement Date: \_\_\_\_\_, \_\_\_\_\_

To: Bank of America, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Second Amended and Restated Loan Agreement, dated as of February 5, 2015 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement," the terms defined therein being used herein as therein defined), among BCBG Max Azria Group, LLC, a Delaware limited liability company (the "Company"), BCBG Max Azria Canada Inc., a Canadian corporation (the "Canadian Borrower" and together with the Company, collectively, the "Borrowers" and each individually, a "Borrower"), each other Guarantor from time to time party thereto, each lender from time to time party thereto (collectively, the "Lenders" and each individually, a "Lender"), Bank of America, N.A., as Administrative Agent and Issuing Bank, Bank of America, N.A. (acting through its Canada branch), as Canadian Agent and Issuing Bank and Bank of America, N.A. and General Electric Capital Corporation, each as a Co-Collateral Agent.

Each of the undersigned hereby certifies as of the date hereof that he/she is the chief financial officer of the Borrower on whose behalf the undersigned has executed this Certificate, and that, as such, he/she is authorized to execute and deliver this Certificate to the Administrative Agent on the behalf of such Borrower and not in his/her individual capacity, and that:

*[Use following paragraph 1 for fiscal year-end financial statements]*

1. The Borrowers have delivered the year-end audited financial statements required by Section 10.1.2(a) of the Agreement for the Fiscal Year of the Company ended as of the above date, together with (i) the report and opinion of an independent certified public accountant required by such section, (ii) the Narrative Report required by such section, (iii) the schedule that sets forth the financial results of the Company and the U.S. Guarantor Subsidiaries for such Fiscal Year consistent in presentation with the financial statements delivered pursuant to Section 10.1.2(b) of the Agreement, and (iv) the schedule that sets forth the financial results of the Canadian Borrower and the Canadian Guarantor Subsidiaries for such Fiscal Year consistent in presentation with the financial statements delivered pursuant to Section 10.1.2(b) of the Agreement. The foregoing financial statements fairly present, in all material respects, the financial condition of the Company, its Subsidiaries and certain Affiliates (including the Canadian Borrower and its Subsidiaries) as at the dates indicated and the results of their operations and their cash flows for the Fiscal Year of the Company ended as of the above date.

*[Use following paragraph 1 for fiscal quarter-end financial statements]*

1. The Borrowers have delivered the unaudited financial statements required by Section 10.1.2(b) of the Agreement for the Fiscal Quarter of the Borrowers ended as of the

above date, together with the (i) Narrative Report and (ii) the certificate of chief financial officer with respect to the amount of Investments made in Foreign Subsidiaries or Specified Foreign Affiliates required by such section. The foregoing financial statements fairly present the financial position and results of operations of the Borrowers and their respective Subsidiaries in accordance with GAAP as at such date and for such period, subject only to normal year-end audit adjustments. Attached hereto as Schedule I is the amount of Investments made in Foreign Subsidiaries or Specified Foreign Affiliates (including those described in Sections 10.2.9(g) and (l)) during such fiscal quarter and the period ending since the Closing Date;

2. Each of the undersigned has reviewed and is familiar with the terms of the Agreement and has made, or has caused to be made under his/her supervision, a detailed review of the transactions and condition (financial or otherwise) of the Borrowers during the accounting period covered by such financial statements.

3. A review of the activities of the Borrowers during such fiscal period has been made under the supervision of the undersigned with a view to determining whether during such fiscal period the Borrowers performed and observed all its Obligations under the Loan Documents, and

*[select one:]*

[to the best knowledge of each of the undersigned, during such fiscal period the each of the Borrowers performed and observed each covenant and condition of the Loan Documents applicable to it, and no Default or Event of Default has occurred and is continuing.]

*--or--*

[to the best knowledge of each of the undersigned, the following covenants or conditions have not been performed or observed and the following is a list of each such Default or Event of Default, as applicable, and its nature and status:]

4. The representations and warranties of the Borrowers contained in Section 9 of the Agreement and all representations and warranties of any Obligor that are contained in any document furnished at any time under or in connection with the Loan Documents, are true and correct on and as of the date hereof, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this Compliance Certificate, the representations and warranties contained in Section 9.1.8 of the Agreement shall be deemed to refer to the most recent statements furnished pursuant to Section 10.1.2 of the Agreement, including the statements in connection with which this Compliance Certificate is delivered.

*[Remainder of page intentionally left blank]*

*IN WITNESS WHEREOF*, the undersigned has executed this Certificate as of  
[\_\_\_\_\_, 20\_\_].

**BCBG MAX AZRIA GROUP, LLC**

By: \_\_\_\_\_

Name:

Title:

**BCBG MAX AZRIA CANADA INC.**

By: \_\_\_\_\_

Name:

Title

[SCHEDULE I  
INVESTMENTS MADE IN FOREIGN SUBSIDIARIES OR SPECIFIED FOREIGN  
AFFILIATES]

*EXHIBIT F*

**FORM OF BORROWING BASE CERTIFICATE**

Please see attached.

FORM OF NOTICE OF BORROWING OR CONVERSION/CONTINUATION

Date: \_\_\_\_\_, \_\_\_\_\_

To: Bank of America, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Second Amended and Restated Loan Agreement, dated as of February 5, 2015 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement," the terms defined therein being used herein as therein defined), among BCBG Max Azria Group, LLC, a Delaware limited liability company (the "Company"), BCBG Max Azria Canada Inc., a Canadian corporation (the "Canadian Borrower" and together with the Company, collectively, the "Borrowers" and each individually, a "Borrower"), each Guarantor party from time to time party thereto, the Lenders from time to time party thereto, Bank of America, N.A., as Administrative Agent and Issuing Bank, Bank of America, N.A. (acting through its Canada branch), as Canadian Agent and Issuing Bank and Bank of America, N.A. and General Electric Capital Corporation, each as a Co-Collateral Agent.

The undersigned hereby requests (select one):

- A Borrowing of [Base Rate Tranche A Revolver][Base Tranche A-1 Revolver][LIBOR Tranche A Revolver][LIBOR Tranche A-1 Revolver][Canadian Prime Rate][Canadian BA Rate] Loans
- A Swingline Loan
- A conversion or continuation of [Base Rate Tranche A Revolver][Base Rate Tranche A-1 Revolver][LIBOR Tranche A Revolver][LIBOR Tranche A-1 Revolver][Canadian Prime Rate][Canadian BA Rate] Loans

1. On \_\_\_\_\_ (a Business Day).
2. In the amount of \$\_\_\_\_\_
3. Comprised of \_\_\_\_\_  
[Type of Loan requested]
4. For LIBOR Loans or Canadian BA Rate Loans: with an Interest Period of \_\_\_\_\_ months.

*[Remainder of page intentionally left blank]*

The undersigned hereby represents and warrants that the conditions specified in **Section 6.2** of the Agreement shall be satisfied on and as of the date of the Applicable Credit Extension.

**BCBG MAX AZRIA GROUP, LLC**, as Borrower  
Agent

By: \_\_\_\_\_  
Name:  
Title:



FORM OF SWINGLINE LOAN NOTICE

TO: [Bank of America, N.A., as Administrative Agent and Swingline Lender]  
[Bank of America, N.A., (acting through its Canada branch), as Canadian Agent]

RE: Second Amended and Restated Loan Agreement, dated as of February 5, 2015 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement;" the terms defined therein being used herein as therein defined), among BCBG Max Azria Group, LLC (the "Company"), BCBG Max Azria Canada Inc., a Canadian corporation (the "Canadian Borrower" and together with the Company, collectively, the "Borrowers" and each individually, a "Borrower"), each Guarantor from time to time party thereto, each lender from time to time party thereto (collectively, the "Lenders" and individually, a "Lender"), Bank of America, N.A., as Administrative Agent and Issuing Bank, Bank of America, N.A. (acting through its Canada branch), as Canadian Agent and Issuing Bank and Bank of America, N.A. and General Electric Capital Corporation, each as a Co-Collateral Agent.

DATE: \_\_\_\_\_, \_\_\_\_\_

---

The undersigned hereby requests a Swingline Loan:

1. On \_\_\_\_\_ (the "Credit Extension Date")
2. In the amount of [\$][Cdn. \$] \_\_\_\_\_.

The Swingline Borrowing requested herein complies with the requirements of the provisos contained in Section 4.1.3 of the Agreement.

The [Borrower][Company] hereby represents and warrants that the conditions specified in Section 6.2 shall be satisfied on and as of the date of the Credit Extension Date.

Delivery of an executed counterpart of a signature page of this notice by fax transmission or other electronic mail transmission (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this notice.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**[BCBG MAX AZRIA GROUP, LLC] [BCBG  
MAX AZRIA CANADA INC.]**

By: \_\_\_\_\_  
Name:  
Title:

**FORM OF U.S. TAX COMPLIANCE CERTIFICATE**

(For Foreign Lenders That Are Not Partnerships  
For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Second Amended and Restated Loan Agreement, dated as of February 5, 2015 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement," the terms defined therein being used herein as therein defined), among BCBG Max Azria Group, LLC, a Delaware limited liability company (the "Company"), BCBG Max Azria Canada Inc., a Canadian corporation (the "Canadian Borrower") and together with the Company, collectively, the "Borrowers" and each individually, a "Borrower") each Guarantor party thereto from time to time, each lender from time to time party thereto (collectively, the "Lenders" and individually, a "Lender"), Bank of America, N.A., as Administrative Agent and Issuing Bank, Bank of America, N.A. (acting through its Canada branch), as Canadian Agent and Issuing Bank and Bank of America, N.A. and General Electric Capital Corporation, each as a Co-Collateral Agent. Pursuant to the provisions of Section 5.8.5 of the Agreement, the undersigned hereby certifies that (a) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (b) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (c) it is not a ten percent shareholder of Global Holdings within the meaning of Section 871(h)(3)(B) of the Code, and (d) it is not a controlled foreign corporation related to Global Holdings as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Company with a certificate of its non-U.S. Person status on IRS Form W-8BEN or W-8BEN-E, as applicable. By executing this certificate, the undersigned agrees that (a) if the information provided on this certificate changes, the undersigned shall promptly so inform the Company and the Administrative Agent, and (b) the undersigned shall have at all times furnished the Company and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Agreement and used herein shall have the meanings given to them in the Agreement.

[NAME OF FOREIGN LENDER]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, \_\_\_\_\_

**FORM OF U.S. TAX COMPLIANCE CERTIFICATE**

(For Foreign Participants That Are Not Partnerships  
For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Second Amended and Restated Loan Agreement, dated as of February 5, 2015 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement," the terms defined therein being used herein as therein defined), among BCBG Max Azria Group, LLC, a Delaware limited liability company (the "Company"), BCBG Max Azria Canada Inc., a Canadian corporation (the "Canadian Borrower") and together with the Company, collectively, the "Borrowers" and each individually, a "Borrower") each Guarantor party thereto from time to time, each lender from time to time party thereto (collectively, the "Lenders" and individually, a "Lender"), Bank of America, N.A., as Administrative Agent and Issuing Bank, Bank of America, N.A. (acting through its Canada branch), as Canadian Agent and Issuing Bank and Bank of America, N.A. and General Electric Capital Corporation, each as a Co-Collateral Agent. Pursuant to the provisions of Section 5.8.5 of the Agreement, the undersigned hereby certifies that (a) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (b) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (c) it is not a ten percent shareholder of Global Holdings within the meaning of Section 871(h)(3)(B) of the Code, and (d) it is not a controlled foreign corporation related to Global Holdings as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN or W-8BEN-E, as applicable. By executing this certificate, the undersigned agrees that (a) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (b) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Agreement and used herein shall have the meanings given to them in the Agreement.

[NAME OF PARTICIPANT]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, \_\_\_\_\_

**FORM OF U.S. TAX COMPLIANCE CERTIFICATE**

(For Foreign Participants That Are Partnerships  
For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Second Amended and Restated Loan Agreement, dated as of February 5, 2015 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement;" the terms defined therein being used herein as therein defined), among BCBG Max Azria Group, LLC, a Delaware limited liability company (the "Company"), BCBG Max Azria Canada Inc., a Canadian corporation (the "Canadian Borrower" and together with the Company, collectively, the "Borrowers" and each individually, a "Borrower") each Guarantor party thereto from time to time, each lender from time to time party thereto (collectively, the "Lenders" and individually, a "Lender"), Bank of America, N.A., as Administrative Agent and Issuing Bank, Bank of America, N.A. (acting through its Canada branch), as Canadian Agent and Issuing Bank and Bank of America, N.A. and General Electric Capital Corporation, each as a Co-Collateral Agent. Pursuant to the provisions of Section 5.8.5 of the Agreement, the undersigned hereby certifies that (a) it is the sole record owner of the participation in respect of which it is providing this certificate, (b) its direct or indirect partners/members are the sole beneficial owners of such participation, (c) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (d) none of its direct or indirect partners/members is a ten percent shareholder of Global Holdings within the meaning of Section 871(h)(3)(B) of the Code, and (e) none of its direct or indirect partners/members is a controlled foreign corporation related to Global Holdings as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (a) an IRS Form W-8BEN or W-8BEN-E, as applicable, or (b) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or W-8BEN-E, as applicable, from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (i) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (ii) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Agreement and used herein shall have the meanings given to them in the Agreement.

*[Remainder of page intentionally left blank.]*

[NAME OF PARTICIPANT]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, \_\_\_\_\_

**FORM OF U.S. TAX COMPLIANCE CERTIFICATE**

(For Foreign Lenders That Are Partnerships  
For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Second Amended and Restated Loan Agreement, dated as of February 5, 2015 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement," the terms defined therein being used herein as therein defined), among BCBG Max Azria Group, LLC, a Delaware limited liability company (the "Company"), BCBG Max Azria Canada Inc., a Canadian corporation (the "Canadian Borrower" and together with the Company, collectively, the "Borrowers" and each individually, a "Borrower") each Guarantor party thereto from time to time, each lender from time to time party thereto (collectively, the "Lenders" and individually, a "Lender"), Bank of America, N.A., as Administrative Agent and Issuing Bank, Bank of America, N.A. (acting through its Canada branch), as Canadian Agent and Issuing Bank and Bank of America, N.A. and General Electric Capital Corporation, each as a Co-Collateral Agent. Pursuant to the provisions of Section 5.8.5 of the Agreement, the undersigned hereby certifies that (a) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (b) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (c) with respect to the extension of credit pursuant to this Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (d) none of its direct or indirect partners/members is a ten percent shareholder of Global Holdings within the meaning of Section 871(h)(3)(B) of the Code and (e) none of its direct or indirect partners/members is a controlled foreign corporation related to Global Holdings as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the [Borrower][Company] with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (a) an IRS Form W-8BEN or W-8BEN-E, as applicable, or (b) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or W-8BEN-E, as applicable, from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (i) if the information provided on this certificate changes, the undersigned shall promptly so inform Global Holdings and the Administrative Agent, and (ii) the undersigned shall have at all times furnished Global Holdings and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Agreement and used herein shall have the meanings given to them in the Agreement.

*[Remainder of page intentionally left blank.]*

[NAME OF LENDER]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, \_\_\_\_\_



**SCHEDULE 1.1(a)**

**COMMITMENTS OF LENDERS**

Lender	Tranche A Revolver Commitment	Tranche A-1 Revolver Commitment	Canadian Revolver Commitment
Bank of America, N.A.	\$60,500,000.00	\$4,000,000.00	\$0
Bank of America, N.A. (acting through its Canada branch)	\$0	\$0	Cdn. \$12,000,000.00
General Electric Capital Corporation	\$64,500,000.00	\$0	\$0
GE Canada Finance Holding Company	\$0	\$0	Cdn. \$12,000,000.00
Total	\$125,000,000.00	\$4,000,000.00	Cdn. \$24,000,000.00

## SCHEDULE 1.1(b)

### **PARTNER SHOP AGREEMENTS**

1. Department License Agreement by and between Bloomingdale's, Inc. and BCBG Max Azria Group, LLC (f/k/a BCBG Max Azria Group, Inc.), dated as of July 19, 2004, as amended by that certain Amendment to Department License Agreement dated as of September 18, 2008, as further amended by that certain Second Amendment to Department License Agreement dated as of May 13, 2009, as further amended by that certain Third Amendment to Department License Agreement dated as of February 27, 2012, as further amended by that certain Fourth Amendment to Department License Agreement dated as of February 5, 2013, as further amended by that certain Fifth Amendment to Department License Agreement dated as of June 17, 2013, as further amended by that certain Sixth Amendment to Department License Agreement dated as of September 24, 2013, as supplemented by that certain Letter Agreement dated as of December 19, 2013, as further amended by that certain Seventh Amendment to Department License Agreement dated as of March 18, 2014, and as further amended by that certain Eighth Amendment to Department License Agreement dated as of August 22, 2014
2. Restated Master License Agreement by and among The Higbee Company, Dillard's Inc., Dillard Store Services, Inc., Dillard's Dollars, Inc., Dillard Tennessee Operating Limited Partnership, Dillard Texas, LLC, SI Shopping Center Lessors, L.P., Condev Nevada, Inc., Dillard International, Inc., D-Serf Company, LLC, U.S. Alpha, Inc., Dillard Investment Co., Inc., Construction Developers, Incorporated, and BCBG Max Azria Group, LLC (f/k/a BCBG Max Azria Group, Inc.), dated as of May 3, 2009, as amended December 26, 2013.
3. Lord & Taylor Licensed Department Agreement by and between Lord & Taylor, a division of The May Department Stores Company, and BCBG Max Azria Group, LLC (f/k/a BCBG Max Azria Group, Inc.), dated as of 2004, as amended by that Addendum to Licensed Department Agreement (Agreement for Internet Sales), dated May 2010, and as further amended by that Amendment to Lord & Taylor Licensed Department Agreement, dated June 1, 2010.
4. Department License Agreement by and between Macy's Retail Holdings, Inc. and BCBG Max Azria Group, LLC (f/k/a BCBG Max Azria Group, Inc.), dated as of October 3, 2003, as amended on November 25, 2005, as further amended June 28, 2010, as further amended October 10, 2012 and as further amended April 22, 2013.
5. Licensed Department Agreement Between the Hudson's Bay Company and BCBG Max Azria Canada Inc. dated as of October 1, 2012.

### SCHEDULE 2.3.1

#### EXISTING LETTERS OF CREDIT AND BANKERS' ACCEPTANCE

##### **BCBG Max Azria Group, LLC**

Standby Letters of Credit from Bank of America, N.A.

<b>Customer Reference</b>	<b>Bank Reference</b>	<b>Beneficiary Name</b>	<b>Issue Date</b>	<b>Expiry Date</b>	<b>Amount Outstanding (\$)</b>
BCBS 52112	00000003068490	1450 Broadway LLC	07 Jun 2012	01 Jun 2015	200,000
00000003068482	00000003068482	Storepark LLC	26 Aug 2009	31 Aug 2015	100,000
00000003068483	00000003068483	South Coast Plaza	28 Jan 2010	14 Jan 2016	30,660
00000003068487	00000003068487	Delta Air Lines, Inc.	31 Aug 2010	19 Jul 2015	5,000
BCBS 100512	00000003119751	Fidelity and Deposit Company of	31 Oct 2012	31 Oct 2015	2,520,000
BCBS 92311	00000003068489	American Express Travel Related	23 Sep 2011	23 Apr 2015	500,000
BCBS3068491	00000003119752	Chubb and Son, a Division of	11 Sep 2014	01 Aug 2015	4,200,000

Documentary Letters of Credit from Bank of America, N.A. (as of January 30, 2015)

<b>Customer Reference</b>	<b>Bank Reference</b>	<b>Beneficiary Name</b>	<b>Issue Date</b>	<b>Expiry Date</b>	<b>Amount Outstanding (\$)</b>
TP605500019010-4	TP605500019010-4	Mega-Link Int'l Holdings Ltd	31 Oct 2014	21 Jan 2015	40,259.4
TP605500019013-4	TP605500019013-4	Mega-Link Int'l Holdings Ltd	21 Nov 2014	17 Jan 2015	81,063.38
TP605500019014-4	TP605500019014-4	Mega-Link Int'l Holdings Ltd	27 Nov 2014	20 Jan 2015	269,424.94
TP605500019015-4	TP605500019015-4	Mega-Link Int'l Holdings Ltd	16 Dec 2014	11 Feb 2015	330,158.11
TP605500019016-4	TP605500019016-4	Mega-Link Int'l Holdings Ltd	24 Dec 2014	07 Mar 2015	999,582.74
TP605500019017-4	TP605500019017-4	Mega-Link Int'l Holdings Ltd	23 Dec 2014	21 Feb 2015	778,936.87
TP605500019018-4	TP605500019018-4	Mega-Link Int'l Holdings Ltd	30 Dec 2014	20 Feb 2015	783,849.22
TP605500019019-4	TP605500019019-4	Mega-Link Int'l Holdings Ltd	09 Jan 2015	28 Feb 2015	600,130.94
TP605500019020-5	TP605500019020-5	International Textile/Resources/	06 Jan 2015	10 Feb 2015	15,057.00
TP605500019021-5	TP605500019021-5	Mega-Link Int'l Holdings Ltd	30 Jan 2015	03 Mar 2015	996,890.39

## **SCHEDULE 7.1.4**

### **CREDIT CARD ARRANGEMENTS**

#### **BCBG Max Azria Group, LLC**

Business Bank Card Service and Security Agreement (Multi-Year Agreement) dated February 26, 1999 between BCBG Max Azria Group, LLC (fka BCBG Max Azria Group, Inc. and AZ3, Inc.) and Wells Fargo Bank, N.A. (as amended).

#### **BCBG Max Azria Canada Inc.**

1. Moneris Visa National Account Merchant Agreement dated January 1, 2013 between BCBG Max Azria Canada Inc., Moneris Solutions Corporation and Royal Bank of Canada.
2. Moneris National Account Merchant Debit Card and Terminal Agreement dated January 1, 2013 between BCBG Max Azria Canada Inc., Moneris Solutions Corporation.
3. American Express Merchant Agreement dated April 30, 2006 between BCBG Max Azria Canada Inc. and AMEX Bank of Canada.

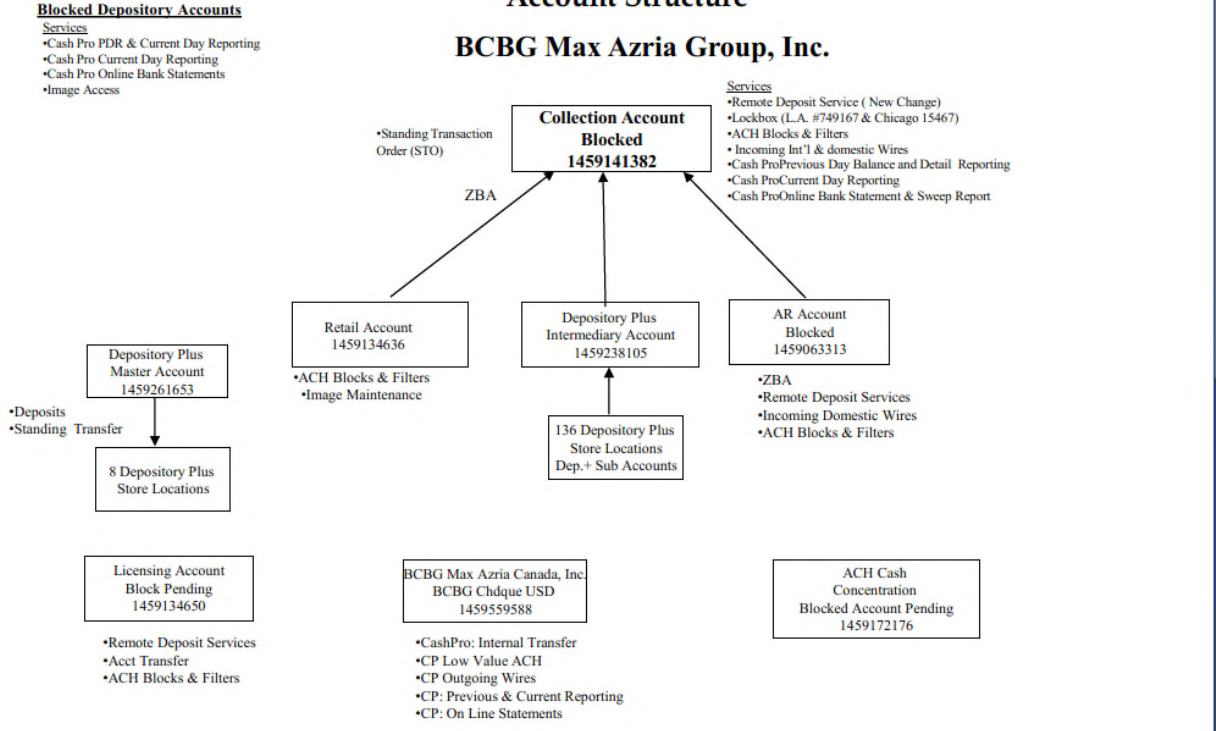
**SCHEDULE 7.2**

**MORTGAGED REAL ESTATE**

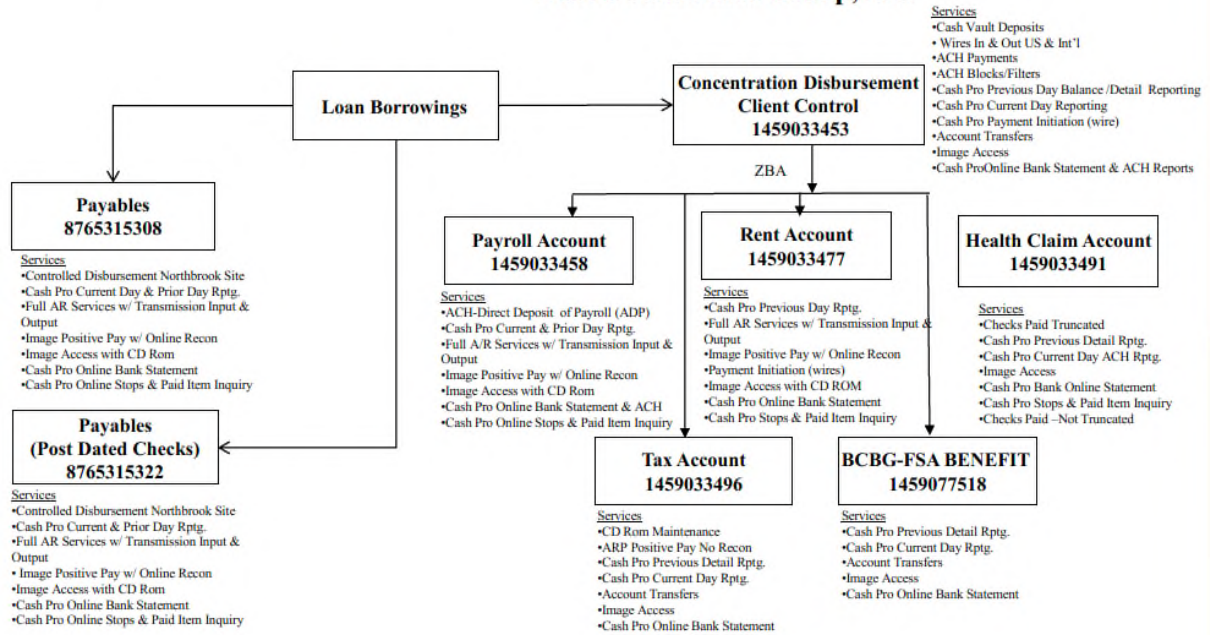
None.

# SCHEDULE 8.4

## DEPOSIT ACCOUNTS



## Account Structure BCBG Max Azria Group, Inc.



### BCBG Max Azria Group, LLC. Bank Accounts

### Summary of Corporate Cash Accounts (BCBG Max Azria Group, Inc.)

Bank Acct#	Description	Bank Address and Phone No.
<b>Bank of America</b>		
1459033453	Concentration	Bank of America
1459033458	Payroll	333 S. Hope Street
1459063313	Wholesale A/R	Los Angeles, CA 90071
1459033477	Rent	(213) 621-7155
1459033491	Health Claim	
1459033496	Tax	
1459141382	Collections	
1459134636	Retail Deposit	
1459134650	Licensing Deposit	
8765315308	A/P Checks	
8765315322	Production Checks	
1459077518	Anthem FSA	

**Summary of Corporate Cash Accounts (Max Rave, LLC)**

8765315865	Rent
8765315884	A/P Checks
1459043198	Concentration
1559134292	Non BofA Store Deposit
1459267872	Tax

**Retail Store Master Accounts (BCBG Max Azria Group, LLC)**

<b>Account #</b>	<b>Bank</b>
4801906546	Wells Fargo
816244354	Chase
55-8511-5171	PNC Bank
153910716593	US Bank
019-271433	Banco Popular
6222861834	Citizens Bank
1459238105	Bank of America - 1
1459261653	Bank of America - 2
0006-211887	Bank of Hawaii
4242332594	TD Bank
5142555990	BB&T
751858587	Five Star Bank
0101020601	First Bank of the Lake
1000075069954	Suntrust
751858587	Five Star Bank
361001834	Premier Bank Minnesota
1144191	Berkshire Bank
1115803810	Legacy Bank (NBT Bank)
906832	Security National Bank
0465191501	Queenstown Bank
0066845106	Regions Bank - 484
0184806028	Regions Bank - 517
62014970	First Hawaiian Bank
0107215178	Bank of Guam
5045853595	Amex

**Retail Store Accounts (BCBG Max Azria Group, LLC)**

STORE	STORE NAME	State	BANK	ACCOUNT
51	Herve Leger, Miracle Mile Shop	NV	Wells Fargo	4945210250
52	Herve Leger, Madison	NY	Bank of America - 1	1459534950



53	Herve Leger, Rodeo/Giorgio	CA	Wells Fargo	4945210268
56	Herve Leger, Venetian	NV	Wells Fargo	4945414589
57	Herve Leger, South Coast	CA	Wells Fargo	4947104311
58	Herve Leger, Century City	CA	Wells Fargo	4946017704
59	Herve Leger, Garden State Plaza	NJ	Bank of America - 1	1459468828
60	Herve Leger, Lenox	GA	Bank of America - 1	1459564735
81	BCBGeneration, Garden State Plaza	NJ	Bank of America - 1	1459367428
82	BCBGeneration, Boca Raton	FL	Bank of America - 1	1459367442
84	BCBGeneration, Mission Viejo	CA	Bank of America - 1	1459367447
85	BCBGeneration, Dallas Galleria	TX	Bank of America - 1	1459367461
86	BCBGeneration, The Galleria Mall	FL	Bank of America - 1	1459367466
88	BCBGeneration, Wellington	FL	Wells Fargo	4947004891
89	BCBGeneration, Century City	CA	Wells Fargo	4945502797
90	BCBGeneration, Oakridge	CA	Wells Fargo	4947004909
91	BCBGeneration, Plaza Las Americas	PR	Banco Popular	019-271433
92	BCBGeneration, Glendale Galleria	CA	Bank of America - 1	1459565961
93	BCBGeneration, Culver City	CA	Wells Fargo	4946506755
94	BCBGeneration, Santa Anita	CA	Bank of America - 1	1459434649
95	BCBGeneration, Mall of America	MN	US Bank	153910716593
96	BCBGeneration, Miracle Mile	NV	Wells Fargo	4945511848
97	BCBGeneration, Aventura	FL	Bank of America - 2	1453202923
134	Lilly's - Corporate	CA	N/A	N/A
135	HL - Corporate	CA	Wells Fargo	4979045275
371	Max Azria, Melrose	CA	Wells Fargo	4945210276
372	Max Azria, Worth Ave.	FL	Bank of America - 1	1459435054
373	Max Azria, W Broadway	NY	Bank of America - 1	1459438760
383	Max Azria, Somerset	MI	Bank of America - 1	1459259858
386	Herve Leger, Aventura Mall	FL	Bank of America - 1	1459071752
400	BCBG Factory, Citadel	CA	Wells Fargo	4945210300
401	BCBG Factory, Cabazon	CA	Wells Fargo	4945210318
402	BCBG Factory, Napa	CA	Wells Fargo	4945210326
405	BCBG Factory, Camarillo	CA	Wells Fargo	4945210334
406	BCBG Factory, Waikale	HI	Bank of Hawaii	91003651
407	BCBG Factory, Dawsonville	GA	BB&T	5142555990
408	BCBG Factory, Clinton Crossing	CT	Bank of America - 1	1459434540
411	BCBG Factory, Guam	Guam	Bank of Hawaii	0006211917
414	BCBG Factory, San Marcos	TX	Wells Fargo	4945210342
415	BCBG Factory, Woodbury	NY	TD Bank	4242332594
416	BCBG Factory, Primm Outlet	NV	Bank of America - 1	1459434564

417	BCBG Factory, Carlsbad	CA	Wells Fargo	4945210359
418	BCBG Factory, Philadelphia Mills	PA	Bank of America - 1	1459434569
419	BCBG Factory, Milpitas	CA	Wells Fargo	4945210367
421	BCBG Factory, Orlando	FL	Bank of America - 1	1459434588
422	BCBG Factory, Wrentham Village	MA	Bank of America - 1	1459434601
424	BCBG Factory, Dolphin Mall	FL	Bank of America - 1	1459434606
425	BCBG Factory, Allen Premium	TX	Wells Fargo	4945210375
426	BCBG Factory, Leesburg Premium	VA	Bank of America - 1	1459434620
431	BCBG Factory, Grove City	PA	PNC Bank	55-8511-5171
433	BCBG Factory, Waterloo	NY	Five Star Bank	751858587
434	BCBG Factory, Birch Run	MI	PNC Bank	55-8511-5171
435	BCBG Factory, Pleasant Prairie	WI	Chase	831145313
436	BCBG Factory, Folsom	CA	Wells Fargo	4945210383
437	BCBG Factory, Osage Beach	MO	First Bank of the Lake	0101020601 100007506995
438	BCBG Factory, St. Augustine	FL	Suntrust	4
441	BCBG Factory, Gilroy	CA	Wells Fargo	4945210391
442	BCBG Factory, Ellenton Outlets	FL	Bank of America - 1	1459434625
444	BCBG Factory, Houston Premium	TX	Bank of America - 1	1459937003
445	BCBG Factory, Lighthouse Place	IN	PNC Bank	55-8511-5171
446	BCBG Factory, Miromar	FL	Bank of America - 1	1459434644
447	BCBG Factory, Vero Fashion Outlets	FL	Bank of America - 1	1459434743
448	BCBG Factory, Orlando Prime	FL	Bank of America - 1	1459937008
452	BCBG Factory, Las Americas	CA	Bank of America - 1	1459837617
453	BCBG Factory, Williamsburg	VA	Bank of America - 1	1459434748
454	BCBG Factory, Chicago Premium	IL	Chase	831145248
456	BCBG Factory, Tannersville	PA	Citizens Bank	6222861834
457	BCBG Factory, Silver Sands	FL	Wells Fargo	4947004917
458	BCBG Factory, Puerto Rico	PR	Banco Popular	019-271433
459	BCBG Factory, Myrtle Beach	SC	Bank of America - 1 Premier Bank	1459434663
460	BCBG Factory, Albertville	MN	Minnesota	361001834
461	BCBG Factory, Seattle Premium	WA	Bank of America - 1	1459434861
462	BCBG Factory, Vacaville	CA	Wells Fargo	4945210425
463	BCBG Factory, Petaluma	CA	Wells Fargo	4945210433
464	BCBG Factory, The Arches	NY	Bank of America - 1	1459071733
466	BCBG Factory, Mercedes	TX	Wells Fargo	4129765442
467	BCBG Factory, Manchester	VT	Berkshire Bank	1144191
469	BCBG Factory, Hagerstown	MD	PNC Bank	55-8511-5171
470	BCBG Factory, Arundel Mills	MD	Bank of America - 1	1459438746

471	BCBG Factory, Gaffney	SC	Bank of America - 1 Legacy Bank (NBT Bank)	1459336455 1115803810
472	BCBG Factory, Lee	MA		
474	BCBG Factory, Sawgrass Mills	FL	Bank of America - 1	1459341683
475	BCBG Factory, Atlantic City	NJ	Bank of America - 1	1459539363
477	BCBG Factory, Jeffersonville	OH	Security National Bank	906832
478	BCBG Factory, Queenstown	MD	Queenstown Bank	0465191501
479	BCBG Factory, Round Rock	TX	Wells Fargo	4945453587
480	BCBG Factory, Woodburn	OR	Wells Fargo	4945210441
482	BCBG Factory, Park City	UT	Wells Fargo	4945210466
483	BCBG Factory, Anthem	AZ	Wells Fargo	4945210920
484	BCBG Factory, Gulfport	MS	Regions Bank - 484	0066845106
485	BCBG Factory, Philadelphia Prem.	PA	Wells Fargo	4947004925
486	BCBG Factory, Barceloneta	PR	Banco Popular	019-271433
487	BCBG Factory, Sun Valley	TX	Wells Fargo	4945210474
489	BCBG Factory, Las Vegas Premium	NV	Bank of America - 1	1453000609
491	BCBG Factory, Foley	AL	Wells Fargo	4947004933
495	BCBG Factory, Potomac Mills	VA	Bank of America - 1	1459833497
496	BCBG, Legends at Sparks	NV	Wells Fargo	4945319200
497	BCBG Factory, Jersey Shore	NJ	Chase	199812150
498	BCBG Factory, Cincinatti Premium	OH	Chase	831145206
499	BCBG Factory, Fashion Outlets	NY	Bank of America - 1	1459259834
501	BCBG Factory, Great Lakes Mall	MI	Bank of America - 1	1459272401
502	BCBG Factory, Mebane	NC	Wells Fargo	4947004941
503	BCBG, Rehoboth	DE	Wells Fargo	4947004958
504	BCBG, Las Vegas Outlets	NV	Bank of America - 2	1453016686
505	BCBG, Destiny	NY	Chase	561561882
506	Charleston	SC	Bank of America - 1	1453006908
507	Hilton Head	SC	Bank of America - 1	1453003358
508	Oklahoma City	OK	Chase	639961601
509	Grand Prairie	TX	Bank of America - 1	1459269154
511	Opry Mills	TN	Bank of America - 1	1459434941
512	Livermore	CA	Bank of America - 1	1459642266
513	BCBG, Phoenix	AZ	Wells Fargo	4962488748
514	BCBG, Rosemont	IL	US Bank	153910716593
516	Herve Leger, Chicago BCBG Factory, St. Louis Premium	IL	US Bank	153910716593
517	Outlets	MO	Regions Bank - 517	0184806028
518	BCBG, Mississippi	MS	Wells Fargo	4941756959
519	BCBG, Citadel	CA	Wells Fargo	4945210508

551	BCBGirls Factory, San Marcos	TX	Wells Fargo	4945210490
554	BCBGirls Factory, Las Americas	CA	Bank of America - 1	1459642247
561	BCBGirls Factory, Mercedes	TX	Wells Fargo	4129765459
574	Houston Premium, Final Cut	TX	Bank of America - 1	1459261672
597	Folsom Premium	CA	Wells Fargo	4945333276
601	BCBG, Westside Pavilion	CA	Wells Fargo	4945210540
602	BCBG, Brentwood Gardens	CA	Wells Fargo	4945210557
603	BCBG, Madison	NY	Bank of America - 1	1459434767
604	BCBG, San Francisco	CA	Wells Fargo	4945210565
606	BCBG, Las Vegas	NV	Bank of America - 1	1459160796
607	BCBG, Westchester	NY	Bank of America - 1	1459434682
608	BCBG, Northpark	TX	Bank of America - 2	1453016969
609	BCBG, Sunset Plaza	CA	Wells Fargo	4945210599
610	BCBG, King of Prussia	PA	Bank of America - 1	1459434781
611	BCBG, Fashion Island	CA	Bank of America - 1	1459269116
612	BCBG, Pentagon	VA	Bank of America - 1	1459434687
613	BCBG, Aventura Mall	FL	Bank of America - 1	1459434786
614	BCBG, Dallas Galleria	TX	Bank of America - 1	1459265595
615	BCBG, Palm Beach Gardens	FL	Bank of America - 1	1459434700
616	BCBG, Lenox Square	GA	Bank of America - 1	1459434804
617	BCBG, Somerset	MI	Bank of America - 1	1459259872
619	BCBG, The Falls	FL	Bank of America - 1	1459434705
620	BCBG, Roosevelt	NY	Bank of America - 1	1459434809
621	BCBG, Bellevue	WA	Bank of America - 1	1459928754
622	BCBG, Pioneer Place	OR	Wells Fargo	4945210631
623	BCBG, Horton Plaza	CA	Wells Fargo	4945210649
624	BCBG, Fashion Valley	CA	Wells Fargo	4945210656
625	BCBG, Garden State	NJ	Bank of America - 1	1459434724
626	BCBG, Northbrook	IL	Bank of America - 1	1459272067
627	BCBG, Beachwood	OH	PNC Bank	55-8511-5171
628	BCBG, Houston Galleria	TX	Wells Fargo	4945210664
629	BCBG, Century City	CA	Wells Fargo	4945210672
630	BCBG, Perimeter Mall	GA	Bank of America - 1	1459434823
631	BCBG, Palisades Center	NY	Chase	831145339

632	BCBG, Georgetown	DC	Bank of America - 1	1459434729
633	BCBG, Canal Place	LA	Chase	831145347
634	BCBG, Beverly Hills	CA	Wells Fargo	4945210680
635	BCBG, Pacific Place	WA	Wells Fargo	4945210698
636	BCBG, Robertson	CA	Wells Fargo	4945210706
637	BCBG, Plaza Las Americas	PR	Banco Popular	019-271433
638	BCBG, Venetian	NV	Wells Fargo	4945210714
639	BCBG, Union Square	CA	Wells Fargo	4945210722
642	BCBG, Mission Viejo	CA	Bank of America - 2	1453417198
644	BCBG, Tyson's Galleria	VA	Bank of America - 1	1459434842
645	BCBG, Desert Passage@Aladdin	NV	Wells Fargo	4945210748
646	BCBG, City Place	FL	Bank of America - 1	1459434847
647	BCBG, Oak Street	IL	Chase	183232695
649	BCBG, Boca Raton	FL	Bank of America - 1	1459434866
652	BCBG, Soho	NY	Bank of America - 1	1459434880
654	BCBG, Scottsdale Fashion Square	AZ	Wells Fargo	4945210763
656	BCBG, Country Club Plaza	MO	Bank of America - 1	1459434885
662	BCBG, Paseo Colorado	CA	Bank of America - 1	1459362275
664	BCBG, Stanford	CA	Wells Fargo	4945210789
665	BCBG, Summit	AL	Wells Fargo	4947004966
667	BCBG, Mall at Millenia	FL	Bank of America - 1	1459434903
668	BCBG, Santana Row	CA	Wells Fargo	4945210797
669	BCBG, Waterside	CA	Bank of America - 1	1459939946
671	BCBG, Plaza Frontenac	MO	Bank of America - 1	1459434908
672	BCBG, Sherman Oaks	CA	Bank of America - 1	1459542950
673	BCBG, Lincoln Park	IL	Chase	831145263
675	BCBG, Kierland Commons	AZ	Wells Fargo	4945210805
676	BCBG, South Beach	FL	Bank of America - 1	1459434922
677	BCBG, Galleria at Ft. Lauderdale	FL	Bank of America - 1	1459434927
678	BCBG, Hollywood & Highland	CA	Wells Fargo	4945210813
681	BCBG, Shops at La Cantera	TX	Bank of America - 1	1459434946
682	BCBG, Biltmore Fashion Park	AZ	Bank of America - 1	1459939941
683	BCBG, Gallaria in Edina	MN	Wells Fargo	4945210821
684	BCBG, Pier at Caesars	NJ	Bank of America - 1	1459435059

