

**AMENDED AND RESTATED CREDIT AGREEMENT**

Dated as of October 11, 2019

among

HUDSON'S BAY COMPANY, as Lead Borrower for

HUDSON'S BAY COMPANY,  
as the Canadian Borrower

LORD & TAYLOR ACQUISITION INC.,  
as the U.S. Borrower

The Guarantors Named Herein

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

and

The Other Lenders Party Hereto

BANK OF MONTREAL, CANADIAN IMPERIAL BANK OF COMMERCE, CITIBANK, N.A.,  
JPMORGAN CHASE BANK, N.A., RBC CAPITAL MARKETS<sup>1</sup> and WELLS FARGO BANK,  
NATIONAL ASSOCIATION,  
as Co-Syndication Agents

CAPITAL ONE, NATIONAL ASSOCIATION,  
as Documentation Agent

and

BOFA SECURITIES, INC., RBC CAPITAL MARKETS<sup>2</sup>,  
BANK OF MONTREAL, CANADIAN IMPERIAL BANK OF COMMERCE, CITIBANK, N.A.,  
JPMORGAN CHASE BANK, N.A. and WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Joint Lead Arrangers and Joint Bookrunners

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<sup>1</sup> RBC Capital Markets is a marketing name for the investment banking activities of Royal Bank of Canada.

<sup>2</sup> RBC Capital Markets is a marketing name for the investment banking activities of Royal Bank of Canada.

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## EXHIBITS

### *Form of*

A-1	U.S. Revolving Loan Notice
A-2	Canadian Revolving Loan Notice
A-3	U.S. FILO Term Loan Notice
A-4	Canadian FILO Term Loan Notice
B-1	U.S. Swing Line Loan Notice
B-2	Canadian Swing Line Loan Notice
C-1	U.S. Revolving Note
C-2	Canadian Revolving Note
C-3	U.S. Swing Line Note
C-4	Canadian Swing Line Note
C-5	U.S. FILO Term Loan Note
C-6	Canadian FILO Term Loan Note
D	Compliance Certificate
E	Assignment and Assumption
F	Borrowing Base Certificate
G	Reserved
H-1 to H-4	U.S. Tax Compliance Certificate

## AMENDED AND RESTATED CREDIT AGREEMENT

This AMENDED AND RESTATED CREDIT AGREEMENT ("Agreement") is entered into as of October 11, 2019 among

HUDSON'S BAY COMPANY, as the Lead Borrower for the Borrowers (in such capacity, the "Lead Borrower"),

HUDSON'S BAY COMPANY, a corporation organized under the federal laws of Canada (the "Canadian Borrower"),

LORD & TAYLOR ACQUISITION INC., a Delaware corporation (the "U.S. Borrower" and together with the Canadian Borrower, each a "Borrower" and collectively, the "Borrowers"),

the Persons named on Schedule 1.01 hereto (collectively, the "Guarantors"),

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

BANK OF AMERICA, N.A. (including acting through its branches and Affiliates), as Administrative Agent and Collateral Agent,

BANK OF MONTREAL, CANADIAN IMPERIAL BANK OF COMMERCE, CITIBANK, N.A., JPMORGAN CHASE BANK, N.A., RBC CAPITAL MARKETS and WELLS FARGO BANK, NATIONAL ASSOCIATION, as Co-Syndication Agents,

CAPITAL ONE, NATIONAL ASSOCIATION, as Documentation Agent, and

BOFA SECURITIES, INC., RBC CAPITAL MARKETS<sup>3</sup>, BANK OF MONTREAL, CANADIAN IMPERIAL BANK OF COMMERCE, CITIBANK, N.A., JPMORGAN CHASE BANK, N.A. and WELLS FARGO BANK, NATIONAL ASSOCIATION, as Joint Lead Arrangers and Joint Bookrunners.

## WITNESSETH

WHEREAS, the Borrowers have requested that the Revolving Lenders make available to the Borrowers on the Effective Date a revolving credit facility (including a letter of credit sub-facility) in an initial maximum amount not to exceed \$1,750,000,000, the proceeds of which shall be used by the Borrowers for purposes permitted under, and otherwise in accordance with and subject to the terms of, this Agreement, and the Lenders have indicated their willingness to lend and the L/C Issuer has indicated its willingness to issue Letters of Credit, in each case on the terms and conditions set forth herein;

WHEREAS, prior to the date of this Agreement, the Borrowers, and the other loan parties, on the one hand, and Bank of America, N.A., as Agent thereunder, and the lenders party thereto, on the other hand, previously entered into a Credit Agreement dated as of February 5, 2016 (as amended to the date

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<sup>3</sup> RBC Capital Markets is a marketing name for the investment banking activities of Royal Bank of Canada.

hereof and in effect, the “Existing Credit Agreement”), pursuant to which the lenders party thereto provided the Borrowers with certain financial accommodations;

WHEREAS, in accordance with Section 10.01 of the Existing Credit Agreement, the Borrowers, the other Loan Parties, the Lenders, and the Agent desire to amend and restate the Existing Credit Agreement as provided herein.

NOW, THEREFORE, in consideration of the mutual conditions and agreements set forth in this Agreement, and for good and valuable consideration, the receipt of which is hereby acknowledged, the undersigned hereby agree that the Existing Credit Agreement shall be amended and restated in its entirety to read as set forth herein (it being agreed that this Agreement shall not be deemed to evidence or result in a novation or repayment and reborrowing of the Obligations under the Existing Credit Agreement):

## **ARTICLE I DEFINITIONS AND ACCOUNTING TERMS**

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

“Accelerated Borrowing Base Delivery Event” means either (i) the occurrence and continuance of any Event of Default, or (ii) the failure of the Borrowing Base Parties to maintain Availability at least equal to twelve and one-half percent (12.5%) of the Revolving Loan Cap (calculated without giving effect to the FILO Term Loan Push Down Reserve, if applicable). For purposes of this Agreement, the occurrence of an Accelerated Borrowing Base Delivery Event shall be deemed continuing at the Agent’s option until (x) if the Accelerated Borrowing Base Delivery Event occurs under clause (i) of the foregoing sentence, the applicable Event of Default has been waived, or (y) if the Accelerated Borrowing Base Delivery Event occurs under clause (ii) of the foregoing sentence, the end of the first full Fiscal Month after the Fiscal Month in which Availability again exceeds twelve and one-half percent (12.5%) of the Revolving Loan Cap (calculated without giving effect to the FILO Term Loan Push Down Reserve, if applicable), in which case an Accelerated Borrowing Base Delivery Event shall no longer be deemed to be continuing for purposes of this Agreement. The termination of an Accelerated Borrowing Base Delivery Event as provided herein shall in no way limit, waive or delay the occurrence of a subsequent Accelerated Borrowing Base Delivery Event in the event that the conditions set forth in this definition again arise.

“Acceptable Waybill” means, with respect to any Inventory, a non-negotiable waybill which names a Borrowing Base Party (or, the Agent, if so requested by it) as consignee and which either (a) contains an express waiver from the consignor / shipper of its right to alter the named consignee and its right of stoppage in transit or (b) for which the consignor / shipper thereunder shall have entered a Customs Broker/Carrier Agreement with the Agent which contains an express waiver from such consignor / shipper of its right to alter the named consignee and its right of stoppage in transit.

“Accommodation Payment” as defined in Section 10.21(c).

“Account” means each and every “account,” as such term is defined in the UCC and the PPSA and all “claims” for purposes of the Civil Code of Quebec, in each case now owned or hereafter acquired by any Secured Loan Party, including (a) all accounts receivable, other receivables, book debts, claims and other forms of obligations (other than obligations evidenced by chattel paper, securities or instruments (as each is defined in the UCC or PPSA)) now owned or hereafter received or acquired by or belonging or owing to any Secured Loan Party, whether arising out of goods sold or services rendered by it or from any other transaction (including any such obligations which may be characterized as an account

or contract right under the UCC or the PPSA), (b) all of each Secured Loan Party's rights in, to and under all purchase orders or receipts now owned or hereafter acquired by it for goods sold or services provided by such Loan Party, (c) all of each Secured Loan Party's rights to any goods represented by any of the foregoing (including unpaid sellers' rights of rescission, replevin, reclamation and stoppage in transit and rights to returned, reclaimed or repossessed goods), (d) all rights to payment due or to become due to any Secured Loan Party for property sold, leased, licensed, assigned or otherwise disposed of, for a policy of insurance issued or to be issued, for a secondary obligation incurred or to be incurred, for energy provided or to be provided, for the use or hire of a vessel under a charter or other contract, arising out of the use of a credit card or charge card, or for services rendered or to be rendered by such Secured Loan Party or in connection with any other transaction (whether or not yet earned by performance on the part of such Secured Loan Party), and (e) all collateral security and guarantees of any kind, now or hereafter in existence, given by any Account Debtor or other Person with respect to any of the foregoing.

"Account Control Agreement" has the meaning specified in the Security Agreement or the Canadian Security Documents, as applicable.

"Account Debtor" has the meaning provided in the UCC and includes, without limitation, any Person who may become obligated to any Loan Party under, with respect to, or on account of, an Account.

"ACH" means automated clearing house transfers.

"Acquired EBITDA" means, with respect to any Acquired Entity or Business or any Converted Restricted Subsidiary for any period, the amount for such period of Consolidated EBITDA of such Acquired Entity or Business or Converted Restricted Subsidiary (determined as if references to the Parent and the Restricted Subsidiaries in the definition of "Consolidated EBITDA" were references to such Acquired Entity or Business and its Restricted Subsidiaries or to such Converted Restricted Subsidiary and its Restricted Subsidiaries), as applicable, all as determined on a consolidated basis for such Acquired Entity or Business or Converted Restricted Subsidiary, as applicable.

"Acquired Entity or Business" has the meaning set forth in the definition of "Consolidated EBITDA."

"Acquisition" means, with respect to any Person (a) a purchase of a Controlling interest in, the Equity Interests of any other Person, (b) a purchase or other acquisition of all or substantially all of the assets or properties of, another Person or of any business unit of another Person, or (c) any merger, amalgamation, or consolidation of such Person with any other Person or other transaction or series of transactions resulting in the acquisition of all or substantially all of the assets, or a Controlling interest in the Equity Interests, of any Person, in each case in any transaction or group of transactions which are part of a common plan and involving Acquisition Consideration in excess of (i) \$250,000,000 if the Acquisition Consideration is paid with the proceeds of, or by, an issuance of Equity Interests, or (ii) \$100,000,000 in all other circumstances.

"Acquisition Consideration" means, with respect to any Acquisition, the aggregate cash and non-cash consideration for such Acquisition. The "Acquisition Consideration" for any Acquisition expressly includes Indebtedness assumed in such Acquisition and the good faith estimate by the Lead Borrower of the maximum amount of any deferred purchase price obligations (including earn-out payments) incurred in connection with such Acquisition. The "Acquisition Consideration" for any Acquisition expressly excludes (a) Equity Interests of the Parent issued to the seller as consideration for such Acquisition and (b) the Net Proceeds of the sale or issuance of Equity Interests by the Parent to the extent such Acquisition is made within 180 days of the receipt of such Net Proceeds by the Parent or its Subsidiaries.

“Additional Commitment Lender” shall have the meaning provided in Section 2.15(c).

“Adjusted LIBOR Rate” means, with respect to any LIBOR Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/100 of one percent (1%)) equal to the LIBOR Rate for such Interest Period multiplied by the Statutory Reserve Rate. The Adjusted LIBOR Rate will be adjusted automatically as to all LIBOR Borrowings then outstanding as of the effective date of any change in the Statutory Reserve Rate.

“Adjustment Date” means the first day of each Fiscal Quarter, commencing February 3, 2020.

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

“Affiliate” means, with respect to any Person, (i) another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified, (ii) any director, officer, managing member, partner, trustee, joint venturer, or beneficiary of that Person, and (iii) any other Person directly or indirectly holding 10% or more of any class of the Equity Interests of that Person; provided, however, that the Agent and the Lenders shall in no event be deemed an Affiliate of the Parent or any of its Subsidiaries.

“Agent” means Bank of America (including acting through its branches and Affiliates) in its capacity as administrative agent and collateral agent under any of the Loan Documents, or any successor thereto.

“Agent Parties” shall have the meaning specified in Section 10.02(c).

“Agent’s Office” means the Canadian Agent’s Office and the U.S. Agent’s Office, as applicable.

“Aggregate Canadian Revolving Commitments” means the sum of the Canadian Revolving Commitments of all the Canadian Revolving Lenders as increased or reduced from time to time in accordance with the provisions of this Agreement. As of the Effective Date, the Aggregate Canadian Revolving Commitments are \$550,000,000.

“Aggregate Commitments” means the sum of the Aggregate Revolving Commitments and the Aggregate FILO Term Loan Commitments.

“Aggregate FILO Term Loan Commitments” means the sum of the FILO Term Loan Commitments of all FILO Term Lenders as reduced from time to time in accordance with the provisions of this Agreement.

“Aggregate Revolving Commitments” means the sum of the Aggregate Canadian Revolving Commitments and the Aggregate U.S. Revolving Commitments as increased or reduced from time to time in accordance with the provisions of this Agreement. As of the Effective Date, the Aggregate Revolving Commitments are \$1,750,000,000.

“Aggregate U.S. Revolving Commitments” means the sum of the U.S. Revolving Commitments of all the U.S. Revolving Lenders as increased or reduced from time to time in accordance with the provisions of this Agreement. As of the Effective Date, the Aggregate U.S. Revolving Commitments are \$1,200,000,000.

“Agreement” means this Amended and Restated Credit Agreement.

“Allocable Amount” has the meaning specified in Section 10.21(c).

“Allocated Availability” has the meaning specified in Section 2.01(f).

“AML Legislation” means the USA PATRIOT Act, the PCTFA, and each other anti-terrorism and legislation, rules and regulations, and anti-money laundering laws and “know your client” policies, regulations, laws or rules, in each case, binding on or affecting the Person referred to in the context in which the term is used or binding or affecting the assets of such Person, including any guidelines or orders under any of the foregoing.

“Applicable Lenders” means the Required Lenders, Required Revolving Lenders, each affected Lender, or all Lenders, as the context may require.

“Applicable Margin” means as follows:

(a) with respect to the Revolving Loans,

(i) From and after the Effective Date until the first Adjustment Date, the percentages set forth in Level II of the pricing grid below; and

(ii) From and after the first Adjustment Date and on each Adjustment Date thereafter, the Applicable Margin shall be determined from the following pricing grid based upon Average Daily Aggregate Availability for the Fiscal Quarter ended immediately preceding such Adjustment Date; provided, however, that if any Borrowing Base Certificates are at any time restated or otherwise revised (including as a result of an audit) or if the information set forth in any Borrowing Base Certificates otherwise proves to be false or incorrect such that the Applicable Margin would have been higher than was otherwise in effect during any period, without constituting a waiver of any Default or Event of Default arising as a result thereof, interest due under this Agreement shall be immediately recalculated at such higher rate for any applicable periods and shall be due and payable on demand.

Level	Average Daily Aggregate Availability	LIBOR Rate Margin and Canadian CDOR Margin for Revolving Loans	Prime Rate Margin for Revolving Loans
I	Greater than or equal to 66% of the Revolving Loan Cap	1.25%	0%
II	Less than 66% of the Revolving Loan Cap but greater than or equal to 33% of the Revolving Loan Cap	1.50%	0.25%
III	Less than 33% of the Revolving Loan Cap	1.75%	0.50%

(b) with respect to the FILO Term Loan, the LIBOR Rate Margin, the Canadian CDOR Margin and the Prime Rate Margin shall be as specifically agreed and documented between the Agent and the Borrowers.



“Applicable Percentage” means with respect to (a) any U.S. Revolving Lender at any time, the percentage (carried out to the ninth decimal place) of the Aggregate U.S. Revolving Commitments represented by such U.S. Revolving Lender’s U.S. Revolving Commitment at such time, (b) any Canadian Revolving Lender at any time, the percentage (carried out to the ninth decimal place) of the Aggregate Canadian Revolving Commitments represented by such Canadian Revolving Lender’s Canadian Revolving Commitment at such time, (c) any Revolving Lender at any time, the percentage (carried out to the ninth decimal place) of the Aggregate Revolving Commitments represented by such Revolving Lender’s Revolving Commitment at such time, (d) any U.S. FILO Term Lender at any time after the FILO Term Loan Draw Date has occurred, the percentage (carried out to the ninth decimal place) of the outstanding portion of the U.S. FILO Term Loan held by such U.S. FILO Term Lender at such time, (e) any Canadian FILO Term Lender at any time after the FILO Term Loan Draw Date has occurred, the percentage (carried out to the ninth decimal place) of the outstanding portion of the Canadian FILO Term Loan held by such Canadian FILO Term Lender at such time, and (f) with reference to all Lenders at any time, the percentage (carried out to the ninth decimal place) of the Aggregate Commitments represented by such Lender’s Total Revolving Commitments at such time and, if the FILO Term Loan Draw Date has occurred, plus such Lender’s portion of the FILO Term Loan outstanding at such time, in each case of clauses (a) through (f), subject to adjustment as provided in Section 2.16 and 10.06. If the Total Revolving Commitments of each Revolving Lender to make Revolving Loans and the obligation of the L/C Issuers to make L/C Credit Extensions have been terminated pursuant to Section 2.06 or Section 8.02 or if the Aggregate Revolving Commitments have expired, then the Applicable Percentages of each Revolving Lender shall be determined based on the percentage (carried out to the ninth decimal place) of all Total Revolving Outstandings represented by such Revolving Lender’s Total Credit Extensions. The initial Applicable Percentages of each Revolving Lender as of the Effective Date is set forth opposite the name of such Revolving Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Revolving Lender becomes a party hereto, as applicable.

“Applicable Rate” means, at any time of calculation, (a) with respect to Commercial Letters of Credit, a per annum rate equal to fifty percent (50%) of the Applicable Margin for Loans which are LIBOR Rate Loans, and (b) with respect to Standby Letters of Credit, including bank guarantees, a per annum rate equal to the Applicable Margin for Loans which are LIBOR Rate Loans.

“Applicable Time” means, with respect to any borrowings and payments in any Optional Currency, the local time in the place of settlement for such Optional Currency as may be determined by the Agent or the L/C Issuer, as the case may be, to be necessary for timely settlement on the relevant date in accordance with normal banking procedures in the place of payment.

“Appraised Value” means, (a) with respect to Eligible Inventory, the appraised orderly liquidation value, net of costs and expenses to be incurred in connection with any such liquidation, of the Borrowing Base Parties’ Inventory, which value is expressed as a percentage of Cost of Inventory as set forth in the inventory stock ledger of each Borrower, which value shall be determined from time to time by the most recent appraisal undertaken by an independent appraiser engaged by the Agent, or (b) with respect to Eligible Intellectual Property, the forced liquidation value, net of costs and expenses to be incurred in connection with any such liquidation, which value shall be determined from time to time by the most recent appraisal undertaken by an independent appraiser engaged by the Agent.

“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.

“Arrangers” means BofA Securities, Inc., RBC, Bank of Montreal, Canadian Imperial Bank of Commerce, Citibank, N.A., JPMorgan Chase Bank, N.A. and Wells Fargo Bank, National Association, in their capacities as joint lead arrangers and joint bookrunners.

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

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

“Attributable Indebtedness” means, on any date, (a) in respect of any Capital Lease Obligation of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP or IFRS, as applicable, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease or similar payments under the relevant lease or other applicable agreement or instrument that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP or IFRS, as applicable, if such lease, agreement or instrument were accounted for as a capital lease.

“Audited Financial Statements” means, collectively, the audited consolidated balance sheet of the Parent and its Subsidiaries for the three most recently completed Fiscal Years of the Parent and its Subsidiaries ended at least ninety (90) days before the Effective Date, and the related consolidated statements of income or operations, Shareholders’ Equity and cash flows for such Fiscal Year of the Parent and its Subsidiaries, including the notes thereto, accompanied by an unqualified report thereon by their independent registered public accountants

“Auto-Extension Letter of Credit” shall have the meaning specified in Section 2.03(b)(iii).

“Availability” means, as of any date of determination thereof by the Agent, the result, if a positive number, of:

(a) the Revolving Loan Cap

Minus

(b) the Total Revolving Outstandings.

“Availability Period” means the period from and including the Effective Date to the earliest of (a) the Maturity Date, (b) the date of termination of the Aggregate Revolving Commitments pursuant to Section 2.06, and (c) the date of termination of the Aggregate Revolving Commitments and of the obligation of the L/C Issuer to make L/C Credit Extensions pursuant to Section 8.02.

“Availability Reserves” means, without duplication of any other Reserves or items that are otherwise addressed or excluded through eligibility criteria, such reserves as the Agent from time to time determines in its Reasonable Credit Judgment as being appropriate (a) to reflect the impediments to the Agent’s ability to realize upon the Collateral, (b) to reflect claims and liabilities that the Agent determines will need to be satisfied in connection with the realization upon the Collateral, (c) to reflect criteria, events, conditions, contingencies or risks which adversely affect any component of the Combined Borrowing Base, or the assets, business, financial performance or financial condition of any Loan Party, or (d) to reflect that a Default or an Event of Default then exists. Without limiting the generality of the foregoing, Availability Reserves may include, in the Agent’s Reasonable Credit Judgment (but are not limited to) reserves based on: (i) rent (which shall initially not include a reserve in respect of leased locations for which a Collateral Access Agreement has been delivered); (ii) customs duties, and other costs to release Inventory which is being imported into the United States or Canada; (iii) outstanding

Taxes and other governmental charges, including, without limitation, goods and services taxes, Quebec sales taxes, provincial sales taxes, retail sales taxes and/or harmonized taxes, ad valorem, real estate, personal property, sales, claims of the PBGC, any other taxes required to be withheld under the ITA or other applicable income taxation laws, and other Taxes which have priority over the interests of the Agent in the Collateral; (iv) salaries, wages and benefits due to employees of any Loan Party, (v) Customer Credit Liabilities Reserves, (vi) customer deposits, (vii) reserves which the Agent deemed necessary in its Reasonable Credit Judgment to address the adverse results of any audit or appraisal performed by or on behalf of the Agent in accordance with the terms of this Agreement from time to time (to the extent that such adverse results are not reflected in the Appraised Value of Eligible Inventory or Eligible Intellectual Property, if the FILO Term Loan is applicable), (viii) warehousemen's or bailee's charges and other Permitted Encumbrances which have priority over the interests of the Agent in the Collateral, (ix) amounts due to vendors on account of consigned goods, (x) Cash Management Reserves, (xi) Bank Product Reserves, (xii) reserves based on dilution of Accounts, (xiii) reserves against Eligible Inventory (including but not limited to Eligible In-Transit Inventory and Eligible Letter of Credit Inventory), Eligible Credit Card Receivables, Eligible Trade Receivables and Eligible Intellectual Property (at any time that Eligible Intellectual Property is included in the Combined Borrowing Base), in each case as established and adjusted from time to time by Agent in accordance with this Agreement, but without duplication of items otherwise included in a Reserve, (xiv) reserves for employee source deductions or employee benefit related liabilities including in respect of income tax, potential claims under the Canada Pension Plan as maintained by the Government of Canada, the Quebec Pension Plan as maintained by the Province of Quebec, other pension plan contributions, employment insurance, savings plans, charitable donations and workers compensation, and potential claims under WEPPA, (xv) reserves for Pension Plan Unfunded Liabilities to the extent such amounts could have priority over or be *pari passu* with the Obligations, (xvi) employer contributions under the Canada Pension Plan and the Quebec Pension Plan as maintained by the Government of Canada or the Province of Quebec, and (xvii) employment insurance employer premiums.

"Average Daily Aggregate Availability" means the average daily Availability for the immediately preceding Fiscal Quarter.

"Bail-In Action" means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"Bail-In Legislation" means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"Bank of America" means Bank of America, N.A. and its successors.

"Bank Product Reserves" means such reserves as the Agent from time to time determines in its Reasonable Credit Judgment as being appropriate to reflect the liabilities and obligations of the Loan Parties with respect to Bank Products then provided or outstanding; provided, that the amount of any such Bank Product Reserve shall be reduced by the amount of any cash collateral provided by the Loan Parties to the counterparty on any Swap Contract being reserved against as collateral for such Swap Contract.

"Bank Products" means any services or facilities provided to the Parent or any Subsidiary of the Parent by the Agent, any Lender, or any of their respective branches or Affiliates, including, without limitation, on account of (a) Swap Contracts, (b) leasing, (c) factoring, (d) Equipment financing, (e) supply chain finance services (including, without limitation, trade payable services and supplier accounts receivable purchases), and (f) Indebtedness of the type described in clause (ff) of the definition of

“Permitted Indebtedness” to the extent not arising from a Letter of Credit issued under this Agreement, but excluding Cash Management Services. For clarity, any Bank Products provided to any Subsidiary that is not a Loan Party shall be deemed provided for the account of the Loan Parties, the Loan Parties shall be deemed to have guaranteed the payment and performance of the obligations of such Subsidiary with respect to such Bank Products and such Bank Products shall be secured by the Collateral as if provided directly to the Loan Parties.

“Bank of Canada Bank Rate” means, at any date, the annual rate of interest at which the Bank of Canada is prepared to make advances, as effective on such date, and as made public in accordance with Section 21 of the *Bank of Canada Act* (Canada).

“Bank Rate” means, for any day, (i) with respect to any amount denominated in Dollars, the greater of (a) the Federal Funds Rate and (b) an overnight rate determined by the Agent, the L/C Issuer or the Swing Line Lender, as applicable, in accordance with banking industry rules on interbank compensation, (ii) with respect to any amount denominated in Canadian Dollars, the Bank of Canada Bank Rate, and (iii) with respect to any amount denominated in any other Optional Currency, the rate of interest per annum at which overnight deposits in the applicable Optional Currency, in an amount approximately equal to the amount with respect to which such rate is being determined, would be offered for such day by a branch or Affiliate of Bank of America in the applicable offshore interbank market for such currency to major banks in such interbank market.

“Base Rate” means for any day a fluctuating rate per annum equal to the highest of: (a) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate”; (b) the Federal Funds Rate for such day, plus 0.50%; and (c) the LIBOR Rate for a one month interest period as determined on such day, plus 1.00%. 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 Bank of America’s prime rate, the Federal Funds Rate or the LIBOR Rate, respectively, shall take effect at the opening of business on the day specified in the public announcement of such change. Notwithstanding the foregoing, if such Base Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement. If the Base Rate is being used as an alternate rate of interest pursuant to Section 3.03 hereof, then the Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above.

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

“Beneficial Ownership Certification” means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

“BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“BIA” means the *Bankruptcy and Insolvency Act* (Canada), as amended.

“Binding Offer Letter” means that certain offer letter, by Signa Holding GmbH and its Subsidiaries that are party thereto, to the Parent and its Subsidiaries that are party thereto, dated August 7-10, 2018, including all exhibits, annexes and schedules thereto, each as in effect on such dates and as may

be amended, modified or changed from time to time in a manner not materially adverse to the interests of the Lenders.

“Borrower Materials” has the meaning specified in Section 6.02.

“Borrower” and “Borrowers” have the meaning specified in the introductory paragraph hereto.

“Borrowing” means a Canadian Revolving Borrowing, a U.S. Revolving Borrowing or the FILO Term Loan Borrowing, as applicable, as the context may require.

“Borrowing Base Certificate” means a certificate substantially in the form of Exhibit F hereto (with such changes therein as may be reasonably required by the Agent to reflect the components of and reserves against the Combined Borrowing Base as provided for hereunder from time to time), executed and certified as accurate and complete by a Responsible Officer of the Lead Borrower which shall include appropriate exhibits, schedules, supporting documentation, and additional reports as reasonably requested by the Agent.

“Borrowing Base Party” or “Borrowing Base Parties” means, individually, each Borrower and any Subsidiary thereof listed on Schedule 1.02 hereto on the Effective Date and any Restricted Subsidiary (other than an Excluded Subsidiary) which, after the Effective Date owns assets of the type included in the Combined Borrowing Base and executes a Joinder Agreement and becomes a Borrower or Guarantor and a Secured Loan Party in accordance with the provisions of Section 6.11), and collectively, means all of them.

“Business Day” means (a) any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Agent’s Office is located or, with respect to the U.S. Borrower, in the State of New York; (b) if such day relates to any interest rate settings as to a LIBOR Rate denominated in Dollars, any fundings, disbursements, settlements and payments in Dollars in respect of any such LIBOR Rate Loan, or any other dealings in Dollars to be carried out pursuant to this Agreement in respect of any such LIBOR Rate Loan, means any such day on which dealings in deposits in Dollars are conducted by and between banks in the London interbank market; (c) when used in connection with any Loan by a Canadian Revolving Lender, the term “Business Day” shall also exclude any day on which banks are authorized or required by law to be closed in Toronto, Ontario, Canada; (d) if such day relates to any interest rate settings as to a LIBOR Rate Loan denominated in a currency other than Dollars or Euros, means any such day on which dealings in deposits in the relevant currency are conducted by and between banks in the London or other applicable offshore interbank market for such currency; and (e) if such day relates to any fundings, disbursements, settlements and payments in a currency other than Dollars or Euros in respect of a LIBOR Rate Loan, or any other dealings in any currency other than Dollars or Euros to be carried out pursuant to this Agreement in respect of any such day (other than any interest rate settings), means any such day on which banks are open for foreign exchange business in the principal financial center of the country of such currency.

“Canadian Agent’s Office” means the address set forth on Schedule 10.02 with respect to Canadian Credit Extensions, notices to be furnished with respect thereto and payments to be made thereon, or such other address as the Agent may from time to time notify the Lead Borrower and the Lenders.

“Canadian Availability” means, as of any date of determination thereof by the Agent, the result, if a positive number, equal to the lesser of (a)(i) the Canadian Revolving Loan Cap minus (ii) the Canadian Total Revolving Outstandings minus (iii) the then amount of any Allocated Availability derived from the

Canadian Loan Parties and allocated to the U.S. Borrower, plus (iv) the then amount of any Allocated Availability derived from the U.S. Borrower and allocated to the Canadian Borrower; and (b)(i) the Revolving Loan Cap minus (ii) the Total Revolving Outstandings on such date. In calculating Canadian Availability at any time and for any purpose under this Agreement any amount calculated or referenced in Dollars shall also refer to the Dollar Equivalent in Cdn\$.

“Canadian Benefit Plans” means any plan, fund, program, or policy, whether oral or written, formal or informal, funded or unfunded, insured or uninsured, providing employee benefits, including medical, hospital care, dental, sickness, accident, disability, life insurance, pension, retirement or savings benefits, under which any Canadian Loan Party has any liability with respect to any employee or former employee, but excluding any Canadian Pension Plans.

“Canadian Blocked Person” means any Person that is a “designated person”, “politically exposed foreign person”, or “terrorist group” as described in any Canadian Economic Sanctions and Export Control Laws, in each case subject to economic sanctions pursuant to Canadian AML Legislation.

“Canadian Borrower” has the meaning specified in the introductory paragraph hereto.

“Canadian Collection Account” has the meaning provided in Section 6.12(c).

“Canadian Credit Party” or “Canadian Credit Parties” means (a) individually, (i) each Canadian Revolving Lender, its branches and Affiliates, (ii) each Canadian FILO Term Lender, its branches and Affiliates, (iii) the Agent and its Affiliates, (iv) each L/C Issuer of any Canadian Letter of Credit, (v) the Arrangers, (vi) each holder of any Other Canadian Liabilities, and (vii) the successors and permitted assigns of each of the foregoing, and (b) collectively, all of the foregoing, in each case, to the extent relating to the services provided to, and obligations owing by or guaranteed by, the Canadian Loan Parties.

“Canadian Dollars” or “Cdn\$” shall mean the lawful currency of Canada.

“Canadian Economic Sanctions and Export Control Laws” means any Canadian laws, regulations or orders governing dealings with countries, entities, organizations, or individuals subject to economic sanctions and similar measures, including the *Special Economic Measures Act* (Canada), the *United Nations Act* (Canada), the *Freezing Assets of Corrupt Foreign Officials Act* (Canada), Part II.1 of the *Criminal Code* (Canada), and any related regulations.

“Canadian FILO Borrowing Base” means, at any time of calculation, a Dollar Equivalent amount equal to:

(a) the Cost of Eligible Inventory of the Canadian Loan Parties (other than Inventory described in clause (b) below), net of Inventory Reserves, multiplied by 5.0% multiplied by the Appraised Value of Eligible Inventory;

plus

(b) the lesser of (i) the Cost of Eligible In-Transit Inventory of the Canadian Loan Parties, multiplied by 5.0% multiplied by the Appraised Value of Eligible In-Transit Inventory or (ii) when combined with amounts available under clause (b) of the “U.S. FILO Borrowing Base”, clause (d) of the “U.S. Revolving Borrowing Base” and clause (d) of the “Canadian Revolving Borrowing Base”, twenty percent (20%) of the Combined Borrowing Base;

plus

(c) the lesser of (i) the product of (x) the FILO IP Advance Rate multiplied by (y) the Appraised Value of Eligible Intellectual Property of the Canadian Loan Parties or (ii) when combined with amounts available under clause (c) of the “U.S. FILO Borrowing Base”, ten percent (10%) of the Combined Borrowing Base;

minus

(d) the then amount of all Availability Reserves relating to the Canadian Loan Parties (provided that such Availability Reserves shall not be duplicative of Availability Reserves maintained against the Canadian Revolving Borrowing Base).

“Canadian FILO Term Loan” means an extension of credit by a Canadian FILO Term Lender to the Canadian Borrower under Article II in the form of a Canadian FILO Term Loan.

“Canadian FILO Term Loan Commitments” means, as to each Canadian FILO Term Lender, its obligation to make the Canadian FILO Term Loan to the Canadian Borrower on the FILO Term Loan Draw Date pursuant to Article II in the amount set forth opposite such Canadian FILO Term Lender’s name on Schedule 2.01.

“Canadian FILO Term Lenders” means the Lenders having Canadian FILO Term Loan Commitments from time to time or at any time.

“Canadian FILO Term Loan Note” means a promissory note made by the Canadian Borrower in favor of a FILO Term Lender evidencing Canadian FILO Term Loan made by such FILO Term Lender, substantially in the form of Exhibit C-6.

“Canadian FILO Term Loan Push Down Reserve” shall mean a reserve against the Canadian Revolving Borrowing Base in an amount equal to the amount by which, if any, (a) the aggregate outstanding principal amount of Canadian FILO Term Loan exceeds (b) the Canadian FILO Borrowing Base at such time.

“Canadian Index Rate” means, for any day, the rate of interest per annum equal to the greater of (i) the per annum rate of interest quoted or established as the “prime rate” of Bank of America (acting through its Canada branch) which it quotes or establishes for such day as its reference rate of interest in order to determine interest rates for commercial loans in Canadian Dollars in Canada to its Canadian borrowers; and (ii) the average rate for Canadian Dollar banker’s acceptances having a term of one month that appears on Reuters Service page CDOR (or such other page as is a replacement page for such banker’s acceptances) at approximately 10:00 a.m. (Toronto time) on such day plus 100 basis points per annum, adjusted automatically with each quoted or established change in such rate, all without the necessity of any notice to the Canadian Borrower or any other Person. Notwithstanding the foregoing, if such Canadian Index Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

“Canadian Index Rate Loan” means a Loan or portion thereof denominated in Canadian Dollars that bears interest at a rate based on the Canadian Index Rate.

“Canadian L/C Advance” means with respect to each Canadian Revolving Lender, such Canadian Revolving Lender’s funding of its participation in any Canadian L/C Borrowing in accordance with its Applicable Percentage.

“Canadian L/C Borrowing” means an extension of credit resulting from a drawing under any Canadian Letter of Credit which has not been reimbursed on or prior to the date required to be reimbursed by the Canadian Borrower, pursuant to Section 2.03(c)(i) or refinanced as a Canadian Revolving Borrowing.

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

“Canadian L/C Obligations” means, as at any date of determination and without duplication, the aggregate Stated Amount of all outstanding Canadian Letters of Credit plus the aggregate of all Unreimbursed Amounts under Canadian Letters of Credit, including all Canadian L/C Borrowings.

“Canadian Lenders” means the Lenders having Canadian Revolving Commitments or holding a portion of the Canadian FILO Term Loan from time to time or at any time. Any Person may be a Canadian Lender only if it is a financial institution that is listed on Schedule I, II or III of the *Bank Act* (Canada), has received an approval to have a financial establishment in Canada pursuant to Section 522.21 of the *Bank Act* (Canada) or is not a foreign bank for purposes of the *Bank Act* (Canada), and if such financial institution is not resident in Canada and is not deemed to be resident in Canada for purposes of the ITA, then such financial institution (i) deals at arm’s length with each Canadian Loan Party for purposes of the ITA and (ii) is not, and deals at arms’ length (for the purposes of the ITA) with each Person who is, a specified shareholder (as defined in Section (18)(5) of the ITA) of any Canadian Loan Party.

“Canadian Letter of Credit” means each Letter of Credit issued hereunder for the account of the Canadian Borrower or its Restricted Subsidiaries.

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

“Canadian Loan” means an extension of credit by a Canadian Lender to the Canadian Borrower under Article II in the form of a Canadian Revolving Loan, a Canadian Swing Line Loan or a Canadian FILO Term Loan.

“Canadian Loan Parties” means, collectively, the Canadian Borrower and all of its Canadian Subsidiaries (other than Excluded Subsidiaries). “Canadian Loan Party” means any one of such Persons.

“Canadian Pension Plans” means each pension plan required to be registered under Canadian federal or provincial pension benefits law or a tax statute or regulation in Canada that is maintained or contributed to by a Canadian Loan Party for its employees or former employees, but does not include the Canada Pension Plan or the Quebec Pension Plan as maintained by the Government of Canada or the Province of Quebec, respectively.



“Canadian Pension Plan Termination Event” shall mean an event which would reasonably be expected to entitle a Person (without the consent of any Canadian Loan Party) to wind-up or terminate a Canadian Pension Plan in full or in part, or the institution of any steps by any Governmental Authority to order the termination or wind-up of, in full or in part, any Canadian Pension Plan, the institution of any steps by a Canadian Loan Party to terminate, in full or in part, any Canadian Pension Plan if such plan has a Pension Plan Unfunded Liability, or an event respecting any Canadian Pension Plan which could reasonably be expected to result in the revocation of the registration of such Canadian Pension Plan or to have a trustee appointed to administer a Canadian Pension Plan or which could otherwise reasonably be expected to adversely affect the tax status of any such Canadian Pension Plan.

“Canadian Revolving Borrowing” means a borrowing consisting of simultaneous Canadian Revolving Loans of the same Type and, in the case of CDOR Rate Loans or LIBOR Rate Loans, having the same Interest Period or CDOR Period, as applicable, made by each of the Canadian Revolving Lenders pursuant to Section 2.01.

“Canadian Revolving Borrowing Base” means, at any time of calculation, a Dollar Equivalent amount equal to:

(a) the face amount of Eligible Credit Card Receivables of the Canadian Loan Parties multiplied by 95%;

plus

(b) the face amount of Eligible Trade Receivables (net of Taxes and excluding Eligible Credit Card Receivables) of the Canadian Loan Parties multiplied by 85%;

plus

(c) the Cost of Eligible Inventory of the Canadian Loan Parties (other than Inventory described in clauses (d) and (e) below), net of Inventory Reserves, multiplied by 90% (or during the Seasonal Advance Period, so long as no portion of the FILO Term Loan is outstanding, 92.5%) multiplied by the Appraised Value of Eligible Inventory;

plus

(d) the lesser of (i) Cost of Eligible In-Transit Inventory of the Canadian Loan Parties, multiplied by 90% (or during the Seasonal Advance Period, so long as no portion of the FILO Term Loan is outstanding, 92.5%) multiplied by the Appraised Value of Eligible In-Transit Inventory, or (ii) when combined with amounts available under clause (e) of this definition, twenty percent (20%) of the sum of clauses (a), (b), and (c) of this definition;

plus

(e) the lesser of (i) Cost of Eligible Letter of Credit Inventory of the Canadian Loan Parties, multiplied by 90% multiplied by the Appraised Value of Eligible Letter of Credit Inventory, or (ii) when combined with amounts available under clause (d) of this definition, twenty percent (20%) of the sum of clauses (a), (b), and (c) of this definition;

minus

(f) the then amount of all Availability Reserves relating to the Canadian Loan Parties (provided that such Availability Reserves shall not be duplicative of Availability Reserves maintained against the Canadian FILO Borrowing Base);

minus

(g) the Canadian FILO Term Loan Push Down Reserve, if applicable.

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

“Canadian Revolving Credit Extensions” mean each of the following: (a) a Canadian Revolving Borrowing, (b) a Canadian Swing Line Loan, and (c) a Canadian L/C Credit Extension.

“Canadian Revolving Loan” means an extension of credit by a Canadian Revolving Lender to the Canadian Borrower under Article II in the form of a Canadian Revolving Loan or a Canadian Swing Line Loan.

“Canadian Revolving Loan Cap” means, at any time of determination, the lesser of (a) the Aggregate Canadian Revolving Commitments or (b) the Canadian Revolving Borrowing Base.

“Canadian Revolving Lenders” means the Canadian Lenders having Canadian Revolving Commitments from time to time or at any time.

“Canadian Revolving Note” means a promissory note made by the Canadian Borrower in favor of a Canadian Revolving Lender evidencing Canadian Revolving Loans made by such Canadian Revolving Lender, substantially in the form of Exhibit C-2.

“Canadian Revolving Overadvance” means a Canadian Revolving Credit Extension to the extent that, immediately after the making of such Canadian Revolving Credit Extension, the aggregate principal balance of all Canadian Revolving Credit Extensions then outstanding exceeds the sum of (i) the Canadian Revolving Loan Cap as then in effect, minus (ii) the then amount of any Allocated Availability derived from the Canadian Loan Parties and allocated to the U.S. Borrower, plus (iii) the then amount of any Allocated Availability derived from the U.S. Borrower and allocated to the Canadian Borrower.

“Canadian Security Documents” means the General Security Agreement, the Quebec Security, and each other security agreement or other instrument or document, in each case, governed by applicable Laws in Canada, executed and delivered by any Canadian Loan Party to the Agent pursuant to this Agreement or any other Loan Document granting a Lien on assets of any Canadian Loan Party for the benefit of the Credit Parties, as security for the Obligations.

“Canadian Subsidiary” means any Subsidiary that is organized under the laws of Canada or any province or territory thereof.

“Canadian Swing Line Loan” means a Swing Line Loan made to the Canadian Borrower pursuant to the provisions of Section 2.04.

“Canadian Total Revolving Outstandings” means, without duplication, the aggregate Outstanding Amount of all Canadian Revolving Loans, all Canadian Swing Line Loans and all Canadian L/C Obligations.

“Capital Expenditures” means, with respect to any Person for any period, all expenditures (by the expenditure of cash or the incurrence of Indebtedness) by such Person during any measuring period for any fixed assets or improvements or for replacements, substitutions or additions thereto, that have a useful life of more than one year and that are required to be capitalized under GAAP or IFRS, as applicable.

“Capital Lease Obligations” means, with respect to any Person for any period, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as liabilities on a balance sheet of such Person under GAAP or IFRS, as applicable, and the amount of which obligations shall be the capitalized amount thereof determined in accordance with GAAP or IFRS, as applicable.

“Cash Collateral Account” means (a) with respect to U.S. L/C Obligations, a non-interest bearing account established by the U.S. Borrower with Bank of America, and in the name of, the Agent (or as the Agent shall otherwise direct) and under the sole and exclusive dominion and control and first-priority perfected Liens of the Agent, in which deposits are required to be made in accordance with this Agreement; and (b) in the case of the Canadian L/C Obligations, a non-interest bearing account established by the Canadian Borrower with the Agent at Bank of America, N.A. (acting through its Canada Branch) under the sole and exclusive dominion and control and first-priority perfected Liens of the Agent, in the name of the Agent or as the Agent shall otherwise direct, in which deposits are required to be made by the Canadian Borrower in respect of the Canadian L/C Obligations in accordance with this Agreement.

“Cash Collateralize” means to deposit in the Cash Collateral Account or to pledge and deposit with or deliver to the Agent, for the benefit of one or more of the Agent, the L/C Issuer or the Revolving Lenders, as collateral for L/C Obligations or obligations of the Revolving Lenders to fund participations in respect thereof (as the context may require), L/C Obligations, cash or deposit account balances or, if the Agent and the L/C Issuer shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance reasonably satisfactory to the Agent and the L/C Issuer. “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“Cash Dominion Event” means either (i) the occurrence and continuance of any Event of Default, or (ii) the failure of the Borrowing Base Parties to maintain Availability of at least twelve and one-half percent (12.5%) of the Revolving Loan Cap (calculated without giving effect to the FILO Term Loan Push Down Reserve, if applicable) for five (5) consecutive Business Days. For purposes of this Agreement, the occurrence of a Cash Dominion Event shall be deemed continuing, (i) so long as such Event of Default has not been waived, and/or (ii) if the Cash Dominion Event arises as a result of the Borrowing Base Parties’ failure to achieve Availability as required hereunder, until Availability has exceeded twelve and one-half percent (12.5%) of the Revolving Loan Cap (calculated without giving effect to the FILO Term Loan Push Down Reserve, if applicable) for thirty (30) consecutive days, in which case a Cash Dominion Event shall no longer be deemed to be continuing for purposes of this Agreement; provided that a Cash Dominion Event shall be deemed continuing (even if an Event of Default is no longer continuing and/or Availability exceeds the required amount for thirty (30) consecutive days) at all times after a Cash Dominion Event has occurred and has been discontinued on two (2) occasions in any consecutive twelve (12) month period. The termination of a Cash Dominion

Event as provided herein shall in no way limit, waive or delay the occurrence of a subsequent Cash Dominion Event in the event that the conditions set forth in this definition again arise.

“Cash Management Reserves” means such reserves as the Agent, from time to time, determines in its Reasonable Credit Judgment as being appropriate to reflect the reasonably anticipated liabilities and obligations of the Loan Parties with respect to Cash Management Services then provided or outstanding.

“Cash Management Services” means any cash management services provided to the Parent, any of its Subsidiaries or HBC India by the Agent or any Lender or any of their respective branches or Affiliates, including, without limitation, (a) ACH transactions, (b) controlled disbursement services, treasury, depository, overdraft, and electronic funds transfer services, (c) credit card processing services, and (d) credit or debit cards and purchase cards. For clarity, any Cash Management Services provided to any Subsidiary that is not a Loan Party or HBC India shall be deemed provided for the account of the Loan Parties, the Loan Parties shall be deemed to have guaranteed the payment and performance of the obligations of such Subsidiary or HBC India, as applicable, with respect to such Cash Management Services and such Cash Management Services shall be secured by the Collateral as if provided directly to the Loan Parties.

“CCAA” means the *Companies’ Creditors Arrangement Act* (Canada), as amended.

“CDOR Period” means, with respect to any CDOR Rate Loan, a period of one, two, three or six months commencing on a Business Day selected by the Lead Borrower in its irrevocable Loan Notice (or such other period that is twelve months or seven days as requested by the Lead Borrower, to the extent available to all applicable Lenders), provided that the foregoing provision relating to CDOR Periods is subject to the following:

(a) if any CDOR Period would otherwise end on a day that is not a Business Day, such CDOR Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such CDOR Period into another calendar month in which event such CDOR Period shall end on the immediately preceding Business Day;

(b) any CDOR Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such CDOR Period) shall end on the last Business Day of a calendar month;

(c) any CDOR Period that would otherwise extend beyond the Maturity Date shall end on the Business Day immediately preceding the Maturity Date;

(d) the Lead Borrower shall select CDOR Periods so as not to require a payment or prepayment of any CDOR Rate Loan during a CDOR Period for such CDOR Rate Loan; and

(e) the Lead Borrower shall select CDOR Periods so there shall be no more than ten (10) separate CDOR Rate Loans in existence at any one time.

“CDOR Rate” means, in respect of any CDOR Period applicable to a CDOR Rate Loan, the rate per annum determined by the Agent by reference to the average rate quoted on the Reuters Monitor Screen (Page CDOR, or such other Page as may replace such Page on such Screen on the purpose of displaying Canadian interbank bid rates for Canadian Dollar bankers’ acceptances) applicable to Canadian Dollars bankers’ acceptances with a term comparable to such CDOR Period as of 10:00 a.m. (Toronto time) on the first day of such CDOR Period. If for any reason the Reuters Monitor Screen rates are unavailable, the CDOR Rate shall be determined from such financial report service or other

information as shall be selected by the Agent, acting reasonably. No adjustment shall be made to account for the difference between the number of days in a year on which the rates referred to in this definition are based and the number of days in a year on the basis of which interest is calculated in the Agreement. Notwithstanding the foregoing, if such CDOR Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

“CDOR Rate Loan” means a Loan, or portion thereof, denominated in Canadian Dollars which bears interest at a rate based on the CDOR Rate.

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

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

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

“Change in Law” means the occurrence, after the Effective Date, 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, (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, and (z) the regulations of the European Union commonly referred to as “CRD IV” and “CRR” shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

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

(a) the direct or indirect sale, transfer, conveyance or other Disposition (other than by way of merger, amalgamation or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Parent and its Restricted Subsidiaries, taken as a whole, to any “person” or “group” (as those terms are used in Section 13(d)(3) of the Exchange Act); or

(b) the consummation of any transaction (including, without limitation, any merger, amalgamation or consolidation), the result of which is that any “person” or “group” (as defined above), (other than the Permitted Holders) becomes the beneficial owner, directly or indirectly, of more than 35% of the combined voting power of all of Equity Interests entitled to vote for members of the board of directors or equivalent governing body of the Parent; or

(c) Parent shall cease to own and control legally and beneficially, either directly or indirectly, equity securities in each other Loan Party representing 100% of the combined voting power of all of Equity Interests entitled to vote for members of the board of directors or equivalent governing body of such Loan Parties on a fully-diluted basis free and clear of all Liens (other than statutory Liens otherwise permitted hereunder), except where such failure is as a result of a transaction permitted by the Loan Documents; or

(d) at any time prior to the Specified Transaction being consummated, during any period of twelve (12) consecutive months, a majority of the members of the board of directors or other equivalent governing body of any Loan Party cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body.

“Class” means, the class consisting of (i) the Canadian Revolving Lenders, (ii) the U.S. Revolving Lenders, (iii) the Canadian FILO Term Lenders or (iv) the U.S. FILO Term Lenders, as the context may require.

“Co-Syndication Agents” means Bank of Montreal, Canadian Imperial Bank of Commerce, Citibank, N.A., JPMorgan Chase Bank, N.A., RBC Capital Markets and Wells Fargo Bank, National Association, in their capacities as co-syndication agents.

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

“Collateral” means any and all property and assets of the Secured Loan Parties that is or is intended under the terms of the Security Documents to be subject to a Lien in favor of the Agent, on behalf of the Credit Parties, to secure the Obligations.

“Collateral Access Agreement” means an agreement reasonably satisfactory in form and substance to the Agent executed by (a) a bailee or other Person in possession of Collateral, and/or (b) any landlord of Real Estate leased by any Secured Loan Party at which any Collateral is located, pursuant to which such Person (i) acknowledges the Agent’s Lien on the Collateral, (ii) releases or subordinates such Person’s Liens in the Collateral held by such Person or located on such Real Estate, (iii) provides the Agent with access to the Collateral held by such bailee or other Person or located in or on such Real Estate, (iv) as to any landlord, provides the Agent with a reasonable time to sell and dispose of the Collateral from such Real Estate, and (v) makes such other agreements with the Agent as the Agent may reasonably require and which are customarily included in such an agreement.

“Collection Account” means each of the U.S. Collection Account and the Canadian Collection Account.

“Combined Borrowing Base” means, at any time of calculation, an amount equal to the sum of the U.S. Revolving Borrowing Base, the Canadian Revolving Borrowing Base, the Canadian FILO Borrowing Base and the U.S. FILO Borrowing Base.

“Commercial Letter of Credit” means any letter of credit or similar instrument (including, without limitation, bankers’ acceptances) issued for the purpose of providing the primary payment mechanism in connection with the purchase of any materials, goods or services by a Loan Party in the ordinary course of business of such Loan Party.

“Commitment” means, as to each Lender, its U.S. Revolving Commitment, its Canadian Revolving Commitment, its U.S. FILO Term Loan Commitment or its Canadian FILO Term Loan Commitment, as applicable.

“Commitment Fee” has the meaning specified in Section 2.09(a).

“Commitment Fee Percentage” means (a) if the aggregate Revolving Credit Extensions of all Revolving Lenders for the immediately preceding Fiscal Quarter were greater than or equal to forty percent (40%) of the Aggregate Revolving Commitments, one-quarter of one percent (0.25%) per annum, or (b) if such aggregate Revolving Credit Extensions for the immediately preceding Fiscal Quarter were less than forty percent (40%) of the Aggregate Revolving Commitments, three-tenths of one percent (0.30%) per annum.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.).

“Company Reorganization” means the reorganization, as described in a separate presentation made available to the Lenders prior to the Effective Date.

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

“Confirmation Agreement” means that certain Confirmation, Ratification and Amendment of Ancillary Loan Documents among the Loan Parties and the Agent, dated as of the Effective Date.

“Consignment Arrangement” means any arrangement or agreement whereby (i) any Borrower or any other Secured Loan Party acts as agent for a consignor in selling merchandise owned by the consignor and (ii) title to the consigned merchandise passes directly from the consignor to the customer upon sale.

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

“Consolidated EBITDA” means, with reference to the Parent and its Restricted Subsidiaries in respect of any period, earnings (loss) before interest expense, income taxes, depreciation and amortization expense for such period adjusted to exclude the following: (i) business and organization restructuring/realignment charges; (ii) merger/acquisition cost and expenses; (iii) non-cash charges (including non-cash foreign currency gains or losses); (iv) the net income or loss from discontinued operations; and (v) normalizing adjustments, if any, related to transactions that are not associated with day-to-day operations or that arise from unusual or infrequently occurring events including discontinued operations, each determined in good faith by management of the Parent, all as determined on a Consolidated basis in accordance with GAAP or IFRS, as applicable (it being agreed that the calculation of Consolidated EBITDA for any period shall exclude the earnings of any Person that is not the Parent or a Restricted Subsidiary of the Parent; provided that Consolidated EBITDA shall be increased by the aggregate amount of dividends, distributions or other payments actually paid in cash or cash equivalents (or to the extent subsequently converted to cash or cash equivalents) to the Borrowers or a Restricted Subsidiary by such Person in respect of such period).

There shall be included in determining Consolidated EBITDA for any period, without duplication, the Acquired EBITDA of any Person, property, business or asset acquired by the Parent or any Restricted Subsidiary during such period (but not the Acquired EBITDA of any related Person, property, business or assets to the extent not so acquired), to the extent not subsequently sold, transferred or otherwise disposed by the Parent or such Restricted Subsidiary during such period (each such Person, property, business or asset acquired and not subsequently so disposed of, an “Acquired Entity or Business”) and the Acquired EBITDA of any Unrestricted Subsidiary that is converted into a Restricted

Subsidiary during such period (each, a “Converted Restricted Subsidiary”), based on the actual Acquired EBITDA of such Acquired Entity or Business or Converted Restricted Subsidiary for such period (including the portion thereof occurring prior to such acquisition). There shall be excluded in determining Consolidated EBITDA for any period the Disposed EBITDA of any Person, property or business sold, transferred or otherwise disposed of or, closed or classified as discontinued operations (but if such operations are classified as discontinued due to the fact that they are subject to an agreement to dispose of such operations, only when and to the extent such operations are actually disposed of) by the Parent or any Restricted Subsidiary during such period (each such Person, property, business or asset so sold or disposed of, a “Sold Entity or Business”) and the Disposed EBITDA of any Restricted Subsidiary that is converted into an Unrestricted Subsidiary during such period (each a “Converted Unrestricted Subsidiary”), based on the actual Disposed EBITDA of such Sold Entity or Business or Converted Unrestricted Subsidiary for such period (including the portion thereof occurring prior to such sale, transfer or disposition).

“Consolidated Fixed Charge Coverage Ratio” means, with reference to the Parent and its Restricted Subsidiaries in respect to any trailing twelve month period, (i) the result of (A) Consolidated EBITDA, minus (B) Capital Expenditures (other than Financed Capital Expenditures and net of tenant allowances paid by lessors and expenditures made by Persons other than a Loan Party for the account of the Parent and its Restricted Subsidiaries), minus (C) income taxes paid in cash to (ii) the sum of (A) interest expense paid in cash, plus (B) scheduled payment of principal payments on account of Indebtedness, plus (C) Restricted Payments made by a Loan Party (other than Restricted Payments made to a Loan Party).

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

“Contributed Assets” means the HBC Europe Business (as defined in the Opco Implementation Agreement) and any assets comprising any portion thereof including the HBC Contributed Shares (as defined in the Opco Implementation Agreement) the receivables that the Parent and HBC Europe S.à r.l. and their Affiliates have against the HBC Europe Business existing on or prior to the OpCo Closing Date (as defined in the Opco Implementation Agreement) (but excluding receivables under the bridge loan granted pursuant to Clause 9 of the Opco Implementation Agreement) and a cash payment of €100,000,000.

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

“Controlled Account” has the meaning provided in Section 6.12(a)(ii).

“Controlled Account Bank” means each bank with whom deposit accounts are maintained in which any funds of any of the Loan Parties from one or more DDAs are concentrated and with whom an Account Control Agreement has been, or is required to be, executed in accordance with the terms hereof.

“Convert”, “Conversion” and “Converted” each refers to a conversion of Loans of one Type into Loans of the other Type.

“Converted Restricted Subsidiary” has the meaning set forth in the definition of “Consolidated EBITDA.”



“Converted Unrestricted Subsidiary” has the meaning set forth in the definition of “Consolidated EBITDA.”

“Cost” means the cost of purchases of Inventory determined according to the accounting policies used in the preparation of the Parent’s audited financial statements; provided that, in all events, such determination is consistent with the determination of Cost used by the appraiser in the most recent appraisal to determine Appraised Value pursuant to clause (a) thereof.

“Covenant Compliance Event” means Availability at any time is less than or equal to ten percent (10%) of the Revolving Loan Cap (calculated without giving effect to the FILO Term Loan Push Down Reserve, if applicable). For purposes hereof, the occurrence of a Covenant Compliance Event shall be deemed continuing until Availability has exceeded ten percent (10%) of the Revolving Loan Cap (calculated without giving effect to the FILO Term Loan Push Down Reserve, if applicable) for thirty (30) consecutive days, in which case a Covenant Compliance Event shall no longer be deemed to be continuing for purposes of this Agreement. The termination of a Covenant Compliance Event as provided herein shall in no way limit, waive or delay the occurrence of a subsequent Covenant Compliance Event in the event that the conditions set forth in this definition again arise.

“Covered Entity” means any of the following:

(i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Covered Party” has the meaning specified in Section 10.31.

“CRA” means the Canada Revenue Agency.

“Credit Card Issuer” means any person (other than a Borrower or other Loan Party) who issues or whose members issue credit cards, including, without limitation, 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, Discover, Diners Club, Carte Blanche and other non-bank credit or debit cards, including, without limitation, credit or debit cards issued by or through American Express Travel Related Services Company, Inc., Novus Services, Inc., and Capital One Bank (Canada branch) (with respect to private label credit cards) and other issuers approved by the Agent.

“Credit Card Processor” means any servicing or processing agent (including, without limitation PayPal) or any factor or financial intermediary who facilitates, services, processes or manages the credit authorization, billing transfer and/or payment procedures with respect to any Borrowing Base Party’s sales transactions involving credit card or debit card purchases by customers using credit cards or debit cards issued by any Credit Card Issuer.

“Credit Card Notifications” has the meaning provided in Section 6.12(a)(i).

“Credit Card Receivables” means each “payment intangible” (as defined in the UCC), “intangible” as defined in the PPSA, or Account together with all income, payments and proceeds thereof,

owed by a Credit Card Issuer or Credit Card Processor to a Borrowing Base Party resulting from charges by a customer of a Borrowing Base Party on credit or debit cards issued by such Credit Card Issuer in connection with the sale of goods by a Borrowing Base Party, or services performed by a Borrowing Base Party, in each case in the ordinary course of its business.

“Credit Extensions” mean each of the following: (a) a Canadian Revolving Credit Extension, (b) a U.S. Revolving Credit Extension and (c) the FILO Term Loan Borrowing, as applicable.

“Credit Party” or “Credit Parties” means, collectively, each Canadian Credit Party, each Swing Line Lender and each U.S. Credit Party.

“Credit Party Expenses” means (a) all reasonable and documented out-of-pocket expenses incurred by the Agent, Bank of America and their respective Affiliates, in connection with this Agreement and the other Loan Documents, including without limitation (i) the reasonable and documented fees, charges and disbursements of (A) counsel for the Agent and Bank of America, including legal fees and other out-of-pocket expenses of Morgan, Lewis & Bockius LLP and Norton Rose Fulbright Canada LLP and of (x) any local counsel reasonably retained by the Agent and (y) solely in the case of a conflict of interest, one additional counsel in each relevant jurisdiction to the affected Lenders similarly situated, and (B) outside consultants for the Agent, (ii) in connection with (A) the syndication of the credit facilities provided for herein, (B) the preparation, negotiation, administration, management, execution and delivery of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (C) the enforcement or protection of their rights in connection with this Agreement or the Loan Documents or efforts to preserve, protect, collect, or enforce the Collateral or in connection with any proceeding under any Debtor Relief Laws, (D) any workout, restructuring or negotiations in respect of any Obligations, (E) appraisals, and (F) commercial finance examinations, and (iii) all customary fees and charges (as adjusted from time to time) of the Agent with respect to the disbursement of funds (or the receipt of funds) to or for the account of any Loan Party (whether by wire transfer or otherwise), together with any out-of-pocket costs and expenses incurred in connection therewith, and (b) with respect to the L/C Issuer, and its Affiliates, all reasonable out-of-pocket expenses incurred in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder; and (c) all reasonable and documented out-of-pocket expenses incurred by the Credit Parties who are not the Agent, Bank of America, the L/C Issuer or any Affiliate of any of them, after the occurrence and during the continuance of an Event of Default, provided that such Credit Parties shall be entitled to reimbursement for no more than one counsel representing all such Credit Parties (absent a conflict of interest in which case the Credit Parties may engage and be reimbursed for the reasonable and documented out-of-pocket expenses incurred by one additional counsel in each relevant jurisdiction to the affected Person similarly situated). The foregoing costs and expenses shall include without limitation all reasonable search, filing and recording charges and fees related thereto, and other reasonable and documented out-of-pocket expenses incurred by the Agent.

“Customer Credit Liabilities” means at any time, the aggregate remaining value (net of breakage as recorded by the Borrowing Base Parties in relation to such outstanding gift certificates and gift cards) at such time of (a) outstanding gift certificates and gift cards of the Borrowing Base Parties entitling the holder thereof to use all or a portion of the certificate or gift card to pay all or a portion of the purchase price for any Inventory, in each case that are issued no more than three (3) years prior to the date of such determination, and (b) outstanding merchandise credits of the Borrowing Base Parties.

“Customer Credit Liabilities Reserve” means, initially as of the Effective Date, an amount equal to 25% of the Customer Credit Liabilities as reflected in the Borrowing Base Parties’ books and records,

which percentage may be increased by Agent from time to time in accordance with this Agreement following the Effective Date.

“Customs Broker/Carrier Agreement” means an agreement in form and substance reasonably satisfactory to the Agent among a Borrowing Base Party, a customs broker, freight forwarder, consolidator, carrier, or other shipping agent and the Agent, in which the customs broker, freight forwarder, consolidator, carrier or shipping agent acknowledges that it has control over and holds the documents evidencing ownership of the subject Inventory for the benefit of the Agent and agrees, upon notice from the Agent, to hold and dispose of the subject Inventory solely as directed by the Agent.

“DDA” means each checking, savings or other demand deposit account maintained by any of the Loan Parties. All funds in each DDA shall be conclusively presumed to be Collateral and proceeds of Collateral and the Agent and the Lenders shall have no duty to inquire as to the source of the amounts on deposit in any DDA.

“Debtor Relief Laws” means (a) the Bankruptcy Code of the United States, (b) the BIA, the CCAA and the WURA, and (c) all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, arrangement, receivership, insolvency, reorganization, examinership, or similar debtor relief Laws of the United States, Canada or other applicable jurisdictions from time to time in effect.

“Deed of Hypothec” means each deed of hypothec entered between the Agent and each Canadian Loan Party signatory thereto.

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

“Default Rate” means (a) when used with respect to Loans, an interest rate equal to the interest rate (including the Applicable Margin) otherwise applicable to such Loan plus two percent (2%) per annum, (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Rate for Standby Letters of Credit or Commercial Letters of Credit, as applicable, plus two percent (2%) per annum, and (c) with respect to all other Obligations, an interest rate equal to the Base Rate, plus the then Applicable Margin, plus two percent (2%) per annum.

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“Defaulting Lender” means, subject to Section 2.16(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder, or (ii) pay to the Agent, the L/C Issuer, the Swing Line Lender 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 Swing Line Loans) within one (1) Business Day of the date when due, (b) has notified the Lead Borrower, the Agent, the L/C Issuer or the Swing Line Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect, (c) has failed, within three (3) Business Days after written request by the Agent or the Lead Borrower, to confirm in writing to the Agent and the Lead Borrower 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 Agent and the Lead Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, interim receiver, monitor, 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, provincial or federal regulatory authority acting in such a capacity, or (iii) becomes the subject of a Bail-In Action; 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, as applicable, 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 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 2.16(b)) as of the date established therefor by the Agent in a written notice of such determination (specifying the reason for such determination), which shall be delivered by the Agent to the Lead Borrower, the L/C Issuer, the Swing Line Lender and each other Lender promptly following such determination.

“Delaware Divided LLC” means any Delaware LLC which has been formed upon consummation of a Delaware LLC Division.

“Delaware LLC Division” means the statutory division of any Delaware LLC into two or more Delaware LLCs pursuant to Section 18-217 of the Delaware Limited Liability Company Act.

“Delegate” means any delegate, agent, attorney or co-trustee appointed by the Agent (in its capacity as security trustee) as appointed under Section 9.02 of this Agreement.

“Designated Jurisdiction” means any country, region or territory to the extent that such country or territory is the subject of any Sanction.

“Determination Date” shall mean the date upon which each of the following has occurred:

(a) the Aggregate Revolving Commitments and, if undrawn, the Aggregate FILO Term Loan Commitments have been terminated by the Lead Borrower or the Required Lenders (or are deemed terminated) upon the occurrence of an Event of Default; and

(b) the Obligations (or any portion of them) have been declared to be due and payable (or have become automatically due and payable) and have not been paid in accordance with the terms of this Agreement.

“Disposed EBITDA” means, with respect to any Sold Entity or Business or any Converted Unrestricted Subsidiary for any period, the amount for such period of Consolidated EBITDA of such Sold Entity or Business or Converted Unrestricted Subsidiary (determined as if references to the Parent and the Restricted Subsidiaries in the definition of “Consolidated EBITDA” (and in the component definitions used therein) were references to such Sold Entity or Business and its Restricted Subsidiaries or to such Converted Unrestricted Subsidiary and its Subsidiaries), as applicable, all as determined on a consolidated basis for such Sold Entity or Business or Converted Unrestricted Subsidiary, as applicable.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction), whether in one transaction or in a series of transactions, of any property (including, without limitation, any Equity Interests other than any sale or issuance of Equity Interests in the Parent) by any Person (or the granting of any option or other right to do any of the foregoing), including any sale, assignment, transfer or other disposal, with or without recourse, of any

notes or accounts receivable or any rights and claims associated therewith and including any disposition of property to a Delaware Divided LLC pursuant to a Delaware LLC Division.

“Disqualified Lender” means each Person identified in a letter agreement between the Agent and the Lead Borrower dated as of the Original Closing Date.

“Disqualified Stock” means any Equity Interest that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder thereof), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is ninety-one (91) days after the date on which the Loans mature; provided, however, that (i) only the portion of such Equity Interests which so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Stock and (ii) with respect to any Equity Interests issued to any employee or to any plan for the benefit of employees of a Borrower or its Subsidiaries or by any such plan to such employees, such Equity Interest shall not constitute Disqualified Stock solely because it may be required to be repurchased by a Borrower or one of its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s termination, resignation, death or disability and if any class of Equity Interest of such Person that by its terms authorizes such Person to satisfy its obligations thereunder solely by delivery of an Equity Interest that is not Disqualified Stock, such Equity Interests shall not be deemed to be Disqualified Stock. Notwithstanding the preceding sentence, any Equity Interest that would constitute Disqualified Stock solely because the holders thereof have the right to require a Loan Party to repurchase such Equity Interest upon the occurrence of a change of control or an asset sale shall not constitute Disqualified Stock. The amount of Disqualified Stock deemed to be outstanding at any time for purposes of this Agreement will be the maximum amount that a Borrower and its Subsidiaries may become obligated to pay upon maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Stock or portion thereof, plus accrued dividends.

“Documentation Agent” means Capital One, National Association, in its capacity as documentation agent.

“Dollar Equivalent” means, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in any Optional Currency, the equivalent amount thereof in Dollars as determined by the Agent or the L/C Issuer, as the case may be, at such time on the basis of the Spot Rate for the purchase of Dollars with such Optional Currency.

“Dollars” and “\$” mean lawful money of the United States.

“EEA Financial Institution” means

- (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority,
- (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or
- (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Effective Date” means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01.

“Eligible Assignee” means (a) a Credit Party or any of its Affiliates; (b) a bank, insurance company, or company engaged in the business of making commercial loans, which Person, together with its Affiliates, has a combined capital and surplus in excess of \$250,000,000; (c) an Approved Fund; (d) any Person to whom a Credit Party assigns its rights and obligations under this Agreement as part of an assignment and transfer of such Credit Party’s rights in and to a material portion of such Credit Party’s portfolio of asset based credit facilities, (e) any “accredited investor” (as defined under Ontario Securities Commission Rule 45-501, as amended, supplemented, replaced and otherwise modified from time to time) which extends credit or buys loans as one of its businesses, including a mutual fund, lease financing company and commercial finance company, in each case, which has combined capital and surplus of at least Cdn\$250,000,000 at the date that it becomes a Canadian Lender and which through its applicable lending office, is capable of lending to the Canadian Borrower, and (f) any other Person (other than a natural Person) satisfying the requirements of Section 10.06(b) hereof; provided that notwithstanding the foregoing, “Eligible Assignee” shall not include a Disqualified Lender, a Loan Party or any of their respective Affiliates or Subsidiaries.

“Eligible Credit Card Receivables” means at the time of any determination thereof, each Credit Card Receivable that satisfies the following criteria at the time of creation and continues to meet the same at the time of such determination: such Credit Card Receivable (i) has been earned by performance and represents the bona fide amounts due to a Borrowing Base Party from a Credit Card Issuer or Credit Card Processor, and in each case is originated in the ordinary course of business of such Borrowing Base Party, and (ii) in each case is not ineligible for inclusion in the calculation of the Revolving Borrowing Base pursuant to any of clauses (a) through (m) below. Without limiting the foregoing, to qualify as an Eligible Credit Card Receivable, such Credit Card Receivable shall indicate no Person other than a Borrowing Base Party as payee or remittance party. In determining the amount to be so included, the face amount of a Credit Card Receivable shall be reduced by, without duplication, to the extent not reflected in such face amount, (i) the amount of all accrued and actual fees and charges due to the Credit Card Issuer or Credit Card Processor, discounts, claims, credits or credits pending, promotional program allowances, price adjustments, finance charges or other allowances (including any amount that a Borrowing Base Party may be obligated to rebate to a customer, a Credit Card Issuer or Credit Card Processor pursuant to the terms of any agreement or understanding) and (ii) the aggregate amount of all cash received in respect of such Credit Card Receivable but not yet applied by the Borrowing Base Parties to reduce the amount of such Credit Card Receivable. Except as otherwise agreed by the Agent in its Reasonable Credit Judgment, any Credit Card Receivable included within any of the following categories shall not constitute an Eligible Credit Card Receivable:

(a) Credit Card Receivables which do not constitute a “payment intangible” (as defined in the UCC) or an “intangible” (as defined in the PPSA), as applicable, or an Account;

(b) Credit Card Receivables that have been outstanding for more than five (5) Business Days from the date of sale (or for such longer period(s) as may be approved by the Agent in its commercially reasonable discretion);

(c) Credit Card Receivables (i) that are not subject to a perfected first-priority security interest in favor of the Agent (other than Permitted Encumbrances having priority by operation of applicable Law over the Lien of the Agent), or (ii) with respect to which a Borrowing Base Party does not have good and valid title thereto, free and clear of any Lien (other than Liens granted to the Agent pursuant to the Security Documents, Liens to secure Permitted Term Loan Debt, any Permitted FILO Refinancing Debt, and any other Permitted Encumbrances);

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

(e) Credit Card Receivables as to which a Credit Card Issuer or a Credit Card Processor has the right under certain circumstances to require a Loan Party to repurchase the Credit Card Receivables from such Credit Card Issuer or Credit Card Processor (but only to the extent of the repurchase right);

(f) Credit Card Receivables due from a Credit Card Issuer or a Credit Card Processor of the applicable credit card which is the subject of any bankruptcy or insolvency proceedings;

(g) Credit Card Receivables which are not a valid, legally enforceable obligation of the applicable Credit Card Issuer or a Credit Card Processor with respect thereto;

(h) Credit Card Receivables which do not conform in all material respects to all representations, warranties or other provisions in the Loan Documents relating to Credit Card Receivables;

(i) Credit Card Receivables that are owed by a Credit Card Issuer or a Credit Card Processor not located in the United States or Canada (unless otherwise agreed to by the Agent in its Reasonable Credit Judgment);

(j) Credit Card Receivables that (i) do not arise from the sale of goods or the performance of services by such Borrowing Base Party in the ordinary course of its business, and (ii) as to which such Borrowing Base Party is not able to bring suit or otherwise enforce its remedies against the Credit Card Issuer or Credit Card Processor through judicial process;

(k) Credit Card Receivables upon which such Borrowing Base Party's right to receive payment is not absolute or is contingent upon the fulfillment of any condition whatsoever;

(l) Credit Card Receivables that are payable in any currency other than Dollars or Canadian Dollars; or

(m) Credit Card Receivables which the Agent determines in its Reasonable Credit Judgment to be uncertain of collection.

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

(a) Which consists of finished goods;

(b) Which has been shipped from a foreign location for receipt by a Borrowing Base Party at a Store, a Temporary Storage Facility, or a distribution center located in the United States or Canada owned or leased by a Borrowing Base Party, but which has not yet been delivered to such Borrowing Base Party, which In-Transit Inventory has been in transit for sixty (60) days or less from the date of shipment of such Inventory;

(c) For which title and risk of loss has passed to such Borrowing Base Party;

(d) Which is subject to a first priority Lien in favor of the Agent and not subject to any other Lien (except for any Liens to secure Permitted Term Loan Debt, Permitted FILO Refinancing Debt, any possessory Lien upon such Inventory in the possession of a freight carrier or shipping company securing only the freight charges for the transportation of such Inventory to such Borrowing Base Party and with respect to which such freight carrier or shipping agent, such Borrowing Base Party and the Agent shall have entered a Customs Broker/Carrier Agreement and any other Permitted Encumbrances);

(e) Which is in the possession of a Borrowing Base Party or a customs broker, freight carrier or other shipping agent which has entered into a Customs Broker/Carrier Agreement with such Borrowing Base Party and the Agent;

(f) Which is insured to the reasonable satisfaction of the Agent in compliance with the provisions of Section 5.11 hereof (including, without limitation, marine cargo insurance, if applicable);

(g) Which is evidenced or deliverable pursuant to (x) prior to the issuance of any Documents of Title (as defined in the UCC) or “document” (as defined in the PPSA), or Acceptable Waybill, one or more purchase orders and corresponding dock receipts, and (y) within seven (7) Business Days’ after the issuance of a dock receipt pursuant to the foregoing clause (x), either (1) one or more Documents of Title that, if negotiable, have been (A) delivered to the Agent or an agent acting on behalf thereof, pursuant to an agreement between the Agent and its agent in form and substance satisfactory to the Agent, acting reasonably or (B) prior to the occurrence and continuance of an Event of Default (but not thereafter) delivered to a Borrowing Base Party, or (2) one or more Acceptable Waybills; and

(h) Which otherwise would constitute Eligible Inventory;

provided that the Agent may, in its Reasonable Credit Judgment, exclude any particular Inventory from the definition of “Eligible In-Transit Inventory” in the event the Agent determines that such Inventory is subject to any Person’s right or claim which is (or is capable of being) senior to, or pari passu with, the Lien in favor of the Agent and may adversely impact the value of such Inventory or the ability of the Agent to realize upon such Inventory.

“Eligible Intellectual Property” means Intellectual Property of a Borrowing Base Party deemed by the Agent in its Reasonable Credit Judgment to be eligible for inclusion in the calculation of the Canadian FILO Borrowing Base and the U.S. FILO Borrowing Base, in each case that, except as otherwise agreed by the Agent, complies with the following criteria:

(a) such Intellectual Property is validly registered with the United States Copyright Office, United States Patent and Trademark Office, or Canadian Intellectual Property Office, as applicable;



(b) a Borrowing Base Party owns such Intellectual Property, free and clear of any Liens other than Liens granted to the Agent and other Permitted Encumbrances having priority by operation of applicable Law over the Lien of the Agent;

(c) such Borrowing Base Party is in compliance in all material respects (subject to any materiality requirements set forth therein) with the representations, warranties and covenants set forth in the Loan Documents relating to such Intellectual Property;

(d) the Agent shall have received an appraisal (based upon Appraised Value) of such Intellectual Property by a third party appraiser reasonably acceptable to the Agent and otherwise in form and substance reasonably satisfactory to the Agent; and

(e) the Agent shall have received evidence reasonably satisfactory to the Agent that (i) all actions have been taken that the Agent may reasonably deem necessary or appropriate in order to create valid first and subsisting Liens in favor of the Agent, and (ii) all filings reasonably requested by the Agent have been filed with the United States Copyright Office, United States Patent and Trademark Office, the Canadian Intellectual Property Office, and each other jurisdiction (if any) as shall be deemed necessary or appropriate in the Agent's reasonable discretion, in each case, to perfect and further evidence the Agent's Lien on such Intellectual Property.