685	BCBG, Southside Works	PA	Citizens Bank	6222861834
686	BCBG, Bridgeport	OR	Wells Fargo	4945210839
687	BCBG, Walt Whitman	NY	Bank of America - 1	1459936995
688	BCBG, Bridgewater Commons	NJ	Bank of America - 1	1459834005
690	BCBG, Westport	CT	Bank of America - 1	1459434960
691	BCBG, Walnut Street	PA	Bank of America - 1	1459435073
692	BCBG, Waterside (NAPLES)	FL	Bank of America - 1	1459434965
693	BCBG, Woodlands	TX	Bank of America - 1	1459336474
694	BCBG, Mall at Green Hills	TN	Bank of America - 1	1459435078
695	BCBG, Ross Park	PA	Citizens Bank	6222861834
696	BCBG, Flatiron	NY	Bank of America - 1	1459434984
697	BCBG, Tumon Sands	Guam	Bank of Hawaii	0006211895
699	BCBG, Chestnut Hill	MA	Bank of America - 1	1459435092
700	BCBG, Yacht Haven	V.I.	Banco Popular	019-271433
702	BCBG, Keystone	IN	Chase	831145297
703	BCBG, Union Street	CA	Wells Fargo	4945210847
704	BCBG, Towson Town Center	MD	Bank of America - 1	1459065879
705	BCBG, Topanga Plaza	CA	Bank of America - 1	1459363326
706	BCBG, Shops at Wailea	HI	First Hawaiian Bank	62014970
707	BCBG, Aventura	FL	Bank of America - 1	1459841954
708	BCBG, Northstar	TX	Bank of America - 1	1459241570
709	BCBG, South Park	NC	Bank of America - 1	1459238129
710	BCBG, Perkins Rowe	LA	Chase	831145362
712	BCBG, The Domain	TX	Wells Fargo	4945210862
713	BCBG, Greenwich	CT	Bank of America - 1	1459434989
714	BCBG, Third Ave.	NY	Chase	831145370
715	BCBG, Plaza El Segundo	CA	Wells Fargo	4945210870
716	BCBG, ABQ Uptown	NM	Wells Fargo	4945210888
718	BCBG, Broadway	NY	Bank of America - 1	1459435097
719	BCBG, East Hampton	NY	Bank of America - 1	1459238124
720	BCBG, La Encantada	AZ	Bank of America - 1	1459336479
721	BCBG, Staten Island	NY	Chase	209160517
724	BCBG, St. John Town Center	FL	Wells Fargo	4122344310
725	BCBG, Town Square	NV	Wells Fargo	4945210896

726	BCBG, Copley Place	MA	Bank of America - 1	1459539382
727	BCBG, Pembroke Gardens	FL	Bank of America - 1	1459539387
729	BCBG, Oakbrook Center	IL	Bank of America - 1	1459833997
730	BCBG, Kenwood	OH	Chase	831145388
731	BCBG, Wisconsin Place	MD	Bank of America - 1	1459266844
732	BCBG, Cherry Hill	NJ	Bank of America - 1	1459059774
735	BCBG, 5th Avenue at 40th	NY	Bank of America - 1	1459642228
736	BCBG, La Cumbre	CA	Bank of America - 1	1459071696
737	BCBG, Americana at Brand	CA	Bank of America - 1	1459939927
739	BCBG, Houston Pavillions	TX	Bank of America - 1	1459065874
742	BCBG, Damen Avenue	IL	Bank of America - 1	1459642261
743	BCBG, Menlo Park	NJ	Bank of America - 1	1459266868
745	BCBG, Barton Creek	TX	Bank of America - 1	1459071719
747	BCBG, Armitage	IL	Chase	831145255
748	BCBG, Forum Shops	NV	Bank of America - 1	1459068462
749	BCBG, La Plaza Mall	TX	Bank of America - 1	1459261677
751	BCBG, Burlington Mall	MA	Bank of America - 1	1459360110
753	BCBG, The Patios at Valencia	CA	Chase	831145594
754	BCBG, Galleria at Roseville	CA	Wells Fargo	4945364750
755	BCBG, Old Orchard	IL	Bank of America - 1	1459461232
756	BCBG, Montgomery	MD	Wells Fargo	4947004974
757	BCBG, Santa Monica Place	CA	Bank of America - 1	1459470142
758	BCBG, Stoney Point	VA	Bank of America - 1	1459461237
759	BCBG, Cherry Creek	CO	Chase	831146048
760	BCBG, Fair Oaks	VA	Wells Fargo	4947004982
761	BCBG, International Plaza	FL	Bank of America - 1	1459461218
762	BCBG, Twelve Oaks	MI	Bank of America - 1	1459564754
763	BCBG, Short Hills	NJ	Bank of America - 1	1459470147
764	BCBG, Beverly Center	CA	Bank of America - 1	1453006903
765	BCBG Crocker Park	OH	PNC Bank	55-8511-5171
766	BCBG, City Creek	UT	Wells Fargo	4945622645
767	BCBG, Westfarms	CT	Bank of America - 1	1459241575
768	Glendale, BCBG Retail	CA	Bank of America - 1	1459071738
769	BCBG, University Town Center	FL	Bank of America - 1	1459071714
770	BCBG, Avalon	GA	Wells Fargo	4029856127

771	BCBG, Southshore	MA	Bank of America - 1	1459360115
772	BCBG, Delray Beach	FL	Bank of America - 1	1459241556
773	BCBG, Summerlin	NV	Bank of America - 1	1459642242
909	Lola, Emerville	CA	Wells Fargo	4948822887
910	Lola, South Lake	TX	Chase	427677021
991	BCBG - Ecommerce	Ecomm	Bank of America - 2	1453319800
992	BCBGen - Ecommerce	Ecomm	Bank of America - 2	1453319805
993	HL - Ecommerce	Ecomm	Bank of America - 2	1453319824

**BCBG Max Azria Canada Inc.**

<b>Company</b>	<b>Depository Bank</b>	<b>Type of Account</b>	<b>Account Number</b>
BCBG Max Azria Canada Inc.	Bank of Montreal	Deposit CAD	001-38951-1056513
BCBG Max Azria Canada Inc.	Bank of Montreal	Deposit USD	001-38951-4622938
BCBG Max Azria Canada Inc.	Bank of Montreal	Cheque CAD	001-38951-1055406
BCBG Max Azria Canada Inc.	Bank of Montreal	Cheque USD	001-38951-4610101
BCBG Max Azria Canada Inc.	Royal Bank of Canada	Deposit CAD	00001-102-983-4
BCBG Max Azria Canada Inc.	Bank of Nova Scotia	Deposit CAD	63081-01753-15
BCBG Max Azria Canada Inc.	Canadian Imperial Bank of Commerce	Deposit CAD	00001 19-23013
BCBG Max Azria Canada Inc.	Bank of America	Deposit CAD	7114-4767-2209
BCBG Max Azria Canada Inc.	Coast Capital Savings	Deposit CAD	100615694138

**BCBG MaxAzria Intermediate Holdings, LLC**

None.

**MLA Multibrand Holdings, LLC**

None.

**Max Rave, LLC**

None.



**SCHEDULE 8.5.1**

**BUSINESS LOCATIONS**

**BCBG Max Azria**

Chief Executive Office: 2761 Fruitland Avenue, Vernon, California 90058\

Retail Stores: See Schedule 4 to the Perfection Certificate.

Warehouses:

2665 Leonis Boulevard, Vernon, CA 90058  
2525 Fruitland Avenue, Vernon, CA 90058  
4701 South Santa Fe Avenue, Vernon, CA 90058

Showrooms:

Atlanta – 250 Spring Street, 11S119, Atlanta, GA 30303  
Dallas – 1807 Ross Ave., Dallas, TX 75201  
Los Angeles – 110 E. 9th Street, Suite A567, A571 and A581, Los Angeles, CA 900  
New York –1450 Broadway, 16th, 17th and 18th Floors, New York, NY 10018

Third Party Locations:

West Coast Distributors  
2760 Fruitland Avenue  
Vernon, CA 90058

GSI Commerce  
935 First Avenue  
King of Prussia, PA 19406

UPS World Headquarters  
55 Glenlake Parkway NE  
Atlanta, GA 30328

DHE  
2555 East Olympic Blvd  
Los Angeles, CA 90023

Alcon Transport  
1312 East 16th Street  
Los Angeles, CA 90021

New York Overnight  
1641 1/2 Westwood Blvd  
Los Angeles, CA 90024

Tech Trans  
2850 Market Loop  
Southlake, TX 76092

PIM Global Logistics, Inc.  
426 West Florence Ave.  
Inglewood, CA 90301

FedEx Corporation  
942 South Shady Grove Road  
Memphis, TN 38120

CTE  
2610 Wisconsin Ave.  
South Gate, CA 90280

JL Baker & Son  
131 JL Baker Street  
Harmon Industrial Park  
Guam, 96 913

Miracle Logistics  
2949 West 160th Street  
Rosemount, MN 55068

Schneider National  
911 Packerland Drive  
Green Bay, WI 54303

**BCBG Max Azria Canada Inc.**

Chief Executive Office: 370 De Louvain West, 2nd floor, Montreal, Quebec,  
Canada, H2N 1B6

Retail Stores: See Schedule 4 to the Perfection Certificate.

**BCBG MaxAzria Intermediate Holdings, LLC**

Chief Executive Office: 2761 Fruitland Avenue, Vernon, California 90058

**MLA Multibrand Holdings, LLC**

Chief Executive Office: 2761 Fruitland Avenue, Vernon, California 90058

**BCBG Max Rave, LLC**

Chief Executive Office: 2761 Fruitland Avenue, Vernon, California 90058]]

SCHEDULE 9.1.4

**NAMES; CAPITAL STRUCTURE; WARRANTS, ETC.**

<b>Entity</b>	<b>Jurisdiction</b>	<b>Authorized Stock or Membership Interests</b>	<b>Capital Outstanding</b>	<b>Ownership</b>	<b>Options to Purchase, Warrants and Similar Agreements</b>
BCBG Max Azria Intermediate Holdings, LLC (Holdings)	Delaware	100 common units	100 common units	BCBG Max Azria Global Holdings, LLC – 100%	None.
BCBG Max Azria Group, LLC (Borrower)	Delaware	200 common units	200 common units	BCBG Max Azria Intermediate Holdings, LLC – 100%	None.
MLA Multibrand Holdings, LLC (Guarantor)	Delaware	100 common units	100 common units	BCBG Max Azria Group, LLC – 100%	None.
BCBG Max Azria UK, Ltd. (a Subsidiary of Borrower)	England and Wales	1,000 ordinary shares	10 shares	BCBG Max Azria Group, LLC – 100%	None.
Max Rave, LLC	Delaware	N/A	N/A	BCBG Max Azria Group, LLC – 100%	None.
BCBG MaxAzria International Holdings, Inc.	California	10,000 shares	100 shares of common stock	BCBG Max Azria Intermediate Holdings, LLC – 100%	None.
BCBG Max Azria Canada Inc. (an Obligor)	Canada	Unlimited number of common shares, Class A shares, Class B shares, Class C shares, Class D shares, Class E shares, Class F shares	100 common shares	BCBG Max Azria B.V. – 100%	None.

## **SCHEDULE 9.1.5**

### **FORMER NAMES AND COMPANIES**

#### **BCBG Max Azria Group, LLC**

On January 3, 2014, BCBG Max Azria Group, Inc., a California corporation, changed its name and converted to BCBG Max Azria Group California, LLC, a California limited liability company

Subsequent to the conversion and name change above on January 3, 2014, BCBG Max Azria Group California, LLC, a California limited liability company, changed its name and converted to BCBG Max Azria Group, LLC, a Delaware limited liability company

BCBG (trade name)  
BCBG Max Azria (trade name)  
BCBG Max Azria Group (trade name)  
BCBGeneration (trade name)  
BCBGirls (trade name)  
Parallel (trade name)

#### **BCBG Max Azria Canada Inc.**

None.

#### **BCBG Max Azria Intermediate Holdings, LLC**

None.

#### **MLA Multibrand Holdings, LLC**

On January 2, 2014, MLA Multibrand Holdings, Inc. a Delaware corporation, changed its name and converted to MLA Multibrand Holdings, LLC, a Delaware limited liability company

#### **Max Rave, LLC**

None.

## **Consolidations**

On or about January 2, 2014, the Obligors changed their corporate structuring in the following ways:

1. MLA Multibrand Holdings, Inc. converted to MLA Multibrand Holdings, LLC, a Delaware limited liability company.
2. Azria Enterprises, Inc. was formed as a California corporation.
3. Ownership interests in BCBG Max Azria Group, Inc. were transferred to Azria Enterprises, Inc.
4. BCBG Max Azria Group, Inc. converted to BCBG Max Azria Group California, LLC, a California limited liability company, and subsequently converted to BCBG Max Azria Group, LLC, a Delaware limited liability company.
5. AZ6 Holdings, Inc. was formed as a California corporation.
6. Ownership interests in BCBG MaxAzria International Holding, Inc. was transferred to AZ6 Holdings, Inc.
7. BCBG MaxAzria Holdings, Inc. converted to BCBG MaxAzria Holdings, LLC, a California limited liability company, and subsequently converted to AZ6, LLC, a Delaware limited liability company.
8. Azria Enterprises, Inc. and AZ6, LLC formed a new Delaware limited liability company, BCBG Max Azria Global Holdings, LLC.
9. BCBG Max Azria Global Holdings, LLC formed a new Delaware limited liability company, BCBG Max Azria Intermediate Holdings, LLC.
10. Azria Enterprises, Inc. and AZ6, LLC contributed the equity of BCBG Max Azria Group, LLC and BCBG MaxAzria International Holding, Inc., respectively, to BCBG Max Azria Global Holdings, LLC, which subsequently transferred its ownership interests in BCBG Max Azria Group, LLC and BCBG MaxAzria International Holding, Inc. to BCBG Max Azria Intermediate Holdings, LLC.

## **SCHEDULE 9.1.6**

### **REAL ESTATE**

#### **A. Real Estate Assets**

All leases, subleases or assignments of leases (together with all amendments, modifications, supplements, renewals or extensions of any thereof) for the locations set forth in Schedule 8.5.1 (excluding Third Party Locations), which is incorporated by reference herein, as well as for a leased parking lot located at 2651 E. 45th Street, Vernon, California.

#### **B. Material Real Estate Assets**

None.

**SCHEDULE 9.1.8**  
**FINANCIAL STATEMENTS**

[See Attached]

## SCHEDULE 9.1.12

### PATENTS, TRADEMARKS, COPYRIGHTS AND LICENSES

#### Patents (Recordation of assignment to MLA Multibrand Holdings, LLC pending)

Owner	Registration/ Application Number	Country	Description
MLA Multibrand Holdings, LLC	R - D504,228 (04/26/05)	U.S.	Purse design
MLA Multibrand Holdings, LLC	R - 108412 (09/19/06)	Canada	Industrial design (purse)
BCBG Max Azria Group, LLC (pending assignment to MLA)	R - 1,252,608 (08/26/05)	Japan	Purse design
BCBG Max Azria Group, LLC (pending assignment to MLA)	R - 389783 (08/12/05)	South Korea	Purse design
MLA Multibrand Holdings, LLC	R - ZL200430009655.2 (06/28/06)	China	Purse design
MLA Multibrand Holdings, LLC	R - 000231493-0001 (09/20/04)	European Union	Purse Design

#### Domain Name Portfolio

##### BCBG Max Azria Group, LLC

bcbg.com  
bcbgirls.com  
bcbggirls.com  
maxazria.com  
herveleger.com  
bcbgmaxazriagroup.com  
bcbgattitude.com  
maxazriaatelier.com  
hervelegercouture.com  
bcbgwithin.com  
bcbgeu.com  
maxazriacollection.com  
bcbgeneration.com  
bcbgen.com



bcbgenerations.com  
bcbgkids.com  
bcbgfinalcut.com  
bcbgmaxazriafinalcut.com  
bcbgperfume.com  
bcbgparfum.com  
bcbgqr.com  
bcbgkid.com  
bcbgchildren.com  
bcbgcosmetics.com  
bcbgfurniture.com  
bcbgbedding.com  
bcbgfragrance.net  
bcbghome.com  
bcbgmaxazriahome.com  
bcbgmaxazriafragrance.com  
bcbgresort.com  
bcbgmaxazriaresort.com  
bcbgswim.com  
bcbgperformance.com  
bcbgfabric.com  
bcbgshapewear.com  
bcbgperformancefabric.com  
bcbgmaxazriarunway.com  
bcbgmaxazria.com  
herveleger.mobi  
bcbgcollection.com  
bcbgbridesmaid.com  
themostwantedevent.com  
mostwantedevent.com  
themostwantedbag.com  
mostwantedbag.com  
bcbgmostwanted.com  
mostwantedbcbg.com  
maxazriarunway.com  
hervelegerrunway.com  
bonchicblog.com  
bcbgmaxazriaperfume.com  
bcbgmaxazriaparfum.com  
thechicset.com  
chicset.com  
bcbgoptical.com  
bcbg.us  
bcbgmaxazriaoptical.com  
bcbgmaxazriaeyewear.com  
bcbgrunway.com

bcbgmaxazriamostwanted.com  
maxandcleoshop.com  
bcbgenerationblog.com  
bcbgenerationblogs.com  
bcbghats.com  
bcbgmaxazriahats.com  
thegenerationnation.com  
thebonchicblog.com  
hervelegerbarbie.com  
bcbgeneration.ca  
bcbgfactory.com  
bcbgcareers.com  
dressesatbcbg.com  
dressesmadebybcbg.com  
bcbgwedding.com  
bcbgbridesmaidaddress.com  
bcbgbridesmaidaddresses.com  
shopherveleger.com  
bcbgjobs.com  
bcbgsweaters.com  
bcbgknits.com  
bcbgpants.com  
bcbgheels.com  
bcbgjewelry.com  
bcbgclutches.com  
bcbgpumps.com  
bcbgflats.com  
bcbgbooties.com  
bcbgbelts.com  
bcbggifts.com  
bcbgscarves.com  
bcbgdress.com  
lola.com

BCBG Max Azria (International Domains)

bcbgmaxazria.eu  
bcbgmaxazria.tv  
bcbg.eu  
bcbg.mx  
bcbg.com.au  
bcbg.asia  
bcbg.ma

BCBG Max Azria Canada Inc. (under MLA Multibrand Holdings, LLC)

www.bcbgcanada.ca  
www.bcbgcanada.com  
www.bcbgparis.ca  
www.bcbgattitude.ca  
www.bcbgeneration.ca  
www.bcbgirls.ca  
www.bcbgmaxazria.ca  
www.herveleger.ca  
www.maxandcleo.ca  
www.maxazria.ca  
www.maxrave.ca  
www.bcbg.ca







**Copyrights**

<b>Owner</b>	<b>Country</b>	<b>Title</b>	<b>Registration/Application Number</b>
MLA Multibrand Holdings, LLC	U.S.	Bamboo Design	R - VA-1-123-697 (03/28/02)

**Trademarks**

**MLA Multibrand Holdings, LLC**  
**U.S. Trademark Portfolio (Federal and State)**

<b>Mark</b>	<b>Appl./Reg. No.</b>	<b>Filing/Reg. Date</b>
BCBG	R 1939918	R 12/5/1995
BC BG	R 2162708	R 6/2/1998
BC BG	R 2166425	R 6/16/1998
BC BG	R 2229364	R 3/2/1999
BC BG	R 2408974	R 11/28/2000
BC BG MAX AZRIA	R 2160919	R 5/26/1998
BC BG MAX AZRIA	R 2162709	R 6/2/1998
BC BG MAX AZRIA	R 2229365	R 3/2/1999
BC BG MAX AZRIA	R 2229366	R 3/2/1999
BCBG	R 2872074	R 8/10/2004
BCBG	R 2581591	R 6/18/2002
BCBG MAX AZRIA	R 2581590	R 6/18/2002

Mark	Appl./Reg. No.	Filing/Reg. Date
BCBG MAX AZRIA	R 2362512	R 6/27/2000
BCBG MAX AZRIA Logo 	R 3865989	R 10/19/2010
BCBG MAX AZRIA Logo 	R 3891502	R 12/4/2010
BCBGENERATION	R 3829652	R 8/3/2010
BCBGENERATION	R 3838323	R 8/24/2010
BCBGENERATION	R 3864833	R 10/19/2010
BCBGENERATION	R 3828750	R 8/3/2010
BCBGENERATION	R 3828751	R 8/3/2010
BCBGENERATION	R 3833071	R 8/10/2010
BCBGENERATION	A 85371593	F 7/14/2011
BCBG PARIS	R 3701208	R 10/27/2009
BCBGMAXAZRIA BON CHIC	R 4338006	R 5/21/2013
BCBGMAXAZRIA RUNWAY	R 3409776	R 4/8/2008
BCBGIRLS	R 2754256	R 8/19/2003
BON CHIC	R 4285122	R 2/5/2013
Butterfly Logo 	R 4118869	R 3/27/2012
Butterfly Logo 	R 3598246	R 3/31/2009
Butterfly Logo 	R 3880467	R 11/23/2010
Butterfly Logo 	R 3598249	R 3/31/2009


Mark	Appl./Reg. No.	Filing/Reg. Date
Butterfly Logo 	R 3598250	R 3/31/2009
Butterfly Logo 	R 3504130	R 9/23/2008
HERVE LEGER	R 2090637	R 8/26/1997
HERVE LEGER PARIS & Design 	R 2062875	R 5/20/1997
LOLA	R 3399602	R 3/18/2008
LOLA	R 3410475	R 4/8/2008
LOLA & Design 	R 1301774	R 10/23/1984
MAX AND CLEO	R 3153856	R 10/10/2006
MAXAZRIA	R 3577982	R 2/17/2009
MAX AZRIA	R 3274680	R 8/7/2007
MAX AZRIA	R 3734001	R 1/5/2010
MAXIME	R 2285116	R 10/12/1999
PARALLEL	R 3477894	R 7/29/2008
PARALLEL	R 1747190	R 1/19/1993
PARALLEL	R 3875030	R 11/9/2010
TO THE MAX	R 1401347	R 7/15/1986
TO THE MAX Logo 	R 3772189	R 4/6/2010
TO THE MAX (California State Registration)	R 93049	R 9/25/1990

Mark	Appl./Reg. No.	Filing/Reg. Date
THE CHIC SET	R 4104915	R 2/28/2012
THE DAILY CHIC	R 4104913	R 2/28/2012

**BCBG Max Azria Group, LLC**  
**U.S. Trademark Portfolio (Federal and State)**

Mark	Appl./Reg. No.	Filing/Reg. Date
STREET BEAT	R 3432861	R 5/20/2008
MANOUKIAN	A 86144475	F 12/16/2013
MANOUKIAN		

**Max Rave, LLC**  
**U.S. Trademark Portfolio (Federal and State)**

Mark	Appl./Reg. No.	Filing/Reg. Date
G + G (Stylized) 	R 1285656	R 7/10/1984
MAX RAVE	R 3506656	R 9/23/2008
RAVE (Oregon State Registration)	R 39580	R 11/17/2006
RAVE (Wisconsin State Registration)	R 5200288	R 8/15/2001
RAVE (Wisconsin State Registration)	R 5200287	R 8/15/2001
RAVE (Missouri State Registration)	R 15494	R 8/6/2001
RAVE (Missouri State Registration)	R 15495	R 8/6/2001
RAVE (Stylized Letters) (Alabama State Registration)	R 108293	R 7/5/2001
RAVE (Stylized Letters) (Alabama State Registration)	R 108294	R 7/5/2001
RAVE GIRL (Oklahoma State Registration)	R 12006770	R &/3/2001
RAVE GIRL (Maryland State Registration)	R 2000-00976	R 7/12/2000
RAVE GIRL (Maryland State Registration)	R 2000-00977	R 7/12/2000

RAVE GIRL (Maryland State Registration)	R 2000-00978	R 7/12/2000
RAVE (New Mexico State Registration)	R TK00053003	R 5/30/2000
RAVE (New Mexico State Registration)	R TK00053004	R 5/30/2000
RAVE (New Mexico State Registration)	R TK00053005	R 5/30/2000
RAVE (Stylized Letters) (New Mexico State Registration)	R TK98122101	R 12/21/1998
RAVE (Stylized Letters) (New Mexico State Registration)	R TK98122102	R 12/21/1998
RAVE (Stylized Letters) (Maryland State Registration)	R 1995-S3406	R 4/25/1995
RAVE UP (Florida State Registration)	R T15897	R 5/19/1992
RAVE (Florida State Registration)	R T158956	R 5/19/1992
RAVE and Design (Alabama State Registration)	R 102492	R 4/22/1985
RAVE (Stylized Letters) (Louisiana State Registration)	R 430670	R 3/27/1995
RAVE and Design (Michigan State Registration)	R M77042	R 3/26/1985

**MLA Multibrand Holdings, LLC**

**International Trademark Portfolio**

Recordation of assignment to MLA Multibrands Holdings, LLC pending for many of the marks below


<b>Country</b>	<b>Mark</b>	<b>Appl./Reg. No.</b>	<b>Filing/Reg. Date</b>
African Union Territories (OAPI)	BCBG	A 3201402647	F 7/24/2014
African Union Territories (OAPI)	BCBGENERATION	A 3201401923	F 5/30/2014
African Union Territories (OAPI)	BCBGENERATION	A 3201401928	F 5/30/2014
African Union Territories (OAPI)	BCBGMAXAZRIA	A 3201401916	F 5/30/2014
African Union Territories (OAPI)	BCBGMAXAZRIA	A 3201401922	F 5/30/2014
African Union Territories (OAPI)	HERVE LEGER	A 3201401919	F 5/30/2014
African Union Territories (OAPI)	HERVE LEGER	A 3201401920	F 5/30/2014
African Union Territories (OAPI)	MAX AZRIA	A 3201401917	F 5/30/2014
African Union Territories (OAPI)	MAX AZRIA	A 3201401921	F 5/30/2014
Andorra	HERVE LEGER	R 25402	R 12/4/1997
Argentina	BCBG MAX AZRIA	R 2530840	R 8/12/2002
Argentina	BCBG MAX AZRIA	R 2530839	R 8/12/2002
Argentina	BCBG MAX AZRIA	R 2530838	R 8/12/2002
Argentina	BCBG MAX AZRIA	R 2530837	R 8/12/2002
Argentina	BC BG MAX AZRIA	R 2482790	R 8/21/2001
Argentina	BCBG MAX AZRIA	R 2017615	R 3/29/2005
Australia	BCBG	R 754501	R 3/30/1999





Australia	BC BG MAX AZRIA	R 755291	R 9/18/1997
Australia	BCBG MAXAZRIA	R 754499	R 2/12/1999
Australia	BCBGIRLS	R 864243	R 10/10/2001
Australia	HERVE LEGER	R 702991	R 2/22/1996
Azerbaijan	BCBG MAX AZRIA	R N20110145	R 2/21/2011
Bahrain	BCBGIRLS	R 29888	R 2/12/2003
Bahrain	BCBG MAX AZRIA	R 59962	R 6/9/2011
Bahrain	BCBG MAX AZRIA	R 59963	R 6/9/2011
Bahrain	BCBG MAX AZRIA	R 59964	R 6/9/2011
Bahrain	BCBG MAX AZRIA	R 59965	R 6/9/2011
Bahrain	BCBG MAX AZRIA	R 59966	R 6/9/2011
Bahrain	BCBG MAX AZRIA	R 59967	R 6/9/2011
Bahrain	BCBG	R 59968	R 6/9/2011
Bangladesh	BCBGIRLS	R 69217	R 2/5/2001
Belarus	BCBG MAX AZRIA	R 45763	R 8/6/2013
Bermuda	BCBGIRLS	R 32889	R 2/20/2002
Brazil	BCBG	R 819842206	R 3/29/2005
Brazil	BCBG	R 819842214	R 8/01/2000
Brazil	BC BG MAX AZRIA (Stylized) 	R 821045040	R 9/04/2001
Brazil	BC BG MAX AZRIA (Stylized) 	R 821045059	R 9/04/2001



Brazil	BC BG MAX AZRIA (Stylized) 	R 821045067	R 9/18/2001
Brazil	BC BG MAX AZRIA (Stylized) 	R 821045075	R 6/04/2002
Brazil	BC BG MAX AZRIA (Stylized) 	R 821045083	R 9/8/2010
Brazil	BCBGIRLS	R 823114074	R 6/26/2007
Brazil	BCBG MAX AZRIA	R 829395954	R 11/17/2009
Brazil	BCBG MAX AZRIA	R 829395903	R 11/17/2009
Brazil	BCBG MAX AZRIA	R 829395946	R 11/17/2009
Brazil	BCBG MAX AZRIA	R 829395938	R 11/17/2009
Brazil	BCBG MAX AZRIA	A 829395920	F 10/3/2007
Brazil	BCBG MAX AZRIA	R 829395911	R 11/17/2009
Brazil	HERVE LEGER	R 818210036	R 11/5/1996
Brazil	HERVE LEGER	R 818210044	R 11/12/1996
Brazil	HERVE LEGER	R 818210052	R 1/28/1997
Brazil	HERVE LEGER	R 818210060	R 11/12/1996
Brazil	HERVE LEGER	R 818210079	R 1/28/1997
Canada	BC BG MAX AZRIA	R TMA573447	R 1/10/2003
Canada	BCBG MAX AZRIA	R TMA826964	R 6/22/2012
Canada	BCBG	R TMA504263	R 11/18/1998
Canada	BCBGENERATION	R TMA831187	R 9/5/2012
Canada	BCBGIRLS	R TMA631203	R 1/26/2005

Canada	BCBGIRLS	R TMA603071	R 2/24/2004
Canada	HERVE LEGER	R TMA507845	R 2/10/1999
Canada	MAX AND CLEO	R TMA794254	R 3/30/2011
Canada	MAX AZRIA	R TMA 573614	R 1/14/2003
Canada	MAXIME	R TMA 546395	R 6/08/2001
Canada	PARALLEL	R TMA 559460	R 3/20/2002
Canada	TO THE MAX	R TMA 546370	R 6/8/2001
Canada	WITHIN	R TMA813518	R 12/7/2011
Canada	WITHIN BY BCBG MAX AZRIA	R TMA813519	R 12/7/2011
Chile	BC BG MAX AZRIA	R 554817	R 12/03/1999
Chile	BC BG MAX AZRIA	R 589925	R 2/12/2001
Chile	BC BG MAX AZRIA	R 554816	R 12/03/1999
Chile	BC BG MAX AZRIA	R 554815	R 12/03/1999
Chile	BC BG MAX AZRIA	R 554818	R 12/03/1999
Chile	BCBG MAX AZRIA	R 1023351	R 1/29/2003
China	BC BG MAX AZRIA	R 1389232	R 4/28/2000
China	BC BG MAX AZRIA	R 1420403	R 7/14/2000
China	BC BG MAX AZRIA	R 1395328	R 5/14/2000
China	BC BG MAX AZRIA	R 1407740	R 6/14/2000
China	BCBG	R 4233790	R 9/28/2007
China	BCBG	R 4233791	R 1/28/2007
China	BCBG	R 4233792	R 9/28/2007
China	BCBG	R 4233807	R 3/28/2011
China	BCBG	A 4233808	F 8/23/2004
China	BCBG	R 4233809	R 1/28/2008
China	BCBGENERATION	R 7302373	R 9/28/2010
China	BCBGENERATION	R 7302372	R 10/7/2010

China	HERVE LEGER	R 8340785	R 7/7/2011
China	TO THE MAX	R 4241261	R 10/14/2007
China	TO THE MAX	R 4241256	R 1/28/2007
China	TO THE MAX	R 4241260	R 10/14/2007
China	TO THE MAX	R 4241259	R 4/7/2008
China	TO THE MAX	R 4241258	R 4/7/2008
China	TO THE MAX	R 4241257	R 1/28/2008
China	B.C.B.G. (Stylized) 	R 905286	R 11/28/1996
China	BCBG MAX AZRIA	R 1246718	R 2/13/1999
China	BCBGIRLS	R 1775368	R 5/28/2002
China	BCBGMAXAZRIA	R 11442981	R 2/7/2014
China	BCBGMAXAZRIA	R 11442982	R 2/7/2014
China	BCBGMAXAZRIA	R 11442983	R 2/7/2014
China	BCBGMAXAZRIA	R 11442984	R 2/7/2014
China	BCBGMAXAZRIA	R 11442985	R 2/7/2014
China	BCBGMAXAZRIA	R 11442986	R 2/7/2014
China	MAX AZRIA	R 11442987	R 2/7/2014
China	MAX AZRIA	A 11442988	F 9/4/2012
China	MAX AZRIA	R 11442989	R 2/7/2014
China	MAX AZRIA	R 11442990	R 2/7/2014
China	MAX AZRIA	A 11442991	F 9/4/2012
China	MAX AZRIA	R 11442992	R 2/28/2014
Colombia	BC BG MAX AZRIA	R 248002	R 8/29/2001
Colombia	BC BG MAX AZRIA	R 247585	R 8/29/2001
Colombia	BC BG MAX AZRIA	R 247584	R 8/29/2001


Colombia	BC BG MAX AZRIA	R 247586	R 8/29/2001
Colombia	BC BG MAX AZRIA	R 248001	R 8/29/2001
Colombia	BC BG MAX AZRIA	R 248003	R 8/29/2001
Colombia	BC BG	R 248004	R 8/29/2001
Czech Republic	BCBG	R 260945	R 2/24/2004
Czech Republic	BCBG MAX AZRIA	R 260944	R 2/24/2004
Czech Republic	BCBGIRLS	R 239798	R 12/19/2001
Denmark	HERVE LEGER	R VR0063891996	R 11/15/1996
Dominica	BCBGIRLS	R 7/2009	R 2/7/2009
Dominican Republic, The	BCBG MAX AZRIA	R 164750	R 12/31/2007
Dominican Republic, The	BCBG MAX AZRIA	R 164883	R 12/31/2007
Dominican Republic, The	BCBG MAX AZRIA	R 164786	R 12/31/2007
Dominican Republic, The	BCBG MAX AZRIA	R 164787	R 12/31/2007
Dominican Republic, The	BCBG MAX AZRIA	R 164909	R 12/31/2007
Dominican Republic, The	BCBG MAX AZRIA	R 164793	R 12/31/2007
Dominican Republic, The	BCBG	R 164908	R 12/31/2007
Ecuador	BCBG	R 7736-13	R 11/27/2013
Ecuador	BCBG MAX AZRIA	R 7737-13	R 11/27/2013
Ecuador	BCBG MAX AZRIA	R 7741-13	R 11/27/2013
Ecuador	BCBG MAX AZRIA	R 7740-13	R 11/27/2013
Ecuador	BCBG MAX AZRIA	R 7739-13	R 11/27/2013
Ecuador	BCBG MAX AZRIA	R 7738-13	R 11/27/2013
Ecuador	BCBG MAX AZRIA	R 1201-14	R 4/29/2014
Egypt	BC BG MAX AZRIA	R 119536	R 8/28/2007
Egypt	BC BG MAX AZRIA	R 119533	R 7/1/2002
Egypt	BC BG MAX AZRIA	R 119535	R 8/28/2007
Egypt	BC BG MAX AZRIA	R 119534	R 8/28/2007

Egypt	BCBG MAX AZRIA	A 207980	F 10/11/2007
Egypt	BCBG	A 207981	F 10/11/2007
European Community (CTM)	BCBG	R 4831129	R 2/13/2012
European Community (CTM)	BCBG	R 6344519	R 2/22/2012
European Community (CTM)	BCBG MAX AZRIA	R 006850895	R 1/21/2009
European Community (CTM)	BCBG MAX AZRIA	R 6344436	R 12/31/2010
European Community (CTM)	BC BG MAX AZRIA (Stylized)  M A X A Z R I A	R 594473	R 4/20/1999
European Community (CTM)	BCBGIRLS	R 3134624	R 8/23/2004
European Community (CTM)	MAX AND CLEO	R 4681276	R 10/26/2006
European Community (CTM)	MAX AZRIA	R 4881215	R 2/6/2006
France	B.C.B.G.	R 1285534	R 10/3/1984
France	B.C.B.G. (Stylized) 	R 94 539698	R 10/11/1994
France	BCBG MAX AZRIA	R 3065004	F 11/16/2000
France	BCBG MAX AZRIA	R 3065000	F 11/16/2000
France	BCBG MAX AZRIA	R 3064998	F 11/16/2000
France	BCBG MAX AZRIA	R 3065001	F 11/16/2000
France	BCBG MAX AZRIA	R 3064997	F 11/16/2000
France	BCBG MAX AZRIA	R 3064995	F 11/16/2000
France	BCBGIRLS	R 01 3076788	R 6/22/2001
France	HERVE LEGER	R 94523495	R 6/7/1994
France	HERVE LEGER	R 95593266	R 10/19/1995
France	HERVE LEGER	R 1328296	R 10/25/1985

France	H.L. HERVE LEGER & Design 	R 95568984	R 4/25/1995
France	HERVE PARIS & Design 	R 99790292	R 5/5/1999
Gaza District	BCBGIRLS	R 7718	R 4/9/2002
Germany	BCBGIRLS	R 30103460	R 7/13/2001
Ghana	BCBGIRLS	R 31596	F 1/30/2001
Greece	BCBG	R 143899	R 10/17/2001
Greece	BCBG MAX AZRIA	R 143900	R 10/17/2001
Greece	BCBG MAX AZRIA	R 143901	R 10/17/2001
Greece	BCBG MAX AZRIA	R 143902	R 10/17/2001
Greece	BCBG MAX AZRIA	R 143903	R 10/17/2001
Greece	BCBG MAX AZRIA	R 143904	R 10/17/2001
Greece	BCBGIRLS	R 148641	R 3/27/2003
Greece	BCBGIRLS	R 146020	R 2/06/2001
Greece	BCBG MAX AZRIA	R 152736	R 9/24/2007
Greece	HERVE LEGER	R 121425	R 10/26/1994
Guyana	BCBGIRLS	R 18415A	F 10/20/2006
Hong Kong	BCBG	R 1999B08040	R 2/24/1998
Hong Kong	BCBG MAX AZRIA	R 1999B14971	R 10/29/1998
Hong Kong	BCBGMAXAZRIA	R 302190834	R 1/15/2013

Hong Kong	BCBG MAX AZRIA	R 2000B04445AA	R 2/24/1998
Hong Kong	BCBGIRLS	R 2003B13901	R 1/18/2001
Hong Kong	BCBGIRLS	R 2003B16724AA	R 12/31/2003
Hong Kong	HERVE LEGER	R 301621241	R 5/30/2011
Hong Kong	HERVE LEGER	R 199807390AA	R 6/16/1997
Hong Kong	MAX AZRIA	R 302190843	R 1/15/2013
Hong Kong	TO THE MAX	R 2004B00805AA	R 8/27/1999
Hungary	BCBG	R 170276	R 5/13/2002
Hungary	BCBG MAX AZRIA	R 168557	R 1/23/2002
Hungary	BCBG MAX AZRIA	R 168551	R 1/23/2002
Hungary	BCBG MAX AZRIA	R 168550	R 1/23/2002
Hungary	BCBG MAX AZRIA	R 168549	R 1/23/2002
Hungary	BCBG MAX AZRIA	R 168548	R 1/23/2002
Hungary	BCBG MAX AZRIA	R 170279	R 5/13/2002
Hungary	BCBGIRLS	R 168352	R 1/16/2002
India	BC BG MAX AZRIA	R 829067	R 11/24/1998
India	BC BG MAX AZRIA	R 829068	R 11/24/1998
India	BC BG MAX AZRIA (Stylized) 	R 829071	R 11/24/1998
India	BC BG MAX AZRIA (Stylized) 	R 829069	R 11/24/1998



India	BC BG MAX AZRIA (Stylized) 	R 829070	R 11/24/1998
India	BCBG MAX AZRIA	R 904989	R 2/21/2000
India	BCBG MAX AZRIA	R 904991	R 2/21/2000
India	BCBG MAX AZRIA	R 904990	R 2/21/2000
India	BCBG MAX AZRIA	R 2090388	R 10/1/2012
India	BCBGENERATION	A 2090384	F 1/27/2011
India	BCBGENERATION	A 2090389	F 1/27/2011
India	BCBGENERATION	A 2090385	F 1/27/2011
India	BCBGENERATION	R 2090386	R 10/1/2012
India	BCBGENERATION	R 2090387	R 9/19/2014
India	BCBGENERATION	A 2090383	F 1/27/2011
India	BCBGIRLS	R 985861	R 1/24/2001
Indonesia	BCBG	R IDM000161214	R 12/27/1999
Indonesia	BCBG MAX AZRIA	R IDM000161217	R 12/27/1999
Indonesia	BCBG MAX AZRIA	R IDM000161220	R 12/27/1999
Indonesia	BCBG MAX AZRIA	R IDM000161225	R 12/27/1999
Indonesia	BCBG MAX AZRIA	R IDM000161227	R 12/27/1999
Indonesia	BCBG MAX AZRIA	R IDM000161229	R 12/27/1999
Indonesia	BCBG MAX AZRIA	R IDM000161231	R 12/27/1999
Indonesia	BCBGIRLS	R IDM000293565	R 1/22/2001

Indonesia	BCBGENERATION	A D00.021199	F 5/4/2012
Indonesia	BCBGENERATION	A D00.021201	F 5/4/2012
Indonesia	BCBGENERATION	A D00.021203	F 5/4/2012
Indonesia	BCBGENERATION	A D00.021204	F 5/4/2012
Indonesia	BCBGENERATION	A D00.021223	F 5/4/2012
Indonesia	BCBGENERATION	A J00.021222	F 5/4/2012
Indonesia	HERVE LEGER	R IDM000179262	R 3/25/1996
Indonesia	HERVE LEGER	R IDM000179264	R 3/25/1996
Indonesia	HERVE LEGER	R IDM000179263	R 3/25/1996
Indonesia	HERVE LEGER	R IDM000179266	R 3/25/1996
Indonesia	HERVE LEGER	R IDM000179265	R 3/25/1996
Indonesia	HERVE LEGER	R IDM000325903	R 10/11/2011
International Register <sup>1</sup>	B.C.B.G.	R 670341A	R 3/18/1997
International Register <sup>2</sup>	B.C.B.G.	R 670341B	R 3/18/1997
International Register <sup>3</sup>	HERVE LEGER	R 516880	R 10/12/1987
International Register <sup>4</sup>	HERVE LEGER	R 625539	R 10/3/1994
International Register <sup>5</sup>	HERVE LEGER	R 625539A	R 10/3/1994

<sup>1</sup> Protection claimed in Albania, Bulgaria, Croatia, Cuba, Hungary, Macedonia, Poland, Romania, Serbia, Slovak Republic and Slovenia, based on France registration. Final refusal in Russian Federation.

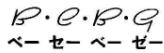
<sup>2</sup> Protection claimed in Vietnam.

<sup>3</sup> Protection claimed in Germany and Italy.



<sup>4</sup> Protection claimed in Austria, Croatia, Czech Republic, Hungary, Liechtenstein, Macedonia, Morocco, Poland, Portugal, Romania, Russian Federation, Slovakia, Slovenia, Ukraine.

<sup>5</sup> Protection claimed in Austria, Benelux, China, Croatia, Czech Republic, Germany, Hungary, Ireland, Italy, Liechtenstein, Macedonia, Monaco, Morocco, Poland, Portugal, Romania, Russian Federation, Serbia, Slovakia, Slovenia, Spain, Switzerland and Ukraine.

(cont'd)

Ireland	BCBG	R 166183	R 8/25/1994
Ireland	BCBGIRLS	R 220306	R 4/04/2002
Ireland	HERVE LEGER	R 231012	R 6/23/2004
Israel	BC BG MAX AZRIA	R 122331	R 9/10/1998
Israel	BC BG MAX AZRIA	R 122332	R 9/10/1998
Israel	BC BG MAX AZRIA	R 122333	R 9/10/1998
Israel	BC BG MAX AZRIA	R 122334	R 9/10/1998
Israel	BC BG MAX AZRIA	R 122335	R 9/10/1998
Israel	BC BG MAX AZRIA	R 122336	R 9/10/1998
Israel	BCBG	R 110931	R 3/09/1997
Israel	BCBG	R 110932	R 3/09/1997
Israel	BCBGIRLS	R 145907	R 4/09/2002
Italy	BCBGIRLS	R 981273	F 11/2/2005
Jamaica	BCBGIRLS	R 99826	R 1/22/2001
Japan	B.C.B.G. (Stylized)  	R 2044506	R 4/26/1988
Japan	B.C.B.G. (Stylized)  	R 2034981	R 3/30/1988
Japan	B.C.B.G. MAX AZRIA	R 4124128	R 3/13/1998

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Japan	B.C.B.G. (Stylized)  B.C.B.G. ベ-セ-ベ-ゼ-	R 2714133	R 5/31/1996
Japan	BC BG MAX AZRIA	R 4342715	R 12/10/1999
Japan	BC BG MAX AZRIA	R 4399293	R 7/14/2000
Japan	BCBG	R 2193257	R 11/28/1989
Japan	BCBG MAX AZRIA	R 5649781	R 2/14/2014
Japan	BCBG MAX AZRIA	R 5594945	R 6/28/2013
Japan	BCBG MAX AZRIA	R 5654491	R 3/7/2014
Japan	BCBGIRLS	R 4572633	R 5/31/2002
Japan	HERVE LEGER	R 4018202	R 6/27/1997
Japan	HERVE LEGER	R 3342321	R 8/29/1997
Japan	HERVE LEGER & Design  	R 4021295	R 7/4/1997
Japan	HERVE LEGER & Design  	R 4026515	R 7/11/1997
Japan	TO THE MAX	R 4516409	R 10/26/2001
Japan	WITHIN	R 5306454	R 3/5/2010
Japan	WITHIN BY BCBG MAX AZRIA	R 5326521	R 5/28/2010

Jordan	BCBG	R 76587	R 5/9/2005
Jordan	BCBG	R 76588	R 5/9/2005
Jordan	BCBG MAX AZRIA	R 76590	R 5/9/2005
Jordan	BCBG MAX AZRIA	R 76585	R 5/9/2005
Jordan	BCBG MAX AZRIA	R 76591	R 5/9/2005
Jordan	BCBG MAX AZRIA	R 76586	R 5/9/2005
Jordan	BCBG MAX AZRIA	R 76592	R 5/9/2005
Jordan	BCBG MAX AZRIA	R 76593	R 5/9/2005
Kazakhstan	BCBG MAX AZRIA	R 037101	R 12/26/2011
Kenya	BCBGIRLS	R 51225	R 2/25/2002
Korea (South)	B.C.B.G. MAX AZRIA	R 337692	R 4/22/1996
Korea (South)	MAXAZRIA	R 387731	R 12/23/1997
Korea (South)	MAXAZRIA	R 407403	R 7/02/1998
Korea (South)	BCBGIRLS	R 534907	R 11/12/2002
Korea (South)	MAX AZRIA	R 769928	R 11/24/2008
Korea (South)	MAX AZRIA	R 755931	R 8/4/2008
Korea (South)	MAX AZRIA	R 755932	R 8/4/2008
Korea (South)	MAX AZRIA	R 769929	R 11/14/2008
Korea (South)	MAX AZRIA	R 777224	R 1/28/2009
Korea (South)	MAX AZRIA	R 175388	R 10/8/2008
Korea (South)	BCBGENERATION	R 761598	R 9/18/2008
Korea (South)	BCBGENERATION	R 761599	R 9/18/2008
Korea (South)	BCBGENERATION	R 761414	R 9/17/2008
Korea (South)	BCBGENERATION	R 766697	R 10/28/2008
Korea (South)	BCBGENERATION	R 410189865	F 9/15/2009
Korea (South)	HERVE LEGER	R 340100	R 5/23/1996
Korea (South)	HERVE LEGER	R 348553	R 10/16/1996

Korea (South)	HERVE LEGER	R 346998	R 9/18/1996
Korea (South)	HERVE LEGER	R 348062	R 10/8/1996
Korea (South)	HERVE LEGER	R 341059	R 6/13/1996
Kuwait	BCBG	R 38429	R 3/05/2002
Kuwait	BCBG MAX AZRIA	R 38412	R 3/05/2002
Kuwait	BCBG MAX AZRIA	R 38413	R 3/05/2002
Kuwait	BCBG MAX AZRIA	R 40389	R 7/24/2002
Kuwait	BCBG MAX AZRIA	R 40388	R 7/24/2002
Kuwait	BCBG MAX AZRIA	R 39312	R 5/18/2002
Kuwait	BCBG MAX AZRIA	R 37488	R 1/12/2002
Kuwait	HERVE LEGER	R 32336	R 5/25/1996
Lebanon	BCBG	R 75672	R 5/04/1998
Lebanon	BCBG MAX AZRIA	R 75673	R 5/04/1998
Lebanon	BCBGIRLS	R 86520	R 2/24/2001
Lebanon	HERVE LEGER	R 126449	R 11/28/1994
Liberia	BCBGIRLS	R 2001/00036	R 5/19/2001
Malawi	BCBGIRLS	R 38/2001	R 2/18/2002
Malaysia	BCBG MAX AZRIA	R 98003218	R 3/16/1998
Malaysia	BCBG MAX AZRIA	R 98003219	R 3/16/1998
Malaysia	BCBG MAX AZRIA	R 98003220	R 3/16/1998
Malaysia	BCBG MAX AZRIA	R 98003221	R 4/21/2007
Malaysia	BCBG MAX AZRIA	R 98003223	R 9/24/2010
Malaysia	BCBG MAX AZRIA	R 98003222	R 3/6/2008
Malaysia	BCBG	R 98003224	R 1/16/2007
Malaysia	HERVE LEGER	R 96002636	R 3/16/1996
Malaysia	HERVE LEGER	R 96002569	R 3/16/1996
Malaysia	HERVE LEGER	R 96002633	R 3/16/1996

Malaysia	HERVE LEGER	R 96002634	R 3/16/1996
Malaysia	HERVE LEGER	R 96002635	R 3/16/1996
Mauritius	BCBGIRLS	R 101	R 10/10/2001
Mauritius	BCBG	R 08240/2009	R 11/4/2009
Mexico	BCBG	R 924722	R 7/21/2005
Mexico	B.C.B.G. MAX AZRIA	R 499560	R 4/05/1995
Mexico	B.C.B.G. MAX AZRIA	R 499564	R 4/05/1995
Mexico	B.C.B.G. MAX AZRIA	R 499565	R 4/05/1995
Mexico	BC BG MAX AZRIA	R 597805	R 10/19/1998
Mexico	BC BG MAX AZRIA	R 597806	R 10/19/1998
Mexico	BC BG MAX AZRIA	R 616022	R 10/19/1998
Mexico	BCBGENERATION	R 1202866	R 2/22/2011
Mexico	BCBGENERATION	R 1202864	R 2/22/2011
Mexico	BCBGENERATION	R 1202865	R 2/22/2011
Mexico	BCBGENERATION	R 1228240	R 7/19/2011
Mexico	BCBGENERATION	R 1202867	R 2/22/2011
Mexico	BCBGIRLS	R 695212	R 4/20/2001
Mexico	HERVE LEGER	R 521472	R 3/28/1996
Mexico	HERVE LEGER	R 521473	R 3/28/1996
Mexico	HERVE LEGER	R 524962	R 3/28/1996
Mexico	HERVE LEGER	R 588710	R 3/28/1996
Mexico	HERVE LEGER	R 521474	R 3/28/1996
Mexico	MAX AZRIA	R 947699	R 8/16/2006
Mexico	MAX AZRIA	R 947445	R 8/9/2006
Mexico	MAX AZRIA	R 947446	R 8/9/2006
Mexico	MAX AZRIA	R 947447	R 8/9/2006
Mexico	MAX AZRIA	R 947448	R 8/9/2006

Moldova, Republic of	BCBG	R 11601	R 12/8/2004
Moldova, Republic of	BCBG MAX AZRIA	R 11602	R 12/8/2004
Mongolia	BC BG MAX AZRIA (Stylized) 	R 2940	R 2/09/2000
Mongolia	BCBG MAX AZRIA	R 2939	R 2/09/2000
Mongolia	BC BG MAX AZRIA (Stylized) 	R 3080	R 6/27/2000
Morocco	BCBGIRLS	R 77440	R 5/18/2001
Morocco	BCBG	R 113163	R 1/15/2008
Morocco	BCBG MAX AZRIA	R 113162	R 1/15/2008
New Zealand	BCBGIRLS	R 630974	R 1/18/2001
Nigeria	BCBG	A F/TM/2014/3819	F 8/8/2014
Nigeria	BCBG	A F/TM/2014/3820	F 8/8/2014
Nigeria	BCBG	A F/TM/2014/3822	F 8/8/2014
Nigeria	BCBG	A F/TM/2014/3823	F 8/8/2014
Nigeria	BCBG	A F/TM/2014/3824	F 8/8/2014
Nigeria	BCBGMAXAZRIA	A F/TM/2012/3864	F 8/12/2014
Nigeria	BCBGMAXAZRIA	A F/TM/2012/3866	F 8/12/2014



Nigeria	BCBGMAXAZRIA	A F/TM/2012/3868	F 8/12/2014
Nigeria	BCBGMAXAZRIA	A F/TM/2012/3869	F 8/12/2014
Nigeria	BCBGMAXAZRIA	A F/TM/2012/3871	F 8/12/2014
Nigeria	BCBGMAXAZRIA	A F/TM/2012/3872	F 8/12/2014
Norway	BCBGIRLS	R 210092	R 8/23/2001
Norway	HERVE LEGER	R 182849	R 6/19/1997
Oman	BCBG MAX AZRIA	R 47014	R 8/18/2008
Oman	BCBG MAX AZRIA	R 47015	R 8/18/2008
Oman	BCBG MAX AZRIA	R 47016	R 8/18/2008
Oman	BCBG MAX AZRIA	R 47017	R 8/18/2008
Oman	BCBG MAX AZRIA	R 47018	R 8/18/2008
Oman	BCBG MAX AZRIA	R 47019	R 8/18/2008
Oman	BCBG	R 47020	R 8/18/2008
Pakistan	BC BG	R 151885	R 12/11/1998
Pakistan	BC BG MAX AZRIA	A 151886	F 12/11/1998
Pakistan	BC BG MAX AZRIA	R 151887	R 12/11/1998
Pakistan	BC BG MAX AZRIA	R 151888	R 12/11/1998
Pakistan	BC BG MAX AZRIA	R 151889	R 12/11/1998
Pakistan	BC BG MAX AZRIA	R 151890	R 12/11/1998
Panama	BC BG	R 98153	R 12/31/1998
Panama	BC BG MAX AZRIA	R 98155	R 12/31/1998
Panama	BC BG MAX AZRIA	R 98156	R 12/31/1998
Panama	BC BG MAX AZRIA	R 98157	R 12/31/1998
Panama	BC BG MAX AZRIA	R 98158	R 12/31/1998
Panama	BC BG MAX AZRIA	R 98160	R 12/31/1998

Panama	BC BG MAX AZRIA	R 98154	R 12/31/1998
Panama	BCBGIRLS	R 116059	R 9/17/2002
Panama	HERVE LEGER	R 80368	R 4/12/1996
Panama	HERVE LEGER	R 80367	R 4/12/1996
Panama	HERVE LEGER	R 80364	R 4/12/1996
Panama	HERVE LEGER	R 80365	R 4/12/1996
Panama	HERVE LEGER	R 80366	R 4/12/1996
Paraguay	BCBG MAX AZRIA	R 347.177	R 6/2/2011
Peru	BCBG	R 00065073	R 7/27/2000
Peru	BC BG MAX AZRIA	R 00061499	R 2/28/2000
Peru	BC BG MAX AZRIA	R 00061500	R 2/28/2000
Peru	BC BG MAX AZRIA	R 00062893	R 4/24/2000
Peru	BC BG MAX AZRIA	R 00061501	R 2/28/2000
Peru	BC BG MAX AZRIA	R 00062145	R 3/21/2000
Peru	BC BG MAX AZRIA	R 00020661	R 3/13/2000
Philippines	BC BG	R 41998009403	R 12/31/2005
Philippines	BC BG MAX AZRIA	R 41998009405	R 8/17/2006
Philippines	BC BG MAX AZRIA	R 41998009402	R 10/31/2005
Philippines	BC BG MAX AZRIA	R 41998009406	R 9/3/2006
Philippines	BC BG MAX AZRIA	R 41998009407	R 9/3/2006
Philippines	BC BG MAX AZRIA	R 41998009408	R 7/16/2006
Poland	BCBGIRLS	R R-155555	R 1/24/2001
Poland	BCBG MAX AZRIA	R 216664	R 10/17/2007
Portugal	B.C.B.G. (Stylized) 	R 303243B	R 8/02/1995
Portugal	BCBGIRLS	R 353085	R 12/04/2001

Puerto Rico	BCBG	R 42445	R 2/13/1998
Puerto Rico	BCBG MAX AZRIA	R 49182	F 4/18/2000
Puerto Rico	BCBG MAX AZRIA	R 49304	F 4/18/2000
Puerto Rico	BCBG MAX AZRIA	R 49306	F 4/18/2000
Puerto Rico	BCBG MAX AZRIA	R 49305	F 4/18/2000
Puerto Rico	BCBG MAX AZRIA	R 49358	F 4/18/2000
Puerto Rico	BCBG MAX AZRIA	R 49183	F 4/18/2000
Qatar	BCBGIRLS	R 24756	R 12/13/2005
Qatar	BCBG MAX AZRIA	R 47670	R 8/9/2009
Qatar	BCBG MAX AZRIA	R 47671	R 8/17/2009
Qatar	BCBG MAX AZRIA	R 47672	R 8/17/2009
Qatar	BCBG MAX AZRIA	R 47673	R 8/17/2009
Qatar	BCBG MAX AZRIA	R 47674	R 8/9/2009
Qatar	BCBG MAX AZRIA	R 47675	R 8/17/2009
Qatar	BCBG	R 47676	R 8/9/2009
Qatar	BCBGENERATION	R 54426	R 2/9/2011
Qatar	BCBGENERATION	R 54427	R 2/9/2011
Qatar	BCBGENERATION	R 54428	R 2/9/2011
Qatar	BCBGENERATION	R 54429	R 2/9/2011
Qatar	BCBGENERATION	R 54430	R 2/9/2011
Qatar	BCBGENERATION	R 54431	R 2/9/2011
Russian Federation	BCBGMAX AZRIA	R 294090	R 8/17/2005
Saudi Arabia	BCBG	R 518/32	R 3/01/1999
Saudi Arabia	BCBG MAX AZRIA	R 520/08	R 3/01/1999
Saudi Arabia	BCBG MAX AZRIA	R 520/09	R 3/01/1999
Saudi Arabia	BCBG MAX AZRIA	R 520/10	R 3/01/1999
Saudi Arabia	BCBG MAX AZRIA	R 520/11	R 3/01/1999

Saudi Arabia	BCBG MAX AZRIA	R 520/12	R 3/01/1999
Saudi Arabia	BCBG MAX AZRIA	R 1196/61	R 9/27/2010
Saudi Arabia	BCBGIRLS	R 601/22	R 12/03/2001
Saudi Arabia	HERVE LEGER	R 341/87	R 5/30/1995
Saudi Arabia	HERVE LEGER	R 341/88	R 5/30/1995
Saudi Arabia	HERVE LEGER	R 341/89	R 5/30/1995
Saudi Arabia	HERVE LEGER	R 341/90	R 5/30/1995
Seychelles	BCBGIRLS	R 6023	R 5/23/2003
Singapore	BCBG	R 98002697	R 3/26/1998
Singapore	BCBG MAX AZRIA	R 00005673	R 4/05/2000
Singapore	BCBG MAX AZRIA	R 98002698	R 3/26/1998
Singapore	BCBG MAX AZRIA	R 98002699	R 3/26/1998
Singapore	BCBG MAX AZRIA	R 98002700	R 3/26/1998
Singapore	BCBG MAX AZRIA	R 98002701	R 3/26/1998
Singapore	BCBG MAX AZRIA	R 98002702	R 3/26/1998
Singapore	BCBGIRLS	R 01001512	R 2/06/2001
Singapore	HERVE LEGER	R 2762/96	R 3/22/1996
Singapore	HERVE LEGER	R T9602764	R 3/22/1996
Singapore	HERVE LEGER	R T9602761	R 3/22/1996
Singapore	HERVE LEGER	R T9602765	R 3/22/1996
South Africa	BC BG MAX AZRIA	R 98018726	R 11/05/2001
South Africa	BC BG MAX AZRIA	R 98018727	R 11/05/2001
South Africa	BC BG MAX AZRIA	R 98018728	R 11/05/2001
South Africa	BC BG MAX AZRIA	R 98018729	R 11/05/2001
South Africa	BC BG MAX AZRIA	R 98018730	R 11/05/2001
South Africa	BC BG MAX AZRIA	R 98018731	R 11/05/2001
South Africa	BC BG	R 98018732	R 11/05/2001

South Africa	BCBGENERATION	A 2014/24258	F 9/9/2014
South Africa	BCBGENERATION	A 2014/24259	F 9/9/2014
South Africa	BCBGENERATION	A 2014/24260	F 9/9/2014
South Africa	BCBGENERATION	A 2014/24261	F 9/9/2014
South Africa	BCBGENERATION	A 2014/24262	F 9/9/2014
South Africa	BCBGENERATION	A 2014/24263	F 9/9/2014
South Africa	HERVE LEGER	R 96/02673	R 2/29/1996
South Africa	HERVE LEGER	R 96/02674	R 2/29/1996
South Africa	HERVE LEGER	R 96/02675	R 2/29/1996
South Africa	HERVE LEGER	R 96/02676	R 2/29/1996
South Africa	HERVE LEGER	R 96/02677	R 2/29/1996
Spain	BCBGIRLS	R 2510688	R 4/28/2003
Sri Lanka	BCBGIRLS	A 102080	F 2/06/2001
Sweden	BCBGIRLS	R 0352533	R 2/08/2002
Sweden	HERVE LEGER	R 315941	R 8/9/1996
Switzerland	BCBGIRLS	R 487445	R 8/30/2001
Switzerland	BCBG MAX AZRIA	R 568269	R 2/19/2008
Taiwan	B.C.B.G. (Stylized) <b>B.C.B.G.</b>	R 704962	R 1/16/1996
Taiwan	BCBG MAX AZRIA	R 999539	R 5/16/2002
Taiwan	BCBG MAX AZRIA	R 950892	R 7/16/2001
Taiwan	BCBG MAX AZRIA	R 933285	R 3/01/2001
Taiwan	BCBG MAX AZRIA	R 947889	R 7/01/2001
Taiwan	BCBG MAX AZRIA	R 929744	R 2/16/2001
Taiwan	BCBG MAX AZRIA	R 139337	R 3/01/2001
Taiwan	BCBGMAXAZRIA	R 01559623	R 1/16/2013

Taiwan	BCBGMAXAZRIA	R 01544142	R 11/1/2012
Taiwan	BCBGMAXAZRIA	R 01544392	R 11/1/2012
Taiwan	BCBGMAXAZRIA	R 01560339	R 1/16/2013
Taiwan	BCBGMAXAZRIA	R 01560490	R 1/16/2013
Taiwan	BCBGMAXAZRIA	R 01561114	R 1/16/2013
Taiwan	BCBGIRLS	R 01082811	R 1/16/2004
Taiwan	BCBGIRLS	R 01082812	R 1/16/2004
Taiwan	HERVE LEGER	R 00689072	R 9/1/1995
Taiwan	HERVE LEGER	R 00707196	R 2/16/1996
Taiwan	HERVE LEGER	R 00690936	R 9/16/1995
Taiwan	HERVE LEGER	R 00690946	R 11/16/1995
Taiwan	MAX AZRIA	R 01559624	R 1/16/2013
Taiwan	MAX AZRIA	R 01544143	R 11/1/2012
Taiwan	MAX AZRIA	R 01544393	R 11/1/2012
Taiwan	MAX AZRIA	R 01560340	R 1/16/2013
Taiwan	MAX AZRIA	R 01560491	R 1/16/2013
Taiwan	MAX AZRIA	R 01561115	R 1/16/2013
Taiwan	TO THE MAX	R 00920755	R 2/16/2000
Taiwan	TO THE MAX	R 00138044	R 2/16/2001
Tanganyika	BCBGIRLS	R 28712	R 3/18/2003
Tangier	BCBGIRLS	R 19531	R 7/26/2001
Thailand	BC BG MAX AZRIA	R 127799	R 11/18/1998
Thailand	BC BG MAX AZRIA	R 127099	R 11/18/1998
Thailand	BC BG MAX AZRIA	R 128464	R 11/18/1998
Thailand	BC BG MAX AZRIA	R 125566	R 11/18/1998
Thailand	BC BG MAX AZRIA	R 125565	R 11/18/1998
Thailand	BC BG MAX AZRIA	R 11459	R 11/18/1998

Thailand	BCBGENERATION	A 854934	F 7/18/2012
Thailand	BCBGENERATION	A 854935	F 7/18/2012
Thailand	BCBGENERATION	A 854937	F 7/18/2012
Thailand	BCBGENERATION	A 854938	F 7/18/2012
Thailand	BCBGENERATION	A 854939	F 7/18/2012
Thailand	HERVE LEGER	R KOR43716	R 12/7/1994
Thailand	HERVE LEGER	R KOR39231	R 12/7/1994
Thailand	HERVE LEGER	R KOR43715	R 12/7/1994
Thailand	HERVE LEGER	R KOR34784	R 12/7/1994
Tunisia	BCBG	R E 980616	R 4/23/1998
Tunisia	BCBG MAX AZRIA	R E 980615	R 4/23/1998
Turkey	BC BG MAX AZRIA	R 206338	R 11/20/1998
Turkey	BC BG MAX AZRIA	R 208283	R 4/19/1999
Turkey	BCBGIRLS	R 2001002079	R 2/05/2001
Turkey	HERVE LEGER	R 173833	R 4/19/1996
Turkey	MAX AZRIA	R 2008/72892	R 11/18/2009
Turkish Republic of North Cyprus	BCBGIRLS	R 5483	R 2/05/2001
Uganda	BCBGIRLS	R 24013	R 12/11/2001
Ukraine	BCBG	R 53854	R 10/31/2003
Ukraine	BCBG MAX AZRIA	R 53855	R 10/31/2003
Ukraine	BCBG MAX AZRIA	R 149344	R 12/26/2011
United Arab Emirates	BCBG	A 186875	F 2/14/2013
United Arab Emirates	BCBG MAX AZRIA	A 186869	F 2/14/2013
United Arab Emirates	BCBG MAX AZRIA	A 186870	F 2/14/2013
United Arab Emirates	BCBG MAX AZRIA	A 186871	F 2/14/2013
United Arab Emirates	BCBG MAX AZRIA	A 186872	F 2/14/2013
United Arab Emirates	BCBG MAX AZRIA	A 186873	F 2/14/2013

United Arab Emirates	BCBG MAX AZRIA	A 186874	F 2/14/2013
United Arab Emirates	BCBGIRLS	R 32682	R 7/21/2002
United Arab Emirates	HERVE LEGER	R 14674	R 6/17/1996
United Arab Emirates	HERVE LEGER	R 26062	R 4/11/1998
United Kingdom	BCBGIRLS	R 2258247	R 7/29/2001
United Kingdom	HERVE LEGER	R 2000828	R 10/31/1994
Venezuela	BCBG	R P255094	R 2/9/2005
Venezuela	BCBG MAX AZRIA	R P255093	R 2/9/2005
Venezuela	BCBG MAX AZRIA	R N038890	R 4/20/1999
Venezuela	BCBG MAX AZRIA	R P211168	R 4/20/1999
Venezuela	BCBG MAX AZRIA	R P211169	R 4/20/1999
Venezuela	BCBG MAX AZRIA	R P211170	R 4/20/1999
Venezuela	BCBG MAX AZRIA	R P211171	R 4/20/1999
Venezuela	HERVE LEGER	R P187348	R 2/9/1996
Venezuela	HERVE LEGER	R P187347	R 2/9/1996
Venezuela	HERVE LEGER	R P187346	R 2/9/1996
Venezuela	HERVE LEGER	R P187350	R 2/9/1996
Vietnam	BCBG	R 98442	Reg issued 3/27/2008 Reg effective from 3/10/2004
Vietnam	BCBG MAX AZRIA	R 65288	R 3/10/2004
Vietnam	BCBGIRLS	R 40589	R 4/04/2002
Vietnam	BCBG MAX AZRIA	R 126274	R 9/24/2007
West Bank	BCBGIRLS	R 8985	R 4/12/2006
Zambia	BCBGIRLS	R 63.2001	R 5/02/2002



**(ii) Social Media Accounts**BCBG Max Azria Group, LLC

<b>Brand</b>	<b>Network</b>	<b>URL</b>	<b>Username</b>
BCBG	Facebook	www.facebook.com/bcbgmaxazria	bcbgmaxazria
BCBG	Twitter	www.twitter.com/bcbgmaxazria	bcbgmaxazria
BCBG	YouTube	www.youtube.com/bcbgmaxazriagroup	bcbgmaxazria
BCBG	Pinterest	www.pinterest.com/bcbgmaxazria	bcbgmaxazria
BCBG	Instagram	instagram.com/bcbgmaxazria	bcbgmaxazria
BCBG	Google+	plus.google.com/109561223746189381996/posts	bcbgmaxazria
BCBG	Tumblr	www.bcbgmaxazria.tumblr.com	bcbgmaxazria
BCBG	LinkedIn	https://www.linkedin.com/company/bcbg-max-azria	bcbgmaxazriagroup
Herve Leger	Facebook	www.facebook.com/herveleger	herveleger
Herve Leger	Twitter	www.twitter.com/hervelegerma	herveleger
Herve Leger	YouTube	www.youtube.com/channel/UCMYbMXHX-ip6cK49L_x9AXQ	herveleger
Herve Leger	Pinterest	www.pinterest.com/hervelegerbyma	herveleger
Herve Leger	Instagram	instagram.com/herveleger	herveleger
Herve Leger	Google+	plus.google.com/b/102857867107579455378/102857867107579455378/posts	herveleger
Generation	Instagram	http://instagram.com/bcbgeneration	bcbgeneration
Generation	Pinterest	http://www.pinterest.com/bcbgeneration/	bcbgeneration
Generation	Wordpress	http://thegenerationnation.com	cassie
Generation	Trendabl	only accessible through the app	bcbgeneration
Generation	Tumblr	http://thegenerationnation.tumblr.com	cassie.weinman@bcbg.com
Generation	Twitter	https://twitter.com/bcbgeneration	bcbgeneration
Generation	YouTube	http://www.youtube.com/therealbcbgeneration	TheRealBCBGeneration
Lola	Facebook	www.facebook.com/pages/Lola-Clothing/146605945404218	lolaclothing
Lola	Twitter	www.twitter.com/shoplola	shoplola
Lola	Instagram	instagram.com/lolaclothing	lolaclothing
Lola	Pinterest	www.pinterest.com/lolaclothing	lolaclothing

**SCHEDULE 9.1.15**

**ENVIRONMENTAL MATTERS**

None.

**SCHEDULE 9.1.17**

**LITIGATION**

None.

**SCHEDULE 9.1.20**

**PENSION PLANS**

None.

**SCHEDULE 10.2.1**

**EXISTING DEBT**

**BCBG Max Azria Group, LLC**

1. The Company records the following obligations as capitalized leases (amounts as of November 29, 2014):

Lease - HP PKMS	\$	127,791.82
Lease - IBM # D00F62735	\$	1,563.43
Lease - IBM #D00G99936	\$	3,500.80
Lease - IBM #D00G94837	\$	25,206.80
Lease - IBM #D00G96334	\$	493,925.40
Lease - IBM # C00G69400	\$	3,359.39
Lease - IBM #D00H01950	\$	24,343.67
Lease - IBM #D00H05535	\$	84,856.17
Lease - CISCO #8010 009-000	\$	107,425.75
Leases - Dell	\$	1,532.45

2. The Company records the following notes payable (amounts as of November 29, 2014):

Lease Unsec - IBM # D00G94837	\$	2,405.84
Lease Unsec - IBM #D00G96334	\$	140,372.67
Lease Unsec - IBM #D00H01950	\$	497.31
Lease Unsec - IBM #D00H05535	\$	53,482.89
Lease Unsec - BofA # 48854	\$	64,230.83
Lease - Varilease #1/2/3	\$	23,591.13
Notes Payable - BDNI	\$	1,272,251.40
Notes Payable - United Pacific	\$	995,391.23
Loan Payable - PFS Web	\$	135,877.08

3. \$24,593 owed to the State of New York for sales/use tax under a payment agreement.
4. \$50,300 owed to the State of Florida for sales/use tax under a payment agreement.

## **SCHEDULE 10.2.2**

### **EXISTING LIENS**

#### **BCBG Max Azria Group, LLC**

Purchase money loan of \$64,500 for the purchase of a 2009 GMC Yukon (VIN# 1GKFK06229R250012).

Purchase money loan of \$37,500 for the purchase of a 2009 Chevrolet Express (VIN# 1GAHG39K091127352).

Lien in connection with the lease of a 2013 Lexus 570UT (VIN# JTJHY7AX6D4116847).

Lien in connection with the lease of a 2012 BMQ X5 (VIN# 5UXZW0C50CL668735).

Lien in connection with the lease of a 2013 Kia Optima (VIN# 5XXGM4A70DG137112).

Lien in connection with the lease of a 2014 Ford Econoline (Shuttle) (VIN# 1FDEE4FL4EDA65316).

Lien in connection with the lease of a 2014 Ford Econoline (Shuttle) (VIN# 1FDEE4FL4EDA65221).

Any tax liens if applicable to the following state tax payment agreements:

\$24,593 owed to the State of New York for sales/use tax under a payment agreement which has been paid.

\$50,300 owed to the State of Florida for sales/use tax under a payment agreement.

Customary security interests granted in connection with the Business Bank Card Service and Security Agreement (Multi-Year Agreement) dated February 26, 1999 between the BCBG Max Azria Group, LLC (f/k/a BCBG Max Azria Group, Inc.) and Wells Fargo Bank, N.A.

Federal Tax Lien (filing number 147436818072) in the amount of \$66,520.39.

#### **Max Rave, LLC**

Judgment Lien (filing number 09-7198815210) in favor of Macerich Lakewood, LLC in the amount of \$21,970.75, which has been settled.

#### **MLA Multibrand Holdings, LLC**

None.

#### **BCBG MaxAzria Intermediate Holdings, LLC**

None.

**BCBG Max Azria Canada Inc.**

None.



## **SCHEDULE 10.2.9**

### **INVESTMENTS**

To the extent not already permitted by Section 10.2.9 of the Agreement, the Investments referenced in Schedule 9.1.4, if any.

#### **BCBG Max Azria Group, LLC**

1. BCBG Max Azria Group, S.A.S. (“BCBG Europe”) owes BCBG Max Azria Group, LLC (“BCBG U.S.”) as of November 29, 2014:

- Trade Receivables
  - o \$82,6 million (including Carrefour settlement of \$11,8 million)
  - o \$0,6 million Top side 2006 (Manoukian acquisition price reduction)

2. BCBG Max Azria Group Europe Holdings, S.A.R.L. (“BCBG Europe Holdings”) owes BCBG U.S.:

- 54.3 million euros denominated in euros bearing interest rate at lower of (i) LIBOR plus 2% or (ii) the maximum rate which is deductible pursuant to French Code; with a -7.5 million euros US GAAP adjustment.
- \$65.3 million denominated in U.S. Dollars bearing interest; with a \$1.6 million US GAAP adjustment.

3. Don Algodon owes BCBG US \$0.5 million denominated in U.S. Dollars as trade receivables.

The Indebtedness of BCBG Europe, BCBG Europe Holdings and Don Algodon to BCBG U.S. in some cases is not evidenced by a note, and are subordinated to indebtedness of approximately 2.6 million euros owed by BCBG Europe to its lenders in France.

## **SCHEDULE 10.2.15**

### **TRANSACTIONS WITH SHAREHOLDERS AND AFFILIATES**

On April 30, 2008, BCBG Max Azria Group, LLC (f/k/a BCBG Max Azria Group, Inc.) converted \$2.7 million of current receivables from BCBG Max Azria Japan Co., Ltd. into equity. The percentage ownership allocated to BCBG Max Azria Group, LLC (f/k/a BCBG Max Azria Group Inc.), for its \$2,700,000 investment for receivables outstanding from BCBG Max Azria Japan Co., Ltd. was approximately 9% (20 shares) of the ownership interest of BCBG Max Azria Japan Co., Ltd.

RIGHTS OF CO-COLLATERAL AGENT:

(a) Bank of America and General Electric Capital Corporation, each in its capacity as a Co-Collateral Agent, shall have rights as expansive as the rights afforded to the Administrative Agent (or, if applicable, the Canadian Agent) relating to (i) (x) the definition in the Loan Agreement of the term “Excess Availability” and any component of such definition, and (y) the definitions in the Loan Agreement of the terms “Tranche A Borrowing Base”, “Tranche A-1 Borrowing Base”, “Canadian Borrowing Base”, “Permitted Discretion”, “Availability Block” and “Maximum Borrowing Amount” and any component of each such definition (including, without limitation, reserves, advance rates, eligibility criteria, reporting requirements and appraisals, examinations and collateral audits), and (ii) the establishment, determination, modification or release of any of the reserves established pursuant to the definition in the Loan Agreement of the term “Availability Reserves”;

(b) Any provision in the Loan Agreement or any other Loan Document relating to any of the matters covered by paragraph (a) above or the validity, extent, perfection or priority of the Liens granted to the Administrative Agent (or, if applicable, the Canadian Agent) in regards to the Collateral (collectively, the “Collateral Issues”) which would otherwise only need the consent or approval of or to be satisfactory or acceptable to the Administrative Agent (or, if applicable, the Canadian Agent) shall be deemed to require the consent or approval of or be satisfactory or acceptable (as the case may be) to Bank of America and General Electric Capital Corporation, each in its capacity as Co-Collateral Agent;

(c) If any provision in the Loan Agreement or any other Loan Document relating to a Collateral Issue allows the Administrative Agent (or, if applicable, the Canadian Agent) to request or reasonably request (as the case may be) that any action be taken or any documents or other information be provided by or on behalf of any Obligor, the Administrative Agent (or, if applicable, the Canadian Agent) shall make any such request or reasonable request (as applicable) that Bank of America or General Electric Capital Corporation, in its capacity as a Co-Collateral Agent, may request and shall provide Bank of America or General Electric Capital Corporation, in its capacity as a Co-Collateral Agent, with any such documents or information so requested after the receipt thereof by the Administrative Agent; and

(d) In the event that Bank of America, in its capacity as Co-Collateral Agent, General Electric Capital Corporation, in its capacity as Co-Collateral Agent, and the Administrative Agent (or, if applicable, the Canadian Agent) cannot in good faith agree on any issue relating to the Tranche A Borrowing Base, the Tranche A-1 Borrowing Base, the Canadian Borrowing Base, the Availability Reserves, the Excess Availability, the Tranche A Borrowing Base eligibility standards, the Tranche A-1 Borrowing Base eligibility standards, the Canadian Borrowing Base eligibility standards, advance rates, borrowing base reporting, appraisals or examinations or any other action or determination relating to a Collateral Issue, the resolution of such issue shall be to either require that the more conservative credit judgment be implemented

(that is, that would result in the least amount of credit being available to the applicable Borrower under the Credit Agreement) or decline to permit the requested action;

*provided, however,* that notwithstanding anything in the Loan Documents and the foregoing to the contrary, (i) Bank of America and General Electric Capital Corporation, each in its capacity as a Co-Collateral Agent, hereby agrees with the Administrative Agent and the Canadian Agent that the Administrative Agent and the Canadian Agent, as applicable, shall have sole and exclusive authority and responsibility under the Loan Agreement and the other Loan Documents (without the consent or further approval of Bank of America or General Electric Capital Corporation, in its capacity as a Co-Collateral Agent) (x) to make Protective Advances to the Company or the Canadian Borrower, as the case may be, in accordance with the terms and conditions of the Credit Agreement and (y) to select, employ and retain all Agent Professionals retained or to be retained by such Agent and (ii) in the event that General Electric Capital Corporation (or an Affiliate thereof) is not a Tranche A-1 Lender, General Electric Capital Corporation, in its capacity as a Co-Collateral Agent, agrees that it shall not exercise its co-collateral agent rights as set forth in this Annex A with respect to any Collateral Issue relating to the “Tranche A-1 Borrowing Base”, any component of such definition (including, without limitation, reserves, advance rates, eligibility criteria, reporting requirements and appraisals, examinations and collateral audits) as it applies to the Tranche A-1 Borrowing Base, or the establishment, determination, modification or release of any of the reserves established pursuant to the definition in the Loan Agreement of the term “Availability Reserves” as it applies to the Tranche A-1 Borrowing Base.

Notwithstanding anything to the contrary contained herein, in the Loan Agreement or in any other Loan Document, each of Bank of America and General Electric Capital Corporation hereby agrees that it shall not assign any of its rights, powers, duties and obligations as a Co-Collateral Agent hereunder to any Person (other than an Affiliate of Bank of America or General Electric Capital Corporation (as applicable) designated by Bank of America or General Electric Capital Corporation from time to time in writing to the Administrative Agent as the Co-Collateral Agent) without the prior written consent of the Administrative Agent.

**EXHIBIT P-5**

**FORBEARANCE AGREEMENT DATED FEBRUARY 14, 2017**

## FORBEARANCE AGREEMENT

This FORBEARANCE AGREEMENT, dated as of February 14, 2017 (this “Agreement”), by and among BCBG MAX AZRIA GROUP, LLC, a Delaware limited liability company (the “Company”), BCBG MAX AZRIA CANADA INC., a Canadian corporation (the “Canadian Borrower” and, together with the Company, collectively, the “Borrowers” and, individually, each a “Borrower”), BCBG MAX AZRIA INTERMEDIATE HOLDINGS, LLC, a Delaware limited liability company (“Holdings”), each other Guarantor party to the Loan Agreement (as hereinafter defined) as of the date hereof, the undersigned Lenders party to the Loan Agreement (as hereinafter defined) as of the date hereof, BANK OF AMERICA, N.A., as Administrative Agent and Issuing Bank, BANK OF AMERICA, N.A. (acting through its Canada branch), as Canadian Agent and Issuing Bank and BANK OF AMERICA, N.A. and WELLS FARGO BANK, NATIONAL ASSOCIATION, each as a Co-Collateral Agent, and the other parties hereto, is entered into with respect to that certain Second Amended and Restated Loan Agreement, dated as of February 5, 2015 (as amended by that certain First Amendment to Second Amended and Restated Loan Agreement, dated as of August 12, 2016, as further amended from time to time, the “Loan Agreement”), among the Borrowers, Holdings, the Guarantors from time to time party thereto, each Lender from time to time party thereto, the Administrative Agent, the Canadian Agent, the Co-Collateral Agents and the Issuing Banks party thereto. Any capitalized term used herein and not defined herein shall have the meaning assigned to such term in the Loan Agreement.

### RECITALS

WHEREAS, the Borrowers and the other Obligors have informed the Agents, the Co-Collateral Agents, the Lenders and the Issuing Banks (collectively, the “Lender Parties”) that the Events of Default set forth on Schedule A attached hereto have occurred and are continuing as of the date hereof (such Events of Default being collectively referred to herein as the “Specified Defaults”); and

WHEREAS, the Company has entered into that certain letter agreement governing Inventory Disposition, dated on or about February 1, 2017 (including any necessary amendments thereto acceptable to the Administrative Agent, the “Disposition Letter”) with Hilco Merchant Resources, LLC and Gordon Brothers Retail Partners, LLC (collectively, and together with their Affiliates, the “Liquidation Agents”), which, among other things, provides for the Liquidation Agents to conduct a store closing sale at 120 of the Borrowers’ locations (the “Specified Store Closing Sale”); and

WHEREAS, the Obligors have pursued efforts to retain Deloitte Restructuring Inc. in Canada to act as either (i) Proposal Trustee in potential proceedings under the Bankruptcy and Insolvency Act (Canada) (“BIA”) or (ii) Monitor in potential proceedings under the Companies’ Creditors Arrangement Act (Canada) (“CCAA”); and

WHEREAS, the Borrowers and the other Obligors acknowledge and agree that, is a condition precedent to the Borrowers’ right to request, and the Lenders’ and Issuing Banks’ respective obligations to make available, Loans and Letters of Credit that no Default or Event of Default shall then exist and that as a result of the existence of the Specified Defaults, the Lenders and the Issuing Banks are under no obligation to make any Loans available or to issue any Letters of

Credit for the account of the Borrowers or any other Obligor and that any such Loans that the Lender may make, and any Letters of Credit that the Issuing Banks may issue, are made and issued, as the case may be, in the sole and absolute discretion of the Lenders and the Issuing Banks; and

WHEREAS, the Borrowers and the other Obligors acknowledge and agree that, but for the terms of this Agreement, the Lender Parties could, if they so elected, proceed to further enforce their rights and exercise any and all remedies available to the Lender Parties under the Loan Agreement, the other Loan Documents and Applicable Law (such rights and remedies, collectively, the “Remedies”) to collect each Borrower’s indebtedness to the Lender Parties under the Loan Agreement and the other Loan Document, including by declaring all of the Obligations under the Loan Documents immediately due and payable by the Borrowers and the other Obligors, and that the Borrowers and the other Obligors have no defense to the Lender Parties’ enforcement and exercise of their Remedies; and

WHEREAS, the Borrowers and the other Obligors have requested that the Lender Parties agree to (a) forbear, for a limited period, from enforcing and exercising their Remedies under the Loan Agreement, the other Loan Documents and Applicable Law with respect to the Specified Defaults, and (b) make other concessions to the Obligors as set forth herein; and

WHEREAS, in connection with any bankruptcy proceeding in U.S. Bankruptcy Court by the Obligors, the Obligors have begun discussions with the Guggenheim Credit Facility Lenders to provide a subordinated debtor-in-possession financing to the Company on terms and conditions and in form and substance reasonably acceptable to the Co-Collateral Agents and consistent with Section 3(c)(i) and 4(l) of this Agreement; and

WHEREAS, the Lender Parties are willing to (a) forbear, for a limited period, from enforcing and exercising their Remedies under the Loan Agreement, the other Loan Documents and Applicable Law with respect to the Specified Defaults, and (b) make other concessions to the Obligors (clauses (a) through (b), collectively, the “Obligors’ Benefits”), all on the terms and conditions contained herein, each of which term and condition, individually and in the aggregate, and including the performance thereof by the Borrowers and the other Obligors and the Obligors agreement to use commercially reasonable efforts to obtain the Junior DIP (as such term is defined below) to the Company, constitute the consideration to the Lender Parties for entering into this Agreement, and in the absence of any of which the Lender Parties would not have entered into this Agreement or otherwise extended to the Borrowers and the other Obligors the Obligors’ Benefits; and

WHEREAS, the Borrowers and the other Obligors acknowledge and agree that the Obligors’ Benefits hereunder are of immediate and material benefit, financial and otherwise, to the Borrowers and the other Obligors, and that neither the Agents, Co-Collateral Agents, Lenders, or Issuing Banks were or are under any obligation to extend to the Borrowers or the other Obligors the Obligors’ Benefits provided hereunder.