"Eligible Inventory" means, as of the date of determination thereof, without duplication, items of Inventory of a Borrowing Base Party that are finished goods, merchantable and readily saleable to the public in the ordinary course of the Borrowing Base Parties' business, in each case that, except as otherwise agreed by the Agent, (A) complies in all material respects with each of the representations and warranties respecting Inventory made by the Borrowing Base Parties in the Loan Documents, and (B) is not excluded as ineligible by virtue of one or more of the criteria set forth below. Except as otherwise agreed by the Agent, in its Reasonable Credit Judgment, the following items of Inventory shall not be included in Eligible Inventory:

(a) Inventory that is not solely owned by a Borrowing Base Party or a Borrowing Base Party does not have good and valid title thereto free and clear of any Lien (other than Liens granted to the Agent pursuant to the Security Documents and any other Permitted Encumbrances);

(b) Inventory that is leased by or is on consignment to a Borrowing Base Party or which is consigned by a Borrowing Base Party to a Person which is not a Loan Party;

(c) Inventory (other than Eligible In-Transit Inventory and, with respect to the Canadian Loan Parties only, Eligible Letter of Credit Inventory) that is not located in (i) with respect to any U.S. Loan Party, the United States of America (including Puerto Rico but excluding any other territories or possessions of the United States) at a location that is owned or leased by a U.S. Loan Party, or (ii) with respect to any Canadian Loan Party, Canada at a location that is owned or leased by a Canadian Loan Party; provided that (i) Inventory in transit between such owned or leased locations and (ii) Inventory as to which a Borrowing Base Party has title and which is in-transit from a domestic vendor to any such owned or leased locations and in the possession of carriers contracted by a Borrowing Base Party shall not be deemed ineligible solely by virtue of the provisions of this clause (c);

(d) Reserved;

(e) Inventory that is located in a distribution center or warehouse leased by a Borrowing Base Party unless the applicable lessor has delivered to the Agent a Collateral Access Agreement;

(f) Inventory that is comprised of goods which (i) are damaged, defective, “seconds,” or otherwise unmerchantable, (ii) are to be returned to the vendor, (iii) are obsolete or slow moving, or custom items, work-in-process, raw materials, or that constitute samples, spare parts, promotional, marketing, labels, bags and other packaging and shipping materials or supplies used or consumed in a Borrowing Base Party’s business, (iv) not in compliance in all material respects with all standards imposed by any Governmental Authority having regulatory authority over such Inventory, its use or sale, or (v) are bill and hold goods;

(g) Inventory that is not subject to a perfected first-priority security interest in favor of the Agent (other than Permitted Encumbrances having priority by operation of applicable Law over the Lien of the Agent);

(h) Inventory that is not insured in compliance with the provisions of Section 5.11 hereof;

(i) Inventory that contains or bears any Intellectual Property licensed to any Borrowing Base Party by any Person other than a Borrowing Base Party and the Agent is subject to a restriction that could reasonably be expected to adversely affect the Agent’s ability to liquidate such Inventory without (i) infringing the rights of such licensor, (ii) violating any contract with such licensor, or (iii) incurring any liability with respect to payment of royalties other than royalties incurred pursuant to sale of such Inventory under the current licensing agreement relating thereto;

(j) Inventory of a type not held for sale in the ordinary course of the applicable Borrowing Base Party’s business;

(k) Inventory which consists of Hazardous Materials or goods that can be transported or sold only with licenses that are not readily available;

(l) Inventory used in connection with dine-in cafes and restaurants; or

(m) Inventory acquired in a Permitted Acquisition or which is not of the type usually sold in the ordinary course of the Borrowing Base Parties’ business, unless and until the Agent has completed or received (A) an appraisal of such Inventory from appraisers reasonably satisfactory to the Agent and establishes Reserves (if applicable) therefor, and (B) such other due diligence as the Agent may reasonably require, all of the results of the foregoing to be reasonably satisfactory to the Agent.

The Agent reserves the right, at any time and from time to time, upon prior written notice to the Lead Borrower, to adjust any such eligibility criteria or the advance rates with respect to Eligible Inventory or Eligible In-Transit Inventory, such adjustments to be determinable and determined by the Agent in its Reasonable Credit Judgment and by methods and in a manner that are customary for asset-based loans administered by the Agent; provided, that any downward adjustment of any advance rate shall be supported by an appraisal of Inventory conducted by or at the request of the Agent pursuant to this Agreement; and, provided further, that the Agent shall permit the Lead Borrower to consult with the Agent until the second Business Day following the sending of such notice in respect of each more restrictive adjustment in eligibility criteria prior to implementing such adjustment.

“Eligible Letter of Credit Inventory” means, as of any date of determination thereof, without duplication of other Eligible Inventory, Inventory of a Canadian Loan Party:

(a) the full purchase price for which is supported by a Commercial Letter of Credit, which Commercial Letter of Credit has been outstanding for ninety (90) days or less;

(b) Which is subject to a first priority Lien in favor of the Agent and not subject to any other Lien (except for Liens to secure Permitted Term Loan Debt, any possessory Lien upon such Inventory in the possession of a freight carrier or shipping company securing only the freight charges for the transportation of such Inventory to such Canadian Loan Party and with respect to which such freight carrier or shipping agent, such Canadian Loan Party and the Agent shall have entered a Customs Broker/Carrier Agreement, and any other Permitted Encumbrances); and

(c) which, upon shipment, would constitute Eligible In-Transit Inventory, except that, for purposes of clause (b) of the definition thereof, such Inventory shall have been received by a Canadian Loan Party at a Store, a Temporary Storage Facility, or a distribution center located in Canada owned or leased by a Canadian Loan Party within ninety (90) days or less from the date of issuance of such Commercial Letter of Credit;

provided that the Agent may, in its Reasonable Credit Judgment, exclude any particular Inventory from the definition of “Eligible Letter of Credit Inventory” in the event the Agent determines that such Inventory is subject to any Person’s right or claim which is (or is capable of being) senior to, or pari passu with, the Liens in favor of the Agent and may adversely impact the value of such Inventory or the ability of the Agent to realize upon such Inventory.

“Eligible Trade Receivables” means Accounts arising from the sale of the Canadian Loan Parties’ or U.S. Loan Parties’ Inventory (other than those consisting of Credit Card Receivables) or rendition of services that satisfy the following criteria at the time of creation and meets the same at the time of such determination: such Account (i) has been earned by performance and represents the bona fide amounts due to a Canadian Loan Party or a U.S. Loan Party from an Account Debtor, and in each case is originated in the ordinary course of business of such Canadian Loan Party or U.S. Loan Party, and (ii) is not ineligible for inclusion in the calculation of the Canadian Revolving Borrowing Base or U.S. Revolving Borrowing Base, as applicable, pursuant to any of clauses (a) through (u) below. Without limiting the foregoing, to qualify as an Eligible Trade Receivable, an Account shall indicate no Person other than a Canadian Loan Party or U.S. Loan Party as payee or remittance party. In determining the amount to be so included, the face amount of an Account shall be reduced by, without duplication, to the extent not reflected in such face amount, (i) the amount of all accrued and actual discounts, claims, credits or credits pending, promotional program allowances, price adjustments, finance charges or other allowances (including any amount that a Canadian Loan Party or U.S. Loan Party may be obligated to rebate to a customer pursuant to the terms of any agreement or understanding (written or oral)) and (ii) the aggregate amount of all cash received in respect of such Account but not yet applied by the Canadian Loan Parties and U.S. Loan Parties to reduce the amount of such Eligible Trade Receivable. Except as otherwise agreed by the Agent, any Account included within any of the following categories shall not constitute an Eligible Trade Receivable:

(a) Accounts that are not evidenced by an invoice (until such time as an invoice is delivered to the applicable Account Debtor);

(b) Accounts that have been outstanding for more than sixty (60) days from the due date or, if sooner, ninety (90) days following its original invoice date;

(c) Accounts due from any Account Debtor fifty percent (50%) or more of whose Accounts are not eligible under any other clause of this definition;

(d) Accounts owed by an Account Debtor and/or its Affiliates together exceed twenty percent (20%) (or any other percentage now or hereafter established by the Agent for any particular Account Debtor) of the amount of all Accounts at any one time (but the portion of the Accounts not in excess of the applicable percentage may be deemed Eligible Trade Receivables, in the Agent's Reasonable Credit Judgment);

(e) Accounts (i) that are not subject to a perfected first-priority security interest in favor of the Agent (other than Permitted Encumbrances which have priority by operation of applicable Laws), or (ii) with respect to which a Loan Party does not have good and valid title thereto, free and clear of any Lien (other than Liens granted to the Agent pursuant to the Security Documents and other Permitted Encumbrances);

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

(g) Accounts which arise out of any sale (i) not made in the ordinary course of business, or (ii) made on a basis other than upon credit terms usual to the business of the Canadian Loan Parties and the U.S. Loan Parties;

(h) Accounts which are owed by any Affiliate or any employee of a Canadian Loan Party or U.S. Loan Party;

(i) Accounts for which all consents, approvals or authorizations of, or registrations or declarations with any Governmental Authority required to be obtained, effected or given in connection with the performance of such Account by the Account Debtor or in connection with the enforcement of such Account by the Agent have not been duly obtained, effected or given and are not in full force and effect;

(j) Accounts due from an Account Debtor which is the subject of any bankruptcy or insolvency proceeding, has had a trustee, interim receiver, or receiver appointed for all or a substantial part of its property, has made an assignment for the benefit of creditors or has suspended its business;

(k) Accounts due from any Governmental Authority except to the extent that the subject Account Debtor is (i) the federal government of the United States of America and the Loan Parties have complied with the Federal Assignment of Claims Act of 1940 or (ii) the federal government of Canada or a political subdivision thereof, or any province or territory, or any municipality or department or agency or instrumentality thereof and the provisions of the *Financial Administration Act* (Canada) or any applicable provincial, territorial or municipal law of similar purpose and effect restricting the assignment thereof or the granting of a Lien thereon, as the case may be, have been complied with;

(l) Accounts (i) owing from any Person that is also a supplier to or creditor of a Canadian Loan Party or U.S. Loan Party or any of its Subsidiaries unless such Person has waived any right of setoff in a manner reasonably acceptable to the Agent or (ii) representing any manufacturer's or supplier's credits, discounts, incentive plans or similar arrangements entitling a Canadian Loan Party or U.S. Loan Party or any of its Subsidiaries to discounts on future purchase therefrom;

(m) Accounts arising out of sales on a bill-and-hold, guaranteed sale, sale-or-return, sale on approval or consignment basis or subject to any right of return;

(n) Other than with respect to jurisdictions agreed by the Lead Borrower and the Agent and specified in writing as of the Effective Date, Accounts owing from any Embargoed Person or from any Person located in a jurisdiction (other than Canada or the United States) which, in either case, a Lender notifies the Lead Borrower in writing shall be ineligible;

(o) Accounts evidenced by a promissory note or other instrument;

(p) Accounts consisting of amounts due from vendors as rebates or allowances;

(q) Accounts which include extended payment terms (datings) beyond those generally furnished in the ordinary course of business;

(r) Accounts upon which such Canadian Loan Party's or U.S. Loan Party's right to receive payment is not absolute or is contingent upon the fulfillment of any condition whatsoever;

(s) Accounts that are payable in any currency other than Canadian Dollars or Dollars;

(t) Accounts which exceed any credit limit established by the Agent, in its Reasonable Credit Judgment, following prior notice of such limit by the Agent to the Lead Borrower; or

(u) Accounts acquired in a Permitted Acquisition, unless and until the Agent has (A) completed or received such due diligence as the Agent may reasonably require with respect thereto, all of the results of the foregoing to be reasonably satisfactory to the Agent, and (B) otherwise agrees in its Reasonable Credit Judgment that such Accounts shall be deemed Eligible Trade Receivables.

"Embargoed Person" means any party that (i) is publicly identified on the most current list of "Specially Designated Nationals and Blocked Persons" published by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), (ii) resides, is organized or chartered, or has a place of business in a Designated Jurisdiction or (iii) is a Canadian Blocked Person.

"EMU" means the economic and monetary union in accordance with the Treaty of Rome 1957, as amended by the Single European Act 1986, the Maastricht Treaty of 1992 and the Amsterdam Treaty of 1998.

"EMU Legislation" means the legislative measures of the EMU for the introduction of, changeover to or operation of a single or unified European currency.

"Environmental Laws" means all applicable federal, state, local, provincial, territorial, municipal, local and foreign laws (including the common law), statutes, ordinances, codes, rules, guidelines, policies, procedures, standards, permits, concessions, grants, franchises, licenses, governmental restrictions and regulations, now or hereafter in effect, and in each case as amended or supplemented from time to time, and any applicable judicial or administrative interpretation thereof, including any applicable judicial or administrative order, consent decree, order or judgment that has the force of law, imposing liability or standards of conduct for or relating to the regulation and protection of human, plant or animal health or safety, the environment or natural resources (including air, surface water, groundwater, wetlands, land, soil, land surface or subsurface strata, wildlife, aquatic species and vegetation) or the release of any Hazardous Materials into the environment. Environmental Laws include,

without limitation, the *Canadian Environmental Protection Act*, 1999, *Fisheries Act*, *Transportation of Dangerous Goods Act*, 1992, the *Migratory Birds Protection Act*, 1994, the *Species At Risk Act*, the *Hazardous Products Act*, the *Canada Shipping Act* and the *Canada Wildlife Act*.

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

“Equipment” means all “equipment,” as such term is defined in the UCC or the PPSA, now owned or hereafter acquired by any Loan Party, wherever located and, in any event, including all such Loan Party’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, all whether now owned or hereafter acquired, and wherever situated, 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.

“Equity Interests” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or non-voting.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

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

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of the U.S. Borrower 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 U.S. Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is insolvent or in reorganization within the meaning of Title IV of ERISA; (d) the filing of a notice of intent to terminate a Pension Plan under, or 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 U.S. Borrower or any ERISA Affiliate.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“Euros” means the lawful currency of the Participating Member States introduced in accordance with the EMU Legislation.

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

“Excluded Accounts” means any payroll, employee benefits, workers compensation, trust and tax withholding accounts funded by the Loan Parties in the ordinary course of business.

“Excluded Assets” means “Excluded Property” as defined in the Security Agreement and General Security Agreement, executed on the Original Closing Date, in each case amended to delete clause (b) of such definition concurrently with the FILO Term Loan Amendment.

“Excluded Subsidiaries” means (a) any Subsidiary that is not a wholly owned Subsidiary of a Borrower, (b) as to the Obligations of the U.S. Loan Parties only, any CFC or any Subsidiary which has no material assets other than the Equity Interests of one or more CFCs, (c) any Immaterial Subsidiary of a Borrower, (d) any Real Estate Subsidiary, (e) any Subsidiary that is prohibited by applicable Law or Contractual Obligations existing on the Effective Date (or, in the case of any newly acquired or formed Subsidiary, in existence at the time of acquisition or formation but not entered into in contemplation thereof) from guaranteeing the Obligations, (f) any Subsidiary to the extent that a guaranty of the Obligations by such Subsidiary could reasonably be expected to result in any violation or breach of, or conflict with, fiduciary duties of such Subsidiary’s officers, directors, or managers or have the potential to result in a material risk of personal or criminal liability for any officer of any Subsidiary of the Borrowers, (g) any Unrestricted Subsidiaries, (h) any Subsidiary organized under the laws of a jurisdiction other than the United States, Canada or a state, province or territory thereof, and (i) any other Subsidiary with respect to which, as reasonably determined in writing by the Lead Borrower in consultation with the Agent (acting reasonably), the cost or consequences (including any adverse tax consequences to the Lead Borrower or any of its Restricted Subsidiaries) of guaranteeing the Obligations will be excessive in view of the benefits to be obtained by the Lenders therefrom; provided that no Subsidiary shall be an Excluded Subsidiary if any of its assets are included in the calculation of the Combined Borrowing Base.

“Excluded Swap Obligation” means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the guaranty of such Loan Party under the Facility Guaranty of, or the grant under a Loan Document by such Loan Party 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 thereof) by virtue of such Loan Party’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act (determined after giving effect to Section 10.26 hereof and any and all guarantees of such Loan Party’s Swap Obligations by other Loan

Parties) at the time the guaranty of such Loan Party, or grant by such Loan Party 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 Contract, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swap Contracts for which such guaranty or security interest is or becomes excluded in accordance with the first sentence of this definition.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by such Recipient’s net income (however denominated), franchise Taxes, capital 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 Lender, 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 Lead Borrower under Section 10.13) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(a)(ii) or (c), amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient’s failure to comply with Section 3.01(e) (d) any U.S. federal withholding Taxes imposed pursuant to FATCA, (e) any withholding Taxes imposed on a payment by or on account of any obligation of a Canadian Loan Party hereunder: (i) to a person with which the Canadian Loan Party does not deal at arm’s length (for the purposes of the ITA) at the time of making such payment or (ii) in respect of a debt or other obligation to pay an amount to a person with whom the payer is not dealing at arm’s length (for the purposes of the ITA) at the time of such payment, (f) any withholding Taxes imposed on a Recipient by reason of such Recipient: (i) being a “specified shareholder” (as defined in subsection 18(5) of the ITA) of any Canadian Loan Party, or (ii) not dealing at arm’s length (for the purposes of the ITA) with a “specified shareholder” (as defined in subsection 18(5) of the ITA) of any Canadian Loan Party, and (g) any Luxembourg withholding Taxes imposed under the law of 23 December 2005, introducing a ten percent (10%) withholding tax on interest payments made to or for the benefit of Luxembourg resident private individuals.

“Executive Order” means Executive Order 13224 of September 21, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)).

“Existing Credit Agreement” has the meaning given such term in the recitals hereto.

“Existing Letters of Credit” means those Letter of Credit described on Schedule 1.03 hereto.

“Facility Guaranty” means each Guarantee of the Obligations made by a Guarantor in favor of the Agent and the other Credit Parties in such form reasonably satisfactory to the Agent.

“FASB” means the Financial Accounting Standards Board, which promulgates accounting standards.

“FATCA” means 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 or any fiscal or regulatory legislation, rules or



practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such sections of the Code.

“FCPA” has the meaning set forth in Section 5.29.

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

“Fee Letters” means, collectively, that certain Administrative Agent Fee Letter dated as of September 18, 2019, between, among others, the Borrowers and the Agent and that certain Lead Arranger Fee Letter dated as of September 18, 2019, between, among others, the Borrowers, the Agent, BofA Securities, Inc. and Royal Bank of Canada.

“FILO Collateral” means license rights, patents, industrial designs, trademarks, tradenames, domain names, trade secrets, copyrights, and proceeds and products of the foregoing.

“FILO Collateral Release Conditions” means the date on which the FILO Term Loan is Paid in Full.

“FILO IP Advance Rate” means, as applicable, with respect to Eligible Intellectual Property, (i) prior to the first anniversary of the FILO Term Loan Draw Date, 50%, (ii) from and after the first anniversary of the FILO Term Loan Draw Date, but prior to the second anniversary thereof, 47.5%, (iii) from and after the second anniversary of the FILO Term Loan Draw Date, but prior to the third anniversary thereof, 45.0%, (iv) from and after the third anniversary of the FILO Term Loan Draw Date, but prior to the fourth anniversary thereof, 42.5%, and (v) from and after the fourth anniversary of the FILO Term Loan Draw Date, 40.0%.

“FILO Maturity Date” means the earlier of (a) five (5) years after the FILO Term Loan Draw Date and (b) the Termination Date.

“FILO Payment Conditions” means, with respect to a repayment or prepayment of the FILO Term Loan, each of the following conditions: (a) no Default or Event of Default exists or would arise as a result of the subject payment, (b) Pro Forma Excess Availability shall be greater than fifteen percent (15%) of the Revolving Loan Cap (calculated without giving effect to the FILO Term Loan Push Down Reserve), (c) after giving pro forma effect to such payment the Consolidated Fixed Charge Coverage Ratio for the trailing twelve (12) month period immediately preceding such payment shall be greater than or equal to 1.00 to 1.00; provided that the provisions of this clause (c) shall not be applicable if Pro Forma Excess Availability is greater than or equal to twenty percent (20%) of the Revolving Loan Cap (calculated without giving effect to the FILO Term Loan Push Down Reserve); and (d) the Borrowers shall have delivered a Compliance Certificate to the Agent including a reasonably detailed calculation of such Pro Forma Excess Availability and, if applicable, Consolidated Fixed Charge Coverage Ratio.

“FILO Term Lender” means each Canadian FILO Term Lender and each U.S. FILO Term Lender.

“FILO Term Loan” means any loan made by any FILO Term Lender as a U.S. FILO Term Loan or a Canadian FILO Term Loan pursuant to Section 2.01.

“FILO Term Loan Amendment” means an amendment to this Agreement, in form and substance reasonably satisfactory to the Agent and the Borrowers, to reflect the changes to the provisions of this Agreement in connection with the FILO Term Loan Commitments and to include such additional terms as are customary for the FILO Term Loan Commitments, including without limitation, satisfaction of the FILO Term Loan Collateral and Guarantee Requirement.

“FILO Term Loan Borrowing” means the one time borrowing, if any, of the FILO Term Loan on the FILO Term Loan Draw Date by the Borrowers, pursuant to Section 2.01(c).

“FILO Term Loan Collateral and Guarantee Requirement” means, at any time, the requirement that:

(a) the Agent shall have received each Security Document or amendments to existing Security Documents, Intellectual Property Security Agreements and each other document and instrument required to be delivered pursuant to the FILO Term Loan Amendment and reflecting the collateral as described in clause (b) below, in each case, duly executed by each Loan Party that is party thereto;

(b) except to the extent otherwise provided hereunder or under any Security Document executed on the FILO Term Loan Draw Date, the Obligations shall have been secured by a valid and perfected first-priority Liens and security interests in and on all of the present and future property and assets of the following kind, of each Borrower and each Guarantor: Inventory, contract rights, Accounts, Credit Card Receivables, DDAs, securities accounts and other bank accounts, documents of title, other general intangibles (including payment intangibles), FILO Collateral and cash, and proceeds and products of the foregoing, in each case, that has been perfected by:

- (i) filing UCC and PPSA financing statements and RDPRM hypothec registrations;
- (ii) making any necessary filings with the United States Copyright Office, United States Patent and Trademark Office, or Canadian Intellectual Property Office; or
- (iii) to the extent required by Section 6.12.

Notwithstanding the foregoing provisions of this definition or anything in this Agreement or any other Loan Document to the contrary, the FILO Term Loan Collateral and Guarantee Requirement shall not apply to any Excluded Assets.

“FILO Term Loan Commitments” means, as to each FILO Term Lender, its obligation to make the FILO Term Loan to the Borrowers on the FILO Term Loan Draw Date pursuant to Article II in the amount set forth opposite such FILO Term Lender’s name on Schedule 2.01.

“FILO Term Loan Draw Conditions” means (i) so long as at the time such request is made and after giving pro forma effect to the funding of the FILO Term Loan, no Default or Event of Default shall have occurred and be continuing hereunder and (ii) the requirements of Sections 2.01(e) and the FILO Term Loan Amendment have been satisfied.

“FILO Term Loan Draw Date” means at any time at the request of the Lead Borrower prior to the FILO Maturity Date, the date upon which the FILO Term Loan Draw Conditions have been satisfied or waived, as reasonably determined by the Agent.

“FILO Term Loan Notice” means a notice of (a) the FILO Term Loan Borrowing, (b) a Conversion of the FILO Term Loan from one Type to the other, or (c) a continuation of LIBOR Rate Loans or CDOR Rate Loans, pursuant to Section 2.02(b), which, if in writing, shall be substantially in the form of Exhibit A-3 or Exhibit A-4, as applicable.

“FILO Term Loan Push Down Reserve” means, at any time, the sum of the U.S. FILO Term Loan Push Down Reserve and the Canadian FILO Term Loan Push Down Reserve.

“Financed Capital Expenditures” means, with respect to any Person and for any period, Capital Expenditures made by such Person during such period in respect of which proceeds of Indebtedness (other than Loans) have been received and where all or a portion of such proceeds have been allocated by the Lead Borrower for application to Capital Expenditures and funds in such amount are applied to Capital Expenditures within one year of the receipt of the proceeds of such Indebtedness.

“Fiscal Month” means any of the monthly accounting periods of the Parent and its Subsidiaries.

“Fiscal Quarter” means any of the quarterly accounting periods of the Parent and its Subsidiaries ending on or about April 30, July 31, October 31 and January 31 of each year.

“Fiscal Year” means any of the annual accounting periods of the Parent and its Subsidiaries ending on or about January 31 of each year.

“Foreign Assets Control Regulations” means the Trading With the Enemy Act and other foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating to any of the foregoing (which for the avoidance of doubt shall include, but shall not be limited to the Executive Order and the USA PATRIOT Act).

“Foreign Cash Equivalents” means, with respect to the Canadian Loan Parties, (a) certificates of deposit, guaranteed investment certificates, or bankers acceptances of, and bank deposits with, any bank organized under the laws of any country that is a member of the European Economic Community or of Canada or any subdivision thereof, whose short-term commercial paper rating from S&P is at least A-1 or the equivalent thereof or from Moody’s is at least P-1 or the equivalent thereof, in each case with maturities of not more than six months from the date of acquisition, (b) commercial paper maturing not more than one year from the date of creation thereof and, at the time of acquisition, having the highest rating obtainable from either S&P’s or Moody’s, (c) shares of any money market mutual fund that has its assets invested continuously in the types of investments referred to in clauses (a) and (b) above, and (d) in the case of any Canadian Loan Party, such local currencies in those countries in which such Loan Party transacts business from time to time in the ordinary course of business, in each case, customarily utilized in countries in which such Loan Party operates for short term cash management purposes.

“Foreign Lender” means (i) in respect of a U.S. Loan Party, any Lender that is organized under the laws of a jurisdiction other than that in which the U.S. Borrower is resident for tax purposes and (ii) in respect of a Canadian Loan Party, any Lender that is organized under the laws of a jurisdiction other than that in which the Canadian Borrower is resident for tax purposes. For purposes of this definition: (i) the United States, each State thereof and the District of Columbia shall be deemed to constitute a single

jurisdiction, and (ii) Canada and each province and territory thereof shall be deemed to constitute a single jurisdiction.

“Foreign Vendor” means a Person that sells In-Transit Inventory to a Borrowing Base Party.

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

“Fronting Exposure” means, at any time there is a Defaulting Lender that is a Revolving Lender, (a) with respect to the L/C Issuer, such Defaulting Lender’s Applicable Percentage of the outstanding L/C Obligations other than L/C Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Revolving Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Swing Line Lender, such Defaulting Lender’s Applicable Percentage of Swing Line Loans other than Swing Line Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Revolving Lenders in accordance with the terms hereof.

“FSCO” means the Financial Services Commission of Ontario and any Person succeeding to the functions thereof and includes the Ontario Superintendent of Financial Services and any other Governmental Authority empowered or created by the *Pension Benefits Act* (Ontario) or any Governmental Authority of any other Canadian jurisdiction exercising similar functions in respect of any Canadian Pension Plan of any Canadian Loan Party and any Governmental Authority succeeding to the functions thereof.

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

“GAAP” means generally accepted accounting principles in the United States set forth in pronouncements of the FASB or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied; provided that, with respect to Subsidiaries of Parent organized under the laws of Canada, or any province or territory thereof, “GAAP” shall mean principles which are consistent with those promulgated or adopted by the Canadian Institute of Chartered Accountants and its predecessors (or successors) in effect and applicable to the accounting period in respect of which reference to GAAP is being made, including IFRS.

“General Security Agreement” means the General Security Agreement dated as of the Original Closing Date among the Canadian Loan Parties and the Agent for the benefit of the Credit Parties, in form and substance reasonably satisfactory to the Agent.

“Governmental Authority” means the government of the United States, Canada, or any other nation, or of any political subdivision thereof, whether state, provincial, municipal, or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank) and any group or body charged with setting financial accounting or regulatory capital rules or standards (including, without limitation, the FASB, the Bank for International Settlements or the Basel Committee on Banking Supervision or any successor or similar authority to any of the foregoing).

“Guarantee” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including

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

“Guarantor” means (a) each Borrower, (b) each of the Borrowers’ Restricted Subsidiaries (including any Restricted Subsidiary that is not an Excluded Subsidiary and owns assets of the type included in the Combined Borrowing Base) existing on the Effective Date and listed on Schedule 1.01, (c) each other Restricted Subsidiary of any Borrower that shall be required to execute and deliver a Facility Guaranty pursuant to Section 6.11, (d) if the Company Reorganization has occurred, SPV Parent, and (e) with respect to any Swap Obligation of a Specified Loan Party (determined before giving effect to Section 10.26) under the Facility Guaranty, the Borrowers.

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

“HBC India” means Hudson’s Bay Services Private Limited, a private limited company organized under the laws of India.

“HBC Netherlands Guarantee Liabilities” means Indebtedness of the type described in clause (ff) of the definition of “Permitted Indebtedness” or Investments described in clause (w) of the definition of “Permitted Investments”.

“HBC Netherlands Liquidation” means the voluntary liquidation, dissolution or winding up of the HBC Netherlands business and related assets.

“HBC Netherlands SPA” means the sale and purchase agreement dated 08/09/10 June 2019 (as amended and/or amended and restated from time to time) between, among others, HBC Europe S.à r.l. as purchaser (the “HBC Netherlands Purchaser”), and European Department Store Holding S.à r.l. as seller (the “HBC Netherlands Seller”) pursuant to which the HBC Netherlands Seller sells its shareholding in HBC Netherlands B.V. to HBC Netherlands Purchaser.

“HBC Netherlands Transaction” means the acquisition of all shares in HBC Netherlands B.V. by HBC Europe S.à r.l. (or any of its Affiliates) pursuant to the HBC Netherlands SPA, as a result of which the Parent will be the sole indirect shareholder of HBC Netherlands B.V.

“Honor Date” has the meaning specified in Section 2.03(c)(i).

“IFRS” means International Financial Reporting Standards, namely the standards, interpretations and framework for the preparation and presentation of financial statements (in the absence of a standard interpretation) as adopted in Canada by the Accounting Standards Board of the Canadian Institute of Chartered Accountants.

“Immaterial Subsidiary” means, at any date of determination, any Restricted Subsidiary of the Parent that (a) does not have total assets or annual revenue in an amount in excess of 2.5% of the consolidated assets or annual revenues of the Parent and its Restricted Subsidiaries as of the last day of the most recently completed fiscal quarter, in each case determined in accordance with GAAP or IFRS, as applicable, for such period, individually or 5.0% of the consolidated assets in the aggregate with all other Restricted Subsidiaries excluded pursuant to this clause (a), and (b) does not hold legal or beneficial title to any assets of the type included in the Combined Borrowing Base having an aggregate value in excess of \$500,000.

“Implementation Agreements” means the OPCO Implementation Agreement and the Propco Implementation Agreement, collectively.

“Inactive Subsidiary” means each Subsidiary of the Parent listed on Schedule 5.14 as an “Inactive Subsidiary”.

“Increase Effective Date” shall have the meaning provided therefor in Section 2.15(d).

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

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
- (b) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guarantees, surety bonds and similar instruments;
- (c) net obligations of such Person under any Swap Contract;
- (d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and, in each case, not past due for more than 180 days after the date on which such trade account payable was created);
- (e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;
- (f) all Attributable Indebtedness of such Person;
- (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 (including, without limitation, Disqualified Stock), or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the greater of its

voluntary or involuntary liquidation preference plus accrued and unpaid dividends (except to the extent that such Person has the right to satisfy its obligations with Equity Interests of such Person); and

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

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

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

“Indemnitees” has the meaning specified in Section 10.04(b).

“Index Rate Loan” means each of a Canadian Index Rate Loan and a U.S. Index Rate Loan.

“Information” has the meaning specified in Section 10.07.

“Intellectual Property” has the meaning given to such term in the Security Agreement or the Canadian Security Documents, as applicable.

“Intellectual Property Security Agreements” has the meaning specified in the applicable Security Documents, in each case as amended.

“Interest Payment Date” means, (a) as to any Prime Rate Loan, the fourth Business Day after the end of each January, April, July, and October, (b) as to any CDOR Rate Loan, the last day of the applicable CDOR Period; provided that, if any CDOR Period for a CDOR Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such CDOR Period shall also be Interest Payment Dates, (c) as to any LIBOR Rate Loan, the last day of each Interest Period applicable to such Loan; provided, however, that if any Interest Period for a LIBOR Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates, and (d) as to all Loans, the applicable Maturity Date and on the date upon which the Aggregate Revolving Commitments have been terminated.

“Interest Period” means, as to each LIBOR Rate Loan, the period commencing on the date such LIBOR Rate Loan is disbursed or Converted to or continued as a LIBOR Rate Loan and ending on the date one, two, three or six months thereafter, as selected by the Lead Borrower in its Revolving Loan Notice or FILO Term Loan Notice, as applicable (or such other period that is twelve months or seven days as requested by the Lead Borrower, to the extent available to all the Lenders); provided that:

(i) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(ii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of

such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period;

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

(iv) except as expressly provided above for Interest Periods of seven days, no Interest Period shall have a duration of less than one (1) month, and if any Interest Period applicable to a LIBOR Borrowing would be for a shorter period, such Interest Period shall not be available hereunder.

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

“In-Transit Inventory” means Inventory of a Borrowing Base Party which is in the possession of a common carrier and is in transit from a Foreign Vendor of a Borrowing Base Party from a location outside of the continental United States or Canada, as applicable, to a location of a Borrowing Base Party that is within the continental United States or Canada, as applicable.

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

“Inventory Reserves” means, without duplication of any other Reserves or items that are otherwise addressed or excluded through eligibility criteria, and without duplication of any of the factors taken into account in determining the Appraised Value, such reserves as may be established from time to time by the Agent in its Reasonable Credit Judgment with respect to the determination of the saleability, at retail, of the Eligible Inventory, which reflect such other factors as affect the market value of the Eligible Inventory or which reflect claims and liabilities that the Agent determines will need to be satisfied in connection with the realization upon the Inventory.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or Equity Interest in, another Person, (c) any Acquisition, or (d) any other investment of money or capital to acquire assets used or useful in such Person’s business. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

“IRS” means the United States Internal Revenue Service.

“ISP” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance).



“Issuer Documents” means with respect to any Letter of Credit, the Letter Credit Application, and any other document, agreement and instrument entered into by the L/C Issuer and a Borrower or in favor of the L/C Issuer and relating to any such Letter of Credit.

“ITA” means the *Income Tax Act* (Canada).

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

“Judgment Currency” has the meaning given to such term in Section 10.23.

“Laws” means, collectively, all international, foreign, federal, state, provincial and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

“Lead Borrower” has the meaning specified in the introductory paragraph hereto.

“L/C Advance” means each Canadian L/C Advance and each U.S. L/C Advance, as applicable.

“L/C Borrowing” means each Canadian L/C Borrowing and each U.S. L/C Borrowing, as applicable.

“L/C Credit Extension” means each Canadian L/C Credit Extension, and each U.S. L/C Credit Extension, as applicable.

“L/C Issuer” means, as applicable (a) Bank of America, in its capacity as issuer of Letters of Credit hereunder, and solely with respect to Letters of Credit issued on account of the Canadian Borrower, Bank of America (acting through its Canada branch), or any successor issuer of Letters of Credit hereunder (which successor may only be a Revolving Lender selected by the Agent in its discretion), (b) RBC, in its capacity as issuer of Letters of Credit hereunder or any successor issuer of Letters of Credit hereunder (which successor may only be a Revolving Lender selected by the Agent in its discretion), (c) with respect to the Existing Letters of Credit and until such Existing Letters of Credit expire or are return undrawn, Bank of America and Citibank, N.A., and (d) any other Revolving Lender that agrees to be a L/C Issuer and is acceptable to the Agent and the Lead Borrower. The L/C Issuer may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of the L/C Issuer, in which case the term “L/C Issuer” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

“L/C Obligations” means, collectively, the Canadian L/C Obligations and the U.S. L/C Obligations. For purposes of computing the amounts available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. For all purposes of this Agreement, if on any date of determination, a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“Lender” means each Canadian Revolving Lender, each U.S. Revolving Lender and each FILO Term Lender, and, as the context requires, includes the Swing Line Lender. Any Lender may, in its reasonable discretion, arrange for one or more Loans to be made by Affiliates or branches of such Lender, in which case the term “Lender” shall include any such Affiliate or branch with respect to Loans made by such Affiliate or branch.

“Lender Joinder Agreement” means a joinder agreement in form and substance satisfactory to the Agent and executed by an Additional Commitment Lender in connection with Section 2.15 or a FILO Term Lender in connection with Section 2.01(e).

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

“Letter of Credit” means each Standby Letter of Credit and each Commercial Letter of Credit issued hereunder and shall include the Existing Letters of Credit.

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

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

“Letter of Credit Fee” has the meaning specified in Section 2.03(i).

“Letter of Credit Sublimit” means (a) an aggregate amount for all Borrowers equal to \$375,000,000, and (b) for any individual Borrower, an amount equal to \$375,000,000 minus all then outstanding L/C Obligations. The Letter of Credit Sublimit is part of, and not in addition to, the Aggregate Revolving Commitments, the Aggregate Canadian Revolving Commitments or the Aggregate U.S. Revolving Commitments. A permanent reduction of the Aggregate Revolving Commitments, the Aggregate Canadian Revolving Commitments or the Aggregate U.S. Revolving Commitments shall not require a corresponding pro rata reduction in the Letter of Credit Sublimit; provided, however, that if the Aggregate Revolving Commitments, the Aggregate Canadian Revolving Commitments or the Aggregate U.S. Revolving Commitments are reduced to an amount less than the Letter of Credit Sublimit, then the Letter of Credit Sublimit for the applicable Borrower or Borrowers shall be reduced to an amount equal to (or, at the Lead Borrower’s option, less than) the Aggregate Revolving Commitments, the Aggregate Canadian Revolving Commitments or the Aggregate U.S. Revolving Commitments, as applicable.

“LIBOR Borrowing” means a Borrowing comprised of LIBOR Rate Loans.

“LIBOR Rate” means the per annum rate of interest (rounded upwards, if necessary, to the next 1/100 of one percent (1%) and in no event less than zero) determined by Agent at or about 11:00 a.m. (London time) two Business Days prior to an interest period for a term equivalent to such period, equal to the London Interbank Offered Rate, or comparable or successor rate approved by Agent, as published on the applicable Reuters screen page (or other commercially available source designated by Agent from time to time); provided, that any comparable or successor rate shall be applied by Agent, if administratively feasible, in a manner consistent with market practice.

“LIBOR Rate Loan” means a Loan that bears interest at a rate based on the Adjusted LIBOR Rate.

“LIBOR Screen Rate” means the LIBOR quote on the applicable screen page the Agent designates to determine LIBOR (or such other commercially available source providing such quotations as may be designated by the Agent from time to time).

“LIBOR Successor Rate” has the meaning specified in Section 3.03(b).

“LIBOR Successor Rate Conforming Changes” has the meaning specified in Section 3.03(b).

“Lien” means any mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), trust (deemed, statutory, constructive or otherwise), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale, Capital Lease Obligation, Synthetic Lease Obligation, or other title retention agreement, and any financing lease having substantially the same economic effect as any of the foregoing).

“Liquidation” means the exercise by the Agent of those rights and remedies accorded to the Agent under the Loan Documents and applicable Laws as a creditor of the Loan Parties 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 Loan Parties acting with the consent of the Agent, of any public, private or “going-out-of-business”, “store closing” or other similar sale or any other disposition of the Collateral for the purpose of liquidating the Collateral. Capitalized derivations of the word “Liquidation” (such as “Liquidate”) are used with like meaning in this Agreement.

“Liquidation Percentage” shall mean, for any Revolving Lender, a fraction, the numerator of which is the Total Revolving Commitment of such Revolving Lender on the Determination Date and the denominator of which is the Aggregate Revolving Commitments of all Revolving Lenders on the Determination Date.

“Loan” means a Canadian Revolving Loan, a U.S. Revolving Loan, a Canadian FILO Term Loan or a U.S. FILO Term Loan, as applicable, and, as the context requires, a Canadian Swing Line Loan or a U.S. Swing Line Loan.

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

“Loan Documents” means this Agreement, each Note, each Issuer Document, the Fee Letters, all Borrowing Base Certificates, the Account Control Agreements, the Credit Card Notifications, the Security Documents, the Permitted FILO Refinancing Debt Intercreditor Agreement, if applicable, the Facility Guaranty, the Luxco Subordination Agreement, and any other instrument or agreement now or hereafter executed and delivered in connection herewith, or in connection with any transaction arising out of any Cash Management Services and Bank Products provided by any Lender or any of its Affiliates, each as amended and in effect from time to time; provided that for purposes of the definition of “Material Adverse Effect” and Article VII, “Loan Documents” shall not include agreements relating to Cash Management Services and Bank Products.

“Loan Parties” means, collectively, the U.S. Loan Parties, the Canadian Loan Parties and the Luxembourg Loan Parties.

“Lord & Taylor Asset Purchase Agreement” means that certain Asset Purchase Agreement dated August 27, 2019 by and among Lord & Taylor Holdings LLC, the U.S. Borrower and Le Tote, Inc. (as amended and/or amended and restated from time to time, provided that such amended terms shall not be materially adverse to the Lenders).

“Lord & Taylor Business” means ownership and operations by Lord & Taylor Holdings LLC and its Affiliates of a national network of retail stores and an online retail platform under the “Lord & Taylor” brand and the supporting general and administrative functions related to such retail stores and platform.

“Lord & Taylor Liquidation” means the voluntary liquidation, dissolution or winding up of Lord & Taylor Business and related assets.

“Lord & Taylor Remaining Obligations” means rent guarantees and direct rent payment obligations provided by the Borrowers or a Restricted Subsidiary and other obligations of the Borrowers or a Restricted Subsidiary that arose in the ordinary course of business prior to the consummation of the Lord & Taylor Sale which are payable by the Borrowers or a Restricted Subsidiary following its closing date, in each case relating to the Lord & Taylor Business, including those arising in connection with the Le Tote Sale (as described in the definition of “Lord & Taylor Sale”) consistent with the forecast model provided to the Agent and any material deviations from such forecast model that are acceptable to the Agent.

“Lord & Taylor Sale” means the sale of the Purchased Assets (as defined in the Lord & Taylor Asset Purchase Agreement) to Le Tote, Inc. pursuant to and in accordance with the Lord & Taylor Asset Purchase Agreement (the “Le Tote Sale”).

“Lux Finance” means HBC Europe Finance S.à.r.l. (formerly HBC Luxembourg Finance Company S.à.r.l.) a private limited liability company (société à responsabilité limitée) incorporated and existing under the laws of the Grand Duchy of Luxembourg, with its registered office at 6, rue Eugène Ruppert, L-2453 Luxembourg, being registered with the Luxembourg trade and companies register under number B 181411.

“Lux Holdings” means HBC Europe Holding S.à.r.l. (formerly HBC Luxembourg Holding Company S.à.r.l.) a private limited liability company (société à responsabilité limitée) incorporated and existing under the laws of the Grand Duchy of Luxembourg, with its registered office at 6, rue Eugène Ruppert, L-2453 Luxembourg, being registered with the Luxembourg trade and companies register under number B 181409.

“Lux Holdings Investment” shall mean investments made by the Parent consisting of the contribution to Lux Holdings of the common Equity Interests in Lux Finance received by the Parent pursuant to the Luxco Financing Conversion in exchange for newly issued Stock in Lux Holdings.

“Luxco Financing” means the Indebtedness advanced, and Investments made, by the Parent directly and indirectly to its Subsidiaries for the purpose of financing the Acquisition of Saks Incorporated and the transactions related thereto, which if owing by a Borrowing Base Party to a Person that is not a Borrowing Base Party, shall be subordinated to the Obligations in a manner reasonably satisfactory to the Agent.

“Luxco Financing Conversion” shall mean Investments made by the Parent consisting of the conversion of a portion of the amounts owing to the Parent under the Luxco Financing in exchange for common Equity Interests in Lux Finance.

“Luxco Subordination Agreement” means the Subordination Agreement dated as of the Original Closing Date among the Agent, Lux Finance, Lord & Taylor Acquisition 2 Inc. and the U.S. Borrower relating to the Luxco Financing.

“Luxembourg” means the Grand Duchy of Luxembourg.

“Luxembourg Loan Party” means all of the Parent’s Luxembourg Subsidiaries (other than Excluded Subsidiaries and HBC Europe S.à r.l.).

“Luxembourg Subsidiary” means any Subsidiary of the Parent that is organized under the laws of Luxembourg.

“Master Agreement” has the meaning set forth in the definition of “Swap Contract.”

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the results of operations, business, properties, or financial condition of the Loan Parties taken as a whole; (b) a material impairment of the ability of the Loan Parties, taken as a whole, to perform their obligations under the Loan Documents; or (c) a material impairment of the rights and remedies of the Agent or the Lenders under the Loan Document or a material adverse effect upon the legality, validity, binding effect or enforceability against the Loan Parties of the Loan Documents.

“Material Contract” means, with respect to any Person, each contract to which such Person is a party which, if (a) breached or contravened by any Loan Party or (b) terminated, in each case could reasonably be expected to have a Material Adverse Effect.

“Material Indebtedness” means Indebtedness (other than the Obligations) of the Loan Parties in an aggregate principal amount exceeding \$75,000,000. For purposes of determining the amount of Material Indebtedness at any time, (a) the amount of the obligations in respect of any Swap Contract at such time shall be calculated at the Swap Termination Value thereof, (b) undrawn committed or available amounts shall be included, and (c) all amounts owing to all creditors under any combined or syndicated credit arrangement shall be included. For clarity, all Permitted Term Loan Debt shall at all times constitute Material Indebtedness at any time while the Permitted Term Loan Debt is in effect.

“Maturity Date” means the Revolving Maturity Date or the FILO Maturity Date, as applicable.

“Maximum Rate” has the meaning provided therefor in Section 10.09.

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

“Multiemployer Plan” means a Plan of the type described in and subject to Section 4001(a)(3) of ERISA, to which the U.S. 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” means a Plan which has two or more contributing sponsors (including the U.S. Borrower or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in and subject to Section 4064 of ERISA.

“Net Proceeds” means (a) with respect to any Disposition by any Loan Party or any casualty or condemnation payments received by, or paid to the account of, any Loan Party, the excess, if any, of (i) the sum of cash and cash equivalents received in connection with such transaction (including any cash or cash equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) minus (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the applicable asset by a Lien permitted hereunder which is senior to the Agent’s Lien on such asset, if any, and that is required to be repaid (or to establish an escrow for the future repayment thereof) in connection with such transaction (other than Indebtedness under the Loan

Documents), and (B) the reasonable and customary out-of-pocket expenses incurred by such Loan Party in connection with such transaction (including, without limitation, appraisals, and brokerage, legal, title and recording or transfer tax expenses and commissions) paid by any Loan Party to third parties (other than Affiliates).

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

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

“Non-Extension Notice Date” has the meaning specified in Section 2.03(b)(iii).

“Note” means each Canadian Revolving Note, each U.S. Revolving Note, each Swing Line Note, each Canadian FILO Term Loan Note and each U.S. FILO Term Loan Note as applicable.

“NPL” means the National Priorities List under CERCLA.

“Obligations” means, collectively, the Canadian Liabilities and the U.S. Liabilities, and “Obligation” means any of them; provided that Obligations of a Loan Party shall exclude any Excluded Swap Obligations with respect to such Loan Party.

“OFAC” has the meaning set forth in the definition of “Embargoed Person”.

“Opco Implementation Agreement” means the Opco Implementation Agreement to be entered into by Signa Holding GmbH and its Subsidiaries that are party thereto and the Parent and its Subsidiaries that are party thereto, in substantially the form attached as Exhibit 1 to the Binding Offer Letter.

“Opco SPA” means the sale and purchase agreement dated 8/9/10 June 2019 (as amended and / or amended and restated from time to time) between, among others, Signa Holding and certain of its Affiliates as purchaser (collectively the “Opco Purchasers”), and the Parent and certain of its Affiliates as sellers (collectively the “Opco Sellers”) pursuant to which the Opco Sellers sell their respective shareholding in the Signa Opco Joint Venture and certain receivables that the Parent and HBC Europe Holdco LLC and their Affiliates have against the Signa Opco Joint Venture existing on or prior to the Opco Closing Date (as defined in the Opco SPA) to the Opco Purchasers.

“Optional Currency” means Canadian Dollars, Euros and Pounds Sterling and each other currency (other than Dollars) that is approved in accordance with Section 1.07.

“Organization Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity, and (d) in each case, all shareholder or other equity holder agreements, voting trusts and similar arrangements to which such Person is a party or which is applicable to its Equity Interests and all other arrangements relating to the Control or management of such Person.

“Original Closing Date” means February 5, 2016.

“Other Canadian Liabilities” means any obligation on account of (a) any Cash Management Services furnished to the Parent, any of its Subsidiaries or HBC India and/or (b) any Bank Product furnished to any of the Parent or any of its Subsidiaries.

“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 Document).

“Other Liabilities” means the Other Canadian Liabilities or the Other U.S. Liabilities, as applicable.

“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 (i) any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.06), and (ii) any Luxembourg registration duties (*droits d’enregistrement*) payable in the case of a voluntary registration of any Loan Document by a Lender or the Agent with the *Administration de l’Enregistrement et des Domaines* in Luxembourg, or registration of any Loan Document in Luxembourg when such registration is not required to enforce the rights of that Lender or the Agent under the Loan Documents.

“Other U.S. Liabilities” means any obligation on account of (a) any Cash Management Services furnished to any of the U.S. Loan Parties or any of their U.S. Subsidiaries and/or (b) any Bank Product furnished to any of the U.S. Loan Parties or any of their U.S. Subsidiaries.

“Outstanding Amount” means (i) with respect to Revolving Loans, Swing Line Loans and FILO Term Loan on any date, the Dollar Equivalent of the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Loans occurring on such date; and (ii) with respect to any L/C Obligations on any date, the Dollar Equivalent of the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by a Borrower of Unreimbursed Amounts.

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

“Parent” means (i) prior to the occurrence of the Company Reorganization, Hudson’s Bay Company, a corporation organized under the federal laws of Canada and (ii) after the occurrence of the Company Reorganization, the SPV Parent.

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

“Participating Member State” means any member state of the European Communities that adopts or has adopted the Euro as its lawful currency in accordance with the EMU Legislation.

“Participation Register” has the meaning provided therefor in Section 10.06(d).

“Payment Conditions” means, at the time of determination with respect to any specified transaction or payment, that (a) no Default or Event of Default then exists or would arise as a result of entering into such transaction or the making of such payment, (b) after giving effect to such transaction or payment, (i) the Pro Forma Availability Condition has been satisfied and (ii) the Consolidated Fixed Charge Coverage Ratio, as calculated on a pro-forma basis for the four Fiscal Quarters preceding such transaction or payment for which financial statements have been, or were required to be, delivered to the Agent, is equal to or greater than 1.00:1.00; provided that the provisions of this clause (b)(ii) shall not be applicable if, after giving effect to such transaction or payment, Pro Forma Excess Availability is, and is projected to be, greater than twenty percent (20%) of the Revolving Loan Cap (calculated without giving effect to the FILO Term Loan Push Down Reserve, if applicable). Prior to undertaking any transaction or payment which is subject to the Payment Conditions, the Lead Borrower shall deliver to the Agent evidence of satisfaction of the conditions contained in clause (b) above on a basis (including, without limitation, giving due consideration to results for prior periods) reasonably satisfactory to the Agent.

“Payment in Full” or “Paid in Full” means (x) the repayment in Dollars in full in cash or immediately available funds (or, in the case of contingent reimbursement obligations with respect to Letters of Credit and Bank Products (other than Swap Contracts), providing Cash Collateralization) of all of the Obligations (including the payment of Unreimbursed Amounts and of any termination amount then applicable (or which would or could become applicable as a result of the repayment of the other Obligations) under Swap Contracts) other than (i) unasserted contingent indemnification Obligations, (ii) any Obligations relating to Bank Products (including Swap Contracts) that, at such time, are allowed by the applicable Bank Product provider to remain outstanding without being required to be repaid or Cash Collateralized, and (iii) any Obligations relating to Cash Management Services that, at such time, are allowed by the applicable provider of such Cash Management Services to remain outstanding without being required to be repaid, and (y) the termination of (1) the Aggregate Commitments, (2) the L/C Issuer’s obligation to issue Letters of Credit hereunder and (3) the Loan Documents (other than terms thereof which expressly survive termination).

“PBGC” means the Pension Benefit Guaranty Corporation.

“PCAOB” means the Public Company Accounting Oversight Board.

“PCTFA” means the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada).

“Pension Act” means the Pension Protection Act of 2006.

“Pension Funding Rules” means 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 Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

“Pension Plan” means a Plan (other than a Multiemployer Plan) that is maintained or is contributed to by the U.S. 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.

“Pension Plan Unfunded Liability” shall mean an unfunded liability in respect of any Canadian Pension Plan, including a going concern unfunded liability, a solvency deficiency or wind-up deficiency, in each case, as reported in the most recent valuation delivered in respect of such Canadian Pension Plan.



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

(a) Such Acquisition shall have been approved by the Board of Directors of the Person (or similar governing body if such Person is not a corporation) which is the subject of such Acquisition and such Person shall not have announced that it will oppose such Acquisition or shall not have commenced any action which alleges that such Acquisition shall violate applicable Laws;

(b) Within ten (10) days after the Acquisition shall have been publicly announced, the Lead Borrower shall have furnished the Agent with a current draft of the Acquisition documents (and final copies thereof as and when executed) and financial statements of the Person which is the subject of such Acquisition (but only to the extent received by the Lead Borrower from such Person or are publicly available);

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

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

(e) If the Person which is the subject of such Acquisition will be maintained as a Restricted Subsidiary of a Loan Party, or if the assets acquired in an Acquisition will be transferred to a Restricted Subsidiary which is not then a Loan Party, such Restricted Subsidiary (other than an Excluded Subsidiary) shall have been joined as a Loan Party hereunder within the time required under Section 6.11 hereof and the Agent shall receive a first priority security interest in the property of such Subsidiary of the same nature as constitutes Collateral under the Security Documents to the extent required by Section 6.11;

(f) The Payment Conditions shall have been satisfied; and

(g) Prior to the consummation of such Acquisition, a Responsible Officer of the Lead Borrower shall provide a certificate, in form and substance reasonably satisfactory to the Agent, affirming compliance with each of the items set forth in clauses (a) through (d) and (f) hereof.

“Permitted Disposition” means any of the following:

(a) Dispositions of Inventory in the ordinary course of business;

(b) as long as no Default or Event of Default then exists or would arise therefrom, bulk sales or other Dispositions of the Inventory of a Loan Party not in the ordinary course of business at arm’s length in connection with Permitted Store Closings;

(c) non-exclusive licenses of Intellectual Property of a Loan Party or any of its Subsidiaries in the ordinary course of business, provided that any such licenses shall not impair the rights of the Agent to utilize such Intellectual Property in connection with a Liquidation;

(d) licenses for the conduct of licensed departments within the Loan Parties' Stores in the ordinary course of business;

(e) Dispositions of Equipment and other property in the ordinary course of business that is worn, damaged, obsolete or, in the judgment of a Loan Party, no longer useful or necessary in its business or that of any Subsidiary;

(f) sales, transfers and other Dispositions among the Loan Parties or by any Subsidiary which is not a Loan Party to a Loan Party;

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

(h) as long as no Default or Event of Default then exists or would arise therefrom, any Dispositions of Real Estate (including RE Sale-Leaseback transactions) and the assignment, surrender, transfer or other Disposition of leases constituting Real Estate, provided that if requested by the Agent, the Agent shall have received a Collateral Access Agreement from the transferee of such Real Estate if any Collateral remains at such Real Estate after such transfer;

(i) Dispositions listed on Schedule 7.05; and

(j) Dispositions of defaulted receivables in the ordinary course of business for collection; provided that, if such overdue accounts constitute Eligible Credit Card Receivables or Eligible Trade Receivables, the Borrowers shall receive not less than the amounts borrowed or available to be borrowed under the Revolving Borrowing Base therefor;

(k) unwinding of any Swap Contract;

(l) (i) Dispositions of Equity Interests of a Real Estate Subsidiary or Real Estate Venture, provided that, if the Real Estate Subsidiary or Real Estate Venture leases a Store location to a Loan Party following such Disposition then, if requested by the Agent, the Agent shall have received a Collateral Access Agreement from such Real Estate Subsidiary or Real Estate Venture; and (ii) Dispositions consisting of the issuance and sale of Equity Interests (other than Disqualified Stock) in the U.S. Borrower to Lux Holdings;

(m) the sale of the Equity Interests of an Unrestricted Subsidiary;

(n) Dispositions of property (other than those of the type included in the Combined Borrowing Base) by any Loan Party to Immaterial Subsidiaries, which when combined with Investments made pursuant to clause (s) of the definition of Permitted Investments in, and Indebtedness pursuant to clause (m) of the definition of Permitted Indebtedness to, such Immaterial Subsidiaries, shall not exceed \$50,000,000 in the aggregate amount at any time outstanding;

(o) other Dispositions by the Parent or any Restricted Subsidiary of assets not constituting either Collateral (other than FILO Collateral unless the FILO Term Loan Draw Date has occurred), Equity Interests in a Real Estate Subsidiary or Real Estate Venture, or, if the FILO Term Loan Draw Date has occurred, FILO Collateral, provided that (i) at the time of such Disposition, no Default (with respect to Collateral only) or Event of Default (with respect to all such Dispositions) shall exist or would result from such Disposition, (ii) the aggregate book value of all property disposed of in reliance on this clause (n) in any Fiscal Year shall not exceed an

amount equal to ten percent (10%) of the aggregate book value of the assets of the Parent and its Restricted Subsidiaries on the last day of the immediately preceding Fiscal Year, (iii) with respect to any Disposition or series of related Dispositions pursuant to this clause (n) for aggregate consideration in excess of \$20,000,000, the Parent or any of its Restricted Subsidiaries shall receive consideration of at least 75% cash or cash equivalents; provided, however, that for the purposes of this clause (iii), each of the following shall be deemed to be cash: (A) any liabilities (as shown on the Parent's most recent consolidated balance sheet provided hereunder or in the footnotes thereto) of the Parent or such Restricted Subsidiary, other than liabilities that are by their terms subordinated to the payment in cash of the Obligations, that are assumed by the transferee with respect to the applicable Disposition and for which the Parent and all of its Subsidiaries shall have been validly released by all applicable creditors in writing, (B) any securities received by the Parent or the applicable Restricted Subsidiary from such transferee that are converted by the Parent or such Restricted Subsidiary into cash or cash equivalents (to the extent of the cash or cash equivalents received) within 180 days following the closing of the applicable Disposition, and (C) aggregate non-cash consideration received by the Parent or the applicable Restricted Subsidiary having an aggregate fair market value (determined as of the closing of the applicable Disposition for which such non-cash consideration is received) not to exceed \$40,000,000 at any time (net of any cash and cash equivalents received upon conversion of non-cash consideration converted into cash and cash equivalents), (iv) such Disposition shall be for at least the fair market value (as determined by the Parent or the applicable Restricted Subsidiary in good faith) of the assets or property subject to such Disposition and (v) if such Disposition includes a sale, issuance or other disposition of Equity Interests of a Restricted Subsidiary, then so long as after giving pro forma effect to any such any sale, issuance or other disposition, no Overadvance would exist or would result therefrom; provided that, if any such Disposition includes the Disposition of Intellectual Property used or useful in connection with any Collateral, the purchaser, assignee or other transferee thereof shall agree in writing to be bound by a non-exclusive royalty-free worldwide license of such Intellectual Property in favor of the Agent for use in connection with the exercise of the rights and remedies of the Credit Parties, which license shall be in form and substance reasonably satisfactory to the Agent, and provided further that in the case of a Disposition of Intellectual Property by the Loan Parties or any Subsidiary to a third party, the transferee thereof shall be required to provide such a license only to the extent to which the applicable license gives it a right to do so;

(p) Dispositions of the Contributed Assets and of Equity Interests of certain Real Estate Subsidiaries pursuant to the Signa Joint Venture Transactions (including, for the avoidance of doubt, Dispositions for the purpose of effecting the Signa Joint Venture Transactions, as contemplated by the applicable Implementation Agreement);

(q) Dispositions of receivables owing to, and Equity Interests in, the Signa Propco Joint Ventures and the Signa Opco Joint Venture pursuant to the Signa Disposition Transactions (including, for the avoidance of doubt, Dispositions for the purpose of effecting the Signa Disposition Transactions, as contemplated by the applicable Signa Disposition Agreement);

(r) the Lord & Taylor Sale as long as the Payment Conditions are satisfied at the time of such Disposition; and

(s) the Lord & Taylor Liquidation, provided that (x)(i) no Default or Event of Default exists or would arise as a result of the Lord & Taylor Liquidation, (ii) the Loan Parties shall retain a professional liquidator or liquidation consultant in connection with the Lord & Taylor Liquidation, each of which shall be reasonably acceptable to the Agent, and (iii) the Loan Parties shall deliver weekly Borrowing Base Certificates during the Lord & Taylor Liquidation

on Wednesday of each week (or, if Wednesday is not a Business Day, on the next succeeding Business Day), as of the close of business on the immediately preceding Saturday and as otherwise specified in Section 6.02(b), and (y) the Agent shall have the right to adjust any Appraised Value or advance rates and change or establish Reserves with respect to any component of the Combined Borrowing Base that relates to the assets of the Lord & Taylor Business and related assets;

- (t) the HBC Netherlands Liquidation; and
- (u) Dispositions contemplated by the Company Reorganization.

“Permitted Encumbrances” means:

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

(b) Carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s and other like Liens imposed by applicable Laws, arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested in compliance with Section 6.04, and (ii) inchoate and unperfected workers’, mechanics’, construction or similar Liens arising in the ordinary course of business attaching only to Equipment, fixtures and/or Real Estate interests or, if perfected, such Liens are being contested in good faith by appropriate proceedings diligently contested; provided, that adequate reserves with respect thereto are being maintained in accordance with GAAP or IFRS, as applicable, and such Liens could not reasonably be expected to have a Material Adverse Effect;

(c) Pledges and deposits made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance and other social security laws or regulations, other than any Lien imposed by ERISA or by applicable Laws relating to Canadian Pension Plans;

(d) Pledges and deposits to secure the performance of bids, tenders, trade contracts and leases and subleases (other than Indebtedness), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(e) Liens in respect of judgments that would not constitute an Event of Default hereunder or securing appeal or other surety bonds related to such judgment;

(f) Easements, reciprocal easements agreements, construction operating reciprocal easement agreements, covenants, conditions, restrictions, building code laws, zoning restrictions, rights-of-way and similar encumbrances or other defects or irregularities in or reservations from title on real property arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the properties of the Loan Parties taken as a whole as of the date hereof or materially interfere with the ordinary conduct of business of a Loan Party on the property subject thereto taken as a whole as such business is conducted on the date hereof and such other minor title defects or survey matters that are disclosed by surveys or title reports that, in each case, do not materially interfere with the current use of the real property on the property subject thereto taken as a whole;

(g) Liens existing on the Effective Date listed on Schedule 7.01 and Liens to secure any Permitted Refinancings of the Indebtedness with respect thereto;

(h) Liens on fixed or capital assets (including software) or on Real Estate of any Loan Party which secure Indebtedness permitted under clauses (c) of the definition of Permitted Indebtedness so long as (i) such Liens and the Indebtedness secured thereby are incurred prior to or within 270 days after such acquisition, construction, installation, repair, lease or improvement, (ii) the Indebtedness secured thereby does not exceed the cost of the property being acquired on the date of acquisition, plus any installation and construction costs, if any, that are capitalized, and (iii) such Liens shall attach only to the assets or Real Estate acquired or improved and the proceeds thereof or refinanced with such Indebtedness and shall not extend to any other property or assets of the Loan Parties;

(i) Liens in favor of the Agent granted pursuant to any of the Loan Documents;

(j) (i) Landlords' and lessors' statutory Liens in respect of rent not in default (after the expiration of all grace or cure periods with respect thereto and excluding any such defaults which are being contested in good faith by the Loan Parties), and (ii) Liens of landlords on fixtures, Equipment and personal property located on premises leased by any Loan Party or any Subsidiary in the ordinary course of business;

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

(l) Liens (i) arising solely by virtue of any statutory or common law provisions relating to banker's Liens, (ii) in favor of securities intermediaries, rights of setoff or similar rights and remedies as to deposit accounts or securities accounts or other funds maintained with depository institutions or securities intermediaries and (iii) in favor of a banking institution arising as a matter of applicable Laws encumbering deposits, securities and movables, and which are within the general parameters customary in the banking industry;

(m) Liens arising from precautionary UCC, RDPRM and PPSA filings regarding "true" operating leases or operating leases with a term of more than one (1) year;

(n) voluntary Liens on property (other than property of the type included in the Revolving Borrowing Base, and, if the FILO Term Loan is outstanding, the Combined Borrowing Base) in existence at the time such property is acquired pursuant to a Permitted Acquisition or on such property of a Subsidiary of a Loan Party in existence at the time such Subsidiary is acquired pursuant to a Permitted Acquisition; provided, that such Liens are not incurred in connection with or in anticipation of such Permitted Acquisition and do not attach to any other assets of any Loan Party or any Subsidiary;

(o) Liens to secure Permitted Term Loan Debt as described in the definition thereof;

(p) Liens in favor of customs and revenues authorities imposed by applicable Laws arising in the ordinary course of business in connection with the importation of goods and securing obligations (i) that are not overdue by more than thirty (30) days, or (ii)(A) that are being contested in good faith by appropriate proceedings, (B) the applicable Loan Party or

Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP or IFRS, as applicable, and (C) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation;

(q) to the extent permitted under the Loan Documents, Liens arising under or in connection with Consignment Arrangements and limited to the inventory subject to such Consignment Agreements and proceeds thereof;

(r) Inchoate or statutory Liens that are related to obligations not due or delinquent;

(s) deposits of cash or the issuance of a letter of credit made to secure a liability to insurance carriers under insurance or self-insurance arrangements;

(t) Liens on cash securing or supporting Letters of Credit or bank Indebtedness guarantees permitted by clause (p) of the definition of Permitted Indebtedness;

(u) Liens securing Indebtedness permitted under clause (r) of the definition of Permitted Indebtedness up to an amount not to exceed \$40,000,000 in the aggregate;

(v) Liens securing the Luxco Financing so long as such Luxco Financing is held by a Loan Party or a Subsidiary;

(w) leases and subleases granted to others in the ordinary course of business which do not (i) interfere in any material respect with the business of a Loan Party or (ii) secure any Indebtedness;

(x) Liens securing Permitted FILO Refinancing Debt, provided that such Liens are subject to the terms of the Permitted FILO Refinancing Debt Intercreditor Agreement; and

(y) additional Liens (other than any Lien imposed by ERISA, applicable Laws relating to Canadian Pension Plans or any Lien on the Collateral) so long as the aggregate principal amount of the obligations secured by such Liens does not exceed \$100,000,000 at any time outstanding.

“Permitted FILO Refinancing Debt” means, any Indebtedness incurred by one or more of the Loan Parties to refinance all of the FILO Term Loan in the form of a credit facility, debt financing facility or other form of loan facility; provided that (i) such facility is documented separately from the credit facility under this Agreement; (ii) the principal amount (or accreted value, if applicable) does not exceed \$250,000,000; (iii) such Indebtedness has a final maturity date equal to or later than the FILO Maturity Date, and has a weighted average life to maturity equal to or longer than the weighted average life to maturity of, the FILO Term Loan then outstanding; (iv) at the time thereof, no Default or Event of Default shall have occurred and be continuing; and (v) if such Indebtedness is secured, the secured parties in respect thereof shall have entered into the Permitted FILO Refinancing Debt Intercreditor Agreement with the Agent.

“Permitted FILO Refinancing Debt Intercreditor Agreement” means an intercreditor agreement in form and substance satisfactory to the Agent and the Required Revolving Lenders entered into by the holders of any Permitted FILO Refinancing Debt, and providing for (i) a first priority Lien in favor of the Agent on the Collateral (other than FILO Collateral) and customary use, access and royalty-free license rights with respect to Intellectual Property and (ii) if the holders of any Permitted FILO Refinancing Debt

have obtained a second priority Lien on the Collateral (other than FILO Collateral), a second priority Lien in favor of the Agent on the assets constituting FILO Collateral.

“Permitted Holders” means (a) any or all of the Persons described on Schedule 1.06, (b) the respective Affiliates of the Persons described in clause (a) (other than, in each case, the Parent and its Subsidiaries or any portfolio company) and (c) any group members of a group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the *Exchange Act* as in effect on the date hereof) of which the Persons described in clauses (a) and (b) are members; provided that the Persons described in clauses (a) and (b) beneficially own a majority of the Equity Interests beneficially owned by such group.

“Permitted Indebtedness” means each of the following:

(a) Indebtedness outstanding on the Effective Date listed on Schedule 7.03 and any Permitted Refinancing thereof;

(b) Indebtedness of any Loan Party to any other Loan Party;

(c) Purchase money Indebtedness of any Loan Party to finance the construction, installation or acquisition of any personal property consisting solely of fixed or capital assets, (including software) and Capital Lease Obligations relating to such personal property, and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the construction, installation or acquisition thereof, and Permitted Refinancings thereof, provided that, if requested by the Agent (which request the Agent shall not make unless such personal property is material for the maximization of the proceeds of the Collateral in a Liquidation), the Loan Parties shall use commercially reasonable efforts to cause the holders of such Indebtedness to enter into an agreement with the Agent permitting the Agent to use such personal property for a specified period of time in connection with a Liquidation, which agreement shall be on other terms reasonably satisfactory to the Agent;

(d) Indebtedness incurred for the construction, installation, acquisition or improvement of, or to finance or to refinance, any Real Estate owned by any Loan Party (including therein any Indebtedness incurred in connection with RE Sale-Leaseback transactions permitted hereunder and any Synthetic Lease Obligations), provided that, the Loan Parties shall use commercially reasonable efforts to cause the holders of such Indebtedness and the lessors under any RE Sale-Leaseback transaction to enter into a Collateral Access Agreement on terms reasonably satisfactory to the Agent to the extent that any Collateral is held at such location;

(e) Contingent liabilities under surety bonds or similar instruments incurred in the ordinary course of business;

(f) obligations (contingent or otherwise) of any Loan Party or any Restricted Subsidiary thereof existing or arising under any Swap Contract, provided that (i) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with fluctuations in interest rates or foreign exchange rates, liabilities, commitments, investments, assets or property held or reasonably anticipated by such Person, and not for purposes of speculation or taking a “market view” and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;

(g) Indebtedness with respect to the deferred purchase price for any Permitted Acquisition, provided that such Indebtedness does not require the payment in cash of principal

(other than in respect of working capital adjustments) prior to the Revolving Maturity Date, has a final maturity which extends beyond the Revolving Maturity Date, and is subordinated to the Obligations on terms reasonably acceptable to the Agent;

(h) Indebtedness of any Person that becomes a Subsidiary of the Parent in a Permitted Acquisition, which Indebtedness is existing at the time such Person becomes a Restricted Subsidiary of the Parent (other than Indebtedness incurred solely in contemplation of such Person's becoming a Restricted Subsidiary of the Parent); provided that, after giving pro forma effect to such Permitted Acquisition and the assumption of such Indebtedness, the aggregate amount of such Indebtedness does not exceed \$100,000,000 at any time outstanding;

(i) the Obligations;

(j) Permitted FILO Refinancing Debt and any Permitted Refinancing thereof;

(k) Permitted Term Loan Debt in an aggregate principal amount not exceeding \$325,000,000.00 at any time outstanding;

(l) [Reserved];

(m) Subordinated Indebtedness consisting of intercompany loans and advances made by any Loan Party to Immaterial Subsidiaries, which when combined with Investments made pursuant to clause (s) of the definition of Permitted Investments in, and dispositions of assets pursuant to clause (n) of the definition of Permitted Dispositions to, such Immaterial Subsidiaries, shall not exceed \$50,000,000 in the aggregate amount at any time outstanding;

(n) Indebtedness consisting of (i) the financing of insurance premiums, or (ii) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(o) Subordinated Indebtedness (other than Subordinated Indebtedness described in clause (m) of this definition);

(p) obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by a Loan Party or any of its Restricted Subsidiaries, or obligations in respect of Letters of Credit, bank guarantees or similar investments related thereto, in each case in the ordinary course of business or consistent with past practice;

(q) Indebtedness of a Loan Party in favor of employees of a Loan Party on an arm's length basis in the ordinary course of business in connection with amounts due from such Loan Party representing deferred cash compensation or similar arrangements, up to a maximum of \$15,000,000 for all such transactions in the aggregate;

(r) Indebtedness created under long-term vendor financing arrangements for the purpose of purchasing inventory;

(s) (x) other unsecured Indebtedness of any Loan Party or any Restricted Subsidiary; provided that (i) no Event of Default shall exist immediately before or immediately after giving effect thereto on a pro forma basis, (ii) the final maturity date of any such Indebtedness shall be no earlier than 91 days following the Maturity Date and (iii) the terms of such Indebtedness shall



not provide for any scheduled repayment, mandatory redemption, sinking fund obligations or other payment (other than periodic interest payments) prior to the date that is 91 days following the Maturity Date, other than customary offers to purchase upon a change of control, asset sale or casualty or condemnation event and customary acceleration rights upon an event of default; and (y) any Permitted Refinancing thereof;

(t) obligations under any agreement governing the provision of treasury or cash management services, including deposit accounts, overnight draft, credit cards, debit cards, p-cards (including purchasing cards and commercial cards), funds transfer, automated clearinghouse, zero balance accounts, returned check concentration, controlled disbursement, cash pooling arrangements within the country of each Borrower, intra-day credit limits, lockbox, account reconciliation and reporting and trade finance services and other cash management services;

(u) Indebtedness incurred under leases of real property in respect of tenant improvements;

(v) Indebtedness incurred by a Loan Party or any of its Restricted Subsidiaries in a Permitted Acquisition, any other Investment expressly permitted hereunder or any Disposition, in each case, constituting indemnification obligations or obligations in respect of purchase price (including earn outs) or other similar adjustments;

(w) Indebtedness incurred by a Loan Party or any of its Restricted Subsidiaries in respect of letters of credit, bank guarantees, bankers' acceptances or similar instruments issued or created in the ordinary course of business, in respect of workers' compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims; provided that any reimbursement obligations in respect thereof are reimbursed within 30 days following the incurrence thereof; and

(x) the Luxco Financing for so long as such Luxco Financing is held by a Subsidiary of the Parent;

(y) Guarantees by any Loan Party of Indebtedness of any other Loan Party permitted hereunder;

(z) Guarantees by any Loan Party of Indebtedness of any of the Restricted Subsidiaries that are not Loan Parties to the extent that the Investment corresponding thereto constitutes a Permitted Investment (other than pursuant to clause (j) thereof);

(aa) Guarantees of any Loan Party in respect of any financing by a Real Estate Subsidiary in respect of customary "bad boy" obligations and similar recourse provisions which Guarantees, in the good faith judgment of the Parent and such Loan Party, are not reasonably expected to result in the lenders under such financing actually having recourse to the Parent or any Loan Party with respect to the monetary obligations owing under such financing incurred by such Real Estate Subsidiary;

(bb) Indebtedness consisting of Specified Debt;

(cc) Indebtedness of the Parent consisting of the Simon JVCo Lease Guaranties;

(dd) Indebtedness incurred by any Loan Party or any Subsidiary in respect of letters of credit, bank guarantees, bankers' acceptances, or similar instruments issued or created in the ordinary course of business in an aggregate principal amount not to exceed \$75,000,000 at any time outstanding;

(ee) Indebtedness not otherwise specifically described herein in an aggregate principal amount not to exceed \$150,000,000 at any time outstanding;

(ff) Guarantees of rent payments by the Lead Borrower or any Restricted Subsidiary in respect of HBC Netherlands B.V., as contemplated by clause 10 of the Opco Implementation Agreement, as amended, restated, modified, supplemented or refinanced from time to time including as modified by the Signa Disposition Transaction and the HBC Netherlands Transaction, the whole in a manner that does not increase the Lead Borrower's or such Restricted Subsidiary's monetary obligations thereunder in the aggregate; and

(gg) the Lord & Taylor Remaining Obligations.

"Permitted Investments" means each of the following:

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

(b) commercial paper issued by any Person organized under the laws of any state of the United States of America, and rated at least "Prime-1" (or the then equivalent grade) by Moody's or at least "A-1" (or the then equivalent grade) by S&P, in each case with maturities of not more than 360 days from the date of acquisition thereof;

(c) time deposits with, or insured certificates of deposit or bankers' acceptances of, any commercial bank that (i) (A) is a Lender or (B) is organized under the laws of the United States of America, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States of America, any state thereof or the District of Columbia and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (b) of this definition and (iii) has combined capital and surplus of at least \$300,000,000, in each case with maturities of not more than 360 days from the date of acquisition thereof;

(d) Foreign Cash Equivalents;

(e) Fully collateralized repurchase agreements with a term of not more than thirty (30) days for securities described in clause (a) above (without regard to the limitation on maturity contained in such clause) and entered into with a financial institution satisfying the criteria described in clause (c) above or with any primary dealer and having a market value at the time that such repurchase agreement is entered into of not less than 100% of the repurchase obligation of such counterparty entity with whom such repurchase agreement has been entered into;

(f) Investments, classified in accordance with GAAP or IFRS, as applicable, as current assets of the Loan Parties, in any money market fund, mutual fund, or other investment companies that are registered under the Investment Company Act of 1940, as amended, which are administered by financial institutions that have the highest rating obtainable from either Moody's

or S&P, and which invest solely in one or more of the types of securities described in clauses (a) through (c) and (e) above;

(g) Investments existing on the Effective Date or committed to be made pursuant to an agreement existing on the Effective Date in each case set forth on Schedule 7.02 and any modification, renewal or extension thereof, but not any increase in the amount thereof except by the terms of such Investment as of the Effective Date;

(h) (i) Investments by any Loan Party and its Subsidiaries in their respective Subsidiaries outstanding on the Effective Date, (ii) additional Investments by the Loan Parties in other Loan Parties, (iii) additional Investments by Subsidiaries of the Loan Parties that are not Loan Parties in other Subsidiaries that are not Loan Parties, and (iv) so long as no Default or Event of Default has occurred and is continuing or would result from such Investment, additional Investments by the Loan Parties in Subsidiaries that are not Loan Parties in an aggregate amount invested after the Effective Date not to exceed \$125,000,000 and additional amounts in excess thereof if the Payment Conditions are satisfied at the time of such Investment;

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

(j) Guarantees constituting Permitted Indebtedness (other than pursuant to clause (z) thereof);

(k) so long as no Default or Event of Default has occurred and is continuing or would result from such Investment, Investments by any Loan Party in Swap Contracts permitted hereunder;

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

(m) (i) to the extent not prohibited by applicable Laws, advances to officers, directors and employees of the Parent and its Restricted Subsidiaries in the ordinary course of business in an aggregate amount not to exceed \$20,000,000 in the aggregate at any time outstanding, for travel, entertainment, relocation and analogous ordinary business purposes, and (ii) loans and advances to officers, directors and employees of the Parent or any of its Restricted Subsidiaries to finance (x) the usual and customary purchase of Equity Interests of the Parent or any of its Restricted Subsidiaries, including in connection with the Specified Transaction or (y) payment of taxes associated with such purchase of Equity Interests not to exceed \$30,000,000 in the aggregate;

(n) Investments constituting Permitted Acquisitions and Investments made by a Person that becomes a Restricted Subsidiary after the Effective Date, provided that such Investment exists at the time such Person became a Restricted Subsidiary and was not made in contemplation of such Person becoming a Restricted Subsidiary;

(o) Investments to the extent that payment for such Investments is made solely with the Equity Interests (other than Disqualified Stock) of the Parent;

(p) Investments in a Real Estate Subsidiary or Real Estate Venture consisting of contributions or other transfers of Real Estate owned or leased by the Parent and its Subsidiaries or resulting from any Disposition of the Equity Interests of a Real Estate Subsidiary or Real Estate Venture permitted hereunder or owned or leased by a Restricted Subsidiary which Restricted Subsidiary is acquired in a Permitted Acquisition;

(q) the Luxco Financing Conversion and the Lux Holdings Investment;

(r) each of Parent's Subsidiaries that operates as an insurance company may hold Investments consisting of securities accounts that are required to be maintained by it pursuant to applicable Laws for the purpose of satisfying specified capital requirements thereunder;

(s) subject to Section 7.16 hereof, so long as no Default or Event of Default exists or would arise therefrom, the Loan Parties may make other Investments in Immaterial Subsidiaries, which when combined with intercompany loans pursuant to clause (m) of the definition of Permitted Indebtedness and dispositions of assets to such Immaterial Subsidiaries pursuant to clause (n) of the definition of Permitted Dispositions, do not exceed the aggregate amount of \$35,000,000 (determined at the time of such Investment);

(t) subject to Section 7.16 hereof, Immaterial Subsidiaries may make or hold other Investments in an aggregate amount not to exceed \$50,000,000 (determined at the time of such investment);

(u) so long as no Default or Event of Default exists or would arise therefrom, Investments using proceeds consisting of distributions and dividends received by the Parent or any of its Restricted Subsidiaries from Simon JVCo or RioCan JVCo (including, for purposes hereof, amounts receivable by the Parent or any of its Restricted Subsidiaries therefrom and which, rather than directly receiving such amounts, the Parent or its Restricted Subsidiary direct Simon JVCo or RioCan JVCo to make the payment to another Person as an Investment in such Person), provided that, pending the making of any such investment, such proceeds shall be deposited in a segregated deposit account;

(v) other Investments not otherwise specifically described herein and not exceeding \$50,000,000 in the aggregate at any time outstanding;

(w) Investments of the Parent or any Restricted Subsidiary (it being understood that any Investment by the Parent or any other Loan Party made through one or more Restricted Subsidiaries shall, for purposes of this clause (x), constitute a single Investment) in the Signa Joint Ventures made in connection with the Signa Joint Venture Transactions or in HBC Netherlands, as contemplated by the applicable Implementation Agreement, the Signa Disposition Agreement and the HBC Netherlands SPA;

(x) to the extent constituting Investments, loans contemplated by Section 7.06(g);

(y) the Lord & Taylor Remaining Obligations and the Investment by the Parent, directly or indirectly, in Lord & Taylor LLC and LT Card Company LLC following the Lord & Taylor Sale as contemplated by the Lord & Taylor Sale; and

(z) other Investments not otherwise specifically described herein as long as the Payment Conditions are satisfied at the time of such Investment.

provided that to the extent any such Investment includes Intellectual Property material and necessary for the operation of the assets of the Loan Parties and their Subsidiaries, taken as a whole, which constitutes Collateral, such Intellectual Property shall be subject to a non-exclusive royalty-free worldwide license in favor of the Agent for the purpose of the Agent's exercise of rights and remedies under this Agreement and under the other Loan Documents and applicable Law in connection with the Collateral; provided further, however, that notwithstanding the foregoing, (i) after the occurrence and during the continuance of a Cash Dominion Event, no such Investments specified in clauses (a) through (f) shall be permitted unless either (A) no Loans or, if then required to be Cash Collateralized, Letters of Credit are then outstanding, or (B) the Investment is a temporary Investment pending expiration of an Interest Period for a LIBOR Rate Loan or expiration of a CDOR Period for a CDOR Rate Loan, as applicable, the proceeds of which Investment will be applied to the Obligations after the expiration of such Interest Period or CDOR Period, as applicable, and (ii) such Investments shall be pledged to the Agent as additional collateral for the Obligations pursuant to such agreements as may be reasonably required by the Agent.

For purposes of determining compliance with this definition, after giving effect to any Permitted Investment in Equity Interests of a Restricted Subsidiary, no Overadvance shall exist or result therefrom.

"Permitted Overadvance" means an Overadvance made by the Agent, in its Reasonable Credit Judgment, which:

- (a) Is made to maintain, protect or preserve the Collateral and/or the Credit Parties' rights under the Loan Documents or which is otherwise for the benefit of the Credit Parties; or
- (b) Is made to enhance the likelihood of, or to maximize the amount of, repayment of any Obligation;
- (c) Is made to pay any other amount chargeable to any Loan Party hereunder; and
- (d) Together with all other Permitted Overadvances then outstanding, shall not (i) exceed five percent (5%) of the Revolving Borrowing Base at any time or (ii) unless a Liquidation is occurring, remain outstanding for more than forty-five (45) consecutive Business Days, unless in each case, the Required Revolving Lenders otherwise agree;

provided however, that the foregoing shall not (i) modify or abrogate any of the provisions of Section 2.03 regarding the Revolving Lenders' obligations with respect to Letters of Credit or Section 2.04 regarding the Revolving Lenders' obligations with respect to Swing Line Loans, or (ii) result in any claim or liability against the Agent (regardless of the amount of any Overadvance) for Unintentional Overadvances, and such Unintentional Overadvances shall not reduce the amount of Permitted Overadvances allowed hereunder, and further provided that (x) in no event shall the Agent make an Overadvance, if after giving effect thereto, the principal amount of the Revolving Credit Extensions would exceed the Aggregate Revolving Commitments (as in effect prior to any termination of the Aggregate Revolving Commitments pursuant to Sections 2.06 or 8.02 hereof) and (y) the Agent's authorization to make Permitted Overadvances may be revoked at any time by the Required Revolving Lenders, provided that any such revocation must be in writing and shall become effective prospectively following the Agent's receipt thereof.

"Permitted Refinancing" means, with respect to any Person, any modification, refinancing, refunding, renewal or extension of any Indebtedness of such Person; provided that (i) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed or extended except by an amount equal to any unpaid accrued interest, premium or other reasonable amount paid, mortgage

recording taxes, title insurance premiums and fees and expenses reasonably incurred, in connection with such modification, refinancing, refunding, renewal or extension; (ii) except in the case of Indebtedness permitted by clause (c) of Permitted Indebtedness, such modification, refinancing, refunding, renewal or extension has a final maturity date equal to or later than the final maturity date of, and has a weighted average life to maturity equal to or longer than the weighted average life to maturity of, the Indebtedness being modified, refinanced, refunded, renewed or extended; (iii) if the Indebtedness being modified, refinanced, refunded, renewed or extended is subordinated in right of payment to the Obligations, such modification, refinancing, refunding, renewal or extension is subordinated in right of payment to the Obligations on terms at least as favorable, taken as a whole, to the Credit Parties as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed or extended; (iv) at the time thereof, no Default or Event of Default shall have occurred and be continuing; (v) if such Indebtedness being modified, refinanced, refunded, renewed or extended is secured, (A) except in the case of Indebtedness permitted by clause (c) of Permitted Indebtedness, the terms and conditions relating to collateral of any such modified, refinanced, refunded, renewed or extended Indebtedness, taken as a whole, are not materially less favorable to the Loan Parties or the Credit Parties than the terms and conditions with respect to the collateral for the Indebtedness being modified, refinanced, refunded, renewed or extended, taken as a whole and the Liens on any Collateral securing any such modified, refinanced, refunded, renewed or extended Indebtedness shall have the same (or lesser) priority as the Indebtedness being modified, refinanced, refunded, renewed or extended relative to the Liens on the Collateral securing the Obligations and (B) in the case of Indebtedness secured by Liens on any Collateral or, except as provided in clause (c) of the definition of Permitted Indebtedness, the secured parties in respect of such Indebtedness shall have entered into with the Agent an intercreditor agreement reasonably satisfactory to the Agent; (vi) the terms and conditions (excluding any pricing, fees, rate floors, discounts, premiums and optional prepayment or redemption terms) of any such modified, refinanced, refunded, renewed or extended Indebtedness, taken as a whole, shall not be materially less favorable to the Loan Parties than the Indebtedness being modified, refinanced, refunded, renewed or extended, except for covenants or other provisions applicable only to periods after the Maturity Date; and (vii) such modification, refinancing, refunding, renewal or extension is incurred by the Person who is the obligor on the Indebtedness being modified, refinanced, refunded, renewed or extended and one or more Loan Parties (to the extent that the obligations of such Loan Party would otherwise constitute Permitted Indebtedness).

“Permitted Store Closings” means (a) Store closures and related Inventory dispositions which do not exceed in any Fiscal Year of the Parent, ten percent (10%) of the number of the Borrowing Base Parties’ Stores as of the beginning of such Fiscal Year (net of new Store openings), and (b) the related Inventory is either moved to a distribution center or another retail location of the Borrowing Base Parties for future sale in the ordinary course of business or is disposed of at such Stores (and if five or more such Store closures are ongoing at any time, in accordance with liquidation agreements and with professional liquidators reasonably acceptable to the Agent).

“Permitted Term Loan Debt” means Indebtedness of the Borrowers with respect to which:

(a) no portion of the principal of such Indebtedness shall be required to be paid, whether by stated maturity, mandatory or scheduled prepayment or redemption or otherwise, prior to the date that is 90 days after the Maturity Date;

(b) none of the obligors or guarantors with respect to such Indebtedness shall be a Person that is not a Loan Party;

(c) such Indebtedness may be secured by (i) a first priority Lien on all Equity Interests of the guarantors under the Permitted Term Loan Debt and their Subsidiaries, all Real Estate and

Equipment, and, if the FILO Term Loan is not outstanding, the FILO Collateral, and related assets and proceeds thereof, and (ii) a second priority Lien on any other Collateral and related assets and proceeds thereof;

(d) the documentation pursuant to which such Indebtedness shall be issued (including, if such Indebtedness is secured, the security documents), shall be reasonably satisfactory to the Agent; and

(e) if such Indebtedness is secured, it shall be subject to an intercreditor agreement reasonably acceptable to the Agent and the Required Revolving Lenders (the “Permitted Term Loan Intercreditor Agreement”).

“Permitted Term Loan Intercreditor Agreement” has the meaning set forth in the definition of “Permitted Term Loan Debt.”

“Person” means any natural person, corporation, limited liability company, unlimited liability company, unincorporated organization, trust, joint venture, association, company, partnership, limited partnership, Governmental Authority or other entity.

“Plan” means any employee benefit plan within the meaning of and subject to Section 3(3) of ERISA (including a Pension Plan but excluding a Multiemployer Plan), maintained for employees of the U.S. Borrower or any ERISA Affiliate or any such Plan to which the U.S. Borrower or any ERISA Affiliate is required to contribute on behalf of any of its employees.

“Platform” has the meaning specified in Section 6.02.

“Pounds Sterling” means the lawful currency of the United Kingdom.

“PPSA” means the *Personal Property Security Act* (Ontario) and the regulations thereunder, as from time to time in effect; provided, however, that if attachment, perfection or priority of the Agent’s security interests in any Collateral are governed by the personal property security laws of any Canadian jurisdiction other than Ontario, PPSA means those personal property security laws in such other jurisdiction for the purposes of the provisions hereof relating to such attachment, perfection or priority and for the definitions related to such provisions, including, without limitation, the *Civil Code of Quebec*.

“Prepayment Event” means:

(a) Any Disposition of any Collateral (other than FILO Collateral unless the FILO Term Loan Draw Date has occurred); provided that prior to the occurrence of a Cash Dominion Event, any Disposition of Inventory or cash in the ordinary course of business shall not be deemed to be a Prepayment Event; or

(b) Any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation, expropriation or similar proceeding of (and payments in lieu thereof), any Collateral, unless prior to the occurrence of a Cash Dominion Event, the proceeds therefrom are deposited into a segregated account and utilized for purposes of replacing or repairing the assets in respect of which such proceeds, awards or payments were received within 180 days of the occurrence of the damage to or loss of the assets being repaired or replaced.

“Prime Rate Loan” means an Index Rate Loan or a Base Rate Loan, as the context may require.

“Pro Forma Availability Condition” means, as of any date of calculation, (a) except as provided in clause (b) hereof, Pro Forma Excess Availability will be equal to or greater than twelve and one-half percent (12.5%) of the Revolving Loan Cap (calculated without giving effect to the FILO Term Loan Push Down Reserve, if applicable), and (b) with respect to the satisfaction of the RP Conditions, Pro Forma Excess Availability will be equal to or greater than fifteen percent (15%) of the Revolving Loan Cap (calculated without giving effect to the FILO Term Loan Push Down Reserve, if applicable).

“Pro Forma Excess Availability” means, as of any date of calculation, after giving pro forma effect to the transaction then to be consummated or payment to be made, projected Availability as of the date of such transaction or payment and as of the end of each Fiscal Month during the subsequent projected six (6) Fiscal Months.

“Propco Implementation Agreement” means the Propco Implementation Agreement to be entered into by Signa Holding GmbH and its Subsidiaries that are party thereto and the Parent and its Subsidiaries that are party thereto, in substantially the form attached as Exhibit 3 to the Binding Offer Letter.

“Propco SPA” means the share purchase agreement dated May 7/8, 2019, as amended June 9/10, 2019 (as amended and / or amended and restated from time to time) between, among others, Signa Holding and certain of its Affiliates as purchaser (collectively the “Propco Purchasers”), and the Parent and certain of its Affiliates as sellers (collectively the “Propco Sellers”) pursuant to which the Propco Sellers sell, *inter alia*, their respective shareholding, as applicable, in the Signa Propco Joint Ventures and certain intercompany receivables to the Propco Purchasers.

“Public Lender” has the meaning specified in Section 6.02.

“Public Market” shall exist if (a) a Public Offering has been consummated and (b) any Equity Interests of the Parent or any of its Restricted Subsidiaries have been distributed by means of an effective registration statement under the Securities Laws.

“Public Offering” means a public offering of the Equity Interests of the Parent or any of its Restricted Subsidiaries pursuant to an effective registration statement under the Securities Laws.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

“QFC Credit Support” has the meaning specified in Section 10.31.

“Qualified ECP Guarantor” means, at any time, each Loan Party with total assets exceeding \$10,000,000 or that qualifies at such time as an “eligible contract participant” under the Commodity Exchange Act and can cause another Person to qualify as an “eligible contract participant” at such time under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Quarterly Financial Statements” means, collectively, the unaudited consolidated balance sheet and related statements of operations and cash flows of the Parent and its Subsidiaries for each Fiscal Quarter following the date of the Audited Financial Statements for the Fiscal Year ended of the Parent and its Subsidiaries ended at least forty-five (45) days before the Effective Date.

“Quebec Security” means the Deeds of Hypothec executed by each Loan Party (including, without limitation, to the extent required by Section 6.11) which has its domicile (within the meaning of the *Civil Code of Quebec*) or chief executive office or personal property in excess of the Security Threshold Amount located in the Province of Quebec.



“RBC” means RBC Capital Markets<sup>4</sup>.

“RDPRM” means the Register of Personal and Moveable Real Rights of Quebec (Registre des Droits Personnels et Réels Mobiliers).

“RE Sale-Leaseback” means any sale of Real Estate owned by the Loan Parties to one or more Real Estate Subsidiaries and the leasing by the Loan Parties of such Real Estate from such Real Estate Subsidiaries.

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

“Real Estate Subsidiary” means any Subsidiary of the Parent (including each of RioCan JVCo and Simon JVCo and their respective Subsidiaries) substantially all of the assets of which (other than cash and cash equivalents) consist of rights, title and interest in and to parcels of or interests in Real Estate (or ownership of the Equity Interests of a Subsidiary owning solely such interests in Real Estate or a Subsidiary that solely owns such a Subsidiary) and that has been designated to the Agent as a “Real Estate Subsidiary” in a certificate of a Responsible Officer of the Lead Borrower.

“Real Estate Venture” means any investment of the Parent in the equity of another Person substantially all of the assets of which Person (other than cash and cash equivalents) consist of rights, title and interest in and to parcels of or interests in Real Estate (or ownership of the Equity Interests of a Person owning solely such interests in Real Estate or a Subsidiary that solely owns such a Person) and that has been designated to the Agent as a “Real Estate Venture” in a certificate of a Responsible Officer of the Lead Borrower.

“Real Property Lease” means any agreement no matter how styled or structured, pursuant to which a Loan Party is entitled to the use or occupancy of any real property for any period of time.

“Reasonable Credit Judgment” means a determination made in good faith and in the exercise of reasonable business judgment in the context of, and by methods in a manner customary for, a similar asset-based credit facility.

“Recipient” means the Agent, any Lender, the L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder.

“Reclassification Notice” has the meaning specified in Section 6.12(c).

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

“Registered Public Accounting Firm” has the meaning specified by the Securities Laws and shall be independent of the Parent and its Subsidiaries as prescribed by the Securities Laws and includes an independent Canadian chartered accounting firm of national standing.

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<sup>4</sup> RBC Capital Markets is a marketing name for the investment banking activities of Royal Bank of Canada.

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

“Release” means any release, threatened release, spill, emission, leaking, pumping, pouring, emitting, emptying, escape, injection, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Material in the indoor or outdoor environment, including the movement of Hazardous Material through or in the air, soil, surface water, ground water or property.

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

“Reports” has the meaning provided in Section 9.15(c).

“Request for Credit Extension” means (a) with respect to a Borrowing, Conversion or continuation of Revolving Loans, a Revolving Loan Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Application, and (c) with respect to a Swing Line Loan, a Swing Line Loan Notice.

“Required Lenders” means, as of any date of determination, (i) Lenders holding more than 50% of the Aggregate Revolving Commitments and the then Outstanding Amount of the FILO Term Loan or, (ii) if the Aggregate Commitments and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated, Lenders holding in the aggregate more than 50% of the Total Outstandings (with the aggregate amount of each Lender’s risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed “held” by such Lender for purposes of this definition); provided that the Total Revolving Commitments of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“Required Revolving Lenders” means, as of any date of determination, (i) Lenders holding more than 50% of the Aggregate Revolving Commitments or, (ii) if the Aggregate Revolving Commitments and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated, Revolving Lenders holding in the aggregate more than 50% of the Total Revolving Outstandings (with the aggregate amount of each Revolving Lender’s risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed “held” by such Revolving Lender for purposes of this definition); provided that the Total Revolving Commitments of, and the portion of the Total Revolving Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Revolving Lenders.

“Reserves” means all Inventory Reserves, Availability Reserves and the FILO Term Loan Push Down Reserve. In relation to Inventory Reserves and Availability Reserves, the Agent shall have the right, at any time and from time to time after the Effective Date in its Reasonable Credit Judgment to establish, modify or eliminate such Reserves upon two (2) Business Days prior notice to the Lead Borrower, (during which period the Agent shall be available to discuss any such proposed Reserve with the Lead Borrower and the Lead Borrower may take such action as may be required so that the event, condition or matter that is the basis for such Reserve no longer exists, in a manner and to the extent reasonably satisfactory to the Agent); provided that no such prior notice shall be required for (1) changes to any Reserves resulting solely by virtue of mathematical calculations of the amount of the Reserve in accordance with the methodology of calculation previously utilized (such as, but not limited to, rent and Customer Credit Liabilities), or (2) changes to Reserves or establishment of additional Reserves if a Material Adverse Effect has occurred or it would be reasonably likely that a Material Adverse Effect to the Lenders would occur were such Reserve not changed or established prior to the expiration of such two

(2) Business Day period, or (3) if an Event of Default is continuing. The amount of any Reserve established by the Agent shall have a reasonable relationship to the event, condition or other matter that is the basis for the Reserve. Notwithstanding anything herein to the contrary, Reserves shall not duplicate eligibility criteria contained in the definition of Eligible Inventory, Eligible In-Transit Inventory, Eligible Credit Card Receivables, Eligible Letter of Credit Inventory, Eligible Trade Receivables, Eligible Intellectual Property or reserves or criteria deducted in computing the Appraised Value of Eligible Inventory.

“Responsible Officer” means the chairman of the board, chief executive officer, chief operating officer, chief accounting officer, president, chief financial officer, senior vice president-finance, treasurer or assistant treasurer, controller, secretary, general counsel or associate general counsel of a Loan Party or any of the other individuals designated in writing to the Agent by an existing Responsible Officer of a Loan Party as an authorized signatory of any certificate or other document to be delivered hereunder. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of any Person or any of its Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to such Person’s stockholders, partners or members (or the equivalent of any thereof), or any option, warrant or other right to acquire any such dividend or other distribution or payment. Without limiting the foregoing, “Restricted Payments” with respect to any Person shall also include all payments made by such Person with any proceeds of a dissolution or liquidation of such Person.

“Restricted Subsidiary” means any Subsidiary of the Parent (including any Excluded Subsidiary) which is not an Unrestricted Subsidiary.

“Revolver Collateral” means all Collateral other than FILO Collateral.

“Revolving Borrowing” means each Canadian Revolving Borrowing and each U.S. Revolving Borrowing.

“Revolving Borrowing Base” means the Canadian Revolving Borrowing Base and the U.S. Revolving Borrowing Base, as applicable.

“Revolving Credit Extensions” means, the Canadian Revolving Credit Extensions and U.S. Revolving Credit Extensions, as applicable.

“Revolving Lender” means each Canadian Revolving Lender and each U.S. Revolving Lender, and, as the context requires, includes the Swing Line Lender.

“Revolving Loan” means any loan at any time made by any Revolving Lender (including, without limitation, any U.S. Revolving Loan and any Canadian Revolving Loan) pursuant to Section 2.01.

“Revolving Loan Cap” means the sum of the U.S. Revolving Loan Cap and Canadian Revolving Loan Cap.

“Revolving Loan Notice” means a notice of (a) a Revolving Borrowing, (b) a Conversion of Revolving Loans from one Type to the other, or (c) a continuation of LIBOR Rate Loans or CDOR Rate Loans, pursuant to Section 2.02(b), which, if in writing, shall be substantially in the form of Exhibit A-1 or Exhibit A-2, as applicable.

“Revolving Maturity Date” means October 11, 2024.

“RioCan JVCo” means RioCan-HBC Limited Partnership (f/k/a HBC JV Limited Partnership), an Ontario limited partnership.

“RioCan Joint Venture” shall mean that certain joint venture arrangement by and among the Parent, certain of its Real Estate Subsidiaries and RioCan Real Estate Investment Trust, with respect to contribution of certain Real Estate to RioCan JVCo and the conduct of certain business relating to the ownership and management of Real Estate.

“RP Conditions” means, at the time of determination with respect to any specified Restricted Payment, that (a) no Default or Event of Default then exists or would arise as a result of the making of such Restricted Payment, (b) after giving effect to such Restricted Payment, (i) the Pro Forma Availability Condition has been satisfied and (ii) the Consolidated Fixed Charge Coverage Ratio, as projected on a pro-forma basis for the twelve Fiscal Months preceding such Restricted Payment, is equal to or greater than 1.00:1.00; provided that the provisions of this clause (b)(ii) shall not be applicable if, after giving effect to such Restricted Payment, Pro Forma Excess Availability is, and is projected to be, greater than or equal to twenty percent (20%) of the Revolving Loan Cap (calculated without giving effect to the FILO Term Loan Push Down Reserve, if applicable). Prior to making any Restricted Payment which is subject to the RP Conditions, the Loan Parties shall deliver to the Agent evidence of satisfaction of the conditions contained in clause (b) above on a basis (including, without limitation, giving due consideration to results for prior periods) reasonably satisfactory to the Agent.

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc. and any successor thereto.

“Sale and Leaseback Transaction” has the meaning provided in Section 7.20.

“Sanctions” has the meaning provided in Section 5.29.

“Scheduled Unavailability Date” has the meaning specified in Section 3.03(b).

“Sarbanes-Oxley” means the Sarbanes-Oxley Act of 2002.

“Seasonal Advance Period” means, for each Fiscal Year following the Effective Date, a 120 consecutive day period selected by the Lead Borrower by notice to the Agent within 30 days after the end of each Fiscal Year, which period must (x) commence after February 15<sup>th</sup> of such Fiscal Year and (y) be completed on or before December 15<sup>th</sup> of such Fiscal Year; provided that, in no event shall the Lead Borrower select a period which commences prior to the date of notice from the Lead Borrower selecting such period; provided further, that, in the event that the Lead Borrower shall fail to select the Seasonal Advance Period in accordance with the foregoing for any Fiscal Year, the Seasonal Advance Period for such Fiscal Year for each Borrower shall be May 1<sup>st</sup> to August 28<sup>th</sup>; and further provided that if a Default or Event of Default then exists, there shall be no Seasonal Advance Period for such Fiscal Year; and provided further that the 120 consecutive day period selected by the Lead Borrower for a Seasonal Advance Period shall be the same for each Borrower. For the avoidance of doubt, no Seasonal Advance Period shall be in effect at any time that the FILO Term Loan is outstanding.

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“Secured Loan Parties” means, collectively, the Loan Parties that have delivered (or are required to deliver) one or more Security Documents. “Secured Loan Party” means any one of such Persons.

“Securities Laws” means 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 PCAOB and all applicable securities laws in each province and territory of Canada and the respective regulations, rules regulations, blanket orders and blanket rulings under such laws together with applicable published policy statements and notices of the securities regulator of each such province and territory.

“Security Agreement” means the Security Agreement dated as of the Original Closing Date among the U.S. Loan Parties and the Agent, for the benefit of the Credit Parties, as security for the Obligations.

“Security Documents” means the Canadian Security Documents, the Security Agreement, the Account Control Agreements, the Credit Card Notifications, the Permitted FILO Refinancing Debt Intercreditor Agreement, if applicable, the Confirmation Agreement, and each other security agreement or other instrument or document executed and delivered to the Agent pursuant to this Agreement or any other Loan Document granting a Lien to secure any of the Obligations.

“Security Threshold Amount” means \$5,000,000.

“Settlement Date” has the meaning provided in Section 2.14(a).

“Shareholders’ Equity” means, as of any date of determination, consolidated shareholders’ equity of the Parent and its Subsidiaries as of that date determined in accordance with GAAP or IFRS, as applicable.

“Shrink” means Inventory which has been lost, misplaced, stolen, or is otherwise unaccounted for.

“Signa Disposition Agreement” means the Opco SPA and the Propco SPA, collectively.

“Signa Disposition Transaction” means the sale and transfer of shares and certain receivables held by the Parent or any of its Affiliates in the Signa Propco Joint Ventures and the Signa Opco Joint Venture to Signa Holding or any of its Affiliates as a result of which the Parent and its Affiliates will cease to have any investment in the Signa Joint Ventures.

“Signa Holding” means Signa Holding GmbH.

“Signa Joint Ventures” means the Signa Opco Joint Venture and the Signa Propco Joint Ventures, collectively.

“Signa Joint Venture Transactions” means the Signa Opco Joint Venture Transaction and the Signa Propco Joint Venture Transaction, collectively.

“Signa Opco Joint Venture” means Luxembourg Investment Company 265 S.à.r.l, to be renamed European Department Store Holding S.à.r.l., a limited liability company under the laws of the Grand Duchy of Luxembourg.

“Signa Opco Joint Venture Transaction” means the contribution by the Parent of the Contributed Assets and the Equity Interests of certain Real Estate Subsidiaries to the Signa Opco Joint Venture, a newly formed joint venture with Signa Holding GmbH, with the Parent retaining, directly or indirectly, approximately 49.99% of the Equity Interests of the Signa Opco Joint Venture, and Guarantees in connection therewith as contemplated by, or necessary to effect, the Opco Implementation Agreement in an amount not to exceed the amount of Guarantees as of the date of the consummation of the Signa Opco Joint Venture Transaction.

“Signa Propco Joint Ventures” means, following the consummation of the Signa Propco Joint Venture Transactions, each of (a) HBS Global Properties Luxembourg S.à.r.l., a limited liability company under the laws of the Grand Duchy of Luxembourg, and its Subsidiaries and (b) HBC Luxembourg German Holding Company II S.à r.l., a limited liability company under the laws of the Grand Duchy of Luxembourg, and its Subsidiaries.

“Signa Propco Joint Venture Transaction” means the Share Split (as defined in the Propco Implementation Agreement), the creation of the Company EGA Shares (as defined in the Propco Implementation Agreement) (or other actions in accordance with the Propco Implementation Agreement to create the same economic result), the other steps contemplated by the Propco Implementation Agreement in connection with the Reorganization (as defined in the Propco Implementation Agreement) and the transfer of the Sold Shares (as defined in the Propco Implementation Agreement), and other dispositions or reorganizations as contemplated by the Propco Implementation Agreement.

“Simon JVCo” shall mean HBS Global Properties LLC, a Delaware limited liability company.

“Simon JVCo Lease Guaranties” shall mean the guaranty by the Parent of the obligations of a tenant under one or more and leases of Real Estate pursuant to which Simon JVCo (or a Subsidiary thereof) or a Real Estate Subsidiary is landlord.

“Simon Joint Venture” shall mean that certain joint venture arrangement by and among LT PropCo LLC, Saks & Company LLC and Simon Property Group, L.P., with respect to contribution of certain Real Estate to Simon JVCo and the conduct of certain business relating to the ownership and management of Real Estate.

“Sold Entity or Business” has the meaning set forth in the definition of “Consolidated EBITDA.”

“Solvent” and “Solvency” means, with respect to any Person after giving effect to the incurrence of each Credit Extension under this Agreement, (i) the fair value of the assets of the such Person and its Subsidiaries, taken as a whole, is not less than the amount that will be required to pay the total liabilities on existing debts, including contingent liabilities, of such Person and its Subsidiaries, taken as a whole, as they become absolute and matured, (ii) the present fair salable value of the assets of such Person and its Subsidiaries, taken as a whole, is not less than the amount that will be required to pay the probable liability on existing debts of such Person and its Subsidiaries, taken as a whole, as they become absolute and matured, (iii) such Person and its Subsidiaries are able to meet their obligations as they generally become due, (iv) such Person and its Subsidiaries have not ceased payment of their current obligations in the ordinary course of business as they generally become due, (v) the aggregate property of such Person and its Subsidiaries, at a fair valuation, is sufficient, or if disposed of at a fairly conducted sale under legal process, would be, sufficient to enable payment of all obligations of such Person and its Subsidiaries, due

and accruing due, (vi) such Person and its Subsidiaries, taken as a whole, are able to pay their debts as they become absolute and mature, (vii) such Person and its Subsidiaries are not engaged in a business or a transaction, and are not about to engage in a business or transaction, for which their properties and assets, taken as a whole, would constitute unreasonably small capital, and (viii) such Person is not “insolvent” within the meaning of Section 101(32) of the Bankruptcy Code and, in the case of any Canadian Loan Party, is not an “insolvent person” within the meaning of such term in the BIA, as applicable (it being understood and agreed that (x) the term “debts” as used in this definition includes any legal liability, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent and (y) “values of assets” shall mean the amount of which the assets (both tangible and intangible) in their entirety would change hands between a willing buyer and a willing seller, with a commercially reasonable period of time, each having reasonable knowledge of the relevant facts, with neither being under compulsion to act). The amount of all guarantees at any time shall be computed as the amount that, in light of all the facts and circumstances existing at the time, can reasonably be expected to become an actual or matured liability.

“Specified Debt” means Indebtedness in the form of notes issued under an indenture, or loans under credit agreements, indentures or other similar agreements or instruments, that is either unsecured or secured by Specified Junior Liens, and the aggregate principal amount of which does not exceed \$700,000,000; provided that (A) (1) the terms of such Indebtedness do not provide for any mandatory prepayment or redemption or sinking fund obligations prior to the Maturity Date unless the making of such prepayments or other obligations are subject to the satisfaction of the Payment Conditions (other than customary acceleration rights after an event of default and, to the extent such Indebtedness is amortizing, regularly scheduled principal payments in an amount not to exceed two percent (2%) of the total principal amount of such Indebtedness per annum), and (2) the covenants, events of default, guarantees, collateral and other terms of such Indebtedness are customary for similar facilities in light of then-prevailing market conditions (it being understood that such Indebtedness shall not include any affirmative or negative covenants that are more restrictive than those contained in this Agreement, but may contain financial covenants approved in writing by the Agent acting reasonably); (B) immediately before and immediately after giving effect to the incurrence of such Indebtedness, no Default or Event of Default shall have occurred and be continuing.

“Specified Equity Contribution” has the meaning provided in Section 8.04 hereof.

“Specified Junior Liens” means Liens on the Collateral securing Specified Debt on a junior and subordinate basis to the Liens securing the Obligations; provided that such Liens are at all times subject to an intercreditor agreement that is satisfactory to the Agent in its discretion.

“Specified Loan Party” means any Loan Party that is not then an “eligible contract participant” under the Commodity Exchange Act (determined prior to giving effect to Section 10.26).

“Specified Transaction” means a going private transaction in connection with the Parent’s public announcement on June 10, 2019 with respect to the June 10, 2019 proposal from certain Permitted Holders for the privatization of the Parent.

“Spot Rate” for a currency means the rate determined by the Agent or the L/C Issuer, as applicable, to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two Business Days prior to the date as of which the foreign exchange computation is made; provided that the Agent or the L/C Issuer may obtain such spot rate from another financial institution designated by the Agent or the L/C Issuer if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency; and

provided further that the L/C Issuer may use such spot rate quoted on the date as of which the foreign exchange computation is made in the case of any Letter of Credit denominated in an Optional Currency.

“SPV Parent” means a partnership or a limited liability company to be formed under the laws of Bermuda in connection with and as contemplated by the Company Reorganization.

“Standby Letter of Credit” means any Letter of Credit, including bank guarantees, that is not a Commercial Letter of Credit and that (a) is used in lieu or in support of performance guaranties or performance, surety or similar bonds (excluding appeal bonds) arising in the ordinary course of business, (b) is used in lieu or in support of stay or appeal bonds, (c) supports the payment of insurance premiums for reasonably necessary casualty insurance carried by any of the Loan Parties or their Restricted Subsidiaries, or (d) supports payment or performance for identified purchases or exchanges of products or services in the ordinary course of business.

“Stated Amount” means at any time the maximum amount for which a Letter of Credit may be honored.

“Statutory Reserve Rate” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the FRB to which the Agent is subject with respect to the Adjusted LIBOR Rate, for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the FRB). Such reserve percentages shall include those imposed pursuant to such Regulation D. LIBOR Rate Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“Store” means any retail store (which may include any Real Estate, fixtures, Equipment, Inventory and other property related thereto) operated, or to be operated, by any Loan Party.

“Subordinated Indebtedness” means Indebtedness which is expressly subordinated in right of payment to the prior Payment in Full of the Obligations and which is in form and on terms (including, but not limited to, terms restricting the exercise of rights by the holders of such Indebtedness) approved in writing by the Agent.

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the Equity Interests having ordinary voting power for the election of directors or other governing body are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of a Loan Party, but shall exclude all Excluded Subsidiaries.

“Substantial Liquidation” means either (a) the Liquidation of substantially all of the Collateral, or (b) the sale or other disposition of substantially all of the Collateral by the Loan Parties.

“Supported QFC” has the meaning specified in Section 10.31.

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity



contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Swap Obligations” means with respect to any Loan Party 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.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon quotations provided by any nationally recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“Swing Line Borrowing” means a borrowing of a Swing Line Loan pursuant to Section 2.04.

“Swing Line Lender” means Bank of America in its capacity as provider of Swing Line Loans (including acting through its Canada branch with respect to Swing Line Loans to the Canadian Borrower), or any successor swing line lender hereunder.

“Swing Line Loan” means, collectively, a Canadian Swing Line Loan or a U.S. Swing Line Loan.

“Swing Line Loan Notice” means a notice of a Swing Line Borrowing furnished to the Swing Line Lender at the applicable Agent’s Office pursuant to Section 2.04(b), which, if in writing, shall be substantially in the form of Exhibit B-1 or Exhibit B-2, as applicable.

“Swing Line Note” means, collectively, (a) the promissory note of the U.S. Borrower substantially in the form of Exhibit C-3, payable to the order of the Swing Line Lender, evidencing the Swing Line Loans made by the Swing Line Lender to the U.S. Borrower and (b) the promissory note of the Canadian Borrower substantially in the form of Exhibit C-4, payable to the order of the Swing Line Lender, evidencing the Swing Line Loans made by the Swing Line Lender to the Canadian Borrower.

“Swing Line Sublimit” means (a) as to the Canadian Borrower, an amount equal to the lesser of (i) \$45,000,000 and (ii) the Aggregate Canadian Revolving Commitments and (b) as to the U.S. Borrower, an amount equal to the lesser of (i) \$125,000,000 and (ii) the Aggregate U.S. Revolving Commitments. The Swing Line Sublimit is part of, and not in addition to, the Aggregate Revolving Commitments, the Aggregate Canadian Revolving Commitments and the Aggregate U.S. Revolving Commitments, as applicable. A permanent reduction of the Aggregate Revolving Commitments, the Aggregate Canadian Revolving Commitments and the Aggregate U.S. Revolving Commitments, as applicable, shall not require a corresponding pro rata reduction in the applicable Swing Line Sublimit; provided, however, that if the Aggregate Revolving Commitments, the Aggregate Canadian Revolving

Commitments and the Aggregate U.S. Revolving Commitments, as applicable, are reduced to an amount less than the applicable Swing Line Sublimit, then such Swing Line Sublimit shall be reduced to an amount equal to (or, at Lead Borrower's option, less than) the Aggregate Revolving Commitments, the Aggregate Canadian Revolving Commitments and the Aggregate U.S. Revolving Commitments, as applicable.

"Synthetic Lease Obligation" means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property (including sale and leaseback transactions), in each case, creating obligations that do not appear on the balance sheet of such Person but which, upon the application of any Debtor Relief Laws to such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Temporary Storage Facility" means facilities leased or rented by a Loan Party for a period of one year or less and at which the Secured Loan Parties store Inventory having an aggregate cost or value that does not exceed \$20,000,000 at any time (for all such facilities and Loan Parties).

"Termination Date" means the earliest to occur of (i) the Revolving Maturity Date, (ii) the date on which the maturity of the Obligations is accelerated (or deemed accelerated) and the Aggregate Commitments are irrevocably terminated (or deemed terminated) in accordance with ARTICLE VIII, or (iii) the termination of the Aggregate Commitments in accordance with the provisions of Section 2.06 hereof.

"Total Credit Extensions" means, as to any Lender at any time of determination, that portion of the Loans and L/C Obligations owed to such Lender.

"Total Revolving Commitments" means, as to any Lender, the sum of its Canadian Revolving Commitment and U.S. Revolving Commitment.

"Total Revolving Outstandings" means the aggregate Outstanding Amount of all Revolving Loans and all L/C Obligations.

"Total Outstandings" means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

"Trading with the Enemy Act" means the Trading With the Enemy Act (50 U.S.C. § 1 et seq., as amended).

"Type" means, with respect to a Loan, its character as a Base Rate Loan, a LIBOR Rate Loan, an Index Rate Loan or a CDOR Rate Loan.

"UCC" or "Uniform Commercial Code" shall have the meaning given to such term in the Security Agreement.

"UCP" means, 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).

“UFCA” has the meaning specified in Section 10.21(d).

“UFTA” has the meaning specified in Section 10.21(d).

“Unintentional Overadvance” means an Overadvance which, to the Agent’s knowledge, did not constitute an Overadvance when made but which has become an Overadvance resulting from changed circumstances beyond the control of the Credit Parties, including, without limitation, a reduction in the Appraised Value of property or assets included in the Combined Borrowing Base or misrepresentation by the Loan Parties.

“United States” and “U.S.” mean the United States of America.

“Unreimbursed Amount” has the meaning specified in Section 2.03(c)(i).

“Unrestricted Subsidiary” means any Subsidiary of the Parent (other than the Borrowers), designated by the board of directors of the Lead Borrower as an Unrestricted Subsidiary pursuant to Section 6.17 subsequent to the date hereof, in each case, until such Person ceases to be an Unrestricted Subsidiary in accordance with Section 6.17 or ceases to be a Subsidiary of the Parent; provided that (i) no Subsidiary may be designated as an Unrestricted Subsidiary if any of its assets are of the type included in the calculation of the Combined Borrowing Base immediately prior to such Subsidiary’s being designated as an Unrestricted Subsidiary, unless the Payment Conditions are satisfied after giving effect to such Subsidiary’s being designated as an Unrestricted Subsidiary, (ii) at no time shall any creditor of any such Subsidiary have any claim (whether pursuant to a guarantee or otherwise) against any Loan Party or any of its other Subsidiaries (other than another Unrestricted Subsidiary) in respect of any Indebtedness or other obligation of any such Person (provided that the provisions of this clause (ii) shall not prohibit any Permitted Indebtedness of a Loan Party under clause (aa) of the definition thereof); (iii) no Loan Party or any of its Subsidiaries (other than another Unrestricted Subsidiary) shall become a general partner of any such Subsidiary; (iv) no such Subsidiary shall own any Equity Interests of, or own or hold any Lien on any property of, any Loan Party or any other Subsidiary of any Loan Party (other than another Unrestricted Subsidiary), and (v) no Unrestricted Subsidiary shall be a party to any transaction or arrangement with any Loan Party or such Loan Party’s Subsidiaries (other than its other Unrestricted Subsidiaries) that would not be permitted by Section 7.09, and (vi) no Loan Party nor such Loan Party’s Subsidiaries (other than its other Unrestricted Subsidiaries) shall have any obligation to subscribe for additional Equity Interests of any Unrestricted Subsidiary or to preserve or maintain the financial condition of any Unrestricted Subsidiary (provided that the provisions of this clause (d) shall not prohibit any Investments in any Unrestricted Subsidiary to the extent expressly permitted in this Agreement). Without limiting the foregoing, the following shall constitute Unrestricted Subsidiaries (a) each Subsidiary of the Parent that is identified on Schedule 5.14 as of the Effective Date as an Unrestricted Subsidiary, and (b) each Real Estate Subsidiary provided that (i) no Subsidiary may be designated as an Unrestricted Subsidiary if it is not also an “Excluded Subsidiary” for the purposes of the Permitted Term Loan Debt and/or any other Indebtedness of the Loan Parties.

“USA PATRIOT Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

“U.S. Agent’s Office” means the address set forth on Schedule 10.02 with respect to U.S. Credit Extensions, notices to be furnished with respect thereto and payments to be made thereon, or such other address as the Agent may from time to time notify the Lead Borrower and the Lenders.

“U.S. Availability” means, as of any date of determination thereof by the Agent, the result, if a positive number, equal to the lesser of (a)(i) the U.S. Revolving Loan Cap minus (ii) aggregate unpaid balance of the U.S. Credit Extensions, minus (iii) the then amount of any Allocated Availability derived from the U.S. Loan Parties and allocated to the Canadian Borrower, plus (iv) the then amount of any Allocated Availability derived from the Canadian Borrower and allocated to the U.S. Borrower, and (b)(i) the Revolving Loan Cap minus (ii) the Total Revolving Outstandings on such date.

“U.S. Borrower” has the meaning specified in the introductory paragraph hereto.

“U.S. Collection Account” has the meaning provided in Section 6.12.

“U.S. Credit Party” or “U.S. Credit Parties” means (a) individually, (i) each U.S. Revolving Lender and its Affiliates, (ii) each U.S. FILO Term Lender, its branches and Affiliates, (iii) the Agent and its Affiliates, (iv) each L/C Issuer, (v) the Arrangers, (vi) each holder of any Other U.S. Liabilities, and (vii) the successors and permitted assigns of each of the foregoing, and (b) collectively, all of the foregoing, in each case, to the extent relating to the services provided to, and obligations owing by or guaranteed by, the U.S. Loan Parties.

“U.S. FILO Borrowing Base” means, at any time of calculation, a Dollar Equivalent amount equal to:

(a) the Cost of Eligible Inventory of the U.S. Loan Parties (other than Inventory described in clause (b) below), net of Inventory Reserves, multiplied by 5.0% multiplied by the Appraised Value of Eligible Inventory;

plus

(b) the lesser of (i) Cost of Eligible In-Transit Inventory of the U.S. Loan Parties, multiplied by 5.0% multiplied by the Appraised Value of Eligible In-Transit Inventory, or (ii) when combined with amounts available under clause (b) of the “Canadian FILO Borrowing Base”, clause (d) of the “U.S. Revolving Borrowing Base” and clause (d) of the “Canadian Revolving Borrowing Base”, twenty percent (20%) of the Combined Borrowing Base;

plus

(c) the lesser of (i) the product of (x) the FILO IP Advance Rate multiplied by (y) the Appraised Value of Eligible Intellectual Property of the U.S. Loan Parties or (ii) when combined with amounts available under clause (c) of the “Canadian FILO Borrowing Base”, ten percent (10%) of the Combined Borrowing Base;

minus

(d) the then amount of all Availability Reserves relating to the U.S. Loan Parties (provided that such Availability Reserves shall not be duplicative of Availability Reserves maintained against the U.S. Revolving Borrowing Base).

“U.S. FILO Term Lenders” means the Lenders having U.S. FILO Term Loan Commitments from time to time or at any time.

“U.S. FILO Term Loan” means an extension of credit by a U.S. FILO Term Lender to the U.S. Borrower under Article II in the form of a U.S. FILO Term Loan.

“U.S. FILO Term Loan Commitments” means, as to each U.S. FILO Term Lender, its obligation to make the U.S. FILO Term Loan to the U.S. Borrower on the FILO Term Loan Draw Date pursuant to Article II in the amount set forth opposite such U.S. FILO Term Lender’s name on Schedule 2.01.

“U.S. FILO Term Loan Note” means a promissory note made by the U.S. Borrower in favor of a FILO Term Lender evidencing U.S. FILO Term Loan made by such FILO Term Lender, substantially in the form of Exhibit C-5.

“U.S. FILO Term Loan Push Down Reserve” shall mean a reserve against the U.S. Revolving Borrowing Base in an amount equal to the amount by which, if any, (a) the aggregate outstanding principal amount of U.S. FILO Term Loan exceeds (b) the U.S. FILO Borrowing Base at such time.

“U.S. Index Rate” means, for any day, a floating rate equal to the highest of (i) the annual rate of interest determined by the Agent which is equal to the annual rate of interest announced from time to time by Bank of America (acting through its Canada branch), as being its reference rate in effect on such date (or if such date is not a Business Day, on the Business Day immediately preceding such date) for determining interest rates on Dollar denominated commercial loans made by it in Canada, in each case regardless of whether such bank actually charges such rate of interest in connection with extensions of credit in Dollars to debtors, (ii) the sum of 0.50% per annum plus the Federal Funds Rate, and (iii) the LIBOR Rate for a one month interest period as determined on such day, plus 1.00%. Notwithstanding the foregoing, if such U.S. Index Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement. Each change in any interest rate provided for in the Agreement based upon the U.S. Index Rate, the Federal Funds Rate or the LIBOR Rate, respectively, shall take effect at the time of such change.

“U.S. Index Rate Loan” means a Loan or portion thereof denominated in US Dollars bearing interest at a rate based on the U.S. Index Rate.

“U.S. L/C Advance” means with respect to each U.S. Revolving Lender, such U.S. Revolving Lender’s funding of its participation in any U.S. L/C Borrowing in accordance with its Applicable Percentage.

“U.S. L/C Borrowing” means an extension of credit resulting from a drawing under any U.S. Letter of Credit which has not been reimbursed on or prior to the date required to be reimbursed by the U.S. Borrower pursuant to Section 2.03(c)(i) or refinanced as a U.S. Revolving Borrowing.

“U.S. L/C Credit Extension” means, with respect to any U.S. Letter of Credit, the issuance thereof or extension of the expiry thereof, or the increase of the amount thereof.

“U.S. L/C Obligations” means, at any date of determination and without duplication, the aggregate Stated Amount of all outstanding U.S. Letters of Credit plus the aggregate of all Unreimbursed Amounts under U.S. Letters of Credit, including all U.S. L/C Borrowings.

“U.S. Letter of Credit” means each Letter of Credit issued hereunder for the account of the U.S. Borrower.

“U.S. Liabilities” means (a) all advances to, and debts (including principal, interest, fees, costs, and expenses), liabilities, obligations, covenants, indemnities, and duties of, any U.S. Loan Party arising under any Loan Document or otherwise with respect to any U.S. Revolving Loan, U.S. FILO Term Loan or U.S. Letter of Credit (including payments in respect of reimbursement of disbursements, interest thereon and obligations to provide cash collateral therefor), whether direct or indirect (including those

acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest, fees, costs, expenses and indemnities that accrue after the commencement by or against any U.S. Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding, (b) obligations under the Facility Guaranty executed by the U.S. Loan Parties, and (c) any Other U.S. Liabilities.

“U.S. Lenders” means the Lenders having U.S. Revolving Commitments or holding a portion of the U.S. FILO Term Loan from time to time or at any time.

“U.S. Person” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“U.S. Revolving Borrowing” means a borrowing consisting of simultaneous U.S. Revolving Loans of the same Type and, in the case of LIBOR Rate Loans, having the same Interest Period made by each of the U.S. Revolving Lenders pursuant to Section 2.01.

“U.S. Revolving Borrowing Base” means, at any time of calculation, an amount equal to:

(a) the face amount of Eligible Credit Card Receivables of the U.S. Loan Parties multiplied by 95%;

plus

(b) the face amount of Eligible Trade Receivables of the U.S. Loan Parties multiplied by 85%;

plus

(c) the Cost of Eligible Inventory of the U.S. Loan Parties, net of Inventory Reserves, multiplied by 90% (or during the Seasonal Advance Period, so long as no portion of the FILO Term Loan is outstanding, 92.5%) multiplied by the Appraised Value of Eligible Inventory;

plus

(d) the lesser of (i) Cost of Eligible In-Transit Inventory of the U.S. Loan Parties, multiplied by 90% (or during the Seasonal Advance Period, so long as no portion of the FILO Term Loan is outstanding, 92.5%) multiplied by the Appraised Value of Eligible In-Transit Inventory, or (ii) twenty percent (20%) of the sum of clauses (a), (b), and (c) of this definition;

minus

(e) the then amount of all Availability Reserves applicable to the U.S. Loan Parties;

minus

(f) the U.S. FILO Term Loan Push Down Reserve, if applicable.

“U.S. Revolving Commitments” means, as to each U.S. Revolving Lender, its obligation to (a) make U.S. Revolving Loans to the U.S. Borrower pursuant to Section 2.01, (b) purchase participations in U.S. L/C Obligations, and (c) purchase participations in U.S. Swing Line Loans, in an aggregate principal

amount at any one time outstanding not to exceed the amount set forth opposite such U.S. Revolving Lender's name on Schedule 2.01 or in the Assignment and Assumption pursuant to which such U.S. Revolving Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"U.S. Revolving Credit Extensions" mean each of the following: (a) a U.S. Revolving Borrowing, (b) a U.S. Swing Line Loan, and (c) a U.S. L/C Credit Extension.

"U.S. Revolving Lenders" means the Lenders having U.S. Revolving Commitments from time to time or at any time.

"U.S. Revolving Loan" means an extension of credit by a U.S. Revolving Lender to the U.S. Borrower under Article II in the form of a U.S. Revolving Loan or a U.S. Swing Line Loan.

"U.S. Revolving Loan Cap" means, at any time of determination, the lesser of (a) the Aggregate U.S. Revolving Commitments or (b) the U.S. Revolving Borrowing Base.

"U.S. Loan Parties" means, collectively, the U.S. Borrower and all Guarantors organized under the laws of the United States or any state thereof. "U.S. Loan Party" means any one of such Persons.

"U.S. Revolving Note" means a promissory note made by the U.S. Borrower in favor of a U.S. Revolving Lender evidencing U.S. Revolving Loans made by such U.S. Revolving Lender, substantially in the form of Exhibit C-1.

"U.S. Revolving Overadvance" means a U.S. Revolving Credit Extension to the extent that, immediately after the making of such U.S. Revolving Credit Extension, the aggregate principal balance of all U.S. Revolving Credit Extensions then outstanding exceeds the sum of (i) the U.S. Revolving Loan Cap as then in effect, minus (ii) the then amount of any Allocated Availability derived from the U.S. Loan Parties and allocated to the Canadian Borrower, plus (iii) the then amount of any Allocated Availability derived from the Canadian Borrower and allocated to the U.S. Borrower.

"U.S. Subsidiary" means any direct or indirect Restricted Subsidiary organized under the laws of United States, any state thereof or the District of Columbia (including Puerto Rico but excluding, for the avoidance of doubt, any other Subsidiary organized under the laws of any other territory) other than (i) a U.S. Subsidiary of a foreign Subsidiary that is a CFC or (ii) any U.S. Subsidiary that has no material assets other than the Equity Interests of one or more CFCs.

"U.S. Swing Line Loan" means a Swing Line Loan made to the U.S. Borrower pursuant to the provisions of Section 2.04.

"U.S. Tax Compliance Certificate" has the meaning specified in Section 3.01(e)(ii)(B)(III).

"U.S. Total Revolving Outstandings" means, without duplication, the aggregate Outstanding Amount of all U.S. Revolving Loans and all U.S. L/C Obligations.

"WEPPA" means the *Wage Earner Protection Program Act* (Canada), as from time to time in effect.

"Write-Down and Conversion Powers" means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In

Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

“WURA” means the *Winding-Up and Restructuring Act* (Canada), as amended.

**1.02 Other Interpretive Provisions.** With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory rules, regulations, orders and provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including,” the words “to” and “until” each mean “to but excluding,” and the word “through” means “to and including.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(d) For purposes of any Collateral located in the Province of Quebec or charged by any Deed of Hypothec (or any other Loan Document) and for all other purposes pursuant to which the interpretation or construction of a Loan Document may be subject to the laws of the Province of Quebec or a court or tribunal exercising jurisdiction in the Province of Quebec, (i) “personal property” shall be deemed to include “movable property”, (ii) “real property” shall be deemed to include “immovable property” and an “easement” shall be deemed to include a “servitude”, (iii) “tangible property” shall be deemed to include “corporeal property”, (iv) “intangible property” shall be deemed to include “incorporeal property”, (v) “security interest”, “mortgage” and “lien” shall be deemed to include a “hypothec”, “prior claim”, “reservation of ownership”, and a “resolutive clause”, (vi) all references to filing, registering or recording under the UCC or PPSA shall be deemed to include publication under the *Civil Code of Quebec*, and all references to releasing any Lien shall be deemed to include a release, discharge and *mainlevée* of



a hypothec, “prior claim”, “reservation of ownership”, and a “resolutive clause” (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, (x) an “agent” shall be deemed to include a “mandatary”, (xi) “joint and several” shall be deemed to include “solidary”, (xii) “gross negligence or willful misconduct” shall be deemed to be “intentional or gross fault”, (xiii) “priority” shall be deemed to include “rank” or “prior claim”, as applicable, and (xiv) all references to “foreclosure” shall be deemed to include “the exercise of a hypothecary right”.

(e) Any reference herein to a, transfer, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company, as if it were a transfer, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder (and each division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

### **1.03 Accounting Terms**

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP or IFRS, as applicable, applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein.

(b) Changes in GAAP or IFRS. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP or IFRS, as applicable, as in effect from time to time; provided that if the Lead Borrower notifies the Agent that the Lead Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Effective Date in GAAP or IFRS or in the application thereof (including through adoption of IFRS) on the operation of such provision (or if the Agent notifies the Lead Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or IFRS or in the application thereof (including through the adoption of IFRS), then until such notice shall have been withdrawn or such provision is amended in accordance herewith, (i) such provision shall be interpreted on the basis of GAAP or IFRS as in effect and applied immediately before such change shall have become effective, and (ii) the Lead Borrower shall include with the financial statements and other financial information and calculations required to be delivered to the Agent and the Lenders hereunder a reconciliation of such financial statements, information and calculations before and after giving effect to such change in GAAP or IFRS. Upon the adoption of IFRS by any Borrower, all references to GAAP herein shall be deemed references to IFRS.

(c) Treatment of Leases. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any change in accounting for leases pursuant to GAAP resulting from the implementation of FASB ASU No. 2016-02, Leases (Topic 842), to the extent such adoption would require treating any lease (or

similar arrangement conveying the right to use) as a Capital Lease Obligation where such lease (or similar arrangement) would not have been required to be so treated under GAAP prior to adoption.

**1.04 Rounding.** Any financial ratios required to be maintained by any Loan Party pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to two places more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

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

**1.06 Letter of Credit Amounts.** Unless otherwise specified, all references herein to the amount of a Letter of Credit at any time shall be deemed to be the Dollar Equivalent of 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 Issuer Documents related thereto, provides for one or more automatic increases in the Stated Amount thereof, the amount of such Letter of Credit shall be deemed to be the Dollar Equivalent of 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.

**1.07 Additional Optional Currencies.**

(a) The Lead Borrower may from time to time request that Letters of Credit be issued in a currency other than those specifically listed in the definition of “Optional Currency;” provided that such requested currency is a lawful currency (other than Dollars) that is readily available and freely transferable and convertible into Dollars, and such request shall be subject to the approval of the Agent and the L/C Issuer.

(b) Any such request shall be made to the Agent not later than 11:00 a.m., twenty (20) Business Days prior to the date of the desired Letters of Credit (or such other time or date as may be agreed by the Agent and the L/C Issuer, in their sole discretion). In the case of any such request, the Agent shall promptly notify the L/C Issuer thereof. The L/C Issuer shall notify the Agent, not later than 11:00 a.m., ten (10) Business Days after receipt of such request whether it consents, in its sole discretion, to the issuance of Letters of Credit, as the case may be, in such requested currency.

(c) Any failure by the L/C Issuer to respond to such request within the time period specified in the preceding clause (b) shall be deemed to be a refusal by the L/C Issuer to permit Letters of Credit to be issued in such requested currency. If the Agent and the L/C Issuer consent to the issuance of Letters of Credit in such requested currency, the Agent shall so notify the Lead Borrower and such currency shall thereupon be deemed for all purposes to be an Optional Currency hereunder for purposes of any Letter of Credit issuances. If the Agent shall fail to obtain consent to any request for an additional currency under this Section 1.07, the Agent shall promptly so notify the Lead Borrower.

**1.08 Exchange Rates; Currency Translation.**

(a) The Agent or the L/C Issuer, as applicable, shall determine the Spot Rates to be used for calculating Dollar Equivalent amounts of Loans and Outstanding Amounts denominated in Optional Currencies. Such Spot Rates shall become effective as of any such date of

determination and shall be the Spot Rates employed in converting any amounts between the applicable currencies until the next date to so occur. Except for purposes of financial statements delivered by Loan Parties hereunder or calculating financial covenants hereunder (including baskets related thereto, as applicable) or except as otherwise provided herein, the applicable amount of any currency (other than Dollars) for purposes of the Loan Documents shall be such Dollar Equivalent amount as so determined by the Agent or the applicable L/C Issuer, as applicable.

(b) Any amount specified in this Agreement or any of the other Loan Documents to be in Dollars shall also include the Dollar Equivalent in any Optional Currency. Wherever in this Agreement in connection with a Borrowing, conversion, continuation or prepayment of a LIBOR Rate Loan or the issuance, amendment or extension of a Letter of Credit, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Borrowing, LIBOR Rate Loan or Letter of Credit is denominated in an Optional Currency, such amount shall be the relevant Dollar Equivalent of such Dollar amount (rounded to the nearest unit of such Optional Currency, with 0.5 of a unit being rounded upward), as determined by the Agent or the L/C Issuer, as the case may be.

(c) Notwithstanding the foregoing, for purposes of any determination under ARTICLE VI, Article VII or Article VIII or any determination under any other provision of this Agreement expressly requiring the use of a currency exchange rate, all amounts incurred, outstanding or proposed to be incurred or outstanding in currencies other than Dollars shall be translated into Dollars at the Spot Rate.

## **ARTICLE II**

### **THE COMMITMENTS AND CREDIT EXTENSIONS**

#### **2.01 Revolving Loans; FILO Term Loan.**

(a) Subject to the terms and conditions set forth herein, each U.S. Revolving Lender severally agrees to make U.S. Revolving Loans to the U.S. Borrower from time to time, on any Business Day during the Availability Period, in an aggregate principal amount not to exceed at any time outstanding the lesser of (x) the amount of the U.S. Revolving Commitment of such U.S. Revolving Lender, and (y) such U.S. Revolving Lender's Applicable Percentage of the U.S. Revolving Borrowing Base; subject in each case to the following limitations:

(i) except as provided in Section 2.01(f), after giving effect to any U.S. Revolving Borrowing, the U.S. Total Revolving Outstandings shall not exceed U.S. Availability,

(ii) after giving effect to any U.S. Revolving Borrowing, the aggregate Outstanding Amount of the U.S. Revolving Loans of any U.S. Revolving Lender, plus such Revolving Lender's Applicable Percentage of the Outstanding Amount of all U.S. L/C Obligations, plus such U.S. Revolving Lender's Applicable Percentage of the Outstanding Amount of all Swing Line Loans made to the U.S. Borrower shall not exceed the U.S. Revolving Commitment of such U.S. Revolving Lender, and

(iii) The Outstanding Amount of all U.S. L/C Obligations shall not at any time exceed the Letter of Credit Sublimit.

Within the limits of the U.S. Revolving Commitment for each U.S. Revolving Lender, and subject to the other terms and conditions hereof, the U.S. Borrower may borrow under this Section 2.01, prepay under Section 2.05, and re-borrow under this Section 2.01.

(b) Subject to the terms and conditions set forth herein, each Canadian Revolving Lender severally agrees to make Canadian Revolving Loans to the Canadian Borrower, from time to time, on any Business Day during the Availability Period, in an aggregate principal amount not to exceed at any time outstanding the lesser of (x) the amount of the Canadian Revolving Commitment of such Canadian Revolving Lender, and (y) such Canadian Revolving Lender's Applicable Percentage of the Canadian Revolving Borrowing Base; subject in each case to the following limitations:

(i) except as provided in Section 2.01(f), after giving effect to any Canadian Revolving Borrowing, the Canadian Total Revolving Outstandings shall not exceed Canadian Availability,

(ii) after giving effect to any Canadian Revolving Borrowing, the aggregate Outstanding Amount of the Canadian Revolving Loans of any Canadian Revolving Lender, plus the Applicable Percentage of the Outstanding Amount of all Canadian L/C Obligations for such Canadian Revolving Lender, shall not exceed the Canadian Revolving Commitment of such Canadian Revolving Lender, and

(iii) the Outstanding Amount of all Canadian L/C Obligations shall not at any time exceed the Letter of Credit Sublimit.

Within the limits of the Canadian Revolving Commitment for each Canadian Revolving Lender, and subject to the other terms and conditions hereof, the Canadian Borrower may borrow under this Section 2.01, prepay under Section 2.05, and re-borrow under this Section 2.01.

(c) At such time as the FILO Term Loan Draw Conditions have been met and the Borrowers have requested the funding of the U.S. FILO Term Loan, each U.S. FILO Term Lender severally agrees to make its portion of the U.S. FILO Term Loan to the U.S. Borrower on the FILO Term Loan Draw Date, which shall be a Business Day, in an amount not to exceed the amount of such FILO Term Lender's FILO Term Loan Commitment. Once repaid, no portion of a U.S. FILO Term Loan may be reborrowed. For the avoidance of doubt, no existing Revolving Lender shall have an obligation to increase their respective commitments to satisfy the Lead Borrower's request for funding of the U.S. FILO Term Loan.

(d) At such time as the FILO Term Loan Draw Conditions have been met and the Borrowers have requested the funding of the Canadian FILO Term Loan, each Canadian FILO Term Lender severally agrees to make its portion of the Canadian FILO Term Loan to the Canadian Borrower on the FILO Term Loan Draw Date, which shall be a Business Day, in an amount not to exceed the amount of such FILO Term Lender's FILO Term Loan Commitment. Once repaid, no portion of a Canadian FILO Term Loan may be reborrowed. For the avoidance of doubt, no existing Revolving Lender shall have an obligation to increase their respective commitments to satisfy the Lead Borrower's request for funding of the Canadian FILO Term Loan.

(e) As a condition precedent to the funding of the FILO Term Loan, (i) the Lead Borrower shall deliver to the Agent a certificate of each Loan Party dated as of the FILO Term Loan Draw Date signed by a Responsible Officer of such Loan Party (A) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to the FILO Term Loan, and (B) in the case of the applicable Borrower, certifying that, before and after giving effect to the FILO Term Loan,

the FILO Term Loan Draw Conditions have been satisfied, (ii) the Borrowers, the Agent, and any Person that becomes a FILO Term Lender shall have executed and delivered a Lender Joinder Agreement; (iii) the applicable Borrower shall have paid such fees and other compensation to the FILO Term Lenders as the Lead Borrower and each such Person may agree; (iv) the applicable Borrower shall have paid such arrangement fees to Bank of America as the Lead Borrower and the Agent may agree; and (v) the Borrowers and the FILO Term Lenders shall have delivered such other instruments, documents and agreements as the Agent may reasonably have requested. The Agent shall promptly notify the Lead Borrower and the FILO Term Lenders of the final allocation of the FILO Term Loan and the FILO Term Loan Draw Date. On the FILO Term Loan Draw Date Schedule 2.01 shall be updated to reflect the FILO Term Loan Commitments and Applicable Percentages of the FILO Term Lenders. The parties hereto agree to take such further actions as Agent or the Borrowers shall reasonably request to enter into the FILO Term Loan Amendment.

(f) (i) Subject to the terms and conditions set forth herein, and except to the extent (A) a Canadian Revolving Overadvance or a U.S. Revolving Overadvance then exists or would exist immediately after given effect thereto, (B) a Default or Event of Default then exists or would exist immediately after giving effect thereto, or (C) Availability is less than twenty percent (20%) of the Revolving Loan Cap prior to and immediately after giving effect thereto: (1) the U.S. Borrower may utilize the entire U.S. Revolving Borrowing Base and the U.S. Borrower may utilize excess availability under the Canadian Revolving Loan Cap to borrow amounts in excess of the U.S. Revolving Borrowing Base (but not to exceed the Aggregate U.S. Revolving Commitments), provided, that such utilization will reduce Canadian Availability dollar for dollar and (2) the Canadian Borrower may utilize the entire Canadian Revolving Borrowing Base and the Canadian Borrower may utilize excess availability under the U.S. Revolving Loan Cap to borrow amounts in excess of the Canadian Revolving Borrowing Base (but not to exceed the Aggregate Canadian Revolving Commitments), provided, that such utilization will reduce U.S. Availability dollar for dollar (each such utilization of availability under another Revolving Borrowing Base under this clause (e) being referred to as “Allocated Availability”).

(ii) If any Borrower desires to utilize Allocated Availability, the Lead Borrower shall furnish the Agent with five (5) Business Days prior written notice of such request, which notice must be received by the Agent not later than 11:00 a.m. on such Business Day. The Agent shall give prompt notice to the Revolving Lenders of such request. Each use of Allocated Availability shall be in a principal amount of \$10,000,000 or a whole multiple of \$5,000,000 in excess thereof. Each such notice by the Lead Borrower shall specify (i) the Borrower from whom Allocated Availability is being used and the Borrower to whom the Allocated Availability shall be made available, (ii) the amount of Allocated Availability to be utilized, and (iii) the requested date of the effectiveness of the use of the Allocated Availability (which, subject to Section 2.05(1), may be no more frequently than monthly and may only become effective on the date of delivery of a Borrowing Base Certificate for the month ending immediately preceding the use of Allocated Availability). Each notice by the Lead Borrower shall be irrevocable and the use of Allocated Availability so requested shall remain in force and effect until the earlier of (A) the date that the Lead Borrower delivers written notice to the Agent of any reallocation of Allocated Availability (which notice must be furnished at the times set forth above and must contain the information required in the original request to utilize Allocated Availability), or (B) the occurrence of any event described in clause (iii) of this Section 2.01(f). For clarity, any Revolving Credit Extension made to a Borrower using the Allocated Availability of another Borrower shall constitute a direct obligation of the Borrower receiving the Revolving Credit Extension.

(iii) If at any time Availability is less than twenty percent (20%) of the Revolving Loan Cap, any Borrowings made in reliance on the availability of another Revolving Borrowing Base pursuant to this Section 2.01(f) must be immediately repaid in full and thereafter, no Borrowings may be made in reliance on the availability of another Revolving Borrowing Base until

Availability has exceeded twenty percent (20%) of the Revolving Loan Cap for thirty (30) consecutive days.

## **2.02 Borrowings, Conversions and Continuations of Loans.**

(a) All U.S. Revolving Loans and the FILO Term Loan may be made in Dollars or Cdn\$. All Swing Line Loans made to the U.S. Borrower shall be only made in Dollars and shall bear interest only at the Base Rate. U.S. Revolving Loans and the U.S. FILO Term Loan made in Dollars (other than Swing Line Loans) shall be either Base Rate Loans or LIBOR Rate Loans as the U.S. Borrower may request subject to and in accordance with this Section 2.02. U.S. Revolving Loans and the U.S. FILO Term Loan made in Cdn\$ shall only be CDOR Rate Loans.

(b) All Canadian Revolving Loans and the Canadian FILO Term Loan shall be made in either Dollars or Cdn\$. All Swing Line Loans made to the Canadian Borrower shall be only made in Canadian Dollars and shall only be Canadian Index Rate Loans. Canadian Revolving Loans and the Canadian FILO Term Loan made to the Canadian Borrower shall be either CDOR Rate Loans or Canadian Index Rate Loans (if made in Cdn\$) or LIBOR Rate Loans or U.S. Index Rate Loans (if made in Dollars) as the Canadian Borrower may request subject to and in accordance with this Section 2.02.

(c) Each Borrowing, each Conversion of Revolving Loans or the Outstanding Amount of the FILO Term Loan from one Type to the other, and each continuation of LIBOR Rate Loans or CDOR Rate Loans shall be made upon the Lead Borrower's irrevocable notice to the applicable Agent's Office, which may be given by telephone. Each such notice must be received by the Agent not later than 11:00 a.m. (i) three (3) Business Days prior to the requested date of any Borrowing of, Conversion to or continuation of LIBOR Rate Loans or CDOR Rate Loans or of any Conversion of LIBOR Rate Loans or CDOR Rate Loans to Prime Rate Loans, and (ii) (x) so long as such Business Day is not a banking holiday in the United States and the applicable notice is received by the Agent not later than 11:00 a.m. on the requested date of such Borrowing of Prime Rate Loans, on the same Business Day any Borrowing of Prime Rate Loans is requested, or (y) otherwise, one Business Day prior to the requested date of any Borrowing of Prime Rate Loans; provided, however, that that if the Lead Borrower wishes to request any Revolving Borrowing to be made to a Borrower, or continued or converted, in currency other than that utilized in such Borrower's jurisdiction of organization (i.e. for the U.S. Borrower, Dollars and for the Canadian Borrower, Canadian Dollars), the applicable notice must be received not later than 11:00 a.m. four (4) Business Days prior to the requested date of such Borrowing (provided that Borrowings by the Canadian Borrower in Dollars are not subject to the four (4) day notice period but rather will be made upon notice described in clauses (d)(i) and (d)(ii) above) and if the Lead Borrower wishes to request LIBOR Rate Loans or CDOR Rate Loans having an Interest Period (or CDOR Period, as applicable) other than one, two, three or six months in duration as provided in the definition of "Interest Period" (or "CDOR Period", as applicable), the applicable notice must be received by the Agent not later than 11:00 a.m. four (4) Business Days prior to the requested date of such Borrowing, Conversion or continuation, whereupon the Agent shall give prompt notice to the Lenders of such request and determine whether the requested Interest Period (or CDOR Period, as applicable) is acceptable to all of them. Not later than 11:00 a.m., three (3) Business Days before the requested date of such Borrowing, Conversion or continuation, the Agent shall notify the Lead Borrower (which notice may be by telephone) whether or not the Dollars or Canadian Dollars are available and whether or not the requested Interest Period has been consented to by all the Lenders. Each telephonic notice by the Lead Borrower pursuant to this Section 2.02(c) must be confirmed promptly by delivery to the Agent of a written Revolving Loan Notice or FILO Term Loan Notice, as applicable, appropriately completed and signed by a Responsible Officer of the Lead Borrower. Each Borrowing of, Conversion to or continuation of LIBOR Rate Loans or CDOR Rate Loans shall be in a principal amount of \$5,000,000 (or Cdn\$5,000,000) or a whole multiple of \$1,000,000 (or

Cdn\$1,000,000) in excess thereof except that any Borrowing of, Conversion of or continuation of (i) the U.S. FILO Term Loan shall be in the entire Outstanding Amount of the U.S. FILO Term Loan and (ii) the Canadian FILO Term Loan shall be in the entire Outstanding Amount of the Canadian FILO Term Loan. Except as provided in Sections 2.03(c) and 2.04(c), each Borrowing of or Conversion to Prime Rate Loans shall be in such minimum amounts as the Agent may require. Each Revolving Loan Notice (whether telephonic or written) shall specify (i) whether the Lead Borrower is requesting a Revolving Borrowing, a Conversion of Revolving Loans from one Type to the other, or a continuation of LIBOR Rate Loans or CDOR Rate Loans (ii) the requested date of the Borrowing, Conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Revolving Loans to be borrowed, Converted or continued, (iv) the Type of Revolving Loans to be borrowed or to which existing Revolving Loans are to be Converted, (v) if applicable, the duration of the Interest Period (or CDOR Period, as applicable) with respect thereto, (vi) whether such Revolving Loan is to be made in Dollars or in Canadian Dollars, and (vii) the Borrower for whom the Revolving Loan is requested. If the Lead Borrower fails to specify a Type of Revolving Loan in a Revolving Loan Notice or if the Lead Borrower fails to give a timely notice requesting a Conversion or continuation, then the applicable Revolving Loans shall be made as, or Converted to, applicable Prime Rate Loans. Any such automatic Conversion to Prime Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable LIBOR Rate Loans or CDOR Rate Loans. If the Lead Borrower requests a Borrowing of, Conversion to, or continuation of LIBOR Rate Loans or CDOR Rate Loans in any such Revolving Loan Notice, but fails to specify an Interest Period (or CDOR Period, as applicable), it will be deemed to have specified an Interest Period (or CDOR Period, as applicable) of one month. If the FILO Term Loan Draw Date occurs, any FILO Term Loan Notice (whether telephonic or written) made on the FILO Term Loan Draw Date or thereafter with respect to any Conversion or continuation of the FILO Term Loan shall specify (i) whether the Lead Borrower is requesting the initial FILO Term Loan Borrowing, a Conversion of the then Outstanding Amount of the FILO Term Loan from one Type to the other, or a continuation of the FILO Term Loan as a LIBOR Rate Loan or CDOR Rate Loan, (ii) the requested date of the FILO Term Loan Borrowing, Conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of the FILO Term Loan to be borrowed, Converted or continued, (iv) the Type of FILO Term Loan to be borrowed or to which the then Outstanding Amount of the FILO Term Loan is to be Converted, (v) if applicable, the duration of the Interest Period (or CDOR Period, as applicable) with respect thereto, (vi) whether such FILO Term Loan is to be made in Dollars or in Canadian Dollars, and (vii) the Borrower for whom the FILO Term Loan is requested. If the Lead Borrower fails to specify a Type of FILO Term Loan in a Term Loan Notice or if the Lead Borrower fails to give a timely notice requesting a Conversion or continuation, then the applicable FILO Term Loan shall be made as, or Converted to, applicable Prime Rate Loans. Any such automatic Conversion to Prime Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the then Outstanding Amount of the FILO Term Loan as a LIBOR Rate Loan or a CDOR Rate Loan. If the Lead Borrower requests a Borrowing of, Conversion to, or continuation of the FILO Term Loan as a LIBOR Rate Loan or a CDOR Rate Loan in any such FILO Term Loan Notice, but fails to specify an Interest Period (or CDOR Period, as applicable), it will be deemed to have specified an Interest Period (or CDOR Period, as applicable) of one month. Notwithstanding anything to the contrary herein, a Swing Line Loan may not be Converted to a LIBOR Rate Loan or CDOR Rate Loan.

(d) Following receipt of a Revolving Loan Notice, the Agent shall promptly notify each Revolving Lender of the amount of its Applicable Percentage of the applicable Revolving Loans, and if no timely notice of a Conversion or continuation is provided by the Lead Borrower, the Agent shall notify each Revolving Lender of the details of any automatic Conversion to Prime Rate Loans described in Section 2.02(c). Following receipt of a FILO Term Loan Notice, the Agent shall promptly notify each FILO Term Lender of the amount of its Applicable Percentage of the applicable FILO Term

Loan, and if no timely notice of a Conversion or continuation is provided by the Lead Borrower, the Agent shall notify each FILO Term Lender of the details of any automatic Conversion to Prime Rate Loans described in Section 2.02(c). In the case of a Borrowing, each Lender (or an Affiliate or branch of such Lender acting on behalf of such Lender) shall make the amount of its Revolving Loan or FILO Term Loan, as applicable available to the Agent in immediately available funds at the Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Revolving Loan Notice or FILO Term Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Credit Extension of Revolving Loans, Section 4.01), the Agent shall make all funds so received available to the applicable Borrower in like funds as received by the Agent either by (i) crediting the account of the applicable Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Agent by the Lead Borrower; provided, however, that if, on the date the Revolving Loan Notice with respect to such Borrowing is given by the Lead Borrower, there are L/C Borrowings outstanding, then the proceeds of such Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings, and second, shall be made available to the Borrowers as provided above.

(e) The Agent, without the request of the Borrowers, may advance any interest, fee, service charge (including direct wire fees), expenses, or other payment to which any Credit Party is entitled from the Loan Parties pursuant hereto or any other Loan Document and may charge the same to the Loan Account notwithstanding that an Overadvance may result thereby. The Agent shall advise the Lead Borrower of any such advance or charge promptly after the making thereof. Such action on the part of the Agent shall not constitute a waiver of the Agent's rights and the Borrowers' obligations under Section 2.05(c). Any amount which is added to the principal balance of the Loan Account as provided in this Section 2.02(e) shall bear interest at the interest rate then and thereafter applicable to Prime Rate Loans.

(f) Except as otherwise provided herein, a LIBOR Rate Loan or CDOR Rate Loan or may be continued or Converted only on the last day of an Interest Period (or CDOR Period, as applicable) for such LIBOR Rate Loan or CDOR Rate Loan. During the existence of a Default or an Event of Default, no Loans may be requested as, Converted to or continued as LIBOR Rate Loans or CDOR Rate Loans without the consent of the Required Lenders.

(g) The Agent shall promptly notify the Lead Borrower and the Lenders of the interest rate applicable to any Interest Period (or CDOR Period, as applicable) for LIBOR Rate Loans or CDOR Rate Loans upon determination of such interest rate. At any time that Prime Rate Loans are outstanding, the Agent shall notify the Lead Borrower and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate or Index Rate promptly following the public announcement of such change.

(h) After giving effect to all Revolving Borrowings, all Conversions of Revolving Loans from one Type to the other, and all continuations of Revolving Loans as the same Type, there shall not be more than eight (8) Interest Periods (or CDOR Periods, as applicable) in effect for each Borrower with respect to each Type of Revolving Loan consisting of LIBOR Rate Loans or CDOR Rate Loans.

(i) The Agent, the Revolving Lenders, the Swing Line Lender and the L/C Issuer shall have no obligation to make any Loan or to provide any Letter of Credit if an Overadvance would result. The Agent may, in its Reasonable Credit Judgment, make Permitted Overadvances without the consent of the any Borrower, the Lenders, the Swing Line Lender and the L/C Issuer and each Borrower and each Lender and L/C Issuer shall be bound thereby. Any Permitted Overadvance may,



but shall not be required to, constitute a Swing Line Loan. A Permitted Overadvance is for the account of the Borrowers and shall constitute a Prime Rate Loan and an Obligation and shall be repaid by the Borrowers in accordance with the provisions of Section 2.05(c). The making of any such Permitted Overadvance on any one occasion shall not obligate the Agent or any Lender to make or permit any Permitted Overadvance on any other occasion or to permit such Permitted Overadvances to remain outstanding. The making by the Agent of a Permitted Overadvance shall not modify or abrogate any of the provisions of Section 2.03 regarding the Revolving Lenders' obligations to purchase participations with respect to Letter of Credits or of Section 2.04 regarding the Revolving Lenders' obligations to purchase participations with respect to Swing Line Loans. The Agent shall have no liability for, and no Loan Party or Credit Party shall have the right to, or shall, bring any claim of any kind whatsoever against the Agent with respect to Unintentional Overadvances regardless of the amount of any such Overadvance(s).

## **2.03 Letters of Credit.**

### **(a) The Letter of Credit Commitment.**

(i) Subject to the terms and conditions set forth herein, (A) the L/C Issuer agrees, in reliance upon the agreements of the Revolving Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period from the Effective Date until the Letter of Credit Expiration Date, to issue Letters of Credit in Dollars or one or more Optional Currencies for the account of any Loan Party on its own behalf or on behalf of any of its Restricted Subsidiaries, and to amend or extend Letters of Credit previously issued by it, in accordance with Section 2.03(b) below, and (2) to honor drawings under the Letters of Credit; and (B) the Revolving Lenders severally agree to participate in Letters of Credit issued for the account of a Loan Party (including on behalf of its Restricted Subsidiaries) and any drawings thereunder; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (w) the U.S. Total Revolving Outstandings shall not exceed the U.S. Revolving Loan Cap and the Canadian Total Revolving Outstandings shall not exceed the Canadian Revolving Loan Cap, as applicable, (x) the Total Revolving Outstandings shall not exceed the Revolving Loan Cap, (y) the aggregate Outstanding Amount of the Revolving Loans of any Revolving Lender, plus such Revolving Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations, plus such Revolving Lender's Applicable Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Revolving Lender's Total Revolving Commitments, and (z) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit. Each request by the Lead Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrowers that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrowers' ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrowers may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. All Existing Letters of Credit shall be deemed to have been issued pursuant hereto, and from and after the Effective Date shall be subject to and governed by the terms and conditions hereof. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary of the Parent, the applicable Borrowers shall be obligated to reimburse the applicable L/C Issuer hereunder for any and all drawings under such Letter of Credit. The Borrowers hereby acknowledge that the issuance of Letters of Credit for the account of a Subsidiary of the Parent inures to the benefit of the Borrowers, and that the Borrowers' business derives substantial benefits from the businesses of such Subsidiaries.