NOW, THEREFORE, in consideration of the foregoing premises, and other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Acknowledgments by the Obligors.

(a) Each Borrower and each other Obligor hereby acknowledges and agrees that (i) as of the close of business on February 10, 2017, (A) the outstanding aggregate principal balance of the Tranche A Revolver Loans totaled \$56,077,271.07; (B) the outstanding aggregate principal balance of the Tranche A-1 Revolver Loans totaled \$1,903,999.99; (C) the outstanding aggregate principal balance of the Canadian Revolver Loans totaled Cdn. \$14,477,110.57; and (D) the maximum aggregate amount available to be drawn under outstanding Letters of Credit totaled \$8,286,133.62, in each case, exclusive of accrued interest, and any other fees (including attorneys' fees), costs, expenses or amounts chargeable to the Borrowers and the Obligors under the Loan Documents; (ii) the Specified Defaults have occurred and are continuing, as set forth in the Recitals; and (iii) as a result of the occurrence of the Specified Defaults, either Agent (in its discretion, or, upon the written direction of the Required Lenders or the Voting Collateral Agent, as the case may be) may (x) declare all of the Obligations under the Loan Documents immediately due and payable by the Borrowers and the other Obligors and (y) exercise any and all of their respective rights and remedies under the Loan Documents or otherwise available under Applicable Law and in equity with respect thereto.

(b) Each Obligor acknowledges and agrees that the forbearance provided herein shall not in any manner limit or restrict any rights or remedies available to the Lender Parties under the Loan Agreement, the other Loan Documents or under Applicable Law as a result of any Event of Default now or hereafter existing other than solely with respect to the Specified Defaults during the Forbearance Period (as hereinafter defined) only. Each Obligor agrees that the Obligations of the Borrowers and the other Obligors to the Lender Parties and the other Secured Parties as evidenced by or otherwise arising under the Loan Agreement and the other Loan Documents, except as expressly modified in this Agreement upon the terms set forth herein, are, by the Obligors' execution of this Agreement, ratified and confirmed in all respects, and the Obligors confirm that the Obligations are not subject to any claims or defenses whatsoever.

(c) Each Obligor (i) agrees to, and to cause its officers, directors, accountants, Affiliates and other representatives to, fully and timely cooperate with the Agents and Lenders and their agents, representatives or independent contractors in the exercise of their respective rights under Section 10.1.1 of the Loan Agreement, and (ii) acknowledges that, as a result of the occurrence and continuance of the Specified Defaults (and notwithstanding the forbearance provided herein), (x) the Agents (or their agents) may at any time, and as frequently as required by each Agent in its sole discretion, visit and inspect the Properties of any Obligor, conduct field examinations and Inventory appraisals, inspect, audit and make extracts from any Obligor's books and records, and discuss with any Obligor's officers, employees, agents, advisors and independent accountants such Obligor's business, financial condition, assets, prospects and results of operations, and (y) all visits, inspections and appraisals under Section 10.1.1 of the Loan Agreement shall be at the sole expense of the Obligors. Each Obligor acknowledges and agrees that the Lenders may participate in any such visit or inspection.

2. Default Rate. Each Obligor acknowledges and agrees that, effective as of the date hereof, (x) the Required Lenders have elected to apply the Default Rate interest as a result of the occurrence and continuance of the Specified Defaults and (y) from the date hereof until the date that the Specified Defaults are permanently waived hereafter in writing by the Agents and the Lenders and no other Events of Default are occurring and continuing, in accordance with Section



3.1.1(b) of the Loan Agreement all Obligations shall bear interest at the Default Rate (that is, at a rate that is 2% per annum in excess of the interest rate or fee rate otherwise applicable under the Loan Agreement if no Event of Default was continuing).

### 3. Forbearance Arrangements.

(a) Forbearance. During (but only during) the period (such period being hereafter referred to as the “Forbearance Period”) commencing on the Effective Date (as hereinafter defined) and ending on that date (the “Forbearance Termination Date”) on which the Administrative Agent or Required Lenders have given written notice terminating the Forbearance Period, which notice may be given on or after the date which is the earliest to occur of the following: (i) February 28, 2017, (ii) the occurrence of any Event of Default under the Loan Documents (other than the Specified Defaults), including, without limitation, an Event of Default under this Agreement as set forth in Section 5 hereof, (iii) the date that any Obligor or any Subsidiary or other Affiliate of any Obligor, or any person or entity claiming by or through either any Obligor or any Subsidiary or other Affiliate of any Obligor joins in, assists, cooperates or participates as an adverse party or adverse witness in any suit or other proceeding against any Secured Party or any Affiliate of any Secured Party, relating to the Obligations or any of the transactions contemplated by the Loan Agreement, the other Loan Documents, this Agreement or any other documents, agreements or instruments executed in connection therewith or with this Agreement, (iv) upon notice of termination delivered by either the Administrative Agent or the Required Lenders, if any representation or warranty set forth in Section 8 is untrue, incorrect or misleading in any material respect when given, (v) any order shall be sought by an Obligor or be entered in a proceeding relating to any Obligor in a Chapter 11 bankruptcy proceeding in the U.S. Bankruptcy Court or a proceeding under the BIA and/or the CCAA that shall not be acceptable to the Agents, (vi) a notice of intention under section 50.4 of the BIA relating to any Obligor is filed without the consent of the Agents, or (vii) the earliest of (w) the date that the agent or lenders under the Guggenheim Credit Agreement shall give written notice of acceleration of the obligations under the Guggenheim Documents (as such term is defined in the Intercreditor Agreement, the “Guggenheim Documents”), (x) the date that the agent or lenders under the Guggenheim Credit Agreement shall take any enforcement or collection action with respect to the obligations under, or institute any suit, file any complaint, or exercise any remedies with respect to, any of the Guggenheim Documents, (y) the date that the agent or lenders under the Guggenheim Credit Agreement shall issue any declaration of a “Guggenheim Standstill Period” (as contemplated by the Intercreditor Agreement) or (z) the maturity of any of the Guggenheim Obligations (as defined in the Intercreditor Agreement), the Lender Parties party hereto will forbear from enforcing and exercising their Remedies under the Loan Agreement, the other Loan Documents and Applicable Law with respect to the Specified Defaults.

(b) Expiration of Forbearance Period. Upon the Forbearance Termination Date, (a) the Lender Parties’ agreement to forbear from enforcing their rights and exercising their remedies with respect to the Specified Defaults contained herein shall automatically, and without any further action, notice or demand or any other occurrence terminate, and (b) the Lender Parties shall be free in their sole and absolute discretion to proceed to enforce any or all of their rights and exercise any or all of their remedies available under the Loan Agreement, the other Loan Documents and Applicable Law, including without limitation, those rights and remedies arising by virtue of the occurrence of the Specified Defaults, and each of the Obligors hereby

waives notice thereof. The Obligors acknowledge and agree that during the Forbearance Period, the Specified Defaults shall be existing and continuing until waived, released or extinguished by the Agents and the Lenders.

(c) Effect and Construction of Forbearance.

i. Prior to the earlier to occur of (x) the Forbearance Termination Date and (y) the funding of the Junior DIP (the “Block Reduction Termination Date”), the Lender Parties and Guggenheim Corporate Funding, LLC, as “Guggenheim Administrative Agent” and “Guggenheim Collateral Agent” under the Intercreditor Agreement, on behalf of all of the “Guggenheim Claimholders” (as defined in the Intercreditor Agreement), acknowledge and agree that the Administrative Agent may temporarily reduce the amount of the Availability Block maintained against the Tranche A Borrowing Base, Tranche A-1 Borrowing Base and the Canadian Borrowing Base by an aggregate amount of up to \$5,000,000 (the “Specified Block Reduction Amount”) and that the aggregate amount of the Availability Block may be an amount that shall not be less than \$7,500,000, provided that (i) the parties hereto acknowledge and agree that that all advances shall be made in accordance with the Budget, (ii) upon the Block Reduction Termination Date, the amount of the Availability Block maintained against Tranche A Borrowing Base, Tranche A-1 Borrowing Base and the Canadian Borrowing Base shall be determined without giving effect to the temporary reduction in the amount of the Availability Block provided for in this Section 3(c) and (iii) the proceeds of the Junior DIP shall be used on the funding date thereof to repay in full Loans in an amount not to exceed the Specified Block Reduction Amount, such that after giving effect to such repayment, the Availability Block shall be an amount equal to not less than \$12,500,000;

ii. Except as otherwise expressly provided herein, the Loan Agreement and the other Loan Documents shall remain in full force and effect in accordance with their respective terms, and neither this Agreement nor the making of any Loans or the issuance of any Letters of Credit or other extensions of credit simultaneously herewith or subsequent hereto shall be construed to: (i) impair the validity, perfection or priority of any Lien or security interest securing the Obligations; (ii) waive or impair any rights, powers or remedies of the Lender Parties under the Loan Agreement, the other Loan Documents or Applicable Law upon the Forbearance Termination Date, with respect to the Specified Defaults or otherwise; (iii) constitute an agreement by the Lender Parties or require the Lender Parties to extend the Forbearance Period or further forbear from exercising their rights and remedies under the Loan Agreement, the other Loan Documents or Applicable Law, extend the term of the Loan Agreement or the time for payment of any of the Obligations; (iv) require the Lender Parties to make any Loans, issue, extend, renew or amend any Letter of Credit or make any other extensions of credit to the Borrowers, other than in the Lender Parties’ sole and absolute discretion; or (v) constitute a waiver of any right of the Lender Parties to insist on strict compliance by the Obligors with each and every term, condition and covenant of this Agreement and the Loan Documents, except as expressly otherwise provided herein. Without limiting the foregoing, the Obligors acknowledge and agree that, notwithstanding the amendments to the Loan Agreement or the forbearance contained herein, the Agents, Lenders and Issuing Bank may refuse to honor any request for any Loan, any issuance, extension, renewal or

amendment of Letters of Credit or any other request for extension of credit based on any failure to satisfy conditions thereto, whether arising from the continuation of the Specified Defaults or any other fact or circumstances now existing or arising in the future, whether or not currently known to the parties hereto.

iii. The Lender Parties hereby acknowledge and agree that to the extent any such Loan or other credit extension is made during the Forbearance Period, it shall not constitute an additional Event of Default due to the failure of the representations and certifications made or deemed made by the Borrowers and the other Obligors in connection with such Loan or such other credit extension under the Loan Documents to be true because of the existence of Specified Defaults.

(d) No Course of Dealing or Performance. Each Obligor acknowledges and agrees that the agreement of the Lender Parties to forbear from enforcing their rights and exercising their remedies with respect to the Specified Defaults pursuant to and as reflected in this Agreement, does not and shall not create (nor shall any Obligor rely upon the existence of or claim or assert that there exists) any obligation of the Lender Parties to consider or agree to any waiver or any other forbearance and, in the event that the Lender Parties subsequently agree to consider any waiver or any other forbearance, neither the existence of any prior forbearance or waiver, nor this Agreement, nor any other conduct of the Lender Parties, or any of them, shall be of any force or effect on the consideration or decision with respect to any such requested waiver or forbearance, and no Lender Party shall have any obligation whatsoever to consider or agree to forbear or to waive any Default or Event of Default. In addition, none of (i) the execution and delivery of this Agreement, (ii) the actions of the Lender Parties in obtaining or analyzing any information from the Obligors, whether or not related to consideration of any waiver, modification, forbearance or alteration of the Loan Agreement, any Default or Event of Default thereunder, or otherwise, including, without limitation, any discussions or negotiations (heretofore or, if any, hereafter) between the Lender Parties and any of the Obligors regarding any potential waiver, modification, forbearance or amendment related to the Loan Agreement, (iii) any failure of the Lender Parties to enforce any of their rights or exercise any of their remedies under, pursuant or with respect to the Loan Agreement, the other Loan Documents or Applicable Law, nor (iv) any action, inaction, waiver, forbearance, amendment or other modification of or with respect to the Loan Agreement or the other Loan Documents, shall, except to the extent otherwise expressly provided herein or unless evidenced by a subsequent written agreement (and then only to the extent provided by the express provisions thereof):

i. constitute a waiver by any Lender Party of, or an agreement by any Lender Party to forbear from the enforcing of any their rights or exercising any of their remedies with respect to, any Default or Event of Default under the Loan Agreement;

ii. constitute a waiver by or estoppel of any Lender Party as to the satisfaction or lack of satisfaction of any covenant, term or condition set forth in the Loan Agreement or any other Loan Document; or

iii. except as expressly set forth herein, constitute an amendment to or modification of, or an agreement on the part of any Lender Party to enter into any amendment to or modification of, or an agreement to negotiate or continue to negotiate

with respect to, the Loan Agreement or any other Loan Document or any amendment of any of the same.

4. Covenants. At all times after the Effective Date (except with respect to Sections 4(b) (Thirteen Week Cash Flow Forecast), 4(c) (Budget Compliance Covenants), 4(d) (Pre-Payment of Debt; Certain Investments) and 4(j) (Canadian Obligor) below, which shall apply during the Forbearance Period only), the Obligors covenant and agree as follows:

(a) Company Financial Advisor. The Obligors shall retain a financial advisor, which financial advisor shall be reasonably acceptable to the Administrative Agent and each Co-Collateral Agent (the "Financial Advisor"). Such retention shall be pursuant to an engagement letter or other arrangement and on terms and conditions reasonably satisfactory to the Administrative Agent and each Co-Collateral Agent. The Agents hereby confirm that, as of the date hereof, the existing engagements of Alix Partners LLP and FAAN Advisors Group Inc. satisfy this requirement. The Financial Advisor shall continue to be retained by and at the sole cost and expense of Borrowers and solely on behalf of Borrowers at all times.

(b) Thirteen-Week Cash Flow Forecast. During the Forbearance Period, the Obligors, in consultation with the Financial Advisor, shall prepare and deliver to each Co-Collateral Agent:

i. a rolling 13-week cash flow forecast (which shall (i) reflect the bankruptcy filing, the Junior DIP and any other debtor-in-possession financing and (ii) reflect breakouts for (x) stores that are being closing pursuant to the Specified Store Closing Sale versus stores that are anticipated to remain open on a go-forward basis and (y) the calculation of Tranche A Borrowing Base, Tranche A-1 Borrowing Base and Canadian Borrowing Base, in each case, prepared by the Obligors in good faith based upon assumptions which the Obligors believe to be reasonable, for the 13-week period commencing as of January 28, 2017, which shall be in form and substance satisfactory to, and approved by, the Co-Collateral Agents (such cash flow forecast, as approved by the Co-Collateral Agents, the "Initial Budget", in the form attached hereto as Annex I, and the Initial Budget as updated from time to time by each Budget Update (as hereinafter defined) approved by the Co-Collateral Agents, the "Budget"); and

ii. on or prior to the last Business Day of each calendar week (commencing with February 17, 2017), (x) an update to the Initial Budget to extend out the 13-week period from the date of preparation thereof prepared by the Obligors in good faith based upon assumptions which the Obligors believe to be reasonable, for the 13-week period commencing as of the Sunday of previous week (i.e. commencing on February 5, 2017 for the initial update), and (y) together with a report comparing the actual weekly cash flows to the budgeted weekly cash flows (as set forth in the Budget) and showing the variances therein for the week most recently ended, in each case, which shall be in form and substance satisfactory to, an approved by, the Co-Collateral Agents (each such updated 13 week cash flow forecast and weekly cash flow reports, as approved by the Co-Collateral Agents, a "Budget Update"). All deliverables described in this clause (b) shall be in form and substance reasonably satisfactory to the Agents and the Co-Collateral Agents.

(c) Budget Compliance Covenants. During the Forbearance Period and commencing with the calendar week ending February 11, 2017, as of the end of each calendar week (and as set forth in the weekly cash flow report delivered with each Budget Update), for the prior week then ended, the Obligors shall not permit:

i. Minimum Total Cash Receipts. the aggregate consolidated total cash receipts of the Obligors during such period to be less than 85% of projected aggregate consolidated total cash receipts of the Obligors set forth in the Budget for such period;

ii. Maximum Total Cash Disbursements. the aggregate consolidated total cash disbursements of the Obligors during such period to be greater than 110% of the aggregate amount of projected total cash disbursements of the Obligors set forth in the Budget for such period; and

iii. Minimum Inventory Receipts. the aggregate consolidated inventory receipts of the Obligors during such period to be less than 80% of projected aggregate consolidated inventory receipts of the Obligors set forth in the Budget for such period.

(d) Pre-Payment of Debt; Certain Investments. During the Forbearance Period, no Obligor shall:

i. (A) voluntarily pre-pay or otherwise satisfy prior to scheduled maturity any principal of Debt of such Obligor (other than the Obligations), or (B) make any payments of Subordinated Debt, except as set forth in the applicable subordination agreement or interest payments that are capitalized and added to the principal amount of such Subordinated Debt or (C) make any payment of interest in cash in respect of the Guggenheim Credit Facility; or

ii. make any Investment in any Affiliate that is not an Obligor.

(e) Cooperation. The Obligors (i) covenant and agree that the Obligors shall fully cooperate with the Financial Advisor (including, without limitation, in connection with the preparation of the deliverables described in clauses (b) and (c) above), (ii) hereby authorize the Agents and each Co-Collateral Agent (or their agents or advisors, including, the Agent Advisors) to communicate directly with the Financial Advisor and the Liquidation Agents regarding any and all matters related to the Obligors and their Affiliates, including, without limitation, (x) all financial reports and projections developed, reviewed or verified by the Financial Advisor or the Liquidation Agents and all additional information, reports and statements reasonably requested by any Agent, any Co-Collateral Agent, or any Lender, including, without limitation, as provided in Section 10.1.2(n) of the Loan Agreement and (y) all aspects of the Specified Store Closing Sale and all additional information, reports and statements reasonably requested by any Agent, any Co-Collateral Agent, or any Lender related thereto, and (iii) hereby authorize and direct the Financial Advisor and the Liquidation Agents to provide the Agents, each Co-Collateral Agent (or their agents or advisors, including, the Agent Advisors) with copies of reports and other information or materials prepared or reviewed by the Financial Advisor as any Agent, any Co-Collateral Agent, or any Lender may reasonably request.

(f) Financial Advisor and Liquidation Agents Status Calls. The Obligors shall, from time to time upon request by the Administrative Agent or any Co-Collateral Agent, conduct (i) and cause the Financial Advisor to participate with financial officers of the Company in status calls with the Administrative Agent and each Co-Collateral Agent to discuss the Budget, any Budget Updates and/or any other reports delivered pursuant to clauses (b) and (c) above or otherwise, the financial operations and performance of the Obligors' business, or such other matters relating to the Obligors as the Administrative Agent or any Co-Collateral Agent (or their agents or advisors) shall reasonably request and (ii) cause the Liquidation Agents to participate in status calls with the Administrative Agent and each Co-Collateral Agent to discuss the Specified Store Closing Sale and any matters relating thereto and such other matters relating to the Obligors as the Administrative Agent or any Co-Collateral Agent (or their agents or advisors) shall reasonably request.

(g) Co-Collateral Agents Financial Advisor. The Obligors hereby acknowledge and agree that the Co-Collateral Agents may in their sole and absolute discretion retain (directly or through counsel), for the benefit of the Lender Parties, a financial advisor and/or consultant and such other third party professionals of their choosing (collectively, the "Agent Advisors") to provide advice, analysis and reporting with respect to such matters relating to the Obligors as the Co-Collateral Agents may determine in their sole and absolute discretion. The Obligors and their advisors shall cooperate in all respects with such Agent Advisors and provide all information that such Agent Advisors may reasonably request in a timely manner. All reasonable costs, fees and expenses incurred by the Lender Parties on account of such Agent Advisors shall be Expenses (as defined below) payable by the Obligors as set forth in Section 12(b) below.

(h) Sales Process Updates. Commencing during the calendar week beginning on February 13, 2017, the Borrowers shall, and shall cause Jefferies to, provide the Co-Collateral Agents updates (in detail reasonably satisfactory to the Co-Collateral Agent) with respect to the Borrowers' sale process not less frequently than bi-weekly and within a reasonable time after any request by the Co-Collateral Agents.

(i) Required Milestones. The Obligors shall do, or shall cause to occur, each of the events or actions set forth set forth on Schedule B hereto (each a "Required Milestone") on or prior the date for such Required Milestone set forth on such schedule.

(j) Canadian Obligor. During the Forbearance Period, the U.S. Obligors shall not transfer, direct or otherwise permit any property owned (or to be owned) by the U.S. Obligors, or their U.S. Subsidiaries, to be transferred to the Canadian Obligor or be maintained or kept in Canada, provided, that (i) the U.S. Obligors shall be permitted to pay professional fees, costs and expenses incurred prior to a filing under the BIA or CCAA in an aggregate amount not to exceed \$750,000 or such greater amount approved by the Co-Collateral Agents in connection with the Specified Store Closing Sale, any bankruptcy filing, the Junior DIP and any other debtor-in-possession financing (in each case, including to the extent incurred in preparation thereof) and (ii) such restrictions shall not restrict the replenishing of inventory and related transactions with respect to the partner shops located in Canada. Subject to the Agents' satisfaction with the terms and conditions thereof (including, without limitation, as to the continued perfection and priority of the Administrative Agent's liens and security interests in the inventory and other assets related thereto), the Canadian Obligor may transfer the partner shop agreement or any other agreement

in connection with the Hudson's Bay Company partner shops from any Canadian Obligor or Canadian Subsidiary to any U.S. Obligor or U.S. Subsidiary.

(k) Delivery of 30 Week Cash Flow Forecast. On or prior to February 17, 2017, deliver a 30-week cash flow forecast prepared on a weekly basis forecast (which shall (i) reflect the bankruptcy filing, the Junior DIP and any other debtor-in-possession financing and (ii) reflect breakouts for (x) stores that are being closing pursuant to the Specified Store Closing Sale versus stores that are anticipated to remain open on a go-forward basis and (y) the calculation of Tranche A Borrowing Base, Tranche A-1 Borrowing Base and Canadian Borrowing Base, together with a report as to aging of warehouse inventory, in each case, prepared by the Obligors in good faith based upon assumptions which the Obligors believe to be reasonable, for the 30-week period commencing as of January 28, 2017, which shall be in form and substance satisfactory to, and approved by, the Co-Collateral Agents.

(l) Junior DIP. The Obligors hereby agree to use reasonable efforts to obtain from a funding source acceptable to the Co-Collateral Agents, a subordinated debtor-in-possession financing for the Company on terms and conditions and in form and substance reasonably acceptable to the Co-Collateral Agents (the "Junior DIP"), such terms to include, without limitation, that (i) the proceeds of such Junior DIP shall be used to repay in full Loans in an amount equal to Specified Block Reduction Amount (such that after giving effect to such repayment the Availability Block shall be an amount equal to not less than \$12,500,000) on the date such Junior DIP is funded and (ii) such Junior DIP shall be secured by a Lien junior in priority to the Lien of the Lender Parties on the "Revolving Credit Priority Collateral" (as such term is defined in the Intercreditor Agreement), provided that the Obligors will provide prompt notice to the Co-Collateral Agents if the Obligors reasonably determine that the Junior DIP will not be provided.

5. Covenants; Immediate Default. The Obligors hereby agree that the failure to perform or comply with any of the terms of this Agreement, including, without limitation, any of the covenants set forth in Section 4 above, shall constitute an additional immediate Event of Default under the Loan Agreement (without any grace or cure period) and shall, upon notice from the Co-Collateral Agents, result in the occurrence of the Forbearance Termination Date as specified herein.

6. [Reserved].

7. Certain Matters In Respect of the Borrowing Base Certificate.

(a) Certain Matters In Respect of the Borrowing Base Certificate. The Borrowers hereby covenant and agree that, notwithstanding anything to the contrary contained in the Loan Agreement or any other Loan Document, (i) each Borrowing Base Certificate shall be certified by Holly Etlin, in her capacity as Chief Restructuring Officer of the Company, and either Deborah Rieger-Paganis in her capacity as Interim Chief Financial Officer or Naveed Manzoor in his capacity as Chief Restructuring Advisor of the Canadian Borrower, and (ii) each Notice of Borrowing shall include a certification by a Senior Officer of the applicable Borrower certifying the payments set forth in the Budget to be made by the Obligors with the proceeds of such Borrowing, and each such certification shall be in form and substance satisfactory to the Agents.

The Borrowers acknowledge and agree that the Lender Parties may refuse to fund any Borrowing as a result of the Specified Defaults.

(b) [Reserved].

(c) Determination of the Tranche A Borrowing Base. Each of the undersigned Lender Parties hereby acknowledges and agrees that the Company may include in the determination of Tranche A Borrowing Base certain Inventory, without duplication, owned by a Borrower or a Guarantor that is Eligible Inventory (but for clause (iii) of the definition of “Eligible Inventory”) that is currently located in the Port of Los Angeles, so long as such Inventory will be received in Company’s warehouse in Vernon, California within three (3) Business Days of the date of inclusion in the Tranche A Borrowing Base, provided that (i) such Inventory is specifically identified by the Borrowers to the Co-Collateral Agents, including in each Borrowing Base Certificate and (ii) the Co-Collateral Agents have not notified the Company in writing (which may be electronic mail) that such Inventory shall be no longer be included in the determination of Tranche A Borrowing Base, which notice may be sent at any time in the sole and absolute discretion of the Co-Collateral Agents.

8. Representations and Warranties; Reaffirmation; No Off-Sets; Release. To induce the Lender Parties to enter into this Agreement:

(a) Each Obligor represents and warrants that, upon and after giving effect to this Agreement, (i) the representations and warranties of such Obligor contained in the Loan Documents, including this Agreement and any agreement, instrument or document executed in connection herewith or therewith or pursuant hereto or thereto are true and correct in all material respects (except to the extent that any such representation or warranty, by its express terms, relates to a prior specific date or period, in which case such representations and warranties are true and correct as of such earlier date or period, as applicable, and except to the extent any such representation or warranty is made incorrect only because of the existence of a Specified Default), (ii) it has the power and authority and is duly authorized to enter into, deliver and perform this Agreement, (iii) this Agreement, the Loan Agreement and each of the other Loan Documents to which it is a party is the legal, valid and binding obligation thereof, enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors’ rights generally and by general principles of equity (regardless of whether enforcement is sought in equity or in law), (iv) the execution, delivery and performance of this Agreement by each Obligor have been duly authorized by all necessary action, and do not (A) require any consent or approval of any holders of Capital Stock of any Obligor, other than those already obtained; (B) contravene the Organic Documents of any Obligor; (C) violate or cause a material default under any Applicable Law or any Guggenheim Document; or (D) result in or require the imposition of any Lien (other than Permitted Liens and Liens granted hereunder) on any Property of any Obligor and (v) each Obligor is Solvent on the Effective Date, after giving effect to this Agreement;

(b) Each Obligor (i) agrees that this Agreement is not intended to be, and is not, a novation of any of the Loan Documents or any of the Obligations thereunder and does hereby ratify, confirm and reaffirm each of the agreements, covenants, and undertakings made by it



under the Loan Agreement and each and every other Loan Document executed by it in connection therewith or pursuant thereto, in each case, as modified by this Agreement, as if such Obligor were making said agreements, covenants and undertakings on the date hereof, except with respect to such agreements, covenants and undertakings which, by their express terms, are applicable only to a prior specified date, (ii) ratifies and confirms all of its Obligations to the Lender Parties and (iii) confirms that the Obligations are and remain secured by the Collateral pursuant to the Security Documents and pursuant to all other instruments and documents executed and/or delivered by the Obligors, as security for the Obligations and acknowledges the validity of the Liens granted in favor of the Agents, for the benefit of the Secured Parties, pursuant thereto;

(c) Each Obligor does hereby acknowledge and agree that, as of the date hereof, no known right of offset, defense, counterclaim, claim, cause of action or objection exists in favor of any Obligor against any Lender Party arising out of or with respect to (i) the Obligations, this Agreement, the Loan Agreement or any of the other Loan Documents, (ii) any other documents evidencing, securing or in any way relating to the foregoing, or (iii) the administration or funding of the Loans or the Obligations; and

(d) As a material inducement to the Lender Parties entering into this Agreement to forbear from enforcing their rights and exercising their remedies under the Loan Documents and Applicable Law with respect to the Specified Defaults during the Forbearance Period, all in accordance with and subject to the terms and conditions of this Agreement and the Loan Agreement, and all of which are to the direct advantage and benefit of Obligors, each Obligor, for itself and its respective successors and assigns, (i) does hereby remise, release, waive, relinquish, acquit, satisfy and forever discharge each Lender Party and each other Secured Party and all of the respective past, present and future officers, directors, employees, agents, attorneys, Agent Advisors, representatives, participants, heirs, Affiliates, successors and assigns of each Agent, each Co-Collateral Agent, each Lender, each Issuing Bank, and each other Secured Party (collectively the “Discharged Parties” and each a “Discharged Party”), from any and all manner of debts, accountings, bonds, warranties, representations, covenants, promises, contracts, controversies, agreements, liabilities, obligations, expenses, damages, judgments, executions, actions, suits, claims, counterclaims, demands, defenses, setoffs, objections and causes of action of any nature whatsoever, whether at law or in equity, either now accrued or hereafter maturing and whether known or unknown, including, but not limited to, any and all claims which may be based on allegations of breach of contract, failure to lend, fraud, promissory estoppel, libel, slander, usury, negligence, misrepresentation, breach of fiduciary duty, bad faith, lender malpractice, undue influence, duress, tortious interference with contractual relations, interference with management, or misuse of control which such Obligor now has or hereafter can, shall or may have by reason of any matter, cause, thing or event occurring on or prior the date of this Agreement arising out of, in connection with or relating to (i) the Obligations, including, but not limited to, the administration or funding thereof, (ii) any of the Loan Documents or the indebtedness evidenced and secured thereby, and (iii) any other agreement or transaction between any Obligor and any Discharged Party relating to or in connection with the Loan Documents or the transactions contemplated therein; and (b) does hereby covenant and agree never to institute or cause to be instituted or continue prosecution of any suit or other form of action or proceeding of any kind or nature whatsoever against any Discharged Party, by reason of or in connection with any of the foregoing matters, claims or causes of action, provided,

however, that the foregoing release and covenant not to sue shall not apply to any claims first arising after the date of this Agreement with respect to acts, occurrences or events after the date of this Agreement. To this end, to the maximum extent permitted by law, to the extent the release under this Section 8(d) is a release as to which Section 1542 of the California Civil Code or any similar provision of other Applicable Law applies, each Obligor, for itself and its respective successors and assigns, waives all rights under Section 1542 of the California Civil Code or such similar provision of other Applicable Law, and acknowledge that Section 1542 of the California Civil Code provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

The waiver above of rights under Section 1542 of the California Civil Code is included solely out of an abundance of caution, and shall not be construed to mean that Section 1542 of the California Civil Code is in any way applicable to the release hereunder.

9. Closing; Conditions Precedent. Each party hereto hereby agrees that the provisions of this Agreement shall be effective as of February 14, 2017 (the “Effective Date”) upon the satisfaction (or waiver by the Administrative Agent in its sole discretion) of each of the following conditions precedent not later than February 14, 2017:

(a) Delivery of Documents. On or prior to the date hereof, the Administrative Agent shall have received a copy of this Agreement duly executed by each Obligor, the Lenders, the Agents and Guggenheim (in its capacities as (i) “Administrative Agent” and “Collateral Agent” under the Guggenheim Credit Agreement and (ii) “Guggenheim Administrative Agent” and “Guggenheim Collateral Agent” under the Intercreditor Agreement).

(b) [Reserved].

(c) Initial Budget. On or prior to the date hereof, the Administrative Agent and the Co-Collateral Agents shall have received the Initial Budget prepared by the Borrowers in consultation with the Financial Advisor, in form and substance satisfactory to, and approved by, the Co-Collateral Agents.

(d) Secretary’s Certificates. Administrative Agent and the Co-Collateral Agents shall have received a certificate of a duly authorized officer of each Obligor certifying (i) that attached copies of such Obligor’s Organic Documents are true and complete, and in full force and effect, (ii) that an attached copy of resolutions authorizing execution and delivery of this Agreement and the documents related hereto is true and complete, and that such resolutions are in full force and effect, were duly adopted, have not been amended, modified or revoked, and constitute all resolutions adopted with respect to this credit facility, and (iii) to the title, name and signature of each Person authorized to sign this Agreement and any documents relating hereto, in each case in form and substance satisfactory to the Agents and the Co-Collateral Agents.

(e) Fees and Expenses. Borrowers shall have paid to the Administrative Agent the Expenses (to the extent incurred, invoiced and otherwise known as to amount as of the date hereof), together with any other fees due and payable on the date hereof.

(f) No Events of Default, Etc. After giving effect to this Agreement, no Default or Event of Default, other than the Specified Defaults, shall have occurred and be continuing under the Loan Agreement or any other Loan Document and each of the representations and warranties in Section 8 of this Agreement shall be true and correct.

Each Lender and each Co-Collateral Agent that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required under this Agreement to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received reasonably advanced notice from such Lender or Co-Collateral Agent prior to the proposed Effective Date specifying its objection thereto.

10. Additional Acknowledgments. Each Obligor expressly acknowledges and agrees that the waivers, estoppels and releases in favor of the Lender Parties and the other Secured Parties contained in this Agreement shall not be construed as an admission of any wrongdoing, liability or culpability on the part of any Lender Party or such other Secured Party, or as an admission by any Lender Party or other Secured Party of the existence of any claims by any Obligor against any Lender Party. Each Obligor further acknowledges and agrees that, to the extent that any such claims exist, they are of a speculative nature so as to be incapable of objective valuation and that, to the extent that any such claims may exist and may have value, such value would constitute primarily “nuisance” value or “leverage” value in adversarial proceedings between any Obligor and any Lender Party or other Secured Party. In any event, each Obligor acknowledges and agrees that the value to such Obligor of the covenants and agreements on the part of each Lender Party or other Secured Party contained in this Agreement substantially and materially exceeds any and all value of any kind or nature whatsoever of any claims or other liabilities waived or released by such Obligor hereunder.

11. Reduction in Commitments. Each Obligor and, notwithstanding the requirements of the Loan Agreement, each of the undersigned Lenders and the Agents hereby agree that, effective as of the date hereof, (a) the aggregate Tranche A Revolver Commitments shall be reduced by an amount equal to \$42,500,000, (b) the aggregate Tranche A-1 Revolver Commitments shall be reduced by an amount equal to \$1,500,000 and (c) the aggregate Canadian Revolver Commitments shall be reduced by an amount equal to Cdn. \$9,000,000, such that the remaining amount of Tranche A Revolver Commitments equal \$82,500,000, the remaining amount of Tranche A-1 Revolver Commitments equal \$2,500,000 and the remaining amount of Canadian Revolver Commitments equal Cdn. \$15,000,000. As of the Effective Date, Schedule 1.1(a) (Commitments of Lenders) to the Loan Agreement shall be replaced by Schedule 1.1(a) (Commitments of Lenders) attached hereto as Exhibit A. The Lenders hereby agree that they will make and accept payments of amounts owing under the Loan Documents, and otherwise make such arrangement among themselves, to give effect to the Commitments set forth on Schedule 1.1(a) attached hereto as Exhibit A.

12. Expenses.

(a) [Reserved].

(b) Without limiting the generality of Section 3.4 of the Loan Agreement, the Borrowers and the other Obligor jointly and severally agree to pay on demand, without duplication, all reasonable and actual invoiced costs and expenses incurred by the Agents and the Co-Collateral Agents in connection with the preparation, execution, delivery and enforcement of this Agreement and all other documents, instruments and agreements entered into in connection herewith and in connection with any other transactions contemplated hereby, including, without limitation, the reasonable fees and out-of-pocket expenses of legal counsel to the Agents, Co-Collateral Agents and Lenders (collectively the “Expenses”).

13. Conflict; Amendments. In the event of any conflict between the provisions of the Loan Documents and this Agreement, the provisions of this Agreement shall govern. This Agreement shall constitute a Loan Document for all purposes of the Loan Agreement.

14. No Waiver. Except as otherwise expressly provided for in this Agreement, nothing contained in this Agreement shall extend to or affect in any way any of the rights or obligations of the Obligor and their respective Affiliates, or the Lender Parties’ obligations and/or rights and remedies under the Loan Agreement, the other Loan Documents or Applicable Law. Except as expressly set forth herein, all of the terms and provisions of the Loan Agreement and the other Loan Documents shall remain in full force and effect. Each Obligor, individually and on behalf of its respective Affiliates, hereby agrees that the Lender Parties shall not be deemed to have waived the Specified Defaults or any other Default or Event of Default existing on the date hereof or arising hereafter or any or all of their rights and remedies under the Loan Documents and Applicable Law with respect to such Specified Defaults, Defaults or Events of Default. This Agreement shall be binding upon each Obligor, any successors or assigns of any Obligor and any other guarantor or co-obligor of any of the Obligations.

15. Agreements among Lenders and Agents. The Lenders agree that (a) notwithstanding the occurrence and continuance of the Specified Defaults, the Administrative Agent and the Canadian Agent may continue to honor requests for, and, if either Agent honors such request, the Lenders and Issuing Banks shall continue to make, Loans and Letters of Credit (and Bankers’ Acceptances) available to the Borrowers under the Loan Agreement (and, in the event that either Agent honors any such request, such Loan will be deemed properly requested for the purposes of Section 4.1.2 of the Loan Agreement) and (b) unless otherwise requested by the applicable Issuing Bank and notwithstanding anything to the contrary contained in the Loan Agreement, Letters of Credit (and any Bankers’ Acceptance) may have an expiration date (or maturity date, as applicable) which occurs later than 7 days prior to the Termination Date without the requirement that such Letters of Credit (or Bankers’ Acceptances) be Cash Collateralized by the Borrower. These agreements of the Lenders under this Section 15 shall remain in effect with respect to any Loans made and Letters of Credit issued (and any corresponding Bankers’ Acceptances) until the earlier of (x) 5:00 p.m. (Boston time) on February 28, 2017 and (y) the date this authorization is revoked by the Required Lenders pursuant to a writing delivered to the Administrative Agent and each of the Lenders. **The provisions of this Section 15 are solely for the benefit of the Agents, the Co-Collateral Agents, the Lenders and the Issuing Banks, and neither any Borrower nor any Guarantor shall have any rights or benefits under this Section 15 (notwithstanding that these**

**provisions are included in this Agreement), and no Obligor shall have any rights as a third-party beneficiary of this Section 15, all of which are expressly waived by each such Obligor.**


16. Miscellaneous. Each Obligor agrees to take such further action as any of the Lender Parties shall reasonably request in connection herewith to evidence the agreements herein contained. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same instrument. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto. This Agreement shall be governed by, and construed and enforced in accordance with, the internal laws of the State of New York. This Agreement may not be modified, altered or amended except by agreement in writing signed by the Obligors, the Lenders and the Agents. Each Obligor acknowledges that it has consulted with counsel and with such other expert advisors as it deemed necessary in connection with the negotiation, execution and delivery of this Agreement. This Agreement shall be construed without regard to any presumption or rule requiring that it be construed against the party causing this Agreement or any part hereof to be drafted. Nothing in this Agreement shall be construed to alter the debtor-creditor relationship between the Obligors, on the one hand, and the Secured Parties, on the other. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any provisions of this Agreement shall be prohibited by or rendered invalid under Applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement. This Agreement is not intended as, nor shall it be construed to create, a partnership or joint venture relationship between or among any of the parties. This Agreement together with the other Loan Documents embodies the entire understanding and agreement between the parties hereto and thereto with respect to the subject matter hereof and thereof and supersedes all prior agreements, understandings and inducements, whether express or implied, oral or written. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or other electronic communication shall be effective as delivery of a manually executed counterpart of this Agreement.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

**Borrowers:**

**BCBG MAX AZRIA GROUP, LLC**

By:  \_\_\_\_\_

Name: Holly Etlin

Title: Chief Restructuring Officer

**BCBG MAX AZRIA CANADA INC.**

By: BCBG MAX AZRIA B.V., its sole shareholder

By: \_\_\_\_\_

Name: Erica Alterwitz Meierhans

Title: Managing Director

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

**Borrowers:**

**BCBG MAX AZRIA GROUP, LLC**

By: \_\_\_\_\_

Name: Holly Etlin

Title: Chief Restructuring Officer

**BCBG MAX AZRIA CANADA INC.**

By: BCBG MAX AZRIA B.V., its sole shareholder

By:  \_\_\_\_\_

Name: Erica Alterwitz Meierhans

Title: Managing Director

**Guarantors:**

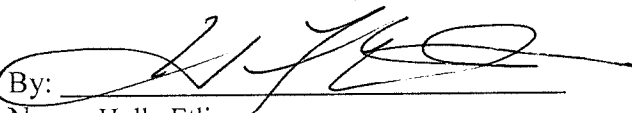
**MLA MULTIBRAND HOLDINGS, LLC**

By: 

Name: Holly Etlin

Title: Chief Restructuring Officer

**MAX RAVE, LLC**

By: 

Name: Holly Etlin

Title: Chief Restructuring Officer

**BCBG MAX AZRIA INTERMEDIATE  
HOLDINGS, LLC**

By: BCBG Max Azria Global Holdings, LLC, its sole member

By: 


Name: Holly Etlin

Title: Chief Restructuring Officer



**Agents and Lenders:**

**BANK OF AMERICA, N.A.**, as  
Administrative Agent, a Co-Collateral Agent,  
a Lender and an Issuing Bank

By:  \_\_\_\_\_  
Name: Roger Malouf  
Title: Director

**BANK OF AMERICA, N.A.**, (acting through its Canada branch), as Canadian Agent, a Lender and an Issuing Bank

By: 

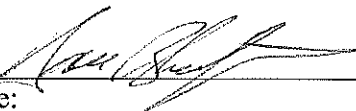
Name: Sylvania Durkiewicz

Title: Vice President

**WELLS FARGO BANK, N.A.**, as a Lender and a Co-Collateral Agent

By: Y. Sonia Anandraj  
Name: Y. Sonia Anandraj  
Title: Authorized Officer.

**WELLS FARGO CAPITAL FINANCE  
CORPORATION CANADA, as a Lender**

By:   
Name: \_\_\_\_\_  
Title: **David G. Phillips  
Senior Vice President  
Credit Officer, Canada  
Wells Fargo Capital Finance  
Corporation Canada**

The undersigned, in its capacities (i) as “Guggenheim Administrative Agent” and “Guggenheim Collateral Agent” under the Intercreditor Agreement and (ii) “Administrative Agent and “Collateral Agent” under the Guggenheim Credit Agreement, hereby acknowledges and consents to the foregoing Agreement, and, notwithstanding any of the restrictions set forth in Section 5.3 of the Intercreditor Agreement, hereby consents to the transactions contemplated under the Agreement and the Loan Agreement (as amended and in effect after giving effect to this Agreement). The undersigned further acknowledges and agrees in its capacity as “Guggenheim Administrative Agent” and “Guggenheim Collateral Agent” under the Intercreditor Agreement that (x) all references to the Revolving Credit Agreement set forth in the Intercreditor Agreement shall mean the Loan Agreement (as amended and in effect after giving effect to this Agreement) and (y) that the “Revolving Credit Cap Amount” (as such term is defined in the Intercreditor Agreement) is hereby permanently increased by an amount equal to \$5,000,000 to provide for the Specified Block Reduction Amount.