(ii) The L/C Issuer shall not issue any Letter of Credit, if:

(A) subject to Section 2.03(b)(iii), the expiry date of such requested Standby Letter of Credit would occur more than twelve months after the date of issuance or last extension, unless the L/C Issuer and the Agent have approved such expiry date; or

(B) the expiry date of such requested Commercial Letter of Credit would occur more than 120 days after the date of issuance, unless the L/C Issuer and the Agent have approved such expiry date; or

(C) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless either such Letter of Credit is Cash Collateralized on or prior to the date of issuance of such Letter of Credit (or such later date as to which the Agent may agree) or all the Revolving Lenders have approved such expiry date; or

(D) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from issuing such Letter of Credit, or any applicable Laws applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Effective Date and which the L/C Issuer in good faith deems material to it;

(E) the issuance of such Letter of Credit would violate one or more policies of the L/C Issuer applicable to letters of credit generally;

(F) such Letter of Credit is to be denominated in a currency other than Dollars or an Optional Currency, except as may be approved by the Agent and the L/C Issuer, each in their sole discretion;

(G) the L/C Issuer does not as of the issuance date of such requested Letter of Credit issue Letters of Credit in the requested currency;

(H) such Letter of Credit contains any provisions for automatic reinstatement of the Stated Amount after any drawing thereunder; or

(I) any Revolving Lender is at that time a Defaulting Lender, unless the L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the L/C Issuer (in its sole discretion) with the applicable Borrower or such Revolving Lender to eliminate the L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.16(a)(iv)) with respect to the Defaulting Lender arising from either (x) the Letter of Credit then proposed to be issued or (y) that Letter of Credit and all other L/C Obligations as to which the L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion.

(iii) The L/C Issuer shall not amend any Letter of Credit (A) if the L/C Issuer would not be permitted at such time to issue such Letter of Credit in its amended form under the terms hereof (unless such amendment is to reduce the face amount of such Letter of Credit, shorten the term of such Letter of Credit or eliminate any automatic renewal feature contained in such Letter of Credit or

renew such Letter of Credit) or (B) if the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(iv) The L/C Issuer shall act on behalf of the Revolving Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the L/C Issuer shall have all of the benefits and immunities (A) provided to the Agent in Article IX with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term “Agent” as used in Article IX included the L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuer.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Lead Borrower delivered to the L/C Issuer (with a copy to the Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Lead Borrower. Such Letter of Credit Application may be sent by facsimile, by mail, by overnight courier, by electronic transmission using the system provided by the L/C Issuer, by personal delivery or by any other means acceptable to the L/C Issuer. Such Letter of Credit Application must be received by the L/C Issuer and the Agent not later than 11:00 a.m. at least two (2) Business Days (or such other date and time as the Agent and the L/C Issuer may agree in a particular instance in their 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 Letter of Credit Application shall specify in form and detail reasonably satisfactory to the L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount and currency thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the Borrower or the Subsidiary for whose account the Letter of Credit is being issued, and (H) such other matters as the L/C Issuer may reasonably require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the L/C Issuer (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as the L/C Issuer may reasonably require. Additionally, the Borrowers shall furnish to the L/C Issuer and the Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the L/C Issuer or the Agent may reasonably require.

(ii) Subject to the provisions of Section 2.03(b)(iv) hereof, promptly after receipt of any Letter of Credit Application, the L/C Issuer will confirm with the Agent (by telephone or in writing) that the Agent has received a copy of such Letter of Credit Application from the Lead Borrower and, if not, the L/C Issuer will provide the Agent with a copy thereof. Unless the L/C Issuer has received written notice from any Revolving Lender, the Agent or any Loan Party, at least one 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 Article IV shall not then be satisfied or unless the L/C Issuer would not be permitted, or would have no obligation, at such time to issue such Letter of Credit under the terms hereof (by reason of the provisions of Section 2.03(a)(ii) or otherwise), then, subject to the terms and conditions hereof, the L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the applicable Borrower (or the applicable Subsidiary) or enter into the applicable amendment, as the case may be, in each case in accordance with the L/C Issuer's usual and customary business practices. Immediately upon the issuance or amendment of each Letter of Credit, each Revolving Lender shall be

deemed to (without any further action), and hereby irrevocably and unconditionally agrees to, purchase from the L/C Issuer, without recourse or warranty, a risk participation in such Letter of Credit in an amount equal to the product of such Revolving Lender's Applicable Percentage times the Stated Amount of such Letter of Credit. Upon any change in the Total Revolving Commitments under this Agreement, it is hereby agreed that with respect to all L/C Obligations, there shall be an automatic adjustment to the participations hereby created to reflect the new Applicable Percentages of the assigning and assignee Revolving Lenders.

(iii) If the Lead Borrower so requests in any applicable Letter of Credit Application, the L/C Issuer 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 L/C Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Standby Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Non-Extension Notice Date") in each such twelve-month period to be agreed upon at the time such Standby Letter of Credit is issued. Unless otherwise directed by the L/C Issuer, the Lead Borrower shall not be required to make a specific request to the L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Revolving Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to permit the extension of such Standby Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that the L/C Issuer shall not permit any such extension if (A) the L/C Issuer has determined that it would not be permitted, or would have no obligation, at such time to issue such Standby Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of Section 2.03(a)(ii) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven (7) Business Days before the Non-Extension Notice Date (1) from the Agent that the Required Revolving Lenders have elected not to permit such extension or (2) from the Agent, any Revolving Lender or the Lead Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, and in each such case directing the L/C Issuer not to permit such extension.

(iv) Any L/C Issuer (other than Bank of America or any of its Affiliates) shall notify the Agent in writing on each Business Day of all Letters of Credit issued on the prior Business Day by such L/C Issuer, provided that (A) until the Agent advises any such L/C Issuer that the provisions of Section 4.02 are not satisfied, or (B) the aggregate amount of the Letters of Credit issued in any such week exceeds such amount as shall be agreed by the Agent and the L/C Issuer, such L/C Issuer shall be required to so notify the Agent in writing only once each week of the Letters of Credit issued by such L/C Issuer during the immediately preceding week as well as the daily amounts outstanding for all Letters of Credit issued by it for the prior week, such notice to be furnished on such day of the week as the Agent and such L/C Issuer may agree. The L/C Issuer will also deliver (contemporaneously with the notification set forth in the first sentence hereof) to the Lead Borrower and the Agent a true and complete copy of such Letter of Credit or amendment.

(v) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the L/C Issuer will also deliver to the Lead Borrower and the Agent a true and complete copy of such Letter of Credit or amendment.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the L/C Issuer shall notify the Lead Borrower and the Agent thereof. In the case of a Letter of Credit denominated in an Optional Currency, the applicable Borrower

shall reimburse the L/C Issuer in such Optional Currency, unless (A) the L/C Issuer (at its option) shall have specified in such notice that it will require reimbursement in Dollars, or (B) in the absence of any such requirement for reimbursement in Dollars, the applicable Borrower shall have notified the L/C Issuer promptly following receipt of the notice of drawing that such Borrower will reimburse the L/C Issuer in Dollars. In the case of any such reimbursement in Dollars of a drawing under a Letter of Credit denominated in an Optional Currency, the L/C Issuer shall notify the applicable Borrower of the Dollar Equivalent of the amount of the drawing promptly following the determination thereof. The Borrowers may elect to reimburse the L/C Issuer in cash through the Agent in an amount equal to the amount of such drawing (A) on the date on which the Lead Borrower receives notice of any payment by the L/C Issuer under a Letter of Credit, if the Lead Borrower receives notice by 1:00 p.m., New York City time on such date, or (B) on the next Business Day if notice is not received by 1:00 p.m. on the date on which some notice is received (each such date described in the foregoing clauses (A) and (B), an “Honor Date”). If the Borrowers fail to so reimburse the L/C Issuer by such time on the relevant Honor Date, the Agent shall promptly notify each Revolving Lender of the Honor Date, the amount of the unreimbursed drawing (the “Unreimbursed Amount”), and the amount of such Revolving Lender’s Applicable Percentage thereof. In such event, the Lead Borrower shall be deemed to have requested a Canadian Revolving Borrowing or a U.S. Revolving Borrowing, as applicable, of Prime Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Prime Rate Loans, but subject to the amount of the unutilized portion of the Canadian Revolving Loan Cap, U.S. Revolving Loan Cap or the Revolving Loan Cap, and the conditions set forth in Section 4.02 (other than the delivery of a Revolving Loan Notice). Any notice given by the L/C Issuer or the Agent pursuant to this Section 2.03(c)(i) 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.

(ii) Each Revolving Lender shall upon any notice from the Agent pursuant to Section 2.03(c)(i) make funds available to the Agent (and the Agent may apply Cash Collateral provided for this purpose) for the account of the L/C Issuer in Dollars or in an Optional Currency (if applicable) at the Agent’s Office in an amount equal to its Applicable Percentage of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Revolving Lender that so makes funds available shall be deemed to have made a Canadian Revolving Loan or a U.S. Revolving Loan, as applicable, that is a Prime Rate Loan to the applicable Borrower in such amount. The Agent shall remit the funds so received to the L/C Issuer.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Borrowing of Prime Rate Loans because the conditions set forth in Section 4.02 cannot be satisfied or for any other reason, the applicable Borrower shall be deemed to have incurred from the L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate for Prime Rate Loans. In such event, each Revolving Lender’s payment to the Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Revolving Lender in satisfaction of its participation obligation under this Section 2.03.

(iv) Until each Revolving Lender funds its Revolving Loan or L/C Advance pursuant to this Section 2.03(c) to reimburse the L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Revolving Lender’s Applicable Percentage of such amount shall be solely for the account of the L/C Issuer.

(v) Each Revolving Lender's obligation to make Revolving Loans or L/C Advances to reimburse the L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Revolving Lender may have against the L/C Issuer, any Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default or Event of Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Revolving Lender's obligation to make Revolving Loans pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 4.02 (other than delivery by the Lead Borrower of a Revolving Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrowers to reimburse the L/C Issuer for the amount of any payment made by the L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Revolving Lender fails to make available to the Agent for the account of the L/C Issuer any amount required to be paid by such Revolving Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), without limiting the other provisions of this Agreement, the L/C Issuer shall be entitled to recover from such Revolving Lender (acting through the Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at a rate per annum equal to the applicable Bank Rate, plus any administrative, processing or similar fees customarily charged by the L/C Issuer in connection with the foregoing. If such Revolving Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Revolving Lender's Revolving Loan included in the relevant Revolving Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the L/C Issuer submitted to any Revolving Lender (through the Agent) with respect to any amounts owing under this clause (vi) shall be conclusive absent manifest error.

(d) Repayment of Participations.

(i) At any time after the L/C Issuer has made a payment under any Letter of Credit and has received from any Revolving Lender its L/C Advance in respect of such payment in accordance with Section 2.03(c), if the L/C Issuer, or the Agent for the account of the L/C Issuer, receives any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrowers or otherwise, including proceeds of Cash Collateral applied thereto by the Agent pursuant to Section 2.03(g)), the L/C Issuer shall distribute any payment it receives to the Agent and the Agent will distribute to such Revolving Lender its Applicable Percentage thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Revolving Lender's L/C Advance was outstanding) in the same funds as those received by the Agent.

(ii) If any payment received by the L/C Issuer or by Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the L/C Issuer in its discretion), each Revolving Lender shall pay to the Agent for the account of the L/C Issuer its Applicable Percentage thereof on demand of the Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Revolving Lender, at a rate per annum equal to the applicable Bank Rate from time to time in effect. The obligations of the Revolving Lenders under this clause shall survive the Payment in Full of the Obligations and the termination of this Agreement.

(e) Obligations Absolute. The obligation of the Borrowers to reimburse the L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute,

unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrowers or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) waiver by the L/C Issuer of any requirement that exists for the L/C Issuer's protection and not the protection of the Borrowers or any waiver by the L/C Issuer which does not in fact materially prejudice the Borrowers;

(v) any honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;

(vi) any payment made by the L/C Issuer 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 if presentation after such date is authorized by the UCC, the ISP or the UCP, as applicable;

(vii) any payment by the L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law;

(viii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrowers or any of their Subsidiaries;

(ix) any adverse change in the relevant exchange rates or in the availability of the relevant Optional Currency to the Borrowers or any of their Subsidiaries or in the relevant currency markets generally; or

(x) the fact that any Default or Event of Default shall have occurred and be continuing.

The Lead Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of non-compliance with the Lead Borrower's instructions or other irregularity, the Lead Borrower will promptly notify the L/C Issuer.

(f) Role of L/C Issuer. Each Revolving Lender and each Borrower agree that, in paying any drawing under a Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuer, the Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable to any Loan Party or to any Revolving Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Revolving Lenders or the Required Revolving Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence, bad faith or willful misconduct; (iii) any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit or any error in interpretation of technical terms; (iv) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document, or (v) any action, neglect or omission under or in connection with any Letter of Credit or Issuer Documents, including, without limitation, the issuance or amendment of any Letter of Credit, the failure to issue or amend any Letter of Credit, or the honoring or dishonoring of any demand under any Letter of Credit, and such action or neglect or omission will be binding upon the Loan Parties and the Revolving Lenders; provided that the Borrowers may have a claim against the L/C Issuer, and the L/C Issuer may be liable to the applicable Borrower, to the extent, but only to the extent, of any direct, as opposed to punitive, consequential or exemplary, damages suffered by the applicable Borrower as determined pursuant to a final and non-appealable judgment of a court of competent jurisdiction were caused by the L/C Issuer's willful misconduct or gross negligence or the L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary or transferee of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. The Borrowers hereby assume all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrowers' pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. In furtherance and not in limitation of the foregoing, the L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. The L/C Issuer may send a Letter of Credit 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.

(g) Cash Collateral. If, as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, the applicable Borrower shall, in each case, immediately Cash Collateralize the then Outstanding Amount of all L/C Obligations in an amount equal to 103% of the Outstanding Amount of all L/C Obligations, pursuant to documentation in form and substance reasonably satisfactory to the Agent and the L/C Issuer (which documents are hereby consented to by the Revolving Lenders). Sections 2.05, 2.06(c) and 8.02(c) set forth certain additional requirements to deliver Cash Collateral hereunder. Each of the Borrowers hereby grants to the Agent a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing to secure all Obligations. Such cash collateral shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America. If at any time the Agent determines that any funds held as cash collateral are subject to any right or claim of any Person other than the Agent or that the total amount of such funds is less than the aggregate Outstanding Amount of all L/C Obligations, the applicable Borrower will, forthwith upon demand by the Agent, pay to the Agent, as additional funds to be deposited as cash



collateral, an amount equal to the excess of (x) such aggregate Outstanding Amount over (y) the total amount of funds, if any, then held as cash collateral that the Agent determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit for which funds are on deposit as cash collateral, such funds shall be applied to reimburse the L/C Issuer for the amount of such drawing and, to the extent not so applied, shall thereafter be applied to satisfy other Obligations. The Agent may, at any time and from time to time after the initial deposit of Cash Collateral, request that additional Cash Collateral be provided in order to protect against the results of exchange rate fluctuations.

(h) Applicability of ISP and UCP; Limitation of Liability. Unless otherwise expressly agreed by the L/C Issuer and the Lead 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 L/C Issuer shall not be responsible to the Borrowers for, and the L/C Issuer's rights and remedies against the Borrowers shall not be impaired by, any action or inaction of the L/C Issuer required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the Law or any order of a jurisdiction where the L/C Issuer 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 chooses such law or practice.

(i) Letter of Credit Fees. Each Borrower shall pay to the Agent for the account of each Revolving Lender in accordance with its Applicable Percentage a Letter of Credit fee (the "Letter of Credit Fee") for each Letter of Credit issued for the account of a Loan Party or any Subsidiary equal to the Applicable Rate times the daily Stated Amount under each such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit). For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of the Letter of Credit shall be determined in accordance with Section 1.06. Letter of Credit Fees shall be (i) due and payable on the fourth Business Day after the end of each April, July, October and January, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand, and (ii) computed on a quarterly basis in arrears. If there is any change in the Applicable Rate during any quarter, the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such Fiscal Quarter that such Applicable Rate was in effect. Notwithstanding anything to the contrary contained herein, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate as provided in Section 2.08(b) hereof.

(j) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer. Each Borrower shall pay directly to the L/C Issuer for its own account a fronting fee with respect to each Letter of Credit, at a rate equal to 0.125% per annum, computed on the daily amount available to be drawn under such Letter of Credit and on a quarterly basis in arrears. Such fronting fees shall be due and payable on the fourth Business Day after the end of each April, July, October and January, commencing with the first such date to occur after the issuance of such Letter of Credit on the Letter of Credit Expiration Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of the Letter of Credit shall be determined in accordance with Section 1.06. In addition, the Borrowers shall pay directly to the L/C Issuer for its own account the customary issuance, presentation, negotiation, amendment, extension and other processing fees, and other standard costs and charges, of the L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(k) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

#### **2.04 Swing Line Loans.**

(a) The Swing Line. Subject to the terms and conditions set forth herein, the Swing Line Lender agrees, in reliance upon the agreements of the other Revolving Lenders set forth in this Section 2.04, to make loans (each such loan, a “Swing Line Loan”) to the applicable Borrower from time to time on any Business Day during the Availability Period in Dollars (with respect to the U.S. Borrower) and in Canadian Dollars (with respect to the Canadian Borrower) in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit, notwithstanding the fact that such Swing Line Loans, when aggregated with the Applicable Percentage of the Outstanding Amount of Revolving Loans and L/C Obligations of the Revolving Lender acting as Swing Line Lender, may exceed the amount of such Revolving Lender’s Revolving Commitment; provided, however, that after giving effect to any Swing Line Loan, (w) the U.S. Total Revolving Outstandings shall not exceed the U.S. Revolving Loan Cap and (ii) the Canadian Total Revolving Outstandings shall not exceed the Canadian Revolving Loan Cap, as applicable, (x) the Total Revolving Outstandings shall not exceed the Revolving Loan Cap, (y) the aggregate Outstanding Amount of the Revolving Loans of any Revolving Lender, plus such Revolving Lender’s Applicable Percentage of the Outstanding Amount of all L/C Obligations, plus such Revolving Lender’s Applicable Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Revolving Lender’s Total Revolving Commitments, and (z) the Outstanding Amount of the Swing Line Loans shall not exceed the Swing Line Sublimit. and provided, further, that the Borrowers shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan, and provided further that the Swing Line Lender shall not be obligated to make any Swing Line Loan if it shall determine (which determination shall be conclusive and binding absent manifest error) that it has, or by such Credit Extension may have, Fronting Exposure. Within the foregoing limits, and subject to the other terms and conditions hereof, each Borrower may borrow under this Section 2.04, prepay under Section 2.05, and re-borrow under this Section 2.04. Immediately upon the making of a Swing Line Loan, each Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Revolving Lender’s Applicable Percentage multiplied by the amount of such Swing Line Loan. The Swing Line Lender shall have all of the benefits and immunities (A) provided to the Agent in Article IX with respect to any acts taken or omissions suffered by the Swing Line Lender in connection with Swing Line Loans made by it or proposed to be made by it as if the term “Agent” as used in Article IX included the Swing Line Lender with respect to such acts or omissions, and (B) as additionally provided herein with respect to the Swing Line Lender.

(b) Borrowing Procedures. Each Swing Line Borrowing shall be made upon the Lead Borrower’s irrevocable notice to the Swing Line Lender and the Agent (in each case, at the applicable Agent’s Office), which may be given by telephone. Each such notice must be received by the Swing Line Lender and the Agent not later than 11:00 a.m. (or, with respect to a notice requesting a U.S. Swing Line Loan, 1:00 p.m.) on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of \$100,000, (ii) the requested borrowing date, which shall be a Business Day, (iii) the Borrower for whom the Swing Line Loan is requested, and (iv) the amount and currency of such Swing Line Loan. Each such telephonic notice must be confirmed promptly by delivery to the Swing Line Lender and the Agent of a written Swing Line Loan Notice, appropriately completed and signed by a Responsible Officer of the Lead Borrower. Promptly after receipt by the Swing Line Lender of any telephonic Swing Line Loan Notice, the Swing Line Lender will confirm with the Agent (by telephone or in writing) that the Agent has also received such Swing Line Loan Notice and, if not, the Swing Line Lender will notify the Agent (by telephone or in writing) of the

contents thereof. Unless the Swing Line Lender has received notice (by telephone or in writing) from the Agent at the request of the Required Revolving Lenders prior to 2:00 p.m. on the date of the proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the provisos to the first sentence of Section 2.04(a), or (B) that one or more of the applicable conditions specified in Article IV is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender may, not later than 4:00 p.m. on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line Loan available to the applicable Borrower either by (i) crediting the account of the applicable Borrower on the books of Bank of America with the amount of such funds or (ii) wire transferring such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Swing Line Lender by the Lead Borrower; provided, however, that if, on the date of the proposed Swing Line Loan, there are L/C Borrowings outstanding, then the proceeds of such Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings, and second, shall be made available to the applicable Borrower as provided above.

(c) Refinancing of Swing Line Loans.

(i) In addition to settlements required under Section 2.14 hereof, the Swing Line Lender at any time in its sole and absolute discretion may request, on behalf of the applicable Borrower (which hereby irrevocably authorize the Swing Line Lender to so request on their behalf), that each Revolving Lender make a Prime Rate Loan in an amount equal to such Revolving Lender's Applicable Percentage of the amount of Swing Line Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Revolving Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of Prime Rate Loans, but subject to the unutilized portion of the Revolving Loan Cap and the conditions set forth in Section 4.02. The Swing Line Lender shall furnish the Lead Borrower with a copy of the applicable Revolving Loan Notice promptly after delivering such notice to the Agent. Each Revolving Lender shall make an amount equal to its Applicable Percentage of the amount specified in such Revolving Loan Notice available to the Agent in immediately available funds for the account of the Swing Line Lender at the Agent's Office not later than 1:00 p.m. on the day specified in such Revolving Loan Notice, whereupon, subject to Section 2.04(c)(ii), each Revolving Lender that so makes funds available shall be deemed to have made a Prime Rate Loan to the applicable Borrower in such amount. The Agent shall remit the funds so received to the Swing Line Lender.

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Revolving Borrowing in accordance with Section 2.04(c)(i), the request for Prime Rate Loans submitted by the Swing Line Lender as set forth herein shall be deemed to be a request by the Swing Line Lender that each of the applicable Revolving Lenders fund its risk participation in the relevant Swing Line Loan and each Revolving Lender's payment to the Agent for the account of the Swing Line Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Revolving Lender fails to make available to the Agent for the account of the Swing Line Lender any amount required to be paid by such Revolving Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swing Line Lender shall be entitled to recover from such Revolving Lender (acting through the Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the applicable Bank Rate and a rate determined by the Swing Line Lender in accordance with banking industry rules on interbank compensation plus any administrative, processing or similar fees customarily charged by the Swing Line Lender in connection with the foregoing. If such Revolving Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Revolving Lender's

Revolving Loan included in the relevant Revolving Borrowing or funded participation in the relevant Swing Line Loan, as the case may be. A certificate of the Swing Line Lender submitted to any Revolving Lender (through the Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Revolving Lender's obligation to make Revolving Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Revolving Lender may have against the Swing Line Lender, the Borrowers or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default or an Event of Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Revolving Lender's obligation to make Revolving Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 4.02. No such funding of risk participations shall relieve or otherwise impair the obligation of the applicable Borrower to repay Swing Line Loans, together with interest as provided herein.

(d) Repayment of Participations.

(i) At any time after any Revolving Lender has purchased and funded a risk participation in a Swing Line Loan, if the Swing Line Lender, or the Agent on behalf of the Swing Line Lender, receives any payment on account of such Swing Line Loan, the Swing Line Lender will distribute such payment to the Agent and the Agent shall distribute to each such Revolving Lender its Applicable Percentage of such payment (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Revolving Lender's risk participation was funded) in the same funds as those received by the Swing Line Lender.

(ii) If any payment received by the Swing Line Lender, or the Agent on behalf of the Swing Line Lender, in respect of principal or interest on any Swing Line Loan is required to be returned by the Swing Line Lender under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the Swing Line Lender in its discretion), each Revolving Lender shall pay to the Swing Line Lender its Applicable Percentage thereof on demand of the Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the applicable Bank Rate. The Agent will make such demand upon the request of the Swing Line Lender. The obligations of the Revolving Lenders under this clause shall survive the Payment in Full of the Obligations and the termination of this Agreement.

(e) Interest for Account of Swing Line Lender. The Swing Line Lender shall be responsible for invoicing the applicable Borrower for interest on the Swing Line Loans. Until each Revolving Lender funds its Prime Rate Loan or risk participation pursuant to this Section 2.04 to refinance such Revolving Lender's Applicable Percentage of any Swing Line Loan, interest in respect of such Applicable Percentage shall be solely for the account of the Swing Line Lender.

(f) Payments Directly to Swing Line Lender. The Borrowers shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.

**2.05 Prepayments.**

(a) The Borrowers may, upon irrevocable notice from the Lead Borrower to the Agent, at any time or from time to time voluntarily prepay Revolving Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Agent not later than 11:00

a.m. (A) three (3) Business Days prior to any date of prepayment of LIBOR Rate Loans and CDOR Rate Loans, and (B) on the date of prepayment of Prime Rate Loans; and (ii) any prepayment of LIBOR Rate Loans and CDOR Rate Loans shall be in a principal amount of \$5,000,000 (or Cdn\$5,000,000) or a whole multiple of \$1,000,000 (or Cdn\$1,000,000) in excess thereof, or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and, if LIBOR Rate Loans or CDOR Rate Loans, the Interest Period(s) (or CDOR Period(s), as applicable) of such Loans. The Agent will promptly notify each Revolving Lender of its receipt of each such notice, and of the amount of such Revolving Lender's Applicable Percentage of such prepayment. If such notice is given by the Lead Borrower, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a LIBOR Rate Loan or CDOR Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Subject to Section 2.16, each such prepayment shall be applied to the Revolving Loans of the Revolving Lenders in accordance with their respective Applicable Percentages.

(b) The Borrowers may, upon irrevocable notice from the Lead Borrower to the Swing Line Lender (with a copy to the Agent), at any time or from time to time, voluntarily prepay Swing Line Loans in whole or in part without premium or penalty; provided that such notice must be received by the Swing Line Lender and the Agent not later than 1:00 p.m. on the date of the prepayment. Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Lead Borrower, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(c) If for any reason (other than on account of Permitted Overadvances) the Total Revolving Outstandings at any time exceed the Revolving Loan Cap as then in effect, the Borrowers shall immediately prepay the Revolving Loans and L/C Borrowings in an aggregate amount equal to such excess, and if there remains an excess, at the option of the Agent or upon the direction of the Required Revolving Lenders, Cash Collateralize the L/C Obligations (other than L/C Borrowings) in an amount equal to 103% of the outstanding L/C Obligations; provided, however, that the Borrowers shall not be required to Cash Collateralize the L/C Obligations (other than L/C Borrowings) pursuant to this Section 2.05(c) unless after the prepayment in full of the Revolving Loans the Total Revolving Outstandings exceed the Revolving Loan Cap as then in effect and the Agent so elects (or the Required Revolving Lenders so direct).

(d) Subject to Section 2.05(l), if for any reason a U.S. Revolving Overadvance exists, the U.S. Borrower shall, upon notification by the Agent, immediately prepay the U.S. Revolving Loans and U.S. L/C Borrowings and, at the option of the Agent or upon the direction of the Required Revolving Lenders, Cash Collateralize the U.S. L/C Obligations (other than U.S. L/C Borrowings) in an aggregate amount equal to such U.S. Revolving Overadvance; provided, however, that the U.S. Borrower shall not be required to Cash Collateralize the U.S. L/C Obligations (other than U.S. L/C Borrowings) pursuant to this Section 2.05(d) unless after the prepayment in full of the U.S. Revolving Loans, the U.S. Total Revolving Outstandings exceed the U.S. Revolving Loan Cap as then in effect and the Agent so elects (or the Required Revolving Lenders so direct).

(e) Subject to Section 2.05(l), if for any reason a Canadian Revolving Overadvance exists, the Canadian Borrower shall, upon notification by the Agent, immediately prepay the Canadian Revolving Loans and Canadian L/C Borrowings and, at the option of the Agent or upon the direction of the Required Revolving Lenders, Cash Collateralize the Canadian L/C Obligations (other than Canadian L/C Borrowings) in an aggregate amount equal to such Canadian Revolving Overadvance; provided, however, that the Canadian Borrower shall not be required to Cash Collateralize the Canadian

L/C Obligations (other than Canadian L/C Borrowings) pursuant to this Section 2.05(e) unless after the prepayment in full of the Canadian Revolving Loans the Canadian Total Revolving Outstandings exceed the Canadian Revolving Loan Cap as then in effect and the Agent so elects (or the Required Revolving Lenders so direct).

(f) (i) The FILO Term Loan may not be voluntarily prepaid in whole or in part, except: (A) as provided in clause (ii) of this Section 2.05(f), (B) in connection with any mandatory prepayments pursuant to Sections 2.05(g) and (i) below, and (C) after all Revolving Loans, Swing Line Loans and Letters of Credit have been prepaid and/or Cash Collateralized and all other Obligations have been repaid, as applicable. Thereafter, each Borrower may, upon irrevocable notice to the Agent, at any time or from time to time voluntarily prepay all or any portion of the FILO Term Loan; provided that (x) such notice must be received by the Agent not later than 11:00 a.m. five (5) Business Days prior to any date of prepayment; and (y) any voluntary prepayment shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment. The Agent will promptly notify each FILO Term Lender of its receipt of each such notice, and of the amount of such FILO Term Lender's Applicable Percentage of such prepayment. If such notice is given by the Lead Borrower, the Borrowers shall make such prepayment to the Agent for the account of the FILO Term Lenders and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of the FILO Term Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 2.08(b). Each such prepayment shall be applied to the FILO Term Loan of the FILO Term Lenders in accordance with their respective Applicable Percentages.

(ii) In addition to other payments permitted or required hereunder and notwithstanding anything to the contrary herein contained, after the date that is twelve (12) months following the FILO Term Loan Draw Date, if applicable, as long as the FILO Payment Conditions are satisfied at the time of and immediately after giving effect to such prepayment, the FILO Term Loan may be voluntarily prepaid in whole or in part, subject to, and otherwise in accordance with the provisions of clause (f)(i) hereof.

(g) To the extent required pursuant to the provisions of Section 6.12 hereof, the Borrowers shall prepay the Loans and, after the occurrence and, at the option of the Agent or upon the direction of the Required Revolving Lenders, during the continuance of an Event of Default or to the extent required by the provisions of Sections 2.06(c)-(e), Cash Collateralize the L/C Obligations in an amount equal to 103% of the outstanding L/C Obligations.

(h) The Borrowers shall prepay the Revolving Loans at the times and to the extent required pursuant to the provisions of Section 2.01(f).

(i) The Borrowers shall prepay the Loans (including L/C Borrowings) and, after the occurrence and, at the option of the Agent or upon the direction of the Required Revolving Lenders, during the continuance of an Event of Default or to the extent required by the provisions of Sections 2.06(c)-(e), Cash Collateralize the other L/C Obligations in an amount equal to the Net Proceeds received by a Loan Party on account of a Prepayment Event, which prepayment shall be made within one (1) day of receipt of such Net Proceeds and will be made irrespective of whether a Cash Dominion Event then exists and is continuing.

(j) Subject to Section 8.03, prepayments made on account of the U.S. Liabilities first, shall be applied ratably to the U.S. L/C Borrowings and the Swing Line Loans made to the U.S. Borrower, second, shall be applied ratably to the outstanding U.S. Revolving Loans, third, after the occurrence and during the continuance of an Event of Default, shall be used to Cash Collateralize the

remaining U.S. L/C Obligations, fourth, the amount remaining, if any, after the prepayment in full of all U.S. L/C Borrowings, Swing Line Loans and U.S. Revolving Loans outstanding at such time, at the option of the Agent or upon the direction of the Required Revolving Lenders, shall be used to Cash Collateralize the remaining U.S. L/C Obligations (to the extent required hereunder) in full, fifth shall be applied ratably to the outstanding amount of the U.S. FILO Term Loan, subject (in all cases other than prepayments made with the proceeds of FILO Collateral) to Section 2.05(f), and, sixth, the amount remaining, if any, after the prepayment in full of all U.S. L/C Borrowings, Swing Line Loans, U.S. Revolving Loans and the U.S. FILO Term Loan outstanding at such time and, at the option of the Agent or upon the direction of the Required Revolving Lenders, the Cash Collateralization of the remaining U.S. L/C Obligations (to the extent required hereunder) in full, shall be deposited by the Agent in a deposit account of the U.S. Borrower and may be utilized by the U.S. Borrower in the ordinary course of its business to the extent otherwise permitted hereunder; provided that, notwithstanding the foregoing, any prepayments made from proceeds of FILO Collateral of the U.S. Loan Parties shall first, be applied ratably to the outstanding amount of the U.S. FILO Term Loan and second, to all other Obligations as set forth in this Section 2.05(j). Upon the drawing of any U.S. Letter of Credit that has been Cash Collateralized, the funds held as Cash Collateral shall be applied (without any further action by or notice to or from the Borrowers or any other Loan Party) to reimburse the L/C Issuer or the Revolving Lenders, as applicable, and, to the extent not so applied, shall thereafter be applied to satisfy other Obligations.

(k) Subject to Section 8.03, prepayments made on account of the Canadian Liabilities, first, shall be applied ratably to the Canadian L/C Borrowings and the Swing Line Loans made to the Canadian Borrower, second, shall be applied ratably to the outstanding Canadian Revolving Loans, third, after the occurrence and during the continuance of an Event of Default, shall be used to Cash Collateralize the remaining Canadian L/C Obligations, fourth, the amount remaining, if any, after the prepayment in full of all Canadian L/C Borrowings made to the Canadian Borrower and Canadian Revolving Loans outstanding at such time, at the option of the Agent or upon the direction of the Required Revolving Lenders, shall be used to Cash Collateralize the remaining Canadian L/C Obligations (to the extent required hereunder) in full, fifth, shall be applied ratably to the Outstanding Amount of the Canadian FILO Term Loan, subject (in all cases other than prepayments made with the proceeds of FILO Collateral) to Section 2.05(f), and, sixth, the amount remaining, if any, after the prepayment in full of all Canadian L/C Borrowings made to the Canadian Borrower, Canadian Revolving Loans and the Canadian FILO Term Loan outstanding at such time, and, at the option of the Agent or upon the direction of the Required Revolving Lenders, the Cash Collateralization of the remaining Canadian L/C Obligations (to the extent required hereunder) in full, shall be deposited by the Agent in a deposit account of the Canadian Borrower and may be utilized by the Canadian Borrower in the ordinary course of its business to the extent otherwise permitted hereunder; provided that, notwithstanding the foregoing, any prepayments made from proceeds of FILO Collateral of the Canadian Loan Parties shall first, be applied ratably to the outstanding amount of the Canadian FILO Term Loan and second, to all other Obligations as set forth in this Section 2.05(k). Upon the drawing of any Canadian Letter of Credit that has been Cash Collateralized, the funds held as Cash Collateral shall be applied (without any further action by or notice to or from the Borrowers or any other Loan Party) to reimburse the L/C Issuer or the Revolving Lenders, as applicable, and, to the extent not so applied, shall thereafter be applied to satisfy other Obligations.

(l) In the case of Loans and Letters of Credit denominated in Optional Currencies or any other currencies other than Dollars, the Agent shall with the delivery of each Borrowing Base Certificate, and may, at its discretion, at other times, recalculate the aggregate exposure under such Loans and Letters of Credit denominated in Optional Currencies or such other currencies at any time to account for fluctuations in exchange rates affecting the Optional Currencies in which any such non-

Dollar Loans and Letters of Credit are denominated. The Borrowers shall promptly (but in any event, within two (2) Business Days after the Lead Borrower receives notice of such currency recalculation) make payments in accordance with the provisions of Section 2.05(c), (d) and (e) hereof, to the extent necessary as a result of any such recalculation (or at the Lead Borrower's option, utilize Allocated Availability for such purpose, without regard to the notice requirements but subject to the other terms of Section 2.01(f)). For clarity, until any payments required under this Section 2.05(l) are made, the Borrowers may not obtain any new Credit Extensions from the Lenders or the L/C Issuer.

## **2.06 Reallocation, Termination or Reduction of Commitments.**

(a) Provided that (i) no Canadian Revolving Overadvance or U.S. Revolving Overadvance then exists or would arise immediately after giving effect thereto and (ii) no Default or Event of Default then exists or would result therefrom, upon notice to the Agent (which shall promptly notify the Revolving Lenders), the Canadian Revolving Commitments and/or U.S. Revolving Commitments of any Revolving Lender may be decreased and reallocated to increase its Canadian Revolving Commitments or U.S. Revolving Commitments, as applicable, in each case with the consent of only those Revolving Lenders so reallocating their applicable Total Revolving Commitments, whose consent may be withheld in each such Revolving Lender's sole discretion; provided that any such request by the Lead Borrower for such a reallocation may be made no more often than once during any Fiscal Quarter, and provided further that no such reallocation shall result in an increase or reduction of the Total Revolving Commitments of any Revolving Lender under this Agreement. At the time of sending such notice, the Lead Borrower (in consultation with the Agent) shall specify the time period within which each Revolving Lender is requested to respond (which shall in no event be less than ten (10) Business Days from the date of delivery of such notice to the Revolving Lenders). Each reallocation of Total Revolving Commitments shall be in a principal amount of \$25,000,000 or a whole multiple of \$5,000,000 in excess thereof. Each such notice by the Lead Borrower shall specify (i) the Borrower from whom Total Revolving Commitments are being reallocated and the Borrower to whom the Total Revolving Commitments will be reallocated, (ii) the amount of Total Revolving Commitments to be reallocated, and (iii) the requested date of the effectiveness of the reallocation of Revolving Commitments. Each Revolving Lender shall notify the Agent within such time period whether or not it agrees to reallocate its applicable Revolving Commitment and, if so, the amount of its reallocation. Any Revolving Lender not responding within such time period shall be deemed to have declined to reallocate its Revolving Commitment. The Agent shall notify the Lead Borrower and each Revolving Lender of the Revolving Lenders' responses to each request made hereunder. If the Total Revolving Commitments are reallocated in accordance with this Section 2.06(a), the Agent, in consultation with the Lead Borrower, shall determine the effective date and the final allocation of such Revolving Commitments. The Agent shall promptly notify the Lead Borrower and the Revolving Lenders of such final allocation and the effective date thereof and on such effective date (i) the applicable Revolving Commitments, under, and for all purposes of, this Agreement shall be increased or reduced, as applicable, and (ii) Schedule 2.01 shall be deemed modified, without further action, to reflect the revised Revolving Commitments and Applicable Percentages of the Revolving Lenders.

(b) The U.S. Borrower may, upon irrevocable notice from the Lead Borrower to the Agent (except as set forth below), terminate the Aggregate U.S. Revolving Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit for the U.S. Borrower or from time to time permanently reduce in part the Aggregate U.S. Revolving Commitments, the U.S. Letter of Credit Sublimit or such Swing Line Sublimit; provided that (i) any such notice shall be received by the Agent not later than 1:00 p.m. five (5) Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$10,000,000 or any whole multiple of \$1,000,000 in excess thereof and (iii) the U.S. Borrower shall not reduce (A) the Aggregate U.S. Revolving Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the U.S.



Total Revolving Outstandings would exceed the Aggregate U.S. Revolving Commitments, (B) the Letter of Credit Sublimit if, after giving effect thereto, the Outstanding Amount of L/C Obligations (other than L/C Borrowings) not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit, and (C) the Swing Line Sublimit of the U.S. Borrower if, after giving effect thereto, and to any concurrent payments hereunder, the Outstanding Amount of Swing Line Loans made to the U.S. Borrower hereunder would exceed such Swing Line Sublimit.

(c) The Canadian Borrower may, upon irrevocable notice from the Lead Borrower to the Agent (except as set forth below), terminate the Aggregate Canadian Revolving Commitments or the Letter of Credit Sublimit or the Swing Line Sublimit for the Canadian Borrower or from time to time permanently reduce in part the Aggregate Canadian Revolving Commitments or the Letter of Credit Sublimit or such Swing Line Sublimit; provided that (i) any such notice shall be received by the Agent not later than 1:00 p.m. (Toronto time) five (5) Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$10,000,000 or any whole multiple of \$1,000,000 in excess thereof and (iii) the Canadian Borrower shall not reduce (A) the Aggregate Canadian Revolving Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Canadian Total Revolving Outstandings would exceed the Aggregate Canadian Revolving Commitments, (B) the Letter of Credit Sublimit if, after giving effect thereto, the Outstanding Amount of L/C Obligations (other than L/C Borrowings) not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit, and (C) the Swing Line Sublimit of the Canadian Borrower if, after giving effect thereto, and to any concurrent payments hereunder, the Outstanding Amount of Swing Line Loans made to the Canadian Borrower hereunder would exceed such Swing Line Sublimit.

(d) If, after giving effect to any reduction of the U.S. Revolving Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit for the U.S. Borrower exceeds the amount of the U.S. Revolving Commitments, such Letter of Credit Sublimit or such Swing Line Sublimit shall be automatically reduced by the amount of such excess.

(e) If, after giving effect to any reduction of the Canadian Revolving Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit for the Canadian Borrower exceeds the amount of the Canadian Revolving Commitments, such Letter of Credit Sublimit or such Swing Line Sublimit shall be automatically reduced by the amount of such excess.

(f) The Agent will promptly notify the Revolving Lenders of any termination or reduction of the Letter of Credit Sublimit, Swing Line Sublimit, Canadian Revolving Commitments or U.S. Revolving Commitments under this Section 2.06. Upon any reduction of any such Canadian Revolving Commitments or U.S. Revolving Commitments, the Canadian Revolving Commitments or U.S. Revolving Commitments of each applicable Revolving Lender shall be reduced by such Lender's Applicable Percentage of such reduction amount. All fees (including, without limitation, Commitment Fees and Letter of Credit Fees) and interest in respect of the Total Revolving Commitments accrued until the effective date of any termination of the Total Revolving Commitments shall be paid on the effective date of such termination.

## **2.07 Repayment of Obligations.**

Except as provided in Section 10.11 with respect to the collateralization of the Other Liabilities, the Borrowers shall repay to the Lenders on the Termination Date all Obligations outstanding on such date (other than contingent indemnification claims for which a claim has not been asserted) and shall cause each Letter of Credit to be returned to the L/C Issuer undrawn or shall Cash Collateralize all L/C Obligations (to the extent not previously Cash Collateralized as required herein).

## **2.08 Interest.**

(a) Subject to the provisions of Section 2.08(b) below, (i) each LIBOR Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Adjusted LIBOR Rate for such Interest Period plus the Applicable Margin for Revolving Loans (if such LIBOR Rate Loan is a Revolving Loan) or for the FILO Term Loan (if such LIBOR Rate Loan is the then Outstanding Amount of the FILO Term Loan), as applicable; (ii) each CDOR Rate Loan shall bear interest on the outstanding principal amount thereof for each CDOR Period at a rate per annum equal to the CDOR Rate for such CDOR Period plus the Applicable Margin for Revolving Loans (if such CDOR Rate Loan is a Revolving Loan) or for the FILO Term Loan (if such CDOR Rate Loan is the then Outstanding Amount of the FILO Term Loan); (iii) each Prime Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate, the Canadian Index Rate or the U.S. Index Rate, as applicable, plus the Applicable Margin for Revolving Loans (if such Prime Rate Loan is a Revolving Loan) or for the FILO Term Loan (if such Prime Rate Loan is the then Outstanding Amount of the FILO Term Loan), as applicable; and (iv) each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum as provided in Section 2.02 plus the Applicable Margin for such Type of Loans.

(b) (i) If any amount payable under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Law until such amount is paid in full.

(ii) If any other Event of Default occurs and is continuing, then the Agent may, and upon the request of the Required Lenders shall, notify the Lead Borrower that all outstanding Obligations shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate and thereafter such Obligations shall bear interest at the Default Rate to the fullest extent permitted by applicable Law.

(iii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Except as provided in Section 2.08(b)(iii), interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

## **2.09 Fees.** In addition to certain fees described in subsections (i) and (j) of Section 2.03:

(a) Commitment Fee. The U.S. Borrower shall pay to the Agent for the account of each U.S. Revolving Lender (other than a Defaulting Lender) in accordance with its Applicable Percentage, a commitment fee equal to the Commitment Fee Percentage multiplied by the actual daily amount by which the Aggregate U.S. Revolving Commitments exceed the U.S. Total Revolving Outstandings (excluding outstanding U.S. Swing Line Loans) (subject to adjustment as provided in Section 2.16) during the immediately preceding Fiscal Quarter. The Canadian Borrower shall pay to the Agent for the account of each Canadian Revolving Lender (other than a Defaulting Lender) in accordance with its Applicable Percentage, a commitment fee equal to the Commitment Fee Percentage multiplied by the actual daily amount by which the Aggregate Canadian Revolving Commitments

exceed the Canadian Total Revolving Outstandings (excluding outstanding Canadian Swing Line Loans) (subject to adjustment as provided in Section 2.16) during the immediately preceding Fiscal Quarter (the fees described in the preceding two sentences collectively referred to as the “Commitment Fee”). The Commitment Fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article IV is not met, and shall be calculated in Dollars as of the end of each quarter and shall be due and payable quarterly in arrears in Dollars (or the Dollar Equivalent thereof in Optional Currencies as determined on such date of calculation) on the fourth Business Day after the end of each April, July, October and January, commencing with the first such date to occur after the Effective Date, and on the last day of the Availability Period. The Commitment Fee shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(b) Other Fees. The Borrowers shall pay to the applicable Credit Parties for their own respective accounts fees in the amounts and at the times specified in the Fee Letters. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

## **2.10 Computation of Interest and Fees**

(a) All computations of interest for Prime Rate Loans and for CDOR Rate Loans shall be made on the basis of a year of 365 days and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed or, in the case of interest in respect of Loans denominated in Optional Currencies as to which market practice differs from the foregoing, in accordance with such market practice. Interest shall accrue on each Loan, and Commitment Fees shall be calculated, for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one day. Letter of Credit Fees shall accrue for each day on which the Letter of Credit is issued, and shall not accrue on a Letter of Credit on the day on which Letter of Credit is terminated or expires. Each determination by the Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(b) For the purposes of the *Interest Act* (Canada), the yearly rate of interest to which any rate calculated on the basis of a period of time different from the actual number of days in the year (three hundred sixty (360) days, for example) is equivalent is the stated rate multiplied by the actual number of days in the year (three hundred sixty-five (365) or three hundred sixty-six (366), as applicable) and divided by the number of days in the shorter period (three hundred sixty (360) days, in the example). Each Canadian Loan Party confirms that it fully understands and is able to calculate the rate of interest applicable to Loans and other Canadian Liabilities based on the methodology for calculating per annum rates provided for in this Agreement and each Canadian Loan Party hereby irrevocably agrees not to plead or assert, whether by way of defense or otherwise, in any proceeding relating to this Agreement or to any other Loan Documents, that the interest payable under this Agreement and the calculation thereof has not been adequately disclosed to the Canadian Loan Parties as required pursuant to Section 4 of the *Interest Act* (Canada).

(c) If any provision of this Agreement or of any of the other Loan Documents would obligate a Loan Party to make any payment of interest or other amount payable to any of the Agent or any Lender under this Agreement or any other Loan Document in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by any of the Agent or any Lender of interest at a criminal rate (as such terms are construed under the *Criminal Code* (Canada)) then, notwithstanding such provisions, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so

prohibited by law or so result in a receipt by the Agent or any Lender of interest at a criminal rate, such adjustment to be effected, to the extent necessary, as follows: (1) firstly, by reducing the amount or rate of interest required to be paid to the Agent or any Lender under this Section 2.10, and (2) thereafter, by reducing any fees, commissions, premiums and other amounts required to be paid to the Agent or any Lender which would constitute “interest” for purposes of Section 347 of the *Criminal Code* (Canada). Notwithstanding the foregoing, and after giving effect to all adjustments contemplated thereby, if the Agent or any Lender shall have received an amount in excess of the maximum permitted by that Section of the *Criminal Code* (Canada), the Loan Parties shall be entitled, by notice in writing to the Agent or such Lender, to obtain reimbursement from such party in an amount equal to such excess and, pending such reimbursement, such amount shall be deemed to be an amount payable by the Agent or such Lender to the Canadian Borrower. Any amount or rate of interest referred to in this Section 2.10(c) shall be determined in accordance with generally accepted actuarial practices and principles as an effective annual rate of interest over the term that the applicable loan remains outstanding with the assumption that any charges, fees or expenses that fall within the meaning of “interest” (as defined in the *Criminal Code* (Canada)) shall be included in the calculation of such effective rate and, in the event of a dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by the Agent shall be conclusive for the purposes of such determination.

(d) All calculations of interest payable by the Loan Parties under this Agreement or any other Loan Document are to be made on the basis of the nominal interest rate described herein and therein and not on the basis of effective yearly rates or on any other basis which gives effect to the principle of deemed reinvestment of interest which principle does not apply to any interest calculated under this Agreement or any Loan Document. The parties hereto acknowledge that there is a material difference between the stated nominal interest rates and the effective yearly rates of interest and that they are capable of making the calculations required to determine such effective yearly rates of interest.

## **2.11 Evidence of Debt.**

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by the Agent (the “Loan Account”) in the ordinary course of business. In addition, each Lender may record in such Lender’s internal records, an appropriate notation evidencing the date and amount of each Loan from such Lender, each payment and prepayment of principal of any such Loan, and each payment of interest, fees and other amounts due in connection with the Obligations due to such Lender. The accounts or records maintained by the Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Agent in respect of such matters, the accounts and records of the Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Agent, the Borrowers shall execute and deliver to such Lender (through the Agent) a Note, which shall evidence such Lender’s Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto. Upon receipt of an affidavit of a Lender as to the loss, theft, destruction or mutilation of such Lender’s Note and upon cancellation of such Note, the Borrowers will issue, in lieu thereof, a replacement Note in favor of such Lender, in the same principal amount thereof and otherwise of like tenor.

(b) In addition to the accounts and records referred to in Section 2.11(a), each Revolving Lender and the Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Revolving Lender of participations in Letters of

Credit and Swing Line Loans. In the event of any conflict between the accounts and records maintained by the Agent and the accounts and records of any Revolving Lender in respect of such matters, the accounts and records of the Agent shall control in the absence of manifest error.

## **2.12 Payments Generally; Agent's Clawback.**

(a) General. All payments to be made by the Borrowers shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder shall be made to the Agent, for the account of the respective Lenders to which such payment is owed, at the Agent's Office in the United States or Canada, as applicable, in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. Without limiting the generality of the foregoing, the Agent may require that any payments due under this Agreement be made in the United States. If, for any reason, a Borrower is prohibited by any applicable Law from making any required payment hereunder in an Optional Currency, such Borrower shall make such payment in Dollars in the Dollar Equivalent of the Optional Currency payment amount. The Agent will, subject to Section 2.14 hereof, promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Agent in Dollars after 2:00 p.m., or after the Applicable Time specified by the Agent in the case of payments in an Optional Currency, shall, at the option of the Agent, be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrowers shall come due on a day other than a Business Day, payment shall be made on the next following Business Day (other than with respect to payment of a LIBOR Rate Loan or CDOR Rate Loan), and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) Currency. Letters of Credit denominated in an Optional Currency shall be reimbursed by the applicable Borrower in that Optional Currency. All obligations of the Lenders with respect to Letters of Credit will be immediately due and payable in Dollars, provided that the amount of any amounts denominated in an Optional Currency will be redenominated into Dollars.

(c) (i) Funding by Lenders; Presumption by Agent. Unless the Agent shall have received notice from a Lender prior to (A) the proposed date of any Borrowing of LIBOR Rate Loans or CDOR Rate Loans (or in the case of any Borrowing of Prime Rate Loans, prior to 12:00 noon on the date of such Borrowing), or (B) the date that such Lender's participation in a Letter of Credit or Swing Line Loan is required to be funded, that such Lender will not make available to the Agent such Lender's share of such Borrowing or participation, the Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or in the case of a Borrowing of Prime Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02), Section 2.03 or Section 2.05, as applicable, and may, in reliance upon such assumption, make available to the Borrowers, the L/C Issuer or the Swing Line Lender, as applicable, a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing or participation available to the Agent, then the applicable Lender and the applicable Borrower severally agree to pay to the Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrowers to but excluding the date of payment to the Agent, at (A) in the case of a payment to be made by such Lender, the applicable Bank Rate plus any administrative processing or similar fees customarily charged by the Agent in connection with the foregoing, and (B) in the case of a payment to be made by any Borrower, the interest rate applicable to Prime Rate Loans. If the Borrowers and such Lender shall pay such interest to the Agent for the same or an overlapping period, the Agent shall promptly remit to the applicable Borrower the amount of such interest paid by

such Borrower for such period. If such Lender pays its share of the applicable Borrowing or participation to the Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing or participation in such Letter of Credit or Swing Line Loan. 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 Agent.

(ii) Payments by Borrowers; Presumptions by Agent. Unless the Agent shall have received notice from the Lead Borrower prior to the time at which any payment is due to the Agent for the account of any of the Lenders or the L/C Issuer hereunder that the Borrowers will not make such payment, the Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the L/C Issuer, as the case may be, the amount due. In such event, if the Borrowers have not in fact made such payment, then each of the Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Agent forthwith on demand the amount so distributed to such Lender or the L/C Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Agent, at the applicable Bank Rate.

A notice of the Agent to any Lender or the Lead Borrower with respect to any amount owing under this subsection (c) shall be conclusive, absent manifest error.

(d) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrowers by the Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof (subject to the provisions of the last paragraph of Section 4.02 hereof), the Agent shall promptly return such funds (in like funds as received from such Lender) to such Lender, without interest.

(e) Obligations of Lenders Several. The obligations of the Revolving Lenders hereunder to make Revolving Loans, to fund participations in Letters of Credit and Swing Line Loans and to make payments hereunder are several and not joint. The obligations of the FILO Term Lenders hereunder to make the FILO Term Loan and to make payments hereunder are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment hereunder 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 hereunder.

(f) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

**2.13 Sharing of Payments by Lenders.** If any Credit Party shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of, interest on, or other amounts with respect to, any of the Obligations resulting in such Credit Party's receiving payment of a proportion of the aggregate amount of such Obligations greater than its pro rata share thereof as provided herein (including as in contravention of the priorities of payment set forth in Section 8.03), then the applicable Credit Party receiving such greater proportion shall (a) notify the Agent of such fact, and (b) purchase (for cash at face value) participations in the Obligations of the other applicable Credit Parties, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the applicable Credit Parties ratably and in the priorities set forth in Section 8.03, provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (x) any payment made by the Loan Parties pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender) or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in L/C Obligations or Swing Line Loans to any Eligible Assignee or Participant, other than to the Lead Borrower or any Subsidiary thereof (as to which the provisions of this Section shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

## **2.14 Settlement Amongst Revolving Lenders**

(a) The amount of each Revolving Lender's Applicable Percentage of outstanding Loans (including, for clarity, outstanding Swing Line Loans), shall be computed weekly (or more frequently in the Agent's discretion) and shall be adjusted upward or downward based on all Revolving Loans and repayments of Revolving Loans received by the Agent as of 3:00 p.m. on the first Business Day (such date, the "Settlement Date") following the end of the period specified by the Agent.

(b) The Agent shall deliver to each of the Revolving Lenders promptly after a Settlement Date a summary statement of the amount of outstanding Revolving Loans for the period and the amount of repayments received for the period. As reflected on the summary statement, each Revolving Lender shall transfer to the Agent (as provided below) or the Agent shall transfer to each Revolving Lender, such amounts as are necessary to insure that, after giving effect to all such transfers, the amount of Revolving Loans made by each Revolving Lender shall be equal to such Revolving Lender's Applicable Percentage of all Revolving Loans outstanding as of such Settlement Date. If the summary statement requires transfers to be made to the Agent by the Revolving Lenders and is received prior to 1:00 p.m. on a Business Day, such transfers shall be made in immediately available funds no later than 3:00 p.m. that day; and, if received after 1:00 p.m., then no later than 3:00 p.m. on the next Business Day. The obligation of each Revolving Lender to transfer such funds is irrevocable, unconditional and without recourse to or warranty by the Agent. If and to the extent any Revolving Lender shall not have so made its transfer to the Agent, such Revolving Lender agrees to pay to the Agent, forthwith on demand such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Agent, equal to the applicable Bank Rate plus any administrative, processing, or similar fees customarily charged by the Agent in connection with the foregoing.

## **2.15 Increase in Revolving Commitments.**

(a) Request for Increase. Provided no Default or Event of Default then exists or would arise therefrom, upon notice to the Agent (which shall promptly notify the Revolving Lenders), the Lead Borrower may from time to time, request an increase in the Aggregate Revolving Commitments by an amount (for all such requests) not exceeding \$500,000,000; provided that any such request for an increase shall be in a minimum amount of \$50,000,000 and shall specify whether the

Aggregate Canadian Revolving Commitments or the Aggregate U.S. Revolving Commitments are to be increased. At the time of sending such notice, the Lead Borrower (in consultation with the Agent) shall specify the time period within which each Revolving Lender is requested to respond (which shall in no event be less than ten (10) Business Days from the date of delivery of such notice to the Revolving Lenders).

(b) Revolving Lender Elections to Increase. Each Revolving Lender shall notify the Agent within such time period whether or not it agrees to increase its applicable Revolving Commitment and, if so, whether by an amount equal to, greater than, or less than its Applicable Percentage of such requested increase. Any Revolving Lender not responding within such time period shall be deemed to have declined to increase its Commitment.

(c) Notification by Agent; Additional Revolving Lenders. The Agent shall notify the Lead Borrower and each Revolving Lender of the Revolving Lenders' responses to each request made hereunder. To achieve the full amount of a requested increase and subject to the approval of the Agent, the L/C Issuer and the Swing Line Lender, to the extent that the existing Revolving Lenders decline to increase their Total Revolving Commitments to the amount requested by the Lead Borrower, the Agent, in consultation with the Lead Borrower, will use its commercially reasonable efforts to arrange for other Eligible Assignees to become a Revolving Lender hereunder (each such Revolving Lender, an "Additional Commitment Lender") and to issue commitments in an amount equal to the amount of the increase in the Aggregate Canadian Revolving Commitments or the Aggregate U.S. Revolving Commitments, as applicable, requested by the Lead Borrower and not accepted by the existing Revolving Lenders (and the Lead Borrower may also invite additional Eligible Assignees to become Revolving Lenders), provided, however, that without the consent of the Agent, at no time shall the Commitment of any Additional Commitment Lender be less than \$5,000,000.

(d) Effective Date and Allocations. If the Aggregate Canadian Revolving Commitments or the Aggregate U.S. Revolving Commitments are increased in accordance with this Section, the Agent, in consultation with the Lead Borrower, shall determine the effective date (the "Increase Effective Date") and the final allocation of such increase. The Agent shall promptly notify the Lead Borrower and the Revolving Lenders of the final allocation of such increase and the Increase Effective Date and on the Increase Effective Date (i) the Aggregate Canadian Revolving Commitments or the Aggregate U.S. Revolving Commitments, as applicable, and the Aggregate Revolving Commitments, under, and for all purposes of, this Agreement shall be increased by the aggregate amount of such Commitment increases, and (ii) Schedule 2.01 shall be deemed modified, without further action, to reflect the revised Commitments and Applicable Percentages of the Revolving Lenders.

(e) Conditions to Effectiveness of Increase. As a condition precedent to such increase, (i) the Lead Borrower shall deliver to the Agent a certificate of each Loan Party dated as of the Increase Effective Date signed by a Responsible Officer of such Loan Party (A) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (B) in the case of the applicable Borrower, certifying that, before and after giving effect to such increase, (1) the representations and warranties contained in Article VI and the other Loan Documents are true and correct in all material respects on and as of the 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 as of such earlier date and in the case of any representation and warranty qualified by materiality, they shall be true and correct in all respects, and except that for purposes of this Section 2.15, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01, and (2) no Default or Event of Default exists or would arise therefrom, (ii) the Borrowers,



the Agent, and any Additional Commitment Lender shall have executed and delivered a Lender Joinder Agreement; (iii) the applicable Borrower shall have paid such fees and other compensation to the Additional Commitment Lenders and to any Revolving Lenders increasing their Commitments as the Lead Borrower and each such Person shall agree; (iv) the applicable Borrower shall have paid such arrangement fees to Bank of America as the Lead Borrower and the Agent may agree; (v) if reasonably requested by the Agent, the Borrowers shall deliver an opinion or opinions, in form and substance reasonably satisfactory to the Agent, from counsel to the Borrowers reasonably satisfactory to the Agent and dated such date; and (vi) the Borrowers and the Additional Commitment Lender shall have delivered such other instruments, documents and agreements as the Agent may reasonably have requested. On the Increase Effective Date, there shall be an automatic adjustment to the Applicable Percentage of each Revolving Lender to reflect the new Applicable Percentages of the Revolving Lenders.

(f) Other Provisions That portion of the Total Revolving Commitment of each Revolving Lender and Additional Commitment Lender constituting its portion of any Commitment Increase under this Section 2.15(f) (i)(A) shall bear interest and be entitled to receive letter of credit fees at the rates provided for with respect to the Commitments in existence as of the Effective Date (as such rate may be amended), and (B) shall receive Commitment Fees based on the Commitment Fee as in effect on the Effective Date (as such fee may be amended), (ii) shall terminate on the Termination Date (for purposes hereof, the “Revolving Maturity Date” as used is the definition of “Termination Date” shall also refer to any extended Revolving Maturity Date, if applicable), and (iii) shall otherwise be on the same (or more restrictive) terms as set forth in, and be entitled to the benefits of, this Agreement and the other Loan Documents (including, without limitation, being subject to the Revolving Borrowing Base).

(g) Conflicting Provisions. This Section shall supersede any provisions in Sections 2.13 or 10.01 to the contrary.

## **2.16 Defaulting Lenders.**

(a) 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:

(i) 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 definitions of “Required Lenders” and “Required Revolving Lenders” and Section 10.01.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Agent from a Defaulting Lender pursuant to Section 10.08 shall be applied at such time or times as may be determined by the Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the L/C Issuer or Swing Line Lender hereunder; *third*, to Cash Collateralize the L/C Issuer’s Fronting Exposure with respect to such Defaulting Lender; *fourth*, as the Lead Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Agent; *fifth*, if so determined by the

Agent and the Lead 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 L/C Issuer's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement; *sixth*, to the payment of any amounts owing to the Lenders, the L/C Issuer or Swing Line Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the L/C Issuer or the Swing Line Lender 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 Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers 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 L/C 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 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Obligations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Obligations owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations and Swing Line Loans are held by the Lenders pro rata in accordance with the Total Revolving Commitments hereunder without giving effect to Section 2.16(a)(iv). 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 2.16(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) No Defaulting Lender that is a Revolving Lender shall be entitled to receive any fee payable under Section 2.09(a) 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).

(B) Each Defaulting Lender that is a Revolving Lender shall be entitled to receive Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.03(g).

(C) With respect to any fee payable under Section 2.09(a) or any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrowers shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations or Swing Line Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to the L/C Issuer and Swing Line Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such L/C Issuer's or Swing Line Lender's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Applicable Percentages to Reduce Fronting Exposure. All or any part of such Defaulting Lender's that is a Revolving Lender participation in L/C Obligations and Swing Line Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that (x) the conditions set forth in Section 4.02 are satisfied at the time of such reallocation (and, unless the Lead Borrower shall have otherwise notified the Agent at such time, the Borrowers shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause the aggregate Outstanding Amount of Obligations of any Non-Defaulting Lender that is a Revolving Lender to exceed such Non-Defaulting Lender's Commitment. Subject to Section 10.29, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Revolving Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender that is a Revolving Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swing Line Loans. If the reallocation described in clause (a)(iv) above cannot, or can only partially, be effected, the Borrowers shall, without prejudice to any right or remedy available to them hereunder or under applicable Law, (x) first, prepay Swing Line Loans in an amount equal to the Swing Line Lenders' Fronting Exposure and (y) second, Cash Collateralize the L/C Issuers' Fronting Exposure in accordance with the procedures set forth in Section 2.03(g).

(b) Defaulting Lender Cure. If the Lead Borrower, the Agent, the Swing Line Lender and the L/C Issuer agree in writing that a Lender is no longer a Defaulting Lender, the 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 Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swing Line Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.16(a)(iv)), 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 Borrowers 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.

### ARTICLE III TAXES, YIELD PROTECTION AND ILLEGALITY; APPOINTMENT OF LEAD BORROWER

#### 3.01 Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of any Loan Party 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 Agent regarding Taxes to be withheld or deducted by the Agent) require the deduction or withholding of any Tax from any such payment by the Agent or a Loan Party, then the Agent or such Loan Party shall be entitled to make such deduction or withholding, upon the basis of the information and documentation, if any, to be delivered pursuant to subsection (e) below.

(ii) If any Loan Party or the Agent shall be required by any applicable Laws to withhold or deduct any Taxes from any payment, then (A) such Loan Party or the Agent, as required by such Laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation, if any, it has received pursuant to subsection (e) below, (B) such Loan Party or the Agent, to the extent required by such Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party 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 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Borrowers. Without limiting the provisions of subsection (a) above, the Borrowers shall timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of the Agent timely reimburse it for the payment of, any Other Taxes.

(c) Tax Indemnifications.

(i) Without duplication of any amounts paid under subsections (a) or (b), above, the Loan Parties shall, and each Loan Party does hereby, jointly and severally indemnify each Recipient, and shall make payment in respect thereof within 30 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 3.01(c)(i)) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, in each case, on or with respect to any obligation of any Loan Party under any Loan Document, 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; provided that a certificate as to the amount of such payment or liability was delivered to the Lead Borrower by a Lender or the L/C Issuer (with a copy to the Agent), or by the Agent on its own behalf or on behalf of a Lender or the L/C Issuer, which certificate shall be conclusive absent manifest error.

(ii) Each Lender and the L/C Issuer shall, and does hereby, severally indemnify, and shall make payment in respect thereof within 30 days after demand therefor, (x) the Agent against any Indemnified Taxes attributable to such Lender or the L/C Issuer (but only to the extent that any Loan Party has not already indemnified the Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (y) the Agent and the Loan Parties, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.06(d) relating to the maintenance of a Participation Register and (z) the Agent and the Loan Parties, as

applicable, against any Excluded Taxes attributable to such Lender or the L/C Issuer, in each case, that are payable or paid by the Agent or a Loan Party 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 Agent shall be conclusive absent manifest error. Each Lender and the L/C Issuer hereby authorizes the Agent to set off and apply any and all amounts at any time owing to such Lender or the L/C Issuer, as the case may be, under this Agreement or any other Loan Document against any amount due to the Agent under this clause (ii).

(d) Evidence of Payments. As soon as practicable after any payment of Taxes by the Loan Parties or by the Agent to a Governmental Authority as provided in this Section 3.01, the Lead Borrower shall deliver to the Agent or the Agent shall deliver to the Lead Borrower, 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 Lead Borrower or the Agent, as the case may be.

(e) Status of Lenders; Tax Documentation.

(i) 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 Lead Borrower and the Agent, at the time or times reasonably requested by the Lead Borrower or the Agent, such properly completed and executed documentation as prescribed by applicable Law or published by a Governmental Authority as will permit such payments to be made without withholding or at a reduced rate of withholding (the “Documentation”). In addition, any Lender, if reasonably requested by the Lead Borrower or the Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Lead Borrower or the Agent as will enable the Lead Borrower or the Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Each such Lender shall, whenever a lapse in time or change in circumstances renders such documentation expired, obsolete or inaccurate in any material respect, deliver promptly to the Lead Borrower and the Agent updated or other appropriate documentation (including any new documentation reasonably requested by the applicable withholding agent) or promptly notify the Lead Borrower and the Agent of its inability to do so. 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 3.01(e)(ii)(A), (ii)(B) and (ii)(D) 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; provided that each Lender acknowledges that such Lender’s completion, execution or submission of the Documentation that is required as of the date hereof in order for payments made under any Loan Document to be without withholding or at a reduced rate of withholding shall not subject such Lender to any material unreimbursed cost or expense and will not materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the U.S. Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Lead Borrower and the 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 U.S. Borrower or the Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Lead Borrower and the 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 Lead Borrower or the Agent), whichever of the following is applicable:

(I) 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 originals of IRS Form W-8BEN or Form W-8BEN-E 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 Form W-8BEN-E 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;

(II) executed originals of IRS Form W-8ECI;

(III) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate 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 any Borrower 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 originals of IRS Form W-8BEN or Form W-8BEN-E; or

(IV) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or Form W-8BEN-E, 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;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Lead Borrower and the 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 Lead Borrower or the 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 withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Law to permit the Lead Borrower or the Agent to determine the withholding or deduction required to be made; and

(D) 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 Lead Borrower and the Agent at the time or times prescribed by law and at such time or times reasonably requested by the Lead Borrower or the 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 Lead Borrower or the Agent as may be necessary for the Borrowers and the Agent 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 (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certificate it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Lead Borrower and the Agent in writing of its legal inability to do so.

(f) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Agent have any obligation to file for or otherwise pursue on behalf of a Lender or the L/C Issuer, or have any obligation to pay to any Lender or the L/C Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or the L/C Issuer, 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 Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section 3.01, it shall pay to the Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by a Loan Party under this Section 3.01 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 Loan Party, upon the request of the Recipient, agrees to repay the amount paid over to the Loan Party (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, in no event will the applicable Recipient be required to pay any amount to the Loan Party 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 the 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 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 Loan Party or any other Person.

(g) For purposes of determining withholding Taxes imposed under FATCA, from and after the effective date of this Agreement, the Borrowers and the Agent shall treat (and the Lenders hereby authorize the Agent to treat) this Agreement as not qualifying as a "grandfathered obligation" within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

(h) Survival. Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of, a Lender or the L/C Issuer, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

**3.02 Illegality.** If any Lender determines in good faith that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund LIBOR Rate Loans or CDOR Rate Loans or to determine or charge interest rates based upon the LIBOR Rate or CDOR Rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market or the Canadian market for bankers' acceptances, then, on notice thereof in reasonable detail by such Lender to the Lead Borrower through the Agent, (i) any obligation of such Lender to make or continue LIBOR Rate Loans or CDOR Rate Loans or to Convert Prime Rate Loans to LIBOR Rate Loans or CDOR Rate Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Prime Rate Loans the interest rate on which is determined by reference to the LIBOR Rate component of the Base Rate or the U.S. Index Rate, the interest rate on which Prime Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Agent without reference to the LIBOR Rate component of the Base Rate or the U.S. Index Rate, in each case, until such Lender notifies the Agent and the Lead Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrowers shall, upon demand from such Lender (with a copy to the Agent), prepay or, if applicable, Convert all LIBOR Rate Loans and CDOR Rate Loans of such Lender to Prime Rate Loans (the interest rate on which Base Rate Loans and U.S. Index Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Agent without reference to the LIBOR Rate component of the Base Rate or the U.S. Index Rate), either on the last day of the Interest Period (or CDOR Period, as applicable) therefor, if such Lender may lawfully continue to maintain such LIBOR Rate Loans or CDOR Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such LIBOR Rate Loans or CDOR Rate Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the LIBOR Rate, the Agent shall during the period of such suspension compute the Base Rate and the U.S. Index Rate applicable to such Lender without reference to the LIBOR Rate component thereof until the 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 LIBOR Rate. Upon any such prepayment or Conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or Converted.

**3.03 Inability to Determine Rates.**

(a) If the Required Lenders determine that for any reason in connection with any request for a LIBOR Rate Loan or CDOR Rate Loan or a Conversion to or continuation thereof that (a) Dollar deposits are not being offered to banks in the London interbank market or bankers' acceptances are not being offered in the Canadian market for bankers' acceptances in the applicable amount and for the applicable Interest Period (or CDOR Period) of such LIBOR Rate Loan, (b) adequate and reasonable means do not exist for determining the LIBOR Rate or CDOR Rate for any requested Interest Period (or CDOR Period, as applicable) with respect to a proposed LIBOR Rate Loan or CDOR Rate Loan, or (c) the LIBOR Rate or CDOR Rate for any requested Interest Period (or CDOR Period, as applicable) with respect to a proposed LIBOR Rate Loan or CDOR Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Agent will promptly so notify the Lead Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain LIBOR Rate Loans and CDOR Rate Loans shall be suspended, and (y) in the event of a determination described in the preceding sentence with respect to the LIBOR Rate component of the Base Rate, or the U.S. Index Rate, the utilization of the LIBOR Rate component in determining the Base Rate, or the U.S. Index Rate shall be suspended, in each case until the Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Lead Borrower may revoke any pending request for a Borrowing of, Conversion to or continuation of LIBOR Rate Loans or CDOR Rate Loans or, failing that, will be deemed to have Converted such request into a request for a Revolving Borrowing of Prime Rate Loans in the amount specified therein.



(b) Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Agent determines (which determination shall be conclusive absent manifest error), or the Lead Borrower or Required Lenders notify the Agent (with, in the case of the Required Lenders, a copy to the Lead Borrower) that the Lead Borrower or Required Lenders (as applicable) have determined, that:

(i) adequate and reasonable means do not exist for ascertaining LIBOR for any requested Interest Period, including, without limitation, because the LIBOR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(ii) the administrator of the LIBOR Screen Rate or a Governmental Authority having jurisdiction over the Agent has made a public statement identifying a specific date after which LIBOR or the LIBOR Screen Rate shall no longer be made available, or used for determining the interest rate of loans (such specific date, the “Scheduled Unavailability Date”), or

(iii) syndicated loans currently being executed, or that include language similar to that contained in this Section, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR,

then, reasonably promptly after such determination by the Agent or receipt by the Agent of such notice, as applicable, the Agent and the Lead Borrower may amend this Agreement to replace LIBOR with an alternate benchmark rate (including any mathematical or other adjustments to the benchmark (if any) incorporated therein), giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated syndicated credit facilities for such alternative benchmarks (any such proposed rate, a “LIBOR Successor Rate”), together with any proposed LIBOR Successor Rate Conforming Changes (as defined below) and any such amendment shall become effective at 5:00 p.m. on the fifth Business Day after the Agent shall have posted such proposed amendment to all Lenders and the Lead Borrower unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Agent written notice that such Required Lenders do not accept such amendment. Such LIBOR Successor Rate shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for the Agent, such LIBOR Successor Rate shall be applied in a manner as otherwise reasonably determined by the Agent.

If no LIBOR Successor Rate has been determined and the circumstances under clause (i) above exist or the Scheduled Unavailability Date has occurred (as applicable), the Agent will promptly so notify the Lead Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain LIBOR Rate Loans shall be suspended, (to the extent of the affected LIBOR Rate Loans or Interest Periods), and (y) the LIBOR Rate component shall no longer be utilized in determining the Base Rate. Upon receipt of such notice, the Lead Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of LIBOR Rate Loans (to the extent of the affected LIBOR Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Revolving Borrowing of Base Rate Loans (subject to the foregoing clause (y)) in the amount specified therein.

Notwithstanding anything else herein, any definition of LIBOR Successor Rate shall provide that in no event shall such LIBOR Successor Rate be less than zero for purposes of this Agreement.

For purposes hereof, “LIBOR Successor Rate Conforming Changes” means, with respect to any proposed LIBOR Successor Rate, any conforming changes to the definition of Base Rate, Interest Period, timing and frequency of determining rates and making payments of interest and other administrative matters as may be appropriate, in the discretion of the Agent in consultation with the Lead Borrower, to

reflect the adoption of such LIBOR Successor Rate and to permit the administration thereof by the Agent in a manner substantially consistent with market practice (or, if the Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such LIBOR Successor Rate exists, in such other manner of administration as the Agent determines is reasonably necessary in connection with the administration of this Agreement).

### **3.04 Increased Costs; Reserves on LIBOR Rate Loans.**

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the LIBOR Rate) or the L/C Issuer;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, and (B) Excluded Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the L/C Issuer or the London or Canadian interbank market any other condition, cost or expense affecting this Agreement or LIBOR Rate Loans, CDOR Rate Loans, or Swing Line Loans calculated on the basis of the Base Rate made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting to, continuing or maintaining any LIBOR Rate Loan, CDOR Rate Loan or Swing Line Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or the L/C Issuer, the Loan Parties will pay, or cause to be paid, to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered as a result of Loans to, or Letters of Credit issued for the account of, the Borrowers.

(b) Capital Requirements. If any Lender or the L/C Issuer determines that any Change in Law affecting such Lender or the L/C Issuer or any Lending Office of such Lender or such Lender's or the L/C Issuer's holding company, if any, regarding capital requirements or liquidity has or would have the effect of reducing the rate of return on such Lender's or the L/C Issuer's capital or on the capital or liquidity of such Lender's or the L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swing Line Loans held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy and liquidity), then from time to time the Borrowers will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered as a result of Loans to, or Letters of Credit issued for the account of, the Borrowers.

(c) Certificates for Reimbursement. A certificate of a Lender or the L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or the L/C Issuer or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Lead Borrower shall be conclusive absent manifest error. The Loan Parties shall pay such Lender or the L/C Issuer, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or the L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's or the L/C Issuer's right to demand such compensation, provided that the Loan Parties shall not be required to compensate a Lender or the L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than six months prior to the date that such Lender or the L/C Issuer, as the case may be, notifies the Lead Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Reserves on LIBOR Rate Loans. The Borrowers shall pay, or cause to be paid, to each Lender, 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 Rate Loan, or Swing Line Loan for which interest is calculated based on the Base Rate 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), which shall be due and payable on each date on which interest is payable on such Loan, provided the Lead Borrower shall have received at least 10 days' prior notice (with a copy to the Agent) of such additional interest from such Lender. If a Lender fails to give notice 10 days prior to the relevant Interest Payment Date, such additional interest shall be due and payable 10 days from receipt of such notice.

(f) Notwithstanding the foregoing, a Lender will not be entitled to demand, and the Borrowers will not be obligated to pay, any amount under this Section 3.04 unless such Lender has a general policy of claiming such amounts from its similarly situated customers generally under agreements containing comparable gross-up provisions.

**3.05 Compensation for Losses.** Upon demand of any Lender (with a copy to the Agent) from time to time, the Borrowers shall promptly compensate, or cause to be compensated, such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, Conversion, payment or prepayment of any Loan other than a Prime Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by any Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or Convert any Loan other than a Prime Rate Loan on the date or in the amount notified by the Lead Borrower; or

(c) any assignment of a LIBOR Rate Loan or CDOR Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Lead Borrower pursuant to Section 10.13;

including any loss or expense arising from the liquidation or reemployment of funds (but not loss of profits) obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrowers shall also pay, or cause to be paid, any customary administrative fees charged by such Lender in connection with the foregoing. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender as specified in this Section and delivered to the Lead Borrower shall be conclusive absent manifest error.

For purposes of calculating amounts payable by the Borrowers to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each LIBOR Rate Loan or CDOR Rate Loan made by it at the LIBOR Rate for such Loan by a matching deposit or other borrowing in the London or Canadian interbank market for a comparable amount and for a comparable period, whether or not such LIBOR Rate Loan or CDOR Rate Loan was in fact so funded.

### **3.06 Mitigation Obligations; Replacement of Lenders.**

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrowers agree to pay or cause to be paid all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 and, in each case, such Lender has declined or is unable to designate a different Lending Office in accordance with Section 3.06(a), the Lead Borrower may replace such Lender in accordance with Section 10.13.

**3.07 Survival.** All of the Borrowers' obligations under this Article III shall survive termination of the Aggregate Revolving Commitments, the Aggregate FILO Term Loan Commitments, repayment, satisfaction or discharge of all other Obligations hereunder, and resignation of the Agent.

### **3.08 Availability of Credit.**

(a) Each Borrower hereby irrevocably designates and appoints the Lead Borrower as such Borrower's agent to obtain Revolving Credit Extensions and the FILO Term Loan, the proceeds of which shall be available to each Borrower for such uses as are permitted under this Agreement. In addition, each Loan Party other than the Borrowers hereby irrevocably designates and appoints the Lead Borrower as such Loan Party's agent to represent such Loan Party in all respects under this Agreement and the other Loan Documents.

(b) Each Borrower recognizes that credit available to it hereunder is in excess of and on better terms than it otherwise could obtain on and for its own account and that one of the reasons therefor is its joining in the applicable credit facility contemplated herein with all other Borrowers.

**ARTICLE IV**  
**CONDITIONS PRECEDENT TO CREDIT EXTENSIONS**

**4.01 Conditions of Initial Credit Extension.** The effectiveness of this Agreement and the other Loan Documents on the Effective Date is subject to satisfaction of the following conditions precedent:

(a) The Agent's receipt of the following, each of which shall be originals, telecopies or other electronic image scan transmission (e.g., "pdf" or "tif" via e-mail) (followed promptly by originals) unless otherwise specified, each dated the Effective Date and each in form and substance satisfactory to the Agent:

(i) counterparts of this Agreement duly executed by all parties hereto;

(ii) a Note executed by each applicable Borrower in favor of each Lender requesting a Note;

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Agent may reasonably require evidencing (A) the authority of each Loan Party to enter into this Agreement and the other Loan Documents to which such Loan Party is a party or is to become a party and (B) the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party;

(iv) copies of each Loan Party's Organization Documents as of the Effective Date, certified by a secretary or assistant secretary of such Loan Party, or with respect to a Luxembourg Loan Party, a manager, to be true and correct as of the Effective Date, and (b) good standing certificates (or equivalent) for each Loan Party as of a recent date prior to the Effective Date in its state, province or federal jurisdiction of organization or formation;

(v) an opinion of (i) Stikeman Elliott LLP, Canadian counsel to the Canadian Loan Parties, (ii) Willkie Farr & Gallagher LLP, counsel to the U.S. Loan Parties, and (iv) such other counsel as the Agent may reasonably require, in each case, addressed to the Agent and each Lender, as to such matters concerning the Loan Parties and the Loan Documents as the Agent may reasonably request;

(vi) a certificate of a Responsible Officer of the Lead Borrower certifying (A) that the conditions specified in Sections 4.01 and 4.02 have been satisfied, (B) that there has been no event or circumstance since February 2, 2019 that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect, (C) as to the Solvency of the Loan Parties, and (D) either that (1) no consents, licenses or approvals are required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, or (2) that all such consents, licenses and approvals have been obtained and are in full force and effect;

(vii) evidence that all insurance required to be maintained pursuant to the Loan Documents and all endorsements in favor of the Agent required under the Loan Documents have been obtained and are in effect;

(viii) the Security Documents, including the Confirmation Agreement, each duly executed by the applicable Secured Loan Parties noted on the signature pages to each such Security Document;

(ix) all other Loan Documents, each duly executed by the applicable Loan Parties;

(x) customary UCC, PPSA, RDPRM, *Bank Act* (Canada), United States Copyright Office, United States Patent and Trademark Office, Canadian Intellectual Property Office, tax and judgment lien searches as may be reasonably requested by the Agent prior to the Effective Date, listing all effective financing statements, lien notices or comparable documents that name any Secured Loan Party as debtor and that are filed in those state, provincial and county jurisdictions in which any Secured Loan Party is organized or maintains its principal place of business, the results of which are reasonably satisfactory to the Agent (in each case dated as of a date reasonably satisfactory to the Agent) indicating the absence of Liens on the assets of the Secured Loan Parties, except for Permitted Encumbrances and Liens for which termination statements satisfactory to the Agent are being tendered substantially concurrently with such extension of credit or other arrangements reasonably satisfactory to the Agent for the delivery of such termination statements have been made; and

(xi) (A) all documents and instruments, including UCC and PPSA financing statements and RDPRM hypothec registrations, required by applicable Laws or reasonably requested by the Agent to be filed, registered or recorded to create or perfect the first priority Liens intended to be created under the Loan Documents and all such documents and instruments shall have been so filed, registered or recorded to the satisfaction of the Agent, (B) the Credit Card Notifications and Account Control Agreements required pursuant to Section 6.12 hereof shall have been obtained, and (C) Account Control Agreements with respect to the Loan Parties' securities and investment accounts have been obtained.

(b) The Agent shall have received a Borrowing Base Certificate relating to the most recent month ended (which month end must be at least twenty (20) days prior to the Effective Date), and executed by a Responsible Officer of the Lead Borrower.

(c) After giving effect to (i) any Loans made or outstanding on the Effective Date, and (ii) all Letters of Credit outstanding on or to be issued at, or immediately subsequent to, the Effective Date, Availability shall be not less than \$600,000,000.

(d) Since February 2, 2019, there shall not have occurred any event or effect that has had or would be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.

(e) The Agent and the Lenders shall have received (A) the Audited Financial Statements, (B) the Quarterly Financial Statements, and (C) a pro forma calculation of Consolidated EBITDA of the Parent and its Subsidiaries as of and for the twelve-month period ending with the latest quarterly period of the Parent and its Subsidiaries covered by the Quarterly Financial Statements, in each case after giving effect to this Agreement, in each case prepared in conformity with GAAP and consistent with the Loan Parties' then current practices.

(f) The Agent and the Lenders shall have received and be reasonably satisfied with (i) (x) a detailed forecast for the 2019 Fiscal Year, which shall include a liquidity and Borrowing Base Availability model, by month, and (y) detailed financial projections and business assumptions for five (5) years thereafter, which shall include a Borrowing Base Availability model, Consolidated income statement, balance sheet, and statement of cash flow, in each case prepared in conformity with GAAP and consistent with the Loan Parties' then current practices and (ii) such other information (financial or otherwise) reasonably requested by the Agent.

(g) All fees required to be paid to the Agent or the Arrangers, including under the Fee Letters, on or before the Effective Date shall have been paid in full, and all fees, including under the Fee Letters, required to be paid to the Lenders on or before the Effective Date shall have been paid in full. The Borrowers shall have paid all expenses, charges and disbursements of the Agent, the Arrangers and of counsel to the Agent to the extent invoiced at least three (3) days prior to or on the Effective Date.

(h) The Agent and the Lenders shall have received all documentation and other information relating to the Borrowers and the other Loan Parties required by regulatory authorities under applicable AML Legislation, at least five (5) Business Days prior to the Effective Date to the extent such information has been requested at least ten (10) Business Days prior to the Effective Date. At least five (5) Business Days prior to the Effective Date to the extent such information has been requested at least ten (10) Business Days prior to the Effective Date, any Borrower that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation shall deliver, to each Lender that so requests, a Beneficial Ownership Certification in relation to such Borrower.

Without limiting the generality of the provisions of Section 9.06, for purposes of determining compliance with the conditions specified in this Section 4.01, 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 Agent shall have received notice from such Lender prior to the proposed Effective Date specifying its objection thereto.

**4.02 Conditions to all Credit Extensions.** The obligation of each Lender to honor any Request for a Revolving Credit Extension (other than a Revolving Loan Notice or a FILO Term Loan Notice requesting only a Conversion of Revolving Loans or the FILO Term Loan to the other Type, or a continuation of LIBOR Rate Loans or CDOR Rate Loans) and of each L/C Issuer to issue each Letter of Credit is subject to the following conditions precedent:

(a) The representations and warranties of each Loan Party contained in Article V or in any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of the date of such Revolving Credit Extension, except (i) in the case of any representation and warranty qualified by materiality, they shall be true and correct in all respects, (ii) to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (or in all respects, as applicable) as of such earlier date, and (iii) for purposes of this Section 4.02, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01 (except that on the Effective Date, shall refer to the most recent statements delivered under the Existing Credit Agreement).

(b) No Default or Event of Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) The Agent and, if applicable, the L/C Issuer or the Swing Line Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

(d) After giving effect to the Revolving Credit Extension requested to be made on any such date and the use of proceeds thereof, Availability shall be greater than zero.

(e) After giving effect to the Revolving Credit Extension requested to be made on any such date and the use of proceeds thereof and subject to the provisions of Section 2.01(f) hereof, Canadian Availability and U.S. Availability shall each be greater than zero.

(f) After giving effect to the Revolving Credit Extension requested to be made on any such date and the use of proceeds thereof, (i) Canadian Total Revolving Outstandings shall not exceed the Aggregate Canadian Revolving Commitments, and (ii) U.S. Total Revolving Outstandings shall not exceed the Aggregate U.S. Revolving Commitments.

Each Request for Credit Extension (other than a Revolving Loan Notice or a FILO Term Loan Notice requesting only a Conversion of Revolving Loans or the FILO Term Loan to the other Type or a continuation of LIBOR Rate Loans or CDOR Rate Loans) submitted by the Lead Borrower shall be deemed to be a representation and warranty by the Borrowers that the conditions specified in Sections 4.02(a), (b) and (d) have been satisfied on and as of the date of the applicable Revolving Credit Extension. The conditions set forth in this Section 4.02 are for the sole benefit of the Credit Parties but until the Required Revolving Lenders otherwise direct the Agent to cease making Revolving Loans and issuing Letters of Credit, the Revolving Lenders will fund their Applicable Percentage of all Revolving Loans and L/C Advances and participate in all Swing Line Loans and Letters of Credit whenever made or issued, which are requested by the Lead Borrower and which, notwithstanding the failure of the Loan Parties to comply with the provisions of this Article IV, agreed to by the Agent, provided, however, the making of any such Revolving Loans or the issuance of any Letters of Credit shall not be deemed a modification or waiver by any Credit Party of the provisions of this Article IV on any future occasion or a waiver of any rights or the Credit Parties as a result of any such failure to comply.

**4.03 Conditions to FILO Credit Extensions.** The obligation of each Lender to honor any request for a FILO Term Loan Borrowing are subject to the conditions precedent as separately agreed between the Borrowers and the FILO Term Lenders.

## **ARTICLE V REPRESENTATIONS AND WARRANTIES**

To induce the Credit Parties to enter into this Agreement and to make Loans and to issue Letters of Credit hereunder, each Loan Party represents and warrants to the Agent and the other Credit Parties that:

**5.01 Existence, Qualification and Power.** Each Loan Party and each Subsidiary thereof (a) is a corporation, limited liability company, partnership or limited partnership, duly incorporated, organized or formed, validly existing and, where applicable, in good standing under the Laws of the jurisdiction of its incorporation, organization or formation, (b) has all requisite power and authority and all requisite governmental licenses, permits, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, where applicable, in good



standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clauses (b)(i) and (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. Schedule 5.01 annexed hereto sets forth, as of the Effective Date, each Loan Party's name as it appears in official filings in its jurisdiction of incorporation or organization, its jurisdiction of incorporation or organization, organization type, organization number, if any, issued by its jurisdiction of incorporation or organization, and its federal employer identification number (if organized in the United States or similar numbers assigned by any other jurisdiction or Governmental Authority for other Loan Parties).

**5.02 Authorization; No Contravention.** The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is or is to be a party, has been duly authorized by all necessary corporate or other organizational action, and does not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach, termination, or contravention of, or constitute a default under, or require any payment to be made under (i) any Material Contract or any Material Indebtedness to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any material order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; (c) result in or require the creation of any Lien upon any asset of any Loan Party (other than Liens in favor of the Agent under the Security Documents); or (d) violate any material Laws applicable to the Loan Parties.

**5.03 Governmental Authorization; Other Consents.** No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, except for (a) the perfection, maintenance or enforcement of the Liens created under the Security Documents (including the first priority nature thereof) or (b) such as have been obtained or made and are in full force and effect.

**5.04 Binding Effect.** This Agreement has been, and each other Loan Document, when delivered, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, subject to Debtor Relief Laws or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

**5.05 Financial Statements; No Material Adverse Effect.**

(a) The audited financial statements of the Parent delivered pursuant to Section 6.01(a) (i) were prepared in accordance with IFRS or GAAP, as the case may be, consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (ii) fairly present in all material respects, the financial condition of the Parent and its Subsidiaries, as of the date thereof and their respective results of operations for the period covered thereby in accordance with GAAP or IFRS consistently applied throughout the period covered thereby, except as otherwise expressly noted therein.

(b) The unaudited Consolidated balance sheet of the Parent and its Subsidiaries delivered pursuant to Section 6.01(b), and the related Consolidated statements of income or operations, and cash flows for the Fiscal Quarter ended on that date, (i) were prepared in accordance with IFRS or GAAP, as the case may be, consistently applied throughout the period covered thereby, except as

otherwise expressly noted therein, and (ii) fairly present in all material respects the financial condition of the Parent and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

(c) Since the date of the most recent audited financial statements delivered pursuant to Section 6.01(a), there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(d) The Consolidated and consolidating forecasted balance sheet and statements of income and cash flows of the Parent and its Subsidiaries delivered pursuant to Section 6.01(d) were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair in light of the conditions existing at the time of delivery of such forecasts, and represented, at the time of delivery, the Loan Parties' best estimate of its future financial performance.

**5.06 Litigation.** Except as set forth on Schedule 5.06, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Loan Parties threatened, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or any of its Subsidiaries or against any of its properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document or any of the transactions contemplated hereby, or (b) except as specifically disclosed in Schedule 5.06, either individually or in the aggregate, if determined adversely, would reasonably be expected to have a Material Adverse Effect.

**5.07 No Default.** No Default or Event of Default has occurred and is continuing or would result from the consummation of any transactions contemplated by this Agreement or any other Loan Document.

#### **5.08 Ownership of Property; Liens**

(a) Each of the Loan Parties and each Subsidiary thereof has valid title in all Real Estate or valid leasehold interests in all Real Property Leases, in each case necessary or used in the ordinary conduct of its business, except for as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each of the Loan Parties and each Subsidiary thereof has valid title to, valid leasehold interests in, or valid licenses to use all personal property and assets material to the ordinary conduct of its business, except for as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Schedule 5.08(b)(1) sets forth the address (including street address, county and state) of all Real Estate (excluding Real Property Leases) that is owned by the Loan Parties and each of their Subsidiaries, together with a list of the holders of any mortgage thereon as of the Effective Date. Each Loan Party and each of its Subsidiaries has good, marketable and insurable fee simple title to the Real Estate owned by such Loan Party or such Subsidiary, free and clear of all Liens, other than Permitted Encumbrances. Schedule 5.08(b)(2) sets forth the address (including street address, county and state) of all Real Property Leases of the Loan Parties (other than any such location where the aggregate value of the Collateral maintained at such location is at all times less than \$5,000,000 (but including, in all events, corporate headquarters)), together with the name of each lessor and its contact information with respect to each such Real Property Lease as of the Effective Date. Each of such Leases is in full force and effect and the Loan Parties are not in default of the terms thereof, except, in each case, as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

### **5.09 Executive Offices, Collateral Locations.**

As of the Effective Date, the current location of each Loan Party's chief executive office, principal place of business, registered office according to its constating documents and, for any Loan Party organized in Quebec, domicile (within the meaning of the *Civil Code of Quebec*), the jurisdictions in which its tangible assets and property in excess of the Security Threshold Amount are located and the locations of all of its books and records concerning the Collateral and all Account Debtors are set forth on Schedule 5.09. Each Secured Loan Party that keeps records in the Province of Quebec relating to Collateral keeps a duplicate copy thereof at a location outside the Province of Quebec, as designated on Schedule 5.09.

### **5.10 Environmental Compliance.**

(a) Except as specifically disclosed in Schedule 5.10, no Loan Party or any Subsidiary thereof (i) has failed to comply in any material respect, with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) to the knowledge of the Loan Parties, has become subject to any Environmental Liability, or (iii) has received notice of any claim with respect to any Environmental Liability, except, in each case, as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Except as otherwise set forth in Schedule 5.10, to the knowledge of the Loan Parties, none of the properties currently or, to their knowledge, formerly owned or operated by any Loan Party or any Subsidiary thereof is listed or proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list or is adjacent to any such property; there are no and never have been any underground or above-ground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed on any property currently owned or operated by any Loan Party or any Subsidiary thereof or, to the best of the knowledge of the Loan Parties, on any property formerly owned or operated by any Loan Party or Subsidiary thereof; there is no asbestos or asbestos-containing material on any property currently owned or operated by any Loan Party or Subsidiary thereof; and Hazardous Materials have not been released, discharged or disposed of on any property currently or formerly owned or operated by any Loan Party or any Subsidiary thereof, except in each case as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(c) Except as otherwise set forth on Schedule 5.10 and except in each case as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, no Loan Party or any Subsidiary thereof is undertaking, and no Loan Party or any Subsidiary thereof has completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and all Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any property currently or, to their knowledge, formerly owned or operated by any Loan Party or any Subsidiary thereof have been disposed of in a manner not reasonably expected to result in material liability to any Loan Party or any Subsidiary thereof.

**5.11 Insurance.** The properties of the Loan Parties and their Subsidiaries that are necessary for the operation of their business are insured with financially sound and reputable insurance companies which are not affiliates of the Loan Parties, in such amounts, with such deductibles and covering such risks (including, without limitation, workmen's compensation, public liability, business interruption,

property damage and directors and officers liability insurance) as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Loan Parties or the applicable Subsidiary operates; provided that the Loan Parties may self-insure to the extent customary among companies engaged in similar businesses and operating in similar localities. Schedule 5.11 sets forth a description of all insurance maintained by or on behalf of the Loan Parties and their Subsidiaries as of the Effective Date. As of the Effective Date, each insurance policy listed on Schedule 5.11 is in full force and effect and all premiums in respect thereof that are due and payable have been paid.

**5.12 Taxes.** The Loan Parties and their Subsidiaries have filed all federal, state, provincial and other material tax returns and reports required to be filed, and have paid all federal, state, provincial and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which (i) are being contested in good faith by appropriate proceedings being diligently conducted, for which adequate reserves have been provided in accordance with GAAP or IFRS, as to which Taxes no Lien has been filed and which contest effectively suspends the collection of the contested obligation and the enforcement of any Lien securing such obligation, or (ii) individually or in the aggregate could not reasonably be expected to have a Material Adverse Effect. There is no proposed tax assessment against any Loan Party or any Subsidiary that would, if made, result in a liability, taking into account any payment made in relation to such assessment, which would be reasonably expected to have a Material Adverse Effect. Schedule 5.12 sets forth as of the Effective Date for each Loan Party in respect of (i) those taxation years or other relevant periods with respect to any charges that have not yet been assessed by the CRA or the applicable provincial, local or foreign Governmental Authorities, (ii) the taxation years or other relevant periods with respect to any charges that are currently being audited by the CRA or any other applicable Governmental Authority and (iii) any assessments or threatened assessments in connection with such audit, or otherwise currently outstanding and (iv) the most recent taxation year or other relevant periods with respect to any charges that an audit by CRA or the applicable provincial, local or foreign Governmental Authorities has been completed. Except as described in Schedule 5.12, as of the Effective Date, no Loan Party has executed or filed with the CRA or any other Governmental Authority any agreement or other document extending, or having the effect of extending, the period for assessment or collection of any charges. Except for failures that could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, each Loan Party has duly and timely collected all amounts on account of any sales or transfer taxes, including goods and services, harmonized sales and provincial or territorial sales taxes, required by Law to be collected by it and has duly and timely remitted to the appropriate Governmental Authority any such amounts required by Law to be remitted by it.

**5.13 ERISA; Canadian Pension Plans.**

(a) Except as would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other federal, or state Laws and the U.S. Borrower and each ERISA Affiliate is in compliance with ERISA, the Code and other United States federal or United States state Laws with respect to each Multiemployer Plan.

(b) There are no pending or, to the best knowledge of the U.S. Loan Parties, 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. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, (i) no ERISA Event has occurred, and neither the U.S.

Borrower nor any ERISA Affiliate is aware of any fact, event or circumstance that would reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan; (ii) the U.S. Borrower and each ERISA Affiliate has 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 Code) is 80% or higher and neither the U.S. Borrower nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 80% as of the most recent valuation date; (iv) neither the U.S. Borrower nor any ERISA Affiliate has 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 U.S. Borrower nor any ERISA Affiliate has engaged in a transaction that is 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 would reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

(d) As of the Effective Date, Schedule 5.13 lists all Canadian Pension Plans and identifies those which have a “defined benefit provision” as such term is defined in the ITA. Except as would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, each Canadian Loan Party is in compliance with all of their obligations under and in respect of the Canadian Pension Plans and Canadian Benefit Plans under the terms thereof, any funding agreements and all applicable laws (including any fiduciary, funding, investment and administration obligations). All employer and employee payments, contributions or premiums to be remitted, paid to or in respect of each Canadian Pension Plan or Canadian Benefit Plan have been paid in a timely fashion in accordance with the terms thereof, any funding agreement and all applicable Laws. Except as set forth on Schedule 5.13, as of the Effective Date, none of the Canadian Pension Plans, other than any union sponsored multi-employer pension plans in respect of which the Canadian Loan Parties’ obligations are limited to an amount set out in the applicable collective agreement or participation agreement or a fixed percentage of the payroll thereof, has a Pension Plan Unfunded Liability. All Pension Plan Unfunded Liabilities have been properly accrued in accordance with IFRS and are fully and accurately disclosed in the Parent’s consolidated financial statements delivered under Section 6.01 in accordance with IFRS. No Canadian Pension Plan Termination Event has occurred for which liabilities exceed Cdn\$2,500,000. Except as would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, there is no investigation by a Governmental Authority or claim (other than routine claims for payment of benefits) pending or, to the knowledge of any Loan Party, threatened involving any Canadian Pension Plan or their assets, and no facts exist which could reasonably be expected to give rise to any such investigation or claim (other than routine claims for payment of benefits).

**5.14 Subsidiaries; Equity Interests.** As of the Effective Date, the Loan Parties have no Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.14, which Schedule sets forth the legal name, jurisdiction of incorporation or formation. Schedule 5.14 also sets forth each Loan Party (under the heading “Loan Parties”), each Secured Loan Party (under the heading “Secured Loan Parties”), each Immaterial Subsidiary (under the heading “Immaterial Subsidiaries”), each Inactive Subsidiary (under the heading “Inactive Subsidiaries”), each Unrestricted Subsidiary (under the heading “Unrestricted Subsidiary”), each Real Estate Subsidiary (under the heading “Real Estate Subsidiary”) and any other Excluded Subsidiary (under the heading “Other Excluded Subsidiary”) as of the Effective Date. All of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and non-assessable and are owned by a Loan Party (or a Subsidiary of a Loan Party) free and clear of all Liens

except for Permitted Encumbrances. Except as set forth in Schedule 5.14, there are no outstanding rights to purchase any Equity Interests in any Subsidiary of a Loan Party. As of the Effective Date, the Loan Parties have no equity investments in any other corporation or entity other than those specifically disclosed in Part (b) of Schedule 5.14. The copies of the Organization Documents of each Loan Party and each amendment thereto provided pursuant to Section 4.01 are true and correct copies of each such document as of the Effective Date, each of which is valid and in full force and effect.

#### **5.15 Margin Regulations; Investment Company Act.**

(a) No Loan Party is engaged or will be engaged, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock. None of the proceeds of the Credit Extensions shall be used directly or indirectly for the purpose of purchasing or carrying any margin stock, for the purpose of reducing or retiring any Indebtedness that was originally incurred to purchase or carry any margin stock or for any other purpose that might cause any of the Credit Extensions to be considered a “purpose credit” within the meaning of Regulations T, U, or X issued by the FRB.

(b) None of the Loan Parties is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

#### **5.16 Disclosure.**

(a) Each Loan Party has disclosed to the Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other written information furnished by or on behalf of any Loan Party to the Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished), taken as a whole, contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time (it being understood that such projected financial information is not a guarantee of future performance and actual results may differ from those set forth in such projected financial information).

(b) As of the Effective Date, the information included in the Beneficial Ownership Certification provided on or prior to the Effective Date to any Lender in connection with this Agreement is true and correct in all respects.

**5.17 Compliance with Laws.** Each of the Loan Parties and each Subsidiary thereof is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees binding on it or its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

**5.18 Intellectual Property; Licenses, Etc.** Except as would not have or reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, the Loan Parties and their Subsidiaries own, or, to their knowledge possess the right to use, all of the Intellectual Property that is

reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person. Except as specifically disclosed in Schedule 5.18, no claim or litigation regarding any of the foregoing is pending or, to the best knowledge of the Loan Parties, threatened, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

#### **5.19 Labor Matters.**

Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect (i) there are no strikes, lockouts, slowdowns or other material labor disputes against any Loan Party or any Subsidiary thereof pending or, to the knowledge of any Loan Party, threatened, (ii) the hours worked by and payments made to employees of the Loan Parties comply with the Fair Labor Standards Act and any other applicable federal, state, local or foreign Law dealing with such matters, (iii) no Loan Party or any of its Subsidiaries has incurred any liability or obligation under the Worker Adjustment and Retraining Act or similar state Law, (iv) all payments due from any Loan Party and its Subsidiaries, or for which any claim may be made against any Loan Party or any of its Subsidiaries, on account of wages and employee health and welfare insurance and other benefits, have been paid or properly accrued in accordance with GAAP or IFRS as a liability on the books of such Loan Party, (v) each Loan Party has withheld all employee withholdings and has made all employer contributions to be withheld and made by it pursuant to applicable Laws on account of the Canada Pension Plan and Quebec Pension Plan as maintained by the Government of Canada and the Province of Quebec, respectively, employment insurance and employee income taxes; (vi) except as set forth on Schedule 5.19, as of the Effective Date, no Loan Party or any Subsidiary is a party to or bound by any collective bargaining agreement, any management, consulting or employment agreement providing for annual compensation of greater than Cdn\$5,000,000, including any bonus, restricted stock, stock option, or stock appreciation plan or agreement or any similar plan, agreement or arrangement (excluding any phantom share plan), (vii) there are no representation proceedings pending or, to any Loan Party's knowledge, threatened to be filed with the National Labor Relations Board, and no labor organization or group of employees of any Loan Party or any Subsidiary has made a pending demand for recognition, (viii) there are no complaints, unfair labor practice charges, grievances, arbitrations, unfair employment practices charges or any other claims or complaints against any Loan Party or any Subsidiary pending or, to the knowledge of any Loan Party, threatened to be filed with any Governmental Authority or arbitrator based on, arising out of, in connection with, or otherwise relating to the employment or termination of employment of any employee of any Loan Party or any of its Subsidiaries, or (ix) the consummation of the transactions contemplated by the Loan Documents will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Loan Party or any of its Subsidiaries is bound.

#### **5.20 Security Documents.**

(a) The Security Agreement creates in favor of the Agent, for the benefit of the Secured Parties referred to therein, a legal, valid, continuing and enforceable security interest in the Collateral (as defined in the Security Agreement), the enforceability of which is subject to applicable Debtor Relief Laws and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law. The financing statements, releases and other filings were in appropriate form and have been filed in the offices specified in Schedule I of the Security Agreement. The Agent has a perfected Lien on, and security interest in, to and under all right, title and interest of the grantors thereunder in all Collateral that may be perfected under the UCC (in effect on the date this representation is made) by filing, recording or registering a financing statement or analogous document (including without limitation the proceeds of such Collateral subject to the limitations relating to such proceeds in the UCC) or by obtaining control, in each case prior and superior in right to any other Person.

(b) The Canadian Security Documents create in favor of the Agent, for the benefit of the Secured Parties referred to therein, a legal, valid, continuing and enforceable security interest in, and hypothec on, the Collateral (as defined in the Canadian Security Documents), the enforceability of which is subject to applicable Debtor Relief Laws and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law. The financing statements, hypothec registrations, releases and other filings were in appropriate form and have been filed and registered in the offices specified in Schedule 1 of the Canadian Security Agreement and as required by applicable Laws, including in the RDPRM. The Agent has a perfected Lien on, and security interest in, to and under all right, title and interest of the grantors thereunder in all Collateral that may be perfected under the PPSA (in effect on the date this representation is made) by filing, recording or registering a financing statement or analogous document (including without limitation the proceeds of such Collateral subject to the limitations relating to such proceeds in the PPSA) or by obtaining control, in each case prior and superior in right to any other Person.

#### **5.21 Solvency**

After giving effect to the transactions contemplated by this Agreement, and before and after giving effect to each Credit Extension, the Loan Parties, on a Consolidated basis, are and will be Solvent. No transfer of property has been or will be made by any Loan Party and no obligation has been or will be incurred by any Loan Party in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of any Loan Party.

#### **5.22 Deposit Accounts; Credit Card Arrangements.**

(a) Annexed hereto as Schedule 5.22(a) is a list of all DDAs maintained by the Secured Loan Parties as of the Effective Date, which Schedule includes, with respect to each DDA (i) the name and address of the depository; (ii) the account number(s) maintained with such depository; (iii) a contact person at such depository, and (iv) the identification of each Controlled Account Bank.

(b) Annexed hereto as Schedule 5.22(b) is a list describing all arrangements as of the Effective Date to which any Secured Loan Party is a party with respect to the processing and/or payment to such Loan Party of the proceeds of any credit card charges and debit card charges for sales made by such Loan Party.

**5.23 Brokers.** No broker or finder brought about the obtaining, making or closing of the Loans, the transactions contemplated by the Loan Documents, and no Loan Party or Affiliate thereof has any obligation to any Person in respect of any finder's or brokerage fees in connection therewith.

**5.24 Material Contracts.** Schedule 5.24 sets forth all Material Contracts to which any Loan Party is a party or is bound as of the Effective Date. The Loan Parties are not in breach or in default in any material respect of or under any Material Contract (excluding Real Property Leases) and have not received any notice of default under, or of the intention of any other party thereto to terminate, any Material Contract.

**5.25 Casualty.** Neither the businesses nor the properties of any Loan Party or any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.



**5.26 Customs Broker/Carrier Agreements.** Schedule 5.26 lists all arrangements, as of the Effective Date, to which any Loan Party maintains with any customs broker, freight carrier or other shipping agent, with respect to the importation, storage or transport of goods (including, for greater certainty, Inventory) for such Loan Party.

**5.27 Inactive Subsidiaries.** As of the Effective Date, no Inactive Subsidiary (a) is engaged in any business or has any Indebtedness or any other material liabilities (except in connection with its corporate formation) or (b) owns or holds any interest, direct or indirect, in any property or asset (other than its name).

## **5.28 USA PATRIOT Act; Sanctioned Persons**

(a) To the extent applicable, each Loan Party is in compliance, in all material respects, with (i) the United States Trading with the Enemy Act and each of the other Foreign Assets Control Regulations (including, without limitation, the Executive Order and the USA PATRIOT Act), (ii) the United States Foreign Corrupt Practices Act of 1977, (iii) *the Corruption of Foreign Public Officials Act* (Canada), as amended (the “FCPA”), (iv) the UK Bribery Act 2010 and (v) other applicable anti-corruption Laws, and the Loan Parties have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws and applicable Sanctions, and to the knowledge of the Loan Parties and their Subsidiaries are in compliance with such anti-corruption Laws in all material respects and applicable Sanctions in all respects. No part of the proceeds of the Credit Extensions will be used, directly or, to the Loan Parties’ knowledge, 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 FCPA, each of the other Foreign Assets Control Regulations or other applicable anti-corruption Laws.

(b) Neither the Parent, nor any of its Subsidiaries, nor, to the knowledge of the Loan Parties, any director, officer, employee, agent or affiliate of the U.S. Borrower is an individual or entity (for purposes of this Section 5.28(b), a “Person”) that is, or is owned or controlled by Persons that are (x) an Embargoed Person or (y) the subject of any sanctions (A) administered or enforced by OFAC, the United States, the Government of Canada, the United Nations Security Council, the European Union, Her Majesty’s Treasury or other applicable sanctions authority, (B) pursuant to the U.S. Iran Sanctions Act, as amended, or Executive Order 13590 (collectively, “Sanctions”) or (C) located, organized or resident in a Designated Jurisdiction (including, without limitation, Burma/Myanmar, Iran, North Korea, Sudan, Crimea, Cuba and Syria). The Loan Parties will not, directly or, to their knowledge, indirectly, use the proceeds of the Credit Extensions, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person, (i) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions or (ii) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in the Credit Extensions, whether as lender, underwriter, advisor, investor or otherwise).

(c) The Parent and each of its Restricted Subsidiaries, to the extent applicable, (a) are in compliance in all material respects with the *Criminal Code* (Canada) and the PCTFA, and (b) are in compliance in all material respects with all other AML Legislation and the Canadian Economic Sanctions and Export Control Laws. Furthermore, no Loan Party nor any Subsidiary thereof is a Canadian Blocked Person. No part of the proceeds of the Credit Extensions will be

used, directly or, to the Loan Parties' knowledge, indirectly, in violation of AML Legislation or the Canadian Economic Sanctions and Export Control Laws.

**5.29 Loan Parties.** None of the Loan Parties which do not constitute Secured Loan Parties have any Inventory, Credit Card Receivables or Intellectual Property, or other assets included in the Combined Borrowing Base and none will obtain, acquire or otherwise own any such assets unless such Loan Party becomes a Secured Loan Party.

**5.30 Luxembourg.** Each Luxembourg Loan Party has, and shall maintain, its central administration (*administration centrale*) and, for the purposes of the Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast), as amended (the "EU Insolvency Regulation"), the centre of its main interests (*centre des intérêts principaux*) at the place of its registered office (*siège statutaire*) in Luxembourg and has no establishment (as defined in the EU Insolvency Regulation) outside Luxembourg.

**5.31 EEA Financial Institution.** None of the Loan Parties is an EEA Financial Institution.

## **ARTICLE VI AFFIRMATIVE COVENANTS**

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent indemnification claims for which a claim has not been asserted), or any Letter of Credit shall remain outstanding, the Loan Parties shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, and 6.03) cause each Restricted Subsidiary of the Parent to:

**6.01 Financial Statements.** Deliver to the Agent, in form and detail reasonably satisfactory to the Agent:

(a) as soon as available, but in any event within 120 days after the end of each Fiscal Year of the Parent, (i) a Consolidated balance sheet of the Parent and its Subsidiaries as at the end of such Fiscal Year, and the related consolidated statements of income or operations, Shareholders' Equity and cash flows for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all in reasonable detail and prepared in accordance with IFRS, and (ii) a consolidating balance sheet of the Parent and its Subsidiaries as at the end of such Fiscal Year, and the related consolidating statements of income or operations, Shareholders' Equity and cash flows for such Fiscal Year (all such consolidating statements to be presented by each Borrower and its Subsidiaries on a consolidated basis), setting forth in each case in comparative form the figures for the previous Fiscal Year, all in reasonable detail and prepared in accordance with GAAP or IFRS, each such consolidated statements to be audited and accompanied by the report of a Registered Public Accounting Firm of nationally recognized standing reasonably acceptable to the Agent, which report 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; and such consolidating statements to be certified by a Responsible Officer of the Lead Borrower to the effect that such statements are fairly stated in all material respects when considered in relation to the consolidated financial statements of the Parent and its Subsidiaries;

(b) as soon as available, but in any event (i) within 45 days after the end of each of the first three Fiscal Quarters of each Fiscal Year of the Parent, and (ii) within 90 days after the

end of the fourth Fiscal Quarter of the Parent, an unaudited Consolidated and consolidating balance sheet of the Parent and its Subsidiaries as at the end of such Fiscal Quarter, and the related unaudited consolidated and consolidating statements of income or operations, and cash flows for such Fiscal Quarter and for the portion of the Parent's Fiscal Year then ended (all such consolidating statements to be presented by each Borrower and its Subsidiaries on a consolidated basis), setting forth in each case in comparative form the figures for (A) the corresponding Fiscal Quarter of the previous Fiscal Year and (B) the corresponding portion of the previous Fiscal Year, all in reasonable detail, such Consolidated statements to be certified by a Responsible Officer of the Lead Borrower as fairly presenting in all material respects the financial condition, results of operations, and cash flows of the Parent and its Subsidiaries as of the end of such Fiscal Quarter in accordance with GAAP or IFRS, as applicable, subject only to normal year-end audit adjustments and the absence of footnotes and such consolidating statements to be certified by a Responsible Officer of the Lead Borrower to the effect that such statements are fairly stated in all material respects when considered in relation to the consolidated financial statements of the Parent and its Subsidiaries;

(c) simultaneously with the delivery of each set of Consolidated financial statements referred to in Sections 6.01(a) and 6.01(b), above, (i) a detailed calculation of the Consolidated Fixed Charge Coverage Ratio for such period, reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such Consolidated Fixed Charge Coverage Ratio, and (ii) a current schedule of all Unrestricted Subsidiaries, accompanied by the certification of a Responsible Officer of the Lead Borrower certifying that such financial information presents fairly in accordance with GAAP or IFRS, as applicable, the exclusion of the financial position and results of operations of all Unrestricted Subsidiaries; and

(d) as soon as available, but in any event no more than 90 days after the end of each Fiscal Year of the Parent, forecasts prepared by management of the Lead Borrower, in form satisfactory to the Agent, of (i) Availability, Canadian Availability and U.S. Availability, prepared on a monthly basis for the immediately following Fiscal Year (including the Fiscal Year in which the Revolving Maturity Date occurs), and (ii) the consolidated, and consolidating by Borrower, balance sheets and statements of income or operations and cash flows of the Parent and its Subsidiaries on a quarterly basis for the immediately following Fiscal Year (including the Fiscal Year in which the Revolving Maturity Date occurs), and as soon as available, any significant revisions to such forecast with respect to such Fiscal Year.

**6.02 Certificates; Other Information.** Deliver to the Agent, in form and detail reasonably satisfactory to the Agent:

(a) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b), a duly completed Compliance Certificate signed by a Responsible Officer of the Lead Borrower, and in the event of any material change in GAAP or IFRS used in the preparation of such financial statements, the Lead Borrower shall also provide a statement of reconciliation conforming such financial statements to GAAP or IFRS, as applicable, and (ii) a copy of management's discussion and analysis with respect to such financial statements;

(b) on the 16th day of each Fiscal Month (or, if such day is not a Business Day, on the next succeeding Business Day), a Borrowing Base Certificate (together with supporting documentation) showing the Revolving Borrowing Base or if the FILO Term Loan is outstanding, the Combined Borrowing Base, as of the close of business as of the last day of the immediately preceding Fiscal Month, each Borrowing Base Certificate to be certified as complete and correct by a Responsible Officer of the Lead Borrower; provided that at any time

that an Accelerated Borrowing Base Delivery Event has occurred and is continuing, such Borrowing Base Certificate shall be delivered on Wednesday of each week (or, if Wednesday is not a Business Day, on the next succeeding Business Day), as of the close of business on the immediately preceding Saturday;

(c) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Loan Parties, and copies of all annual, regular, periodic and special reports and registration statements which any Loan Party may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, with any national securities exchange or with any similar Canadian Governmental Authority or exchange;

(d) The financial and collateral reports described on Schedule 6.02 hereto, at the times set forth in such Schedule;

(e) promptly, and in any event within five (5) Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence received from any Governmental Authority (including, without limitation, the SEC (or comparable agency in any applicable non-U.S. jurisdiction)) concerning any proceeding with, or investigation or possible investigation or other inquiry by such Governmental Authority regarding financial or other operational results of any Loan Party or any Subsidiary thereof or any other matter which, if adversely determined, could reasonably be expected to have a Material Adverse Effect; and

(f) promptly, such additional information regarding the business affairs, financial condition or operations of any Loan Party or any Subsidiary, or compliance with the terms of the Loan Documents, as the Agent (or any Lender acting through the Agent) may from time to time reasonably request.

Documents required to be delivered pursuant to Section 6.01(a), (b), or (c) or Section 6.02(d) (to the extent any such documents are included in materials otherwise filed with the SEC or comparable agency in any applicable non-U.S. jurisdiction) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Lead Borrower posts such documents, or provides a link thereto on the Lead Borrower's website on the Internet at the website address listed on Schedule 10.02 (as may be updated by the Lead Borrower from time to time); or (ii) on which such documents are posted on the Lead Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Agent have access (whether a commercial, third-party website or whether sponsored by the Agent); provided that: the Lead Borrower shall notify the Agent (by telecopier or electronic mail) of the posting of any such documents and provide to the Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Loan Parties with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Loan Parties hereby acknowledge that (a) the Agent and/or the Arrangers will make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of the Loan Parties hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on Debt Domain, IntraLinks, Syndtrak or another similar electronic system (the "Platform") and (b) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information (within the meaning of applicable Canadian securities laws and the United States federal securities laws) with respect to the Loan Parties and Affiliates, or the respective securities of any of the

foregoing, and who may be engaged in investment and other market related activities with respect to such Person's securities) (each, a "Public Lender"). The Loan Parties hereby agree that (w) they will identify that portion of the Borrower Materials that may be distributed to the Public Lenders by clearly and conspicuously marking such Borrower Materials "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 Loan Parties shall be deemed to have authorized the Agent, the Arrangers, the L/C Issuer and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Loan Parties or their securities for purposes of applicable Canadian securities laws, United States federal securities laws and provincial and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information"; and (z) the Agent and the 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 Side Information."

**6.03 Notices.** Promptly after any Responsible Officer of the Loan Parties has actual knowledge thereof, notify the Agent:

- (a) of the occurrence of any Default or Event of Default;
- (b) of any dispute, litigation, investigation, proceeding or suspension between any Loan Party or any Subsidiary thereof and any Governmental Authority (other than customary tax certiorari proceedings); or the commencement of, or any material development in, any litigation or proceeding affecting any Loan Party or any Subsidiary thereof, including pursuant to any applicable Environmental Laws, in each case, to the extent that such matter has resulted or would reasonably be expected to result in a Material Adverse Effect;
- (c) of (i) the occurrence of any ERISA Event which would reasonably be expected to result in a Material Adverse Effect, or (ii) a failure to make any required contribution to a Canadian Pension Plan, the creation of any Lien in favor of the PBGC or FSCO, or a Canadian Pension Plan, or (iii) the occurrence of a Canadian Pension Plan Termination Event, which would reasonably be expected to result in a Material Adverse Effect;
- (d) of any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary thereof;
- (e) of any change in the Lead Borrower's chief executive officer or chief financial officer;
- (f) of the discharge by any Loan Party of its present Registered Public Accounting Firm or any withdrawal or resignation by such Registered Public Accounting Firm;
- (g) of the filing of any Lien for unpaid Taxes against any Loan Party in excess of \$5,000,000;
- (h) of any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any interest in a material portion of the Collateral under power of eminent domain or by condemnation or similar proceeding or if any material portion of the Collateral is damaged or destroyed;

(i) of any planned or actual Disposition of Equity Interests of any Loan Party (other than of the Parent or between Loan Parties) which would result (or has resulted) in a Change of Control with respect to such Loan Party; and

(j) of any failure by any Loan Party to pay rent at (i) any of the Loan Parties' distribution centers or warehouses, or (ii) ten percent (10%) or more of such Loan Party's Store locations if, in each case, such failure continues for more than ten (10) days following the day on which a Loan Party received notice of such failure and such failure would be reasonably likely to result in a Material Adverse Effect.

Each notice pursuant to this Section shall be accompanied by a statement of a Responsible Officer of the Lead Borrower setting forth details of the occurrence referred to therein and stating what action the Lead Borrower has taken and proposes to take with respect thereto.

**6.04 Payment of Obligations.** Pay and discharge as the same shall become due and payable, all its obligations and liabilities (beyond any applicable grace or cure period), including (a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, and (b) all lawful claims (including, without limitation, claims of landlords, warehousemen, customs brokers, freight forwarders, consolidators, and carriers) which, if unpaid, would by Law become a Lien upon its property; except, in each case, where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) such Loan Party has set aside on its books adequate reserves with respect thereto in accordance with GAAP or IFRS, as applicable, (c) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation, (d) no Lien has been filed with respect thereto and (e) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect. Each Loan Party shall also duly and timely collect all amounts on account of any sales or transfer taxes required by law to be collected by it, and shall duly and timely remit to the appropriate Governmental Authority any such amounts required by law to be remitted by it except, in each case, where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) such Loan Party has set aside on its books adequate reserves with respect thereto in accordance with GAAP or IFRS, as applicable, (c) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation, (d) no Lien has been filed with respect thereto and (e) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect. Nothing contained herein shall be deemed to limit the rights of the Agent with respect to determining Reserves pursuant to this Agreement.

**6.05 Preservation of Existence, Etc.** (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization or formation except in a transaction permitted by Section 7.04 or 7.05; (b) take all reasonable action to maintain all material rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its material Intellectual Property, except to the extent such Intellectual Property is no longer used or useful in the conduct of the business of the Loan Parties.

**6.06 Maintenance of Properties.** (a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, in all material respects, ordinary wear and tear excepted and casualty and condemnation excepted and in accordance with industry practices; and (b) make all necessary repairs thereto and renewals and replacements thereof in accordance with customary industry practice except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

## **6.07 Maintenance of Insurance**

(a) Maintain with financially sound and reputable insurance companies reasonably acceptable to the Agent that are not affiliates of the Loan Parties, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business and operating in the same or similar locations or as is required by Law, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons and as are reasonably acceptable to the Agent.

(b) Maintain for themselves and their Subsidiaries, a Directors and Officers insurance policy, and a "Blanket Crime" policy including employee dishonesty, forgery or alteration, theft, disappearance and destruction, robbery and safe burglary, property, and computer fraud coverage with responsible companies in such amounts as are customarily carried by business entities engaged in similar businesses similarly situated.

(c) Cause fire and extended coverage policies maintained with respect to any Collateral to be endorsed or otherwise amended to include (i) a lenders' loss payable clause (regarding personal property), in form and substance satisfactory to the Agent, which endorsements or amendments shall provide that the insurer shall pay all proceeds otherwise payable to the Loan Parties under the policies directly to the Agent, (ii) a provision to the effect that none of the Loan Parties, Credit Parties or any other Person shall be a co-insurer and (iii) such other provisions as the Agent may reasonably require from time to time to protect the interests of the Credit Parties.

(d) Cause commercial general liability policies to be endorsed to name the Agent as an additional insured.

(e) Cause business interruption policies to name the Agent as a loss payee and to be endorsed or amended to include (i) a provision that, from and after the Effective Date, the insurer shall pay all proceeds otherwise payable to the Secured Loan Parties under the policies directly to the Agent, (ii) a provision to the effect that none of the Loan Parties, the Agent, the Agent or any other party shall be a co-insurer and (iii) such other provisions as the Agent may reasonably require from time to time to protect the interests of the Credit Parties.

(f) Cause each such policy referred to in this Section 6.07 to also provide that it shall not be canceled, modified or not renewed (i) by reason of nonpayment of premium except upon not less than ten (10) days' prior written notice thereof by the insurer to the Agent (giving the Agent the right to cure defaults in the payment of premiums) or (ii) for any other reason except upon not less than thirty (30) days' prior written notice thereof by the insurer to the Agent.

(g) Deliver to the Agent, prior to the cancellation, modification or non-renewal of any such policy of insurance, a copy of a renewal or replacement policy (or other evidence of renewal of a policy previously delivered to the Agent, including an insurance binder) together with evidence satisfactory to the Agent of payment of the premium therefor.

(h) Permit any representatives that are designated by the Agent to inspect the insurance policies maintained by or on behalf of the Loan Parties and to inspect books and records related thereto and any properties covered thereby.

None of the Credit Parties, or their agents or employees shall be liable for any loss or damage insured by the insurance policies required to be maintained under this Section 6.07. Each Loan Party shall look

solely to its insurance companies or any other parties other than the Credit Parties for the recovery of such loss or damage and such insurance companies shall have no rights of subrogation against any Credit Party or its agents or employees. If, however, the insurance policies do not provide waiver of subrogation rights against such parties, as required above, then the Loan Parties hereby agree, to the extent permitted by law, to waive their right of recovery, if any, against the Credit Parties and their agents and employees. The designation of any form, type or amount of insurance coverage by any Credit Party under this Section 6.07 shall in no event be deemed a representation, warranty or advice by such Credit Party that such insurance is adequate for the purposes of the business of the Loan Parties or the protection of their properties.

#### **6.08 Compliance with Laws; Compliance with ERISA and Canadian Pension Plans**

(a) Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (i) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves have been set aside and maintained by the Loan Parties in accordance with GAAP or IFRS, as applicable, (ii) such contest effectively suspends enforcement of the contested Laws, and (iii) the failure to comply therewith would not reasonably be expected to have a Material Adverse Effect.

(b) With respect to the U.S. Loan Parties, do, and cause each of its ERISA Affiliates to do, each of the following:

(i) maintain each Plan in compliance with the applicable provisions of ERISA, the Internal Revenue Code and other applicable Law;

(ii) cause each Plan that is qualified under Section 401(a) of the Internal Revenue Code to maintain such qualification; and

(iii) make all required contributions to any Plan or Multiemployer Plan subject to Section 412 of the Internal Revenue Code, except with respect to each of the foregoing clauses of this Section 6.08(b), where the failure to comply would not reasonably be expected to have a Material Adverse Effect.

(c) With respect to Canadian Loan Parties, cause each of its Canadian Pension Plans (other than any Canadian Pension Plan which is a “multi-employer pension plan”, as defined under the *Pension Benefits Act* (Ontario) or any similar type of plan subject to pension benefits standards legislation of another jurisdiction in Canada) to be duly registered and administered in all material respects in compliance with the *Pension Benefits Act* (Ontario) or other applicable pension benefits standards legislation and all other applicable laws (including regulations, orders and directives), and the terms of the Canadian Pension Plans and any agreements relating thereto. Each Canadian Loan Party shall ensure:

(i) that no Lien arises on any of its assets in respect of any Canadian Pension Plan (other than Liens in respect of employee contributions withheld from pay but not yet due to be remitted to any Canadian Pension Plan); and

(ii) it makes all required contributions to any Canadian Pension Plan when due.



#### **6.09 Books and Records; Accountants.**

(a) Maintain proper books of record and account, in which full, true and correct entries in conformity in all material respects with GAAP or IFRS, as the case may be, consistently applied shall be made of all financial transactions and matters involving the assets and business of the Loan Parties or such Subsidiary, as the case may be.

(b) at all times retain a Registered Public Accounting Firm which is reasonably satisfactory to the Agent and instruct such Registered Public Accounting Firm to cooperate with, and be available to, the Agent or its representatives to discuss the Loan Parties' financial performance, financial condition, operating results, controls, and such other matters, within the scope of the retention of such Registered Public Accounting Firm, as may be reasonably raised by the Agent.

#### **6.10 Inspection Rights.**

(a) In addition to the rights set forth in clauses (b) and (c) hereof, permit representatives and independent contractors of the Agent to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and Registered Public Accounting Firm, all at the expense of the Loan Parties and at such reasonable times during normal business hours one time each Fiscal Year for each Borrower, upon reasonable advance notice to the Lead Borrower; provided, however, that when a Default or an Event of Default exists the Agent (or any of its representatives or independent contractors) may do any of the foregoing at the expense of the Loan Parties at any time during normal business hours and without advance notice. Unless an Event of Default has occurred and is continuing, the Borrowers shall have the right to have a representative at any and all inspections conducted at the Borrowers' headquarters.

(b) Upon the request of the Agent after reasonable prior notice, permit the Agent or professionals (including investment bankers, consultants, accountants, and lawyers) retained by the Agent to conduct commercial finance examinations and other evaluations of the Loan Parties, including, without limitation, of (i) the Borrowers' practices in the computation of the Revolving Borrowing Base or at any time that the FILO Term Loan is outstanding, the Combined Borrowing Base, and (ii) the assets included in the Revolving Borrowing Base, or at any time that the FILO Term Loan is outstanding, the Combined Borrowing Base, and related financial information such as, but not limited to, sales, gross margins, payables, accruals and reserves. The Agent agrees (and the Loan Parties acknowledge) that it shall request at least one (1) commercial finance examination for each Borrower in any twelve (12) month period. The Loan Parties shall pay the fees and expenses of the Agent and such professionals with respect to one (1) commercial finance examination for each Borrower in any twelve (12) month period; provided that if Availability is at any time less than fifteen percent (15%) of the Revolving Loan Cap (calculated without giving effect to the FILO Term Loan Push Down Reserve, if applicable), the Loan Parties shall pay for one (1) additional commercial finance examination for each Borrower in each twelve (12) month period. Notwithstanding the foregoing, (i) the Agent may cause one (1) additional commercial finance examination in any twelve (12) month period to be undertaken for each Borrower as it in its discretion deems necessary or appropriate, at the Credit Parties' expense, and (ii) the Agent may cause additional commercial finance examinations be undertaken if required by applicable Laws or if an Event of Default shall have occurred and be continuing, at the expense of the Loan Parties. Unless an Event of Default has occurred and is continuing, the Lead Borrower shall have the right to have a representative at any and all commercial finance examinations and other evaluations of the Loan Parties.

(c) Upon the request of the Agent after reasonable prior notice, permit the Agent or professionals (including appraisers) retained by the Agent to conduct appraisals of the Collateral, including, without limitation, the assets included in the Revolving Borrowing Base, or at any time that the FILO Term Loan is outstanding, the Combined Borrowing Base. The Agent agrees (and the Secured Loan Parties acknowledge) that it shall request at least (i) one (1) inventory appraisal and (ii) if the FILO Term Loan Draw Date has occurred one (1) intellectual property appraisal for each Borrower in any twelve (12) month period. The Secured Loan Parties shall pay the fees and expenses of the Agent and such professionals with respect to one (1) such inventory appraisal and, if the FILO Term Loan is outstanding, one (1) such intellectual property appraisal for each Borrower in any twelve (12) month period; provided that if Availability is at any time less than fifteen percent (15%) of the Revolving Loan Cap (calculated without giving effect to the FILO Term Loan Push Down Reserve, if applicable), the Secured Loan Parties shall pay for one (1) additional inventory appraisal and, if the FILO Term Loan is outstanding, one (1) additional intellectual property appraisal for each Borrower in each twelve (12) month period. Notwithstanding the foregoing, (i) the Agent may cause (i) one (1) additional inventory appraisal and (ii) if the FILO Term Loan is outstanding, one (1) additional intellectual appraisal to be undertaken in any twelve (12) month period for each Borrower as it in its discretion deems necessary or appropriate, at the Credit Parties' expense, and (ii) the Agent may cause additional inventory appraisals and, if the FILO Term Loan is outstanding, intellectual property appraisals to be undertaken if required by applicable Laws or if an Event of Default shall have occurred and be continuing, at the expense of the Secured Loan Parties. Unless an Event of Default has occurred and is continuing, the Borrowers shall have the right to have a representative at any and all appraisals of the Collateral conducted at the Borrowers' headquarters.

#### **6.11 Additional Loan Parties; Additional Collateral.**

(a) Notify the Agent at the time that any Person becomes, after the Effective Date, a Restricted Subsidiary of the Parent or a Subsidiary of any of its Restricted Subsidiaries (which, for purposes of this Section, shall include any Excluded Subsidiary which no longer qualifies as an Excluded Subsidiary and any Person which is required to become either a borrower or a guarantor under the Permitted Term Loan Debt), and promptly thereafter (and in any event within ninety (90) days or such longer period as the Agent may agree in its direction), cause any such Person which is not an Excluded Subsidiary to (i) become a Loan Party by executing and delivering to the Agent a Joinder Agreement or such other documents as the Agent shall deem appropriate for such purpose, (ii) in the case of a Restricted Subsidiary of a Loan Party (other than an Excluded Subsidiary) which Restricted Subsidiary has assets that are of a type included in the Combined Borrowing Base, grant a Lien to the Agent on such Person's assets of the same type that constitute Collateral to secure the Obligations in order that such Person shall be a Secured Loan Party, and (iii) deliver to the Agent documents of the types referred to in clauses (iii) and (iv) of Section 4.01(a), as appropriate based on whether such Person is a Secured Loan Party or a Loan Party, and opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in this Section 6.11). In no event shall compliance with this Section 6.11 waive or be deemed a waiver or consent to any transaction giving rise to the need to comply with this Section 6.11 if such transaction was not otherwise expressly permitted by this Agreement or constitute or be deemed to constitute, with respect to any Subsidiary, an approval of such Person as a Guarantor hereunder or permit the inclusion of any acquired assets in the computation of the Combined Borrowing Base or any component thereof.

(b) In no event shall compliance with this Section 6.11 waive or be deemed a waiver or consent to any transaction giving rise to the need to comply with this Section 6.11 if such transaction was not otherwise expressly permitted by this Agreement or constitute or be deemed to constitute, with

respect to any Subsidiary, an approval of such Person as a Guarantor hereunder or permit the inclusion of any acquired assets in the computation of the Combined Borrowing Base or any component thereof.

(c) The Parent may, at its option, provide notice to the Agent if a Restricted Subsidiary that is a Loan Party becomes or qualifies as an Immaterial Subsidiary or other Excluded Subsidiary (a “Reclassification Notice”). Upon delivery of a certificate demonstrating the basis upon which a Reclassification Notice is being delivered and certifying that no Default or Event of Default exists or would arise as a result of such designation, such certificate in form satisfactory to the Agent, acting reasonably, upon request of the Parent, so long as no Default or Event of Default shall then exist or would result therefrom, the Agent shall take such actions as may be requested by the Parent to release such Excluded Subsidiary from its Facility Guarantee and release any Liens held by the Agent.

#### **6.12 Cash Management.**

(a) On or prior to the Effective Date (or such later date to which the Agent may agree in writing):

(i) deliver to the Agent copies of notifications (each, a “Credit Card Notification”) reasonably satisfactory in form and substance to the Agent which have been executed on behalf of any Secured Loan Party and delivered to such Secured Loan Party’s credit card clearinghouses and processors listed on Schedule 5.22(b); and

(ii) enter into an Account Control Agreement satisfactory in form and substance to the Agent with each Controlled Account Bank (collectively, the “Controlled Accounts”); provided that such Controlled Accounts shall in no event include any Excluded Accounts.

(b) ACH or wire transfer no less frequently than daily (and whether or not there are then any outstanding Obligations) to a Controlled Account all amounts on deposit in each DDA, other than any Excluded Accounts (net of any minimum balances, not to exceed \$50,000 required to be kept in the subject DDA by the depository institution at which DDA is maintained, but in no event in excess of \$2,500,000 in the aggregate for all such DDAs (other than during the months of November, December and January, during which months such cash shall not exceed \$4,000,000 at any time in the aggregate)) and all payments due from all Credit Card Issuers and Credit Card Processors.

(c) After the occurrence and during the continuance of a Cash Dominion Event, cause the ACH or wire transfer to the concentration account maintained by the Agent at Bank of America (the “U.S. Collection Account”) (in the case of any U.S. Loan Party) or maintained by the Agent at Bank of America (the “Canadian Collection Account”) (in the case of any Canadian Loan Party), no less frequently than daily (and whether or not there are then any outstanding Obligations), all cash receipts and collections received by each Loan Party from all sources, including, without limitation, the following:

(i) all available cash receipts from the sale of Inventory (including without limitation, proceeds of credit card charges) and other assets (whether or not constituting Collateral);

(ii) all proceeds of collections of Accounts;

(iii) all Net Proceeds, and all other cash payments received by a Loan Party from any Person or from any source or on account of any Disposition of Collateral or other transaction or event, including, without limitation, any Prepayment Event; and

(iv) the then entire ledger balance of each Controlled Account (net of (A) any minimum balances required to be kept in such Controlled Account by the depository institution at which such Controlled Account is maintained plus (B) up to \$2,500,000 in the aggregate (other than during the months of November, December and January, during which months such cash shall not exceed \$4,000,000 at any time in the aggregate)).

(d) Each Collection Account shall at all times be under the sole dominion and control of the Agent. The Loan Parties hereby acknowledge and agree that (i) the Loan Parties have no right of withdrawal from the Collection Accounts, (ii) the funds on deposit in each Collection Account shall at all times be collateral security for the Obligations, and (iii) the funds on deposit in the Collection Accounts shall be applied to the Obligations as provided in this Agreement. In the event that, notwithstanding the provisions of this Section 6.12, any Loan Party receives or otherwise has dominion and control of any such cash receipts or collections, such receipts and collections shall be held in trust by such Loan Party for the Agent, shall not be commingled with any of such Loan Party's other funds or deposited in any account of such Loan Party and shall, not later than the Business Day after receipt thereof, be deposited into a Controlled Account, a Collection Account or dealt with in such other fashion as such Loan Party may be instructed by the Agent. Upon Payment in Full, all remaining amounts in the Collection Accounts shall be released and transferred to the Loan Parties as designated by the Lead Borrower.

(e) Upon the request of the Agent, cause bank statements and/or other reports to be delivered to the Agent, accurately setting forth all amounts deposited in each Controlled Account to ensure the proper transfer of funds as set forth above.

### **6.13 Information Regarding the Collateral.**

(a) Furnish to the Agent at least ten (10) days (or within such other period as may be agreed to by the Agent) prior written notice of any change in: (i) any Secured Loan Party's name or in any trade name used to identify it in the conduct of its business or in the ownership of its properties; (ii) the location of any Secured Loan Party's chief executive office, its principal place of business, domicile (within the meaning of the *Civil Code of Quebec*), any office in which it maintains books or records relating to Collateral, or any office or facility at which Collateral in excess of \$5,000,000 owned by it is located (including the establishment of any such new office or facility); provided, that any Canadian Loan Party may change its corporate offices or warehouses or locations at which Collateral is held or stored, or the location of its records concerning the Collateral, to any other location in a province or territory of Canada in which it had such a location as of the Effective Date (with prior notice of such change to Agent); (iii) any Loan Party's type of organization or jurisdiction of incorporation or formation; or (iv) any U.S. Loan Party's Federal Taxpayer Identification Number or organizational identification number assigned to it by its state of organization (or similar numbers assigned by any other jurisdiction or Governmental Authority for other Loan Parties). The Loan Parties shall not effect or permit any change referred to in the preceding sentence unless all filings have been made under the UCC, PPSA or otherwise that are required in order for the Agent to continue at all times following such change to have a valid, legal and perfected first priority security interest in all the Collateral for its own benefit and the benefit of the other Credit Parties.

(b) Should any of the information on any of the Schedules hereto become inaccurate or misleading in any material respect as a result of changes after the Effective Date, advise the Agent in

writing of such revisions or updates as may be necessary or appropriate to update or correct the same. From time to time as may be reasonably requested by the Agent, the Lead Borrower shall supplement each Schedule hereto, or any representation herein or in any other Loan Document, with respect to any matter arising after the Effective Date that, if existing or occurring on the Effective Date, would have been required to be set forth or described in such Schedule or as an exception to such representation or that is necessary to correct any information in such Schedule or representation which has been rendered inaccurate thereby (except to the extent such information was only required as of the Effective Date) (and, in the case of any supplements to any Schedule, such Schedule shall be appropriately marked to show the changes made therein). Notwithstanding the foregoing, no supplement or revision to any Schedule or representation shall be deemed the Credit Parties' consent to the matters reflected in such updated Schedules or revised representations nor permit the Loan Parties to undertake any actions otherwise prohibited hereunder or fail to undertake any action required hereunder from the restrictions and requirements in existence prior to the delivery of such updated Schedules or such revision of a representation; nor shall any such supplement or revision to any Schedule or representation be deemed the Credit Parties' waiver of any Default or Event of Default resulting from the matters disclosed therein.

#### **6.14 Physical Inventories.**

Cause not less than one physical inventory of the Secured Loan Parties' inventory to be undertaken, at the expense of the Secured Loan Parties, in each Fiscal Year and periodic cycle counts, in each case consistent with past practices, conducted by such inventory takers as are satisfactory to the Agent acting reasonably and following such methodology as is consistent with the methodology used in the immediately preceding inventory or as otherwise may be satisfactory to the Agent, acting reasonably. The Agent, at the expense of the Secured Loan Parties, may participate in and/or observe each scheduled annual physical count of Inventory which is undertaken on behalf of any Secured Loan Party. The Lead Borrower shall promptly post the results of each such inventory (as well as any other physical inventories or cycle counts undertaken by a Secured Loan Party) to the Secured Loan Parties' stock ledgers and general ledgers, as applicable.

#### **6.15 Environmental Laws.**

(a) Conduct its operations and keep and maintain its Real Estate in material compliance with all Environmental Laws; (b) obtain and renew all material environmental permits necessary for its operations and properties; and (c) implement any and all investigation, remediation, removal and response actions that are appropriate or necessary to maintain the value and marketability of the Real Estate or to otherwise comply with Environmental Laws pertaining to the presence, generation, treatment, storage, use, disposal, transportation or release of any Hazardous Materials on, at, in, under, above, to, from or about any of its Real Estate, provided, however, that neither a Loan Party nor any of its Subsidiaries shall be required to undertake any such clean-up, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and adequate reserves have been set aside and are being maintained by the Loan Parties with respect to such circumstances in accordance with GAAP or IFRS, as applicable.

#### **6.16 Further Assurances.**

(a) Execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements and other documents), that may be required under any Law, or which any Agent may reasonably request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created or intended to be created by the Security Documents or the validity

or priority of any such Lien, all at the expense of the Loan Parties; provided however, that such documentation shall not increase the duties, liabilities or obligations of any Loan Party hereunder or reduce the rights of any Loan Party hereunder. The Loan Parties also agree to provide to the Agent, from time to time upon request, evidence satisfactory to the Agent as to the perfection and priority of the Liens created or intended to be created by the Security Documents.

(b) If any material assets of the type that is Collateral (other than FILO Collateral unless the FILO Term Loan Draw Date has occurred), are acquired by any Secured Loan Party after the Effective Date (other than assets constituting Collateral under the Security Documents that become subject to the perfected first-priority Lien under the Security Documents upon acquisition thereof), notify the Agent thereof, and the applicable Secured Loan Parties will cause such assets to be subjected to a Lien securing the Obligations and will take such actions as shall be necessary or shall be requested by any Agent to grant and perfect such Liens, including actions described in paragraph (a) and (c) of this Section 6.16, all at the expense of the applicable Secured Loan Parties. In no event shall compliance with this Section 6.16(b) waive or be deemed a waiver or consent to any transaction giving rise to the need to comply with this Section 6.16(b) if such transaction was not otherwise expressly permitted by this Agreement or constitute or be deemed to constitute consent to the inclusion of any acquired assets in the computation of the Combined Borrowing Base.

(c) Upon the request of the Agent, cause each of the Secured Loan Parties' customs brokers, freight forwarders, consolidators and/or carriers to deliver an agreement (including, without limitation, a Customs Broker/Carrier Agreement) to the Agent covering such matters and in such form as the Agent may reasonably require.

**6.17 Designation of Subsidiaries.** The board of directors of the Lead Borrower may at any time designate any Subsidiary as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary; provided that (i) immediately before and after such designation, no Default shall have occurred and be continuing, (ii) no Subsidiary may be designated as an Unrestricted Subsidiary if, after such designation, it would be a "Restricted Subsidiary" for the purpose of the Permitted Term Loan Debt or any other Indebtedness of any Loan Party. The designation of any Subsidiary as an Unrestricted Subsidiary shall constitute an Investment by the applicable Borrower therein at the date of designation in an amount equal to the fair market value of such Borrower's or its Subsidiary's (as applicable) Investment therein. 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 Restricted Subsidiary existing at such time and a return on any Investment by the applicable Borrower in Unrestricted Subsidiaries pursuant to the preceding sentence in an amount equal to the fair market value at the date of such designation of the applicable Borrower's or its Subsidiary's (as applicable) Investment in such Subsidiary.

## **ARTICLE VII NEGATIVE COVENANTS**

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent indemnification claims for which a claim has not been asserted), or any Letter of Credit shall remain outstanding, no Loan Party shall, nor shall it permit any Restricted Subsidiary, to, directly or indirectly:

**7.01 Liens.** Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired or sign or file or suffer to exist under the UCC, PPSA or any similar Law or statute of any jurisdiction a financing statement or registration that names any Loan Party or any Subsidiary thereof as debtor; sign or suffer to exist any security agreement

authorizing any Person thereunder to file such financing statement or registration; or collaterally assign or otherwise transfer as collateral security any accounts or other rights to receive income, other than, as to all of the above, Permitted Encumbrances.

**7.02 Investments.** Make any Investments, except Permitted Investments.

**7.03 Indebtedness; Disqualified Stock; Equity Issuances**

(a) Create, incur, assume, guarantee, suffer to exist or otherwise become or remain liable with respect to, any Indebtedness, except Permitted Indebtedness; or (b) issue Disqualified Stock.

**7.04 Fundamental Changes.** Merge, dissolve, liquidate, amalgamate, consolidate with or into another Person, (or agree to do any of the foregoing) (including, in each case, pursuant to a Delaware LLC Division), except that so long as no Default or Event of Default shall have occurred and be continuing prior to or immediately after giving effect to any action described below or would result therefrom:

(a) any Subsidiary which is not a Loan Party may merge or amalgamate with or dissolve into (i) a Loan Party, provided that the Loan Party shall be the continuing or surviving Person, or (ii) any one or more other Subsidiaries which are not Loan Parties, provided that when any wholly-owned Subsidiary that is a Loan Party is merging or amalgamating with another Subsidiary, the wholly-owned Subsidiary shall be the continuing or surviving Person;

(b) any Subsidiary which is a Loan Party may merge or amalgamate or dissolve into any Subsidiary which is a Loan Party or into a Borrower, provided that in any merger, amalgamation or dissolution involving a Borrower, such Borrower shall be the continuing or surviving Person; and

(c) in connection with a Permitted Acquisition, any Subsidiary of a Loan Party may merge or amalgamate with or into or consolidate with any other Person or permit any other Person to merge or amalgamate with or into or consolidate with it; provided that (i) the Person surviving such merger or amalgamation shall be a wholly-owned Restricted Subsidiary of a Loan Party and such Person shall become a Loan Party to the extent required in accordance with the provisions of Section 6.11 hereof, and (ii) in the case of any such merger or amalgamation to which any Loan Party is a party, such Loan Party is the surviving Person; and

(d) in connection with the Specified Transaction, the Company Reorganization shall be permitted; provided that ten (10) days prior to the consummation of the Company Reorganization, the Lead Borrower shall have furnished the Agent with a notice of the implementation of the Company Reorganization (the “Company Reorganization Notice”), and the Agent and the Lenders shall have received all documentation and other information relating to SPV Parent, the Borrowers, the other Loan Parties and any other Person in connection with the Company Reorganization required by regulatory authorities under applicable AML Legislation and, for any Person that qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, a Beneficial Ownership Certification in relation to such Person, at least five (5) days prior to the Company Reorganization to the extent such information has been requested at least eight (8) days after the Agent’s receipt of the Company Reorganization Notice.

**7.05 Dispositions.** Make any Disposition except Permitted Dispositions. Notwithstanding anything in this Section 7.05 to the contrary, no Disposition shall be permitted if after giving effect to any Disposition, any Default or Event of Default or Overadvance shall exist or result therefrom.

**7.06 Restricted Payments.** Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that each of the following shall be permitted so long as no Default or Event of Default shall have occurred and be continuing prior, or immediately after giving effect, to the following, or would result therefrom provided that, except as permitted pursuant to clause (e) below, no Restricted Payment shall be made by any Loan Party to any Unrestricted Subsidiary:

- (a) each Subsidiary may make Restricted Payments to any Loan Party;
- (b) each Loan Party may make Restricted Payments to any other Loan Party;
- (c) the Loan Parties and each Restricted Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person;
- (d) the Parent may purchase, redeem or otherwise acquire Equity Interests issued by it in the ordinary course of business and/or may declare or pay cash dividends to the holders of its Equity Interests in the ordinary course of business, in an aggregate amount not to exceed Cdn\$75,000,000 in any twelve month period; provided that: (a) no Default or Event of Default exists or would arise as a result of such Restricted Payment and (b) if the Specified Transaction has occurred, immediately after giving pro forma effect to such Restricted Payment, Availability shall be greater than fifteen percent (15%) of the Revolving Loan Cap (calculated without giving effect to the FILO Term Loan Push Down Reserve);
- (e) if the RP Conditions are satisfied, the Parent may purchase, redeem or otherwise acquire Equity Interests issued by it and/or may declare or pay cash dividends to the holders of its Equity Interests without a dollar limitation;
- (f) the Restricted Subsidiaries of the Parent may make a Restricted Payment to the extent such payment is funded solely with amounts received by the Restricted Subsidiaries, directly or indirectly, from an Excluded Subsidiary consisting of either (i) proceeds of Indebtedness incurred by such Excluded Subsidiary under a financing arrangement or (ii) proceeds of dividends and distributions received directly or indirectly from Simon JVCo and RioCan JVCo;
- (g) upon consummation of the Specified Transaction, the Parent may make Restricted Payments in the form of loans to its shareholders in an aggregate amount of (x) up to \$25,000,000 on the date the consummation of the Specified Transaction occurs, plus (y) an additional amount of up to \$25,000,000 per year (provided that all of the Restricted Payments permitted under subclauses (x) and (y) of this clause (g) shall not exceed \$100,000,000 in the aggregate at any time outstanding); provided that amounts advanced pursuant to this clause (y) may only be advanced if (a) no Default or Event of Default exists or would arise as a result of the Restricted Payment, (b) Pro Forma Excess Availability shall be greater than fifteen percent (15%) of the Revolving Loan Cap (calculated without giving effect to the FILO Term Loan Push Down Reserve), (c) after giving pro forma effect to such Restricted Payment the Consolidated Fixed Charge Coverage Ratio for the trailing twelve (12) month period immediately preceding such Restricted Payment shall be greater than or equal to 1.00 to 1.00; provided that the provisions of this clause (c) shall not be applicable if Pro Forma Excess Availability is greater than or equal to twenty percent (20%) of the Revolving Loan Cap (calculated without giving effect to the FILO Term Loan Push Down Reserve); and (d) the Borrowers shall have delivered



a Compliance Certificate to the Agent including a reasonably detailed calculation of such Pro Forma Excess Availability and, if applicable, Consolidated Fixed Charge Coverage Ratio; and

(h) Restricted Payments made as part of the Company Reorganization (which, for the avoidance of doubt, shall not include Restricted Payments made in connection with the Specified Transaction, which may only be made pursuant to paragraph (g) above); provided that the terms of such Restricted Payments are reasonably acceptable to the Agent and do not result in any assets or Equity Interests being distributed, or any transfer of value being made, to any equity holders of the SPV Parent.

Notwithstanding anything in this Section 7.06 to the contrary, no Restricted Payment shall be permitted if after giving effect to any Restricted Payment, any Default or Event of Default or Overadvance shall exist or result therefrom .

**7.07 Prepayments of Indebtedness.** Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner any Indebtedness, or make any payment in violation of any subordination terms of any Subordinated Indebtedness, except (a) as long as no Default or Event of Default then exists, regularly scheduled or mandatory repayments, repurchases, redemptions or defeasances of (i) Permitted Indebtedness (other than Subordinated Indebtedness) and (ii) Subordinated Indebtedness in accordance with the subordination terms thereof, (b) voluntary prepayments, repurchases, redemptions or defeasances of (i) Permitted Indebtedness (but excluding on account of any Subordinated Indebtedness but including the Permitted Term Loan Debt, Specified Debt and Permitted FILO Refinancing Debt) as long as the Payment Conditions are satisfied, (ii) Subordinated Indebtedness (other than the Luxco Financing) in accordance with the subordination terms thereof and as long as the Payment Conditions are satisfied, and (iii) Indebtedness under the Luxco Financing in accordance with the terms of the Luxco Subordination Agreement, (iv) Indebtedness of any Loan Party to another Loan Party in accordance with the terms of this Agreement, (c) payments, purchases, redemptions or defeasances of Specified Debt solely to the extent made with proceeds of other Specified Debt in connection with a refinancing thereof, and (d) Permitted Refinancings of any such Indebtedness.

**7.08 Change in Nature of Business.** Engage in any line of business substantially different from those lines of business conducted by the Loan Parties and their Subsidiaries on the Effective Date or any business reasonably related, complimentary or incidental thereto (it being understood that the ownership of Equity Interests in any real estate investment trust and property development activities shall be deemed to be a related business).

**7.09 Transactions with Affiliates.** Enter into, renew, extend or be a party to any transaction of any kind with any Affiliate of any Loan Party, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to the Loan Parties or such Subsidiary as would be obtainable by the Loan Parties or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate, provided that the foregoing restriction shall not apply to (a) a transaction between or among the Loan Parties, or a transaction permitted by Section 7.04, (b) transactions described on Schedule 7.09 hereto, (c) advances or reimbursements for commissions, travel and other similar purposes in the ordinary course of business to directors, officers and employees, (d) the payment of reasonable fees and out-of-pocket costs to directors, and compensation, bonuses, employee benefit arrangements and stock option plans paid to, and indemnities provided for the benefit of, directors, officers or employees of the Parent or any of its Restricted Subsidiaries, (e) aircraft use benefits provided to senior executives for personal use to be reimbursed at cost; (f) as long as no Change of Control results therefrom, any issuances of securities of any Loan Party (other than Disqualified Stock) or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment agreements, stock options and stock ownership or equity incentive plans of the Parent or any of its

Restricted Subsidiaries, (g) as long as no Default or Event of Default then exists or would arise therefrom and clause (h) of the definition of “Permitted Disposition” is otherwise complied with, a RE Sale-Leaseback and the performance of its obligations thereunder, (h) Restricted Payments permitted pursuant to Section 7.06, (i) Investments permitted pursuant to clauses (g), (h), (m), (p), (x) and (y) of the definition of “Permitted Investments”, (j) Indebtedness permitted pursuant to clauses (b), (m), (q), (s), (x), (y), (z), (aa), (bb) and (dd) of the definition of “Permitted Indebtedness”, (k) Dispositions permitted pursuant to clauses (f) and (g) of the definition of “Permitted Dispositions” and (l) payment of management fees of up to \$2,000,000 in the aggregate per annum and reimbursement of reasonable expenses of up to \$1,600,000 per annum incurred for the sole benefit of one or more of the Loan Parties.

**7.10 Burdensome Agreements.** Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document or any agreement governing Permitted Term Loan Debt) that (a) limits the ability (i) of any Subsidiary to make Restricted Payments or other distributions to any Loan Party or to otherwise transfer property to or invest in a Loan Party, (ii) of any Subsidiary to Guarantee the Obligations, (iii) of any Subsidiary to make or repay loans to a Loan Party, or (iv) of the Loan Parties or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person in favor of the Agent; provided, however, that this clause (iv) shall not prohibit any negative pledge incurred or provided in favor of any holder of Indebtedness permitted under clauses (c) or (d) of the definition of Permitted Indebtedness solely to the extent any such negative pledge relates to the property financed by or the subject of such Indebtedness; or (b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person; provided that the Permitted Term Loan Debt shall not restrict the Indebtedness, Guarantees and security contemplated by this Agreement and the other Loan Documents.

**7.11 Use of Proceeds.** Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, (a) 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, (b) to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions or for any purpose which would violate the Sanctions or any anti-corruption Laws, or (c) for any purpose other than (i) on the Effective Date, to refinance the obligations under the Existing Credit Agreement and to pay transaction costs in connection with the Loan Documents and (ii) general corporate purposes including (A) the acquisition of working capital assets in the ordinary course of business, (B) the financing of Capital Expenditures of the Loan Parties, and (C) the making of Permitted Acquisitions, other Investments, and Restricted Payments, in each case to the extent expressly permitted under Law and the Loan Documents.

**7.12 Amendment of Material Documents.**

(a) Change or amend the terms of any Subordinated Indebtedness (or any indenture or agreement in connection therewith) if the effect of such amendment is to: (i) increase the interest rate on such Subordinated Indebtedness; (ii) change the dates upon which payments of principal or interest are due on such Subordinated Indebtedness other than to extend such dates; (iii) change any default or event of default other than to delete or make less restrictive any default provision therein, or add any covenant with respect to such Subordinated Indebtedness; (iv) change the redemption or prepayment provisions of such Subordinated Indebtedness other than to extend the dates therefor or to reduce the premiums payable in connection therewith; (v) grant any security or collateral to secure payment of such Subordinated Indebtedness; or (vi) change or amend any other term if such change or amendment would materially increase the obligations of the Loan Party thereunder or confer additional material rights on the holder of

such Subordinated Indebtedness in a manner adverse to any Loan Party, the Agent or any Lender, in each case, without the prior consent of the Agent.