**GUGGENHEIM CORPORATE FUNDING, LLC**

By: \_\_\_\_\_

Name:

Title:

## SCHEDULE A

### **Specified Defaults**

1. Events of Default arising from the Company's failure to deliver (a) the audited annual financial statements and related certifications (including the Compliance Certificate to be delivered pursuant to Section 10.1.2(d) of the Loan Agreement concurrently therewith) for the Fiscal Year ended January 20, 2016, as required by Section 10.1.2(a) of the Loan Agreement and (b) the business plan and projections for the Fiscal Year ended January 20, 2016, as required by Section 10.1.2(a) of the Loan Agreement, each of which constitutes an Event of Default under Section 11.1(c) of the Loan Agreement.
2. Events of Default arising from the Company's entry into the Disposition Letter and the conduct of the Specified Store Closing Sale in violation of Section 10.2.12 of the Loan Agreement, which constitutes an Event of Default under Section 11.1(c) of the Loan Agreement.
3. Event of Default arising from the Obligors' intention to commence a Chapter 11 bankruptcy proceeding in the U.S. Bankruptcy Court, a proceeding under the BIA and/or the CCAA and the Obligors inability and failure to pay its debts as they become due, including, without limitation, inability to pay debts to vendors which have resulted in the Obligors being unable to replenish their inventory.
4. Any Event of Default arising from the occurrence of an "Event of Default" under and as defined in the Guggenheim Credit Agreement (including, without limitation, with respect to any Specified Defaults).
5. Any Event of Default arising from the failure to give notice of any Specified Default as required under the Loan Documents and any breach of any representation or certification to the effect that no Default or Event of Default exists, where such representation or certification is untrue only because of the existence of Specified Defaults (including, for the avoidance of doubt, representations or certifications which were untrue due to the failure of the Borrowers and the Obligors, taken as a whole, to be Solvent).
6. Event of Defaults arising from the failure to comply with Sections 10.1.10 (Payment of Obligations) or 10.1.13 (Compliance with Terms of Leaseholds) of the Loan Agreement, each of which would constitute an Event of Default under Section 11.1(d) of the Loan Agreement.

## **SCHEDULE B**

### **Required Milestones**

1. No later than February 17, 2017, the Borrowers shall have delivered to the Co-Collateral Agents substantially complete drafts of (i) customary first day motions and orders for a case commenced under Chapter 11 of Title 11 of the United States Code, and (B) customary motions and orders (including an initial order, which shall provide, *inter alia*, that Deloitte Restructuring Inc. be proposed to act as the monitor or trustee thereunder and that it has consented to act in such capacity) for a proceeding commenced under the BIA or the CCAA in connection with a liquidation of the entire chain of the store locations of the Obligors in Canada other than the Hudson's Bay Company partner shops, each in form and substance satisfactory to the Co-Collateral Agents.
2. No later than February 20, 2017, the Borrowers shall have delivered to the Co-Collateral Agents a term sheet for the Junior DIP on terms and conditions and in form and substance acceptable to the Co-Collateral Agent, which shall include terms satisfying the requirements set forth in Sections 3(c)(i) and 4(l) of this Agreement and be in accordance with the Budget.

**EXHIBIT A**

**SCHEDULE 1.1(a)**

**COMMITMENTS OF LENDERS**

Lender	Tranche A Revolver Commitment	Tranche A-1 Revolver Commitment	Canadian Revolver Commitment
Bank of America, N.A.	\$40,000,000	\$2,500,000	\$0
Bank of America, N.A. (acting through its Canada Branch)	\$0	\$0	Cdn. \$7,50,000
Wells Fargo Bank, N.A.	\$42,500,000	\$0	\$0
Wells Fargo Capital Finance Corporation Canada	\$0	\$0	Cdn. \$7,50,000
<b>Total</b>	<b>\$82,500,000</b>	<b>\$2,500,000</b>	<b>Cdn. \$15,000,000</b>



**ANNEX I**

Initial Budget

Please see attached.

# 24 Week Cash Forecast (1/2)

BCBG Max Azria Group, LLC - US Operations  
 Weekly Cash Flow Forecast  
 (\$ in 000's)

Month / Year Actual / Forecast Week Ending Saturday	Chinese New Year	CH 11 Filing				Mar-17 Forecast	Mar-17 Forecast	Mar-17 Forecast	Mar-17 Forecast	Mar-17 Forecast	Apr-17 Forecast	Apr-17 Forecast	Apr-17 Forecast	Apr-17 Forecast	13 Weeks Total
	Jan-17 Actual	Feb-17 Forecast	Feb-17 Forecast	Feb-17 Forecast	Feb-17 Forecast										
<b>I. Cash Flows</b>	EOM				EOM				EOM				EOM		
<b>Cash Receipts:</b>															
Retail, Factory, & e-Comm (- CC fees + sales tax)	4,256	3,999	5,020	6,855	7,219	7,121	7,144	6,940	6,561	5,824	5,016	4,922	4,027	3,169	73,817
Partner Shops (net of percentage rent)	5,875	-	2,433	-	1,430	-	1,860	-	3,606	-	-	2,378	-	5,218	16,925
Wholesale Operations	719	636	1,034	659	377	459	377	1,028	1,683	550	404	524	4,759	1,669	14,159
Licensing	-	-	-	759	325	-	-	-	-	-	-	-	-	-	1,084
International Affiliates	218	180	-	-	-	-	-	-	-	-	-	-	-	-	180
Other Cash Receipts	17	16	-	-	-	-	-	-	-	-	-	-	-	-	16
<b>Total Cash Receipts</b>	<b>11,085</b>	<b>4,831</b>	<b>8,487</b>	<b>8,272</b>	<b>9,351</b>	<b>7,580</b>	<b>9,381</b>	<b>7,969</b>	<b>11,850</b>	<b>6,374</b>	<b>5,420</b>	<b>7,824</b>	<b>8,786</b>	<b>10,056</b>	<b>106,182</b>
<b>Operating Disbursements</b>	EOM				EOM				EOM				EOM		
Merchandise Vendors	1,008	-	1,600	3,000	-	3,789	3,789	3,789	3,789	3,789	6,685	6,685	6,685	6,685	50,285
Payroll, Payroll Taxes, and Benefits	4,471	2,336	4,578	389	5,000	556	4,583	599	4,736	530	4,627	357	4,856	357	33,502
Occupancy (Rent & Utilities)	426	201	1,100	1,500	800	1,300	3,631	1,495	231	94	1,788	3,091	723	186	16,140
Sales Tax	1,668	140	-	1,870	-	-	-	1,711	-	-	-	-	2,332	-	6,053
Customs & Freight	756	779	867	598	505	64	145	157	400	346	800	800	554	471	6,487
Marketing & Ecommerce	357	195	137	466	340	-	250	250	250	250	1,100	225	225	225	3,912
Insurance & Risk Management	16	0	-	-	295	-	260	-	-	310	-	245	-	-	1,110
Information Technology	303	159	264	64	1,270	-	69	69	69	69	321	87	87	87	2,616
Contractors / Professionals / Legal	10	621	1,690	1,150	1,054	-	-	-	-	-	2,898	-	-	-	7,413
Supplies, Maintenance & Other	256	670	1,102	342	425	-	490	490	490	565	715	490	400	400	6,580
<b>Total Operating Disbursements</b>	<b>9,271</b>	<b>5,101</b>	<b>11,338</b>	<b>9,378</b>	<b>9,688</b>	<b>5,708</b>	<b>13,216</b>	<b>8,561</b>	<b>9,966</b>	<b>5,953</b>	<b>18,934</b>	<b>11,980</b>	<b>15,863</b>	<b>8,411</b>	<b>134,097</b>
<b>Operating Cash Flow</b>	<b>1,813</b>	<b>(270)</b>	<b>(2,850)</b>	<b>(1,106)</b>	<b>(337)</b>	<b>1,872</b>	<b>(3,835)</b>	<b>(593)</b>	<b>1,884</b>	<b>421</b>	<b>(13,514)</b>	<b>(4,157)</b>	<b>(7,077)</b>	<b>1,646</b>	<b>(27,916)</b>
<b>Non-Operating Disbursements:</b>															
Interest & Fees-Revolver	-	-	-	-	-	-	-	-	-	-	700	-	-	-	700
Interest-Term	-	311	-	-	292	-	-	-	-	292	-	-	-	292	1,187
DIP Interest	-	-	-	-	-	-	-	-	-	75	-	-	-	264	339
Capex	12	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Subtotal Non-Operating Disbursements</b>	<b>12</b>	<b>311</b>	<b>-</b>	<b>-</b>	<b>292</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>367</b>	<b>700</b>	<b>-</b>	<b>-</b>	<b>556</b>	<b>2,226</b>
<b>Subtotal Restructuring Disbursements</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Total Disbursements</b>	<b>9,283</b>	<b>5,412</b>	<b>11,338</b>	<b>9,378</b>	<b>9,980</b>	<b>5,708</b>	<b>13,216</b>	<b>8,561</b>	<b>9,966</b>	<b>6,320</b>	<b>19,635</b>	<b>11,980</b>	<b>15,863</b>	<b>8,967</b>	<b>136,324</b>
<b>Net Cash Flow</b>	<b>1,801</b>	<b>(581)</b>	<b>(2,850)</b>	<b>(1,106)</b>	<b>(629)</b>	<b>1,872</b>	<b>(3,835)</b>	<b>(593)</b>	<b>1,884</b>	<b>54</b>	<b>(14,215)</b>	<b>(4,157)</b>	<b>(7,077)</b>	<b>1,090</b>	<b>(30,142)</b>
<b>II. Availability</b>															
Gross Borrowing Base	80,451	77,078	82,308	81,146	82,931	76,407	76,125	73,795	72,077	67,061	66,070	68,627	69,454	69,872	69,872
Less: US Revolver Balance	(56,568)	(55,359)	(58,209)	(59,315)	(59,944)	(58,072)	(61,906)	(62,499)	(60,615)	(60,560)	(74,775)	(78,932)	(86,009)	(84,919)	(84,919)
Less: CA Revolver Balance	(11,591)	(11,161)	(11,204)	(11,182)	(11,178)	(11,235)	(11,122)	(10,734)	(9,985)	(9,248)	(8,449)	(7,624)	(6,752)	(5,884)	(5,884)
Less: Letters of Credit	(8,775)	(8,775)	(8,775)	(8,775)	(8,775)	(8,775)	(8,775)	(8,775)	(8,775)	(8,775)	(8,775)	(8,775)	(8,775)	(8,775)	(8,775)
Subtotal Obligations before DIP Funding	(76,934)	(75,295)	(78,188)	(79,272)	(79,896)	(78,082)	(81,804)	(82,008)	(79,374)	(78,584)	(91,999)	(95,331)	(101,536)	(99,578)	(99,578)
Net Remaining Availability	3,517	1,784	4,120	1,874	3,034	(1,676)	(5,679)	(8,214)	(7,298)	(11,522)	(25,929)	(26,704)	(32,082)	(29,706)	(29,706)
Add: Bank Cash	1,791	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Bank Liquidity	5,308	1,784	4,120	1,874	3,034	(1,676)	(5,679)	(8,214)	(7,298)	(11,522)	(25,929)	(26,704)	(32,082)	(29,706)	(29,706)
<b>III. Disbursements not included above</b>															
Canada Rent	-	-	1,042	-	-	-	-	-	-	-	-	-	-	-	1,042
Canada Payroll	-	-	462	-	-	-	-	-	-	-	-	-	-	-	462
Canadian Advisors	-	-	96	241	264	-	-	-	23	-	914	-	-	39	1,577
	-	-	1,600	241	264	-	-	-	23	-	914	-	-	39	3,080
<i>Cumulative disbursements not included above</i>	-	-	1,600	1,841	2,104	2,104	2,104	2,104	2,128	2,128	3,042	3,042	3,042	3,080	3,080
Total Bank Liquidity with all disbursements	5,308	1,784	2,520	33	930	(3,780)	(7,784)	(10,318)	(9,425)	(13,650)	(28,971)	(29,746)	(35,124)	(32,786)	(32,786)
<b>IV. DIP Loan Balance &amp; ABL Loan Balance</b>															
OS Check Float	-	1,478	1,478	1,478	1,478	-	-	-	-	-	-	-	-	-	-
DIP Loan Balance	-	-	-	-	-	3,780	7,784	10,318	9,425	13,650	28,971	29,746	35,124	32,786	32,786
Liquidity Post DIP Loan	306	1,042	(1,445)	(548)	-	-	-	-	-	-	-	-	-	-	-
ABL Loan Obligations post DIP	(76,934)	(75,295)	(78,188)	(79,272)	(79,896)	(76,407)	(76,125)	(73,795)	(72,077)	(67,061)	(66,070)	(68,627)	(69,454)	(69,872)	(69,872)

Note: Assumes CH.11 week of Feb 25th

**DRAFT: All figures preliminary, subject to revision**

# 24 Week Cash Forecast (2/2)

BCBG Max Azria Group, LLC - US Operations  
 Weekly Cash Flow Forecast  
 (\$ in 000's)

Month / Year Actual / Forecast Week Ending Saturday	May-17 Forecast May-06	May-17 Forecast May-13	May-17 Forecast May-20	May-17 Forecast May-27	Jun-17 Forecast Jun-03	Jun-17 Forecast Jun-10	Jun-17 Forecast Jun-17	Jun-17 Forecast Jun-24	Jun-17 Forecast Jul-01	Jul-17 Forecast Jul-08	Jul-17 Forecast Jul-15	Jul-17 Forecast Jul-22	Jul-17 Forecast Jul-29	13 Weeks Total
<b>I. Cash Flows</b>														
<b>Cash Receipts:</b>														
Retail, Factory, & e-Comm (- CC fees + sales tax)	3,856	4,553	4,041	3,842	4,303	4,032	3,481	3,401	3,965	5,011	4,609	3,567	3,415	52,078
Partner Shops (net of percentage rent)	-	1,914	-	4,945	-	2,571	-	4,893	-	2,830	-	-	5,701	22,856
Wholesale Operations	677	852	804	1,160	899	926	954	1,065	1,231	980	1,188	1,727	1,347	13,810
Licensing	-	-	-	150	-	-	-	-	-	-	-	-	-	150
International Affiliates	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Other Cash Receipts	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total Cash Receipts</b>	<b>4,533</b>	<b>7,320</b>	<b>4,846</b>	<b>10,098</b>	<b>5,202</b>	<b>7,529</b>	<b>4,435</b>	<b>9,358</b>	<b>5,196</b>	<b>5,991</b>	<b>8,628</b>	<b>5,294</b>	<b>10,464</b>	<b>88,893</b>
<b>Operating Disbursements</b>														
Merchandise Vendors	3,278	3,278	3,278	3,278	1,703	1,703	1,703	1,703	1,703	2,854	2,854	2,854	2,854	33,041
Payroll, Payroll Taxes, and Benefits	3,669	357	3,748	357	3,634	428	3,812	357	3,618	428	3,474	598	3,548	28,028
Occupancy (Rent & Utilities)	1,177	1,747	723	186	740	2,223	723	186	186	1,170	1,747	723	186	11,716
Sales Tax	-	-	1,147	-	-	-	1,185	-	-	-	-	1,372	-	3,705
Customs & Freight	251	251	1,540	251	536	536	2,385	536	241	241	1,080	241	115	8,203
Marketing & Ecommerce	1,100	150	150	150	1,100	150	150	150	1,100	150	150	150	150	4,800
Insurance & Risk Management	-	149	-	-	-	326	-	-	50	-	-	-	-	525
Information Technology	287	87	87	87	333	69	69	69	69	87	87	87	87	1,704
Contractors / Professionals / Legal	2,746	-	-	-	2,453	-	-	-	-	2,823	-	-	-	8,022
Supplies, Maintenance & Other	439	314	314	314	439	311	311	311	311	436	314	314	314	4,440
<b>Total Operating Disbursements</b>	<b>12,947</b>	<b>6,332</b>	<b>10,987</b>	<b>4,622</b>	<b>10,938</b>	<b>5,746</b>	<b>10,338</b>	<b>3,311</b>	<b>7,277</b>	<b>8,389</b>	<b>9,706</b>	<b>6,339</b>	<b>7,253</b>	<b>104,184</b>
<b>Operating Cash Flow</b>	<b>(8,413)</b>	<b>987</b>	<b>(6,141)</b>	<b>5,476</b>	<b>(5,736)</b>	<b>1,783</b>	<b>(5,903)</b>	<b>6,046</b>	<b>(2,081)</b>	<b>(2,398)</b>	<b>(1,078)</b>	<b>(1,044)</b>	<b>3,211</b>	<b>(15,291)</b>
<b>Non-Operating Disbursements:</b>														
Interest & Fees-Revolver	-	-	-	-	-	-	-	-	-	1,113	-	-	-	1,113
Interest-Term	-	-	-	-	292	-	-	-	292	-	-	-	292	876
DIP Interest	-	-	-	279	-	-	-	-	315	-	-	-	-	956
Capex	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Subtotal Non-Operating Disbursements</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>279</b>	<b>292</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>607</b>	<b>1,113</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>2,945</b>
<b>Subtotal Restructuring Disbursements</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Total Disbursements</b>	<b>12,947</b>	<b>6,332</b>	<b>10,987</b>	<b>4,901</b>	<b>11,230</b>	<b>5,746</b>	<b>10,338</b>	<b>3,311</b>	<b>7,884</b>	<b>9,503</b>	<b>9,706</b>	<b>6,339</b>	<b>7,908</b>	<b>107,129</b>
<b>Net Cash Flow</b>	<b>(8,413)</b>	<b>987</b>	<b>(6,141)</b>	<b>5,197</b>	<b>(6,028)</b>	<b>1,783</b>	<b>(5,903)</b>	<b>6,046</b>	<b>(2,688)</b>	<b>(3,512)</b>	<b>(1,078)</b>	<b>(1,044)</b>	<b>2,556</b>	<b>(18,236)</b>
<b>II. Availability</b>														
Gross Borrowing Base	74,166	76,540	76,693	78,335	75,975	76,842	75,481	76,377	73,293	73,757	75,278	74,037	75,052	75,052
Less: US Revolver Balance	(93,333)	(92,345)	(98,486)	(93,289)	(99,316)	(97,533)	(103,436)	(97,390)	(100,078)	(103,589)	(104,667)	(105,711)	(103,155)	(103,155)
Less: CA Revolver Balance	(4,721)	(3,742)	(2,705)	(1,826)	(1,196)	(1,091)	(1,091)	(1,091)	(1,091)	(1,091)	(1,091)	(1,091)	(1,091)	(1,091)
Less: Letters of Credit	(8,775)	(8,775)	(8,775)	(8,775)	(8,775)	(8,775)	(8,775)	(8,775)	(8,775)	(8,775)	(8,775)	(8,775)	(8,775)	(8,775)
Subtotal Obligations before DIP Funding	(106,829)	(104,862)	(109,966)	(103,890)	(109,287)	(107,399)	(113,302)	(107,255)	(109,943)	(113,455)	(114,533)	(115,577)	(113,021)	(113,021)
Net Remaining Availability	(32,663)	(28,322)	(33,274)	(25,555)	(33,312)	(30,557)	(37,821)	(30,878)	(36,650)	(39,698)	(39,255)	(41,540)	(37,969)	(37,969)
Add: Bank Cash	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total Bank Liquidity</b>	<b>(32,663)</b>	<b>(28,322)</b>	<b>(33,274)</b>	<b>(25,555)</b>	<b>(33,312)</b>	<b>(30,557)</b>	<b>(37,821)</b>	<b>(30,878)</b>	<b>(36,650)</b>	<b>(39,698)</b>	<b>(39,255)</b>	<b>(41,540)</b>	<b>(37,969)</b>	<b>(37,969)</b>
<b>III. Disbursements not included above</b>														
Canada Rent	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Canada Payroll	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Canadian Advisors	400	-	-	31	400	-	-	-	-	-	-	-	-	831
	400	-	-	31	400	-	-	-	-	-	-	-	-	831
<i>Cumulative disbursements not included above</i>	3,480	3,480	3,480	3,511	3,911	3,911	3,911	3,911	3,911	3,911	3,911	3,911	3,911	3,911
<b>Total Bank Liquidity with all disbursements</b>	<b>(36,143)</b>	<b>(31,802)</b>	<b>(36,754)</b>	<b>(29,066)</b>	<b>(37,223)</b>	<b>(34,468)</b>	<b>(41,732)</b>	<b>(34,789)</b>	<b>(40,561)</b>	<b>(43,609)</b>	<b>(43,166)</b>	<b>(45,451)</b>	<b>(41,880)</b>	<b>(41,880)</b>
<b>IV. DIP Loan Balance &amp; ABL Loan Balance</b>														
OS Check Float	-	-	-	-	-	-	-	-	-	-	-	-	-	-
DIP Loan Balance	36,143	31,802	36,754	29,066	37,223	34,468	41,732	34,789	40,561	43,609	43,166	45,451	41,880	41,880
Liquidity Post DIP Loan	-	-	-	-	-	-	-	-	-	-	-	-	-	-
ABL Loan Obligations post DIP	(74,166)	(76,540)	(76,693)	(78,335)	(75,975)	(76,842)	(75,481)	(76,377)	(73,293)	(73,757)	(75,278)	(74,037)	(75,052)	(75,052)

**DRAFT: All figures preliminary, subject to revision**

# Working Capital Summary (1/2)

BCBG Max Azria Group, LLC - US Operations

Working Capital

(\$ in 000's)

	Chinese New Year					CH 11 Filing									
Month / Year	Jan-17	Feb-17	Feb-17	Feb-17	Feb-17	Mar-17	Mar-17	Mar-17	Mar-17	Mar-17	Apr-17	Apr-17	Apr-17	Apr-17	13 Weeks
Actual / Forecast	Actual	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	
Week Ending Saturday	Jan-28	Feb-04	Feb-11	Feb-18	Feb-25	Mar-04	Mar-11	Mar-18	Mar-25	Apr-01	Apr-08	Apr-15	Apr-22	Apr-29	Total
<b>I. Credit Card Receivables - Retail</b>															
Beginning Balance	1,907	1,820	1,467	2,683	3,147	3,072	3,054	3,085	2,909	2,756	2,319	2,041	2,178	1,404	1,820
+ Sales (Retail Stores, Factory & e-Comm)	3,999	3,219	5,905	6,931	6,765	6,727	6,795	6,406	6,068	5,101	4,487	4,791	3,080	2,942	69,216
- CC Fees (1.9%)	(76)	(61)	(112)	(132)	(129)	(128)	(129)	(122)	(115)	(97)	(85)	(91)	(59)	(56)	(1,315)
+ Sales tax collected (7.5%)	300	241	443	520	507	505	510	480	455	383	336	359	231	221	5,191
- Cash Receipts	(4,256)	(3,752)	(5,020)	(6,855)	(7,219)	(7,121)	(7,144)	(6,940)	(6,561)	(5,824)	(5,016)	(4,922)	(4,027)	(3,169)	(73,570)
+/- Adjustment/Other	(54)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Ending Balance</b>	<b>1,820</b>	<b>1,467</b>	<b>2,683</b>	<b>3,147</b>	<b>3,072</b>	<b>3,054</b>	<b>3,085</b>	<b>2,909</b>	<b>2,756</b>	<b>2,319</b>	<b>2,041</b>	<b>2,178</b>	<b>1,404</b>	<b>1,342</b>	<b>1,342</b>
<b>II. Other Receivables - Partner Shops</b>															
Beginning Balance	10,069	5,209	6,056	5,252	6,500	6,680	7,911	7,405	9,002	6,770	8,437	10,106	9,603	10,956	5,209
+ Sales	1,545	1,086	2,087	1,601	2,064	1,579	1,735	2,048	1,762	2,137	2,139	2,405	1,734	2,153	24,529
- Percentage Rent	(340)	(239)	(459)	(352)	(454)	(347)	(382)	(451)	(388)	(470)	(471)	(529)	(381)	(474)	(5,396)
- Cash Receipts	(5,875)	-	(2,433)	-	(1,430)	-	(1,860)	-	(3,606)	-	-	(2,378)	-	(5,218)	(16,925)
+/- Adjustment/Other	(190)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Ending Balance</b>	<b>5,209</b>	<b>6,056</b>	<b>5,252</b>	<b>6,500</b>	<b>6,680</b>	<b>7,911</b>	<b>7,405</b>	<b>9,002</b>	<b>6,770</b>	<b>8,437</b>	<b>10,106</b>	<b>9,603</b>	<b>10,956</b>	<b>7,417</b>	<b>7,417</b>
<b>III. Accounts Receivable - Wholesale</b>															
Beginning Balance	8,561	10,780	10,317	9,719	9,424	9,944	10,151	10,480	10,200	9,432	10,047	10,164	10,473	7,356	10,780
+ Sales	2,274	200	504	420	1,038	769	817	865	1,057	1,345	602	963	1,898	1,898	12,374
- Chargebacks/co-op Adv/Reserves (13.5%)	(307)	(27)	(68)	(56)	(140)	(103)	(110)	(116)	(142)	(181)	(81)	(130)	(256)	(256)	(1,666)
- Cash Receipts	(719)	(636)	(1,034)	(659)	(377)	(459)	(377)	(1,028)	(1,683)	(550)	(404)	(524)	(4,759)	(1,669)	(14,159)
+/- Adjustment/Other	970	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Ending Balance</b>	<b>10,780</b>	<b>10,317</b>	<b>9,719</b>	<b>9,424</b>	<b>9,944</b>	<b>10,151</b>	<b>10,480</b>	<b>10,200</b>	<b>9,432</b>	<b>10,047</b>	<b>10,164</b>	<b>10,473</b>	<b>7,356</b>	<b>6,759</b>	<b>6,759</b>
<b>VIII. Inventory - Total</b>															
Beginning Balance	92,695	90,435	89,457	89,272	90,926	87,681	82,784	77,756	72,474	70,094	67,988	67,362	66,155	67,128	90,435
- Cost of Goods Sold	(3,344)	(1,999)	(4,100)	(4,690)	(5,358)	(5,211)	(5,763)	(5,826)	(6,025)	(5,750)	(4,271)	(4,851)	(2,672)	(2,800)	(59,315)
+ Add Back: Drop-Ship	4	37	3	3	76	-	-	-	-	-	-	-	-	-	119
+ Inventory Receipts	1,818	753	2,993	4,852	1,558	240	562	416	2,788	2,788	2,788	2,788	2,788	5,954	31,270
+ Freight / Customs	327	136	539	873	280	43	101	75	502	502	502	502	502	1,072	5,629
+ Overhead	231	96	380	616	198	31	71	53	354	354	354	354	354	703	3,918
+/- Adjustment/Other	(1,297)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Ending Balance</b>	<b>90,435</b>	<b>89,457</b>	<b>89,272</b>	<b>90,926</b>	<b>87,681</b>	<b>82,784</b>	<b>77,756</b>	<b>72,474</b>	<b>70,094</b>	<b>67,988</b>	<b>67,362</b>	<b>66,155</b>	<b>67,128</b>	<b>72,056</b>	<b>72,056</b>

**DRAFT: All figures preliminary, subject to revision**

# Working Capital Summary (2/2)

BCBG Max Azria Group, LLC - US Operations

Working Capital

(\$ in 000's)

Month / Year Actual / Forecast Week Ending Saturday	May-17 Forecast	May-17 Forecast	May-17 Forecast	May-17 Forecast	Jun-17 Forecast	Jun-17 Forecast	Jun-17 Forecast	Jun-17 Forecast	Jun-17 Forecast	Jun-17 Forecast	Jul-17 Forecast	Jul-17 Forecast	Jul-17 Forecast	Jul-17 Forecast	13 Weeks Total
	May-06	May-13	May-20	May-27	Jun-03	Jun-10	Jun-17	Jun-24	Jul-01	Jul-08	Jul-15	Jul-22	Jul-29		
<b>I. Credit Card Receivables - Retail</b>															
Beginning Balance	1,342	1,904	2,005	1,545	1,740	1,940	1,586	1,438	1,489	1,875	2,370	1,697	1,420	1,342	
+ Sales (Retail Stores, Factory & e-Comm)	4,184	4,407	3,392	3,823	4,264	3,483	3,156	3,268	4,120	5,215	3,728	3,116	3,323	49,479	
- CC Fees (1.9%)	(79)	(84)	(64)	(73)	(81)	(66)	(60)	(62)	(78)	(99)	(71)	(59)	(63)	(940)	
+ Sales tax collected (7.5%)	314	331	254	287	320	261	237	245	309	391	280	234	249	3,711	
- Cash Receipts	(3,856)	(4,553)	(4,041)	(3,842)	(4,303)	(4,032)	(3,481)	(3,401)	(3,965)	(5,011)	(4,609)	(3,567)	(3,415)	(52,078)	
+/- Adjustment/Other	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
<b>Ending Balance</b>	<b>1,904</b>	<b>2,005</b>	<b>1,545</b>	<b>1,740</b>	<b>1,940</b>	<b>1,586</b>	<b>1,438</b>	<b>1,489</b>	<b>1,875</b>	<b>2,370</b>	<b>1,697</b>	<b>1,420</b>	<b>1,514</b>	<b>1,514</b>	
<b>II. Other Receivables - Partner Shops</b>															
Beginning Balance	7,417	9,495	9,510	11,279	8,302	10,025	9,081	10,600	7,463	9,406	10,886	9,913	11,475	7,417	
+ Sales	2,665	2,473	2,268	2,524	2,209	2,086	1,947	2,251	2,492	1,897	2,382	2,001	3,090	30,286	
- Percentage Rent	(586)	(544)	(499)	(555)	(486)	(459)	(428)	(495)	(548)	(417)	(524)	(440)	(680)	(6,663)	
- Cash Receipts	-	(1,914)	-	(4,945)	-	(2,571)	-	(4,893)	-	-	(2,830)	-	(5,701)	(22,856)	
+/- Adjustment/Other	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
<b>Ending Balance</b>	<b>9,495</b>	<b>9,510</b>	<b>11,279</b>	<b>8,302</b>	<b>10,025</b>	<b>9,081</b>	<b>10,600</b>	<b>7,463</b>	<b>9,406</b>	<b>10,886</b>	<b>9,913</b>	<b>11,475</b>	<b>8,184</b>	<b>8,184</b>	
<b>III. Accounts Receivable - Wholesale</b>															
Beginning Balance	6,759	7,767	8,600	9,481	10,006	10,472	10,911	11,321	11,621	11,755	12,673	13,382	13,552	6,759	
+ Sales	1,948	1,948	1,948	1,948	1,577	1,577	1,577	1,577	1,577	2,192	2,192	2,192	2,192	24,445	
- Chargebacks/co-op Adv/Reserves (13.5%)	(263)	(263)	(263)	(263)	(212)	(212)	(212)	(212)	(212)	(295)	(295)	(295)	(295)	(3,292)	
- Cash Receipts	(677)	(852)	(804)	(1,160)	(899)	(926)	(954)	(1,065)	(1,231)	(980)	(1,188)	(1,727)	(1,347)	(13,810)	
+/- Adjustment/Other	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
<b>Ending Balance</b>	<b>7,767</b>	<b>8,600</b>	<b>9,481</b>	<b>10,006</b>	<b>10,472</b>	<b>10,911</b>	<b>11,321</b>	<b>11,621</b>	<b>11,755</b>	<b>12,673</b>	<b>13,382</b>	<b>13,552</b>	<b>14,102</b>	<b>14,102</b>	
<b>VIII. Inventory - Total</b>															
Beginning Balance	72,056	76,287	80,532	85,183	85,334	85,761	86,534	87,468	86,438	85,031	82,967	81,302	80,043	72,056	
- Cost of Goods Sold	(3,497)	(3,484)	(3,077)	(3,327)	(3,052)	(2,706)	(2,544)	(2,689)	(3,066)	(3,722)	(3,324)	(2,917)	(3,398)	(40,802)	
+ Add Back: Drop-Ship	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
+ Inventory Receipts	5,954	5,954	5,954	2,680	2,680	2,680	2,680	1,278	1,278	1,278	1,278	1,278	2,215	37,185	
+ Freight / Customs	1,072	1,072	1,072	482	482	482	482	230	230	230	230	230	399	6,693	
+ Overhead	703	703	703	316	316	316	316	151	151	151	151	151	261	4,388	
+/- Adjustment/Other	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
<b>Ending Balance</b>	<b>76,287</b>	<b>80,532</b>	<b>85,183</b>	<b>85,334</b>	<b>85,761</b>	<b>86,534</b>	<b>87,468</b>	<b>86,438</b>	<b>85,031</b>	<b>82,967</b>	<b>81,302</b>	<b>80,043</b>	<b>79,521</b>	<b>79,521</b>	

**DRAFT: All figures preliminary, subject to revision**

# Borrowing Base Summary (1/2)

BCBG Max Azria Group, LLC - US Operations

Borrowing Base & Availability

(\$ in 000's)

	Chinese New Year	CH 11 Filing														
Month / Year	Jan-17	Feb-17	Feb-17	Feb-17	Feb-17	Mar-17	Mar-17	Mar-17	Mar-17	Mar-17	Apr-17	Apr-17	Apr-17	Apr-17		
Actual / Forecast	Actual	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast		
Week Ending Saturday	Jan-28	Feb-04	Feb-11	Feb-18	Feb-25	Mar-04	Mar-11	Mar-18	Mar-25	Apr-01	Apr-08	Apr-15	Apr-22	Apr-29	13 Weeks Total	
<b>I. Borrowing Base</b>																
<b>Receivables</b>																
Accounts Receivables (incl credit cards in cash)	20,537	17,809	17,840	17,653	19,071	19,696	21,117	20,970	22,112	18,959	20,803	22,310	22,255	19,715	19,715	
Less: ineligible	(2,331)	(2,297)	(1,873)	(1,854)	(2,002)	(2,068)	(2,217)	(2,202)	(2,322)	(1,991)	(2,184)	(2,343)	(2,337)	(2,070)	(2,070)	
Eligible receivables	18,206	15,512	15,967	15,799	17,068	17,628	18,899	18,768	19,790	16,968	18,618	19,968	19,918	17,645	17,645	
Advance Rate	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%	
Receivables Borrowing Base	16,385	13,960	14,370	14,219	15,361	15,865	17,009	16,891	17,811	15,272	16,756	17,971	17,926	15,881	15,881	
<b>Inventory</b>																
Inventory	92,695	90,431	89,420	89,269	90,923	87,605	82,784	77,756	72,474	70,094	67,988	67,362	66,155	67,128	67,128	
Add: In Transits	5,700	4,623	3,794	2,614	1,882	1,218	4,143	6,592	9,201	9,201	9,201	12,683	16,165	19,647	19,647	
Less: Shrink	(4,626)	(2,949)	(2,920)	(2,915)	(2,969)	(2,860)	(2,703)	(2,539)	(2,366)	(2,289)	(2,220)	(2,199)	(2,160)	(2,192)	(2,192)	
Eligible inventory	93,769	92,105	90,294	88,968	89,836	85,963	84,224	81,809	79,309	77,006	74,969	77,846	80,161	84,584	84,584	
NOLV	78.8%	79.3%	80.6%	80.6%	80.6%	81.7%	81.7%	81.7%	81.7%	81.7%	81.5%	81.5%	81.5%	81.5%	81.5%	
Advance Rate	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%	
Inventory BB (Tranche A)	66,508	65,749	65,532	64,570	65,199	63,170	61,892	60,118	58,280	56,588	54,957	57,065	58,762	62,004	62,004	
<b>Tranche A Inventory &amp; Receivables Base</b>																
	82,894	79,710	79,903	78,789	80,561	79,035	78,901	77,009	76,091	71,860	71,713	75,036	76,688	77,885	77,885	
Less: Reserves	(3,381)	(3,119)	(3,119)	(3,119)	(3,119)	(3,119)	(3,119)	(3,119)	(3,119)	(3,119)	(3,119)	(3,119)	(3,119)	(3,119)	(3,119)	
Less: Availability Block	(12,500)	(12,500)	(7,500)	(7,500)	(7,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	
<b>Total Tranche A BBase (\$125M cap)</b>	67,012	64,091	69,284	68,170	69,942	63,416	63,283	61,390	60,473	56,241	56,094	59,417	61,070	62,266	62,266	
Inventory BBase (Tranche A-1) (2.5% NOLV, \$4M cap)	1,847	1,826	1,820	1,794	1,811	1,755	1,719	1,670	1,619	1,572	1,527	1,585	1,632	1,722	1,722	
Canadian Borrowing Base (\$24M CAD cap)	11,591	11,161	11,204	11,182	11,178	11,235	11,122	10,734	9,985	9,248	8,449	7,624	6,752	5,884	5,884	
<b>Borrowing Base</b>	<b>80,451</b>	<b>77,078</b>	<b>82,308</b>	<b>81,146</b>	<b>82,931</b>	<b>76,407</b>	<b>76,125</b>	<b>73,795</b>	<b>72,077</b>	<b>67,061</b>	<b>66,070</b>	<b>68,627</b>	<b>69,454</b>	<b>69,872</b>	<b>69,872</b>	

Note: Borrowing base for W/E Feb 4 is calculated based on W/E Jan 28 numbers and is finalized on Wednesday Feb 1. Similar cadence is assumed for all weeks during the projection period.

**DRAFT: All figures preliminary, subject to revision**

# Borrowing Base Summary (2/2)

BCBG Max Azria Group, LLC - US Operations

Borrowing Base &amp; Availability

(\$ in 000's)

Month / Year Actual / Forecast Week Ending Saturday	May-17 Forecast May-06	May-17 Forecast May-13	May-17 Forecast May-20	May-17 Forecast May-27	Jun-17 Forecast Jun-03	Jun-17 Forecast Jun-10	Jun-17 Forecast Jun-17	Jun-17 Forecast Jun-24	Jun-17 Forecast Jul-01	Jul-17 Forecast Jul-08	Jul-17 Forecast Jul-15	Jul-17 Forecast Jul-22	Jul-17 Forecast Jul-29	13 Weeks Total
<b>I. Borrowing Base</b>														
<b>Receivables</b>														
Accounts Receivables (incl credit cards in cash)	15,517	19,166	20,115	22,305	20,048	22,437	21,578	23,359	20,573	23,036	25,929	24,992	26,447	26,447
Less: ineligible	(1,629)	(2,012)	(2,112)	(2,342)	(2,105)	(2,356)	(2,266)	(2,453)	(2,160)	(2,419)	(2,723)	(2,624)	(2,777)	(2,777)
Eligible receivables	13,888	17,154	18,002	19,963	17,943	20,081	19,313	20,907	18,413	20,617	23,206	22,368	23,670	23,670
Advance Rate	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%
Receivables Borrowing Base	12,499	15,438	16,202	17,967	16,149	18,073	17,381	18,816	16,572	18,555	20,886	20,131	21,303	21,303
<b>Inventory</b>														
Inventory	72,056	76,287	80,532	85,183	85,334	85,761	86,534	87,468	86,438	85,031	82,967	81,302	80,043	80,043
Add: In Transits	19,647	16,046	12,444	8,843	8,843	7,301	5,759	4,217	4,217	4,217	5,247	6,278	7,309	7,309
Less: Shrink	(2,353)	(2,491)	(2,629)	(2,781)	(2,786)	(2,800)	(2,825)	(2,856)	(2,822)	(2,776)	(2,709)	(2,655)	(2,613)	(2,613)
Eligible inventory	89,351	89,842	90,347	91,244	91,391	90,261	89,467	88,829	87,832	86,471	85,506	84,926	84,739	84,739
NOLV	91.2%	91.2%	91.2%	91.2%	91.1%	91.1%	91.1%	91.1%	91.1%	90.7%	90.7%	90.7%	90.7%	90.7%
Advance Rate	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%	90.0%
Inventory BB (Tranche A)	73,323	73,726	74,140	74,877	74,963	74,036	73,384	72,861	72,044	70,565	69,778	69,304	69,152	69,152
<b>Tranche A Inventory &amp; Receivables Base</b>	<b>85,822</b>	<b>89,164</b>	<b>90,342</b>	<b>92,843</b>	<b>91,112</b>	<b>92,109</b>	<b>90,766</b>	<b>91,677</b>	<b>88,615</b>	<b>89,121</b>	<b>90,663</b>	<b>89,435</b>	<b>90,455</b>	<b>90,455</b>
Less: Reserves	(5,914)	(5,914)	(5,914)	(5,914)	(5,914)	(5,914)	(5,914)	(5,914)	(5,914)	(5,914)	(5,914)	(5,914)	(5,914)	(5,914)
Less: Availability Block	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)
<b>Total Tranche A BBase (\$125M cap)</b>	<b>67,408</b>	<b>70,750</b>	<b>71,928</b>	<b>74,429</b>	<b>72,697</b>	<b>73,695</b>	<b>72,352</b>	<b>73,263</b>	<b>70,201</b>	<b>70,706</b>	<b>72,249</b>	<b>71,021</b>	<b>72,040</b>	<b>72,040</b>
Inventory BBase (Tranche A-1) (2.5% NOLV, \$4M cap)	2,037	2,048	2,059	2,080	2,082	2,057	2,038	2,024	2,001	1,960	1,938	1,925	1,921	1,921
Canadian Borrowing Base (\$24M CAD cap)	4,721	3,742	2,705	1,826	1,196	1,091	1,091	1,091	1,091	1,091	1,091	1,091	1,091	1,091
<b>Borrowing Base</b>	<b>74,166</b>	<b>76,540</b>	<b>76,693</b>	<b>78,335</b>	<b>75,975</b>	<b>76,842</b>	<b>75,481</b>	<b>76,377</b>	<b>73,293</b>	<b>73,757</b>	<b>75,278</b>	<b>74,037</b>	<b>75,052</b>	<b>75,052</b>

Note: Borrowing base for W/E Feb 4 is calculated based on W/E Jan 28 numbers and is finalized on Wednesday Feb 1. Similar cadence is assumed for all weeks during the projection period.

**DRAFT: All figures preliminary, subject to revision**

**EXHIBIT P-6**

**REDACTED CCRA ENGAGEMENT LETTER DATED FEBRUARY 9, 2017**



# BCBGMAXAZRIAGROUP

February 9, 2017

Naveed Manzoor  
FAAN Advisors Group Inc.  
6 Adelaide Street East  
Suite 220  
Toronto, ON M5C 1H6

Dear Naveed:

This letter confirms and sets forth the terms and conditions of the engagement between FAAN Advisors Group Inc. ("FAAN") and BCBG Max Azria Canada Inc. (the "Company") and the basis of compensation for those services. Upon execution of this letter by each of the parties below and receipt of the retainer described below, this letter will constitute an agreement between the Company and FAAN (the "Agreement").

1. Description of Services.

In connection with this engagement:

- (i) Naveed Z. Manzoor, a Managing Director of FAAN, is to serve as a director of the Company (the "Director") effective as and from the date on which the Company confirms that Mr. Manzoor has been duly appointed as a Director; and
- (ii) FAAN is to serve as a chief Canadian restructuring advisor to the Company (the "CCRA").

2. Duties of the Director and CCRA.

- (a) During the continuance of the Director's appointment, the Director shall act in accordance with the Declaration of BCBG Max Azria International Holdings, Inc. or BCBG Max Azria B.V. (either, the "Shareholder") in respect of the Company, which declaration shall be made prior to the appointment of the Director and shall be in the form set out in Schedule A hereto (as may be amended, with the consent of the Director). The Director's duties shall include the following:
  - (i) Reviewing and commenting on restructuring initiatives or plans as prepared by management and its advisors;
  - (ii) Assisting with the implementation of restructuring initiatives or plans (formal or informal) from a governance

perspective, to the extent so instructed by the Shareholder;  
and

- (iii) Attending at meetings and calls relating to the above.