(b) Amend, modify or waive any of a Loan Party's rights under (a) its Organization Documents in a manner materially adverse to the Credit Parties, or (b) any Material Contract or Material Indebtedness (other than on account of any Permitted Refinancing thereof or Subordinated Indebtedness which is provided for in clause (a) of this Section), including without limitation, any instruments, documents or agreements governing Permitted Term Loan Debt, in each case to the extent that such amendment, modification or waiver would result in an Event of Default under any of the Loan Documents, would be in violation of the Permitted Term Loan Intercreditor Agreement or Permitted FILO Refinancing Debt Intercreditor Agreement, in each case if applicable, would be materially adverse to the Credit Parties, or otherwise would be reasonably likely to have a Material Adverse Effect.

**7.13 Fiscal Year.** Change the Fiscal Year of any Loan Party, or the accounting policies or reporting practices of the Loan Parties, except as required by GAAP or IFRS, as applicable.

**7.14 Deposit Accounts; Credit Card Processors.** Open new DDAs unless, if applicable, the Loan Parties shall have delivered to the Agent appropriate Account Control Agreements with respect to concentration accounts of the Loan Parties consistent with the provisions of Section 6.12 and otherwise satisfactory to the Agent. No Loan Party shall maintain or enter into any agreements with Credit Card Issuers or Credit Card Processors other than the ones expressly contemplated herein or with such other Credit Card Issuers or Credit Card Processors to whom a Credit Card Notification has been furnished.

**7.15 Consolidated Fixed Charge Coverage Ratio.** During the continuance of a Covenant Compliance Event, permit the Consolidated Fixed Charge Coverage Ratio, calculated as of the last day of each Fiscal Quarter on a trailing four quarters basis (commencing with the Fiscal Quarter immediately prior to the date that the Covenant Compliance Event occurs), to be less than 1.00:1.00.

**7.16 Inactive Subsidiaries.** Notwithstanding any other term or provision in this Agreement or any other Loan Document, no Inactive Subsidiary shall (i) engage in any trade or business, (ii) own any assets (other than its name) or (iii) create, incur, assume or permit to exist any Indebtedness.

**7.17 Immaterial Subsidiaries Covenant Baskets.** Notwithstanding any term or provision in this Agreement, (i) Permitted Acquisitions, (ii) intercompany loans and advances made to any Immaterial Subsidiary pursuant to clause (b) of the definition of "Permitted Indebtedness", (iii) Guarantees by any Loan Party of any Permitted Indebtedness in favor of any Immaterial Subsidiary, (iv) sales, transfers, conveyances, assignments or other dispositions of the properties or assets of any Loan Party to any Immaterial Subsidiary made pursuant to clauses (b) and (f) of the definition of "Permitted Dispositions", and (v) Restricted Payments made by any Loan Party to any Immaterial Subsidiary shall not, collectively, exceed \$50,000,000 in the aggregate; provided, that for purposes of any determination made with respect to this Section 7.17, the amount of Indebtedness outstanding from any Immaterial Subsidiary pursuant to clause (b) of the definition of "Permitted Indebtedness" shall be the amount of such Indebtedness outstanding at such time of determination.

**7.18 Pensions and Benefit Plans.**

No Loan Party shall (i) permit any Pension Plan Unfunded Liability to exist other than in accordance with applicable Laws, and other than where same could not reasonably be expected to have a Material Adverse Effect, (ii) terminate or wind-up a defined benefit Canadian Pension Plan unless (A) there are no Pension Plan Unfunded Liabilities in respect of or resulting from such termination or wind-

up, or (B) upon such termination or wind-up, the Loan Parties would be able to meet the Payment Conditions on a pro form basis assuming payment of all of the Pension Plan Unfunded Liabilities in respect of or resulting from such termination or wind-up on the date of such termination or wind-up as if the payment were made under Section 7.07(b)(i) and, pending the payment thereof, an Availability Reserve would be implemented in the amount of such Pension Plan Unfunded Liabilities in respect of or resulting from such termination or wind-up.

#### **7.19 Hazardous Materials.**

No Loan Party shall cause or permit a Release of any Hazardous Material on, at, in, under, above, to or from any of the Real Estate where such Release would (a) violate in any respect, or form the basis for any Environmental Liabilities under, any Environmental Laws, or (b) otherwise adversely impact the value or marketability of any of the Real Estate or any of the Collateral, other than such violations or Environmental Liabilities that could not reasonably be expected to have a Material Adverse Effect.

#### **7.20 Sale Leasebacks.**

No Loan Party shall enter into any arrangement, directly or indirectly, whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred (a “Sale and Leaseback Transaction”); provided that (a) a RE Sale-Leaseback shall be permitted to the extent permitted by clause (h) of the definition of “Permitted Disposition”, and (b) a Sale and Leaseback Transaction shall be permitted so long as (i) no Default or Event of Default has occurred and is continuing or would result after giving effect to any such Sale and Leaseback Transaction, (ii) if such Sale and Leaseback Transaction relates to personal property, it (A) is made for cash consideration in an amount not less than the fair value of such property (or, if greater, the amount advanced (as reflected in the most recently delivered Borrowing Base Certificate), or available to be advanced, against such assets under the Combined Borrowing Base), (B) the cash proceeds from any such Sale and Leaseback Transaction are used to repay the Loans in accordance with Section 2.05, and (C) is pursuant to a lease on market terms, and (iii) if such Sale and Leaseback Transaction relates to real property, (A) it is on reasonable terms and will not adversely affect the business or operations of any Loan Party, (B) the Agent is provided with the reasonable details of such proposed Sale and Leaseback Transaction in advance thereof, along with any agreement, document or other information relating thereto as the Agent may request, acting reasonably, and (C) if requested by the Agent, the purchaser executes and delivers a Collateral Access Agreement in favor of, and on terms reasonably satisfactory to, the Agent.

### **ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES**

#### **8.01 Events of Default.** Any of the following shall constitute an Event of Default:

(a) Non-Payment. Any Borrower or any other Loan Party fails to pay when and as required to be paid, (i) any amount of principal of any Loan or any L/C Obligation, or deposit any funds as Cash Collateral in respect of L/C Obligations, or (ii) any interest, fee or other amount payable hereunder, which failure continues for five (5) days; or

(b) Specific Covenants. (i) Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of Sections 6.02(a), 6.02(b), 6.02(d), 6.03(a), 6.05(a),

6.07 (but only with respect to fire and extended coverage policies maintained with respect to the Collateral), 6.10, 6.11, 6.12, 6.13, or 6.14 or Article VII; or

(c) Limited Grace. Any Loan Party fails to perform or observe any term, covenant or agreement contained in Section 6.01 and such failure continues for ten (10) Business Days; or

(d) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a), (b) or (c) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 30 days; or

(e) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith by any Borrower or any other Loan Party (including, without limitation, any Borrowing Base Certificate) shall be false or misleading in any material respect (or in the case of any representation and warranty qualified by materiality, in any respect) when made or deemed made; or

(f) Cross-Default. Any Loan Party or any Subsidiary thereof (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise but after giving effect to any applicable grace period) in respect of any Material Indebtedness, or (B) fails to observe or perform any other agreement or condition relating to any such Material Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto (in each case, after giving effect to any applicable grace period), or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Material Indebtedness or the beneficiary or beneficiaries of any Guarantee thereof (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed in full (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or

(g) Insolvency Proceedings, Etc. Any Loan Party or any of its Subsidiaries institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, interim receiver, receiver and manager, monitor, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or a proceeding shall be commenced or a petition filed, without the application or consent of such Person, seeking or requesting the appointment of any receiver, interim receiver, receiver and manager, monitor, trustee, custodian, conservator, examiner, liquidator, rehabilitator or similar officer is appointed and the appointment continues undischarged, undismissed or unstayed for 60 calendar days or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for 60 calendar days, or an order for relief is entered in any such proceeding; or

(h) Inability to Pay Debts; Attachment. (i) Any Loan Party or any Subsidiary thereof becomes unable or admits in writing its inability or fails generally to pay its debts as they become due in the ordinary course of business, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of

any such Person and is not released, vacated or fully bonded within 10 days after its issuance or levy; or

(i) Judgments. There is entered against any Loan Party or any Subsidiary thereof (i) one or more judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding \$50,000,000 (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage), or (ii) any one or more non-monetary judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 30 consecutive days during which (1) a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, is not in effect, or (2) the same is not discharged, satisfied or vacated; or

(j) ERISA. (i) An ERISA Event occurs which has resulted or would reasonably be expected to result in liability of any U.S. Loan Party in an aggregate amount which would reasonably be expected to have a Material Adverse Effect, or (ii) a U.S. Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount which would reasonably be expected to have a Material Adverse Effect; or

(k) Canadian Pension Plan. Any event or condition shall occur or exist with respect to a Canadian Pension Plan that would reasonably be expected to subject any Canadian Loan Party to any tax, penalty or other liabilities under the *Pension Benefits Act* (Ontario) or any other applicable pension benefits standards legislation or other applicable Laws, or if a Canadian Loan Party is in default with respect to required payments to a Canadian Pension Plan or any Lien arises on the assets of a Canadian Loan Party (save for contribution amounts not yet due) in connection with any Canadian Pension Plan or if a Canadian Pension Plan is partially or fully terminated or a trustee or other similar official is appointed to monitor, run, or unwind a Canadian Pension Plan, where any of the foregoing events, conditions, defaults or Liens would reasonably be expected to result in a Material Adverse Effect; or

(l) Invalidity of Loan Documents. (i) Any material provision of any Loan Document, at any time after its execution and delivery and for any reason, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any material provision of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any material provision of any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document or seeks to avoid, limit or otherwise adversely affect any Lien purported to be created under any Security Document; or (ii) any Lien purported to be created under any Security Document shall cease to be, or shall be asserted by any Loan Party or any other Person not to be, a valid and perfected Lien on any Collateral, with the priority required by the applicable Security Document; or

(m) Change of Control. There occurs any Change of Control; or

(n) Cessation of Business. Except as otherwise expressly permitted hereunder, the Loan Parties, taken as a whole, shall take any action to suspend the operation of their business in the ordinary course, liquidate all or a material portion of their assets or Store locations, or employ an agent or other third party to conduct a program of closings, liquidations or “Going-Out-Of-Business” sales of any material portion of their business; or

(o) Subordination; Intercreditor Agreements. (i) The provisions of the Permitted Term Loan Intercreditor Agreement, the Permitted FILO Refinancing Debt Intercreditor Agreement, in each case if applicable, or the subordination provisions of the documents evidencing or governing the subordination of any Subordinated Indebtedness (together with the provisions of the Permitted Term Loan Intercreditor Agreement and the Permitted FILO Refinancing Debt Intercreditor Agreement, in each case if applicable, the “Subordination Provisions”) shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the Permitted Term Loan Debt, the Permitted FILO Refinancing Debt or the applicable Subordinated Indebtedness or such holder shall fail to comply with such Subordination Provisions; or (ii) any Borrower or any other Loan Party shall, directly or indirectly, disavow or contest in any manner (A) the effectiveness, validity or enforceability of any of the Subordination Provisions, (B) that the Subordination Provisions exist for the benefit of the Credit Parties, or (C) that all payments of principal of or premium and interest on the Permitted Term Loan Debt or the applicable Subordinated Indebtedness, or realized from the liquidation of any property of any Loan Party, shall be subject to any of the Subordination Provisions.

## **8.02 Remedies Upon Event of Default.**

If any Event of Default occurs and is continuing, the Agent may, or, at the request of the Required Lenders shall, take any or all of the following actions:

(a) declare the Commitments of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such Commitments and obligations shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other Obligations (excluding Other Liabilities not then due and payable) to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Loan Parties;

(c) require that the Borrowers Cash Collateralize the L/C Obligations in an amount equal to 103% of the L/C Obligations; and

(d) whether or not the maturity of the Obligations shall have been accelerated pursuant hereto, proceed to protect, enforce and exercise all rights and remedies of the Credit Parties under this Agreement, any of the other Loan Documents or applicable Laws, including, but not limited to, by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Agreement and the other Loan Documents or any instrument pursuant to which the Obligations are evidenced, and, if such amount shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of the Credit Parties;

provided, however, that upon the occurrence of any Default or Event of Default with respect to any Loan Party or any Subsidiary thereof under Section 8.01(f), (g) or (h) the obligation of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans, all interest accrued thereon and all other Obligations shall automatically become due and payable, and the obligation of the Loan Parties to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Agent or any Lender.

No remedy herein is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or any other provision of Law.

### **8.03 Application of Funds.**

(a) After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received from any U.S. Loan Party, from the liquidation of any Collateral of any U.S. Loan Party, or on account of the Obligations, shall be applied by the Agent against the Obligations in the following order:

First, to payment of that portion of the U.S. Liabilities (excluding the Other Liabilities, the Canadian Liabilities and any Facility Guaranty thereof) constituting reasonable and documented fees, indemnities, Credit Party Expenses and other amounts (including reasonable and documented fees, charges and disbursements of counsel to the Agent and amounts payable under Article III) payable to the Agent, in its capacity as such;

Second, to payment of that portion of the U.S. Liabilities (excluding the Other Liabilities, the Canadian Liabilities and any Facility Guaranty thereof) constituting indemnities (including indemnities under Section 10.04 hereof), Credit Party Expenses, and other amounts (other than principal, interest and fees) payable to the U.S. Revolving Lenders, U.S. FILO Term Lenders and the L/C Issuer (on account of U.S. Letters of Credit) and amounts payable under Article III, ratably among them in proportion to the amounts described in this clause Second payable to them;

Third, to the extent not previously reimbursed by the U.S. Revolving Lenders, to payment to the Agent of that portion of the U.S. Liabilities constituting principal and accrued and unpaid interest on any Permitted Overadvances made to the U.S. Loan Parties;

Fourth, to the extent that Swing Line Loans made to the U.S. Borrower have not been refinanced by a U.S. Revolving Loan, payment to the Swing Line Lender of that portion of the Obligations constituting accrued and unpaid interest on the Swing Line Loans made to the U.S. Borrower;

Fifth, to the extent that Swing Line Loans made to the U.S. Borrower have not been refinanced by a U.S. Revolving Loan, payment to the Swing Line Lender of that portion of the Obligations constituting unpaid principal on the Swing Line Loans made to the U.S. Borrower;

Sixth, to payment of that portion of the U.S. Liabilities constituting accrued and unpaid interest on the U.S. Revolving Loans and U.S. L/C Borrowings and Other U.S. Liabilities (other than the Outstanding Amount of the FILO Term Loan, if any, the Canadian Liabilities and any Facility Guaranty thereof), and fees (including Letter of Credit Fees), ratably among the U.S. Revolving Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Sixth payable to them;

Seventh, to payment of that portion of the U.S. Liabilities constituting unpaid principal of the U.S. Revolving Loans and U.S. L/C Borrowings, and to the Agent for the account of the L/C Issuer, to Cash Collateralize that portion of U.S. L/C Obligations comprised of the aggregate undrawn amount of U.S. Letters of Credit, ratably among the U.S. Revolving Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Seventh held by them;



Eighth, to payment of that portion of the Obligations constituting accrued and unpaid interest on the U.S. FILO Term Loan owing to the U.S. FILO Term Lenders, ratably among the U.S. FILO Term Lenders in proportion to the amounts described in this clause Eighth payable to them;

Ninth, to payment of that portion of the Obligations constituting unpaid principal of the U.S. FILO Term Loan, ratably among the U.S. FILO Term Lenders in proportion to the amounts described in this clause Ninth held by them;

Tenth, to payment of all other U.S. Liabilities (excluding the Other Liabilities, the Canadian Liabilities and any Facility Guaranty thereof, but including without limitation the cash collateralization of unliquidated indemnification obligations for which a claim has been made as provided in Section 10.04), ratably among the U.S. Lenders in proportion to the respective amounts described in this clause Tenth held by them;

Eleventh, to payment of that portion of the U.S. Liabilities arising from Cash Management Services furnished to the U.S. Loan Parties or any of their U.S. Subsidiaries, ratably among the Credit Parties in proportion to the respective amounts described in this clause Eleventh held by them;

Twelfth, to payment of all other U.S. Liabilities arising from Bank Products furnished to the U.S. Loan Parties or any of their U.S. Subsidiaries, ratably among the U.S. Revolving Lenders and their Affiliates in proportion to the respective amounts described in this clause Twelfth held by them;

Thirteenth, to the Agent to be held for the benefit of the Credit Parties as cash collateral to secure payment of the Canadian Liabilities; and

Last, the balance, if any, after all of the Obligations have been Paid in Full, to the U.S. Loan Parties or as otherwise required by applicable Laws;

provided that, notwithstanding the foregoing, all proceeds of FILO Collateral of the U.S. Loan Parties shall be applied:

First, to payment of that portion of the Obligations constituting accrued and unpaid interest on the U.S. FILO Term Loan owing to the U.S. FILO Term Lenders, ratably among the U.S. FILO Term Lenders in proportion to the amounts described in this clause First payable to them;

Second, to payment of that portion of the Obligations constituting unpaid principal of the U.S. FILO Term Loan, ratably among the U.S. FILO Term Lenders in proportion to the amounts described in this clause Second held by them; and

Third, to the payment of all other Obligations in accordance with the foregoing provisions of this Section 8.03(a).

Subject to Section 2.03(c), amounts used to Cash Collateralize the aggregate undrawn amount of U.S. Letters of Credit pursuant to clause Seventh above shall be applied to satisfy drawings under such U.S. Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all U.S. Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

Any amounts received by the Agent pursuant to clause Thirteenth of Section 8.03(a) shall be held as cash collateral for the Canadian Liabilities until the earlier of (i) the Substantial Liquidation of the Collateral granted by the Canadian Loan Parties, or (ii) such date that the Agent shall otherwise determine. Any amounts received pursuant to clause Thirteenth of Section 8.03(a) shall, subject to the provisions of Section 9.20, be applied to the Canadian Liabilities in the order as set forth in this Section 8.03(a).

(b) After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received from any Canadian Loan Party, from the liquidation of any Collateral of any Canadian Loan Party, or on account of the Canadian Liabilities, shall be applied by the Agent against the Canadian Liabilities in the following order:

First, to payment of that portion of the Canadian Liabilities (excluding the Other Canadian Liabilities, the U.S. Liabilities and any Facility Guaranty thereof made by the Canadian Loan Parties) constituting reasonable and documented fees, indemnities, Credit Party Expenses and other amounts (including reasonable and documented fees, charges and disbursements of counsel to the Agent and amounts payable under Article III) payable to the Agent, in its capacity as such;

Second, to payment of that portion of the Canadian Liabilities (excluding the Other Canadian Liabilities, the U.S. Liabilities and any Facility Guaranty thereof made by the Canadian Loan Parties) constituting indemnities (including indemnities under Section 10.04 hereof), Credit Party Expenses, and other amounts (other than principal, interest and fees) payable to the Canadian Revolving Lenders, the Canadian FILO Term Lenders and the L/C Issuer (on account of Canadian Letters of Credit) and amounts payable under Article III), ratably among them in proportion to the amounts described in this clause Second payable to them;

Third, to the extent not previously reimbursed by the Canadian Revolving Lenders, to payment to the Agent of that portion of the Obligations constituting principal and accrued and unpaid interest on any Permitted Overadvances made to the Canadian Loan Parties;

Fourth, to the extent that Swing Line Loans made to the Canadian Borrower have not been refinanced by a Canadian Revolving Loan, payment to the Swing Line Lender of that portion of the Obligations constituting accrued and unpaid interest on the Swing Line Loans made to the Canadian Borrower;

Fifth, to the extent that Swing Line Loans made to the Canadian Borrower have not been refinanced by a Canadian Revolving Loan, payment to the Swing Line Lender of that portion of the Obligations constituting unpaid principal on the Swing Line Loans made to the Canadian Borrower;

Sixth, to payment of that portion of the Canadian Liabilities constituting accrued and unpaid interest on the Canadian Revolving Loans and other Canadian Liabilities (excluding the Outstanding Amount of the FILO Term Loan, if any, the Other Canadian Liabilities, the U.S. Liabilities and any Facility Guaranty thereof made by the Canadian Loan Parties), and fees ratably among the Canadian Revolving Lenders in proportion to the respective amounts described in this clause Sixth payable to them;

Seventh, to payment of that portion of the Canadian Liabilities constituting unpaid principal of the Canadian Revolving Loans and Canadian L/C Borrowings, and to the Agent for the account of the L/C Issuer, to Cash Collateralize that portion of Canadian L/C Obligations comprised of the aggregate undrawn amount of Canadian Letters of Credit, ratably among the Canadian Revolving Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Seventh held by them;

Eighth, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Canadian FILO Term Loan owing to the Canadian FILO Term Lenders, ratably among the Canadian FILO Term Lenders in proportion to the amounts described in this clause Eighth payable to them;

Ninth, to payment of that portion of the Obligations constituting unpaid principal of the Canadian FILO Term Loan, ratably among the Canadian FILO Term Lenders in proportion to the amounts described in this clause Ninth held by them;

Tenth, to payment of all other Canadian Liabilities (excluding the Other Canadian Liabilities, the U.S. Liabilities and any Facility Guaranty thereof made by the Canadian Loan Parties, but including without limitation the cash collateralization of unliquidated indemnification obligations as provided in Section 10.04), ratably among the Credit Parties in proportion to the respective amounts described in this clause Tenth held by them;

Eleventh, to payment of that portion of the Canadian Liabilities arising from Cash Management Services furnished to the Parent, any of its Subsidiaries or HBC India, ratably among the Credit Parties in proportion to the respective amounts described in this clause Eleventh held by them;

Twelfth, to payment of all other Canadian Liabilities arising from Bank Products furnished to the Parent or any of its Subsidiaries, ratably among the Credit Parties in proportion to the respective amounts described in this clause Twelfth held by them; and

Thirteenth, to the Agent to be held for the ratable benefit of the U.S. Lenders as cash collateral to secure payment of the U.S. Liabilities; and

Last, the balance, if any, after all of the Obligations have been Paid in Full, to the Canadian Loan Parties or as otherwise required by applicable Laws;

provided that, notwithstanding the foregoing, all proceeds of FILO Collateral of the Canadian Loan Parties shall be applied:

First, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Canadian FILO Term Loan owing to the Canadian FILO Term Lenders, ratably among the Canadian FILO Term Lenders in proportion to the amounts described in this clause First payable to them;

Second, to payment of that portion of the Obligations constituting unpaid principal of the Canadian FILO Term Loan, ratably among the Canadian FILO Term Lenders in proportion to the amounts described in this clause Second held by them; and

Third, to the payment of all other Obligations in accordance with the foregoing provisions of this Section 8.03(b).

Subject to Section 2.03(c), amounts used to Cash Collateralize the aggregate undrawn amount of Canadian Letters of Credit pursuant to clause Seventh above shall be applied to satisfy drawings under such Canadian Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Canadian Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Canadian Liabilities, if any, in the order set forth above.

Any amounts received by the Agent pursuant to clause Thirteenth of Section 8.03(b) shall be held as cash collateral for the U.S. Liabilities until the earlier of (i) the Substantial Liquidation of the Collateral granted by the U.S. Loan Parties, or (ii) such date that the Agent shall otherwise determine. Any amounts received pursuant to clause Thirteenth of Section 8.03(b) shall, subject to the provisions of Section 9.20, be applied to the U.S. Liabilities in the order as set forth in this Section 8.03(b).

(c) Excluded Swap Obligations with respect to any Loan Party shall not be paid with amounts received from such Loan Party or its assets, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to the Obligations otherwise set forth above in this Section.

(d) It is agreed that if any payment pursuant to this Section 8.03 arises from proceeds of a sale or other disposition of Collateral which is comprised of both Revolver Collateral and FILO Collateral, such proceeds shall be allocated as between the Revolver Collateral and the FILO Collateral in a manner such that the Obligations not consisting of or relating to the FILO Term Loan shall receive proceeds in an amount not less than the sum of (a) the Appraised Value of the Inventory subject to such sale or other disposition and (b) the book value of all Credit Card Receivables and Accounts subject to such sale or other disposition.

#### **8.04 Financial Covenant Cure.**

In the event that the Borrowers fail to comply with the financial covenant set forth in Section 7.15 as of the end of any Fiscal Quarter, then it shall be deemed to be a Default, and the parties agree that such failure shall only constitute an Event of Default if, and only if, the Consolidated Fixed Charge Coverage Ratio set forth in a Compliance Certificate delivered for such fiscal quarter pursuant to Section 6.01(a) or (b), as applicable, fails to comply with the financial covenant set forth in Section 7.15, after giving effect to any cash equity contribution made to the Parent during the period up to and including the date of such Compliance Certificate, which equity contributions will be included in the calculation of Consolidated EBITDA for the purposes of determining compliance with such financial covenant at the end of the relevant period and applicable subsequent periods which include such period (any such equity contribution so included in the calculation of Consolidated EBITDA, a "Specified Equity Contribution"), provided that (a) in each four consecutive fiscal quarter period, there shall be at least two fiscal quarters in respect of which no Specified Equity Contribution is made, (b) the amount of any Specified Equity Contribution shall be no greater than 100% of the amount required to cause the Borrowers to be in compliance with the financial covenant set forth in Section 7.15, (c) no more than five (5) Specified Equity Contributions may be made from and after the Effective Date, and (d) all Specified Equity Contributions shall be disregarded for purposes of determining pricing, Payment Conditions, RP Conditions, FILO Payment Conditions, Section 7.06(g) any financial ratio-based conditions or other baskets with respect to the covenants contained in this Agreement or any other Loan Document.

## **ARTICLE IX THE AGENT**

### **9.01 Appointment and Authority.**

(a) Each of the Lenders (in its capacity as a Lender), the Swing Line Lender and the L/C Issuer hereby irrevocably appoints Bank of America to act on its behalf as the administrative agent and collateral agent hereunder and under the other Loan Documents and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof (including, without limitation, acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations), together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Agent and the other Credit Parties, and no Loan Party or any Subsidiary thereof shall have rights as a third party beneficiary of any of such provisions. 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 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) Without limiting the generality of the foregoing Section 9.01(a), for the purposes of holding any hypothec granted pursuant to the laws of the Province of Quebec, each of the Credit Parties hereby irrevocably appoints and authorizes the Agent, in its capacity as Agent, and, to the extent necessary, ratifies the appointment and authorization of the Agent, to act as the hypothecary representative of the applicable Credit Parties as contemplated under Article 2692 of the *Civil Code of Quebec*, and to enter into, to take and to hold on their behalf, and for their benefit, any hypothec, and to exercise such powers and duties that are conferred upon the Agent under any related deed of hypothec. The Agent shall have the sole and exclusive right and authority to exercise, except as may be otherwise specifically restricted by the terms hereof, all rights and remedies given to the Agent pursuant to any such deed of hypothec and applicable Law. Any person who becomes a Credit Party shall, by its execution of an Assignment and Assumption, be deemed to have consented to and confirmed the Agent as the person acting as hypothecary representative holding the aforesaid hypothecs as aforesaid and to have ratified, as of the date it becomes a Credit Party, all actions taken by the Agent in such capacity. The substitution of the Agent pursuant to the provisions of this Article IX also constitute the substitution of the Agent as hypothecary representative as aforesaid.

### **9.02 Further Provisions Regarding Appointment of the Agent as agent under the Loan Documents.**

(a) The Agent, its subsidiaries and associated companies may each retain for its own account and benefit any fee, remuneration and profits paid to it in connection with (i) its activities under the Security Documents; and (ii) its engagement in any kind of banking or other business with any Credit Party.

(b) Nothing in this Agreement constitutes the Agent as a trustee or fiduciary of, nor shall the Agent have any duty or responsibility to, any Credit Party.

(c) The Agent shall have no duties or obligations to any other Person except for those which are expressly specified in the Loan Documents or mandatorily required by applicable Laws.

(d) The Agent may appoint one or more Delegates on such terms (which may include the power to sub-delegate) and subject to such conditions as it thinks fit, to exercise and perform all or any of the duties, rights, powers and discretions vested in it by any of the Security Documents and shall not be obliged to supervise any Delegate or be responsible to any person for any loss incurred by reason of any act, omission, misconduct or default on the part of any Delegate.

(e) The Agent may (whether for the purpose of complying with any applicable Laws or regulation of any overseas jurisdiction, or for any other reason) appoint (and subsequently remove) any person to act jointly with the Agent either as a separate agent or as a co-agent on such terms and subject to such conditions as the Agent thinks fit and with such of the duties, rights, powers and discretions vested in the Agent by any Security Document as may be conferred by the instrument of appointment of that person.

(f) The Agent shall notify the Credit Parties of the appointment of each appointee (other than a Delegate).

(g) The Agent may pay reasonable remuneration to any Delegate or appointee, together with any costs and expenses (including legal fees) reasonably incurred by the Delegate or appointee in connection with its appointment. All such remuneration, costs and expenses shall be treated, for the purposes of this Agreement and any Fee Letter, as paid or incurred by the Agent.

(h) Each Delegate and each appointee shall have every benefit, right, power and discretion and the benefit of every exculpation (together "Rights") of the Agent (in its capacity as agent) under the Security Documents, and each reference to the Agent (where the context requires that such reference is to the Agent in its capacity as agent) in the provisions of the Security Documents which confer Rights shall be deemed to include a reference to each Delegate and each appointee.

(i) Each Credit Party confirms its approval of the Security Documents and authorizes and instructs the Agent: (i) to execute and deliver the Security Documents; (ii) to exercise the rights, powers and discretions given to the Agent (in its capacity as agent) under or in connection with the Security Documents together with any other incidental rights, powers and discretions; and (iii) to give any authorizations and confirmations to be given by the Agent (in its capacity as agent) on behalf of the Credit Parties under the Security Documents.

(j) The Agent may accept without inquiry the title (if any) which any person may have to the Collateral from the Loan Parties.

(k) On a disposal of any of the Collateral from the Loan Parties which is permitted under the Loan Documents or in connection with FILO Collateral Release Conditions or Permitted FILO Refinancing Debt, the Agent shall (at the cost of the Loan Parties) execute any release of the security interest constituted under any Security Documents or other claim over that Collateral, enter into any necessary release, reassignment, and/or retransfer agreement necessary or desirable to perform that release, and issue any certificates of non-crystallisation of floating charges that may be required or take any other action that the Agent considers desirable.

(l) The Agent shall not be liable for: (i) any defect in or failure of the title (if any) which any person may have to any assets over which security is intended to be created by any Security Document; any loss resulting from the investment or deposit at any bank of moneys which it invests or deposits in a manner permitted by the Security Documents; (ii) the exercise of, or the failure to exercise, any right, power or discretion given to it by or in connection with any Loan Document or any other agreement, arrangement or document entered into, or executed in anticipation of, under or in

connection with, any Loan Document; or any shortfall which arises on enforcing the Security Documents.

(m) The Agent shall not be obligated to (i) obtain any authorization or environmental permit in respect of any of the Collateral from the Loan Parties or any of the Security Documents; (ii) hold in its own possession any Security Document, title deed or other document relating to the Collateral from the Loan Parties or the Security Documents; (iii) perfect, protect, register, make any filing or give any notice in respect of the Security Documents (or the order of ranking of any Security Document), unless that failure arises directly from its own gross negligence or willful misconduct; or (iv) require any further assurances in relation to any Security Document.

(n) In respect of the Security Documents, the Agent shall not be obligated to (i) insure, or require any other person to insure, the Collateral from the Loan Parties; or (ii) make any enquiry or conduct any investigation into the legality, validity, effectiveness, adequacy or enforceability of any insurance existing over the Collateral from the Loan Parties.

(o) In respect of the Security Documents, the Agent shall not have any obligation or duty to any person for any loss suffered as a result of: (i) the lack or inadequacy of any insurance; or (ii) the failure of the Agent to notify the insurers of any material fact relating to the risk assumed by them, or of any other information of any kind, unless Required Lenders have requested it to do so in writing and the Agent has failed to do so within fourteen (14) days after receipt of that request.

(p) The perpetuity period under the rule against perpetuities if applicable to this Agreement and the Security Documents shall be 80 years from the date of this Agreement.

(q) In the event of any conflict between the provisions of this Section 9.02 and the other provisions of Article IX, the other provisions of Article IX will control (except to the extent any provision of this Section 9.02 is necessary or customary to preserve or protect the Agent's and/or the Lenders' rights, obligations and liabilities in a particular jurisdiction in which case such provision of this Section 9.02 will govern).

**9.03 [Reserved].**

**9.04 [Reserved].**

**9.05 Rights as a Lender.** The Person serving as the Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Loan Parties or any Subsidiary or other Affiliate thereof as if such Person were not the Agent hereunder and without any duty to account therefor to the Lenders.

**9.06 Exculpatory Provisions.** The Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of 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 Agent is required to exercise as directed in writing by the Applicable Lenders, provided that the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Loan Document or 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; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Loan Parties, or any of their Affiliates or any Account Debtor that is communicated to or obtained by the Person serving as the Agent or any of its Affiliates in any capacity.

The Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Applicable Lenders (as the Agent shall believe in good faith shall be necessary under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence, bad faith or willful misconduct as determined by a final and non-appealable judgment of a court of competent jurisdiction.

The Agent shall not be deemed to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Agent in writing by the Loan Parties, a Lender or the L/C Issuer. In the event that the Agent obtains such actual knowledge or receives such a notice, the Agent shall give prompt notice thereof to each of the other Credit Parties. Upon the occurrence of a Default or an Event of Default, the Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Applicable Lenders. Unless and until the Agent shall have received such direction, the Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to any such Default or Event of Default as it shall deem advisable in the best interest of the Credit Parties. In no event shall the Agent be required to comply with any such directions to the extent that the Agent believes that its compliance with such directions would be unlawful.

The Agent 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 or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or the creation, perfection or priority of any Lien purported to be created by the Security Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Agent.

#### **9.07 Reliance by Agent.**

The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including, but not limited to, any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The 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 L/C Issuer, the Agent may presume that such condition is reasonably satisfactory to such Lender or the L/C Issuer unless the Agent shall have received written notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Agent may consult with legal counsel (who may be counsel for any Loan Party), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

**9.08 Delegation of Duties.** The Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Agent. The Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Agent. The Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Agent acted with gross negligence, bad faith or willful misconduct in the selection of such sub-agents.

**9.09 Resignation of Agent.** The Agent may at any time give written notice of its resignation to the Lenders, the L/C Issuer and the Lead Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the consent of the Lead Borrower (not to be unreasonably withheld or delayed; provided that no consent of the Lead Borrower shall be required if an Event of Default under Sections 8.01(a), 8.01(f) or 8.01(g) has occurred), to appoint a successor, which shall be (i) a Lender, (ii) a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States or (iii) a financial institution that is listed on Schedule I, II or III of the *Bank Act* (Canada), has received an approval to have a financial establishment in Canada pursuant to Section 522.21 of the *Bank Act* (Canada) or is not a foreign bank for purposes of the *Bank Act* (Canada), and if such financial institution is not resident in Canada and is not deemed to be resident in Canada for purposes of the ITA, then such financial institution (i) deals at arm's length with each Canadian Loan Party for purposes of the ITA, and (ii) is not, and deals at arm's length (for the purposes of the ITA) with each Person who is, a specified shareholder (as defined in subsection 18(5) of the ITA) of any Canadian Loan Party. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders and the L/C Issuer, appoint a successor Agent meeting the qualifications set forth above; provided that if the Agent shall notify the Lead Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any Collateral held by the Agent on behalf of the Lenders or the L/C Issuer under any of the Loan Documents, the retiring Agent shall continue to hold such collateral security until such time as a successor Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time as the Required Lenders appoint a successor Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrowers

to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Lead Borrower and such successor. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Agent hereunder.

**9.10 Non-Reliance on Agent and Other Lenders.** Each Lender and the L/C Issuer acknowledges that it has, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the L/C Issuer also acknowledges that it will, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder. Except as provided in Section 9.14, the Agent shall not have any duty or responsibility to provide any Credit Party with any other credit or other information concerning the affairs, financial condition or business of any Loan Party that may come into the possession of the Agent.

**9.11 No Other Duties, Etc.** Anything herein to the contrary notwithstanding, none of the Arrangers, Co-Syndication Agents or Co-Documentation Agents listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity as the Agent, a Lender or the L/C Issuer hereunder.

**9.12 Agent May File Proofs of Claim.** In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Agent shall have made any demand on the Loan Parties) shall be entitled and empowered, by intervention in such proceeding or otherwise

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuer, the Agent and the other Credit Parties (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer, the Agent, such Credit Parties and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer the Agent and such Credit Parties under Sections 2.03(i), 2.03(j) and 2.03(k) as applicable, 2.09 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, examiner, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the L/C Issuer to make such payments to the Agent and, in the event the Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuer, to pay to the 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 Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Agent to authorize or consent to or accept or adopt on behalf of any Credit Party any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Credit Party or to authorize the Agent to vote in respect of the claim of any Credit Party in any such proceeding.

**9.13 Collateral and Guaranty Matters.** The Credit Parties irrevocably authorize the Agent, at its option and in its discretion,

(a) to release any Lien on any property granted to or held by the Agent under any Loan Document (i) upon Payment in Full, (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document, (iii) or in connection with FILO Collateral Release Conditions, (iv) in connection with a Reclassification Notice provided under Section 6.12(c) in relation to an Excluded Subsidiary resulting from such Reclassification or (v) if approved, authorized or ratified in writing by the Applicable Lenders in accordance with Section 10.01;

(b) to subordinate any Lien on any property granted to or held by the Agent under any Loan Document to (i) the holder of any Lien on such property that is permitted by clause (h) of the definition of Permitted Encumbrances, (ii) the holders of any Permitted Term Loan Debt, if the secured parties in respect thereof shall have entered into the Permitted Term Loan Intercreditor Agreement with the Agent and (iii) the holders of any Permitted FILO Refinancing Debt, if the secured parties in respect thereof shall have entered into the Permitted FILO Refinancing Debt Intercreditor Agreement with the Agent; and

(c) to release any Guarantor that is a Subsidiary from its obligations under the Facility Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder or under any other Loan Document or if such Person is subject to a Reclassification as provided for in Section 6.12(c) and as a result is an Excluded Subsidiary; provided that after giving effect to any such release, no Overadvance shall exist or result therefrom.

Upon request by the Agent at any time, the Applicable Lenders will confirm in writing the Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Facility Guaranty pursuant to this Section 9.13. In each case as specified in this Section 10.10, the Agent will, at the Loan Parties' expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Facility Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.13.

**9.14 Notice of Transfer.**

The Agent may deem and treat a Lender party to this Agreement as the owner of such Lender's portion of the Obligations for all purposes, unless and until, and except to the extent, an Assignment and Assumption shall have become effective as set forth in Section 10.06.

**9.15 Reports and Financial Statements.**

By signing this Agreement, each Lender:

(a) agrees to furnish the Agent at such frequency as the Agent may reasonably request with a summary of all Other Liabilities due or to become due to such Lender. In connection with any distributions to be made hereunder, the Agent shall be entitled to assume that no amounts are due to any Lender on account of Other Liabilities unless the Agent has received written notice thereof from such Lender and if such notice is received, the Agent shall be entitled to assume that the only amount due to such Lender on account of Other Liabilities is the amount set forth in such notice;

(b) is deemed to have requested that the Agent furnish, and the Agent agrees to furnish, such Lender, promptly after they become available, copies of all Borrowing Base Certificates and financial statements required to be delivered by the Borrowers hereunder;

(c) is deemed to have requested that the Agent furnish, and the Agent agrees to furnish, such Lender, promptly after they become available, copies of all commercial finance examinations and appraisals of the Collateral received by the Agent (collectively, the “Reports”);

(d) expressly agrees and acknowledges that the Agent makes no representation or warranty as to the accuracy of the Borrowing Base Certificates, financial statements or Reports, and shall not be liable for any information contained in any Borrowing Base Certificate, financial statement or Report;

(e) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that the Agent or any other party performing any audit or examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties’ books and records, as well as on representations of the Loan Parties’ personnel;

(f) may request that the Agent furnish such Lender copies of any other information or material delivered by the Loan Parties pursuant to the requirements of the Credit Agreement or any other Loan Document;

(g) agrees to keep all Borrowing Base Certificates, financial statements, Reports and other information or material confidential in accordance with the provisions of Section 10.07 hereof; and

(h) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold the Agent and any such other Lender preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any Credit Extensions that the indemnifying Lender has made or may make to any Borrower, or the indemnifying Lender’s participation in, or the indemnifying Lender’s purchase of, a Loan or Loans; and (ii) to pay and protect, and indemnify, defend, and hold the Agent and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including attorney costs) incurred by the Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

#### **9.16 Agency for Perfection.**

Each Credit Party hereby appoints each other Credit Party as agent for the purpose of perfecting Liens for the benefit of the Credit Parties, in assets which, in accordance with Article 9 of the UCC or any

other Laws of the United States or Canada (or any province or territory thereof) can be perfected only by possession or control. Should any Credit Party (other than the Agent) obtain possession or control of any such Collateral, such Credit Party shall notify the Agent thereof, and, promptly upon the Agent's request therefor shall deliver such Collateral to the Agent or otherwise deal with such Collateral in accordance with the Agent's instructions.

**9.17 Indemnification of Agent.** Without limiting the obligations of Loan Parties hereunder, to the extent that the Loan Parties for any reason fail to indefeasibly pay any amount required under Section 10.04 to be paid by them to the Agent (or any sub-agent thereof), the Lenders shall indemnify the Agent, any sub-agent thereof, the L/C Issuer and any Related Party, as the case may be ratably according to their Applicable Percentages, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against the Agent, any sub-agent thereof, the L/C Issuer and their Related Parties in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted to be taken by the Agent, any sub-agent thereof, the L/C Issuer and their Related Parties in connection therewith; provided, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Agent's, any sub-agent's, the L/C Issuer's and their Related Parties' gross negligence, bad faith or willful misconduct as determined by a final and nonappealable judgment of a court of competent jurisdiction.

**9.18 Relation among Lenders.** The Lenders are not partners or co-venturers, and no Lender shall be liable for the acts or omissions of, or (except as otherwise set forth herein in case of the Agent) authorized to act for, any other Lender.

**9.19 Intercreditor Agreements.** The Agent is hereby authorized to enter into the Permitted Term Loan Intercreditor Agreement, the Permitted FILO Refinancing Debt Intercreditor Agreement or any other document evidencing an intercreditor arrangement to the extent contemplated by the terms hereof, and the parties hereto acknowledge that the Permitted Term Loan Intercreditor Agreement, the Permitted FILO Refinancing Debt Intercreditor Agreement or such other document evidencing an intercreditor arrangement is binding upon them. Each Lender (a) hereby agrees that it will be bound by and will take no actions contrary to the provisions of the Permitted Term Loan Intercreditor Agreement, the Permitted FILO Refinancing Debt Intercreditor Agreement or any other document evidencing an intercreditor arrangement entered into pursuant to the immediately preceding sentence and (b) hereby authorizes and instructs the Agent to enter into the Permitted Term Loan Intercreditor Agreement, the Permitted FILO Refinancing Debt Intercreditor Agreement and any other document evidencing an intercreditor arrangement entered into pursuant to the immediately preceding sentence and, in each case, to subject the Liens on the Collateral securing the Obligations to the provisions thereof. In addition, each Lender hereby authorizes the Agent to enter into any amendment to the Permitted Term Loan Intercreditor Agreement, the Permitted FILO Refinancing Debt Intercreditor Agreement and any other document evidencing an intercreditor arrangement, in each case, to the extent required to give effect to the establishment of intercreditor rights and privileges as contemplated and required by this Agreement or the other Loan Documents. Promptly after execution thereof, the Agent shall provide each Lender with a copy of the Permitted Term Loan Intercreditor Agreement, the Permitted FILO Refinancing Debt Intercreditor Agreement, other document evidencing an intercreditor arrangement, and any amendment to or other modification of any of the foregoing.

**9.20 Risk Participation.**

(a) Upon the earlier of Substantial Liquidation or the Determination Date, if all Canadian Liabilities have not been repaid in full (other than those Canadian Liabilities relating to the

Facility Guaranty of the U.S. Liabilities and relating to the Other Canadian Liabilities and excluding the Canadian FILO Term Loan), then the other Revolving Lenders shall purchase from the Canadian Revolving Lenders (on the date of Substantial Liquidation or the Determination Date, as applicable) such portion of the Canadian Liabilities (other than those Canadian Liabilities relating to the Facility Guaranty of the U.S. Liabilities and relating to the Other Canadian Liabilities, but including, for clarity, participations in any outstanding Canadian Letters of Credit and Canadian Swing Line Loans) so that each Revolving Lender shall, after giving effect to any such purchases, hold its Liquidation Percentage of all outstanding Canadian Liabilities and all other Obligations (excluding the Canadian FILO Term Loan).

(b) Upon the earlier of Substantial Liquidation or the Determination Date, if all U.S. Liabilities (other than those U.S. Liabilities relating to the Facility Guaranty of the Canadian Liabilities and relating to the Other U.S. Liabilities and excluding the FILO Term Loan) have not been repaid in full, then the other Revolving Lenders shall purchase from the U.S. Revolving Lenders (on the date of Substantial Liquidation or the Determination Date, as applicable) such portion of the U.S. Liabilities (other than those U.S. Liabilities relating to the Facility Guaranty of the Canadian Liabilities and relating to the Other U.S. Liabilities, but including, for clarity, participations in any outstanding U.S. Letters of Credit and U.S. Swing Line Loans) so that each Revolving Lender shall, after giving effect to any such purchases, hold its Liquidation Percentage of all outstanding U.S. Liabilities and all other Obligations (excluding the U.S. FILO Term Loan).

(c) All purchases of Obligations under this Section 9.20 shall be at par, for cash, with no premium, discount or reduction.

(d) No Lender shall be responsible for any default of any other Lender in respect of any other Lender's obligations under this Section 9.20, nor shall the obligations of any Lender hereunder be increased as a result of such default of any other Lender. Each Lender shall be obligated to the extent provided herein regardless of the failure of any other Lender to fulfil its obligations hereunder. If any Lender fails to make available any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 9.20 within two (2) Business Days after receipt of written notice from the Agent requesting such payment, without limiting the other provisions of this Agreement, the Agent (for the benefit of the other Lenders entitled to such payment) shall be entitled to recover from such defaulting Lender (acting through the 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 at a rate per annum equal to the applicable Bank Rate, plus any administrative, processing or similar fees customarily charged by the Agent in connection with the foregoing. A certificate of the Agent submitted to any Lender with respect to any amounts payable under this Agreement shall be conclusive in the absence of manifest error.

(e) Each Lender shall execute such instruments, documents and agreements and do such other actions as may be necessary or proper in order to carry out more fully the provisions and purposes of this Section 9.20 and the purchase of, or participations in, the U.S. Liabilities or the Canadian Liabilities, as applicable, as provided herein.

(f) The obligations of each Lender under this Section 9.20 are irrevocable, absolute, and unconditional and shall not be subject to any qualification or exception or be affected by any circumstance whatsoever including, without limitation, (i) lack of validity or enforceability of this Agreement or any of the Loan Documents, (ii) the existence of any claim, counterclaim, recoupment, setoff, defense or other right which any Loan Party may have at any time against any of the Lenders, any Borrower or any other Person for any reason whatsoever, (iii) the occurrence or continuance of an Event of Default, (iv) any adverse change in the condition (financial or otherwise) of any Borrower,

Loan Party or any other Person, or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

(g) No fees required to be paid on any assignment pursuant to Section 10.06 of this Agreement shall be payable in connection with any assignment under this Section 9.20.

## **ARTICLE X MISCELLANEOUS**

### **10.01 Amendments, Etc.**

(a) Except as expressly provided in, or contemplated by, Section 2.15 and subject to Section 3.03(b), no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by any Loan Party therefrom, shall be effective unless in writing signed by the Agent, with the consent of the Required Lenders, and the Lead Borrower or the applicable Loan Party, as the case may be, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that, except as provided in, or contemplated by, Section 2.15, no such amendment, waiver or consent shall:

(i) increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender (it being understood and agreed that amendment or waiver of any condition precedent set forth in Section 4.01 or 4.02 or of any Default or Event of Default shall not be considered an extension or increase in Commitments for purposes hereof);

(ii) as to any Lender, postpone any date fixed by this Agreement or any other Loan Document for (i) any scheduled payment (including the Revolving Maturity Date and FILO Maturity Date, as applicable) or mandatory prepayment of principal, interest, fees or other amounts due hereunder or under any of the other Loan Documents without the written consent of such Lender, or (ii) any scheduled or mandatory reduction or termination of the Aggregate Revolving Commitments or the Aggregate FILO Term Loan Commitments hereunder or under any other Loan Document, without the written consent of such Lender;

(iii) as to any Lender, reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing held by such Lender, or (subject to clause (iv) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document to or for the account of such Lender, without the written consent of such Lender; provided, however, that only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" and to waive any obligation of the Borrowers to pay interest at the Default Rate and only the consent of the Required Revolving Lenders shall be necessary to waive any obligation of the Borrowers to pay Letter of Credit Fees at the Default Rate;

(iv) change Section 2.13 or Section 8.03 in a manner that would alter the order of application, or pro rata sharing, of payments required thereby, or the allocation of proceeds as between Revolver Collateral and FILO Collateral, without the written consent of each Lender adversely affected thereby;

(v) change any provision of this Section or the definition of "Required Lenders", "Required Revolving Lenders" or any other provision hereof or of any Loan Document specifying the number or percentage of Lenders required to amend, waive or otherwise modify

any right hereunder or under any other Loan Document or make any determination or grant any consent hereunder or thereunder, without the written consent of each Lender affected thereby;

(vi) except as expressly permitted hereunder or under any other Loan Document, release, or limit the liability of, any Loan Party without the written consent of each Lender affected thereby;

(vii) except for Permitted Dispositions or as provided in Section 9.123, release all or substantially all of the Collateral from the Liens of the Security Documents without the written consent of each Lender affected thereby;

(viii) increase any advance rate percentage set forth in the definition of “Canadian Revolving Borrowing Base”, “U.S. Revolving Borrowing Base” or “Combined Borrowing Base” without the written consent of each Revolving Lender affected thereby; provided that the foregoing shall not limit the discretion of the Agent to add, increase, reduce, change, establish or eliminate any Reserves;

(ix) so long as the FILO Term Loan is outstanding, (i) increase any advance rate percentage set forth in the definition of “Canadian Revolving Borrowing Base”, “U.S. Revolving Borrowing Base”, “U.S. FILO Borrowing Base”, “Canadian FILO Borrowing Base” or “Revolving Borrowing Base” (or any component definition of any of the foregoing terms) without the written consent of each FILO Term Lender, (ii) change the definition of “Combined Borrowing Base” or any component definition of any of the foregoing terms if, as a result thereof, the amount of the Combined Borrowing Base would be increased without the written consent of each FILO Term Lender, (iii) change the definition of “U.S. FILO Term Loan Push Down Reserve” or “Canadian FILO Term Loan Push Down Reserve” without the written consent of each FILO Term Lender; provided that the foregoing shall not limit the discretion of the Agent to add, increase, reduce, change, establish or eliminate any Reserves (other than as provided in clause (iii) above with respect to the FILO Term Loan Push Down Reserve), or (iv) alter the order of application of any payments to the FILO Term Loan as set forth in Section 2.05;

(x) modify the definition of Permitted Overadvance so as to increase the amount thereof or, except as otherwise provided in such definition, the time period for which a Permitted Overadvance may remain outstanding without the written consent of each Lender; and

(xi) except as expressly permitted herein or in any other Loan Document, subordinate the Liens on any Collateral (other than FILO Collateral unless the FILO Term Loan is outstanding), or the Obligations hereunder to any other Indebtedness, without the written consent of each Lender;

and, provided further, that (i) no amendment, waiver or other change to the provisions of Section 2.01(f)(iii) may be made without the consent of Lenders holding 66 2/3% of the Aggregate Revolving Commitments, (ii) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Swing Line Lender under this Agreement; (iv) no amendment, waiver or consent shall, unless in writing and signed by the Agent in addition to the Lenders required above, affect the rights or duties of any Agent under this Agreement or any other Loan Document; (v) any Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto; and (vi) any amendment or waiver that disproportionately and



adversely affects any Class of Lenders shall require the written consent of each Lender of such Class. 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 to the extent required by Section 10.01(a)(i) 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.

Notwithstanding the foregoing, the parties hereto consent to the Agent and the Borrowers entering into the FILO Term Loan Amendment to give effect to the FILO Term Loan and the FILO Term Loan Commitments.

(b) Notwithstanding anything to the contrary in this Agreement or any other Loan Document, (x) no provider or holder of any Bank Products or Cash Management Services shall have any voting or approval rights hereunder (or be deemed a Lender) solely by virtue of its status as the provider or holder of such agreements or products or the Obligations owing thereunder, nor shall the consent of any such provider or holder be required (other than in their capacities as Lenders, to the extent applicable) for any matter hereunder or under any of the other Loan Documents, including as to any matter relating to the Collateral or the release of Collateral or any Loan Party, (y) any Loan Document may be amended and waived with the consent of the Agent at the request of the Lead Borrower without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (i) to comply with local Law or advice of local counsel, (ii) to cure ambiguities or defects or (iii) to cause any Loan Document to be consistent with this Agreement and the other Loan Documents, and (z) no Lender consent is required to effect any amendment or supplement to the Permitted Term Loan Intercreditor Agreement or the Permitted FILO Refinancing Debt Intercreditor Agreement, in each case if applicable, that is for the purpose of adding holders of the obligations under the Permitted Term Loan Debt or the Permitted FILO Refinancing Debt, as applicable, as parties thereto, as expressly contemplated by the terms of Permitted Term Loan Intercreditor Agreement or Permitted FILO Refinancing Debt Intercreditor Agreement, in each case if applicable (it being understood that any such amendment, modification or supplement may make such other changes to the Permitted Term Loan Intercreditor Agreement or the Permitted FILO Refinancing Debt Intercreditor Agreement, in each case if applicable, that, in the good faith determination of the Agent, are required to effectuate the foregoing and provided, that such other changes are not adverse, in any material respect, to the interests of the Lenders).

(c) If any Lender does not consent (a “Non-Consenting Lender”) to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of each Lender and that has been approved by the Required Lenders, the Lead Borrower may replace such Non-Consenting Lender in accordance with Section 10.13; provided that such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by the Lead Borrower to be made pursuant to this paragraph).

## **10.02 Notices; Effectiveness; Electronic Communications.**

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by electronic mail or

telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Loan Parties, the Agent, the L/C Issuer or the Swing Line Lender, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Agent, provided that the foregoing shall not apply to notices to any Lender or the L/C Issuer pursuant to Article II if such Lender or the L/C Issuer, as applicable, has notified the Agent that it is incapable of receiving notices under such Article by electronic communication. The Agent or the Lead Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), 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.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to any Loan Party, any Lender, the L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out

of the Loan Parties' or the Agent's transmission of Borrower Materials through the Internet other than for direct, actual damages resulting from the gross negligence, bad faith or willful misconduct of the Agent as determined by a final non-appealable judgment of a court of competent jurisdiction; provided, however, that in no event shall the Agent have any liability to any Loan Party, any Lender, the L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Loan Parties, the Agent, the L/C Issuer and the Swing Line Lender may change its address, electronic mail address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Lead Borrower, the Agent, the L/C Issuer and the Swing Line Lender. In addition, each Lender agrees to notify the Agent from time to time to ensure that the Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. 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 United States Federal and state 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 Borrowers or their securities for purposes of United States Federal or state securities laws.

(e) Reliance by Agent, L/C Issuer and Lenders. The Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic Revolving Loan Notices and Swing Line Loan Notices) purportedly given by or on behalf of the Loan Parties even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Loan Parties shall indemnify the Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrowers. All telephonic notices to and other telephonic communications with the Agent may be recorded by the Agent, and each of the parties hereto hereby consents to such recording.

**10.03 No Waiver; Cumulative Remedies.** No failure by any Credit Party to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges provided herein and in the other Loan Documents are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default or Event of Default, regardless of whether any Credit Party may have had notice or knowledge of such Default or Event of Default at the time.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at Law in connection with such enforcement shall be instituted and maintained exclusively by, the Agent in accordance with Section 8.02 for the benefit of all the Lenders and the L/C Issuer; provided, however, that the foregoing

shall not prohibit (a) the Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Agent) hereunder and under the other Loan Documents, (b) the L/C Issuer or the Swing Line Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer or Swing Line Lender, as the case may be) hereunder and under the other Loan Documents, or (c) any Lender from exercising setoff rights in accordance with Section 10.08 (subject to the terms of Section 2.13); and provided, further, that if at any time there is no Person acting as Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b) and (c) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

#### **10.04 Expenses; Indemnity; Damage Waiver.**

(a) Costs and Expenses. The Borrowers shall pay all Credit Party Expenses.

(b) Indemnification by the Loan Parties. The Loan Parties shall indemnify the Agent (and any sub-agent thereof), each other Credit Party, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless (on an after tax basis) from, any and all losses, claims, causes of action, damages, liabilities, settlement payments, costs, and related expenses (including the reasonable and documented fees, charges and disbursements of counsel for the Indemnitees) and without duplication of amounts payable under Section 10.04(a), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by any Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or the administration of this Agreement and the other Loan Documents, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit, any bank advising or confirming a Letter of Credit and any other Person seeking to enforce the rights of a Borrower, beneficiary, transferee, or assignee or Letter of Credit proceeds or the holder of an instrument or document related to any Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Loan Party or any of its Subsidiaries, or any Environmental Liability related in any way to any Loan Party or any of its Subsidiaries, (iv) any claims of, or amounts paid by any Credit Party to, a Controlled Account Bank or other Person which has entered into a control agreement with any Credit Party hereunder, or (v) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Borrower or any other Loan Party or any of the Loan Parties' directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto, provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence, bad faith, or willful misconduct of such Indemnitee, or (y) arise from disputes solely among the Indemnitees, and in such event solely to the extent that the underlying dispute does not (1) arise as a result of an action, inaction or representation of, or information provided by or on behalf of the Loan Parties or their Subsidiaries or Affiliates, or (2) relate to any action of such Indemnitee in its capacity as Agent, Arranger or Co-Documentation Agent. Without limiting the provisions of Section 3.01(c), this Section 10.04(b) shall not apply with respect to Taxes other than any Taxes that represent losses, liabilities, claims, damages, etc. arising from any non-Tax claim. In the case of an investigation, litigation or other proceeding to

which the indemnity in this Section 10.04 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, any Subsidiary of any Loan Party, its directors, stockholders or creditors or an Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents are consummated.

(c) Waiver of Consequential Damages, Etc. To the fullest extent permitted by Law, the Loan Parties shall not assert, and hereby waive, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee shall have any liability (whether direct or indirect, in contract or tort or otherwise) to any Loan Party or its Subsidiaries or Affiliates, or to their respective equity holders or creditors or to any other Person arising out of, related to or in connection with any aspect of the Transaction, except to the extent of direct (as opposed to special, indirect, consequential or punitive) damages determined in a final non appealable judgment by a court of competent jurisdiction to have resulted from such Indemnitee's gross negligence, bad faith or willful misconduct. No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through Syndtrak, IntraLinks or other similar information transmission systems in connection with this Agreement, other than for direct, actual damages resulting from the gross negligence, bad faith or willful misconduct of such Indemnitee as determined by a final non-appealable judgment of a court of competent jurisdiction.

(d) Payments. All amounts due under this Section shall be payable on demand therefor.

(e) Limitation of Liability. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and non-appealable judgment of a court of competent jurisdiction.

(f) Survival. The agreements in this Section shall survive the resignation of any Agent, the L/C Issuer or the Swing Line Lender, the assignment of any Commitment or Loan by any Lender, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

**10.05 Payments Set Aside.** To the extent that any payment by or on behalf of the Loan Parties is made to any Credit Party, or any Credit Party exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Credit Party in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the L/C Issuer severally agrees to pay to the Agent upon demand its Applicable Percentage (without duplication) of any amount so recovered from or repaid by the Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Bank Rate from time to time in

effect. The obligations of the Lenders and the L/C Issuer under clause (b) of the preceding sentence shall survive the Payment in Full and the termination of this Agreement.

#### **10.06 Successors and Assigns.**

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder or under any other Loan Document without the prior written consent of the Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of Section 10.06(b), (ii) by way of participation in accordance with the provisions of subsection Section 10.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.06(f) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Credit Parties) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments) and the Loans (including for purposes of this Section 10.06(b), participations in L/C Obligations and in Swing Line Loans) at the time owing to it; provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitments and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitments (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the 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 each of the Agent and, so long as no Default or Event of Default has occurred and is continuing, the Lead Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitments assigned, except that this clause (ii) shall not apply to the Swing Line Lender's rights and obligations in respect of Swing Line Loans;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Lead Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default under any of Sections 8.01(a), 8.01(f) or 8.01(g) has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund with respect to such Lender; provided that the Lead Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Agent within ten (10) Business Days after having received notice thereof; and

(B) the consent of the Agent, the L/C Issuer and the Swing Line Lender (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of any Commitments if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender; and

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500, provided, however, that the Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it shall not be a Lender, shall deliver to the Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to the Loan Parties or any of the Loan Parties' Subsidiaries or Affiliates, (B) to any Defaulting Lender or any of its Subsidiaries or Affiliates, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), (C) to a natural Person, or (D) to a Disqualified Lender.

(vi) Certain Additional Payments. 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 Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Lead Borrower and the 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 (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Agent, the L/C Issuer or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swing Line Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Laws 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 the Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and

Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment; 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 Borrowers (at their expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.06(d).

(c) Register. The Agent, acting solely for this purpose as an agent of the Borrowers (and such agency being solely for tax purposes), shall maintain at the 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 and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, absent manifest error, and the Loan Parties, the Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Lead Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. (i) Any Lender may at any time, without the consent of, or notice to, the Loan Parties, the Agent, the L/C Issuer or the Swing Line Lender, sell participations to any Person (other than a natural person, a Disqualified Lender, or the Loan Parties or any of the Loan Parties' Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitments and/or the Loans (including such Lender's participations in L/C Obligations and/or Swing Line Loans) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Loan Parties, the Agent, the Lenders and the L/C Issuer shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any Participant shall agree in writing to comply with all confidentiality obligations set forth in Section 10.07 as if such Participant was a Lender hereunder.

(ii) 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 clauses (i) through (iv) of the first proviso to Section 10.01 that affects such Participant. Subject to subsection (e) of this Section, the Loan Parties agree that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.06(b). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.02 as though it were a Lender.

(iii) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, 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 "Participation Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participation 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 (a) to the Lead Borrower, or (b) 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 Participation Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participation 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 Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participation Register.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or Section 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Lead Borrower's prior written consent or to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation and then only to the extent that the applicable Lender would have been entitled to such greater payment. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 or Section 3.04 unless the Lead Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Loan Parties, to comply with Section 3.01(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Resignation as L/C Issuer or Swing Line Lender after Assignment or Resignation. Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Commitments and Loans pursuant to subsection (b) above, or resigns as Agent in accordance with the provisions of Section 9.08, Bank of America may, (i) upon 30 days' notice to the Lead Borrower and the Lenders, resign as L/C Issuer and/or (ii) with duplication of any notice required under Section 9.08, upon 30 days' notice to the Lead Borrower, resign as Swing Line Lender. In the event of any such resignation as L/C Issuer or Swing Line Lender, the Lead Borrower shall be entitled to appoint from among the Lenders a successor L/C Issuer or Swing Line Lender hereunder; provided, however, that no failure by the Lead Borrower to appoint any such successor shall affect the resignation of Bank of America as L/C Issuer or Swing Line Lender, as the case may be. If Bank of America resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Prime Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). If Bank of America resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Prime Rate Revolving Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c). Upon the appointment of a successor L/C Issuer and/or Swing Line Lender, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swing Line Lender, as the case may be, (b) the successor L/C

Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit, and (c) the successor Swing Line Lender shall repay all outstanding Obligations with respect to Swing Line Loans due to the resigning Swing Line Lender.

(h) Luxembourg. In the event that a transfer by any Lender of its rights and/or obligations under this Agreement (and any relevant Loan Documents) occurred or was deemed to occur by way of novation, the Parties explicitly agree that all securities and guarantees created under any Loan Documents shall be preserved for the benefit of the new Lender, new secured party, participant or their successors or assignees in accordance with the provisions of article 1278 of the Luxembourg Civil Code, to the extent applicable.

**10.07 Treatment of Certain Information; Confidentiality.** Each of the Credit Parties agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates, Approved Funds, and to its and its Affiliates' and Approved Funds' respective partners, directors, officers, employees, agents, funding sources, attorneys, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority), (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement (including any electronic agreement contained in any Platform) containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any Swap Contract relating to any Loan Party and its obligations, (g) with the consent of the Lead Borrower or (h) 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 Credit Party or any of their respective Affiliates on a non-confidential basis from a source other than the Loan Parties.

For purposes of this Section, "Information" means all information received from the Loan Parties or any Subsidiary thereof relating to the Loan Parties or any Subsidiary thereof or their respective businesses, other than any such information that is available to any Credit Party on a non-confidential basis prior to disclosure by the Loan Parties or any Subsidiary thereof. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Credit Parties acknowledges that (a) the Information may include material non-public information concerning the Loan Parties or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with Law, including Federal and state securities Laws.

**10.08 Right of Setoff.** If an Event of Default shall have occurred and be continuing or if any Lender shall have been served with a trustee process or similar attachment relating to property of a Loan Party, each Lender, the L/C Issuer and each of their respective Affiliates and Participants is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Agent or the Required Lenders, to the fullest extent permitted by Law, to set off and apply any and all deposits

(general or special, time or demand, provisional or final, in whatever currency) or other property at any time held and other obligations (in whatever currency) at any time owing by such Lender, the L/C Issuer or any such Affiliate to or for the credit or the account of any Borrower or any other Loan Party against any and all of the Obligations now or hereafter existing under this Agreement or any other Loan Document to such Lender or the L/C Issuer, regardless of the adequacy of the Collateral, and irrespective of whether or not such Lender or the L/C Issuer shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrowers or such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender or the L/C Issuer different from the branch or office holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Agent for further application in accordance with the provisions of Section 2.16 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 Agent, the L/C Issuer and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, the L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective Affiliates may have. Each Lender and the L/C Issuer agrees to notify the Lead Borrower and the Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

**10.09 Interest Rate Limitation.** Notwithstanding anything to the contrary contained in any Loan Document, but subject to the provisions of Section 2.10(c) hereof, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by Law (the “Maximum Rate”). Subject to the provisions of Section 2.10(c) hereof with respect to the Canadian Revolving Loans, in determining whether the interest contracted for, charged, or received by the Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Laws, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

**10.10 Counterparts; Integration; Effectiveness.** This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Agent and when the Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, pdf or other electronic transmission shall be as effective as delivery of a manually executed counterpart of this Agreement.

**10.11 Survival.** All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Credit Parties, regardless of any investigation made by any Credit Party or on their behalf and notwithstanding that any Credit Party may have had notice or knowledge of any Default 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 shall remain outstanding. Further, the provisions of Sections 3.01, 3.04, 3.05 and 10.04 and

Article IX, without limitation, shall survive and remain in full force and effect regardless of the repayment of the Obligations, the expiration of the Letters of Credit or the termination of the Aggregate Commitments or the termination of this Agreement or any provision hereof. In connection with the termination of this Agreement and the release and termination of the security interests in the Collateral, the Agent may require such indemnities and collateral security as it shall reasonably deem necessary or appropriate to protect the Credit Parties against (x) loss on account of credits previously applied to the Obligations that may subsequently be reversed or revoked, (y) any obligations that may thereafter arise with respect to the Other Liabilities, and (z) any Obligations that may thereafter arise under Section 10.04 hereof.

**10.12 Severability.** If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Agent, the L/C Issuer or the Swing Line Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

**10.13 Replacement of Lenders.** If any Lender requests compensation under Section 3.04, or if any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Lead Borrower may, at its sole expense and effort, upon notice to such Lender and the Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights (other than its existing rights to payments pursuant to Section 3.01 and 3.04) and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrowers shall have paid to the Agent the assignment fee specified in Section 10.06(b);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter; and

(d) such assignment does not conflict with Laws; and

(e) in the case of an assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Lead Borrower to require such assignment and delegation cease to apply.

#### **10.14 Governing Law; Jurisdiction; Etc.**

(a) 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.

(b) SUBMISSION TO JURISDICTION. EACH LOAN PARTY 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 THE AGENT, ANY LENDER, THE L/C ISSUER, 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 LOAN 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 APPLICABLE LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ANY CREDIT PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE LOAN PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY

PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW. THE PARENT AND EACH OTHER LOAN PARTY HEREBY AGREES THAT SERVICE OF PROCESS IN ANY ACTION OR PROCEEDING BROUGHT IN ANY NEW YORK STATE COURT OR FEDERAL COURT MAY BE MADE UPON SUCH PERSON AS THE LEAD BORROWER MAY PROVIDE THE AGENT IN WRITING (THE "PROCESS AGENT"), AND EACH OF THE PARENT AND EACH OTHER LOAN PARTY HEREBY IRREVOCABLY APPOINTS THE PROCESS AGENT ITS AUTHORIZED AGENT TO ACCEPT SUCH SERVICE OF PROCESS, AND AGREES THAT THE FAILURE OF THE PROCESS AGENT TO GIVE ANY NOTICE OF ANY SUCH SERVICE SHALL NOT IMPAIR OR AFFECT THE VALIDITY OF SUCH SERVICE OR OF ANY JUDGMENT RENDERED IN ANY ACTION OR PROCEEDING BASED THEREON.

**10.15 Waiver of Jury Trial.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**10.16 No Advisory or Fiduciary Responsibility.** In connection with all aspects of each transaction contemplated hereby, the Loan Parties each acknowledge and agree that: (i) the credit facility provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Loan Parties, on the one hand, and the Credit Parties, on the other hand, and each of the Loan Parties is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (ii) in connection with the process leading to such transaction, each Credit Party is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Loan Parties or any of their respective Affiliates, stockholders, creditors or employees or any other Person; (iii) none of the Credit Parties has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Loan Parties with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether any of the Credit Parties has advised or is currently advising any Loan Party or any of its Affiliates on other matters) and none of the Credit Parties has any obligation to any Loan Party or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; (iv) the Credit Parties and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and none of the Credit Parties has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) the Credit Parties have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. Each of the

Loan Parties hereby waives and releases, to the fullest extent permitted by applicable Law, any claims that it may have against each of the Credit Parties with respect to any breach or alleged breach of agency or fiduciary duty.

**10.17 USA PATRIOT Act and PCTFA Notice.** Each Lender that is subject to the USA PATRIOT Act and the PCTFA and the Agent (for itself and not on behalf of any Lender) hereby notifies the Loan Parties that pursuant to the requirements of the USA PATRIOT Act and the PCTFA, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Agent, as applicable, to identify each Loan Party in accordance with the USA PATRIOT Act and the PCTFA. Each Loan Party is in compliance, in all material respects, with the USA PATRIOT Act and the PCTFA. No part of the proceeds of the Loans will be used by the Loan Parties, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the USA PATRIOT and the PCTFA. The Loan Parties shall, promptly following a request by the Agent or any Lender, provide all documentation and other information that the Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act and the Beneficial Ownership Regulation.

**10.18 Foreign Assets Control Regulations.** Neither of the advance of the Loans nor the use of the proceeds thereof or of any Letter of Credit will violate any Sanctions or any applicable anti-corruption Laws. Furthermore, none of the Loan Parties or their affiliates (a) is or will become an Embargoed Person or (b) engages or will engage in any dealings or transactions, or be otherwise associated, with any such Embargoed Person or in any manner violative of the Foreign Assets Control Regulations and other applicable anti-corruption Laws.

**10.19 Time of the Essence.** Time is of the essence of the Loan Documents.

**10.20 Press Releases.**

(a) Each Credit Party executing this Agreement agrees that neither it nor its Affiliates will in the future issue any press releases or other public disclosure using the name of the Agent or its Affiliates or referring to this Agreement or the other Loan Documents without at least two (2) Business Days’ prior notice to the Agent and without the prior written consent of the Agent unless (and only to the extent that) such Credit Party or Affiliate is required to do so under Law and then, in any event, such Credit Party or Affiliate will consult with the Agent before issuing such press release or other public disclosure.

(b) Each Loan Party consents to the publication by the Agent or any Lender of advertising material relating to the financing transactions contemplated by this Agreement using any Loan Party’s name, product photographs, logo or trademark. The Agent or such Lender shall provide a draft reasonably in advance of any advertising material to the Lead Borrower prior to the publication thereof. The Agent reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

**10.21 Additional Waivers.**

(a) Except as provided herein or in any other Loan Document, the Obligations are the joint and several obligation of each Loan Party. To the fullest extent permitted by applicable Laws, the obligations of each Loan Party shall not be affected by (i) the failure of any Credit Party to assert

any claim or demand or to enforce or exercise any right or remedy against any other Loan Party under the provisions of this Agreement, any other Loan Document or otherwise, (ii) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, this Agreement or any other Loan Document, (iii) the failure to perfect any security interest in, or the release of, any of the Collateral or other security held by or on behalf of the Agent or any other Credit Party, or (iv) any default, failure or delay, willful or otherwise, in the performance of any of the Obligations, or by any other act or omission that may or might in any manner or to any extent vary the risk of any Loan Party or that would otherwise operate as a discharge of any Loan Party as a matter of law or equity (other than the indefeasible Payment in Full). The obligations of each Loan Party shall not be subject to any reduction, limitation, impairment or termination for any reason (other than the indefeasible Payment in Full), including any claim of waiver, release, surrender, alteration or compromise of any of the Obligations, and shall not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any of the Obligations or otherwise.

(b) Except as provided herein or in any other Loan Document, to the fullest extent permitted by applicable Laws, each Loan Party waives any defense based on or arising out of any defense of any other Loan Party or the unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any other Loan Party, other than the indefeasible Payment in Full. The Agent and the other Credit Parties may, at their election, foreclose on any security held by one or more of them by one or more judicial or non-judicial sales, accept an assignment of any such security in lieu of foreclosure, compromise or adjust any part of the Obligations, make any other accommodation with any other Loan Party, or exercise any other right or remedy available to them against any other Loan Party, without affecting or impairing in any way the liability of any Loan Party hereunder except to the extent that all of the Obligations have been indefeasibly Paid in Full in cash and the Aggregate Commitments have been terminated. Each Loan Party waives any defense arising out of any such election even though such election operates, pursuant to Law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Loan Party against any other Loan Party.

(c) Upon payment by any Loan Party of any Obligations, all rights of such Loan Party against any other Loan Party arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subordinate and junior in right of payment to the prior indefeasible Payment in Full. In addition, any indebtedness of any Loan Party now or hereafter held by any other Loan Party is hereby subordinated in right of payment to the prior indefeasible Payment in Full and no Loan Party will demand, sue for or otherwise attempt to collect any such indebtedness. If any amount shall erroneously be paid to any Loan Party on account of (i) such subrogation, contribution, reimbursement, indemnity or similar right or (ii) any such indebtedness of any Loan Party, such amount shall be held in trust for the benefit of the Credit Parties and shall forthwith be paid to the Agent to be credited against the payment of the Obligations, whether matured or unmatured, in accordance with the terms of this Agreement and the other Loan Documents. Subject to the foregoing, to the extent that any Borrower shall, under this Agreement as a joint and several obligor, repay any of the Obligations constituting Loans made to another Borrower hereunder or other Obligations incurred directly and primarily by any other Borrower (an "Accommodation Payment"), then the Borrower making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed by, each of the other Borrower in an amount, for each of such other Borrower, equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Borrower's Allocable Amount and the denominator of which is the sum of the Allocable Amounts of all of the Borrowers. As of any date of determination, the "Allocable Amount" of each Borrower shall be equal to the maximum amount of liability for Accommodation Payments



which could be asserted against such Borrower hereunder without (a) rendering such Borrower “insolvent” within the meaning of Section 101(32) of the Bankruptcy Code, Section 2 of the Uniform Fraudulent Transfer Act (“UFTA”) or Section 2 of the Uniform Fraudulent Conveyance Act (“UFCA”) or a similar provision under any other Debtor Relief Law, (b) leaving such Borrower with unreasonably small capital or assets, within the meaning of Section 548 of the Bankruptcy Code, Section 4 of the UFTA, Section 5 of the UFCA, or a similar provision under any other Debtor Relief Law or (c) leaving such Borrower unable to pay its debts as they become due within the meaning of Section 548 of the Bankruptcy Code or Section 4 of the UFTA, Section 5 of the UFCA, or a similar provision under any other Debtor Relief Law.

(d) Notwithstanding any other provision contained in this Agreement or any other Loan Document, if a “secured creditor” (as that term is defined under the BIA) is determined by a court of competent jurisdiction not to include a Person to whom obligations are owed on a joint or joint and several basis, then Loan Parties’ Obligations, to the extent such Obligations are secured, only shall be several obligations and not joint or joint and several obligations.

#### **10.22 No Strict Construction.**

The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

#### **10.23 Judgment Currency.**

(a) If, for the purpose of obtaining or enforcing judgment against any Loan Party in any court in any jurisdiction, it becomes necessary to convert into any other currency (such other currency being hereinafter in this Section 10.23 referred to as the “Judgment Currency”) an amount due under any Loan Document in any currency (the “Obligation Currency”) other than the Judgment Currency, the conversion shall be made at the rate of exchange prevailing on the Business Day immediately preceding the date of actual payment of the amount due, in the courts of any jurisdiction that will give effect to such conversion being made on such date, or the date on which the judgment is given, in the case of any proceeding in the courts of any jurisdiction (the applicable date as of which such conversion is made pursuant to this Section 10.23 being hereinafter in this Section 10.23 referred to as the “Judgment Conversion Date”).

(b) If, in the case of any proceeding in the court of any jurisdiction referred to in Section 10.23(a), there is a change in the rate of exchange prevailing between the Judgment Conversion Date and the date of actual receipt for value of the amount due, the applicable Loan Party or Loan Parties shall pay such additional amount (if any) as may be necessary to ensure that the amount actually received in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of the Obligation Currency which could have been purchased with the amount of the Judgment Currency stipulated in the judgment or judicial order at the rate of exchange prevailing on the Judgment Conversion Date. Any amount due from any Credit Party under this Section 10.23 shall be due as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of any of the Loan Documents.

(c) The term “rate of exchange” in this Section 10.23 means the rate of exchange at which the Agent, on the relevant date at or about 12:00 noon (New York time), would be

prepared to sell, in accordance with the Agent's normal course foreign currency exchange practices, the Obligation Currency against the Judgment Currency.

#### **10.24 Attachments.**

The exhibits, schedules and annexes attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail.

#### **10.25 Electronic Execution of Assignments and Certain Other Documents.**

The words "execute," "execution," "signed," "signature," and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including 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 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.

#### **10.26 ENTIRE AGREEMENT.**

**THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.**

#### **10.27 Keepwell.**

Each Loan Party that is a Qualified ECP Guarantor at the time the Facility Guaranty or the grant of a security interest under the Loan Documents, in each case, by any Specified Loan Party becomes effective with respect to any Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under the Facility Guaranty voidable under applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this Section shall remain in full force and effect until Payment in Full. Each Loan Party intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of, each Specified Loan Party for all purposes of the Commodity Exchange Act.

#### **10.28 Canadian Anti-Money Laundering Legislation.**

If the Agent has ascertained the identity of any Canadian Loan Party or any authorized signatories of any Canadian Loan Party for the purposes of the PCTFA and other applicable AML Legislation, then the Agent:

(a) shall be deemed to have done so as an agent for each Canadian Lender and this Agreement shall constitute a “written agreement” in such regard between each Canadian Lender and the Agent within the meaning of the applicable AML Legislation; and

(b) shall provide to each Canadian Lender, copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness.