(b) CCRA shall:

- (i) Assist the global chief restructuring officer of BCBG Max Azria Global Holdings LLC and its affiliates and subsidiaries, including the Company, AlixPartners (the "CRO") with the review and implementation of the Company's restructuring plans (formal or informal), including dealing with requisite Canadian communication plans and strategies;
- (ii) Serve as the Company's representative and review and provide information required by the Company's Canadian financial and legal advisors, employees, creditors and other stakeholders; and
- (iii) Perform such other services, as required and as authorized by the Company and the CRO, and agreed to by FAAN, including assisting in the filing of Court documents and the making of any necessary representations before the Court in any Insolvency Proceeding (as defined below).

3. Limitation of Duties and Responsibilities.

FAAN will be directed by the CRO. FAAN and the Director are not responsible for developing the restructuring alternatives, whether formal or informal, as such tasks are the responsibility of management and/or its advisors. As such, FAAN and the Director do not make any representations or guarantees that, *inter alia*, (i) an appropriate restructuring proposal or strategic alternative can be formulated for the Company, (ii) any restructuring proposal or strategic alternative will be more successful than all other possible restructuring proposals or strategic alternatives, (iii) a restructuring is the best course of action for the Company, or (iv) if formulated, that any proposed restructuring plan or strategic alternative will be accepted by any of the Company's creditors, shareholders and other constituents.

4. Information and Access:

- (a) The Company shall: (i) furnish all data, material and other information concerning the business, assets, liabilities, operations, cash flows, properties, financial condition and prospects of the Company that FAAN reasonably requests in connection with the services to be provided to the Company.

- (b) FAAN shall rely, without further independent verification, on the accuracy and completeness of all information that is furnished by or on behalf of the Company and otherwise reviewed by FAAN in connection with the services performed for the Company. The Company acknowledges and agrees that FAAN is not responsible for the accuracy or completeness of such information and shall not be responsible for any inaccuracies or omissions therein. FAAN is under no obligation to update data submitted to them or to review any other areas unless specifically requested to do so.
- (c) The Company understands that the services to be rendered by FAAN may include the review of projections and other forward-looking statements, and numerous factors can affect the actual results of the Company's operations, which may materially and adversely differ from those projections. In addition, FAAN will be relying on information provided by the Company and its advisors, including the CRO, in the preparation and review of those projections and other forward-looking statements.
- (d) No Audit. The Entities acknowledge and agree that FAAN is not being requested to perform an audit, review or compilation, or any other type of financial statement reporting engagement that is subject to the rules of the CICA, ICAO, OSC, AICPA, SEC or other state or national professional or regulatory body.

5. Compensation.

- (a) FAAN shall be paid a monthly fee of \_\_\_\_\_ plus applicable taxes and out-of-pocket expenses reasonably incurred in connection with or arising out of FAAN and the Director's activities under or contemplated by this engagement. Out-of-pocket expenses shall include, but not be limited to, fees, disbursements and other charges associated with travel and lodging expenses, reasonable independent legal advice provided to FAAN and/or the Director (as may be required), and other necessary expenses incurred in connection with fulfilment of FAAN's duties as provided hereunder.
- (b) In the event the Company initiates a bankruptcy, insolvency or creditor enforcement proceeding (an "Insolvency Proceeding") under the *Companies' Creditors Arrangement Act*, the *Bankruptcy and Insolvency Act* or otherwise, and the approval of the court in which such a proceeding is brought (the "Court") is required with respect to the retention of FAAN or the Director (in any role), as applicable, and/or any of the terms of such engagement (including, without limitation, the payment of FAAN and/or the Director's fees and expenses and the provision of indemnification to FAAN, the Director, as is customary in Insolvency Proceedings), then the Company shall apply for such approval by the Court and shall use reasonable commercial efforts to obtain such approval by the Court concurrently with or promptly following the initiation of the Insolvency

Proceeding, failing which the FAAN and/or the Director may suspend or terminate their efforts on behalf of the Company on 3 days' prior written notice to the Company.

- (c) The Company shall also promptly seek from the Court an order to grant to FAAN and the Director a security or charge, ranking in priority over all claims including any pre-filing claims of any secured creditor of the Company, on all of its property, in an amount reasonably appropriate, in respect of all of FAAN, and the Director's fees and expenses payable. The Company shall supply FAAN, the Director and its counsel with a draft of any such application and order for approval of FAAN and/or the Director's retention and/or any of the terms of such retention sufficiently in advance of the filing of such application and proposed order to enable FAAN and/or the Director and its counsel to review and comment thereon.
- (d) The Company shall promptly remit a retainer in the amount of \_\_\_\_\_ plus HST, which shall be credited against any amounts due at the termination of this engagement, the balance of which, if any, shall be returned to the Company upon the satisfaction of all obligations hereunder.
- (e) The Company shall be invoiced semi-monthly for the above monthly fee, plus applicable taxes and out-of-pocket costs. Invoices are payable upon receipt.

6. Termination.

The engagement will commence as of the date hereof and may be terminated by either party without cause by giving 30 days' written notice to the other party. In the event of such termination, any fees and expenses due by the Company to FAAN shall be applied to the remaining balance of the retainer, to the extent a balance exists and then any additional fees and expenses shall be remitted promptly to FAAN.

7. Exclusivity and Conflicts.

The Company is aware that FAAN is an independent firm that has multiple clients and engagements, some of which will be active during the rendering of services by the Director in connection with this matter. FAAN and the Director are not currently aware of any relationship that would create a conflict of interest with the Company. It is possible that FAAN and/or the Director may have rendered or will render services to, or have business associations with, other Company or people which had or have or may have relationships with the Company, including creditors of the Company. In the event FAAN and the Director accepts the terms of this engagement, the Director and/or FAAN will not represent, and has not represented, the interests of any such Company or people in connection with this matter.

8. Indemnification/Limitations on Liability.

The Company confirms that as at the time of the execution of this agreement, that there are no outstanding obligations for which a director or officer could be held personally liable, including, *inter alia*, unpaid payroll source deductions, wages, vacation pay, sales taxes (including outstanding assessments) and/or other potential director obligations and undertakes that all such payments and remittances shall continue to be made in the ordinary course. The Company shall provide the Director, on a monthly basis, with written confirmation that all such payments and remittances have been duly made. The Company further confirms that the Company's employees are not part of any pension plan.

The Company shall indemnify FAAN and Mr. Manzoor acting as director to the same extent as the most favorable indemnification it extends to its officers or directors, whether under the Company's bylaws, its certificate of incorporation, by contract or otherwise, and no reduction or termination in any of the benefits provided under any such indemnities shall affect the benefits provided.

The Company confirms that it has director and officer liability insurance policy and that Mr. Manzoor shall be covered as a director under the Company's existing once Mr. Manzoor is elected and appointed as a director. A Certificate of Insurance evidencing such coverage shall be furnished to Mr. Manzoor immediately after Manzoor is added, to the extent required. The Company shall give thirty (30) days' prior written notice to Manzoor of cancellation, non-renewal, or material change in coverage, scope, or amount of such director and officer liability policy. The Company shall also maintain such insurance coverage for Mr. Manzoor for a period of not less than three years following the date of the termination of the services hereunder. The provisions of this section are in the nature of contractual obligations and no change in applicable law or the Company's charter, bylaws or other organizational documents or policies shall affect Mr. Manzoor's rights hereunder. In the event the Company initiates an Insolvency Proceeding, the Company shall also seek, as part of any plan confirmation or final sale order obtained through an Insolvency proceeding, a full and final release of Mr. Manzoor from all potentially affected parties to the plan confirmation or final sale order. The Company shall use reasonable commercial efforts to obtain such approval by the Court.

The Company and its sole shareholder, BCBG Max Azria B.V., hereby releases Mr. Manzoor and FAAN, from any present or future claims, liabilities or actions which it may now or hereafter have in respect of the performance by such persons of their duties under this Agreement.

The Company indemnifies and holds harmless Mr. Manzoor, FAAN and each of FAAN's employees, directors, officers, agents, representatives, legal advisors, fiduciaries, officers, directors, partners, predecessors, successors and assigns, subsidiary corporations, parent corporations and shareholders (collectively, the "Indemnified Parties") against any and all claims or liabilities whatsoever and of

every nature or kind arising in connection with FAAN's exercise of any duties or authority pursuant to this agreement, or any court order, including any related professional fees or defense costs. This indemnity does not apply to claims which are determined by a court to arise from gross negligence or willful misconduct.

9. Confidentiality.

FAAN and the Director shall keep as confidential all non-public information received from the Company and its representatives including its advisors and legal counsel, in conjunction with this engagement except (i) as required by the Company, its legal advisors or a court of competent jurisdiction or (ii) as reasonably required in the performance of this engagement, but in no event without providing prior notice to the Company and making all reasonable efforts to obtain the Company's prior written approval.

FAAN shall only be entitled to reference or list the Company's name and/or a general description of the services provided by FAAN to the Company in FAAN's marketing materials with the Company's written authorization.


All obligations as to non-disclosure shall cease in respect of any information to the extent that such information is or becomes public other than as a result of a breach of this provision.

10. Miscellaneous.

This Agreement: (a) shall be governed and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein without giving effect to such Province's rules concerning conflicts of laws that might provide for any other choice of law; (b) incorporates the entire understanding of the parties with respect to the subject matter hereof; (c) may not be amended or modified except in writing executed by each of the parties hereto; (d) may be executed by facsimile and in counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same agreement; and (e) notwithstanding anything herein to the contrary, this Agreement shall not, in whole or in part, directly or indirectly, cause either party to be or be deemed to be, or in any way be relied upon to claim or assert that either party is or is deemed to be, either (a) an employer, or (b) a common or related employer, of any employee, shareholder, principal, contractor, subcontract or agent of the other Party, whether under contract, statute, civil law, common law or otherwise. .

If the foregoing is acceptable to you, kindly sign the enclosed copy to acknowledge your agreement with its terms.

Very truly yours,  
**BCBG MAX AZRIA GLOBAL HOLDINGS,  
LLC**  
for and on behalf of  
**BCBG MAX AZRIA CANADA INC.**

Per:   
Duly authorized CRO-BCBG

Accepted and agreed:

**FAAN ADVISORS GROUP INC.**

Per:   
\_\_\_\_\_

Naveed Z. Manzoor

Managing Director

**EXHIBIT P-7**  
**CONSULTING AGREEMENT**



February 24, 2017

VIA EMAIL

BCBG MAX AZRIA GROUP, LLC  
c/o Holly Felder Etlin  
Chief Restructuring Officer  
2761 Fruitland Avenue  
Vernon, CA 90058  
+1-212-297-1594  
Email: hetlin@alixpartners.com

Re: Letter Agreement Governing Inventory Disposition

Dear Holly:

By executing below, this letter shall serve as an agreement ("Agreement") between Merchant Retail Solutions, ULC, an affiliate of Hilco Merchant Resources, LLC and Gordon Brothers Canada ULC, on the one hand (together, "Consultant" or a "Party"), and BCBG Max Azria Canada Inc., on the other hand ("Merchant" or a "Party" and together with the Agent, the "Parties"), under which Consultant shall act as the exclusive consultant for the purpose of conducting a sale of certain Merchandise (as defined below) at the Merchant's stores set forth on Exhibit A (each a "Store" and collectively, the "Stores") through a "Store Closing", "Everything Must Go", "Everything on Sale" or similar themed sale (the "Sale") in accordance with the terms of the sale guidelines substantially in the form attached hereto as Exhibit B (the "Sale Guidelines"). Only Merchant-approved Sale terminology will be utilized at each Store.

The Merchant intends to file a Notice of Intention to Make a Proposal ("NOI") pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3. ("BIA") and file an application with the Superior Court of Quebec (Commercial Division) (the "Court") seeking an order approving, among other things, this Agreement and the conduct of the Sale, in accordance with the terms hereof and the Sale Guidelines (the "Order").

The Consultant and the Merchant agree and acknowledge that the entering into of this Agreement by the Merchant is subject to the issuance of the Order approving, among other things, this Agreement and the conduct of the Sale and that should the Order not be obtained, this Agreement shall have no force or effect.

**A. Merchandise**

For purposes hereof, "Merchandise" shall mean all goods, saleable in the ordinary course, located in the Stores on the Sale Commencement Date (defined below) and certain goods located or to be located in the Merchant's distribution center (the "Distribution Center") to which Merchant and Consultant mutually agree. "Merchandise" does not mean and shall not include: (1) goods that belong to sublessees, licensees or concessionaires of Merchant or are leased or licensed from third parties by

Merchant; (2) owned furnishings, trade fixtures, equipment and improvements to real property that are located in the Stores (collectively, "FF&E"), or any FF&E that is leased by Merchant located in the Stores; (3) damaged or defective merchandise that cannot be sold; and (4) any goods or furnishings, trade fixtures, equipment and improvements to real property that are located in the locations occupied by Merchant within the Hudson Bay Canada retail locations across Canada (the "Partner Shops") or any inventory located in the Distribution Center identified by Merchant, in its sole discretion, to be delivered to any Partner Shop during the Sale Term

**B. Sale Term**

For each Store, the Sale shall commence no later than two (2) business days following the date of the Order (the "Sale Commencement Date") and conclude no later than May 31, 2017 (the "Sale Termination Date"); provided, however, that the Parties may mutually agree in writing to terminate the Sale at any Store prior to the Sale Termination Date. The Consultant shall provide the Merchant with no less than 21 days prior written notice of its intention to surrender any Store premises. The period between the Sale Commencement Date and the Sale Termination Date shall be referred to as the "Sale Term." At the conclusion of the Sale, Consultant shall surrender the premises for each Store to Merchant in broom clean condition and in accordance with the lease requirements for such premises; provided, however, Merchant shall bear all costs and expenses associated with surrendering the premises in accordance with the lease requirements for such premises to the extent such expenses were incurred by Consultant in accordance with a budget mutually agreed to in writing between the Consultant and Merchant. At the conclusion of the Sale at each Store, Consultant shall photographically document the condition of each such Store and provide such photographs to Merchant within ten (10) days. Photographs shall reference with specificity each Store by number, name and/or location.

**C. Project Management**

(i) Consultant's Undertakings

During the Sale Term, Consultant shall, in collaboration with Merchant, (a) provide qualified supervisors (the "Supervisors") engaged by Consultant and approved in advance by Merchant to oversee the management of the Stores and the Sale; (b) determine appropriate point-of-sale and external advertising for the Stores, approved in advance by Merchant; (c) determine appropriate discounts of Merchandise, staffing levels for the Stores, and appropriate bonus and incentive programs, if any, for the Stores' employees, in each case approved in advance by Merchant; (d) oversee display of Merchandise for the Stores; (e) to the extent that information is available, evaluate sales of Merchandise by category and sales reporting and monitor expenses; (f) maintain the confidentiality of all proprietary or non-public information regarding Merchant in accordance with the provisions of the confidentiality agreement signed by the Parties; (g) assist Merchant in connection with managing and controlling loss prevention and employee relations matters; (h) to the extent necessary, assist Merchant in obtaining all required permits and governmental consents required to conduct the Sale; (i) ensure that all marketing, advertising and other communications provided by Merchant to Consultant for distribution to customers are provided to customers by including same in bags along with purchased merchandise or through other similarly appropriate means; and (j) provide such other related services deemed necessary or appropriate by Merchant and Consultant.

Without limiting the generality of the foregoing, all information of a business nature relating to the pricing, sales, promotions, marketing, assets, liabilities or other business affairs of Merchant, its customers, parent, subsidiary, or other affiliated entities (for purposes of this paragraph, all such entities are included within each reference to "Merchant") is Merchant's confidential, trade secret information ("Merchant Confidential Information"), which is and shall remain the exclusive intellectual property of Merchant. Except as may be required for Consultant to perform its obligations under this Agreement in respect of the Sale, Consultant shall not divulge, furnish, make available, or in any other manner disclose such information to any third party other than Consultant's officers, employees, representatives, and agents. Consultant shall take and shall cause its officers, employees, representatives, and agents to take such action as shall be reasonably necessary or advisable to preserve and protect the confidentiality of Merchant Confidential Information. Consultant agrees to maintain strict confidentiality and agrees that it may use Merchant Confidential Information only as reasonably necessary to the performance of its obligations related to the Sale. If and to the extent the use or other handling of any Personal Information is necessary for Consultant to perform its obligations hereunder, Consultant shall comply with all Data Security Requirements and such other reasonable restrictions requested by Merchant. For purposes of this Agreement, "Personal Information" means any natural person's name, street address, telephone number, e-mail address, social security number, driver's license number, passport number, credit card number, or user or account number, or any other piece of information that, individually or when combined with other information, allows the identification of a natural person or is otherwise considered personally identifiable information or personal data protected under any applicable Data Security Requirement. For purposes of this Agreement, "Data Security Requirements" means, collectively, all of the following to the extent relating to privacy, security, or security breach notification requirements: (i) Merchant's own rules, policies, and procedures; (ii) all applicable regulations; (iii) industry standards applicable to the industry in which the Merchant's business is conducted (including, as applicable, the Payment Card Industry Data Security Standard (PCI DSS)); and (iv) contracts into which Merchant has entered or by which it is otherwise bound, provided such contracts (or the requirements of such contracts) are provided to Consultant.

The Parties expressly acknowledge and agree that Merchant shall have no liability to the Supervisors for wages, benefits, severance pay, termination pay, vacation pay, pay in lieu of notice of termination or any other liability arising from Consultant's hiring or engagement of the Supervisors, and the Supervisors shall not be considered employees of Merchant.

(ii) Merchant's Undertakings

During the Sale Term, Merchant shall: (a) be the employer of the Stores' employees, other than the Supervisors; (b) pay all taxes, costs, expenses, accounts payable, and other liabilities relating to the Stores, the Stores' employees and other representatives of Merchant; (c) prepare and process all tax forms and other documentation; (d) collect all HST/GST and other applicable taxes assessed on the sale of the Merchandise and pay them to the appropriate taxing authorities for the Stores; (e) use reasonable efforts to cause Merchant's employees to cooperate with Consultant and the Supervisors; (f) execute all agreements mutually determined by the Merchant and Consultant to be necessary or desirable for the operation of the Stores during the Sale; (g) arrange for the ordinary maintenance of all point-of-sale equipment required for the Stores; and (h) use reasonable efforts to ensure that Consultant has quiet use and enjoyment of the Stores for the Sale Term in order to perform its obligations under this Agreement.

Merchant shall provide throughout the Sale Term central administrative services necessary for the Sale, including (without limitation) customary POS administration, sales audit, cash reconciliation, accounting, and payroll processing, as currently available through the Merchant's existing accounting and IT systems, all at no cost to Consultant.

The Parties expressly acknowledge and agree that Consultant shall have no liability to Merchant's employees for wages, benefits, severance pay, termination pay, vacation pay, pay in lieu of notice of termination or any other liability arising from Merchant's employment, hiring or retention of its employees, and such employees shall not be considered employees of Consultant.

**D. The Sale**

All sales of Merchandise shall be made on behalf of Merchant. Consultant does not have, nor shall it have, any right, title or interest in the Merchandise. All sales of Merchandise shall be by cash, gift card, gift certificate, merchandise credit, or credit or debit card and, at Merchant's discretion, by check or otherwise in accordance with Merchant's policies, and shall be "final" with no returns accepted or allowed, unless otherwise directed by Merchant.

**E. Agent Fee and Expenses in Connection with the Sale**

As used in this Agreement, the following terms shall have the following meanings:

(i) "Gross Proceeds" shall mean the sum of the gross proceeds of all sales of Merchandise made in the Stores during the Sale Term using the "gross rings" method, net only of HST/GST and other applicable taxes assessed against the sale of Merchandise.

(ii) "Net Proceeds" shall mean aggregate Gross Proceeds, less Consultant's actual expenses incurred pursuant to the Expense Budget.

In consideration of its services hereunder, Agent shall earn a fee equal to one and one half percent (1.5%) of the aggregate Net Proceeds.

Merchant shall be responsible for all expenses of the Sale, including (without limitation) all Store level operating expenses, all costs and expenses related to Merchant's other retail store operations, and Consultant's other reasonable, documented out of pocket expenses. To control expenses of the Sale, Merchant and Consultant have established an aggregate budget (the "Expense Budget") of certain delineated expenses, including (without limitation) payment of the costs of supervision (including (without limitation) Supervisors' wages, fees, travel, and deferred compensation) and advertising costs. The Expense Budget may only be modified by mutual written agreement of Consultant and Merchant and Merchant may review, verify, and/or audit the expenses at any time, including any expense paid in advance by the Sale Expense Advance (as defined below). The costs of supervision set forth on the Expense Budget shall include, among other things, industry standard deferred compensation. Notwithstanding anything herein to the contrary, unless otherwise agreed to by Merchant, Merchant shall not be obligated to pay costs of supervision and advertising costs that have not been included, or provided for, in the Expense Budget, as may be amended in accordance with this Agreement.

All accounting matters (including, without limitation, all fees, expenses, or other amounts reimbursable or payable to Consultant) shall be reconciled on every Wednesday for the prior week and shall be paid within seven (7) days after each such weekly reconciliation. The Parties shall complete a final reconciliation and settlement of all amounts payable to Consultant and contemplated by this Agreement (including, without limitation, Expense Budget items, and fees earned hereunder) no later than forty five (45) days following the Sale Termination Date for the last Store (the "Final Reconciliation").

The Consultant hereby acknowledges receipt of the amount of \$222,206.59 representing an advance payment of costs and expenses delineated in the Expense Budget (the "Sale Expense Advance") which shall be held by Consultant and applied towards Expense Budget items as incurred. Any portion of the Sale Expense Advance not so used shall be returned to Merchant within three days following the final reconciliation.

**F. Indemnification**

(i) Merchant's Indemnification

Merchant shall indemnify, defend, and hold Consultant and its consultants, members, managers, partners, officers, directors, employees, attorneys, advisors, representatives, lenders, potential co-investors, principals, affiliates, and Supervisors (collectively, "Consultant Indemnified Parties") harmless from and against all liabilities, claims, demands, damages, costs and expenses (including reasonable attorneys' fees) arising from or related to: (a) the willful or negligent acts or omissions of Merchant or the Merchant Indemnified Parties (as defined below); (b) the material breach of any provision of this Agreement by Merchant; (c) any liability or other claims, including, without limitation, product liability claims, asserted by customers, any Store employees (under a collective bargaining agreement or otherwise), or any other person (excluding Consultant Indemnified Parties) against Consultant or an Consultant Indemnified Party, except claims arising from Consultant's negligence, willful misconduct, gross negligence, or unlawful behavior; (d) any harassment, discrimination or violation of any laws or regulations or any other unlawful, tortious or otherwise actionable treatment of Consultant's Indemnified Parties or Merchant's customers by Merchant or Merchant's Indemnified Parties; and (e) Merchant's failure to pay over to the appropriate taxing authority any taxes required to be paid by Merchant during the Sale Term in accordance with applicable law.

(ii) Consultant's Indemnification

Consultant shall indemnify, defend and hold Merchant and its consultants, members, managers, partners, officers, directors, employees, attorneys, advisors, representatives, lenders, potential co-investors, principals, and affiliates (other than the Consultant or the Consultant Indemnified Parties) (collectively, "Merchant Indemnified Parties") harmless from and against all liabilities, claims, demands, damages, costs and expenses (including reasonable attorneys' fees) arising from or related to (a) the willful or negligent acts or omissions of Consultant or the Consultant Indemnified Parties; (b) the breach of any provision of, or the failure to perform any obligation under, this Agreement by Consultant; (c) any liability or other claims made by Consultant's Indemnified Parties or any other person (excluding Merchant Indemnified Parties) against a Merchant Indemnified Party arising out of or related to Consultant's conduct of the Sale, except claims arising from Merchant's negligence, willful misconduct, gross negligence, or unlawful behavior; (d) any

harassment, discrimination or violation of any laws or regulations or any other unlawful, tortious or otherwise actionable treatment of Merchant Indemnified Parties, or Merchant's customers by Consultant or any of the Consultant Indemnified Parties and (e) any claims made by any party engaged by Consultant as an employee, agent, representative or independent contractor arising out of such engagement.

**G. Insurance**

(i) Merchant's Insurance Obligations

Merchant shall maintain throughout the Sale Term, liability insurance policies (including, without limitation, products liability (to the extent currently provided), comprehensive public liability insurance and auto liability insurance) covering injuries to persons and property in or in connection with the Stores, and shall cause Consultant to be named an additional insured with respect to all such policies. At Consultant's request, Merchant shall provide Consultant with a certificate or certificates evidencing the insurance coverage required hereunder and that Consultant is an additional insured thereunder. In addition, Merchant shall maintain throughout the Sale Term, in such amounts as it currently has in effect, workers compensation insurance in compliance with all statutory requirements.

(ii) Consultant's Insurance Obligations

Consultant shall maintain (at Consultant's expense) throughout the Sale Term, liability insurance policies (including, without limitation, products liability/completed operations, contractual liability, comprehensive public liability and auto liability insurance) on an occurrence basis in an amount of at least Two Million dollars (\$2,000,000) and an aggregate basis of at least five million dollars (\$5,000,000) covering injuries to persons and property in or in connection with Consultant's provision of services at the Stores. Consultant shall name Merchant as an additional insured and loss payee under such policy, and upon execution of this Agreement provide Merchant with a certificate or certificates evidencing the insurance coverage required hereunder. In addition, Consultant shall maintain throughout the Sale Term, workers' compensation insurance in compliance with all statutory requirements. Further, should Consultant employ or engage third parties to perform any of Consultant's undertakings with regard to this Agreement, Consultant will ensure that such third parties are covered by Consultant's insurance or maintain all of the same insurance as Consultant is required to maintain pursuant to this paragraph and name Merchant as an additional insured and loss payee under the policy for each such insurance.

**H. Representations, Warranties, Covenants and Agreements**

(i) Merchant warrants, represents, covenants and agrees that, subject to the issuance of the Order: (a) Merchant is a company duly organized, validly existing and in good standing under the laws of its province of organization, with full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, and maintains its principal executive office at the address set forth herein; (b) the execution, delivery and performance of this Agreement has been duly authorized by all necessary actions of Merchant and this Agreement constitutes a valid and binding obligation of Merchant enforceable against Merchant in accordance with its terms and conditions, and the consent of no other entity or person is required for Merchant to fully perform all of its obligations herein; (c) all ticketing of Merchandise at the Stores has been and will be done in

accordance with Merchant's customary ticketing practices; (d) all normal course hard markdowns on the Merchandise have been, and will be, taken consistent with Merchant's customary practices; and (e) the Stores will be operated in the ordinary course of business in all respects, other than those expressly agreed to by Merchant and Consultant.

(ii) Each party comprising the Consultant warrants, represents, covenants and agrees that: (a) Consultant is a company duly organized, validly existing and in good standing under the laws of its province of organization, with full power and authority to execute and deliver this Agreement and to perform the Consultant's obligations hereunder, and maintains its principal executive office at the addresses set forth herein; (b) the execution, delivery and performance of this Agreement has been duly authorized by all necessary actions of Consultant and this Agreement constitutes a valid and binding obligation of Consultant enforceable against Consultant in accordance with its terms and conditions, and the consent of no other entity or person is required for Consultant to fully perform all of its obligations herein; (c) Consultant shall comply with and act in accordance with any and all applicable federal, provincial and local laws, rules, and regulations, and other legal obligations of all governmental authorities; (d) no non-emergency repairs or maintenance in the Stores will be conducted without Merchant's prior written consent; (e) Consultant will not take any disciplinary action against any employee of Merchant; and (f) Consultant is not a non-resident of Canada pursuant to the *Income Tax Act* and shall provide the Merchant with its relevant sales tax numbers prior to the Sale.

(iii) The Merchant shall seek Court approval of this Agreement pursuant to the Order. The Parties expressly acknowledge and agree that the entering into of this Agreement by the Merchant is subject to the issuance of the Order approving, among other things, this Agreement and the conduct of the Sale and that should the Order or Court approval of this Agreement not be obtained, this Agreement shall have no force or effect.

**I. Furniture, Fixtures and Equipment**

Consultant shall sell the FF&E in the Stores from the Stores themselves. Merchant shall be responsible for all reasonable and documented costs and expenses incurred by Consultant in connection with the sale of FF&E, which costs and expenses shall be incurred pursuant to a written budget or budgets to be established from time to time by mutual agreement of the Parties. Consultant shall have the right to abandon at the Stores any unsold FF&E.

Notwithstanding the foregoing, Merchant has informed Consultant that it intends to remove certain POS systems from the closing stores. Merchant will provide a list of equipment and store location to Consultant shortly after the Sale Commencement Date, and will remove the equipment at the conclusion of the Sale. Consultant will make all commercially reasonable efforts to ensure that the designated equipment remains in good, working condition throughout the Sale.

In consideration for providing the services set forth in this section I, Consultant shall be entitled to a commission from the sale of the FF&E equal to fifteen percent (15%) of the Gross Proceeds of the sale of the FF&E.

Consultant shall remit to Merchant all Gross Proceeds from the sale of FF&E. During each weekly reconciliation described in section E above, Consultant's FF&E fee shall be calculated, and

Consultant's calculated FF&E fee and all FF&E costs and expenses then incurred shall be paid within seven (7) days after each such weekly reconciliation.

**J. Termination**

The following shall constitute "Termination Events" hereunder:

- (a) Merchant's or Consultant's failure to perform any of their respective material obligations hereunder, which failure shall continue uncured seven (7) days after receipt of written notice thereof to the defaulting Party;
- (b) Any representation or warranty made by Merchant or Consultant is untrue in any material respect as of the date made or at any time and throughout the Sale Term (other than with respect to the representations and warranties of Merchant set forth in section H(i)(d) and H(i)(e), which representations and warranties are made solely as of the date hereof; or
- (c) the Sale is terminated or materially interrupted or impaired for any reason other than an event of default by Consultant or Merchant.

If a Termination Event occurs, the non-defaulting Party (in the case of an event of default) or either Party (if the Sale is otherwise terminated or materially interrupted or impaired) may, in its discretion, elect to terminate this Agreement by providing seven (7) business days' written notice thereof to the other Party and, in the case of an event of default, in addition to terminating this Agreement, pursue any and all rights and remedies and damages resulting from such default. If this Agreement is terminated, Merchant shall be obligated to pay Consultant all amounts due and owing by Merchant to Consultant under this Agreement through and including the termination date.

**K. Notices**

All notices, certificates, approvals, and payments provided for herein shall be sent by fax or by recognized overnight delivery service as follows: (a) To Merchant: at the address listed above, with a copy to (i) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Joshua Sussberg and Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois 60654, Attn: Benjamin Rhode; and (ii) Osler, Hoskin and Harcourt LLP, 1000, rue De La Gauchetière Ouest Bureau 2100, Montréal QC, H3B 4W5, Attn: Sandra Abitan (b) To Consultant: c/o Hilco Merchant Resources, LLC, One Northbrook Place, 5 Revere Drive, Suite 206, Northbrook, Illinois 60062, Fax: 847- 897-0859, Attn: Ian S. Fredericks and c/o Gordon Brothers Retail Partners, LLC, 800 Boylston Street, 27<sup>th</sup> Floor, Boston, Massachusetts 02199, fax: 617-531-7906, Attn: Michael Chartock; or (c) such other address as may be designated in writing by Merchant or Consultant.

**L. Independent Consultant**

Consultant's relationship to Merchant is that of an independent contractor without the capacity to bind Merchant in any respect. No employer/employee, principal/agent, joint venture or other such relationship is created by this Agreement. Merchant shall have no control over the hours that Consultant or its employees or assistants or the Supervisors work or the means or manner in which the services that will be provided are performed and Consultant is not authorized to enter into any contracts or agreements



on behalf of Merchant or to otherwise create any obligations of Merchant to third parties, unless authorized in writing to do so by Merchant.

**M. Non-Assignment**

Neither this Agreement nor any of the rights hereunder may be transferred or assigned by either Party without the prior written consent of the other Party. No modification, amendment or waiver of any of the provisions contained in this Agreement, or any future representation, promise or condition in connection with the subject matter of this Agreement, shall be binding upon any Party to this Agreement unless made in writing and signed by a duly authorized representative or agent of such Party. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, legal representatives, successors and permitted assigns.

**N. Severability**

If any term or provision of this Agreement, as applied to either Party or any circumstance, for any reason shall be declared by a court of competent jurisdiction to be invalid, illegal, unenforceable, inoperative or otherwise ineffective, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. If the surviving portions of the Agreement fail to retain the essential understanding of the Parties, the Agreement may be terminated by mutual consent of the Parties.

**O. Governing Law, Venue, Jurisdiction and Jury Waiver**

This Agreement, and its validity, construction and effect, shall be governed by and enforced in accordance with the internal laws of the Province of Ontario (without reference to the conflicts of laws provisions therein) and the laws of Canada applicable therein. Merchant and Consultant waive their respective rights to trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by either Consultant against Merchant or Merchant against Consultant on any matter whatsoever arising out of, or in any way connected with, this Agreement, the relationship between Merchant and Consultant, any claim of injury or damage or the enforcement of any remedy under any law, statute or regulation, emergency or otherwise, now or hereafter in effect.

**P. Entire Agreement**

This Agreement, together with all additional schedules and exhibits attached hereto, constitutes a single, integrated written contract expressing the entire agreement of the Parties concerning the subject matter hereof. No covenants, agreements, representations or warranties of any kind whatsoever have been made by any Party except as specifically set forth in this Agreement. All prior agreements, discussions and negotiations are entirely superseded by this Agreement.

**Q. Execution**

This Agreement may be executed simultaneously in counterparts (including by means of electronic mail, facsimile or portable document format (pdf) signature pages), any one of which need not contain the signatures of more than one party, but all such counterparts taken together shall constitute one and the same instrument. This Agreement, and any amendments hereto, to the extent

signed and delivered by means of electronic mail, a facsimile machine or electronic transmission in portable document format (pdf), shall be treated in all manner and respects as an original thereof and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person.

**R. Language.**

The Parties do hereby agree that this Agreement and related documents be drawn up in the English language only. Les Parties aux présentes ont convenu que cette convention et les documents s'y rattachant soient rédigés en langue anglaise seulement.

\* \* \*

If this Agreement is acceptable to you, kindly execute a copy in the space provided, and return a countersigned version to the undersigned. Thank you again for this opportunity -- we look forward to working with you.

Very truly yours,

MERCHANT RETAIL SOLUTIONS, ULC



By: Ryan O. Lawlor  
Its: Authorized Agent


GORDON BROTHERS CANADA ULC



By: Michael Chan  
Its: Vice President

AGREED AND ACCEPTED as of the 24<sup>th</sup> day  
of February, 2017:

BCBG MAX AZRIA CANADA INC.

  
By: BCBG MAX AZRIA B.V., its sole shareholder  
Its: Erica Alterwitz Meierhans, Managing Director

**Exhibit "A"**

**Stores**

**BCBG Canada- Retail Stores  
Exhibit A**

Store List

Store #	Location Type	Name	Address	City	State	Zip	Phone	District	Selling Sq. Ft.
10	Retail	St Catherine I	1300 rue Ste-Catherine Ouest	Montreal	QC	H3G 1P6	(514) 398-9130	59	10,000
12	Retail	Robson	1080 Robson Street	Vancouver	BC	V6E 1A7	(604) 681-3733	34	2,730
15	Retail	Rockland	2305 Chenin Rockland Suite -41	Mont-Royal	QC	H3P 3E9	(514) 344-9444	32	2,380
16	Retail	St Catherine II	950 rue Ste-Catherine Ouest	Montreal	QC	H3B 1E3	(514) 868-9561	59	11,208
17	Retail	Sherway	25 The West Mall Suite -1766	Etobicoke	ON	M9C 1B8	(416) 695-0606	43	5,440
18	Retail	Carrefour Laval	3003 boulevard Le Carrefour Suite -T-105	Laval	QC	H7T 1C7	(450) 902-0158	59	3,680
19	Retail	Ste Foy	2450 boulevard Laurier Suite -40E	Ste-Foy	QC	G1V 2L1	(418) 263-0223	32	2,411
20	Retail	South Ctr	100 Anderson Road S.E. Suite -234	Calgary	AB	T2J 3V1	(403) 225-8020	55	3,083
21	Retail	Calgary Eaton Centre	317 - 7th Ave S.W. Suite -322	Calgary	AB	T2P 2Y9	(403) 539-0193	55	3,394
24	Retail	Yorkdale	3401 Dufferin Street Suite -223	Toronto	ON	M5A 2T9	(416) 642-2626	43	3,605
25	Retail	Toronto Eaton Ctr	218 Yonge Street Suite -307	Toronto	ON	MSB 2H1	(416) 640-2766	43	3,239
26	Retail	Oakridge	650 West 41st Avenue Suite -272	Vancouver	BC	V5Z 2M9	(604) 630-0560	34	3,600
29	Retail	Fairview	1800 Sheppard Avenue East Suite -2031	North York	ON	M2J 5A7	(416) 644-0331	53	4,006
30	Retail	Promenade	1 Promenade Circle Suite -0215A	Thornhill	ON	L4J 4P8	(905) 695-0602	53	2,860
32	Retail	Pacific Centre	701 West Georgia Suite -D067	Vancouver	BC	V7Y 1A1	(604) 638-0655	34	3,059
34	Retail	Rideau	50 Rideau Street Suite -235	Ottawa	ON	K1N 9J7	(613) 288-2874	59	3,500
35	Retail	Quartier DIX30	9140 Boul. Leduc Suite -130	Brossard	QC	J4Y 0L2	(450) 676-4455	32	3,011
36	Retail	Edmonton City	10200 102nd Avenue NW Suite -D209	Edmonton	AB	T5J 4B7	(780) 702-4930	55	3,788
38	Retail	Bloor	50 Bloor Street West Suite -A07	Toronto	ON	M4W 3L8	(416) 642-1606	43	4,693
39	Retail	Orchard	2271 Harvey Avenue Suite -1025	Kelowna	BC	V1Y 6H2	(250) 763-7763	34	3,701
40	Retail	Square One	100 City Centre Drive Suite -2-462	Mississauga	ON	LSB 2C9	(905) 366-0440	53	2,317
41	Retail	Grandview	16031 24th Avenue Suite -40	Surrey	BC	V3Z 9H7	(604) 531-0654	34	4,006
42	Retail	Don Mills	16 Aggie Hogg Gardens	Toronto	ON	M3C 0G7	(416) 640-4376	53	3,475
43	Retail	Metropolis	4700 Kingsway Suite -1176	Burnaby	BC	V5H 4M1	(604) 638-5758	34	4,475
44	Retail	Hillcrest	9350 Yonge Street Suite -F004A	Richmond Hill	ON	L4C 5G2	(905) 770-4333	53	3,026
47	Retail	Southgate	11100-51st Avenue Suite -834	Edmonton	AB	T6H 4M6	(780) 702-0386	55	3,607
48	Retail	Richmond	6551 No. 3 Road Suite -1430	Richmond	BC	V6Y 2B6	(604) 248-0210	34	5,176
49	Retail	Markville	5000 Highway 7 East Suite -321B	Markham	ON	L3R 4M9	(905) 947-8552	53	3,918
61	Retail	Rosemere	401 boulevard Labelle Suite -J-10	Quebec	QC	J7A 3T2	(450) 435-5771	59	4,853
63	Retail	Chinook	1171 6455 Mac Leod Trail South West Suite -223	Calgary	AB	T2H 0K8	(403) 536-1344	55	4,004
64	Retail	Bramalea	25 Peel Centre Drive Suite -645	Brampton	ON	L6T 3R5	(905) 595-0644	53	4,151
65	Retail	Uptown	3500 Uptown Blvd. Saanich Suite -111	Victoria	BC	V8Z 0B9	(250) 380-0678	34	4,302
66	Retail	Polo Park	66Q-1485 Portage Avenue Suite -L156A	Winnipeg	MA	R3G 0W4	(204) 775-7774	55	5,000
67	Retail	Mapleview	900 Maple Avenue	Burlington	ON	L7S 2J8	-	0	3,559
68	Retail	St Laurent	1200 St. Laurent Blvd. Suite -505	Ottawa	ON	K1K 3B8	(613) 688-1255	59	3,548
69	Retail	Erin Mills	5100 Erin Mills Parkway, PO Box 109 Suite -B111B	Mississauga	ON	LSM 4Z5	(905) 412-3089	53	3,445
70	Retail	Victoria Bay	1150 Douglas Street Suite -124-5	Victoria	BC	V8W 3M9	(250) 412-1150	34	3,568
71	Retail	Mic Mac	21 Mic Mac Blvd. Exit 5 Hwy 11 Suite -223	Halifax	NS	B3A 4K6	(902) 442-0375	32	3,798
77	Retail	Pointe Claire	6801 Route Transcanadienne Suite -H-011B	Pointe-Claire	QC	H9R 5J2	(514) 697-9701	59	4,270
78	Retail	Mail Champlain	2151 boulevard Lapiniere Suite -1000	Brossard	QC	J4W 2T5	(450) 465-7233	32	4,494
79	Retail	St. Vital	1225 St. Marys Rd. Suite -8	Winnipeg	MA	R2M SE5	(204) 253-3976	55	3,929
870	Retail	St. Bruno	1 boulevard des Promenades Suite -G02C	Saint Bruno	QC	J3V 5J5	(450) 441-7734	32	5,286

**BCBG Canada- Retail Stores  
Exhibit A**

**Store List**

Store #	Location Type	Name	Address	City	State	Zip	Phone	District	Selling Sq. Ft.
871	Retail	Lime Ridge	999 Upper Wentworth Street Suite -0261C	Hamilton	ON	L9A 4X5	(905) 538-5626	53	3,252
872	Retail	Rivieres	4225 boulevard Des Forges Suite -E2B	Trois-Rivieres	QC	G8Y 1W2	(819) 379-2808	32	5,151
894	Retail	Galeries Capitale	5401 Boul. De les Galeries	Quebec City	QC	G2K 1N4	(418) 263-0309	32	2,490
895	Retail	Promenades Gatineau	1100 boulevard Maloney Ouest Suite -88	Gatineau	QC	J8T 6G3	(819) 243-5177	59	-
22	Factory	Notre Dame	2202 Chomedey (A-13) Ouest Suite -19D	Laval	QC	H7X 4G8	(450) 689-2787	59	3,000
31	Factory	Heartland	5985 Rodeo Drive	Mississauga	ON	LSR 3X8	(905) 366-0197	53	5,856
46	Factory	Tremblant	2455 Rue De L'Aulnale Suite -201	Ville De Mont-Tremblant	QC	J8E 0E5	(819) 425-7928	59	5,000
74	Factory	Queensborough	805 Boyd Street Suite -E140	New Westminster	BC	V3M 5X2	(604) 636-0355	34	5,996
75	Factory	Rive Sud	582 Chemin de la Touraine Suite -208	South Shore Montreal	QC	J4B 5E4	(450) 641-7671	32	7,100
								<b>Average Sq. Ft.</b>	<b>4,189</b>

51

**Exhibit "B"**

**Sale Guidelines**

## SALES GUIDELINES

The following procedures shall apply to the Sale to be conducted at the Stores of BCBG Max Azria Canada Inc. (the “**Merchant**”). All terms not herein defined shall have the meaning set forth in the Consulting Agreement by and between a contractual joint venture composed of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC (together the “**Consultant**”) and the Merchant dated as of February 24, 2017 (the “**Consulting Agreement**”).

1. Except as otherwise expressly set out herein, and subject to: (i) the Order or any further Order of the Court; or (ii) any subsequent written agreement between the Merchant and the applicable landlord(s) (individually, a “Landlord” and, collectively, the “Landlords”) and approved by Consultant, or (iii) as otherwise set forth herein, the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements to which the affected landlords are privy for each of the affected Stores (individually, a “Lease” and, collectively, the “Leases”). However, nothing contained herein shall be construed to create or impose upon the Merchant or the Consultant any additional restrictions not contained in the applicable Lease or other occupancy agreement.
2. The Sale shall be conducted so that each of the Stores remain open during their normal hours of operation provided for in the respective Leases for the Stores until the respective Sale Termination Date of each Store. The Sale at the Stores shall end by no later than May 31, 2017. Rent payable under the respective Leases shall be paid as provided in the Order.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise ordered by the Court.
4. All display and hanging signs used by the Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Consultant may advertise the Sale at the Stores as a “everything on sale”, “everything must go”, “store closing” or similar theme sale at the Stores (provided however that no signs shall advertise the Sale as a “bankruptcy”, a “going out of business” or a “liquidation” sale, it being understood that the French equivalent of “clearance” is “liquidation” and is permitted to be used). Forthwith upon request from a Landlord, the Landlord’s counsel, the Merchant or the Trustee, the Consultant shall provide the proposed signage packages along with the proposed dimensions and number of signs (as approved by the Merchant pursuant to the Consulting Agreement) by e-mail or facsimile to the applicable Landlords or to their counsel of record. Where the provisions of the Lease conflict with these Sales Guidelines, these Sales Guidelines shall govern. The Consultant shall not use neon or day-glow or handwritten signage (save that handwritten “you pay” or “topper” signs may be used). In addition, the Consultant shall be permitted to utilize exterior banners/signs at stand alone or strip mall Stores or enclosed mall Stores with a separate entrance from the exterior of the enclosed mall, provided, however, that where such banners are not explicitly permitted by the applicable Lease and the Landlord requests in writing that the banners are not to be used, no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the Service List. Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the façade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Consultant. If a Landlord is concerned with “store closing” signs being placed in the front window of a Store or with the number or size of the signs in the front window, the Consultant and the Landlord will discuss the Landlord’s concerns and work to resolve the dispute.



5. The Consultant shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.
6. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are "final".
7. The Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on any Landlord's property, unless permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Consultant may solicit customers in the Stores themselves. The Consultant shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable Lease, or agreed to by the Landlord.
8. At the conclusion of the Sale in each Store, the Merchant shall arrange that the premises for each Store are in "broom-swept" and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than FF&E which for clarity is owned by the Merchant) may be removed without the Landlord's written consent unless otherwise provided by the applicable Lease. Any fixtures or personal property left in a Store after the Sale Termination Date in respect of which the applicable Lease has been disclaimed by the Merchant shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord.
9. Subject to the terms of paragraph 8 above and the Consulting Agreement, the Consultant may sell FF&E which is located in the Stores during the Sale. The Merchant and the Consultant may advertise the sale of FF&E consistent with these guidelines on the understanding that any Landlord may require that such signs be placed in discreet locations within the Stores acceptable to the Landlord, acting reasonably. Additionally, the purchasers of any FF&E sold during the Sale shall only be permitted to remove the FF&E either through the back shipping areas designated by the Landlord, or through other areas after regular store business hours, or through the front door of the Store during store business hours if the FF&E can fit in a shopping bag, with Landlord's supervision as required by the Landlord. The Consultant shall repair any damage to the Stores resulting from the removal of any FF&E by Consultant or by third party purchasers of FF&E from Consultant.
10. The Consultant shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the applicable Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these guidelines, shall not constitute an alteration to a Store.
11. The Merchant hereby provides notice to the Landlords of the Merchant and the Consultant's intention to sell and remove FF&E from the Stores. The Consultant will arrange with each Landlord represented by counsel on the service list and with any other Landlord that so requests, a walk through with the Consultant to identify the FF&E subject to the sale. The relevant Landlord shall be entitled to have a representative present in the Store to observe such removal. If the Landlord disputes the Consultant's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between the Merchant, the Consultant and such Landlord, or by further Order of the Court upon application by the Merchant on at least two (2) days' notice to such Landlord. If the Merchant has disclaimed or resiliated the Lease governing such Store in accordance with the BIA, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for in the BIA), and the disclaimer or resiliation of the Lease shall be without prejudice to the Merchant's or Consultant's claim to the FF&E in dispute.

12. If a notice of disclaimer or resiliation is delivered pursuant to the BIA to a Landlord while the Sale is ongoing and the Store in question has not yet been vacated, then: (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Merchant and the Consultant 24 hours' prior written notice; and (b) at the effective time of the disclaimer or resiliation, the relevant Landlord shall be entitled to take possession of any such Store without waiver of or prejudice to any claims or rights such landlord may have against the Merchant in respect of such Lease or Store, provided that nothing herein shall relieve such Landlord of its obligation to mitigate any damages claimed in connection therewith.
13. The Consultant and its agents and representatives shall have the same access rights to the Stores as the Merchant under the terms of the applicable Lease, and the Landlords shall have the rights of access to the Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).
14. The Merchant and the Consultant shall not conduct any auctions of Merchandise or FF&E at any of the Stores.
15. The Consultant shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for Consultant shall be Jane Dietrich who may be reached by phone at (416) 860-5223 or email at [jdietrich@casselsbrock.com](mailto:jdietrich@casselsbrock.com). If the parties are unable to resolve the dispute between themselves, the Landlord or Merchant shall have the right to schedule a "status hearing" before the Court on no less than two (2) days written notice to the other party or parties, during which time the Consultant shall cease all activity in dispute other than activity expressly permitted herein, pending the determination of the matter by the Court; provided, however, subject to para. 4 of these Sales Guidelines, that if a banner has been hung in accordance with these Sale Guidelines and is thereafter the subject of a dispute, the Consultant shall not be required to take any such banner down pending determination of the dispute.
16. Nothing herein is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or to grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.
17. These Sale Guidelines may be amended by written agreement between the Merchant, the Consultant and any applicable Landlord (provided that such amended Sale Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court approving the amended Sales Guidelines).

**EXHIBIT P-8**

**DRAFT CANADIAN FORBEARANCE AGREEMENT**

## CANADIAN FORBEARANCE AGREEMENT

This CANADIAN FORBEARANCE AGREEMENT, dated as of ● (this “Agreement”), by and among BCBG MAX AZRIA GROUP, LLC, a Delaware limited liability company (the “Company”), BCBG MAX AZRIA CANADA INC., a Canadian corporation (the “Canadian Borrower” and, together with the Company, collectively, the “Borrowers” and, individually, each a “Borrower”), BCBG MAX AZRIA INTERMEDIATE HOLDINGS, LLC, a Delaware limited liability company (“Holdings”), each other Guarantor party to the Loan Agreement (as hereinafter defined) as of the date hereof, the undersigned Lenders party to the Loan Agreement (as hereinafter defined) as of the date hereof, BANK OF AMERICA, N.A., as Administrative Agent and Issuing Bank, BANK OF AMERICA, N.A. (acting through its Canada branch), as Canadian Agent and Issuing Bank and BANK OF AMERICA, N.A. and WELLS FARGO BANK, NATIONAL ASSOCIATION, each as a Co-Collateral Agent, and the other parties hereto, is entered into with respect to that certain Second Amended and Restated Loan Agreement, dated as of February 5, 2015 (as amended by that certain First Amendment to Second Amended and Restated Loan Agreement, dated as of August 12, 2016, as further amended from time to time, the “Loan Agreement”), among the Borrowers, Holdings, the Guarantors from time to time party thereto, each Lender from time to time party thereto, the Administrative Agent, the Canadian Agent, the Co-Collateral Agents and the Issuing Banks party thereto.

Any capitalized term used herein and not defined herein shall have the meaning assigned to such term in the Loan Agreement or in the US ABL DIP Agreement (as defined herein); provided, however, that the term “Loan Documents” shall include the Senior Secured Super-Priority Debtor-In-Possession Loan Agreement dated as of on or about the date hereof between, among others the Company, Holdings, the other guarantors party thereto, the lenders party thereto, Bank of America, N.A. as Administrative Agent, Bank of America, N.A. and Wells Fargo Bank, N.A., as Co-Collateral Agents (the “US ABL DIP Agreement”).

### RECITALS

WHEREAS, the Borrowers and the other Obligors have informed the Agents, the Co-Collateral Agents, the Lenders and the Issuing Banks (collectively, the “Lender Parties”) that the Events of Default set forth on Schedule A attached hereto have occurred and are continuing as of the date hereof (such Events of Default being collectively referred to herein as the “Existing Defaults”); and

WHEREAS, the Company and certain of its affiliates, other than the Canadian Borrower, intend to commence proceedings under Chapter 11 of the United States Bankruptcy Code (the “Chapter 11 Proceedings”) in the United States Bankruptcy Court for the District of Delaware (the “US Court”) to implement (a) that certain letter agreement governing inventory disposition, dated on or about February 1, 2017 (including any necessary amendments thereto acceptable to the Administrative Agent) with Hilco Merchant Resources, LLC and Gordon Brothers Retail Partners, LLC (collectively, the “US Liquidation Agent”), providing for the liquidation of certain retail locations of the Company and its affiliates, other than the Canadian Borrower, and (b) a sale and investment solicitation process; and

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WHEREAS, Deloitte Restructuring Inc. will act as Proposal Trustee (in such capacity, the “Proposal Trustee”) in proceedings (the “BIA Proceedings”) under Part III, Division I of the *Bankruptcy and Insolvency Act* (Canada) (“BIA”) commenced in the Quebec Superior Court (Commercial Division) (the “Canadian Court”), which BIA Proceedings are intended to be commenced to implement (i) a liquidation of all Canadian standalone retail locations of the Canadian Borrower (the “Canadian Liquidation”); and (ii) the restructuring of the partner shop business (the “Partner Shop Business”) of the Canadian Borrower (the “Partner Shop Restructuring”); and

WHEREAS, in connection with the Canadian Liquidation, Merchant Retail Solutions, ULC and Gordon Brothers Canada ULC (collectively, the “Canadian Liquidation Agent” and, together with the US Liquidation Agent, the “Liquidation Agent”), have been retained to provide consulting services pursuant to an agreement with the Canadian Borrower dated February 24, 2017 (the “Liquidation Services Agreement”); and

WHEREAS, the Canadian Liquidation, the Partner Shop Restructuring, the BIA Proceedings, and the Chapter 11 Proceedings would be further additional Events of Default (the “Anticipated Defaults” and, together with the Existing Defaults, the “Specified Defaults”); and

WHEREAS, the Borrowers and the other Obligors acknowledge and agree that, it is a condition precedent to the Borrowers’ right to request, and the Lenders’ and Issuing Banks’ respective obligations to make available, Loans and Letters of Credit that no Default or Event of Default shall then exist and that as a result of the existence of the Existing Defaults (and also upon the occurrence of the Anticipated Defaults), the Lenders and the Issuing Banks are under no obligation to make any Loans available or to issue any Letters of Credit for the account of the Borrowers or any other Obligor and that any such Loans that the Lenders may make, and any Letters of Credit that the Issuing Banks may issue, are made and issued, as the case may be, solely on the terms set out herein in the case of the Canadian Borrower and solely on the terms of the US ABL DIP Agreement in the case of any parties other than the Canadian Borrower; and

WHEREAS, the Borrowers and the other Obligors acknowledge and agree that, but for the terms of this Agreement, the Lender Parties could, if they so elected, proceed to further enforce their rights and exercise any and all remedies available to the Lender Parties under the Loan Agreement, the other Loan Documents and Applicable Law (such rights and remedies, collectively, the “Remedies”) to collect the Canadian Borrower’s indebtedness to the Lender Parties under the Loan Agreement and the other Loan Documents, including by declaring all of the Obligations of the Canadian Borrower under the Loan Documents immediately due and payable by the Canadian Borrower, and that the Obligors have no defense to the Lender Parties’ enforcement and exercise of their Remedies; and

WHEREAS, the Borrowers and the other Obligors have requested that the Lender Parties agree to (a) forbear, for a limited period, from enforcing and exercising their Remedies under the Loan Agreement, the other Loan Documents and Applicable Law against the Canadian Borrower with respect to the indebtedness of the Canadian Borrower in connection with the Specified Defaults, and (b) make other concessions to the Obligors as set forth herein; and

WHEREAS, the Lender Parties are willing to (a) forbear, for a limited period, from enforcing and exercising their Remedies under the Loan Agreement, the other Loan Documents

and Applicable Law with respect to the indebtedness of the Canadian Borrower in connection with the Specified Defaults, and (b) make other concessions to the Obligors (clauses (a) through (b), collectively, the “Obligors’ Benefits”), all on the terms and conditions contained herein, each of which term and condition, individually and in the aggregate, and including the performance thereof by the Borrowers and the other Obligors, constitute the consideration to the Lender Parties for entering into this Agreement, and in the absence of any of which the Lender Parties would not have entered into this Agreement or otherwise extended to the Canadian Borrower and the other Obligors the Obligors’ Benefits; and

WHEREAS, the Canadian Borrower and the other Obligors acknowledge and agree that the Obligors’ Benefits hereunder are of immediate and material benefit, financial and otherwise, to the Canadian Borrower and the other Obligors, and that neither the Agents, Co-Collateral Agents, Lenders, or Issuing Banks were or are under any obligation to extend to the Canadian Borrower or the other Obligors the Obligors’ Benefits provided hereunder.

NOW, THEREFORE, in consideration of the foregoing premises, and other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Acknowledgments by the Obligors.

(a) The Canadian Borrower and each other Obligor hereby acknowledges and agrees that (i) as at February 24, 2017, the outstanding aggregate principal balance of the Canadian Revolver Loans totaled Cdn. \$13,483,923.88, exclusive of accrued interest, and any other fees (including attorneys’ fees), costs, expenses or amounts chargeable to the Canadian Borrower under the Loan Documents; (ii) the Existing Defaults have occurred and are continuing, as set forth in the Recitals; and (iii) as a result of the occurrence of the Existing Defaults, either Agent (in its discretion, or, upon the written direction of the Required Lenders or the Voting Collateral Agent, as the case may be) may (x) declare all of the Canadian Obligations due and payable by the Canadian Borrower and the other Obligors and (y) exercise any and all of their respective rights and remedies under the Loan Documents or otherwise available under Applicable Law and in equity with respect thereto.

(b) Each Obligor acknowledges and agrees that the forbearance provided herein shall not in any manner limit or restrict any rights or remedies available to the Lender Parties under the Loan Agreement, the other Loan Documents or under Applicable Law as a result of any Event of Default now or hereafter existing other than solely against the Canadian Borrower with respect to the Specified Defaults during the Forbearance Period (as hereinafter defined) only. Each Obligor agrees that the Obligations of the Canadian Borrower and the other Obligors to the Lender Parties and the other Lender Parties as evidenced by or otherwise arising under the Loan Agreement and the other Loan Documents, except as expressly modified in this Agreement upon the terms set forth herein, are, by the Obligors’ execution of this Agreement, ratified and confirmed in all respects, and the Obligors confirm that the Obligations are not subject to any claims or defenses whatsoever.

(c) The Canadian Borrower (i) agrees to, and to cause its officers, directors, accountants, Affiliates and other representatives to, fully and timely cooperate with the Agents and Lenders and their agents, representatives or independent contractors in the exercise of their

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respective rights under Section 10.1.1 of the Loan Agreement, and (ii) acknowledges that, as a result of the occurrence and continuance of the Existing Defaults and also, upon their occurrence, the Specified Defaults (and notwithstanding the amendments to the Loan Agreement or the forbearance provided herein), (x) the Agents (or their agents) may at any time, and as frequently as required by each Agent in its sole discretion, visit and inspect the Properties of the Canadian Borrower, conduct field examinations and Inventory appraisals, inspect, audit and make extracts from the Canadian Borrower's books and records, and discuss with the Canadian Borrower's officers, employees, agents, advisors and independent accountants the Canadian Borrower's business, financial condition, assets, prospects, results of operations and the Canadian Liquidation, and (y) all visits, inspections and appraisals under Section 10.1.1 of the Loan Agreement shall be at the sole expense of the Obligor. Each Obligor acknowledges and agrees that the Lenders may participate in any such visit or inspection.

2. Default Rate. The Canadian Borrower acknowledges and agrees that, effective as of the date hereof, (x) the Required Lenders have elected to apply the Default Rate interest as a result of the occurrence and continuance of the Existing Defaults and (y) from the date hereof until the date that the Specified Defaults are permanently waived hereafter in writing by the Agents and the Lenders and no other Events of Default are occurring and continuing, all Obligations shall bear interest at the Default Rate (that is, at a rate that is 2% per annum in excess of the interest rate or fee rate otherwise applicable under the Loan Agreement if no Event of Default was continuing).

3. Forbearance Arrangements.

(a) Forbearance. During (but only during) the period (such period being hereafter referred to as the "Forbearance Period") commencing on the Effective Date (as hereinafter defined) and ending on that date (the "Forbearance Termination Date") on which the Administrative Agent or Required Lenders have given written notice terminating the Forbearance Period, which notice may be given on or after the date which is the earliest to occur of the following: (i) May 31, 2017, (ii) the occurrence of any Event of Default under the Loan Documents (other than the Specified Defaults), including, without limitation, an Event of Default under this Agreement as set forth in Section 5 hereof, (iii) the date that any Obligor or any Subsidiary or other Affiliate of any Obligor, or any person or entity claiming by or through either any Obligor or any Subsidiary or other Affiliate of any Obligor, commences, joins in, assists, cooperates or participates as an adverse party or adverse witness in any suit or other proceeding against any Secured Party or any Affiliate of any Secured Party, relating to the Obligations or any of the transactions contemplated by the Loan Agreement, the other Loan Documents, this Agreement or any other documents, agreements or instruments executed in connection therewith or with this Agreement, (iv) upon notice of termination delivered by either the Administrative Agent or the Required Lenders, if any representation or warranty set forth in Section 7 is untrue, incorrect or misleading in any material respect when given, (v) any order shall be sought by an Obligor or be entered in a proceeding relating to any Obligor in a Chapter 11 bankruptcy proceeding in the U.S. Bankruptcy Court, including the Chapter 11 Proceedings, that shall not be acceptable to the Agents, (vi) any Event of Default (as defined in the US ABL DIP Agreement) occurs, or (vii) or any other Additional Terminating Event (as defined below) occurs (collectively, the "Forbearance Terminating Events"), the Lender Parties party hereto will forbear from enforcing and exercising their Remedies under the Loan Agreement, the other Loan

Documents and Applicable Law against the Canadian Borrower with respect to the Specified Defaults.

“Additional Terminating Event” means:

- i. the Canadian Borrower creates, incurs, assumes or permits to exist any Lien on any of its property, undertaking or assets now owned or hereafter acquired or the Canadian Court makes any order declaring that all or part of the Canadian Borrower’s property is subject to a charge in favour of any party other than the Agents and such Lien or court ordered charge purports to rank in any manner whatsoever in priority to or *pari passu* with any claim or interest of the Agents under their Liens, other than Permitted Liens and any court-ordered charge(s) approved by the Agents and granted by the Canadian Court in the BIA Proceedings;
- ii. if, on or after the date of this Agreement (a) the BIA Proceedings or the Chapter 11 Proceedings are terminated without the prior or concurrent consent of the Agents; (b) any order of the Canadian Court is sought by the Canadian Borrower or any other Obligor or granted by the Canadian Court that is not acceptable to the Agents; or (c) the Canadian Preliminary Order (as defined below) is not granted on terms satisfactory to the Agent on or before March 6, 2017 or the Canadian Preliminary Order is subsequently amended, vacated or stayed or subject to a motion seeking a stay or leave to appeal;
- iii. the Proposal Trustee reports to the Canadian Court information indicating that there has been a material adverse change in respect of the Canadian Borrower, the BIA Proceedings or the Canadian Liquidation;
- iv. the Liquidation Services Agreement is terminated or amended without the consent of the Agents;
- v. if any representation, warranty or other statement made or deemed to be made by the Canadian Borrower or any other Obligor in this Agreement, or instruments to be delivered to the Agent and the Lender as contemplated by this Agreement is untrue in any material respect;
- vi. if, other than the BIA Proceedings, any action is taken by or against or consented to by the Canadian Borrower to (a) institute proceedings to be liquidated, adjudicated a bankrupt or insolvent; (b) consent to the institution of liquidation, bankruptcy, insolvency or similar proceedings against the Canadian Borrower; (c) file a petition (or similar action or proceeding) or consent to a petition (or similar proceeding) seeking reorganization, arrangement, or relief from creditors, or (d) take or commence any other steps or proceedings under any one or more of the applicable insolvency, liquidation, bankruptcy or analogous statutes or laws, unless the Agents consent thereto;

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- vii. if any creditor or encumbrancer of the Canadian Borrower takes possession of any of its property or assets, or if distress or execution or any similar process is levied or enforced against the Canadian Borrower's property or assets;
- viii. if any liability arises or event occurs, including any change in the business, assets or conditions, financial or otherwise, of the Canadian Borrower that will, in any Agent's judgment, acting reasonably, materially further impair the Canadian Borrower's financial condition, operations or ability to comply with its obligations under this Agreement, the Loan Agreement or the other Loan Documents or carry out the Canadian Liquidation in a manner reasonably acceptable to the Agents;
- ix. if any step is taken or event occurs that would materially prejudice or jeopardize the Agents' or the Lenders' priority rights with respect to the Collateral; or
- x. if the stay imposed under the BIA Proceedings is lifted, in whole or in part, is terminated or lapses without extension, unless the Agents consent thereto

(b) Expiration of Forbearance Period. Upon the Forbearance Termination Date, (i) the Lender Parties' agreement to forbear from enforcing their rights and exercising their remedies against the Canadian Borrower with respect to the Specified Defaults contained herein shall automatically, and without any further action, notice or demand or any other occurrence terminate, and (ii) the Lender Parties shall be free in their sole and absolute discretion to proceed to enforce any or all of their rights and exercise any or all of their remedies available under the Loan Agreement, the other Loan Documents and Applicable Law in respect of the Canadian Borrower (and, for greater certainty, the other Obligors in respect of the Canadian Obligations), including without limitation, those rights and remedies arising by virtue of the occurrence of the Specified Defaults, and each of the Obligors hereby waives notice thereof. The Obligors acknowledge and agree that during the Forbearance Period, the Specified Defaults shall be existing and continuing until waived, released or extinguished by the Agents and the Lenders.

(c) Effect and Construction of Forbearance.

- i. Except as otherwise expressly provided herein, the Loan Agreement and the other Loan Documents shall remain in full force and effect in accordance with their respective terms in respect of the Canadian Revolving Loans and the other Canadian Obligations, and neither this Agreement nor the making of any Canadian Revolving Loans or other extensions of credit simultaneously herewith or subsequent hereto or the entry of certain of the Obligors into the US ABL DIP Agreement shall be construed to: (i) impair the validity, perfection or priority of any Lien or security interest securing the Obligations, including the Canadian Obligations; (ii) waive or impair any rights, powers or remedies of the Lender Parties under the Loan Agreement, the other Loan Documents or Applicable Law upon the Forbearance Termination Date, with respect to

the Specified Defaults or otherwise; (iii) constitute an agreement by the Lender Parties or require the Lender Parties to extend the Forbearance Period or further forbear from exercising their rights and remedies under the Loan Agreement, the other Loan Documents or Applicable Law, extend the term of the Loan Agreement or the time for payment of any of the Obligations; (iv) require the Lender Parties to make any Loans, issue, extend, renew or amend any Letter of Credit or make any other extensions of credit to the Borrowers, other than in respect of the Canadian Revolving Loans as expressly provided herein; or (v) constitute a waiver of any right of the Lender Parties to insist on strict compliance by the Obligors with each and every term, condition and covenant of this Agreement and the Loan Documents, except as expressly otherwise provided herein. Without limiting the foregoing, the Obligors acknowledge and agree that, notwithstanding the amendments to the Loan Agreement or the forbearance contained herein (and except as expressly set out herein in respect of the Canadian Revolving Loans only), the Agents, Lenders and Issuing Bank may refuse to honor any request for any Loan, any issuance, extension, renewal or amendment of Letters of Credit or any other request for extension of credit based on any failure to satisfy conditions thereto, whether arising from the continuation of the Specified Defaults or any other fact or circumstances now existing or arising in the future, whether or not currently known to the parties hereto.

- ii. The Lender Parties hereby acknowledge and agree that to the extent any such Loan or other credit extension is made to the Canadian Borrower during the Forbearance Period, it shall not constitute an additional Event of Default due to the failure of the representations and certifications made or deemed made by the Canadian Borrower and the other Obligors in connection with such Loan or such other credit extension under the Loan Documents to be true because of the existence of Specified Defaults.

Except as modified by this Agreement, no other changes or modifications to the Loan Agreement or the other Loan Documents in respect of the Canadian Borrower are intended or implied, and in all other respects the Loan Agreement and the other Loan Documents in respect of the Canadian Borrower are specifically acknowledged, ratified and confirmed by the Obligors. To the extent of conflict between the terms of this Agreement, the Loan Agreement and the other Loan Documents in respect of the Canadian Borrower, the terms of this Agreement will govern. Notwithstanding anything to the contrary contained herein, for certainty, the Lender Parties are not forbearing from enforcing and exercising their Remedies under the Loan Agreement, the other Loan Documents and Applicable Law against any other Obligor (other than the Canadian Borrower) with respect to the Specified Defaults or otherwise.

(d) No Course of Dealing or Performance. Each Obligor acknowledges and agrees that the agreement of the Lender Parties to forbear from enforcing their rights and exercising their remedies against the Canadian Borrower with respect to the Specified Defaults pursuant to

and as reflected in this Agreement, does not and shall not create (nor shall any Obligor rely upon the existence of or claim or assert that there exists) any obligation of the Lender Parties to consider or agree to any waiver or any other forbearance and, in the event that the Lender Parties subsequently agree to consider any waiver or any other forbearance, neither the existence of any prior forbearance or waiver, nor this Agreement, nor any other conduct of the Lender Parties, or any of them, shall be of any force or effect on the consideration or decision with respect to any such requested waiver or forbearance, and no Lender Party shall have any obligation whatsoever to consider or agree to forbear or to waive any Default or Event of Default. In addition, none of (i) the execution and delivery of this Agreement, (ii) the actions of the Lender Parties in obtaining or analyzing any information from the Obligors, whether or not related to consideration of any waiver, modification, forbearance or alteration of the Loan Agreement, any Default or Event of Default thereunder, or otherwise, including, without limitation, any discussions or negotiations (heretofore or, if any, hereafter) between the Lender Parties and any of the Obligors regarding any potential waiver, modification, forbearance or amendment related to the Loan Agreement, (iii) any failure of the Lender Parties to enforce any of their rights or exercise any of their remedies under, pursuant or with respect to the Loan Agreement, the other Loan Documents or Applicable Law, nor (iv) any action, inaction, waiver, forbearance, amendment or other modification of or with respect to the Loan Agreement or the other Loan Documents, shall, except to the extent otherwise expressly provided herein or unless evidenced by a subsequent written agreement (and then only to the extent provided by the express provisions thereof):

- i. constitute a waiver by any Lender Party of, or an agreement by any Lender Party to forbear from the enforcing of any their rights or exercising any of their remedies with respect to, any Default or Event of Default under the Loan Agreement;
- ii. constitute a waiver by or estoppel of any Lender Party as to the satisfaction or lack of satisfaction of any covenant, term or condition set forth in the Loan Agreement or any other Loan Document;
- iii. except as expressly set forth herein, constitute an amendment to or modification of, or an agreement on the part of any Lender Party to enter into any amendment to or modification of, or an agreement to negotiate or continue to negotiate with respect to, the Loan Agreement or any other Loan Document or any amendment of any of the same;

4. Covenants. At all times after the Effective Date, the Canadian Borrower and the other Obligors covenant and agree as follows (in each case without limiting any covenants or other agreements in the US ABL DIP Agreement and the other Loan Documents):

(a) Company Financial Advisors. The Obligors shall continue to retain a financial advisor, which financial advisor shall be reasonably acceptable to the Administrative Agent and each Co-Collateral Agent. Such retention shall be pursuant to an engagement letter or other arrangement and on terms and conditions reasonably satisfactory to the Administrative Agent and each Co-Collateral Agent. The Agents hereby confirm that, as of the date hereof, the existing engagements of Alix Partners LLP and FAAN Advisors Group Inc. (collectively, the “Financial Advisors”) satisfy this requirement. The Financial Advisors shall continue to be

retained by and at the sole cost and expense of Borrowers and solely on behalf of Borrowers at all times.

(b) Fourteen-Week Cash Flow Forecast. The Canadian Borrower, in consultation with the Financial Advisors, shall prepare and deliver to the Co-Collateral Agents:

- i. prior to the commencement of the Forbearance Period, a 14-week cash flow forecast prepared by the Canadian Borrower in good faith based upon assumptions which the Canadian Borrower believes to be reasonable, for the 14-week period commencing as of February 27, 2017, which shall be in form and substance satisfactory to, and approved by, the Co-Collateral Agents (such cash flow forecast, as approved by the Co-Collateral Agents, the “Approved Canadian Budget”); and
- ii. on or before 11:59 p.m. Pacific time on Thursday of each week (commencing as of the first full calendar week following the Petition Date in respect of (ii) and (iii) below and commencing following the third full calendar week following the Petition Date in respect of (i) below) a compliance certificate substantially in the form attached to the US DIP ABL Agreement as Exhibit E, modified as required for application to the Canadian Borrower, and such compliance certificate shall include such detail as is reasonably satisfactory to the Co-Collateral Agents, signed by Naveed Manzoor in his capacity as Chief Restructuring Advisor certifying that (i) the Canadian Borrower is in compliance with the covenants contained in Section 4(c) below, (ii) no Forbearance Terminating Event has occurred or, if a Forbearance Terminating Event has occurred, specifying the nature and extent thereof, and (iii) attaching an approved budget variance report in the form contemplated in the US ABL DIP Agreement with such modifications as are required for such report to apply to the Canadian Borrower.

(c) Budget Compliance Covenants. Commencing following the third full calendar week following the Petition Date and for each calendar week thereafter, the Obligors shall not permit:

- i. Actual Net Cash Flows. The Actual Net Cash Flows of the Canadian Borrower (without giving effect to borrowings or repayments under the Loan Agreement) for any Cumulative Four Week Period or the Cumulative Period to be less than 90% of Budgeted Net Cash Flows of the Canadian Borrower (without giving effect to borrowings or repayments under the Loan Agreement) for any Cumulative Four Week Period or the Cumulative Period ;and
- ii. Maximum Cash Disbursements. Any Actual Line Item Disbursement Amount (other than amounts under the line item “Professional Fees”, “Sales taxes on expense” and “Sales taxes on remittance”) for any Cumulative Four Week Period or the Cumulative Period to be greater

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than 110% of Budgeted Line Item Disbursement Amount for the applicable line item for any such Cumulative Four Week Period or the Cumulative Period.

For the purposes of this Agreement:

“Actual Net Cash Flows” means the sum of all cash receipts received by the Canadian Borrower (excluding any borrowings), minus the sum of all cash disbursements, expenses and payments (excluding repayments of any borrowings) made by the Canadian Borrower, in each case, during the relevant period of determination, as determined in a manner consistent with the Approved Canadian Budget.

“Budgeted Net Cash Flows” means the amount shown in the line item labelled “Net Cash Flow” in the Approved Canadian Budget during the relevant period of determination, provided, that is understood and agreed that, without any further action, any positive or negative variances from the budgeted amount that are tested for any Cumulative Four Week Period shall automatically roll forward to the next tested Cumulative Four Week Period.

“Actual Line Item Disbursement Amount” means expenditures made by the Canadian Borrower during the relevant period of determination which correspond to each of the budgeted expenditures described in the line items contained in the Approved Canadian Budget under the heading “General Disbursements”, as determined in a manner consistent with the Approved Canadian Budget.

“Budgeted Line Item Disbursement Amount” means the expenditures described in the line items contained in the Approved Canadian Budget under the heading “General Disbursements” during the relevant Period of determination on a line item basis, provided, that it is understood and agreed that, without any further action, any positive or negative variances from the budgeted amount that are tested for any Cumulative Four Week Period shall automatically roll forward to the next tested Cumulative Four Week Period.

(d) Pre-Payment of Debt; Certain Investments. During the Forbearance Period, the Canadian Borrower shall not:

- i. (A) voluntarily pre-pay or otherwise satisfy prior to scheduled maturity any principal of Debt of the Canadian Borrower (other than the Obligations), or (B) make any payments of Subordinated Debt, except interest payments that are capitalized and added to the principal amount of such Subordinated Debt; or
- ii. make any expenditure not included in the Approved Canadian Budget (subject to permitted variances set out above in Section 4(c)) save and except for any inventory purchases made pursuant to the Intercompany Loan.

(e) Cooperation. The Obligors (i) covenant and agree that the Obligors shall fully cooperate with the Financial Advisors (including, without limitation, in connection with the preparation of the deliverables described in clause (b) above), (ii) hereby authorize the Agents

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and each Co-Collateral Agent (or their agents or advisors, including, the Agent Advisors) to communicate directly with the Financial Advisors and the Liquidation Agent regarding any and all matters related to the Obligors and their Affiliates, including, without limitation, (x) all financial reports and projections developed, reviewed or verified by the Financial Advisors or the Liquidation Agent and all additional information, reports and statements reasonably requested by any Agent, any Co-Collateral Agent, or any Lender, including, without limitation, as provided in Section 10.1.2(n) of the Loan Agreement and (y) all aspects of the Canadian Liquidation and all additional information, reports and statements reasonably requested by any Agent, any Co-Collateral Agent, or any Lender related thereto, and (iii) hereby authorize and direct the Financial Advisors and the Liquidation Agent to provide the Agents, each Co-Collateral Agent (or their agents or advisors, including, the Agent Advisors) with copies of reports and other information or materials prepared or reviewed by the Financial Advisors as any Agent, any Co-Collateral Agent, or any Lender may reasonably request.

(f) Financial Advisors and Liquidation Agents Status Calls. The Canadian Borrower shall, from time to time upon request by the Administrative Agent or any Co-Collateral Agent, conduct (i) and cause the Financial Advisors to participate in status calls with the Administrative Agent and each Co-Collateral Agent to discuss the Approved Canadian Budget and/or any other reports delivered pursuant to clauses (b), (c) or (e) above or otherwise, the financial operations and performance of the Canadian Borrower's business, the Canadian Liquidation, or such other matters relating to the Canadian Borrower as the Administrative Agent or any Co-Collateral Agent (or their agents or advisors) shall reasonably request and (ii) cause the Liquidation Agent to participate in status calls with the Administrative Agent and each Co-Collateral Agent to discuss the Canadian Liquidation and any matters relating thereto and such other matters relating to the Obligors as the Administrative Agent or any Co-Collateral Agent (or their agents or advisors) shall reasonably request.

(g) Co-Collateral Agents Financial Advisor. The Obligors hereby acknowledge and agree that the Co-Collateral Agents may in their sole and absolute discretion retain (directly or through counsel), for the benefit of the Lender Parties, a financial advisor and/or consultant and such other third party professionals of their choosing (collectively, the "Agent Advisors") to provide advice, analysis and reporting with respect to such matters relating to the Obligors as the Co-Collateral Agents may determine in their sole and absolute discretion. The Obligors and their advisors shall cooperate in all respects with such Agent Advisors and provide all information that such Agent Advisors may reasonably request in a timely manner. All reasonable costs, fees and expenses incurred by the Lender Parties on account of such Agent Advisors shall be Expenses (as defined below) payable by the Obligors as set forth in Section 10 below.

(h) Canadian Liquidation. The Canadian Borrower shall diligently pursue the completion of the Canadian Liquidation, including by commencing the Canadian Liquidation at all Canadian standalone retail locations on or before the date that is two Business Days following the date of the Canadian Preliminary Order, and comply with the terms of the Liquidation Services Agreement. The Liquidation Services Agreement shall not be amended without the consent of the Agents.

(i) Blocked Accounts. The Canadian Borrower shall enforce, collect and receive at its expense all amounts owing on its Accounts in the ordinary course of its business and any

Cash Receipts so received shall be subject to the terms of the Loan Agreement and this Agreement. Each of the Canadian Borrower's Deposit Accounts that receive such Cash Receipts or other property subject to a Lien in favour of the Canadian Agent or otherwise shall be subject to duly executed and delivered Account Control Agreements. For purposes of greater certainty, the Canadian Borrower is required to transfer by the ACH or wire transfer on each Business Day (and whether or not there is then an outstanding balance in the Loan Account) all available Cash Receipts to the Canadian Agent's Agent Account.

(j) Court Materials. All motions, orders and other documents to be filed with and submitted to the Canadian Court at any time in the BIA Proceedings shall be in form and substance reasonably satisfactory to the Administrative Agent and the Canadian Agent.

5. Covenants; Immediate Default. The Obligors hereby agree that the failure to perform or comply with any of the terms of this Agreement, including, without limitation, any of the covenants set forth in Section 4 above, shall constitute an additional immediate Event of Default under the Loan Agreement (without any grace or cure period) and shall, upon notice from the Co-Collateral Agents, result in the occurrence of the Forbearance Termination Date as specified herein.

6. Certain Matters In Respect of the Borrowing.

(a) Certain Matters In Respect of the Borrowing Base Certificate. The Canadian Borrower hereby covenants and agrees that, notwithstanding anything to the contrary contained in the Loan Agreement or any other Loan Document, (i) each Borrowing Base Certificate shall be certified by Naveed Manzoor in his capacity as Chief Restructuring Advisor of the Canadian Borrower, and (ii) each Notice of Borrowing shall include a certification certifying the payments set forth in the Approved Canadian Budget to be made by the Canadian Borrower with the proceeds of such borrowing, and each such certification shall be in form and substance satisfactory to the Agents.

(b) Funding During Forbearance Period.

- i. Except to the extent otherwise set forth in this Agreement, the Canadian Revolver Commitments to the Canadian Borrower (as amended by the Forbearance Agreement dated February 14, 2017) shall continue in accordance with the terms and conditions as set forth in the Loan Agreement. Canadian Revolver Loans to the Canadian Borrower will be subject to the calculation of the Canadian Borrowing Base.
- ii. The proceeds of borrowings by the Canadian Borrower shall, subject to the provisions of this Agreement, be used for funding the Canadian Liquidation, the Canadian Borrower's out-of-pocket costs incurred in connection with the BIA Proceedings (including all reasonable fees and expenses of its counsel, the Proposal Trustee and the Proposal Trustee's counsel and the Agent's counsel), and for such other purposes as may be agreed to by the Agents in writing; all in accordance with the Approved Canadian Budget.

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- iii. The Canadian Borrower hereby agrees with the Agents and the Lenders that, effective immediately, (a) no new Canadian BA Rate Loans shall be made available to, or may be continued or converted by, the Canadian Borrower under the Loan Agreement, provided that, during the Forbearance Period, existing Canadian BA Rate Loans made to the Canadian Borrower shall be allowed to expire and converted to Canadian Prime Rate Loans in accordance with the Credit Agreement; (b) no new Banker's Acceptances or Letters of Credit shall be requested or issued for the benefit of the Canadian Borrower, provided that, during the Forbearance Period, any existing Banker's Acceptance or Letter of Credit issued for the benefit of the Canadian Borrower shall be allowed to remain outstanding and renew in accordance with its terms; and (c) no new Hedging Agreement shall be requested or concluded for the benefit of the Canadian Borrower.

7. Representations and Warranties; Reaffirmation; No Off-Sets; Release. To induce the Lender Parties to enter into this Agreement:

(a) Each Obligor represents and warrants that, upon and after giving effect to this Agreement, (i) the representations and warranties of such Obligor contained in the Loan Documents, including this Agreement and any agreement, instrument or document executed in connection herewith or therewith or pursuant hereto or thereto are true and correct in all material respects (except to the extent that any such representation or warranty, by its express terms, relates to a prior specific date or period, in which case such representations and warranties are true and correct as of such earlier date or period, as applicable, and except to the extent any such representation or warranty is made incorrect only because of the existence of a Specified Default), (ii) it has the power and authority and is duly authorized to enter into, deliver and perform this Agreement, (iii) this Agreement, the Loan Agreement and each of the other Loan Documents to which it is a party is the legal, valid and binding obligation thereof, enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in equity or in law), (iv) the execution, delivery and performance of this Agreement by each Obligor have been duly authorized by all necessary action, and do not (A) require any consent or approval of any holders of Capital Stock of any Obligor, other than those already obtained; (B) contravene the Organic Documents of any Obligor; (C) violate or cause a material default under any Applicable Law; or (D) result in or require the imposition of any Lien (other than Permitted Liens and Liens granted hereunder) on any Property of any Obligor.

(b) Each Obligor (i) agrees that this Agreement and the US ABL DIP Agreement are not intended to be, and are not, a novation of any of the Loan Documents or any of the Obligations thereunder and does hereby ratify, confirm and reaffirm each of the agreements, covenants, and undertakings made by it under the Loan Agreement and each and every other Loan Document executed by it in connection therewith or pursuant thereto, in each case, as modified by this Agreement, as if such Obligor were making said agreements, covenants and undertakings on the date hereof, except with respect to such agreements, covenants and undertakings which, by their express terms, are applicable only to a prior specified date, (ii)

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ratifies and confirms all of its Obligations to the Lender Parties in respect of the Canadian Obligations and the Canada Guaranty; and (iii) confirms that such Obligations are and remain secured by the Collateral pursuant to the Security Documents and pursuant to all other instruments and documents executed and/or delivered by the Obligors, as security for such Obligations and acknowledges the validity of the Liens granted in favour of the Agents, for the benefit of the Secured Parties, pursuant thereto;

(c) Each Obligor does hereby acknowledge and agree that, as of the date hereof, no known right of offset, defense, counterclaim, claim, cause of action or objection exists in favour of any Obligor against any Lender Party arising out of or with respect to (i) the Obligations, this Agreement, the Loan Agreement or any of the other Loan Documents, (ii) any other documents evidencing, securing or in any way relating to the foregoing, or (iii) the administration or funding of the Loans or the Obligations; and

(d) As a material inducement to the Lender Parties entering into this Agreement to forbear from enforcing their rights and exercising their remedies under the Loan Documents and Applicable Law against the Canadian Borrower with respect to the Specified Defaults during the Forbearance Period, all in accordance with and subject to the terms and conditions of this Agreement and the Loan Agreement, and all of which are to the direct advantage and benefit of Canadian Borrower, the Canadian Borrower, for itself and its respective successors and assigns, (i) does hereby remise, release, waive, relinquish, acquit, satisfy and forever discharge each Lender Party and each other Secured Party and all of the respective past, present and future officers, directors, employees, agents, attorneys, Agent Advisors, representatives, participants, heirs, Affiliates, successors and assigns of each Agent, each Co-Collateral Agent, each Lender, each Issuing Bank, and each other Secured Party (collectively the “Discharged Parties” and each a “Discharged Party”), from any and all manner of debts, accountings, bonds, warranties, representations, covenants, promises, contracts, controversies, agreements, liabilities, obligations, expenses, damages, judgments, executions, actions, suits, claims, counterclaims, demands, defenses, setoffs, objections and causes of action of any nature whatsoever, whether at law or in equity, either now accrued or hereafter maturing and whether known or unknown, including, but not limited to, any and all claims which may be based on allegations of breach of contract, failure to lend, fraud, promissory estoppel, libel, slander, usury, negligence, misrepresentation, breach of fiduciary duty, bad faith, lender malpractice, undue influence, duress, tortious interference with contractual relations, interference with management, or misuse of control which the Canadian Borrower now has or hereafter can, shall or may have by reason of any matter, cause, thing or event occurring on or prior the date of this Agreement arising out of, in connection with or relating to (i) the Obligations, including, but not limited to, the administration or funding thereof, (ii) any of the Loan Documents or the indebtedness evidenced and secured thereby, and (iii) any other agreement or transaction between any Obligor and any Discharged Party relating to or in connection with the Loan Documents or the transactions contemplated therein; and (b) does hereby covenant and agree never to institute or cause to be instituted or continue prosecution of any suit or other form of action or proceeding of any kind or nature whatsoever against any Discharged Party, by reason of or in connection with any of the foregoing matters, claims or causes of action, provided, however, that the foregoing release and covenant not to sue shall not apply to any claims first arising after the date of this Agreement with respect to acts, occurrences or events after the date of this Agreement. To this end, to the maximum extent permitted by law, to the extent the release under this Section 7(d) is a release as

to which Section 1542 of the California Civil Code or any similar provision of other Applicable Law applies, each Obligor, for itself and its respective successors and assigns, waives all rights under Section 1542 of the California Civil Code or such similar provision of other Applicable Law, and acknowledge that Section 1542 of the California Civil Code provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favour at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

The waiver above of rights under Section 1542 of the California Civil Code is included solely out of an abundance of caution, and shall not be construed to mean that Section 1542 of the California Civil Code is in any way applicable to the release hereunder.