Notwithstanding the preceding sentence and except as may otherwise be agreed in writing, each Canadian Lender agrees that the Agent has no obligation to ascertain the identity of the Canadian Loan Parties or any authorized signatories of the Canadian Loan Parties on behalf of any Canadian Lender, or to confirm the completeness or accuracy of any information it obtains from any Canadian Loan Party or any such authorized signatory in doing so.

#### **10.29 Acknowledgement and Consent to Bail-In of EEA Financial Institutions.**

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

#### **10.30 Language.**

The parties herein have expressly requested that this Agreement and all related documents be drawn up in the English language. A la demande expresse des parties aux présentes, cette convention et tout document y afférent ont été rédigés en langue anglaise.

### **10.31 Acknowledgement Regarding Any Supported QFCs.**

To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Contracts or any other agreement or instrument that is a QFC (such support, “QFC Credit Support” and each such QFC, a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

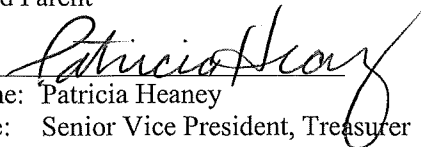
### **10.32 Amendment and Restatement.**

This Agreement is an amendment and restatement of the Existing Credit Agreement, it being acknowledged and agreed that as of the Effective Date all obligations outstanding under or in connection with the Existing Credit Agreement and any of the other Loan Documents (such obligations, collectively, the “Existing Obligations”) constitute obligations under this Agreement. This Agreement is in no way intended to constitute a novation of the Existing Credit Agreement or the Existing Obligations. With respect to (i) any date or time period occurring and ending prior to the Effective Date, the Existing Credit Agreement and the other Loan Documents shall govern the respective rights and obligations of any party or parties hereto also party thereto and shall for such purposes remain in full force and effect; and (ii) any date or time period occurring or ending on or after the Effective Date, the rights and obligations of the parties hereto shall be governed by this Agreement (including, without limitation, the exhibits and schedules hereto) and the other Loan Documents. From and after the Effective Date, any reference to the Existing Credit Agreement in any of the other Loan Documents executed or issued by and/or delivered to any one or more parties hereto pursuant to or in connection therewith shall be deemed to be a reference to this Agreement, and the provisions of this Agreement shall prevail in the event of any conflict or inconsistency between such provisions and those of the Existing Credit Agreement.

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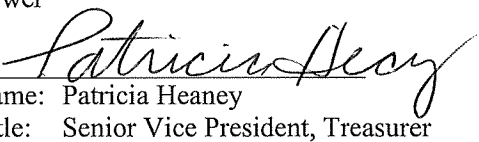
*IN WITNESS WHEREOF*, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the date first above written.

**HUDSON'S BAY COMPANY**, as Canadian  
Borrower and Parent

By:   
Name: Patricia Heaney  
Title: Senior Vice President, Treasurer

By: \_\_\_\_\_  
Name: David Schwartz  
Title: Executive Vice President,  
General Counsel & Corporate  
Secretary

**LORD & TAYLOR ACQUISITION INC.**, as  
U.S. Borrower

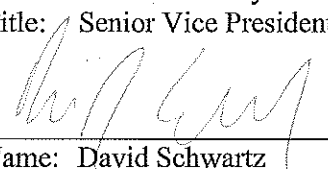
By:   
Name: Patricia Heaney  
Title: Senior Vice President, Treasurer

By: \_\_\_\_\_  
Name: David Schwartz  
Title: Executive Vice President,  
General Counsel & Corporate  
Secretary

*IN WITNESS WHEREOF*, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the date first above written.

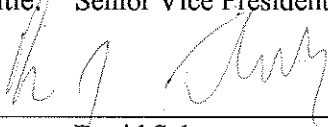
**HUDSON'S BAY COMPANY**, as Canadian  
Borrower and Parent

By: \_\_\_\_\_  
Name: Patricia Heaney  
Title: Senior Vice President, Treasurer

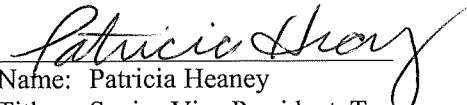
By:  \_\_\_\_\_  
Name: David Schwartz  
Title: Executive Vice President,  
General Counsel & Corporate  
Secretary

**LORD & TAYLOR ACQUISITION INC.**, as  
U.S. Borrower

By: \_\_\_\_\_  
Name: Patricia Heaney  
Title: Senior Vice President, Treasurer

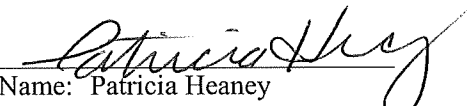
By:  \_\_\_\_\_  
Name: David Schwartz  
Title: Executive Vice President,  
General Counsel & Corporate  
Secretary

**LORD & TAYLOR LLC**  
**LORD & TAYLOR ACQUISITION 2 INC.**  
**LORD & TAYLOR HOLDINGS LLC**  
**LT CARD COMPANY LLC,**  
each as a Guarantor

By:   
Name: Patricia Heaney  
Title: Senior Vice President, Treasurer

By: \_\_\_\_\_  
Name: David Schwartz  
Title: Executive Vice President,  
General Counsel & Corporate  
Secretary

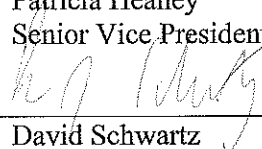
**SAKS INCORPORATED**  
**SAKS & COMPANY LLC**  
**SAKS FIFTH AVENUE LLC**  
**SAKS DIRECT, LLC**  
**MERCHANDISE CREDIT, LLC,**  
each as a Guarantor

By:   
Name: Patricia Heaney  
Title: Senior Vice President, Treasurer

By: \_\_\_\_\_  
Name: David Schwartz  
Title: Executive Vice President,  
General Counsel & Corporate  
Secretary

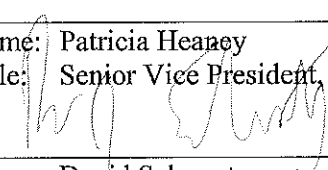
**LORD & TAYLOR LLC**  
**LORD & TAYLOR ACQUISITION 2 INC.**  
**LORD & TAYLOR HOLDINGS LLC**  
**LT CARD COMPANY LLC,**  
each as a Guarantor

By: \_\_\_\_\_  
Name: Patricia Heaney  
Title: Senior Vice President, Treasurer

By:  \_\_\_\_\_  
Name: David Schwartz  
Title: Executive Vice President,  
General Counsel & Corporate  
Secretary

**SAKS INCORPORATED**  
**SAKS & COMPANY LLC**  
**SAKS FIFTH AVENUE LLC**  
**SAKS DIRECT, LLC**  
**MERCHANDISE CREDIT, LLC,**  
each as a Guarantor

By: \_\_\_\_\_  
Name: Patricia Heaney  
Title: Senior Vice President, Treasurer

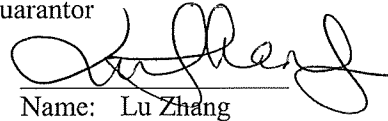
By:  \_\_\_\_\_  
Name: David Schwartz  
Title: Executive Vice President,  
General Counsel & Corporate  
Secretary



**HBC EUROPE HOLDING S.À R.L.,**

as a Guarantor

By:



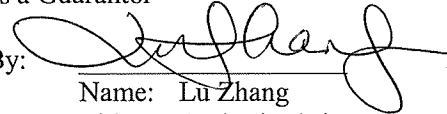
Name: Lu Zhang

Title: Authorised signatory

**HBC EUROPE FINANCE S.À R.L.,**

as a Guarantor


By:




Name: Lu Zhang

Title: Authorised signatory

**BANK OF AMERICA, N.A.**, as administrative  
agent and collateral agent

By:   
Name: Brian Lindblom  
Title: Senior Vice President

**BANK OF AMERICA, N.A.**, as a U.S.  
Revolving Lender, L/C Issuer and Swing Line  
Lender

By:   
Name: Brian Lindblom  
Title: Senior Vice President

**BANK OF AMERICA, N.A.** (acting through  
its Canada branch), as a Canadian Revolving  
Lender, L/C Issuer and Swing Line Lender

By:   
Name: Sylwia Durkiewicz  
Title: Vice President

**ROYAL BANK OF CANADA**, as a U.S.  
Revolving Lender

By: 

Name: Pierre Noriega

Title: Authorized Signatory

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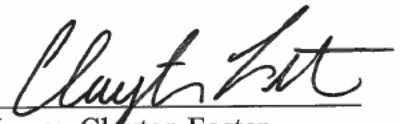
**ROYAL BANK OF CANADA**, as a Canadian  
Revolving Lender

By: 

Name: Michael Petersen

Title: Attorney in Fact

**THE BANK OF MONTREAL**, as a U.S.  
Revolving Lender

By:   
Name: Clayton Foster  
Title: Assistant Vice President

**THE BANK OF MONTREAL**, as a Canadian  
Revolving Lender

By:   
Name: Helen Alvarez-Hernandez  
Title: Managing Director

**BANK OF MONTREAL**  
Corporate Finance Division  
*Cross-Border Banking*  
First Canadian Place - 100 King St. W, 18th Fl  
Toronto, Ontario M5X 1A1  
CANADA




**CANADIAN IMPERIAL BANK OF  
COMMERCE, as a U.S. Revolving Lender**

By: 

Name:

Title: **Farhad Foroughi**  
**Authorized Signatory**


By: 

Name:

Title: **Geoff Golding**  
**Authorized Signatory**

**CANADIAN IMPERIAL BANK OF  
COMMERCE**, as a Canadian Revolving Lender

By:   
Name: **Farhad Foroughi**  
Title: **Authorized Signatory**

By:   
Name: **Geoff Golding**  
Title: **Authorized Signatory**

**CITIBANK, N.A., as a U.S. Revolving Lender**

By:

A handwritten signature in dark ink, appearing to read "David L. Smith", is written over a horizontal line.

Name:

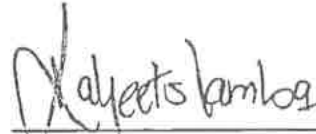
David L. Smith

Title:

Vice President and Director

**CITIBANK, N.A., CANADIAN BRANCH,**  
as a Canadian Revolving Lender

By:

A handwritten signature in dark ink, appearing to read "Daljeet Lamba", written over a horizontal line.

Name: DALJEET LAMBA

Title: AUTHORIZED SIGNATORY

**JPMORGAN CHASE BANK, N.A.**, as a U.S.  
Revolving Lender

By: Donna DiForio  
Name: Donna DiForio  
Title: Authorized Officer

**JPMORGAN CHASE BANK, N.A.,**  
**TORONTO BRANCH,** as a Canadian Revolving  
Lender



By: \_\_\_\_\_

Name: MICHAEL TAM

Title: AUTHORIZED OFFICER

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as a U.S. Revolving Lender

By: Chanda Ruff  
Name: Chanda Ruff  
Title: Assistant Vice President

**WELLS FARGO CAPITAL FINANCE  
CORPORATION CANADA, as a Canadian  
Revolving Lender**

By: \_\_\_\_\_

  
Name: David G. Phillips  
Title: Senior Vice President  
Credit Officer, Canada  
Wells Fargo Capital Finance  
Corporation Canada

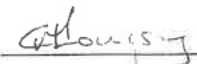



TD BANK, N.A., as a U.S. Revolving Lender

By: 


Name: Stephen A. Caffrey  
Title: Vice President

THE TORONTO-DOMINION BANK, as a  
Canadian Revolving Lender


By:   
Name: Chaz Louising  
Title: Senior Analyst, TDAF

By:   
Name: DARLY MACK  
Title: AUP

**CAPITAL ONE, NATIONAL ASSOCIATION,**  
as a U.S. Revolving Lender

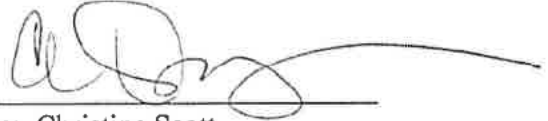
By:   
Name: Julianne Low  
Title: Senior Director

**CAPITAL ONE NATIONAL ASSOCIATION,**  
as a Canadian Revolving Lender

By:   
Name: Julianne Low  
Title: Senior Director

**CITIZENS BUSINESS CAPITAL, A DIVISION  
OF CITIZENS ASSET FINANCE, INC., as a  
U.S. Revolving Lender**

By: \_\_\_\_\_

A handwritten signature in black ink, appearing to be 'Christine Scott', written over a horizontal line.

Name: Christine Scott  
Title: SVP

**CITIZENS BUSINESS CAPITAL, A DIVISION  
OF CITIZENS ASSET FINANCE, INC., as a  
Canadian Revolving Lender**

By:

A handwritten signature in black ink, appearing to be 'Christine Scott', written over a horizontal line.

Name: Christine Scott

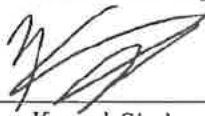
Title: SVP

**CREDIT SUISSE AG, CAYMAN ISLANDS  
BRANCH, as a U.S. Revolving Lender**

By: \_\_\_\_\_

  
Name: Mikhail Faybusovich  
Title: Authorized Signatory

By: \_\_\_\_\_

  
Name: Komal Shah  
Title: Authorized Signatory

**CREDIT SUISSE AG, CAYMAN ISLANDS  
BRANCH, as a Canadian Revolving Lender**

By: 

Name: Mikhail Faybusovich  
Title: Authorized Signatory

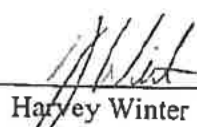
By: 

Name: Komal Shah  
Title: Authorized Signatory



**WEBSTER BUSINESS CREDIT  
CORPORATION, as a U.S. Revolving Lender**

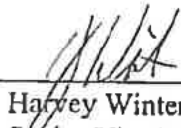
By: \_\_\_\_\_

  
Name: Harvey Winter

Title: Senior Vice President


**WEBSTER BUSINESS CREDIT  
CORPORATION**, as a Canadian Revolving  
Lender


By: \_\_\_\_\_

  
Name: Harvey Winter

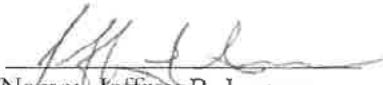
Title: Senior Vice President


SIEMENS FINANCIAL SERVICES, INC., as a  
U.S. Revolving Lender

By:   
Name: Jeffrey B. Iervese  
Title: Vice President

By:   
Name: Sonia Vargas  
Title: Sr. Loan Closer

SIEMENS FINANCIAL SERVICES, INC., as a  
Canadian Revolving Lender

By:   
Name: Jeffrey B. Iervese  
Title: Vice President

By:   
Name: Sonia Vargas  
Title: Sr. Loan Closer

**Schedule 1.01**  
**Guarantors**

<b>Canadian Subsidiary Guarantors</b>
None.
<b>U.S. Subsidiary Guarantors</b>
Lord & Taylor Acquisition 2 Inc.
Lord & Taylor Holdings LLC
Lord & Taylor LLC
LT Card Company LLC
Saks Incorporated
Saks & Company LLC
Saks Fifth Avenue LLC
SAKS DIRECT, LLC
Merchandise Credit, LLC
<b>Luxembourg Subsidiary Guarantors</b>
HBC Europe Holding S.à r.l.
HBC Europe Finance S.à r.l.

**Schedule 1.02**  
**Borrowing Base Parties**

<b>Canadian Borrowing Base Parties</b>
Hudson's Bay Company
<b>U.S. Borrowing Base Parties</b>
Lord & Taylor Acquisition Inc.
Lord & Taylor Acquisition 2 Inc.
Lord & Taylor Holdings LLC
Lord & Taylor LLC
LT Card Company LLC
Saks Incorporated
Saks & Company LLC
Saks Fifth Avenue LLC
SAKS DIRECT, LLC
Merchandise Credit, LLC

**Schedule 1.03**  
**Existing Letters of Credit**

**Hudson's Bay Company – Standby Letters of Credit**

Issuer	Product Type	Account Party	Beneficiary	Instrument Number	Liability Amount (CAD)	Expiration Date
BAML	Standby	Hudson's Bay Company	Cad Borders Svcs Agency	GT 100200/08P	3,857,643.00	5-Feb-21
BAML	Standby	Hudson's Bay Company	Cad Borders Svcs Agency	GT 100201/08P	25,000.00	5-Feb-21
BAML	Standby	Hudson's Bay Company	Cad Borders Svcs Agency	GT 100202/08P	277,151.00	5-Feb-21
BAML	Standby	Hudson's Bay Company	Regie Des Alcools, Des Course et des Jeux	SB104845/09	35,000.00	31-Mar-20
BAML	Standby	Hudson's Bay Company	Ontario Superior Court of Justice	SB108259/15	24,333.99	17-Apr-20
BAML	Standby	Hudson's Bay Company	Aviva Canada Inc.	SB108293/15	225,000.00	29-Apr-20
BAML	Standby	Hudson's Bay Company	City of Toronto	SB108326/15	3,581,091.93	14-May-20
BAML	Standby	Hudson's Bay Company	Macquarie Equipment Finance LTD	SB109755/17	1,690,000.00	8-Feb-20
BAML	Standby	Hudson's Bay Company	Hydro Quebec	7114SB110038/17	580,000.00	1-Aug-20
BAML	Standby	Hudson's Bay Company	Computershare Trust Company of Canada	SB110489/19	2,621,574.00	28-Feb-2020
BAML	Standby	Hudson's Bay Company	Computershare Trust Company of Canada	SB110490/19	8,738,580.00	28-Feb-2020

Issuer	Product Type	Account Party	Beneficiary	Instrument Number	Liability Amount (GBP)	Expiration Date
BAML	Standby	Hudson's Bay Company	Arcadia Topshop/Top Man Limited	SB1058890/11P	1,500,000.00	10-Sep-20

Issuer	Product Type	Account Party	Beneficiary	Instrument Number	Liability Amount (EUR)	Expiration Date
BAML	Standby	Hudson's Bay Company	Punto FA S.L.	68144443	555,000.00	18-Jan-20
BAML	Standby	Hudson's Bay Company	Commerzbank AG	68144115	6,409,755.24	27-Nov-2019

Lord & Taylor Acquisition Inc. – Standby Letters of Credit

Issuer	Product Type	Account Party	Beneficiary	Instrument Number	Liability Amount (USD)	Expiration Date
BAML	Standby	Lord & Taylor Acquisition, Inc.	Safety National Casualty	68110512	37,200,000.00	27-Feb-20
BAML	Standby	Lord & Taylor Acquisition, Inc.	Zurich American Insurance Company	68105191	2,700,000.00	17-Jul-20
BAML	Standby	Saks Incorporated	Liberty Mutual Insurance Company	68107168	1,000,000.00	10-Oct-20
BAML	Standby	Lord & Taylor LLC	City of Novi - Treasurers Office	68099624	10,000.00	11-Oct-20
BAML	Standby	Saks Incorporated	ARCH Insurance Company	68125701	3,287,986.00	05-May-20
BAML	Standby	Saks Incorporated	California Union Square L.P.	68127512	5,551,094.00	31-Jan-20
BAML	Standby	Lord & Taylor Acquisition Inc.	PFF Off Two Park Avenue Owner, LLC	68125179	1,923,597.00	8-Apr-20

Issuer	Product Type	Account Party	Beneficiary	Instrument Number	Liability Amount (EUR)	Expiration Date
BAML	Standby	Hudson's Bay Company	Metro AG	68143675	3,000,000.00	31-Oct-19
Citibank	Standby	Hudson's Bay Company.	ING Bank N.V.	69616840	3,143,515.14	17-Jul-2020
Citibank	Standby	Hudson's Bay Company	ING Bank N.V.	69616841	2,814,457.05	17-Jul-2020



Citibank	Standby	Hudson's Bay Company	ING Bank N.V.	69616842	2,184,330.87	17-Jul-2020
Citibank	Standby	Hudson's Bay Company	ING Bank N.V.	69616843	4,452,642.94	17-Jul-2020
Citibank	Standby	Hudson's Bay Company	ING Bank N.V.	69616844	2,606,337.53	17-Jul-2020
Citibank	Standby	Hudson's Bay Company	ING Bank N.V.	69616845	3,245,755.64	17-Jul-2020
Citibank	Standby	Hudson's Bay Company	ING Bank N.V.	69616846	4,885,908.49	17-Jul-2020
Citibank	Standby	Hudson's Bay Company	ING Bank N.V.	69616847	3,359,947.31	17-Jul-2020
Citibank	Standby	Hudson's Bay Company	ING Bank N.V.	69616848	354,774.57	17-Jul-2020
Citibank	Standby	Hudson's Bay Company	ING Bank N.V.	69616849	3,259,597.12	17-Jul-2020
Citibank	Standby	Hudson's Bay Company	ING Bank N.V.	69616850	3,900,483.96	17-Jul-2020

**Schedule 1.06**  
**Permitted Holders**

**RAB**

Richard A. Baker  
L&T B (Cayman) Inc.  
Lisa and Richard Baker Enterprises, LLC  
Rupert of the Rhine LLC  
Lisa Baker  
Red Trust  
Yellow Trust  
Mr. and Mrs. Robert Baker Family Foundation  
Robert Baker  
Christina Baker  
Ashley S. Baker 3/15/84 Trust  
Christina Baker Trust for Grandchildren  
Trust for Francesca Richman  
Trust for Bettina Richman  
Trust for Emma Richman  
Lion Trust  
Robert Baker Trust for Grandchildren  
Lee S. Neibart 2010 GRAT  
Lee Neibart  
WRS Advisors III, LLC  
WRS Advisors IV, LLC  
Richard Mack  
Blue Trust  
The William and Phyllis Mack Foundation, Inc.  
William Mack and the Mack 2010 Family Trust I

**Rhone/WPI**

Fabric Luxembourg Holdings S.à r.l.  
Fabric-Charles Holdings LP  
Rhône Capital L.L.C.  
Rhône Holdings V L.L.C.  
Rhône Capital V L.P.  
Rhône Partners V L.P.  
Rhône Offshore Partners V L.P.  
Rhône Coinvestment V LP;  
Fabric Holdings LP  
WeWork Property Investors LLC  
WeWork Property Investors LP  
WeWork Property Investors Fund B-1 LP  
WeWork Property Investors Fund B LP  
WeWork Property Investors Fund A LP  
WeWork Property Investors Operating Partnership III LP;  
Charles Holdings LP  
WeWork Property Investors Blocker-C LP

**Abrams**

Abrams Capital Management, L.P.  
Abrams Capital Partners I, L.P.  
Abrams Capital Partners II, L.P.  
Whitecrest Partners, LP  
Great Hollow International, L.P.

**Hanover**

Hanover Investments (Luxembourg) S.A.  
Abu Dhabi Investment Council  
Mubadala Investment Company PJSC

**Schedule 2.01**  
**Commitments and Applicable Percentages**

<b>Lender</b>	<b>U.S. Commitment</b>	<b>Applicable Percentage (U.S. Commitments)</b>
Bank of America, N.A.	\$162,857,142.87	13.5714285725%
Royal Bank of Canada	\$145,714,285.71	12.1428571425%
The Bank of Montreal	\$121,714,285.71	10.1428571425%
Canadian Imperial Bank of Commerce	\$121,714,285.71	10.1428571425%
Citibank, N.A.	\$121,714,285.71	10.1428571425%
JPMorgan Chase Bank, N.A.	\$121,714,285.71	10.1428571425%
Wells Fargo Bank, National Association	\$121,714,285.71	10.1428571425%
TD Bank, N.A.	\$102,857,142.86	8.57142857167%
Capital One, National Association	\$63,428,571.43	5.28571428583%
Citizens Business Capital, a division of Citizens Asset Finance, Inc.	\$30,857,142.86	2.57142857167%
Credit Suisse AG Cayman Islands Branch	\$30,857,142.86	2.57142857167%
Webster Business Credit Corporation	\$30,857,142.86	2.57142857167%
Siemens Financial Services, Inc.	\$24,000,000.00	2.0000000000%
<b>TOTAL</b>	<b>\$1,200,000,000.00</b>	<b>100.0000000000%</b>

<b>Lender</b>	<b>Canadian Commitment</b>	<b>Applicable Percentage (Canadian Commitments)</b>
Bank of America, N.A. (acting through its Canada branch)	\$74,642,857.13	13.5714285691%
Royal Bank of Canada	\$66,785,714.29	12.1428571436%
The Bank of Montreal	\$55,785,714.29	10.1428571436%
Canadian Imperial Bank of Commerce	\$55,785,714.29	10.1428571436%
Citibank, N.A., Canadian Branch	\$55,785,714.29	10.1428571436%
JPMorgan Chase Bank, N.A., Toronto Branch	\$55,785,714.29	10.1428571436%
Wells Fargo Capital Finance Corporation Canada	\$55,785,714.29	10.1428571436%
The Toronto-Dominion Bank	\$47,142,857.14	8.57142857091%
Capital One, National Association	\$29,071,428.57	5.28571428545%
Citizens Business Capital, a division of Citizens Asset Finance, Inc.	\$14,142,857.14	2.57142857091%
Credit Suisse AG Cayman Islands Branch	\$14,142,857.14	2.57142857091%
Webster Business Credit Corporation	\$14,142,857.14	2.57142857091%
Siemens Financial Services, Inc.	\$11,000,000.00	2.0000000000%
<b>TOTAL</b>	<b>\$550,000,000.00</b>	<b>100.0000000000%</b>

<b>Lender</b>	<b>Total Commitment</b>	<b>Applicable Percentage (Total Commitments)</b>
Bank of America, N.A.	\$237,500,000.00	13.5714285714%
Royal Bank of Canada	\$212,500,000.00	12.1428571429%
The Bank of Montreal	\$177,500,000.00	10.1428571429%
Canadian Imperial Bank of Commerce	\$177,500,000.00	10.1428571429%
Citibank, N.A.	\$177,500,000.00	10.1428571429%
JPMorgan Chase Bank, N.A.	\$177,500,000.00	10.1428571429%
Wells Fargo Bank, National Association	\$177,500,000.00	10.1428571429%
TD Bank, N.A.	\$150,000,000.00	8.57142857143%
Capital One, National Association	\$92,500,000.00	5.28571428571%
Citizens Business Capital, a division of Citizens Asset Finance, Inc.	\$45,000,000.00	2.57142857143%
Credit Suisse AG Cayman Islands Branch	\$45,000,000.00	2.57142857143%
Webster Business Credit Corporation	\$45,000,000.00	2.57142857143%
Siemens Financial Services, Inc.	\$35,000,000.00	2.0000000000%
<b>TOTAL</b>	<b>\$1,750,000,000.00</b>	<b>100.0000000000%</b>

**Schedule 5.01**  
**Loan Parties Organizational Information**

<b>CANADIAN ENTITIES</b>						
<b>Legal Name</b>	<b>Type of Entity</b>	<b>Corporate Function</b>	<b>Registered Organization (Yes/No)</b>	<b>Corporation Number</b>	<b>Federal Taxpayer Identification Number/Similar Identification Number</b>	<b>Jurisdiction of Formation</b>
Hudson's Bay Company Compagnie de la Baie D'Hudson	Corporation	Operating Company	Yes	9172530	102420296 RC0006	Canada

<b>U.S. ENTITIES – Lord &amp; Taylor</b>						
<b>Legal Name</b>	<b>Type of Entity</b>	<b>Corporate Function</b>	<b>Registered Organization (Yes/No)</b>	<b>Organizational Number</b>	<b>Federal Taxpayer Identification Number/Similar Identification Number</b>	<b>Jurisdiction of Formation</b>
Lord & Taylor Acquisition Inc.	Corporation	Holding Company	Yes	5087062	99-0372181	Delaware
Lord & Taylor Acquisition 2 Inc.	Corporation	Holding Company	Yes	5423183	46-4015185	Delaware
Lord & Taylor Holdings LLC	Limited liability company	Holding Company	Yes	4196647	38-3868716	Delaware
Lord & Taylor LLC	Limited liability company	Operating Company	Yes	4195799	20-5344961	Delaware
LT Card Company LLC	Limited liability company	Gift Card Business	Yes	S195731-7	26-0192954	Virginia

U.S. ENTITIES – Saks						
Legal Name	Type of Entity	Corporate Function	Registered Organization (Yes/No)	Organizational Number	Federal Taxpayer Identification Number/Similar Identification Number	Jurisdiction of Formation
Saks Incorporated	Corporation	Operating Company – Parent Corporation	Yes	000025344	62-0331040	Tennessee
Saks & Company LLC	Limited liability company	Operating Company – Owns and operates Saks Fifth Avenue and Off 5 <sup>th</sup> Stores	Yes	5657136	13-1256625	Delaware
Saks Fifth Avenue LLC	Limited liability company	Operating Company - Owns and operates Saks Fifth Avenue and Off 5 <sup>th</sup> Stores	Yes	001127438	04-2226632	Massachusetts
Merchandise Credit, LLC	Limited liability company	Operating Company - Owns and operates gift card business	Yes	S071008-9	04-3586216	Virginia
SAKS DIRECT, LLC	Limited liability company	Operating Company - Owns and operates e-commerce business	Yes	4780724	27-1503676	Delaware

#### LUXEMBOURG ENTITIES

Legal Name	Type of Entity	Corporate Function	Registered Organization (Yes/No)	Organizational Number	Federal Taxpayer Identification Number/Similar Identification Number	Jurisdiction of Formation
HBC Europe Holding S.à r.l.	Private Limited Liability Company ( <i>société à responsabilité limitée</i> )	Holding Company	Yes	B181409	Federal Taxpayer Identification #: 98-1134432 Lux number: 2013 2449 210	Grand Duchy of Luxembourg
HBC Europe Finance S.à r.l.	Private Limited Liability Company ( <i>société à responsabilité limitée</i> )	Financing Company	Yes	B181411	Federal Taxpayer Identification #: 98-1134430 Lux number: 2013 2449 229	Grand Duchy of Luxembourg



**Schedule 5.06**  
**Litigation**

None.

**Schedule 5.08(b)(1)**  
**Owned Real Property**

<b>Company (Entity of Record)</b>	<b>Common Name and Address</b>	<b>Purpose/Use</b>
Hudson's Bay Company	BRAMPTON 8925 Torbram Road Brampton, ON (BZ0900)	Hudson's Bay Office Space

**Schedule 5.08(b)(2)**  
**Leased Real Estate**

**CANADIAN ENTITIES - Leased Retail Locations**

<b>Entity Of Record</b>	<b>Common Name and Address</b>	<b>Purpose/Use</b>	<b>Landlord Contact Information</b>
Hudson's Bay Company	Banff National Park 125 Banff Avenue Banff, AB (B1154)	Bay Store Location	NICK + TED'S INVESTMENTS LTD. 111 PUMPHILL RD. S.W. CALGARY, ALBERTA T2V 4L7 ATTN: NICK DASKAS
Hudson's Bay Company	Banff National Park 125 Banff Avenue Banff, AB (B1154A)	Bay Store Location	HER MAJESTY THE QUEEN ATTN SUPERINTENDENT BANFF NATIONAL PARK BOX 900 BANFF ALBERTA
Hudson's Bay Company	Chinook Centre 6455 Macleod Trail S.W. Calgary, AB (B1138)	Bay Store Location	ONTREA INC. C/O THE CADILLAC FAIRVIEW CORP. LIMITED 20 QUEEN STREET WEST., 5TH FLOOR TORONTO,ONT. M5H 3R4
Hudson's Bay Company	Chinook Centre 6455 Macleod Trail S.W. Calgary, AB (B1138A)	Bay Store Location	ONTREA INC. C/O THE CADILLAC FAIRVIEW CORP. LIMITED 20 QUEEN STREET WEST., 5TH FLOOR TORONTO,ONT. M5H 3R4
Hudson's Bay Company	Downtown 200-8th Avenue S.W. Calgary, AB (B1114)	Bay Store Location	RIOCAN-HBC LIMITED PARTNERSHIP 401 BAY STREET, SUITE 600 TORONTO, ONTARIO M5H 2Y4
Hudson's Bay Company	Downtown 200-8th Avenue S.W. Calgary, AB (B1114K1)	Bay entrance	COMINAR SC 1 INC., AND COMINAR SC 2 INC. C/O COMINAR REAL ESTATE INVESTMENT TRUST SUITE 400, 700 - 2ND STREET S.W. CALGARY ALBERTA T2P 2W1 ATTENTION: PROPERTY MANAGER

Hudson's Bay Company	Market Mall 3625 Shaganappi Trail N.W. Calgary, AB (B1144)	Bay Store Location	MARKET MALL LEASEHOLDS INC. 20 QUEEN STREET WEST, SUITE 500 TORONTO, ONTARIO M5H 3R4
Hudson's Bay Company	Southcentre Mall 100 Anderson Road S.E. Calgary, AB (B1164)	Bay Store Location	OXFORD PROPERTIES RETAIL HOLDINGS INC. 100 ADELAIDE STREET WEST, SUITE 900 TORONTO, ONTARIO M5H 0E3 ATTN: VICE PRESIDENT, REM LEGAL
Hudson's Bay Company	Sunridge Mall 2525 36 Street NE Calgary, AB (B1150)	Bay Store Location	SUNRIDGE MALL HOLDINGS INC. C/O PRIMARIS MANAGEMENT INC. 1 ADELAIDE STREET EAST, SUITE 900 TORONTO, ONTARIO M5C 2V9 ATTENTION - VICE PRESIDENT, LEGAL
Hudson's Bay Company	Edmonton City Centre 10250 - 102 Avenue, N.W.,# 1200 Edmonton, AB (B1137)	Bay Store Location	OXFORD PROPERTIES GROUP INC. & CPP INVESTMENT BOARD c/o OXFORD PROPERTIES GROUP ROYAL BANK PLAZA NORTH TOWER 200 BAY ST, STE 900 TORONTO, M5J 2J2
Hudson's Bay Company	Kingsway Garden Mall 109th St & Princess Eliz Ave Edmonton, AB (B1183)	Bay Store Location	KINGSWAY GARDEN HOLDINGS INC. C/O OXFORD PROPERTIES GROUP 100 ADELAIDE STREET WEST, SUITE 900 TORONTO, ONTARIO, M5H 0E3 ATTN: VICE PRESIDENT, LEGAL
Hudson's Bay Company	Londonderry Mall 137th Ave. & 66th St. Edmonton, AB (B1135)	Bay Store Location	LONDONDERRY SHOPPING CENTRE INC. C/O CUSHMAN & WAKEFIELD ASSET SERVICES INC. ONE QUEEN STREET EAST, SUITE 300 TORONTO, ONTARIO M5C 2W5
Hudson's Bay Company	Southgate Shopping Centre 111th St. & 51st Avenue Edmonton, AB (B1125)	Bay Store Location	IVANHOE CAMBRIDGE II INC. AND OPB (SOUTHGATE) INC. 95 WELLINGTON STREET WEST, SUITE 300 TORONTO, ONTARIO M5J 2R2

Hudson's Bay Company	West Edmonton Mall 8770 170th St. NW Ste 1001 Edmonton, AB (B1147)	Bay Store Location	WEST EDMONTON MALL PROPERTY INC. SUITE 3000 8882 - 170TH STREET EDMONTON ALBERTA T5T 4M2
Hudson's Bay Company	Lethbridge Centre 200 4th Avenue South Lethbridge, AB (B1148)	Bay Store Location	LETHCENTRE INC C/O MELCOR DEVELOPMENTS LTD. 900,10310 JASPER AVENUE EDMONTON, ALBERTA T5J 1Y8 ATTN: VP INVESTMENT PROPERTY DIVISION
Hudson's Bay Company	Medicine Hat Mall 3292 Dunmore Road S.E. Medicine Hat, AB (B1136)	Bay Store Location	MEDICINE HAT MALL INC. C/O PRIMARIS MGMT. INC., SUITE 900, P.O. BOX 194, 1 ADELAIDE ST. E., TORONTO, ON M5C 2V9
Hudson's Bay Company	Bower Place 4900 Molly Bannister Dr. Red Deer, AB (B1116)	Bay Store Location	BCIMC REALTY CORPORATION C/O QUADREAL PROPERTY GROUP 666 BURRARD STREET, SUITE 800 VANCOUVER, B.C. V6C 2X8
Hudson's Bay Company	St. Albert Centre 330 St. Albert Road St. Albert, AB (B1145)	Bay Store Location	ST. ALBERT CENTRE HOLDINGS INC. C/O PRIMARIS MANAGEMENT INC. 1 ADELAIDE ST. EAST, SUITE 900, P.O. BOX 194, TORONTO, ON., M5C 2V9 ATTN: VICE PRESIDENT & SECRETARY
Hudson's Bay Company	Sevenoaks Shopping Centre 32900 South Fraser Way Abbotsford, BC (B1162)	Bay Store Location	585562 BC LTD. C/O MORGUARD INVESTMENTS LTD. 55 CITY CENTRE DRIVE SUITE 800 MISSISSAUGA, ONT. L5B 1M3 ATTN: VP RETAIL PROPERTY MANAGEMENT

Hudson's Bay Company	Lougheed Mall 9855 Austin Road Burnaby, BC (B1131)	Bay Store Location	SHAPE PROPERTIES (LOUGHEED) CORP. & LTC EQUITIES INC. 2020 ONE BENTALL CENTRE 505 BURRARD STREET, BOX 206 VANCOUVER, B.C. V7X 1M6 ATTN: EXECUTIVE V.P.
Hudson's Bay Company	Metropolis At Metrotown 4850 Kingsway Burnaby, BC (B1127)	Bay Store Location	IVANHOE CAMBRIDGE II INC. 95 WELLINGTON ST. W SUITE 300 TORONTO, ON M5J 2R2 ATT: CORPORATE SECRETARY
Hudson's Bay Company	Coquitlam Centre 100-2929 Barnet Highway Coquitlam, BC (B1171)	Bay Store Location	PENSIONFUND REALTY LIMITED 2929 BARNET HIGHWAY PORT COQUITLAM, BC V3B 5R5 ATTN: VP OPERATIONS
Hudson's Bay Company	Aberdeen Mall 300-1320 TransCan Hwy W Kamloops, BC (B1106)	Bay Store Location	ABERDEEN KAMLOOPS MALL LIMITED C/O CUSHMAN & WAKEFIELD ASSET SERVICES ONE QUEEN STREET EAST , SUITE 300 TORONTO, ONT M5C 2W5
Hudson's Bay Company	Orchard Park Shopping Centre #1415, 2271 Harvey Ave. Kelowna, BC (B1119)	Bay Store Location	ORCHARD PARK SHOPPING CENTRE HOLDINGS INC. C/O PRIMARIS MGMT INC. 1 ADELAIDE ST.E SUITE 900 TORONTO ONTARIO M5C 2V9 ATTN VICE PRESIDENT LEGAL, RETAIL
Hudson's Bay Company	Willowbrook Shopping Centre #320-19705 Fraser Hwy. Langley, BC (B1107)	Bay Store Location	BCIMC REALTY CORPORATION C/O QUADREAL PROPERTY GROUP LIMITED 666 BURRARD STREET, SUITE 800 VANCOUVER, B.C. V6C 2X8 ATTN: EXECUTIVE VP, CANADIAN REAL ESTATE

Hudson's Bay Company	Woodgrove Centre 6631 Island Hwy. Nanaimo, BC (B1118)	Bay Store Location	IVANHOE CAMB. I INC, IVANHOE CAMB. II INC. & WOODGROVE HOLDINGS 95 WELLINGTON ST WEST SUITE 300 TORONTO, ON M5J 2R2 ATTN: CORPORATE SECRETARY
Hudson's Bay Company	Cherry Lane Shopping Centre 2111 Main Street Penticton, BC (B1149)	Bay Store Location	CHERRY LANE SHOPPING CENTRE HOLDINGS LTD. C/O COLLIERS INTERNATIONAL, IN TRUST FOR THE MANUFACTURERS LIFE INSURANCE COMPANY 181 BAY STREET, SUITE 1400, TORONTO, ON, M5J2V1
Hudson's Bay Company	Parkwood Mall 140 -1600 15th Avenue Prince George, BC (B1109)	Bay Store Location	PARKWOOD PLACE LTD. C/O RIOCAN MANAGEMENT (BC) INC SUITE 200, 1640 LECKIE ROAD KELOWNA, BC V1X 4H9
Hudson's Bay Company	Richmond Centre 6060 Minoru Boulevard Richmond, BC (B1111)	Bay Store Location	RCCOM LP & AIMCO REALTY INVESTORS LP 20 QUEEN STREET WEST., 5TH FLOOR TORONTO, ONT. M5H 3R4
Hudson's Bay Company	Guildford Shopping Centre 1400 Guildford Town Centre Surrey, BC (B1142)	Bay Store Location	GUILDFORD TOWN CENTRE LIMITED PARTNERSHIP C/O IVANHOE CAMBRIDGE II INC. 95 WELLINGTON ST. W SUITE 300, TORONTO, ON M5J 2R2 ATTN: CORPORATE SECRETARY
Hudson's Bay Company	Downtown 674 Granville Street Vancouver, BC (B1101)	Bay Store Location	RIOCAN-HBC LIMITED PARTNERSHIP 401 BAY STREET, SUITE 600 TORONTO, ONTARIO M5H 2Y4
Hudson's Bay Company	Oakridge Centre 650 41st Avenue West Vancouver, BC (B1152)	Bay Store Location	QUADREAL OAKRIDGE CENTRE HOLDINGS INC. 666 BURRARD STREET, SUITE 1238 VANCOUVER, B.C. ATT: SENIOR VP- RETAIL

Hudson's Bay Company	Park Royal Shopping Centre 725 Park Royal North Vancouver, BC (B1161)	Bay Store Location	PARK ROYAL SHOPPING CENTRE HOLDINGS LTD. 100 PARK ROYAL, 3RD FLOOR, KAPILANO 100, WEST VANCOUVER, B.C. V7T 1A2
Hudson's Bay Company	Park Royal Shopping Centre 725 Park Royal North Vancouver, BC (B1161A)	Bay Store Location	PARK ROYAL SHOPPING CENTRE HOLDINGS LTD. 100 PARK ROYAL, 3RD FLOOR, KAPILANO 100, WEST VANCOUVER, B.C. V7T 1A2
Hudson's Bay Company	Village Green Mall 4900, 27th Street Vernon, BC (B1104)	Bay Store Location	OPTRUST RETAIL INC. C/O BENTALL RETAIL SERVICES LP 4900-27TH STREET VERNON, B.C. V1T 7G7
Hudson's Bay Company	Mayfair Shopping Centre 221-3125 Douglas Street Victoria, BC (B1108)	Bay Store Location	MAYFAIR SHOPPING CENTRE LIMITED PARTNERSHIP 95 WELLINGTON STREET WEST SUITE 300 TORONTO, ON M5J 2R2 ATTENTION CORPORATE SECRETARY
Hudson's Bay Company	The Bay Centre Centre - 1150 Douglas St. Victoria, BC (B1139)	Bay Store Location	TBC NOMINEE INC. C/O CUSHMAN WAKEFIELD ASSEST SERVICES INC. ONE QUEEN STREET EAST, SUITE 300 TORONTO, ONTARIO M5C 2W5
Hudson's Bay Company	Downtown 450 Portage Ave. Winnipeg, MB (B1120)	Bay Store Location	HUDSON'S BAY COMPANY REAL ESTATE LIMITED 401 BAY STREET, SUITE 600 TORONTO, ONTARIO M5H 2Y4
Hudson's Bay Company	Polo Park Shopping Centre 1485 Portage Ave Winnipeg, MB (B1140)	Bay Store Location	ONTREA INC. 20 QUEEN STREET WEST, SUITE 500 TORONTO, ONTARIO M5H 3R4
Hudson's Bay Company	St. Vital Shopping Centre 1225 St. Mary's Road Winnipeg, MB (B1117)	Bay Store Location	OPB REALTY INC. ONE QUEEN STREET EAST, SUITE 300, BOX #88E TE TORONTO, ONTARIO M5C 2W5



Hudson's Bay Company	Mic Mac Mall 21 Micmac Blvd. Dartmouth, NS (B1646)	Bay Store Location	MIC MAC LIMITED PARTNERSHIP C/O IVANHOE CAMBRIDGE 95 WELLINGTON STREET WEST, SUITE 300 TORONTO, ONTARIO. M5J 2R2
Hudson's Bay Company	Mayflower Mall 800 Grand Lake Road Sydney, NS (B1647)	Bay Store Location	NSAHOPP MAYFLOWER INC AND HOOPP REALTY INC C/O MCCOR MANAGEMENT 21 ST. CLAIR AVE EAST, STE 1201 TORONTO, ON, M4T 1L9 ATTN: PRESIDENT
Hudson's Bay Company	Georgian Mall 465 Bayfield Street Barrie, ON (B1535)	Bay Store Location	RIOCAN HOLDINGS INC. C/O RIOCAN MANAGEMENT INC. GEORGIAN MALL ADMIN. OFFICE 509 BAYFIELD ST., BARRIE , ON., L4M 4Z8
Hudson's Bay Company	Bramalea City Centre 25 Peel Centre Drive Brampton, ON (B1517)	Bay Store Location	MORGUARD CORPORATION & BRAMALEA CITY CENTRE EQUITIES INC. 55 CITY CENTRE DRIVE, SUITE 1000 MISSISSAUGA, ONTARIO L5B 1M3
Hudson's Bay Company	Burlington Mall 777 Guelph Line Burlington, ON (B1524)	Bay Store Location	3056376 CANADA INC. 1384 GREENE AVE, SUITE 200 WESTMOUNT, QUEBEC M6A 2B1 ATTN: BARRY FEINSTEIN
Hudson's Bay Company	Mapleview Centre 900 Maple Avenue Burlington, ON (B1537)	Bay Store Location	IVANHOE CAMBRIDGE II INC. AND CANAPEN (HALTON) LTD. 95 WELLINGTON ST WEST SUITE 300 TORONTO,ON M5J 2R2
Hudson's Bay Company	Cambridge Centre 355 Hespeler Road Cambridge, ON (B1576)	Bay Store Location	MORGUARD REAL ESTATE INVESTMENT TRUST 55 CITY CENTRE DRIVE, SUITE 800 MISSISSAUGA, ONTARIO L5B 1M3
Hudson's Bay Company	Sherway Gardens 25 The West Mall Etobicoke, ON (B1544)	Bay Store Location	ONTREA INC. C/O CADILLAC FAIRVIEW CORPORATION LIMITED 20 QUEEN STREET WEST SUITE 500 TORONTO, ONTARIO M5H 3R4

Hudson's Bay Company	Woodbine Centre 500 Rexdale Blvd. at Hwy #27 Etobicoke, ON (B1522)	Bay Store Location	WOODBINE MALL HOLDINGS INC. 500 REXDALE BLVD, ADMIN OFFICE ETOBICOKE, ONTARIO M9W 6K5
Hudson's Bay Company	Limeridge Mall 999 Upper Wentworth St. Hamilton, ON (B1550)	Bay Store Location	ONTREA INC. 20 QUEEN STREET WEST SUITE 500 TORONTO, ONTARIO M5H 3R4
Hudson's Bay Company	Limeridge Mall 999 Upper Wentworth St. Hamilton, ON (B1550A/B5104)	Bay Store Location	ONTREA INC. 20 QUEEN STREET WEST SUITE 500 TORONTO, ONTARIO M5H 3R4
Hudson's Bay Company	Cataraqui Town Centre 945 Gardiners Road Kingston, ON (B1644)	Bay Store Location	CATARAQUI HOLDINGS INC. C/O PRIMARIS MANAGEMENT INC. 1 ADELAIDE STREET WEST, SUITE 900 TORONTO, ONTARIO M5C 2V9
Hudson's Bay Company	Fairview Park 3050 Kingsway Drive Kitchener, ON (B1542)	Bay Store Location	PLACE LAURIER HOLDINGS INC. C/O IVANHOE CAMBRIDGE 2700 BOUL LAURIER BUREAU 1000 QUEBEC, QC G1V 4J9
Hudson's Bay Company	Masonville 1680 Richmond Street London, ON (B1527)	Bay Store Location	CF/REALTY HOLDINGS INC. 20 QUEEN STREET WEST SUITE 500 TORONTO, ONTARIO M5H 3R4
Hudson's Bay Company	Whiteoaks Mall 1105 Wellington Rd. South London, ON (B1541)	Bay Store Location	WHITE OAKS MALL HOLDINGS LTD. C/O BENTALL KENNEDY (CANADA) LIMITED PARTNERSHIP 65 PORT STREET EAST, UNIT 10 MISSISSAUGA, ON., L5G 4V3 ATTN: VICE PRESIDENT, OPERATIONS
Hudson's Bay Company	Markville Shopping Centre 5000 Hwy #7 & McCowan Markham, ON (B1532)	Bay Store Location	ONTREA INC. 5650 YONGE STREET NORTH YORK, ONTARIO M2M 4H5

Hudson's Bay Company	Erin Mills Town Centre 5100 Erin Mills Parkway Mississauga, ON (B1523)	Bay Store Location	OPB (EMTC) INC. C/O CUSHMAN & WAKEFIELD ASSET SERVICES INC. 5100 ERIN MILLS PARKWAY, P.O. BOX A MISSISSAUGA ONTARIO L5M 4Z5
Hudson's Bay Company	Square One Hwy10/Burnhamthorpe R W Mississauga, ON (B1518)	Bay Store Location	OMERS REALTY MANAGEMENT CORP. & SQUARE ONE PROPERTY CORP. EY TOWER 900 - 100 ADELAIDE ST. W TORONTO, ON, M5H OE2
Hudson's Bay Company	Square One Hwy10/Burnhamthorpe R W Mississauga, ON (B1518A)	Bay Store Location	OMERS REALTY MANAGEMENT CORP. & SQUARE ONE PROPERTY CORP. 100 CITY CENTRE DR, SUITE 1000 MISSISSAUGA, ONTARIO L5B 2T4
Hudson's Bay Company	Upper Canada Mall 17600 Yonge St. N. Newmarket, ON (B1531)	Bay Store Location	OXFORD PROPERTIES RETAIL HOLDINGS II INC. AND CPPIB UPPER CANADA MALL INC. C/O OXFORD PROPERTIES 200 BAY STREET, TORONTO ON SUITE 900 ATTN: CORPORATE SECRETARY
Hudson's Bay Company	Centerpoint Mall 6500 Yonge Street North York, ON (B1515)	Bay Store Location	REVENUE PROPERTIES COMPANY LIMITED SUITE N-2, 6500 YONGE STREET TORONTO, ONTARIO M2M 3X4
Hudson's Bay Company	Yorkdale Shopping Centre 3401 Dufferin St. (Hwy. 401) North York, ON (B1554)	Bay Store Location	YORKDALE SHOPPING CENTRE HOLDINGS INC. C/O OXFORD PROPERTIES GROUP 900-100 ADELAIDE STREET WEST TORONTO, ONTARIO M5H 0E2 ATTN: VICE PRESIDENT, LEGAL
Hudson's Bay Company	Oakville Place 240 Leighland Road Oakville, ON (B1530)	Bay Store Location	RIOCAN HOLDINGS (OAKVILLE PLACE) INC. C/O RIOCAN MANAGEMENT INC. 240 LEIGHLAND AVE. OAKVILLE ONTARIO, L6H 3H6 ATTN: PROPERTY ADMINISTRATOR

Hudson's Bay Company	Place D'Orleans Shopping Centre 110 Place d'Orléans Drive Orleans, ON (B1618)	Bay Store Location	PLACE D'ORLEANS HOLDINGS INC. C/O PRIMARIS MANAGEMENT INC. DUNDEE PLACE, 1 ADELAIDE ST. E, ST. 900 TORONTO, ONTARIO M5C 2V9
Hudson's Bay Company	Oshawa Centre 419 King Street West Oshawa, ON (B1526)	Bay Store Location	OSHAWA HOLDINGS INC. C/O CAMBRIDGE LEASEHOLDS LTD. 95 WELLINGTON ST W SUITE 300 TORONTO, ONT M5J 2R2
Hudson's Bay Company	Bayshore Shopping Centre 100 Bayshore Drive, Ottawa, ON (B1634)	Bay Store Location	BAYSHORE SHOPPING CENTRE LIMITED & KS BAYSHORE INC. 1001 SQUARE VICTORIA, BUREAU C-500 MONTREAL, QUEBEC H2Z 2B5
Hudson's Bay Company	Rideau Centre 73 Rideau Street Ottawa, ON (B1631)	Bay Store Location	RIOCAN-HBC LIMITED PARTNERSHIP 401 BAY STREET, SUITE 600 TORONTO, ONTARIO M5H 2Y4
Hudson's Bay Company	St. Laurent Shopping Centre 1200 St. Laurent Boulevard Ottawa, ON (B1633)	Bay Store Location	MORGUARD REAL ESTATE INVESTMENT TRUST AND 713949 ONTARIO LTD. C/O MGMT OFFICE ST. LAURENT CTR - 1200 ST. LAURENT BLVD OTTAWA, ONTARIO K1K 3B8
Hudson's Bay Company	Pickering Town Centre 1355 Kingston Road Pickering, ON (B1533)	Bay Store Location	OPB REALTY INC. C/O CUSHMAN & WAKEFIELD ASSET SERVICES INC. ONE QUEEN ST. EAST, SUITE 300 TORONTO, ONTARIO, M5C 2W5
Hudson's Bay Company	Hillcrest Mall 9350 Yonge Street Richmond Hill, ON (B1547)	Bay Store Location	MONTEZ HILLCREST INC. AND HILLCREST HOLDINGS INC. C/O OXFORD RETAIL GROUP 100 ADELAID STREET WEST, SUITE 900 TORONTO, ONTARIO M5H 0E3 ATTN: VICE PRESIDEN LEGAL

Hudson's Bay Company	Eglinton Square Victoria Park & O'Connor Dr. Scarborough, ON (B1512)	Bay Store Location	KS EGLINTON SQUARE INC. C/O BENTALL KENNEDY ( CANADA) LP 1-70 EGLINTON SQUARE BLVD. SUITE 203 TORONTO, ONTARIO M1L 2K1
Hudson's Bay Company	Scarborough Town Centre 300 Borough Drive Scarborough, ON (B1546)	Bay Store Location	SCARBOROUGH TOWN CENTRE HOLDINGS INC. 900-100 ADELAIDE STREET WEST TORONTO, ONTARIO M5H 0E3 ATN: VICE PRESIDENT LEGAL
Hudson's Bay Company	Pen Centre 221 Glendale Avenue St. Catharines, ON (B1573)	Bay Store Location	OPB REALTY INC. C/O CUSHMAN & WAKEFIELD ASSET SERVICES ONE QUEEN STREET EAST, SUITE 300, TORONTO, ONTARIO M5C 2W5
Hudson's Bay Company	Downtown 176 Yonge Street Toronto, ON (B1560)	Bay Store Location	ONTREA INC. C/O CADILLAC FAIRVIEW 20 QUEEN STREET WEST SUITE 500 TORONTO, ONTARIO M5H 3R4
Hudson's Bay Company	Fairview Mall 1800 Sheppard Ave. East Toronto, ON (B1514)	Bay Store Location	CF/REALTY HOLDINGS INC. & FVM PROPERTY INC. 20 QUEEN ST.W. SUITE 500 TORONTO. ONTARIO. M5H 3R4
Hudson's Bay Company	Hudson's Bay Centre 44 Bloor Street East Toronto, ON (B1519)	Bay Store Location	6524443 CANADA INC. & 2001101 ONTARIO INC. C/O BROOKFIELD OFFICE PROPERTIES MGMT LP 181 BAY STREET, SUITE 330 TORONTO ONTARIO M5J 2T3 ATTN: SVP LEGAL, EASTERN CANADA
Hudson's Bay Company	Conestoga Mall 550 King Street North Waterloo, ON (B1575)	Bay Store Location	IVANHOE CAMBRIDGE II INC 95 WELLINGTON ST., SUITE 300 TORONTO, ONTARIO M5J 2R2

Hudson's Bay Company	Devonshire Mall 3030 Howard Avenue Windsor, ON (B1543)	Bay Store Location	RIOCAN-HBC LIMITED PARTNERSHIP 401 BAY STREET, SUITE 600 TORONTO, ONTARIO M5H 2Y4
Hudson's Bay Company	Les Galeries D'Anjou 7895, boul. Les Galeries- d'Anjou Anjou, QC (B1612)	Bay Store Location	LES GALERIES D'ANJOU LEASEHOLDS INC. 20 QUEEN ST. W. SUITE 500 TORONTO, ONT. M5H 3R4
Hudson's Bay Company	Champlain Mall 2151, boul. Lapinière Brossard, QC (B1649)	Bay Store Location	9015086 CANADA INC. C/O COMINAR REAL ESTATE INVESTMENT TRUST COMPLEX JULES-DALLAIRE - T3, STE 850 2820 LAURIER BLVD. QUEBEC QC G1V 0C1
Hudson's Bay Company	Dorval Gardens 386 Dorval Avenue Dorval, QC (B1604)	Bay Store Location	DORVAL PROPERTY CORPORATION C/O STRATHALLEN PROPERTY MANAGEMENT INC. 352 AVENUE DORVAL, SUITE 205 DORVAL, QUEBEC H9S 3H8
Hudson's Bay Company	Les Promenades De L'Outaouais 1100 ouest, boul. Maloney Gatineau, QC (B1637)	Bay Store Location	9257-4748 QUEBEC INC AND MONTEZ L'OUTAOUAIS INC. 1100 MALONEY BLVD WEST GATINEAU, QUEBEC J8T 6G3
Hudson's Bay Company	Carrefour Angrignon 7077 Newman Blvd. LaSalle, Quebec (B1617)	Bay Store Location	CARREFOUR RICHELIEU REALTIES LTD. 600 DE MAISONNEUVE BOUL. WEST SUITE 2600 MONTREAL, QUEBEC, H3A 3J2
Hudson's Bay Company	Carrefour Laval 3045 Boulevard Le Carrefour Laval, QC (B1613)	Bay Store Location	LE CARREFOUR LAVAL (2013) INC. 20 QUEEN ST. W. SUITE 500 TORONTO ONTARIO M5H 3R4
Hudson's Bay Company	Centre Laval 1600 Boulevard Le Corbusier Laval, QC (B1606)	Bay Store Location	COMINAR REIT/ HOMBURG TRUST (186) 3400 DE MAISONNEUVE BLVD WEST, STE 1010 MONTREAL QUEBEC H3Z 3B8
Hudson's Bay Company	Centre Commercial Rockland 2435 Rockland Road Montreal, QC (B1607)	Bay Store Location	COMINAR REAL ESTATE INVESTMENT TRUST 2305 ROCKLAND SUITE 41 MOUNT-ROYAL, QUEBEC H3P 3E9

Hudson's Bay Company	Downtown 585 Ste-Catherine St. W. Montreal, QC (B1601)	Bay Store Location	RIOCAN-HBC LIMITED PARTNERSHIP 401 BAY STREET, SUITE 600 TORONTO, ONTARIO M5H 2Y4
Hudson's Bay Company	Fairview Pointe Claire 6790 Route TransCanada Pointe Claire, QC (B1611)	Bay Store Location	FAIRVIEW POINTE-CLAIRE LEASEHOLDS INC. 20 QUEEN ST. W. 3RD FLOOR TORONTO ONTARIO M5H 3R4
Hudson's Bay Company	Fairview Pointe Claire 6790 Route TransCanada Pointe Claire, QC (B1611A)	Auto centre lands	FAIRVIEW POINTE-CLAIRE LEASEHOLDS INC. 20 QUEEN ST. W. 3RD FLOOR TORONTO ONTARIO M5H 3R4
Hudson's Bay Company	Les Galeries De La Capitale 5401 boulevard des Galeries Quebec City, QC (B1640)	Bay Store Location	LES GALERIES DE LA CAPITALE HOLDINGS INC. C/O OXFORD PROPERTIES GROUP 100 ADELAIDE ST. W., SUITE 900 TORONTO, ONTARIO M5H 0E2 ATTENTION: VP LEGAL
Hudson's Bay Company	Place Rosemere Shopping Centre 401 Boulevard Labelle Rosemere, QC (B1638)	Bay Store Location	PLACE ROSEMERE INC. 55 CITY CENTRE DRIVE, SUITE 800 MISSISSAUGA, ONTARIO L5B 1M3
Hudson's Bay Company	Carrefour De L'Etrie 3000 boul. de Portland Sherbrooke, QC (B1616)	Bay Store Location	CARREFOUR DE L'ESTRIE HOLDINGS INC. C/O IVANHOE CAMBRIDGE INC., CDP CAPITAL CENTER, 1001 SQUARE VICTORIA STREET SUITE C-500, MONREAL, QC, H2Z 2B5 ATTN.: LEGAL DEPARTMENT
Hudson's Bay Company	Les Promenades St Bruno 800 Bouevard des Promenades St-Bruno, QC (B1610)	Bay Store Location	ONTREA INC. C/O CADILLAC FAIRVIEW 20 QUEEN ST. WEST SUITE 500 TORONTO, ON M5H 3R4
Hudson's Bay Company	Place Laurier 2740 Boulevard Laurier Ste-Foy, QC (B1642)	Bay Store Location	PLACE LAURIER HOLDINGS INC. C/O IVANHOE CAMBRIDGE 2700 BOUL LAURIER BUREAU 1000 QUEBEC, QC G1V 4J9

Hudson's Bay Company	Cornwall Centre 2150 -11th Avenue Regina, SK (B1113)	Bay Store Location	CORNWALL CENTRE INC. C/O CUSHMAN & WAKEFIELD ASSET SERVICES INC. ONE QUEEN STREET EAST, SUITE 300 TORONTO, ONTARIO M5C 2W5
Hudson's Bay Company	Midtown Plaza 201 First Avenue South Saskatoon, SK (B1112)	Bay Store Location	MIDTOWN PLAZA INC. AS GENERAL PARTNER OF MPLP C/O CUSHMAN WAKEFIELD ASSET SERVICES INC. ONE QUEEN STREET EAST, SUITE 300 TORONTO, ONTARIO M5C 2W5
Hudson's Bay Company	Toronto Premium Outlets 13850 Steeles Avenue Halton Hills, ON (B1580)	Hudson's Bay Outlet Store now operating as a SOF	HALTON HILLS SHOPPING CENTRE PARTNERSHIP C/O SIMON PROPERTY GROUP-PREMIUM OUTLETS 105 EISENHOWER PARKWAY, 1ST FLOOR ROSELAND,NJ 07068
Hudson's Bay Company	Mirabel Premium Outlets 19001 Chemin Notre-Dame Mirabel, QC (B1680)	Hudson's Bay Outlet Store	MIRABEL OUTLET CENTRE GENERAL PARTNERSHIP C/O SIMON PROPERTY GROUP 225 WEST WASHINGTON STREET INDIANAPOLIS, IN 46204-3438 ATTN: GENERAL COUNSEL
Hudson's Bay Company	100 Bayshore Drive Ottawa, Ontario (B1634S1)	Storage Space	BAYSHORE SHOPPING CENTRE LIMITED & KS BAYSHORE INC. 1001 SQUARE VICTORIA, BUREAU C-500 MONTREAL, QUEBEC H2Z 2B5
Hudson's Bay Company	100 Bayshore Drive Ottawa, Ontario (B1634S2)	Storage Space	BAYSHORE SHOPPING CENTRE LIMITED & KS BAYSHORE INC. 1001 SQUARE VICTORIA, BUREAU C-500 MONTREAL, QUEBEC H2Z 2B5
Hudson's Bay Company	Kipling Queensway Mall 1255 The Queensway, Etobicoke, Ontario (B1910)	Bay Clearance Store	FIGTREE CONSTRUCTION LTD. 90 TIVERTON COURT, SUITE 200 MARKHAM, ONTARIO L3R 9V2



Hudson's Bay Company	Bell's Corner, 59 Robertson Rd. Nepean, Ontario (B1908)	Bay Clearance Store	CHOICE PROPERTIES LIMITED PARTNERSHIP C/O CHOICE PROPERTIES GP INC. 1224 PLACE D'ORLEANS DRIVE, UNIT 109 OTTAWA, ON K1C 7K3
Hudson's Bay Company	HBC Office Space 2 Bloor Street East Toronto, Ontario	Forms Part of Bay store on Bloor Street B1519 for office component,	6524443 CANADA INC. & 2001101 ONTARIO INC. C/O BROOKFIELD OFFICE PROPERTIES MGMT LP 181 BAY STREET, SUITE 330 TORONTO ONTARIO M5J 2T3 ATTN: SVP LEGAL, EASTERN CANADA

#### **CANADIAN ENTITIES – Leased Distribution Centers, Warehouses and Office Locations**

<b>Entity Of Record</b>	<b>Common Name and Address</b>	<b>Lessor Name</b>	<b>Lessor Contact Information</b>	<b>Purpose/Use</b>
Hudson's Bay Company	VANCOUVER LOGISTICS 18111 Blundell road Richmond, BC (BB1160W)	PIRET (18111 Blundell Road) Holdings Inc.	150 King Street West, Suite 2420 Toronto, ON M5H 1J9	Distribution and/or Warehouse Facility, Partially vacant and a portion of the space is subleased
Hudson's Bay Company	SLC SCARBOROUGH LOGISTICS 100 Metropolitan Road Scarborough, ON (BB1568W)	100 Metropolitan Portfolio Inc.	3625 Dufferin Street, Suite 500 Toronto, ON M3K 1N4 Attention: Lease Administrator  And  3625 Dufferin Street, Suite 500 Toronto, ON M3K 1N4 Attention: Legal Department	Distribution and/or Warehouse Facility
Hudson's Bay Company	EBTC E-COMM - BIG TICKET 160 Carrier Drive Toronto, ON (BB1578W1)	Ontari Holdings Ltd.	c/o Blackwood Partners Corporation 385 Admiral Blvd., Unit #12 Mississauga, ON L5T 2M8 Attention: Melissa Chu, Vice-	Distribution and/or Warehouse Facility

Entity Of Record	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			President Property Management and Leasing	
Hudson's Bay Company	LOGISTICS QUEBEC 1805 Chemin St. Francois Dorval, QC (BB552A)	115522 Canada Inc. and Engleng Incorporated	c/o Transport Schonfeld 1805 Chemin St. Francois Dorval, PQ H9P 2S1 Attention: Steve Leng, President	Distribution office and truck storage location
Hudson's Bay Company	TLC TORONTO LOGISTICS 145 Carrier Drive Toronto, ON (BB1516W1)	HBCRP LP	c/o HBCRP LP 401 Bay Street, Suite 500 Toronto, Ontario M5H 2Y4	Distribution and/or Warehouse Facility
Hudson's Bay Company	173 Carrier Drive Toronto, ON (BB1516A)	269118 BC Ltd.	c/o 6490 Bradford Place Delta, BC V4E 1G3	Distribution Centre and Warehouse
Hudson's Bay Company	LAWRENCE 698 Lawrence Avenue Toronto, ON (BB1820B)	Riocan Holdings Inc.	2300 Yonge Street, Suite 500 Toronto, ON M4P 1E4  And  c/o Riocan Property Services 700 Lawrence Ave W., Suite 315 Toronto, ON M6A 3B4	Hudson's Bay Office Space
Hudson's Bay Company	SIMPSON TOWER 401 Bay Street Toronto, ON (BB2450)	Ontrea Inc.	c/o The Cadillac Fairview Corporation Limited Ontrea Inc. 20 Queen Street West, 5 <sup>th</sup> Floor Toronto, ON M5H 3R4 Attention: Vice-President, National Property Operations  And  Fairview Corporation Limited	Hudson's Bay Office Tower & Office Space

Entity Of Record	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			Ontrea Inc. 20 Queen Street West, 5 <sup>th</sup> Floor Toronto, ON M5H 3R4 Attention: Toronto Eaton Centre General Manager  Both telecopier # 416-598-8222	

#### U.S. ENTITIES – Lord & Taylor Leased Retail Locations

Entity Of Record	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
LT Danbury Leasehold LLC HBS GP JV	Danbury Fair Mall 7 Backus Avenue Danbury, CT	Danbury Mall LLC	<b>Danbury Mall LLC</b> c/o The Macerich Company Attn: Legal Department 401 Wilshire Boulevard, Suite 700 Santa Monica, CA 90401	L&T Retail Location (6061)
LT Westfarms Leasehold LLC HBC GP JV	West Farms Mall 400 West Farms Mall Farmington, CT	West Farms Mall LLC	<b>West Farms Mall, LLC</b> c/o The Taubman Company Attn: Lease Administration 200 East Long Lake Road Bloomfield Hills, MI 48304	L&T Retail Location (6005)
LT Stamford LLC HBS GP JV	Freestanding 110 High Ridge Road Stamford, CT			L&T Retail Location (6013)
LT Propco LLC	Trumbull 5065 Main Street Trumbull, CT	Trumbull Shopping Ctr # 2 LLC	<b>Trumbull Shopping Center # 2 LLC</b> Westfield Corporation, Inc. Attn: Office of Legal Counsel 2049 Century Park East, 41st Floor Los Angeles, CA 90067 <b>Trumbull Shopping Center # 2 LLC</b> Westfield Corporation, Inc. Attn: President 2049 Century Park East, 41st Floor Los Angeles, CA 90067	L&T Retail Location (6064)

LT Propco LLC	Freestanding 5255 Western Ave, N.W. Washington, DC	Mazza Family Friendship Heights LLC	<b>Mazza Family Friendship Heights LLC</b> c/o John W. Ridenour, III 4205 Stanford Street Chevy Chase, MD 20815  <b>Linda A. Ridenour</b> 10816 Barnwood Lane Potomac, MD 20854  <b>Holland &amp; Knight</b> Attn: Joseph Whitebread 800 17 <sup>th</sup> Street, NW Suite 1100 Washington DC 20006	L&T Retail Location (6008)
LT Northbrook Leasehold LLC HBC GP JV	Northbrook Court 1455 Lake Cook Road Northbrook, IL	West Coast Estates	<b>West Coast Estates</b> C/O General Growth Properties Inc. Attn: Chief Legal Officer 110 North Wacker Drive Chicago, IL 60606	L&T Retail Location (6022)
Lord & Taylor LLC	Mizner Park 200 Plaza Real Boca Raton, FL	Crocker Mizner Park III, Ltd	<b>GGP-Mizner Park LLC – Retail Series</b> Lord & Taylor Attn: Law/Lease Administration Department 350 N Orleans St., Suite 300 Chicago, IL 60654  <b>Mizner Park – Lord &amp; Taylor</b> Attn: General Manager 200 Plaza Real, Suite 315 Boca Raton, FL 33432	L&T Retail Location (6046)
LT Woodfield LLC HBS GP JV	Woodfield Mall #4 Woodfield Mall Schaumburg, IL	Woodfield Mall	<b>Woodfield Mall</b> C/O Simon Property Group Attn: Legal Department 225 West Washington Street Indianapolis, IN 46204	L&T Retail Location (6073)
Lord & Taylor LLC	Prudential Center 760 Boylston Street Boston, MA	Boston Prop. LTD Partnership	<b>Boston Properties Limited Partnership</b> Prudential Center 800 Boylston Street, Suite 1900 Boston MA 02199-8103 <b>Boston Properties Limited Partnership</b> Attn: General Counsel Prudential Center 800 Boylston Street, Suite 1900	L&T Retail Location (6012)

			Boston, MA 02199-8103	
LT Braintree Leasehold LLC HBS GP JV	South Shore Plaza 250 Granite Street Braintree, MA	4838-Braintree Prop Assoc. LP	<b>Braintree Property Associates, L.P.</b> c/o Simon Property Group L.P. Attn: Legal Department 225 West Washington Street Indianapolis, IN 46204	L&T Retail Location (6031)
LT Burlington Leasehold LLC HBS GP JV	Burlington Mall 1320 Burlington Mall Road Burlington, MA	4822 Bellwether Prop of MA LP	<b>Bellwether Properties of Massachusetts, Limited Partnership</b> c/o Simon Property Group, L.P. Attn: Legal Department 225 W. Washington Street Indianapolis, IN 46204-3438  <b>Simon Property Group, L.P.</b> Attn: General Counsel 225 W. Washington Street Indianapolis, IN 46204	L&T Retail Location (6029)
LT Natick Leasehold LLC HBS GP JV	1245 Worcester Road Natick MA 01760	Natick Mall LLC	<b>Natick Mall LLC</b> Natick Mall Attn: Law/Lease Administration Dept. 350 N. Orleans Street Suite 300 Chicago, IL 60654-1607  <b>Natick Mall</b> Attn: General Manager 1245 Worcester Street, Suite 121B Natick, MA 01760-1553	L&T Retail Location (6068)
LT Columbia LLC HBS GP JV	The Mall in Columbia 10300 Little Patuxent Pkwy. Columbia, MD	The Mall in Columbia Business Trust	<b>The Mall in Columbia Business Trust</b> The Mall in Columbia 350 N Orleans Street, Ste. 300 Chicago IL 60654-1607  <b>The Mall in Columbia</b> Attn: General Manager 10300 Little Patuxent Pkwy. Columbia, MD 21044	L&T Retail Location (6100)
LT Propco LLC	White Flint Mall	White Flint Mall,	<b>White Flint Mall, LLLP</b>	L&T Retail Location

	11311 Rockville Pike Kensington, MD	LLLP	c/o Lerner Corporation Attn: Legal Department 2000 Tower Oaks Blvd - 8th Fl. Rockville, MD 20852-4208	(6023)
LT Twelve Oaks LLC HBS GP JV	Twelve Oaks Mall 27650 Novi Road Novi, MI	TVO Mall Owner LLC	<b>TVO Mall Owner LLC</b> C/O Taubman Company Attn: President 200 East Long Lake Rd, Suite 300 Bloomfield Hills, MI 48304  <b>The Taubman Company</b> Attn: General Counsel 200 East Long Lake Rd, Suite 300 Bloomfield Hills, MI 48304  <b>Honigman, Miller, Schwartz &amp; Cohn LLP</b> Attn: Richard J. Burstein Esq. 39400 Woodward Avenue, Suite 101 Bloomfield Hills, MI 48304	L&T Retail Location (6028)
Lord & Taylor LLC	Rockingham Mall 99 Rockingham Park Blvd. Salem, NH	Mall at Rockingham LLC	<b>Mall at Rockingham LLC</b> c/o Simon Property Group Attn: Michael McCarty 225 West Washington St. Indianapolis, IN 46204  <b>Rocksall Mall LLC</b> C/O Simon Property Group Attn: Michael McCarty 225 West Washington Street Indianapolis, IN 46204  <b>Rockingham</b> C/O Simon Property Group 225 West Washington Street Indianapolis, IN 46204	L&T Retail Location (6091)
LT Bridgewater LLC HBS GP JV	Bridgewater Commons 400 Commons Way Bridgewater, NJ	Bridgewater Commons Mall    LLC	<b>Bridgewater Commons Mall    LLC</b> Bridgewater Commons Attn: Law/Lease Administration Dept. 350 N. Orleans Street, Ste. 300 Chicago, IL 60654-1607	L&T Retail Location (6054)

			<b>Bridgewater Commons</b> Attn: General Manager 400 Commons Way, Ste. 100 Bridgewater, NJ 08807	
LT Freehold Raceway LLC HBS GP JV	Freehold Raceway Mall 3710 Highway 9 Suite 1500 Freehold, NJ	Free Mall Associates	<b>Free Mall Associates, LLC</b> C/O The Macerich Company Attn: Legal Department 401 Wilshire Blvd, Suite 700 Santa Monica, CA 90401	L&T Retail Location (6059)
LT Quakerbridge Leasehold LLC HBS GP JV	Quakerbridge Mall Rt. 1 & Quakerbridge Road Lawrenceville, NJ	Lawrence Associates	<b>Quaker Bridge Mall, LLC</b> c/o Simon Property Group 225 W. Washington Street Indianapolis, IN 46204-3438	L&T Retail Location (6058)
LT Livingston Leasehold LLC HBS GP JV	Livingston Mall 111 Eisenhower Pkwy Livingston, NJ	Livingston Mall Venture-4828	<b>Livingston Mall Venture</b> c/o Simon Property Group 225 W. Washington Street Indianapolis, IN 46204-3438	L&T Retail Location (6052)
LT Propco LLC	Moorestown Mall Lenola Road & Route 38 Moorestown, NJ	Moorestown Mall LLC	<b>Moorestown Mall LLC</b> Attn: General Manager Moorestown Mall 400 Route 38 Moorestown, NJ 08057  <b>Moorestown Mall LLC</b> PREIT Attn: Executive V.P. & General Counsel 200 S. Broad Street, 3 <sup>rd</sup> Floor Philadelphia, PA 19102	L&T Retail Location (6106)
LT Ridgewood LLC HBS GP JV	Fashion Center Route 17 & Ridgewood Avenue Paramus, NJ	Fashion Center LLC	<b>Fashion Center LLC</b> c/o WRDC 123 Coulter Avenue Suite 200 Ardmore, PA 19003	L&T Retail Store (6011)
LT Garden State Leasehold LLC HBS GP JV	Garden State Plaza 504 Garden State Plaza Paramus, NJ	Westland Garden State Plaza LP	<b>Westland Garden State Plaza Ltd. Partnership</b> c/o Westfield LLC Attn: General Counsel 2049 Century Park East, 41st Floor Los Angeles, CA 90067	L&T Retail Location (6020)

LT Rockaway Town LLC HBS GP JV	Rockaway Town Square Mall Rt. 80 & Mt. Hope Road Rockaway, NJ	Rockaway Center Associates	<b>Rockaway Center Associates</b> C/O Simon Property Group Attn: Legal Department 225 West Washington Street Indianapolis, IN 46204	L&T Retail Location (6053)
LT Willowbrook LLC HBS GP JV	Willowbrook Mall 4 Willowbrook Blvd Wayne, NJ	Willowbrook Mall LLC	<b>Willowbrook Mall, LLC</b> Willowbrook, NJ Attn: Lease Admin Department 350 N. Orleans Street, Suite 300 Chicago, IL 60654  <b>Willowbrook, NJ</b> Attn: General Manager 1400 Willowbrook Mall Wayne, NJ 07470	L&T Retail Location (6038)
LT Westfield LLC HBS GP JV	Freestanding 609 North Avenue Westfield, NJ			L&T Retail Location (6055)
LT Propco LLC	Woodbridge Center 198 Woodbridge Center Drive Woodbridge, NJ	Woodbridge Center Property LLC	<b>Woodbridge Center Property LLC</b> Woodbridge Center Attn: Law/Lease Administration Department 350 N. Orleans Street, Ste. 300 Chicago IL 60654-1607 <b>Woodbridge Center</b> Attn: General Manager 250 Woodbridge Center Drive Woodbridge NJ 07095	L&T Retail Location (6030)
Lord & Taylor LLC	Crossgates Mall 1 Crossgates Mall Road Albany, NY	Crossgates Mall Company LLC	<b>Crossgates Mall Company LLC</b> The Clinton Exchange 4 Clinton Square Syracuse NY 13202 <b>Pyramid Management Group LLC</b> Attn: General Counsel The Clinton Exchange 4 Clinton Square Syracuse NY 13202	L&T Retail Location (6069)
LT Bay Shore Leasehold LLC HBS GP JV	South Shore Mall 1701 Sunrise Hwy Bay Shore, NY	Westland South Shore Mall LP	<b>Westland South Shore Mall L.P.</b> Westfield Corporation, Inc. 2049 Century Park East, 41st Floor Los Angeles, CA 90067 Attn: President	L&T Retail Location (6017)