8. Closing; Conditions Precedent. Each party hereto hereby agrees that the provisions of this Agreement shall be effective upon the date (the “Effective Date”) of satisfaction (or waiver by the Agents in their sole discretion) of each of the following conditions precedent:

(a) Delivery of Documents. On or prior to the date hereof, the Administrative Agent shall have received a copy of this Agreement duly executed by each Obligor, the Lenders, the Agents and Guggenheim (in its capacities as (i) “Administrative Agent” and “Collateral Agent” under the Guggenheim Credit Agreement and (ii) “Guggenheim Administrative Agent” and “Guggenheim Collateral Agent” under the Intercreditor Agreement).

(b) Budget. The Administrative Agent and the Co-Collateral Agents shall have received the Approved Canadian Budget, in form and substance satisfactory to, and approved by, the Co-Collateral Agents.

(c) BIA Proceedings, Court Materials. The Administrative Agent and the Co-Collateral Agents shall have received drafts of all orders to be sought by the Canadian Court upon commencement of the BIA Proceedings and drafts of all supporting affidavits to be filed in the BIA Proceedings in connection with such orders, in form and substance satisfactory to, and approved by, the Co-Collateral Agents. Without limiting the foregoing, the Canadian Borrower shall have filed a motion seeking an order of the Canadian Court (the “Canadian Preliminary Order”) that shall, *inter alia*, provide:

i. that this agreement, and the entry of the Canadian Borrower into this Agreement, is approved;

ii. that the Liquidation Services Agreement, and the entry of the Canadian Borrower into the Liquidation Services Agreement, is approved;

iii. the Agents shall at all times be treated as “unaffected creditors” in the BIA Proceedings and in any proposal filed pursuant thereto and/or in any other insolvency, restructuring, reorganization and/or arrangement proceeding with respect to the Canadian Borrower thereafter including, without limitation, proceedings under the *Companies’ Creditors Arrangement Act* (Canada) or the *Bankruptcy and Insolvency Act* (Canada) and

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any stay of proceedings (whether statutory or otherwise) applicable to any creditors in the BIA Proceedings shall not apply to the Agents and the Lenders;

iv. the aggregate of any and all advances of funds by the Agents and the Lenders to the Canadian Borrower under the Loan Agreement made on or after the time of the commencement of the BIA Proceedings shall be secured by a Canadian Court ordered security and charge in favour of the Agents (the “Canadian ABL Priority Charge”) which security and charge shall rank in priority to every other claim, Lien and security interest against the Canadian Borrower’s property, assets and undertaking, other than such other charges ordered by the Canadian Court with the prior consent of the Agents, without any need or requirement for any further steps for attachment, perfection, opposability against third parties, registration, publication or other notice thereof required to be taken by the Agent;

v. authorization and direction for the Canadian Borrower to pay, in accordance with the Loan Agreement, any and all amounts owing by the Canadian Borrower to the Agents or the Lenders on account of the Canadian Borrower’s pre-filing outstanding obligations under the Loan Agreement from time to time, provided that no advances of funds made by the Agents or the Lenders to the Canadian Borrower under the Loan Agreement made on or after the commencement of the BIA Proceedings shall be used to pay the Canadian Borrower’s pre-filing outstanding obligations under the Loan Agreement;

vi. authorization and direction for the Canadian Borrower to perform under its existing cash management arrangements pursuant to the Loan Agreement, including as described in subsection 4(i) above.

(d) Notice of Intention to Enforce Security. The Canadian Agent shall have delivered and the Canadian Borrower shall have received a notice in prescribed form from the Canadian Agent to the Canadian Borrower pursuant to Section 244 of the *Bankruptcy and Insolvency Act* (Canada) and the Canadian Borrower shall have consented to enforcement of the security interests described therein and waiver of any applicable notice periods on terms satisfactory to the Agents.

(e) Fees and Expenses. The Canadian Borrower shall have paid to the Administrative Agent the Expenses (as defined below) (to the extent incurred, invoiced and otherwise known as to amount as of the date hereof), together with any other fees due and payable on the date hereof.

(f) No Events of Default, Etc. After giving effect to this Agreement, no Default or Event of Default, other than the Specified Defaults, shall have occurred and be continuing under the Loan Agreement or any other Loan Document and each of the representations and warranties in Section 7 of this Agreement shall be true and correct.

(g) Other Creditors. Any proceedings of other creditors of the Canadian Borrower that are ongoing as at the Petition Date or that may be commenced shall be stayed as a result of the commencement of the BIA Proceedings.

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(h) US ABL DIP Agreement. The US ABL DIP Agreement shall have been entered into and shall be fully enforceable by and against the parties thereto.

(i) Liquidation Services Agreement. The Liquidation Services Agreement shall remain in full force and effect, unamended.

(j) all other documentation reasonably required by the Agents and their counsel in connection with this Agreement shall have been received by the Agents, all duly authorized, executed and delivered in form and substance satisfactory to the Agent in its sole discretion

9. Additional Acknowledgments. Each Obligor expressly acknowledges and agrees that the waivers, estoppels and releases in favour of the Lender Parties and the other Secured Parties contained in this Agreement shall not be construed as an admission of any wrongdoing, liability or culpability on the part of any Lender Party or such other Secured Party, or as an admission by any Lender Party or other Secured Party of the existence of any claims by any Obligor against any Lender Party. Each Obligor further acknowledges and agrees that, to the extent that any such claims exist, they are of a speculative nature so as to be incapable of objective valuation and that, to the extent that any such claims may exist and may have value, such value would constitute primarily “nuisance” value or “leverage” value in adversarial proceedings between any Obligor and any Lender Party or other Secured Party. In any event, each Obligor acknowledges and agrees that the value to such Obligor of the covenants and agreements on the part of each Lender Party or other Secured Party contained in this Agreement substantially and materially exceeds any and all value of any kind or nature whatsoever of any claims or other liabilities waived or released by such Obligor hereunder.

10. Expenses.

Without limiting the generality of Section 3.4 of the Loan Agreement, the Borrowers and the other Obligors jointly and severally agree to pay on demand, without duplication, all reasonable and actual invoiced costs and expenses incurred by the Agents and the Co-Collateral Agents in connection with the preparation, execution, delivery and enforcement of this Agreement and all other documents, instruments and agreements entered into in connection herewith and in connection with any other transactions contemplated hereby or in connection with the BIA Proceedings, the Chapter 11 Proceedings or the Canadian Liquidation, including, without limitation, the reasonable fees and out-of-pocket expenses of legal counsel to the Agents, Co-Collateral Agents and Lenders (collectively the “Expenses”).

11. Conflict; Amendments. In the event of any conflict between the provisions of the Loan Documents and this Agreement, the provisions of this Agreement shall govern. This Agreement shall constitute a Loan Document for all purposes of the Loan Agreement.

12. No Waiver. Except as otherwise expressly provided for in this Agreement, nothing contained in this Agreement shall extend to or affect in any way any of the rights or obligations of the Obligors and their respective Affiliates, or the Lender Parties’ obligations and/or rights and remedies under the Loan Agreement, the other Loan Documents or Applicable Law. Except as expressly set forth herein, all of the terms and provisions of the Loan Agreement and the other Loan Documents shall remain in full force and effect. Each Obligor, individually and on behalf of its respective Affiliates, hereby agrees that the Lender Parties shall not be

deemed to have waived the Specified Defaults or any other Default or Event of Default existing on the date hereof or arising hereafter or any or all of their rights and remedies under the Loan Documents and Applicable Law with respect to such Specified Defaults, Defaults or Events of Default. This Agreement shall be binding upon each Obligor, any successors or assigns of any Obligors and any other guarantor or co-obligor of any of the Obligations.

13. Miscellaneous. Each Obligor agrees to take such further action as any of the Lender Parties shall reasonably request in connection herewith to evidence the agreements herein contained. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same instrument. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto. This Agreement shall be governed by, and construed and enforced in accordance with, the internal laws of the State of New York. This Agreement may not be modified, altered or amended except by agreement in writing signed by the Obligors, the Lenders and the Agents. Each Obligor acknowledges that it has consulted with counsel and with such other expert advisors as it deemed necessary in connection with the negotiation, execution and delivery of this Agreement. This Agreement shall be construed without regard to any presumption or rule requiring that it be construed against the party causing this Agreement or any part hereof to be drafted. Nothing in this Agreement shall be construed to alter the debtor-creditor relationship between the Obligors, on the one hand, and the Secured Parties, on the other. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any provisions of this Agreement shall be prohibited by or rendered invalid under Applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement. This Agreement is not intended as, nor shall it be construed to create, a partnership or joint venture relationship between or among any of the parties. This Agreement together with the other Loan Documents embodies the entire understanding and agreement between the parties hereto and thereto with respect to the subject matter hereof and thereof and supersedes all prior agreements, understandings and inducements, whether express or implied, oral or written. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or other electronic communication shall be effective as delivery of a manually executed counterpart of this Agreement.

Each Lender and each Co-Collateral Agent that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required under this Agreement to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received reasonably advanced notice from such Lender or Co-Collateral Agent prior to the proposed Effective Date specifying its objection thereto.

[the balance of this page is intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

**Borrowers:**

**BCBG MAX AZRIA GROUP, LLC**

By: \_\_\_\_\_

Name:

Title:

**BCBG MAX AZRIA CANADA INC.**

By: \_\_\_\_\_

Name:

Title:

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**Guarantors:**

**MLA MULTIBRAND HOLDINGS, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**MAX RAVE, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**BCBG MAX AZRIA INTERMEDIATE  
HOLDINGS, LLC**

By: BCBG Max Azria Global Holdings, LLC, its sole member

By: \_\_\_\_\_  
Name:  
Title:

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**Agents and Lenders:**

**BANK OF AMERICA, N.A.**, as  
Administrative Agent, a Co-Collateral Agent,  
a Lender and an Issuing Bank

By: \_\_\_\_\_

Name:

Title:

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**BANK OF AMERICA, N.A.**, (acting through its Canada branch), as Canadian Agent, a Lender and an Issuing Bank

By: \_\_\_\_\_  
Name:  
Title:

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**WELLS FARGO BANK, N.A.**, as a  
Lender and a Co-Collateral Agent

By: \_\_\_\_\_  
Name:  
Title:

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**WELLS FARGO CAPITAL FINANCE  
CORPORATION CANADA, as a Lender**

By: \_\_\_\_\_  
Name:  
Title:

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The undersigned, in its capacities (i) as “Guggenheim Administrative Agent” and “Guggenheim Collateral Agent” under the Intercreditor Agreement and (ii) “Administrative Agent and “Collateral Agent” under the Guggenheim Credit Agreement, hereby acknowledges and consents to the foregoing Agreement, and, notwithstanding any of the restrictions set forth in Section 5.3 of the Intercreditor Agreement, hereby consents to the transactions contemplated under the Agreement and the Loan Agreement (as amended and in effect after giving effect to this Agreement). The undersigned further acknowledges and agrees in its capacity as “Guggenheim Administrative Agent” and “Guggenheim Collateral Agent” under the Intercreditor Agreement that all references to the Revolving Credit Agreement set forth in the Intercreditor Agreement shall mean the Loan Agreement (as amended and in effect after giving effect to this Agreement).

**GUGGENHEIM CORPORATE FUNDING, LLC**

By: \_\_\_\_\_  
Name:  
Title:

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## SCHEDULE A

### **Existing Defaults**

1. Events of Default arising from Company's failure to deliver (a) the audited annual financial statements and related certifications (including the Compliance Certificate to be delivered pursuant to Section 10.1.2(d) of the Loan Agreement concurrently therewith) for the Fiscal Year ended January 20, 2016, as required by Section 10.1.2(a) of the Loan Agreement and (b) the business plan and projections for the Fiscal Year ended January 20, 2016, as required by Section 10.1.2(a) of the Loan Agreement, each of which constitutes an Event of Default under Section 11.1(c) of the Loan Agreement.
2. Events of Default arising from Company's entry into the Disposition Letter and the conduct of the Specified Store Closing Sale in violation of Section 10.2.12 of the Loan Agreement, which constitutes an Event of Default under Section 11.1(c) of the Loan Agreement.
3. Event of Default arising from the Obligors' intention to commence a Chapter 11 bankruptcy proceeding in the U.S. Bankruptcy Court, a proceeding under the BIA and/or the CCAA and the Obligors inability and failure to pay its debts as they become due, including, without limitation, inability to pay debts to vendors which have resulted in the Obligors being unable to replenish their inventory.
4. Any Event of Default arising from the occurrence of an "Event of Default" under and as defined in the Guggenheim Credit Agreement to the extent caused by a Specified Default.
5. Any Event of Default arising from the failure to give notice of any Specified Default as required under the Loan Documents and any breach of any representation or certification to the effect that no Default or Event of Default exists, where such representation or certification is untrue only because of the existence of Specified Defaults (including, for the avoidance of doubt, representations or certifications which were untrue due to the failure of the Borrowers and the Obligors, taken as a whole, to be Solvent).
6. Event of Defaults arising from the failure to comply with Sections 10.1.10 (Payment of Obligations) or 10.1.13 (Compliance with Terms of Leaseholds) of the Loan Agreement, each of which would constitute an Event of Default under Section 11.1(d) of the Loan Agreement.

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**EXHIBIT P-9**  
**DRAFT ORDER**

**SUPERIOR COURT**  
(Commercial Division)

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No.: 500-11-052159-171

DATE: March ●, 2017

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**BEFORE THE HONOURABLE DAVID R. COLLIER, J.S.C.**

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***IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF:***

**BCBG MAX AZRIA CANADA INC.**

Debtor / Petitioner

and

**DELOITTE RESTRUCTURING INC.**

Trustee

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**ORDER APPROVING A DIP FINANCING AND DIP CHARGE, AN ADMINISTRATION CHARGE, A D&O CHARGE, A CONSULTING AGREEMENT AND SALE GUIDELINES AND GRANTING ANCILLARY RELIEF**

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- [1] **CONSIDERING** the Application for an Order approving a DIP Financing and DIP Charge, an Administration Charge, a D&O Charge, a Consulting Agreement and Sale Guidelines and granting ancillary relief pursuant to sections 50.6, 64.1, and 64.2 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, (“**BIA**”), as well as the exhibits and the affidavit of Mr. Naveed Z. Manzoor, filed in support

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thereof (the “**Application**”) by the Debtor / Petitioner BCBG Max Azria Canada Inc. (the “**Petitioner**”);

[2] **CONSIDERING** the Notice of intention to make a proposal filed by the Petitioner on March 1, 2017 in accordance with the BIA (the “**NOI**”);

[3] **CONSIDERING** the representations of counsel;

[4] **CONSIDERING** the provisions of the BIA;

**THE COURT HEREBY:**

[5] **GRANTS** the Application.

*Definitions*

[6] **DECLARES** that, unless otherwise defined, all capitalized terms in this Order shall have the meaning ascribed thereto in the Application.

*Service*

[7] **ORDERS** that any prior delay for the presentation of the Application is hereby abridged and validated so that the Application is properly presentable and **DISPENSES** with further service thereof.

*DIP Financing and DIP Charge*

[8] **APPROVES** and **RATIFIES** the execution by the Petitioner of the Canadian Forbearance Agreement dated as of ● entered into between, *inter alia*, the Petitioner and Bank of America, N.A. (the “**DIP Agreement**”).

[9] **AUTHORIZES** the Petitioner to borrow, repay and re-borrow such amounts from time to time as the Petitioner may consider necessary or desirable, up to a maximum principal amount of \$15 million outstanding at any time, on the terms and conditions as set forth in the DIP Agreement and the ABL Agreement.

[10] For greater certainty, **AUTHORIZES** the DIP Lender and the ABL Lenders to apply receipts and deposits made to the Petitioner’s bank accounts, whether directly or through the Blocked Accounts and the Agent Account (collectively, the “Blocked Account Arrangements”), against the indebtedness of the Petitioner to the DIP Lender and the ABL Lenders in accordance with the Definitive DIP Documents (as defined below), whether such indebtedness arose before or after the date of this Order.

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- [11] **AUTHORIZES** the Petitioner to execute such agreements, hypothecs, mortgages, charges, security documents or other definitive documents (together with the DIP Agreement and the ABL Agreement, the “**Definitive DIP Documents**”), as are contemplated by the DIP Agreement or as may reasonably be required by the DIP Lender pursuant to the terms thereof together with such modifications as may be agreed by the Petitioner and the DIP Lender and consented to by the Trustee and **AUTHORIZES** the Petitioner to perform its obligations under the Definitive DIP Documents.
- [12] **ORDERS** the Petitioner to, :
- (a) Pay to the DIP Lender, when due, all amounts owing or to become owing (including principal, interest, fees, charges and expenses) under the Definitive DIP Documents and to perform all of its other obligations to the DIP Lender pursuant to the Definitive DIP Documents and this Order; and
  - (b) Comply with the Blocked Account Arrangements in accordance with section 4(i) of the DIP Agreement.
- [13] **ORDERS** that in addition to the existing liens, charges, mortgages, hypothecs and encumbrances in favour of the ABL Lenders in connection with the ABL Agreement, the DIP Lender is granted a charge (the “**DIP Charge**”), in the aggregate amount of \$18 million, on all assets, rights, undertakings and properties of the Petitioner, of every nature and kind whatsoever, and wherever situated, regardless of whose possession it may be in and including all proceeds thereof (the “**Property**”) as security for all obligations of the Petitioner to the DIP Lender relating to advances made to the Petitioner under the DIP Facility from and after the date of this Order, which DIP Charge shall not secure any obligations that exist before the date of this Order. The DIP Charge shall have the priority set out in paragraphs [50] and following of this Order.
- [14] **AUTHORIZES** the DIP Lender to take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Charge or any of the Definitive DIP Documents.
- [15] **DECLARES** that the rights of the DIP Lender under this Order, including without limitation the DIP Charge, shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or manager of the Petitioner or the Property.
- [16] **ORDERS** and **DECLARES** that all claims of the DIP Lender pursuant to the Definitive DIP Documents are not claims that may be compromised or arranged pursuant to any proposal under the BIA filed by the Petitioner or any plan of arrangement or compromise of the Petitioner under the *Companies’ Creditors*

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*Arrangement Act*, RSC 1985, c C-36, as amended (“**CCAA**”) (in each case, a “**Proposal**”) without the consent of the DIP Lender.

- [17] **ORDERS** and **DECLARES** that the DIP Lender and the ABL Lenders shall be treated as unaffected in these proceedings and in any Proposal, and shall not be subject to any applicable stay of proceedings and, for greater certainty, that nothing herein shall prevent the DIP Lender or the ABL Lenders from enforcing any rights or remedies in accordance with the Definitive DIP Documents or impose any conditions upon such enforcement.
- [18] **ORDERS** and **DECLARES** that the payments made by the Petitioner to the ABL Lenders or the DIP Lender pursuant to this Order or the Definitive DIP Documents, whether prior to or after the date of this Order, and the granting of the DIP Charge shall not constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable or reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

*Cash Management System and Payment of Rent*

- [19] **DECLARES** that the Petitioner shall be entitled to continue to use the Cash Management System in place as at the date for the NOI in accordance with the Definitive DIP Documents or, with the consent of the Trustee and the DIP Lender, replace it in part or in whole with another substantially similar central cash management system, and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Petitioner of funds transferred, paid, collected or otherwise dealt with in the Cash Management System.
- [20] **ORDERS** that until a real property or immovable lease is disclaimed or resiliated in accordance with the BIA, BCBG Canada shall pay all amounts constituting rent or payable as rent under real property or immovable leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between BCBG Canada and the landlord from time to time (“**Rent**”), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, or the immediately following business day if that day is not a business day, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of the NOI shall also be paid.

*Consulting Agreement and Sale of Inventory*

- [21] **APPROVES** and **RATIFIES** the Letter Agreement Governing Inventory Disposition dated as of February 24, 2017 between a joint venture composed of Merchant Retail Solutions, ULC and Gordon Brothers Canada ULC (the “**Consultant**”) and the Petitioner (with such minor amendments as the Petitioner (with the consent of the Trustee) and the Consultant may agree to in writing, the “**Consulting Agreement**”), including the Sales Guidelines attached hereto as Schedule I (the “**Sales Guidelines**”), and **APPROVES** the transactions contemplated thereunder.
- [22] Subject to the provisions of this Order and the Definitive DIP Documents, **AUTHORIZES** and **DIRECTS** the Petitioner to take any and all actions, including, without limitation, execute and deliver such additional documents, as may be necessary or desirable to implement the Consulting Agreement and each of the transactions contemplated thereunder.
- [23] **DECLARES** that the Petitioner, with the assistance of the Consultant, is authorized to conduct the Sale in accordance with this Order, the Consulting Agreement and the Sales Guidelines and to advertise and promote the Sale within the Stores in accordance with the Sales Guidelines.
- [24] **DECLARES** that if there is a conflict between this Order, the Consulting Agreement and the Sales Guidelines, the order of priority of documents to resolve such conflicts is as follows:
- (a) First, this Order;
  - (b) Second, the Sales Guidelines; and
  - (c) Third, the Consulting Agreement.
- [25] **ORDERS** and **DECLARES** that the Petitioner, with the assistance of the Consultant, is authorized to market and sell the Merchandise and the FF&E (as both defined in the Consulting Agreement) free and clear of all security, hypothecs, liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been registered, perfected or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to the date of this Order or came into existence following the date of this Order (in each case, whether contractual, statutory, arising by operation of law or otherwise), including, without limitation the Administration Charge, the D&O Charge, the DIP Charge and any other charges hereafter granted by the Court in these proceedings (all of the foregoing, collectively “**Encumbrances**”), which

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Encumbrances will attach instead to the proceeds of sale of the Merchandise and FF&E other than amounts specified at paragraph [36] of this Order, in the same order and priority as they existed on the Sale Commencement Date (as defined in the Consulting Agreement).

- [26] **ORDERS** and **DECLARES** that subject to the terms of this Order, the Sales Guidelines and the Consulting Agreement, the Consultant shall have the right to enter and use the Stores and all related Store services and all facilities and all furniture, trade fixtures and equipment, including the FF&E, located at the Stores, and other assets of the Petitioner as designated under the Consulting Agreement, for the purpose of conducting the Sale and for such purposes, the Consultant shall be entitled to the benefit of the stay of proceedings in place in the present proceedings, as such stay of proceedings may be extended by further order of the Court.
- [27] **ORDERS** and **DECLARES** that until the applicable Sale Termination Date (as defined in the Consulting Agreement) for each Store (which shall in no event be later than May 31, 2017), the Consultant shall have access to the Stores in accordance with the applicable leases and the Sales Guidelines on the basis that the Consultant is assisting the Petitioner and the Petitioner has granted the right of access to the applicable Store to the Consultant.
- [28] **DECLARES** that, to the extent that the terms of the applicable leases are in conflict with any term of this Order or the Sales Guidelines, the terms of this Order and the Sales Guidelines shall govern.
- [29] **DECLARES** that nothing contained in this Order or the Sales Guidelines shall be construed to create or impose upon the Petitioner or the Consultant any additional restrictions not contained in the applicable lease or other occupancy agreement.
- [30] **ORDERS** and **DECLARES** that except as provided for in section [23] of this Order in respect of the advertising and promotion of the Sale within the Stores, subject to, and in accordance with this Order, the Consulting Agreement and the Sales Guidelines, the Consultant is authorized to advertise and promote the Sale, without further consent of any person other than the Petitioner and the Trustee as provided under the Consulting Agreement or a Landlord (as defined in the Consulting Agreement) as provided under the Sales Guidelines.
- [31] **ORDERS** and **DECLARES** that the Consultant shall have the right to use, without interference by any intellectual property licensor, the Petitioner's trademarks and logos, as well as all licenses and rights granted to the Petitioner to use the trade names, trademarks, and logos of third parties, relating to and used in connection with the operation of the Stores solely for the purpose of advertising and conducting the Sale of the Merchandise and FF&E in accordance with the terms

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of the Consulting Agreement, the Sales Guidelines and this Order, provided that the Consultant provides the Petitioner with a copy of any advertising prior to its use in the Sale.

[32] **DECLARES** that the Consultant shall act solely as an independent consultant to the Petitioner and that it shall not be liable for any claims against the Petitioner other than as expressly provided in the Consulting Agreement (including the Consultant's indemnity obligations thereunder) or the Sales Guidelines and, for greater certainty:

- (a) The Consultant shall not be deemed to be an owner or in possession, care, control or management of the Stores, of the assets located therein or associated therewith or of the Petitioner's employees located at the Stores or any other property of Petitioner;
- (b) The Consultant shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payer within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law for any purpose whatsoever, and shall not incur any successor liabilities whatsoever; and
- (c) The Petitioner shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines or awards) relating to claims of customers, employees and any other persons arising from events occurring at the Stores during and after the Sale Term (as defined in the Consulting Agreement) in connection with the Sale, except to the extent such claims are the result of events or circumstances caused or contributed to by the gross negligence or wilful misconduct of the Consultant, its employees, agents or other representatives, or otherwise in accordance with the Consulting Agreement;

(sub-paragraphs (a), (b) and (c) above collectively, the "**Liability Limitations**").

[33] **DECLARES** that to the extent the Landlords (or any of them) may have a claim against the Petitioner arising solely out of the conduct of the Consultant in conducting the Sale for which the Petitioner has claims against the Consultant under the Consulting Agreement, the Petitioner shall be deemed to have assigned such claims free and clear to the applicable Landlord (the "**Assigned Landlord Rights**").

[34] **ORDERS** and **DECLARES** that the Consulting Agreement shall not be repudiated, resiliated or disclaimed by the Petitioner, nor shall the claims of the Consultant pursuant to the Consulting Agreement be compromised or arranged pursuant to a

Proposal and, for greater certainty, that the Consultant shall be treated as an unaffected creditor in these proceedings and under any Proposal.

[35] **AUTHORIZES** the Petitioner to remit, in accordance with the Consulting Agreement, all amounts that become due to the Consultant thereunder.

[36] **DECLARES** that no Encumbrances shall attach to any amounts payable or to be credited or reimbursed to, or retained by, the Consultant pursuant to the Consulting Agreement and, at all times, the Consultant will retain such amounts, free and clear of all Encumbrances, notwithstanding any enforcement or other process, all in accordance with the Consulting Agreement.

[37] **ORDERS** and **DECLARES** that notwithstanding:

- (a) The pendency of these proceedings, including any bankruptcy that may result from these proceedings;
- (b) Any application for a bankruptcy order pursuant to the BIA or any bankruptcy order made pursuant to such an application;
- (c) The filing of any assignment for the general benefit of creditors made pursuant to the BIA;
- (d) The provisions of any federal or provincial statute; or
- (e) Any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of the Encumbrances contained in any existing loan documents, lease, sublease, offer to lease or other agreement to which the Petitioner is a party;

the Consulting Agreement and the transactions and actions provided for and contemplated therein, including without limitation, the payment of amounts due to the Consultant and the Assigned Landlord Rights, shall be binding on any trustee in bankruptcy that may be appointed in respect to the Petitioner and shall not be void or voidable by any person, including any creditor of the Petitioner, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable or reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

[38] **DECLARES** that the transactions contemplated under the Consulting Agreement shall be exempt from the application of the *Bulk Sales Act* (Ontario) and any other equivalent federal or provincial legislation.

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*Confirmation of Chief Canadian Restructuring Advisor*

[39] **CONFIRMS** and **RATIFIES** the appointment of FAAN Advisors Group Inc. as Chief Canadian Restructuring Advisor of the Petitioner (the “**CCRA**”).

[40] **DECLARES** that the CCRA shall not be or be deemed to be an employee of the Petitioner.

[41] **DECLARES** that the CCRA shall benefit from the Liability Limitations, *mutatis mutandis*.

[42] **DECLARES** that the CCRA shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any person from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on the part of the CCRA.

[43] **ORDERS** that:

(a) Any indemnification obligations of the Petitioner in favour of the CCRA; and

(b) The payment obligations of the Petitioner to the CCRA;

shall be entitled to the benefit of and shall form part of the Administration Charge set out herein.

[44] **ORDERS** that any claims of the CCRA shall be treated as unaffected in any Proposal and, for greater certainty, that the CCRA shall be treated as an unaffected creditor in these proceedings and under any Proposal.

*Administration Charge*

[45] **ORDERS** that the Trustee, counsel to the Trustee, the CCRA and counsel to the Petitioner are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed the aggregate amount of \$500,000, as security for their professional fees and disbursements, at the standard rates and charges, incurred both before and after the date of this Order. The Administration Charge shall have the priority set out in paragraphs [50] and following of this Order.

[46] **ORDERS** that the Trustee, counsel to the Trustee, counsel to the Petitioner, the CCRA, the directors of the Petitioner and, if any, counsel to the directors of the Petitioner, shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements), in each case at their standard rates and charges, by the Petitioner. The Petitioner is hereby authorized and directed to pay the accounts of the Trustee, counsel to the Trustee, counsel to the Petitioner, the

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CCRA and counsel to the directors of the Petitioner on a weekly basis or on such other basis as such persons may agree.

*D&O Indemnification and Charge*

- [47] **ORDERS** that the Petitioner shall indemnify all of its directors and officers in office as at the date of this Order or thereafter appointed (the “**Directors and Officers**”) against obligations and liabilities that they may incur as directors or officers of the Petitioner after the commencement of these proceedings, except to the extent that the obligation or liability was incurred as a result of the Director’s or Officer’s gross negligence or wilful misconduct.
- [48] **ORDERS** that the Directors and Officers are hereby granted a charge (the “**D&O Charge**”) on the Property, which charge shall not exceed the aggregate amount of \$500,000, as security for the indemnity provided in paragraph [47] of this Order. The D&O Charge shall have the priority set out in paragraphs [50] and following of this Order.
- [49] **ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary:
- (a) No insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge; and
  - (b) The Directors and Officers shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any applicable insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph [48] of this Order.

*Priority of court-ordered charges*

- [50] **DECLARES** that the priorities of the Administration Charge, the D&O Charge and the DIP Charge (collectively, the “**NOI Charges**”), as between them with respect to any Property to which they apply, shall be as follows:
- (a) First, the Administration Charge;
  - (b) Second, the D&O Charge; and
  - (c) Third, the DIP Charge.
- [51] **ORDERS** and **DECLARES** that each of the NOI Charges shall constitute a charge on the Property and that such Charges shall rank in priority to all other Encumbrances in favour of any person.



- [52] **ORDERS** that the filing, registration or perfection of the NOI Charges shall not be required, and that the NOI Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the NOI Charges coming into existence.
- [53] **ORDERS** that except as may be approved or ordered by this Court, the Petitioner shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the NOI Charges, unless the Petitioner also obtains the prior written consent of the Trustee and the beneficiaries of the NOI Charges.
- [54] **ORDERS** and **DECLARES** that notwithstanding:
- (a) The pendency of these proceedings;
  - (b) Any application for a bankruptcy order pursuant to the BIA or any bankruptcy order made pursuant to such an application;
  - (c) The filing of any assignment for the general benefit of creditors made pursuant to the BIA;
  - (d) The provisions of any federal or provincial statute; or
  - (e) Any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of the Encumbrances contained in any existing loan documents, lease, sublease, offer to lease or other agreement to which the Petitioner is a party;

the NOI Charges shall be binding on any trustee in bankruptcy that may be appointed in respect to the Petitioner and shall not be void or voidable by any person, including any creditor of the Petitioner, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable or reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

- [55] **ORDERS** that any of the NOI Charges created by this Order over leases of real property in Canada shall only be a charge in the Petitioner's interest in such real property leases.

*General*

- [56] **ORDERS** that no person shall commence, proceed with or enforce any proceedings against the Trustee or any of the Directors and Officers, employees, legal counsel or financial advisors of the Petitioner or of the Trustee in relation to the business of the Petitioner or the Property, without first obtaining leave of this

Court, upon five (5) business days' written notice to the Petitioner's counsel, the Trustee and to all those referred to in this paragraph whom it is proposed be named in such proceedings.

- [57] **DECLARES** that the NOI, this Order and any proceeding or affidavit leading to this Order, shall not, in and of themselves, constitute a default or failure to comply by the Petitioner under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement other than the ABL Agreement (subject to the forbearance provided under the DIP Agreement).
- [58] **DECLARES** that this Order and its effects shall survive the filing by the Petitioner of a proposal pursuant to the terms of the BIA, the issuance of an initial order in regard of the Petitioner pursuant to the terms of the CCAA or the bankruptcy of the Petitioner, unless this Court orders otherwise.
- [59] **DECLARES** that, except as otherwise specified herein or in the BIA, the Petitioner and the Trustee are at liberty to serve any notice, proof of claim form, proxy, circular or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to persons or other appropriate parties at their respective given addresses as last shown on the records of the Petitioner and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three (3) business days after mailing if by ordinary mail.
- [60] **DECLARES** that the Petitioner and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that the Petitioner shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter.
- [61] **DECLARES** that, except as otherwise specified herein or in the BIA, or ordered by this Court, no document, order or other material need be served on any person in respect of these proceedings, unless such person has served a response on the Petitioner's counsel and the Trustee and has filed such response with this Court, or appears on the service list prepared by the Petitioner, the Trustee or their counsel, save and except when an order is sought against a person not previously involved in these proceedings.
- [62] **DECLARES** that the Petitioner or the Trustee may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of this Order on notice only to each other.

- [63] **DECLARES** that the Petitioner and the Trustee shall be entitled to seek leave to vary this Order upon such terms and such notice as this Court deems just.
- [64] **ORDERS** and **DECLARES** that any interested Person may apply to this Court to vary or rescind this Order or seek other relief upon five (5) business days' notice to the Petitioner, the Trustee, the DIP Lender and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
- [65] **DECLARES** that the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
- [66] **REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist, the Petitioner, the Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioner and the Trustee, as an officer of this Court, as may be necessary or desirable to give effect to the Order, to grant representative status to the CCRA in any foreign proceeding or to assist the Petitioner, the Trustee and their respect agents in carrying out this Order.
- [67] **ORDERS** that each of the Petitioner and the Company be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulator or administrative body, wherever located, for the recognition of the Order and for assistance in carrying out the terms of this Order, and that the Trustee is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside of Canada.
- [68] **ORDERS** provisional execution of this Order notwithstanding any appeal and without the necessity of furnishing any security.
- [69] **THE WHOLE** without costs.

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David R. Collier, J.S.C.

500-11-052159-171

PAGE: 14

MTRE. SANDRA ABITAN  
MTRE. JULIEN MORISSETTE  
(OSLER HOSKIN & HARCOURT LLP)  
COUNSEL TO THE PETITIONER

Hearing date: March ●, 2017

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**SCHEDULE I**  
**SALES GUIDELINES**

The following procedures shall apply to the Sale to be conducted at the Stores of BCBG Max Azria Canada Inc. (the “**Merchant**”). All terms not herein defined shall have the meaning set forth in the Consulting Agreement by and between a contractual joint venture composed of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC (together the “**Consultant**”) and the Merchant dated as of February 24, 2017 (the “**Consulting Agreement**”).

1. Except as otherwise expressly set out herein, and subject to: (i) the Order or any further Order of the Court; or (ii) any subsequent written agreement between the Merchant and the applicable landlord(s) (individually, a “**Landlord**” and, collectively, the “**Landlords**”) and approved by Consultant, or (iii) as otherwise set forth herein, the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements to which the affected landlords are privy for each of the affected Stores (individually, a “**Lease**” and, collectively, the “**Leases**”). However, nothing contained herein shall be construed to create or impose upon the Merchant or the Consultant any additional restrictions not contained in the applicable Lease or other occupancy agreement.
2. The Sale shall be conducted so that each of the Stores remain open during their normal hours of operation provided for in the respective Leases for the Stores until the respective Sale Termination Date of each Store. The Sale at the Stores shall end by no later than May 31, 2017. Rent payable under the respective Leases shall be paid as provided in the Order.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise ordered by the Court.
4. All display and hanging signs used by the Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Consultant may advertise the Sale at the Stores as a “everything on sale”, “everything must go”, “store closing” or similar theme sale at the Stores (provided however that no signs shall advertise the Sale as a “bankruptcy”, a “going out of business” or a “liquidation” sale, it being understood that the French equivalent of “clearance” is “liquidation” and is permitted to be used). Forthwith upon request from a Landlord, the Landlord's counsel, the Merchant or the Trustee, the Consultant shall provide the proposed signage packages along with the proposed dimensions and number of signs (as approved by the Merchant pursuant to the Consulting Agreement) by e-mail or facsimile to the applicable

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Landlords or to their counsel of record. Where the provisions of the Lease conflict with these Sales Guidelines, these Sales Guidelines shall govern. The Consultant shall not use neon or day-glow or handwritten signage (save that handwritten "you pay" or "topper" signs may be used). In addition, the Consultant shall be permitted to utilize exterior banners/signs at stand alone or strip mall Stores or enclosed mall Stores with a separate entrance from the exterior of the enclosed mall, provided, however, that where such banners are not explicitly permitted by the applicable Lease and the Landlord requests in writing that the banners are not to be used, no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the Service List. Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the façade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Consultant. If a Landlord is concerned with "store closing" signs being placed in the front window of a Store or with the number or size of the signs in the front window, the Consultant and the Landlord will discuss the Landlord's concerns and work to resolve the dispute.

5. The Consultant shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.
6. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are "final".
7. The Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on any Landlord's property, unless permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Consultant may solicit customers in the Stores themselves. The Consultant shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable Lease, or agreed to by the Landlord.
8. At the conclusion of the Sale in each Store, the Merchant shall arrange that the premises for each Store are in "broom-swept" and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than FF&E which for clarity is owned by the Merchant) may be removed without the Landlord's written consent unless otherwise provided by the applicable Lease.

Any fixtures or personal property left in a Store after the Sale Termination Date in respect of which the applicable Lease has been disclaimed by the Merchant shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord.

9. Subject to the terms of paragraph 8 above and the Consulting Agreement, the Consultant may sell FF&E which is located in the Stores during the Sale. The Merchant and the Consultant may advertise the sale of FF&E consistent with these guidelines on the understanding that any Landlord may require that such signs be placed in discreet locations within the Stores acceptable to the Landlord, acting reasonably. Additionally, the purchasers of any FF&E sold during the Sale shall only be permitted to remove the FF&E either through the back shipping areas designated by the Landlord, or through other areas after regular store business hours, or through the front door of the Store during store business hours if the FF&E can fit in a shopping bag, with Landlord's supervision as required by the Landlord. The Consultant shall repair any damage to the Stores resulting from the removal of any FF&E by Consultant or by third party purchasers of FF&E from Consultant.
10. The Consultant shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the applicable Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these guidelines, shall not constitute an alteration to a Store.
11. The Merchant hereby provides notice to the Landlords of the Merchant and the Consultant's intention to sell and remove FF&E from the Stores. The Consultant will arrange with each Landlord represented by counsel on the service list and with any other Landlord that so requests, a walk through with the Consultant to identify the FF&E subject to the sale. The relevant Landlord shall be entitled to have a representative present in the Store to observe such removal. If the Landlord disputes the Consultant's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between the Merchant, the Consultant and such Landlord, or by further Order of the Court upon application by the Merchant on at least two (2) days' notice to such Landlord. If the Merchant has disclaimed or resiliated the Lease governing such Store in accordance with the BIA, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for in the BIA), and the disclaimer or resiliation of the Lease shall be without prejudice to the Merchant's or Consultant's claim to the FF&E in dispute.
12. If a notice of disclaimer or resiliation is delivered pursuant to the BIA to a Landlord while the Sale is ongoing and the Store in question has not yet been vacated, then:

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(a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Merchant and the Consultant 24 hours' prior written notice; and (b) at the effective time of the disclaimer or resiliation, the relevant Landlord shall be entitled to take possession of any such Store without waiver of or prejudice to any claims or rights such landlord may have against the Merchant in respect of such Lease or Store, provided that nothing herein shall relieve such Landlord of its obligation to mitigate any damages claimed in connection therewith.

13. The Consultant and its agents and representatives shall have the same access rights to the Stores as the Merchant under the terms of the applicable Lease, and the Landlords shall have the rights of access to the Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).
14. The Merchant and the Consultant shall not conduct any auctions of Merchandise or FF&E at any of the Stores.
15. The Consultant shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for Consultant shall be Jane Dietrich who may be reached by phone at (416) 860-5223 or email at [jdietrich@casselsbrock.com](mailto:jdietrich@casselsbrock.com). If the parties are unable to resolve the dispute between themselves, the Landlord or Merchant shall have the right to schedule a "status hearing" before the Court on no less than two (2) days written notice to the other party or parties, during which time the Consultant shall cease all activity in dispute other than activity expressly permitted herein, pending the determination of the matter by the Court; provided, however, subject to para. 4 of these Sales Guidelines, that if a banner has been hung in accordance with these Sale Guidelines and is thereafter the subject of a dispute, the Consultant shall not be required to take any such banner down pending determination of the dispute.
16. Nothing herein is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or to grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.
17. These Sale Guidelines may be amended by written agreement between the Merchant, the Consultant and any applicable Landlord (provided that such amended Sale Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court approving the amended Sales Guidelines).

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No.: 500-11-052159-171

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**SUPERIOR COURT  
(Commercial Division)**  
DISTRICT OF MONTRÉAL

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**IN THE MATTER OF THE NOTICE OF  
INTENTION TO MAKE A PROPOSAL OF:**

**BCBG MAX AZRIA CANADA INC.**

**Debtors/Petitioners**

**-and-**

**DELOITTE RESTRUCTURING INC.**

**Trustee**

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**APPLICATION FOR AN ORDER APPROVING  
A DIP FINANCING AND DIP CHARGE,  
AN ADMINISTRATION CHARGE,  
A D&O CHARGE, A CONSULTING AGREEMENT AND SALE  
GUIDELINES AND GRANTING ANCILLARY RELIEF,  
AFFIDAVIT, NOTICE OF PRESENTATION, LIST OF  
EXHIBITS AND EXHIBITS P-1 TO P-9**

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**COPY**

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Code : BO 0323

o/f: 1179263

**Mtre. Sandra Abitan  
Mtre. Julien Morissette  
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**Notification by email: Addresses listed above**