			<b>Westfield Corporation, Inc.</b> 2049 Century Park East, 41st Floor Los Angeles, CA 90067 Attn: Office of Legal Counsel	
LT Walden Galleria LLC HBS GP JV	Walden Galleria 8 Walden Galleria Buffalo, NY	Pyramid Walden Company L.P.	<b>Pyramid Walden Company L.P.</b> Attn: Legal Department The Clinton Exchange 4 Clinton Square Syracuse, NY 13202	L&T Retail Location (6063)
LT Garden City LLC HBS GP JV	Freestanding 1200 Franklin Avenue Garden City, NY			L&T Retail Location (6007)
LT Walt Whitman Leasehold LLC HBS GP JV	Walt Whitman 158 Walt Whitman Road Huntington Station, NY	Walt Whitman Mall, LLC	<b>Walt Whitman Mall LLC</b> c/o Simon Property Group Attn: Legal Department 225 W. Washington Street Indianapolis, IN 46204-3438	L&T Retail Location (6035)
LT Manhasset LLC HBS GP JV	Freestanding 1440 Northern Blvd. Manhasset, NY			L&T Retail Location (6002)
LT Propco LLC	Eastview Mall 7979 Pittsford Victor Road Rochester (Victor), NY	Eastview Mall, LLC	<b>Eastview Mall LLC</b> Attn: General Counsel 1265 Scottsville Road Rochester, NY 14624	L&T Retail Location (6074)
LT Eastchester LLC HBS GP JV	Freestanding 750 White Plains Road Scarsdale, NY			L&T Retail Location (6003)
LT Carousel Leasehold LLC HBS GP JV	Carousel Center 9629 Destiny USA Drive Syracuse, NY	Carousel Center Company LP	<b>Carousel Center Company L.P.</b> The Clinton Exchange 4 Clinton Square Syracuse, NY 13202	L&T Retail Location (6070)
LT Palisades Leasehold LLC HBS GP JV	Palisades Center 1825 Palisades Center Drive West Nyack, NY	Eklecco Newco LLC	<b>EklecCo NewCo, LLC</b> The Clinton Exchange Attn: Legal Department 4 Clinton Square Syracuse, NY 13202-1078	L&T Retail Location (6042)

Lord & Taylor LLC	Ridge Hill Shopping Center 157 Market Street Yonkers, NY	FC Yonkers Associates LLC	<b>FC Yonkers Associates LLC</b> Attn: Associate General Counsel Leasing 600 Superior Avenue East, Suite 1500 Cleveland, OH 44114	L&T Retail Location (6092)
Lord & Taylor LLC	Bala Cynwyd Shopping Center City Line & Belmont Avenue Bala Cynwyd, PA	Federal Realty Investment	<b>Federal Realty Investment Trust</b> 1626 E. Jefferson Street Rockville, MD 20852	L&T Retail Location (6006)
LT King of Prussia LLC HBS GP JV	King of Prussia Plaza 180 North Gulph Road King of Prussia, PA	King of Prussia Associates	<b>King of Prussia Associates</b> C/O Simon Property Group Attn: Legal Department 225 West Washington Street Indianapolis, IN 46204	L&T Retail Location (6075)
LT Fair Oaks LLC HBS GP JV	Fair Oaks Mall 11900-L Fair Oaks Mall Fairfax, VA	Fairfax Company of Virginia, LLC	<b>Fairfax Company of Virginia, LLC</b> C/O Taubman Company Attn: President 200 East Long Lake Road, Suite 300 Bloomfield, MI 48304	L&T Retail Location (6048)
LT Tysons Corner Leasehold LLC HBS GP JV	Tyson's Corner Center 7950 Tyson's Corner Center McLean, VA	Tyson's Corner Holdings LLC	<b>Tysons Corner Holdings LLC</b> C/O The Macerich Company Attn: Legal Department 401 Wilshire Boulevard, Suite 700 Santa Monica, CA 90401 <b>Tysons Corner Holdings LLC</b> 1961 Chain Bridge Rd, Suite 305 Tyson's Corner, VA 22102	L&T Retail Location (6056)
LT Propco LLC	Dulles Town Center 21050 Dulles Town Center Sterling, VA	Dulles Town Center Mall, LLC	<b>Dulles Town Center Mall, LLC</b> C/O Lerner Corporation Attn: Legal Department 2000 Tower Oaks Blvd, 8 <sup>th</sup> Floor Rockville, MD 20852	L&T Retail Location (6043)

#### U.S. ENTITIES – Lord & Taylor Leased Distribution Centers, Warehouses and Office Locations

Entity Of Record	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
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Lord & Taylor LLC	L&T DATA CENTER 500 North Broadway St. Louis, MO (n/a)	500 Broadway, LLC	<b>500 Broadway, LLC</b> BEB Management 500 N Broadway, Suite 150 St. Louis, MO 63102	Not Utilized
LT Propco LLC/ Lord & Taylor LLC	38th STREET 15 West 38th Street New York, NY (n/a)	Abner Properties Company	<b>Abner Properties Company</b> 40 East 69th Street New York, NY 10021	Subleased
Lord & Taylor LLC	39th STREET 16 West 39th Street New York, NY (n/a)	Weatherley 39th Street, LLC	<b>Weatherley 39th Street, LLC</b> Mr. James W. Simpson, Manager 207 Undermountain Road Salisbury, CT 06068	Saks Alterations/Storage
Lord & Taylor LLC	1787 Sentry Pkwy West, Bldg 18, Suite 1 Blue Bell, PA 19422	Gateway Search Associates Inc.	<b>Gateway Search Associates Inc.</b> Attn: Patrick Jones 1787 Sentry Pkwy West, Bldg 18, Suite 1 Blue Bell, PA 19422	L&T Office
LT Propco LLC/ Lord & Taylor LLC	250 Highland Park Boulevard, Wilkes Barre, PA 18702	LT Propco LLC	<b>LT Propco LLC</b> 225 Liberty Street, 31st Floor New York, NY 10281	L&T Distribution Center (6082)
Lord & Taylor LLC	601 W. 26 <sup>th</sup> St NY, NY 10001	RXR SL Owner LLC	<b>RXR Realty</b> Attn: Jason Barrett Esq. Office of General Counsel 625 RXR Plaza Uniondale ,NY 10556  RXR SL Owner LLC Attn: William Elder 75 Rockefeller Plaza, 14 <sup>th</sup> Flr. NY, NY 10019	Subleased

# U.S. AND CANADIAN ENTITIES – Saks Leased Retail Locations

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
Saks & Company LLC	Biltmore Fashion Park 2446 East Camelback Road Phoenix, AZ	Biltmore Shopping Center Partners LLC	<b>Biltmore Shopping Center Partners LLC</b>  2502 East Camelback Road, #216  Phoenix, AZ 85016  <b>Macerich Company</b>  Attn: Legal Dept  401 Wilshire Blvd., Ste 700  Santa Monica, CA 90401	Saks Fifth Ave Retail Location  (626)
Saks & Company LLC	Freestanding 9634 Wilshire Boulevard Beverly Hills, CA	Haagen Company LLC  Alexander and Betty Haagen Living Trust	<b>Haagen Company LLC</b>  Alexander and Betty Haagen Living Trust  12302 Exposition Boulevard  Los Angeles, CA 90064  Attn: Mr. Alexander Haagen III	Saks Fifth Ave Retail Location (Men's)  (603)
Saks Beverly Hills LLC HBS GP JV	Freestanding 9600 Wilshire Boulevard Beverly Hills, CA			Saks Fifth Ave Retail Location (Main)  (603)
Saks South Coast Leasehold LLC HBS GP JV	South Coast Plaza 3333 Bristol Street Costa Mesa, CA	South Coast Plaza	<b>South Coast Plaza</b>  c/o CJ Segerstrom & Sons  3315 Fairview Road	Saks Fifth Ave Retail Location  (636)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			<p>Costa Mesa, California 92626</p> <p>Attention: Controller</p> <p><b>South Coast Plaza</b></p> <p>Management Offices</p> <p>3333 Bristol Street</p> <p>Costa Mesa, California 92626</p> <p>Attention: General Manager</p>	
Saks & Company LLC	The Gardens 73555 El Paseo Drive Palm Desert, CA	The Gardens on El Paseo LLC	<p><b>The Gardens on El Paseo LLC</b></p> <p>c/o The Taubman Company LLC</p> <p>200 East Long Lake Road, Suite 300</p> <p>Bloomfield Hills, MI 48304-2324</p> <p>Attn: Lease Administration</p> <p><b>The Gardens on El Paseo LLC</b></p> <p>c/o The Taubman Company LLC</p> <p>200 East Long Lake Road, Suite 300</p> <p>Bloomfield Hills, MI 48304-2324</p> <p>Attn: General Counsel</p>	Saks Fifth Ave Retail Location (612)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
Saks & Company LLC	Freestanding 384 Post Street San Francisco, CA	California Union Square	<b>RREEF Management LLC</b>  222 S. Riverside Plaza  Chicago, IL 60606  Attn: Jeff Kahl  <b>Orrick, Herrington &amp; Sutcliffe LLP</b>  The Orrick Building  405 Howard Street  San Francisco, CA 94105  Attn: Michael H. Liever	Saks Fifth Ave Retail Location  (646 Main)
Saks Fifth Avenue LLC	Freestanding 200 Greenwich Avenue Greenwich, CT	200 GREENWICH AVENUE LLC,	<b>Greenwich Properties, LLC c/o Hines</b>  55 Railroad Avenue Property Management Office  Greenwich, CT 06830  Attention: Ruby Abreu  <b>Kensico Properties</b>  509 Madison Avenue, 2 <sup>nd</sup> Floor  New York, NY 10022  Attn: Marilyn Cafone	Saks Fifth Ave Retail Location (Cotempo/Vault)  (672)

<b>Company (Entity of Record)</b>	<b>Common Name and Address</b>	<b>Lessor Name</b>	<b>Lessor Contact Information</b>	<b>Purpose/Use</b>
Saks Fifth Avenue LLC	Freestanding 205 Greenwich Avenue Greenwich, CT	Street Retail, Inc.	<b>Street Retail, Inc</b>  c/o Federal Realty Investment Trust  1626 East Jefferson St  Rockville, MD 20852-4041  Attn: Legal Department	Saks Fifth Ave Retail Location (Main)  (672)
Saks Fifth Avenue LLC	Bal Harbour Shops 9700 Collins Avenue Bal Harbour, FL	BAL HARBOUR SHOPS, LLLP	<b>c/o Whitman Family Development</b>  420 Lincoln Road, Suite 320  Miami Beach, Florida 33139  Attn: Matthew Whitman Lazenby	Saks Fifth Ave Retail Location  (637)
Saks & Company LLC	Town Center Mall 5800 Glades Road Boca Raton, FL	The Town Center at Boca Raton Trust	<b>The Town Center at Boca Raton Trust</b>  c/o Simon Property Group, Inc.  225 West Washington Street  Indianapolis, IN 46204  Attn: Lease Services	Saks Fifth Ave Retail Location  (624)
Saks Dadeland Leasehold LLC HBS GP JV	Dadeland Mall 7687 North Kendall Drive Miami, FL	SDG Dadeland Assoc. Inc.	SDG Dadeland Assoc. Inc.  c/o Simon Property Group, L.P.  225 West Washington Street  Indianapolis, Indiana 46204-3438  Attention: Legal Development Department	Saks Fifth Ave Retail Location  (632)

<b>Company (Entity of Record)</b>	<b>Common Name and Address</b>	<b>Lessor Name</b>	<b>Lessor Contact Information</b>	<b>Purpose/Use</b>
			and EVP Development Operations	
Saks & Company LLC	Waterside Shops 5395 Tamiami Trail North Naples, FL	Waterside at Pelican Bay LLC	Waterside at Pelican Bay LLC  c/o The Forbes Company  100 Galleria Officentre, Suite 427  Southfield, MI 48034  Attn: Minden Humphrey, Lease Administration Manager	Saks Fifth Ave Retail Location  (669)
Saks & Company LLC	Worth Avenue 172 Worth Avenue Palm Beach, FL	Wilson 150 Worth, LLC	<b>Wilson 150 Worth, LLC</b>  c/o O'Conner Property Management LLC  240 Royal Palm Way, 2 <sup>nd</sup> Floor  Palm Beach, FL 33480  <b>Wilson 150 Worth, LLC</b>  c/o O'Connor Capital Partners  535 Madison Ave, 6 <sup>th</sup> Floor  New York, NY 10022  Attn: Mark Tutun	Saks Fifth Ave Retail Location  (643)
Saks & Company Real Property	Gardens Mall 3109 PGA Boulevard Palm Beach Garden, FL	Forbes/Cohen Properties Limited Partnership	<b>Forbes/Cohen Properties Limited Partnership</b>  100 Galleria Officentre, Suite 427	Saks Fifth Ave Retail Location  (610)



Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			PO Box 667  Southfield, MI 48034	
Saks & Company LLC	University Town Center 298 N Cattlemen Road Sarasota, FL	TB Mall at UTC LLC	<b>TB Mall at UTC LLC</b>  200 East Long Lake Road, Suite 200  Bloomfield Hills, MI 48304  Attention: Senior Vice President — Development  <b>The Taubman Company</b>  200 East Long Lake Road, Suite 300  Bloomfield Hills, MI 48304  Attention: Chris Heaphy, Esq.  General Counsel  <b>Richard J. Burstein, Esq.</b>  <b>Honigman Miller Schwartz and Cohn LLP</b>  39400 Woodward Avenue, Suite 101  Bloomfield Hills, MI 48304-5151	Saks Fifth Ave Retail Location  (633)
Saks Atlanta Leasehold LLC  HBS GP JV	Phipps Plaza 3440 Peachtree Road Atlanta, GA	CPI-Phipps Limited Liability Company	CPI-Phipps Limited Liability Company  c/o Simon Property Group, L.P.  225 West Washington Street	Saks Fifth Ave Retail Location  (629)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			Indianapolis, Indiana 46204-3438  Attention: Legal Department	
Saks & Company LLC	International Market Place  2345 Kuhio Avenue  Honolulu, HI	TRG IMP LLC	<b>TRPG IMP LLC</b>  c/o The Taubman Company  200 East Long Lake Road, Ste 300  Bloomfield Hills, MI 48304  Attn: General Counsel	Saks Fifth Ave Retail Location  (660)
Saks Chicago Place Leasehold LLC HBS GP JV	Chicago Place Mall 700 North Michigan Avenue Chicago, IL	700 North Michigan Avenue LLC	700 North Michigan Avenue LLC  c/o ACHS Management Corp.  1412 Broadway, 3rd Floor  New York, NY 10018	Saks Fifth Ave Retail Location  (620)
Saks Fifth Avenue LLC	Fashion Mall at Keystone 8702 Keystone Crossing Indianapolis, IN	SDG Fashion Mall L.P.	<b>SDG Fashion Mall L.P.</b>  c/o Simon Property Group  225 West Washington Street  Indianapolis, IN 46204  Attn: Lease Services	Saks Fifth Ave Retail Location  (679)
Saks Fifth Avenue LLC	The Shops at Canal Place 301 Canal Street New Orleans, LA	Wilson Canal Place II, LLC	<b>Wilson Canal Place II, LLC</b>  c/o O'Connor Property Management  230 Royal Palm Way, Ste. 102	Saks Fifth Ave Retail Location  (608)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			Palm Beach, FL 33480	
Saks Fifth Avenue LLC	Prudential Center 800 Boylston Street Boston, MA	BP Prucenter Acquisition LLC	<b>BP Prucenter Acquisition LLC</b> c/o Boston Properties Limited Partnership  Prudential Center  800 Boylston Street, Suite 1900  Boston, MA 02199-8103  <b>BP Prucenter Acquisition LLC</b> c/o Boston Properties Limited Partnership  Prudential Center  800 Boylston Street, Suite 1900  Boston, MA 02199-8103  Attn: General Counsel	Saks Fifth Ave Retail Location  (630)
Saks Chevy Chase Leasehold LLC HBS GP JV	Chevy Chase Mall 5555 Wisconsin Avenue Chevy Chase, MD	The Chevy Chase Land Company of Montgomery County, Maryland	<b>The Chevy Chase Land Company of Montgomery County, Maryland</b>  5471 Wisconsin Avenue, Suite 320  Chevy Chase, MD 20815  Attn: President, Vice President, Asset Management  <b>Maurice J. Montaldi, Esq.</b>	Saks Fifth Ave Retail Location  (623)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			Linowes & Blocher, LLP  1010 Wayne Avenue, 10 <sup>th</sup> Floor  Silver Spring, MD 20910	
Saks Fifth Avenue LLC	Mazza Galleria 5300 Wisconsin Avenue NW Chevy Chase, MD	Prime Chevy Chase Asset I LLC	<b>Mazza Gallerie</b> c/o Ashkenazy Acquisition Corp.  150 East 58 <sup>th</sup> St.  Penthouse  New York, NY 10155  Attn: Asset Manager  <b>Mazza Gallerie</b> c/o Union Station DC  40 Massachusetts Ave. NE, 2 <sup>nd</sup> Floor  Washington DC, 20002  Attn: Mark Polhemus, General Manager  <b>Jones Lang Lasalle Americas, Inc.</b>  3344 Peachtree Rd., Suite 1100  Atlanta, GA 30326  Attn: President and CEO, Retail	Saks Fifth Ave Retail Location  (674)

<b>Company (Entity of Record)</b>	<b>Common Name and Address</b>	<b>Lessor Name</b>	<b>Lessor Contact Information</b>	<b>Purpose/Use</b>
Saks Troy LLC HBS GP JV	Somerset Mall 2901 West Big Beaver Road Troy, MI	Somerset Collection, L.P	<b>Somerset Collection, L.P.</b>  100 Galleria Officentre, Suite 427  Southfield, MI 48037  William J. Zousmer, Esq.  <b>Honigman Miller Schwartz and Cohn LLP</b>  39400 Woodward Avenue, Suite 101  Bloomfield Hills, MI 48304 – 5151  Attn: Richard J. Burstein Esq.	Saks Fifth Ave Retail Location  (628)
Saks Fashion Show Leasehold LLC HBS GP JV	Fashion Show Mall 3200 Las Vegas Boulevard South Las Vegas, NV	Fashion Show I, LLC	<b>Fashion Show Holding I, LLC</b>  Fashion Show  350 N. Orleans St., Suite 300  Chicago, IL 60654 – 1607  Attn: Law/Lease Administration Dept.  <b>Fashion Show</b>  3200 Las Vegas Blvd. S., Ste 600  Las Vegas, NV 89109  Attn: General Manager	Saks Fifth Ave Retail Location  (645)
Saks Walt Whitman Leasehold LLC HBS GP JV	Walt Whitman Mall 230 Walt Whitman Road Huntington Station,	Walt Whitman Mall, LLC	<b>Walt Whitman Mall, LLC</b>  c/o Simon Property Group, L.P.	Saks Fifth Ave Retail Location  (654)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
	NY		225 West Washington Street  Indianapolis, Indiana 46204-3438  Attention: Legal Department	
Saks & Company LLC <b>NB: Lessor is a related party</b>	Freestanding 611 Fifth Avenue New York, NY	12 East 49th Street LLC,	<b>12 East 49th Street LLC,</b>  225 Liberty Street, 31st Floor  New York, NY 10281	Saks Fifth Ave Retail Location  (601)
Saks Fifth Avenue Real Property LLC	Triangle Town Center 7700 Old Wake Forest Rd Raleigh, NC 27616	C&I VIII CBL TTC LLC	<b>LB-UBS 2006-C1 Triangle Town Boulevard, LLC</b>  c/o Spinoso Real Estate Group DLS, LLC  112 North Concourse  North Syracuse, NY 13212  <b>LB-UBS 2006-C1 Triangle Town Boulevard, LLC c/o LN R Partners, LLC</b>  1601 Washington Ave, Suite 700  Miami Beach, FL 33139  <b>LB-UBS 2006-C1 Triangle Town Boulevard, LLC</b>  Attn: General Manager  5959 Triangle Town Blvd, Ste CU-2072  Raleigh, NC 27616	Saks Fifth Ave Retail Location  (673)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
Saks Beachwood Leasehold LLC HBS GP JV	Beachwood Place 26100 Cedar Road Beachwood, OH	Beachwood Place Mall, LLC	<b>Beachwood Place</b>  26300 Cedar Rd  Beachwood, OH 44122  Attn: General Manager  &  350 N. Orleans St., Suite 300  Chicago, IL 60654 – 1607  Attn: Law/Lease Administration Dept.	Saks Fifth Ave Retail Location  (641)
Saks Fifth Avenue Real Property LLC	Freestanding 101 West Fifth Street Cincinnati, OH	City of Cincinnati	<b>City of Cincinnati</b>  801 Plum Street, Room 152  City Hall  Cincinnati, OH 45202	Saks Fifth Ave Retail Location  (618)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
Saks Columbus Real Property LLC	Polaris Fashion Mall 1350 Polaris Parkway Columbus, OH	PFP Columbus II, LLC	<b>PFP Columbus II, LLC</b>  180 East Broad Street, 21 <sup>st</sup> FL  Columbus, OH 43215  Attn: General Counsel	Saks Fifth Ave Retail Location  (675)
Saks Fifth Avenue Real Property LLC	Utica Square 1780 Utica Square Tulsa, OK	Utica Square Shopping Center, Inc.	<b>Utica Square Shopping Center, Inc</b>  1579 E 21 <sup>st</sup> Street  Tulsa, OK 74117	Saks Fifth Ave Retail Location  (621)



<b>Company (Entity of Record)</b>	<b>Common Name and Address</b>	<b>Lessor Name</b>	<b>Lessor Contact Information</b>	<b>Purpose/Use</b>
Saks Fifth Avenue LLC	Bala Plaza 2 Bala Plaza Bala Cynwyd, PA	Bala Plaza Property, Inc.	<b>Bala Plaza Property, Inc.</b>  c/o Tower Realty Management Corporation  Northeast Regional Office  One Bala Plaza, Suite 629  Bala Plaza, Cynwyd, PA 19004  Attn: General Manager  <b>Bala Plaza Property, Inc.</b>  c/o Tower Realty Management Corporation  Management Office  One Bala Plaza, Suite 629  Bala Plaza, Cynwyd, PA 19004  Attn: Property Manager	Saks Fifth Ave Retail Location  (631)
Saks & Company LLC	Galleria Mall 5175 Westheimer Houston, TX	HG Galleria, LLC	<b>HG Galleria, LLC</b>  c/o Simon Property Group  225 West Washington Street  Indianapolis, IN 46204	Saks Fifth Ave Retail Location  (634)
Saks North Star LLC HBS GP JV	North Star Mall 7400 San Pedro Avenue, Suite 650 San Antonio, TX	NSMJV, LLC	<b>North Star Mall</b>  7400 San Pedro, Suite 224  San Antonio, TX 78216	Saks Fifth Ave Retail Location  (657)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			Attn: General Manager  &  350 N. Orleans St., Suite 300  Chicago, IL 60654 – 1607  Attn: Law/Lease Administration Dept.	
Saks Richmond Real Property LLC	Stony Point Fashion Park 9214 Stony Point Parkway  Richmond, VA	TM Stony Point Park LP	<b>Starwood Retail Property Management, LLC</b>  1 E Wacker Drive, Suite 3700  Chicago, IL 60601  Attn: Lease Coordination  <b>Stony Point Fashion Park</b>  9200 Stony Point Pkwy  Richmond, VA 23235  Attn: General Manager	Saks Fifth Ave Retail Location  (671)
Saks Tysons Corner LLC  HBS GP JV	Tysons Galleria 2051 International Drive Tysons, VA	Tysons Galleria L.L.C	Tysons Galleria L.L.C. c/o Tysons Galleria Management Office 2001 International Drive  McLean, VA 22102  &  350 N. Orleans St., Suite 300	Saks Fifth Ave Retail Location  (604)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			Chicago, IL 60654 – 1607  Attn: Law/Lease Administration Dept.	
Saks & Company LLC	250 Vesey New York, NY	WFP Tower B Co. L.P	<p><b>WFP Retail Co. L.P.</b></p> <p>c/o Brookfield Financial Properties, L.P.</p> <p>250 Vesey Street, 15th Floor</p> <p>New York, New York 10281-1023</p> <p>Attention: Senior Vice President, Director of Leasing</p> <p><b>WFP Retail Co. L.P.</b></p> <p>c/o Brookfield Financial Properties, L.P.</p> <p>250 Vesey Street, 15th Floor</p> <p>New York, New York 10281-1023</p> <p>Attention: General Counsel</p>	Saks Fifth Ave Retail Location  (Men's)  (655)
Saks & Company LLC	Brickell City Centre 67 SW 8th Street Miami, FL	Brickell City Centre Retail LLC	<p><b>Brickell City Centre Retail LLC</b></p> <p>799 Brickell Plaza, Suite 802</p> <p>Miami, Florida 33131</p> <p>Attn: "President"</p> <p><b>Akerman LLP</b></p> <p>350 East Las Olas Boulevard, Suite 1600</p>	Saks Fifth Ave Retail Location  (668)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			Ft. Lauderdale, FL 33301  Attn: Theresa M. McLaughlin, Esq.	
Saks & Company LLC	American Dream Meadowland Sports Complex East Rutherford, NJ	<b>Ameream, LLC</b>	Ameream, LLC  One Meadowlands Plaza, 3 <sup>rd</sup> Floor,  East Rutherford,  New Jersey 07073  Attn: General Counsel	Saks Fifth Ave Retail Location  (681)
Saks Fifth Avenue LLC	20 East Elm Street, Greenwich, Ct	20 East Elm Street, LLC	20 EAST ELM STREET, LLC  22 Lakeview Drive, Riverside,  Connecticut 06878  Attn: Dennis J. Keegan and Karen S. Keegan	Saks Fifth Shoe Store  (672 Shoe)
Saks & Company LLC	Phoenix Premium Outlets 4976 Premium Outlet Way Chandler, AZ	Phoenix Premium Outlets, LLC	Phoenix Premium Outlets, LLC  c/o Simon Property Group, Inc.  225 West Washington Street  Indianapolis, Indiana 46204  Attn: Premium Outlets  &  c/o Simon Premium Outlets  60 Columbia Turnpike	Saks Off Fifth Retail Location  (763)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			Building B, 3rd Floor  Morristown, NJ 07960  Attn: Lease Services	
Saks & Company LLC	The Promenade Shopping Center 16427 N. Scottsdale Road  Scottsdale, AZ	Excel Owner Promenade LLC	ShopCore Properties  Two Liberty Place, Suite 3325  50 South 16 <sup>th</sup> Street  Philadelphia, PA 19102  Attn: Legal Department	Saks Off Fifth Retail Location  (844)
Saks & Company LLC	Tucson Premium Outlets  6401 W Marana Center Blvd. Unit 700  Tucson, AZ	Tucson Premium Outlets, LLC	Tuscon Premium Outlets, LLC  c/o Simon Property Group, Inc.  225 West Washington Street  Indianapolis, Indiana 46204  Attn: Premium Outlets  &  c/o Simon Premium Outlets  60 Columbia Turnpike  Building B, 3rd Floor  Morristown, NJ 07960  Attn: Lease Services	Saks Off Fifth Retail Location  (400)

<b>Company (Entity of Record)</b>	<b>Common Name and Address</b>	<b>Lessor Name</b>	<b>Lessor Contact Information</b>	<b>Purpose/Use</b>
Saks & Company LLC	Tanger Outlet Center Westgate 6800 N. 95th Avenue, Ste. 525 Glendale, AZ	OUTLETS AT WESTGATE, LLC	Outlets at Westgate, LLC  c/o Tanger Management, LLC  3200 Northline Avenue, Suite 360  Greensboro, North Carolina 27408  Attn: Legal Dept.	Saks Off Fifth Retail Location  (823)
Saks & Company LLC	Desert Hills Premium Outlets 48400 Seminole Drive Cabazon, CA	Premium Outlet Partners, L.P.	<b>Premium Outlet Partners, L.P.</b>  c/o Simon Property Group, Inc.  225 West Washington Street  Indianapolis, Indiana 46204  Attn: Premium Outlets  <b>Premium Outlet Partners, L.P.</b>  c/o Simon Premium Outlets  60 Columbia Turnpike  Building B, 3rd Floor  Morristown, NJ 07960  Attn: Lease Services	Saks Off Fifth Retail Location  (707)
Saks & Company LLC	Camarillo Premium Outlets 740 Ventura Blvd. Camarillo, CA	Premium Outlet Partners, L.P.	<b>Premium Outlet Partners, L.P.</b>  c/o Simon Property Group, Inc.  225 West Washington Street	Saks Off Fifth Retail Location  (754)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			<p>Indianapolis, Indiana 46204</p> <p>Attn: Premium Outlets</p> <p><b>Premium Outlet Partners, L.P.</b></p> <p>c/o Simon Premium Outlets</p> <p>60 Columbia Turnpike</p> <p>Building B, 3rd Floor</p> <p>Morristown, NJ 07960</p> <p>Attn: Lease Services</p>	
Saks & Company LLC	<p>Cerritos Best Plaza</p> <p>11113 E. 183<sup>rd</sup> Street</p> <p>Cerritos, CA</p>	<p>Cerritos Retail</p> <p>Centercal, LLC</p>	<p><b>Cerritos Retail Centercal, LLC</b></p> <p>c/oCenterCal Properties, L.L.C.</p> <p>1600 East Franklin Avenue</p> <p>El Segundo, CA 90245</p> <p>Attn: Jean Paul Wardy</p> <p><b>Cerritos Retail CenterCal, LLC</b></p> <p>c/o CenterCal Properties, LLC</p> <p>1600 East Franklin Avenue</p> <p>El Segundo, CA 90245</p> <p>Attn: General Counsel</p>	<p>Saks Off Fifth</p> <p>Retail Location</p> <p>(831)</p>

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
Saks & Company LLC	Metro Pointe 901 S. Coast Drive, Suite 100 Costa Mesa, CA	METRO POINTE RETAIL ASSOCIATES II,	<b>Mr. Kevin P. Rather</b>  c/o Arnel Commercial Properties  949 South Coast Drive, Suite 600  Costa Mesa, California 92626  <b>CWCapital Asset Management LLC</b>  7501 Wisconsin Avenue, Suite 500 West  Bethesda, MD 20814  Attn: Legal Department	Saks Off Fifth Retail Location  (814)
Saks & Company LLC	Livermore Premium Outlets 2774 Paragon Outlets Dr. Livermore, CA	Livermore Premium Outlets, LLC	<b>Livermore Premium Outlets, LLC</b>  c/o Simon Property Group, Inc.  225 West Washington Street  Indianapolis, Indiana 46204  Attn: Premium Outlets  <b>Livermore Premium Outlets, LLC</b>  c/o Simon Premium Outlets  60 Columbia Turnpike  Building B, 3rd Floor  Morristown, NJ 07960  Attn: Lease Services	Saks Off Fifth Retail Location  (769)



Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
Saks & Company LLC	Woodland Hills 21500 Victory Blvd., Los Angeles, CA	Pacific/Youngman – Woodland Hills	<p><b>Pacific/Youngman-Woodland Hills</b></p> <p>One Corporate Plaza, Suite 200</p> <p>Newport Beach, California 92660</p> <p>Attention: Dennis Berryman</p> <p><b>Pacific/Youngman-Woodland Hills</b></p> <p>P.O. Box 3060</p> <p>Newport Beach, California 92658</p> <p>Attention: Legal</p>	Saks Off Fifth Retail Location  (846)
Saks & Company LLC	Beverly Connection 100 N. La Cienega Blvd. W. Los Angeles, CA	Bevcon I, L.L.C.	<p><b>DK Connections LLC</b></p> <p>150 East 58th Street, 39th Floor New York, NY 10155</p> <p>Attn: Asset Manager</p> <p><b>DK Connections LLC</b></p> <p>c/o Jones Lang LaSalle Americas, Inc. 3344 Peachtree Road, Suite 1200</p> <p>Atlanta, GA 30326</p> <p>Attn: President &amp; CEO, Retail</p> <p><b>DK Connections LLC</b></p> <p>c/o Beverly Connection</p> <p>8489 W. 3rd Street #1007</p>	Saks Off Fifth Retail Location  (816)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			Los Angeles, CA 90048  Attn: General Manager	
Saks & Company LLC	The Great Mall 447 Great Mall Dr. Milpitas, CA	Milpitas Mills Limited Partnership	<b>Milpitas Mills Limited Partnership</b>  c/o Simon Property Group, Inc.  225 West Washington Street  Indianapolis, IN 46204  Attn: General Counsel  <b>Milpitas Mills Limited Partnership</b>  c/o M.S. Management Associates Inc.  /o Simon Property Group, Inc.  225 West Washington Street  Indianapolis, IN 46204  Attn: General Counsel	Saks Off Fifth Retail Location  (749)
Saks & Company LLC	Ontario Mills 1 Mills Circle Ontario, CA	Ontario Mills Limited Partnership	<b>Ontario Mills Limited Partnership &amp; Ontario Mills Limited Partnership</b>  c/o Simon Property Group, Inc.  225 West Washington Street  Indianapolis, IN 46204  Attn: General Counsel	Saks Off Fifth Retail Location  (778)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
Saks & Company LLC	The Outlets at Orange 20 City Blvd W. Orange, CA	Orange City Mills Limited Partnership	<p><b>Orange City Mills Limited Partnership &amp; Orange City Mills Limited Partnership</b></p> <p>c/o M.S. Management Associates Inc.</p> <p>/o Simon Property Group, Inc.</p> <p>225 West Washington Street</p> <p>Indianapolis, IN 46204</p> <p>Attn: General Counsel</p> <p><b>Orange City Mills Limited Partnership</b></p> <p>c/o Simon Property Group, Inc.</p> <p>225 West Washington Street</p> <p>Indianapolis, IN 46204</p> <p>Attn: General Counsel</p>	Saks Off Fifth Retail Location  (713)
Saks & Company LLC	El Paseo Square 73-411 Highway 111, Suite 1 Palm Desert, CA	El Paseo, L.L.C.	<p><b>El Paseo, L.L.C.</b></p> <p>c/o Allied District Properties</p> <p>180 N. Stetson, Suite 3240</p> <p>Chicago, IL 60601</p> <p>Attn: Cathy Green</p> <p><b>Fox, Swible, Levin &amp; Carroll, LLP</b></p> <p>200 W. Madison Street, Suite 3000</p>	Saks Off Fifth Retail Location  (848)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			Chicago, Illinois 60606  Attn: Laurie A. Levin	
Saks & Company LLC	Petaluma Village Premium Outlets 2200 Petaluma Dr. Petaluma, CA	Premium Outlet Partners, L.P.	<b>Premium Outlet Partners, L.P</b>  c/o Simon Property Group, Inc.  225 West  Washington Street  Indianapolis, IN 46204  Attention: Premium Outlets  &  c/o Simon Premium Outlets  60 Columbia Turnpike  Building B, 3rd Floor  Morristown, NJ 07960  Attn: Lease Services	Saks Off Fifth Retail Location  (752)
Saks & Company LLC	Creekside Town Centre 1252 Galleria Blvd. Roseville, CA	CPT CREEKSIDE TOWN CENTER, LLC	<b>CPT Creekside Town Center, LLC</b>  c/o AEW Capital Management  Two Seaport Land  Boston, MA 02210  Attn: Asset Management and General	Saks Off Fifth Retail Location  (822)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			Counsel	
Saks & Company LLC	Carmel Mountain Plaza 11602-12174 Carmel Mountain Rd. San Diego, CA	CARMEL MOUNTAIN PAD, LLC	Carmel Mountain PAD, LLC c/o American Assets Trust Management, LLC, as agent  11455 El Camino Real, Suite 200  San Diego, CA 92130  Attn: Leasing	Saks Off Fifth Retail Location  (813)
Saks & Company LLC	Park in the Valley 1750 Camino de la Reina San Diego, CA	PITV, LP	PITV, LP c/o Sunbelt Management Company  8095 Othello Avenue  San Diego, CA 92111  Attention Legal Department	Saks Off Fifth Retail Location  (701)
Saks & Company LLC	Freestanding 901 Market St. San Francisco, CA	HUDSON 901 MARKET, LLC	<b>Hudson Pacific Properties, Inc.</b> 11601 Wilshire Boulevard, Suite 600  Los Angeles, California 90025  Attention: Mr. Arthur X. Suazo  <b>As Agent for Hudson LLC.</b>  901 Market Street, Suite 480	Saks Off Fifth Retail Location  (818)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			San Francisco, California 94103  Attention: Shelly Orlando, RPA	
Saks & Company LLC	The Nut Tree Shopping Center 1680 E. Monte Vista Avenue Vacaville, CA	Del Medio Vacaville, LLC	<b>Del Medio Vacaville, LLC</b>  5667 Brookhurst Court  San Jose, CA 95129  Attn: Lauralon S. Johnson	Saks Off Fifth Retail Location  (830)
Saks Fifth Avenue LLC	Clinton Crossings Premium Outlets 20 Killingworth Turnpike Clinton, CT		<b>Premium Outlet Partners, L.P</b>  c/o Simon Property Group, Inc.  225 West Washington Street  Indianapolis, IN 46204  Attention: Lease Services  <b>Premium Outlet Partners, L.P</b>  c/o Simon Premium Outlets  60 Columbia Turnpike  Building B, 3rd Floor  Morristown, NJ 07960  Attn: Lease Services	Saks Off Fifth Retail Location  (773)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
Saks Fifth Avenue LLC	Stamford Town Center 140 Atlantic Street, Stamford CT	Rich-Taubman Associates	<b>Rich-Taubman Associates</b>  c/o The Taubman Company  200 East Long Lake Road, Suite 300  Bloomfield Hills, Michigan 48304  Attention: Chris B. Heaphy, Esquire  <b>Honigman Miller Schwartz and Cohn LLP</b>  39400 Woodward Avenue, Suite 101  Bloomfield Hills, Michigan 48304-5151  Attention: Richard J. Burstein, Esquire	Saks Off Fifth Retail Location  (824)
Saks Fifth Avenue LLC	The Corbin Collection 1445 New Britain Avenue West Hartford, CT	SF WH Property Owner LLC	<b>SF WH Property Owner LLC</b>  <b>c/o Seritage Growth Properties</b>  500 Fifth Avenue, Suite 1530  New York, NY 10110  Attn: Executive Vice President, Operations & Leasing  <b>SF WH Property Owner LLC</b>  <b>c/o Seritage Growth Properties</b>  500 Fifth Avenue, Suite 1530  New York, NY 10110  Attn: Executive Vice President, General	Saks Off Fifth Retail Location  (412)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			Counsel	
Saks & Company LLC	Christiana Fashion Center 2300 Fashion Center Blvd. Newark, DE	Christiana Fashion Center, LLC	<b>Christiana Fashion Center, LLC</b>  4737 Concord Pike  Wilmington, DE 19803  Attn: Vice President of Real Estate  <b>Christiana Fashion Center, LLC</b>  4737 Concord Pike  Wilmington, DE 19803  Attn: Manager	Saks Off Fifth Retail Location  (829)
Saks Fifth Avenue LLC	Washington, D.C. 555 12 <sup>th</sup> Street, N.W. Washington, District of Columbia	555 12 <sup>th</sup> REIT, LLC	<b>555 12<sup>th</sup> REIT, LLC</b>  600 13 <sup>th</sup> Street NW, Suite 700  Washington, D.C. 20005  Attn: Director, Equity Investments – REI  <b>555 12<sup>th</sup> REIT, LLC</b>  10 Park Avenue  P.O. Box 1902  Morristown, NJ 07962  Attn: Associate General Counsel – Real	Saks Off Fifth Retail Location  (845)



<b>Company (Entity of Record)</b>	<b>Common Name and Address</b>	<b>Lessor Name</b>	<b>Lessor Contact Information</b>	<b>Purpose/Use</b>
			Estate Investments Legal	
Saks & Company LLC	Town Center Aventura 18711 Northeast Biscayne Boulevard Aventura, FL	Aventura Fashion Island, L.P	<b>Aventura Fashion Island, L.P</b>  c/o Turnberry Associates  19501 Biscayne Blvd Suite 400  Aventura, FL 33180  Attn: Legal Dept./Leasing Attorney	Saks Off Fifth Retail Location  (714)
Saks & Company LLC	Somerset Shoppes 8903 Glades Rd. Boca Raton, FL	Somerset Shoppes FLA, LLC	<b>Somerset Shoppes FLA, LLC</b>  c/o The Roberts Organization  4 E. 80th Street  New York, New York 10075  Attention: Property Management	Saks Off Fifth Retail Location  (817)
Saks & Company LLC	Silver Sands Premium Outlets 10562 Emerald Coast Prky. Destin, FL	Silver Sands GLI, LLC	<b>Silver Sands GLI, LLC</b>  c/o Simon Property Group, Inc.  225 West Washington Street  Indianapolis, Indiana 46204  Attn: Premium Outlets  <b>Silver Sands GLI, LLC</b>  c/o Simon Premium Outlets	Saks Off Fifth Retail Location  (731)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			60 Columbia Turnpike  Building B, 3rd Floor  Morristown, NJ 07960  Attn: Lease Services	
Saks & Company LLC	Ellenton Premium Outlets 5461 Factory Shops Blvd. Ellenton (Tampa), FL	Gulf Coast Factory Shops Limited Partnership	<b>Gulf Coast Factory Shops Limited Partnership</b>  c/o Simon Property Group, Inc.  225 West Washington Street  Indianapolis, Indiana 46204  Attn: Premium Outlets  <b>Gulf Coast Factory Shops Limited Partnership</b>  c/o Simon Premium Outlets  60 Columbia Turnpike  Building B, Td Floor  Morristown, NJ 07960  Attn: Lease Services	Saks Off Fifth Retail Location  (725)
Saks Fifth Avenue LLC	Miromar Outlets 10801 Corkscrew Rd. Estero (Naples), FL	Miromar Outlet West, LLC	<b>Miromar Outlet West, LLC</b>  10801 Corkscrew Road  Suite 305	Saks Off Fifth Retail Location  (723)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			<p>Estero, FL 33928</p> <p>Attention: Office of General Counsel</p>	
Saks & Company LLC	<p>Tampa Premium Outlets</p> <p>2416 Grand Cypress Gulch Drive</p> <p>Lutz, FL</p>	Tampa Premium Outlets, LLC	<p><b>Tampa Premium Outlets, LLC</b></p> <p>c/o Simon Property Group, Inc.</p> <p>225 West Washington Street</p> <p>Indianapolis, Indiana 46204</p> <p>Attn: Premium Outlets</p> <p><b>Tampa Premium Outlets, LLC</b></p> <p>c/o Simon Premium Outlets</p> <p>60 Columbia Turnpike</p> <p>Building B, 3rd Floor</p> <p>Morristown, NJ 07960</p> <p>Attn: Lease Services</p>	<p>Saks Off Fifth Retail Location</p> <p>(828)</p>
Saks Fifth Avenue LLC	<p>Dolphin Mall</p> <p>11401 NW 12th St.</p> <p>Miami, FL</p>	Dolphin Mall Associates LLC	<p><b>Dolphin Mall Associates LLC</b></p> <p>c/o The Taubman Company</p> <p>200 East Long Lake Road, Suite 300</p> <p>Bloomfield Hills, Michigan 48304</p> <p>Attn: Chris B. Heaphy, Esquire</p> <p><b>Dolphin Mall Associates Limited</b></p>	<p>Saks Off Fifth Retail Location</p> <p>(718)</p>

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			<p align="center"><b>Partnership</b></p> <p align="center">c/o Premium Outlets I Simon</p> <p align="center">105 Eisenhower Parkway,</p> <p align="center">Roseland, NJ 07068</p> <p align="center">Attn: Lease Services</p>	
Saks & Company LLC	Orlando Premium Outlets 4953 International Drive Orlando, FL	Orlando Outlet Owner LLC	<p align="center"><b>Orlando Outlet Owner LLC</b></p> <p align="center">c/o Simon Property Group, Inc.</p> <p align="center">225 West Washington Street</p> <p align="center">Indianapolis, Indiana 46204</p> <p align="center">Attn: Premium Outlets</p> <p align="center"><b>Orlando Outlet Owner LLC</b></p> <p align="center">c/o Simon Premium Outlets</p> <p align="center">60 Columbia Turnpike</p> <p align="center">Building B, 3rd Floor</p> <p align="center">Morristown, NJ 07960</p> <p align="center">Attn: Lease Services</p>	Saks Off Fifth Retail Location (747)
Saks & Company LLC	Park Shore Shopping Center 4141 Tamiami Trail N Naples, FL	Brixmor Park Shore SC LLC	<p align="center"><b>Brixmor Park Shore SC LLC</b></p> <p align="center">c/o Brixmor Property Group</p> <p align="center">450 Lexington Avenue, Floor 13</p>	Saks Fifth Avenue Retail Location (401)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			New York, New York 10017  Attn: General Counsel  <b>Brixmor Park Shore SC LLC</b>  c/o Brixmor Property Group  1003 Holcomb Woods Parkway  Roswell, GA 30076  Attn: Vice President of Legal Services	
Saks & Company LLC	St. Augustine Prime Outlets 494 Prime Outlet Blvd. St. Augustine, FL	LVP St. Augustine Outlets LLC	<b>LVP St. Augustine Outlets LLC</b>  c/o Simon Premium Outlets  60 Columbia Turnpike  Building B, 3rd Floor  Morristown, NJ 07960  Attn: Lease Services  <b>LVP St. Augustine Outlets LLC</b>  c/o Simon Property Group, Inc.  225 West Washington Street  Indianapolis, IN 46204  Attn: Lease Services	Saks Off Fifth Retail Location  (737)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
Saks & Company LLC	Sawgrass Mills 12801 W. Sunrise Blvd. Sunrise, FL	Sunrise Mills (MLP), Limited Partnership	<b>Sunrise Mills (MLP), Limited Partnership</b>  c/o Simon Property Group, Inc.  225 West Washington Street  Indianapolis, IN 46204  Attn: Lease Services  <b>Sunrise Mills (MLP) Limited Partnership</b>  c/o M.S Management Associates, Inc.  /o Simon Property Group, Inc.  225 West Washington Street  Indianapolis, IN 46204  Attn: General Counsel	Saks Off Fifth Retail Location  (733)
Saks & Company LLC	Orlando Premium Outlets - Vineland 8200 Vineland Avenue Vineland, FL	Orlando Vineland Exchange, LLC	<b>Orlando Vineland Exchange, LLC</b>  c/o Simon Property Group, Inc.  225 West Washington Street  Indianapolis, Indiana 46204  Attn: Premium Outlets  <b>Orlando Vineland Exchange, LLC</b>  c/o Simon Premium Outlets  60 Columbia Turnpike	Saks Off Fifth Retail Location  (770)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			Building B, 3rd Floor  Morristown, NJ 07960  Attn: Lease Services	
Saks & Company LLC	Palm Beach Outlets 1801 Palm Beach Lakes Blvd. West Palm Beach, FL	Palm Beach Outlets I LLC	Palm Beach Outlets I LLC  c/o New England Development  75 Park Plaza  Boston MA, 02116  Attn: Diane MacMillan	Saks Off Fifth Retail Location  (735)
Saks Fifth Avenue LLC	Buckhead Station 1 Buckhead Loop Drive NE  Atlanta, GA	Equity One (Southeast Portfolio), Inc.	<b>Equity One (Southeast Portfolio) LLC</b>  c/o Regency Centers Corporation  One Independent Drive, Suite 114  Jacksonville, FL 32202-5019  Attn: Lease Administration  <b>Equity One (Southeast Portfolio) LLC</b>  c/o Regency Centers Corporation  One Independent Drive, Suite 114  Jacksonville, FL 32202-5019  Attn: Legal Department  <b>Regency Centers Corporation</b>	Saks Off Fifth Retail Location  (842)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			3715 Northside Parkway NW, Building 400, Suite 400  Atlanta, GA 30327  Attn: Property Management	
Saks Fifth Avenue LLC	North Georgia Premium Outlets 800 Highway 400 S. Dawsonville, GA		<b>Premium Outlet Partners, L.P.</b>  c/o Simon Premium Outlets  60 Columbia Road, Building B, 3 <sup>rd</sup> Fl.  Morristown, NJ 07960  Attention: Matthew J. Broas  Senior Vice President & Leasing Counsel  <b>Premium Outlet Partners, L.P.</b>  c/o Simon Property Group  225 West Washington Street  Indianapolis, IN 46204  Attn: Lease Services	Saks Off Fifth Retail Location  (762)
Saks Fifth Avenue LLC	Sugarloaf Mills 5900 Sugarloaf Parkway Lawrenceville, GA	Sugarloaf Mills, LP	<b>Sugarloaf Mills, LP</b>  c/o Simon Property Group  225 West Washington Street  Indianapolis, IN 46204	Saks Off Fifth Retail Location  (726)



Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			Attn: Lease Services  &  c/o Simon Premium Outlets  60 Columbia Turnpike  Building B, 3rd Floor  Morristown, NJ 07960  Attn: Lease Services	
Saks Fifth Avenue LLC	Outlet Shoppes of Atlanta at Woodstock 15 Ridgewalk Parkway Woodstock, GA	Atlanta Outlet Shoppes, LLC	<b>Atlanta Outlet Shoppes, LLC</b> c/o Horizon Group Properties, LP  5000 Hakes Drive, Suite 500  Muskegon, MI 49441  Atlanta Outlet Shoppes, LLC  Attn: David Percy  <b>Atlanta Outlet Shoppes, LLC</b> c/o CBL & Associates Management Inc.  CBL Center, Suite 500  2030 Hamilton Place Blvd  Chattanooga, TN 37421  Attn: General Counsel	Saks Off Fifth Retail Location (719)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
Saks Fifth Avenue LLC	Ala Moana Center 1450 Ala Moana Blvd. Honolulu, HI	GGP Kapiolani Development L.L.C.	<b>GGP Kapiolani Development L.L.C</b>  c/o Ala Moana Center  110 N. Wacker Drive  Chicago, IL 60606  Attn: Lease/Legal Administration Department  <b>Ala Moana Center</b>  1450 Ala Moana Boulevard, Suite 1290  Honolulu, HI 96814  Attn : General Manager	Saks Fifth Avenue Retail Location  (403)
Saks Fifth Avenue LLC	Waialele Premium Outlets 94-800 Lumina St. Waipahu, HI	Premium Outlet Partners, L.P.	<b>Premium Outlet Partners, L.P.</b>  c/o Simon Property Group, Inc.  225 West Washington Street  Indianapolis, Indiana 46204  Attn: Premium Outlets  <b>Premium Outlet Partners, L.P.,</b>  c/o Simon Premium Outlets  60 Columbia Turnpike  Building B, 3rd Floor  Morristown, NJ 07960	Saks Off Fifth Retail Location  (750)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			Attn: Lease Services	
Saks & Company LLC	Village Square 127 Skokie Blvd. Northbrook, IL	Northbrook SUB, LLC  Northbrook PLIC, LLC  Northbrook VNBP, LLC	<b>Northbrook SUB, LLC</b>  c/o Mid-America Asset Management, Inc.  1 Parkview Plaza, 9th Floor  Oakbrook Terrace, IL 60181  Attn: Property Mgr.-Village Square of Northbrook	Saks Off Fifth Retail Location  (780)
Saks & Company LLC	Fashion Outlets of Chicago 5220 Fashion Outlets Way Rosemont, IL	Fashion Outlets of Chicago, LLC	<b>Fashion Outlets of Chicago, LLC</b>  AWE Talisman  355 Alhambra Circle, Suite 1250  Coral Gables, FL 33146  Attn: James Schlesinger, President  <b>Fashion Outlets of Chicago, LLC</b>  c/o Robert W. Claeson, Esq.  Akerman Senterfitt, LLP  666 Fifth Avenue  New York, NY 10017  <b>Fashion Outlets of Chicago, LLC</b>	Saks Off Fifth Retail Location  (756)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			c/o MaceRich  11411 N. Tatum Blvd.  Phoenix, AZ 85028	
Saks & Company LLC	Chicago Premium Outlets 1650 Premium Outlet Blvd. Chicago, IL	CHICAGO PREMIUM OUTLETS, LLC,	<b>Chicago Premium Outlets, LLC</b>  c/o Simon Property  225 West Washington Street, Indianapolis, IN  46204-3438 USA  Attn: Premium Outlet  &  c/o Simon Premium Outlets  60 Columbia Turnpike  Building B, 3rd Floor  Morristown, NJ 07960  Attn: Lease Services	Saks Off Fifth Retail Location  (825)
Saks & Company LLC	New City Center 1457 North Halstead St.  Chicago (Lincoln Park), IL	1515 N. Halsted LLC	<b>1515 N. Halsted LLC</b>  c/o Bucksbaum Retail Properties  71 South Wacker Drive, Suite 2130  Chicago, IL 60606  <b>Honigman Miller Schwartz and Cohn LLP</b>	Saks Off Fifth Retail Location  (850)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			39400 Woodward Avenue, Suite 101  Bloomfield Hills, MI 48304  Attn: Richard J. Burstein	
Saks Fifth Avenue LLC	The Outlet Shoppes of Bluegrass 1155 Buck Creek Road Simpsonville, KY	Louisville Outlet Shoppes LLC	<b>Simon/Woodmont Development, LLC</b>  c/o Premium Outlets - Simon  105 Eisenhower Parkway  Roseland, NJ 07068  Attn: Lease Services  <b>Bluegrass Outlet Shops CMBS, LLC</b>  c/o Horizon Properties, L.P.  500 Hakes Drive, Ste. 500 Muskegon, MI 49441	Saks Off Fifth Retail Location (811)
Saks Fifth Avenue LLC	Assembly Row 34 Sturtevant St Somerville, MA	Street Realty, Inc.	<b>Street Realty, Inc.</b>  c/o Federal Realty Investment Trust  1626 East Jefferson Street  Rockville, MD 20852-4041  Attn: Legal Dept  <b>Coniston &amp; Storrs</b>  400 Atlantic Avenue	Saks Off Fifth Retail Location (807)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			Boston, MA 02110-3333  Attn: Assembly Row	
Saks Fifth Avenue LLC	Wrentham Village Premium Outlets 1048 South Street Wrentham, MA	Premium Outlet Partners, L.P.	<b>Premium Outlet Partners, L.P.</b>  c/o Simon Premium Outlets  60 Columbia Turnpike  Building B, 3rd Floor  Morristown, NJ 07960  Attn: Lease Services  <b>Premium Outlet Partners, L.P.</b>  c/o Simon Property Group  225 West Washington Street  Indianapolis, IN 46204  Attn: Lease Services	Saks Off Fifth Retail Location  (706)
Saks & Company LLC	Clarksburg Premium Outlets  22593 Clarksburg Road  Clarksburg, MD	Simon/Clarksburg Development, LLC	<b>Simon/Clarksburg Development, LLC</b>  c/o Simon Premium Outlets  60 Columbia Turnpike  Building B, 3rd Floor  Morristown, NJ 07960  Attn: Lease Services	Saks Off Fifth Retail Location  (852)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			<b>Simon/Clarksburg Development, LLC</b>  c/o Simon Property Group  225 West Washington Street  Indianapolis, IN 46204  Attn: Lease Services	
Saks & Company LLC	Arundel Mills 7000 Arundel Mills Circle Hanover, MD	Arundel Mills, LP	<b>Arundel Mills, LP</b>  c/o Simon Property Group, Inc.  225 West Washington Street  Indianapolis, IN 46204  Attn: General Counsel  <b>Arundel Mills, LP</b>  <b>M.S. Management Associates, Inc.</b>  c/o M.S Management Associates, Inc.  /o Simon Property Group, Inc.  225 West Washington Street  Indianapolis, IN 46204  Attn: General Counsel	Saks Off Fifth Retail Location  (722)
Saks & Company LLC	Congressional Plaza 1626 E. Jefferson Street, Space # 4 & 4A	Congressional Plaza Associates, LLC	<b>Congressional Plaza Associates, LLC</b>  c/o Federal Realty Investment Trust	Saks Off Fifth Retail Location  (851)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
	Rockville, MD		1626 East Jefferson Street  Rockville, MD 20852-4041  Attn: Legal Department  <b>Congressional Plaza Associates, LLC</b>  c/o Federal Realty Investment Trust  6110 Executive Boulevard, 8 <sup>th</sup> Floor  Rockville, MD 20852  Attn: Senior Vice President – Legal Operations	
Saks Fifth Avenue LLC	Hunter's Square 31005 Orchard Lake Rd Farmington Hills, MI 48334	RPT Realty L.P.	<b>RPT Realty L.P.</b>  20750 Civic Center Drive, Suite 310  Southfield, MI 48076  <b>Honigman, Miller, Schwartz and Cohn</b>  Attn: Richard Burstein  39400 Woodward Ave., Suite 101  Bloomfield Hills, MI 48304	Saks Off Fifth Retail Location  (837)
Saks & Company LLC	Twin Cities Premium Outlets 3885 Eagan Outlets	Twin Cities Outlets Eagan LLC	<b>Twin Cities Outlets Eagan LLC</b>	Saks Off Fifth Retail Location



<b>Company (Entity of Record)</b>	<b>Common Name and Address</b>	<b>Lessor Name</b>	<b>Lessor Contact Information</b>	<b>Purpose/Use</b>
	Parkway Eagan, MN		c/o Paragon Outlet Partners LLC  217 East Redwood Street, 21 <sup>st</sup> Floor  Baltimore, Maryland 21202  Attention: Office of the General Counsel  <b>Paragon Outlets Eagan LLC</b>  c/o The Lightstone Group  1985 Cedar Bridge Avenue, Suite 1  Lakewood, New Jersey 08701  Attn: Lease Administration	(810)
Saks & Company LLC	Minneapolis City Center  600 Nicollet Mall  Minneapolis, MN	City Center 33 South Property LLC	<b>City Center 33 South Property LLC</b>  600 Nicollet Mall, Suite 312  Minneapolis, MN 55402  Attn: Property Manager	Saks Off Fifth Retail Location  (840)
Saks Fifth Avenue LLC	St. Louis Premium Outlets 18521 Outlet Blvd. St. Louis, MO	Simon/Woodmont Development, LLC	<b>Simon/Woodmont Development, LLC</b>  c/o Premium Outlets I Simon  c/o Simon Premium Outlets  60 Columbia Turnpike  Building B, 3rd Floor  Morristown, NJ 07960	Saks Off Fifth Retail Location  (753)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			<p>Attn: Lease Services</p> <p><b>Simon/Woodmont Development, LLC</b></p> <p>c/o Simon Property Group</p> <p>225 West Washington Street</p> <p>Indianapolis, IN 46204</p> <p>Attn: Lease Services</p>	
Saks Fifth Avenue LLC	<p>Charlotte Premium Outlets</p> <p>5404 New Fashion Way</p> <p>Charlotte, NC</p>	<p>Charlotte Outlets, LLC</p>	<p>Charlotte Outlets, LLC</p> <p>225 W. Washington Street</p> <p>Indianapolis, IN 46204</p> <p>Attn: General Counsel</p> <p>&amp;</p> <p>c/o Simon Premium Outlets</p> <p>60 Columbia Turnpike</p> <p>Building B, 3rd Floor</p> <p>Morristown, NJ 07960</p> <p>Attn: Lease Services</p>	<p>Saks Off Fifth Retail Location</p> <p>(808)</p>
Saks Fifth Avenue LLC	<p>Mebane Tanger Outlets</p> <p>4000 Arrowhead Blvd.</p> <p>Mebane, NC</p>	<p>Tanger Properties Limited Partnership</p>	<p>Tanger Management, LLC</p> <p>3200 Northline Avenue, Suite 360</p> <p>Greensboro, NC 27408</p>	<p>Saks Off Fifth Retail Location</p> <p>(774)</p>

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			Attn: Legal Department	
Saks Fifth Avenue LLC	Merrimack Premium Outlets 80 Premium Outlets Blvd. Merrimack, NH	Merrimack Premium Outlets, LLC	<b>Merrimack Premium Outlets, LLC</b>  c/o Simon Premium Outlets  60 Columbia Turnpike  Building B, 3rd Floor  Morristown, NJ 07960  Attn: Lease Services  <b>Merrimack Premium Outlets, LLC</b>  c/o Simon Property Group  225 West Washington Street  Indianapolis, IN 46204  Attn: Lease Services	Saks Off Fifth Retail Location  (744)
Saks & Company LLC	Chimney Rock Crossing  356 Chimney Rock Road  Bound Brook, NJ 08805	Bridgewater Regency LLC	<b>Bridgewater Regency LLC</b>  <b>c/o Regency Centers Corporation</b>  One Independent Drive, Suite 114  Jacksonville, FL 32202  Attn: Lease Administration  <b>Bridgewater Regency LLC</b>	Saks Off Fifth Retail Location  (414)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			<p><b>c/o Regency Centers Corporation</b></p> <p>One Independent Drive, Suite 114</p> <p>Jacksonville, FL 32202</p> <p>Attn: Legal Department</p> <p><b>Bridgewater Regency LLC</b></p> <p><b>c/o Regency Centers Corporation</b></p> <p>Four Radnor Corporate Center</p> <p>100 Matsonford Road, Suite 510</p> <p>Radnor, PA 19087</p>	
Saks & Company LLC	Jersey Gardens Mall 651 Kapkowski Rd. Elizabeth, NJ	JG ELIZABETH II, LLC,	<p><b>JG Elizabeth II, LLC</b></p> <p>c/o M.S. Management Associates Inc.</p> <p>/o Simon Property Group, Inc.</p> <p>225 West Washington Street</p> <p>Indianapolis, IN 46204</p> <p>Attn: General Counsel</p> <p><b>JG Elizabeth II, LLC</b></p> <p>225 West Washington St. Indianapolis, IN</p> <p>46204-3438</p>	Saks Off Fifth Retail Location (715)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
Saks & Company LLC	Hanover Commons Shopping Center 200 State Route 10 West, Suite 10 East Hanover, NJ	Hanover UE LLC	<p><b>Hanover UE LLC</b></p> <p>c/o Urban Edge Properties</p> <p>210 Route 4 East</p> <p>Paramus, NJ 07652</p> <p>Attn: Chief Operating Officer</p> <p><b>Hanover UE LLC</b></p> <p>c/o Urban Edge Properties</p> <p>210 Route 4 East</p> <p>Paramus, NJ 07652</p> <p>Attn: Legal Department</p>	Saks Off Fifth Retail Location (406)
Saks & Company LLC	120 Bergen Town Center Paramus, NJ	UE Bergen Mall Owner, LLC	<p><b>UE Bergen Mall Owner, LLC</b></p> <p>210 Route 4 East</p> <p>Paramus, New Jersey 07652</p> <p>Attn: Urban Edge Properties</p> <p>COO c/o UE Bergen Mall Owner LLC</p> <p><b>UE Bergen Mall Owner, LLC</b></p> <p>210 Route 4 East</p> <p>Paramus, New Jersey 07652</p> <p>Attn: COO c/o UE Bergen Mall Owner LLC</p>	Saks Off Fifth Retail Location (712)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			Legal Dept.	
Saks & Company LLC	Las Vegas Town Square 6605 Las Vegas Blvd. South Las Vegas, NV	SRMF Town Square LLC	<b>SRMF Town Square LLC</b>  c/o Fairbourne Properties, LLC  6605 Las Vegas Blvd., South, Suite 201  Las Vegas, Nevada 89119  <b>SRMF Town Square LLC</b>  c/o Fairbourne Properties, LLC  1 East Wacker Drive, Suite 2900  Chicago, IL 60601  Attn: George Manojlovic	Saks Off Fifth Retail Location  (821) (South)
Saks & Company LLC	Las Vegas Premium Outlets 875 S. Grand Central Hwy Las Vegas, NV	Simon/Chelsea Las Vegas Development, LLC	<b>Simon/Chelsea Las Vegas Development,</b> <b>LLC</b>  c/o Simon Property Group, Inc.  225 West Washington Street,  Indianapolis, IN 46204-3438 Attn: Premium Outlet  &  c/o Simon Premium Outlets	Saks Off Fifth Retail Location  (820) (North)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			60 Columbia Turnpike  Building B, 3rd Floor  Morristown, NJ 07960  Attn: Lease Services	
Saks & Company LLC	Bay Plaza 290 Baychester Avenue Bronx, NY	B&N 2-Bay Plaza, LLC	<b>B&amp;N2-Bay Plaza, LLC</b> c/o Prestige Properties & Development Co., Inc.  546 Fifth Avenue, 15 <sup>th</sup> Floor  New York, NY 10036  Attn: Chairman  <b>Ruskin Moscou Faltischek P.C.</b>  1425 RXR Plaza  Uniondale, NY 11556-1425  Attn: Jerry Siegelman, Esq.	Saks Off Fifth Retail Location (410)
Saks & Company, LLC	Liberty View Industrial Plaza 850 Third Avenue Brooklyn, NY	Salmar Properties, LLC	<b>Salmar Properties, LLC</b>  850 Third Avenue  Brooklyn, NY  Attn: Mr. Marvin Schein	Saks Off Fifth Retail Location (843)

<b>Company (Entity of Record)</b>	<b>Common Name and Address</b>	<b>Lessor Name</b>	<b>Lessor Contact Information</b>	<b>Purpose/Use</b>
Saks & Company LLC	Woodbury Commons Premium Outlets 498 Red Apple Court Central Valley, NY	Premium Outlet Partners L.P.	<b>Premium Outlet Partners L.P.</b>  c/o Simon Premium Outlets  60 Columbia Turnpike  Building B, 3rd Floor  Morristown, NJ 07960  Attn: Lease Services  <b>Premium Outlet Partners L.P.</b>  c/o Simon Property Group, Inc.  225 West Washington Street  Indianapolis, IN 46204  Attn: Lease Services	Saks Off Fifth Retail Location  (709)
Saks & Company LLC	The Arches at Deer Park 455 Commack Rd. Deer Park, NY	Tanger Outlets Deer Park, LLC	<b>Tanger Management, LLC</b>  3200 Northline Avenue, Suite 360  Greensboro, North Carolina 27408  Attn: Legal Department	Saks Off Fifth Retail Location  (734)
Saks & Company LLC	Gallery @ Westbury Plaza 1070 Old Country Rd. Garden City, NY	Equity One (Northeast Portfolio), LLC	Equity One (Northeast Portfolio), LLC  150 Monument Road Suite 406  Bala Cynwyd, PA 19004  Attn: Property Manager	Saks Off Fifth Retail Location  (776)



Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			c/o Regency Centers Corporation One Independent Drive, Suite 114  Jacksonville, FL 32202-5019  Attn: Lease Administration & Legal Dept.	
Saks & Company LLC	125 East 57 <sup>th</sup> Street, Floor 1 and 2  New York, NY	135 East 57 <sup>th</sup> Street LLC	135 East 57 <sup>th</sup> Street LLC  750 Lexington Avenue, 28 <sup>th</sup> Floor,  New York, New York 10022	Saks Off Fifth Retail Location  (402)
Saks & Company LLC	Niagara Fashion Outlets 1900 Military Rd. Niagara Falls, NY	Macerich Property Management Company, LLC	<b>Macerich Property Management Company, LLC</b>  c/o Fashion Outlets of Niagara Falls  Attn: Center Manager  1900 Military Road  Niagara Falls, NY 14304  <b>Fashion Outlets II LLC</b>  Attn: Legal Counsel — Fashion Outlets of Niagara  401 Wilshire Boulevard, Suite 700  Santa Monica, CA 90401	Saks Off Fifth Retail Location  (767)
Saks & Company LLC	Riverhead Tanger Outlets 200 Tanger Mall Dr. Riverhead, NY	Tanger Properties Limited Partnership	Tanger Management, LLC  3200 Northline Avenue, Suite 360	Saks Off Fifth Retail Location  (779)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			Greensboro, North Carolina 27408  Attn: Legal Department	
Saks & Company LLC	White Plains Shopping Center 29 Tarrytown Rd. White Plains, NY	White Plains Shopping Center Associates, LLC	White Plains Shopping Center Associates, LLC  c/o Robert Orlofsky Realty, Inc.  7 Bryant Crescent, #1-C  White Plains, New York 10605 Attention: Robert Orlofsky  <b>Peck &amp; Heller</b>  805 Third Avenue, Ninth Floor  New York, New York 10022  Attention: Nancy R. Heller, Esq.	Saks Off Fifth Retail Location  (819)
Saks & Company LLC	Aurora Farms Premium Outlets 549 S. Chillicothe Rd. Aurora, OH	Premium Outlet Partners, L.P.	<b>Premium Outlet Partners, L.P.</b>  c/o Simon Premium Outlets  60 Columbia Turnpike  Building B, 3rd Floor  Morristown, NJ 07960  Attn: Lease Services  <b>Premium Outlet Partners, L.P.</b>  c/o Simon Property Group	Saks Off Fifth Retail Location  (772)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			225 West Washington Street  Indianapolis, IN 46204  Attn: Lease Services	
Saks Fifth Avenue LLC	Cincinnati Premium Outlets 301 Premium Outlets Dr. Cincinnati, OH	Cincinnati Premium Outlets, LLC	<b>Cincinnati Premium Outlets, LLC</b>  c/o Simon Premium Outlets  60 Columbia Turnpike  Building B, 3rd Floor  Morristown, NJ 07960  Attn: Lease Services  <b>Cincinnati Premium Outlets, LLC</b>  c/o Simon Property Group  225 West Washington Street  Indianapolis, IN 46204  Attn: Lease Services	Saks Off Fifth Retail Location  (742)
Saks Fifth Avenue LLC	Easton Town Center 3940 Stelzer Rd. Columbus, OH	Easton Gateway LLC	Easton Gateway LLC  c/o Steiner + Associates  <b>Attn: Lease Administration</b>  4016 Townsfair Way, Suite 201  Columbus, Ohio 43219	Saks Off Fifth Retail Location  (809)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
Saks Fifth Avenue LLC	Bridgeport Village 7489 SW Bridgeport Rd. Tigard, OR	BV CenterCal, LLC	<p><b>BV CenterCal, LLC</b></p> <p>c/o Center Call Properties LLC</p> <p>1600 East Franklin Ave</p> <p>El Segundo, California 90245</p> <p>Attn: Jean Paul Wardy &amp;</p> <p>Attn: Property Accountant, General Counsel</p> <p>with a copy thereof to:</p> <p><b>Daspin &amp; Aument, LLP</b></p> <p>227 W. Monroe, Suite 3500</p> <p>Chicago, Illinois 60606</p> <p>Attention: James H. Marshall</p>	Saks Off Fifth Retail Location (782)
Saks & Company LLC	Overlook at King of Prussia 310 Goddard Boulevard King of Prussia, PA	DDRTC Overlook at King of Prussia, LLC	<p><b>DDRTC Overlook at King of Prussia LLC</b></p> <p>c/o DDR Corp.</p> <p>330 Enterprise Parkway</p> <p>Beachwood, OH 44122</p> <p>Attn: Executive Vice President of Leasing</p> <p><b>DDR Corp.</b></p> <p>330 Enterprise Parkway</p> <p>Beachwood, OH 44122</p>	Saks Off Fifth Retail Location (405)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			Attn: Vice President, General Counsel	
Saks & Company LLC	Franklin Mills 1455 Franklin Mills Circle Philadelphia, PA	Franklin Mills Associates, LP	<b>Franklin Mills Associates, LP</b>  c/o Simon Premium Outlets  60 Columbia Turnpike  Building B, 3rd Floor  Morristown, NJ 07960  Attn: Lease Services  <b>Franklin Mills Associates, LP</b>  c/o Simon Property Group, Inc.  225 West Washington Street  Indianapolis, IN 46204  Attn: Lease Services	Saks Off Fifth Retail Location  (759)
Saks & Company LLC	The Block Northway Mall  8001 McKnight Road  Pittsburgh, PA	LRC Northway Mall Acquisitions LLC	<b>LRC Northway Mall Acquisitions LLC</b>  1585 Frederick Blvd.  Akron, OH 44320  Attn: Frank Licata  <b>Daniel Daniluk, LLC</b>	Saks Off Fifth Retail Location  (853)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			1129 Niles-Cortland Road, SE  Warren, OH 44484  Attn: Daniel P. Daniluk, Esq.	
Saks & Company LLC	Metroplex Center 2400 Chemical Road Plymouth, PA	Metroplex West Associates, L.P.	<b>Metroplex West Associates, L.P.</b>  c/o The Goldenberg Group, Inc.  350 Sentry Parkway, Bldg. 630, Suite 300  Blue Bell, PA 19422  Attn: Kenneth N. Goldenberg  <b>Klehr Harrison Harvey Branzburg LLP</b>  1835 Market Street, Suite 1400  Philadelphia, PA 19103  Attn: Lee R. Sussman, Esq.	Saks Off Fifth Retail Location  (847)
Saks Fifth Avenue LLC	Tanger Outlets 2200 Tanger Blvd. Washington (Pittsburgh), PA	Tanger Properties Limited Partnership	Tanger Management, LLC  Attn: Legal Department  3200 Northline Avenue, Suite 360  Greensboro, NC 27408  Attention: Legal Department	Saks Off Fifth Retail Location  (781)
Saks Fifth Avenue LLC	Tanger Outlets 4840 Tanger Outlet Blvd. Charleston, SC	Tanger Properties Limited Partnership	Tanger Management, LLC  Attn: Legal Department	Saks Off Fifth Retail Location  (784)

<b>Company (Entity of Record)</b>	<b>Common Name and Address</b>	<b>Lessor Name</b>	<b>Lessor Contact Information</b>	<b>Purpose/Use</b>
			3200 Northline Avenue, Suite 360  Greensboro, NC 27408  Attention: Legal Department	
Saks Fifth Avenue LLC	Tanger Outlets 1414 Fording Island Rd. Hilton Head, SC	COROC/HILTON HEAD I L.L.C.,	Tanger Management, LLC  Attention: Legal Department,  3200 Northline Avenue,  Suite 360, Greensboro, North Carolina 27408	Saks Off Fifth Retail Location  (785)
Saks Fifth Avenue LLC	Opry Mills 247 Opry Mills Dr. Nashville, TN	Opry Mills Mall Limited Partnership	Opry Mills Mall Limited Partnership  c/o Simon Property Group  225 West Washington Street  Indianapolis, Indiana 46204  Attn: Lease Services	Saks Off Fifth Retail Location  (720)
Saks & Company LLC	Gateway Shopping Center 9503 Research Blvd.  Austin, TX	Gateway Square, LLC	<b>Gateway Square, LLC</b>  c/o WP Glimcher Inc.  180 East Broad Street  Columbus, OH 43215  Attn: General Counsel  <b>Gateway Square, LLC</b>  c/o WP Glimcher Inc.	Saks Off Fifth Retail Location  (826)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			180 East Broad Street Columbus, OH 43215 Attn: Property Management	
Saks & Company LLC	Houston Premium Outlets 29300 Hempstead Rd. Cypress, TX	SPG Houston Holdings, L.P.	<b>SPG Houston Holdings, L.P.</b> 225 West Washington Street Indianapolis, Indiana 46204 Attn: Premium Outlets  <b>SPG Houston Holdings, L.P.</b> c/o Simon Premium Outlets 60 Columbia Turnpike Building B, 3rd Floor Morristown, NJ 07960 Attn: Lease Services	Saks Off Fifth Retail Location (777)
Saks & Company LLC	Park Lane S/C 8040 Park Lane Dallas, TX	Northwood PL Holdings LLC	<b>Northwood PL Holdings LLC</b> 575 Fifth Avenue, 23m Floor New York, NY 10017 Attn: Erwin Aulis	Saks Off Fifth Retail Location (738)



Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			<b>Northwood PL Holdings LLC</b>  The Law Offices of David Skrilow  Attn: David Skrilow  551 Fifth Avenue, Suite 614  New York, NY 10176	
Saks & Company LLC	The Centre at Preston Ridge  3251 Preston Road, Suite 1400  Frisco, TX	BRE Retail Residual Owner 1 LLC	<b>BRE Retail Residual Owner 1</b>  c/o Brixmor Property Group  450 Lexington Avenue, Floor 13  New York, NY 10017  Attn: General Counsel  <b>BRE Retail Residual Owner 1</b>  c/o Brixmore Property Group  1525 Faraday Avenue, Suite 350  Carlsbad, CA 92008  Attn: Vice President of Legal Services	Saks Off Fifth Retail Location  (827)
Saks & Company LLC	Grand Prairie Premium Outlets 2950 W. Interstate 20 Grand Prairie, TX	Grand Prairie Premium Outlets, LLC	<b>Grand Prairie Premium Outlets, LLC</b>  c/o Simon Property Group, Inc.  225 West Washington Street  Indianapolis, Indiana 46204	Saks Off Fifth Retail Location  (765)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			<p>Attn: Premium Outlets</p> <p><b>Grand Prairie Premium Outlets, LLC</b></p> <p>c/o Simon Premium Outlets</p> <p>60 Columbia Turnpike</p> <p>Building B, 3<sup>rd</sup> Floor</p> <p>Morristown, NJ 07960</p> <p>Attn: Lease Services</p>	
Saks & Company LLC	Grapevine Mills 3000 Grapevine Mills Prky. Grapevine, TX	GRAPEVINE MILLS MALL LIMITED PARTNERSHIP	<p><b>Grapevine Mills Mall Limited Partnership</b></p> <p>c/o Simon Premium Outlets</p> <p>60 Columbia Turnpike</p> <p>Building B, 3rd Floor</p> <p>Morristown, NJ 07960</p> <p>Attn: Lease Services</p> <p><b>Grapevine Mills Mall Limited Partnership</b></p> <p>c/o Simon Property Group, Inc.</p> <p>225 West Washington Street</p> <p>Indianapolis, IN 46204</p> <p>Attn: Lease Services</p>	Saks Off Fifth Retail Location (705)

<b>Company (Entity of Record)</b>	<b>Common Name and Address</b>	<b>Lessor Name</b>	<b>Lessor Contact Information</b>	<b>Purpose/Use</b>
Saks & Company LLC	Katy Mills 5000 Katy Mills Circle Katy, TX	MALL AT KATY MILLS, L.P.	<b>Mall at Katy Mills, L.P.</b>  c/o Simon Property Group, Inc.  225 West Washington Street  Indianapolis, IN 46204  Attn: General Counsel  <b>Mall at Katy Mills L.P.</b>  c/o M.S. Management Associates Inc.  /o Simon Property Group, Inc.  225 West Washington Street  Indianapolis, IN 46204  Attn: General Counsel	Saks Off Fifth Retail Location  (717)
Saks & Company LLC	The Rim 5819 Worth Prky. San Antonio, TX	Hines Global REIT San Antonio Retail I LP	Hines Global REIT San Antonio Retail I LP  c/o The Rim Management  17503 La Cantera Parkway  Suite 104, Box 627  San Antonio, Texas 78257	Saks Off Fifth Retail Location  (739)
Saks & Company LLC	San Marcos Premium Outlets 3939 S. Route 35 San Marcos, TX	San Marcos Factory Stores, LTD	<b>San Marcos Factory Stores, Ltd.</b>  c/o Simon Property Group, Inc.  225 West Washington Street	Saks Off Fifth Retail Location  (746)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			<p>Indianapolis, Indiana 46204</p> <p>Attn: Premium Outlets</p> <p><b>San Marcos Factory Stores, Ltd.</b></p> <p>c/o Simon Premium Outlets</p> <p>60 Columbia Turnpike</p> <p>Building B, 3<sup>rd</sup> Floor</p> <p>Morristown, NJ 07960</p> <p>Attn: Lease Services</p>	
Saks & Company LLC	<p>Market at Town Center</p> <p>2745-C Town Center Blvd.</p> <p>Sugarland, TX</p>	Weingarten Realty Investors	<p>Weingarten Realty Investors</p> <p>2600 Citadel Plaza Drive, Suite 125</p> <p>Houston, TX 77008</p> <p>Attention: General Counsel</p>	<p>Saks Off Fifth Retail Location</p> <p>(771)</p>
Saks Fifth Avenue LLC	<p>Fair Lakes Shopping Center</p> <p>12995 Fair Lakes Shopping Center</p> <p>Fairfax, VA</p>	Fairfax Retail L.C.	<p><b>Fairfax Retail L.C.</b></p> <p>c/o The Peterson Companies L.C.</p> <p>12500 Fair Lakes Circle, Suite 400</p> <p>Fairfax, VA 22033</p> <p>Attn: Paul Weinschenk, President – Retail Division</p> <p><b>Fairfax Retail L.C.</b></p>	<p>Saks Off Fifth Retail Location</p> <p>(856)</p>

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			c/o The Peterson Companies L.C.  12500 Fair Lakes Circle, Suite 400  Fairfax, VA 22033  Attn : Garry L Witt, Esq., General Counsel - Retail	
Saks Fifth Avenue LLC	Springfield Town Center  6502 Springfield Mall  Springfield, VA	PR Springfield Town Center LLC	<b>PR Springfield Town Center LLC</b>  c/o PREIT Services, LLC  200 South Broad Street  The Bellevue, 3 <sup>rd</sup> Floor  Philadelphia, PA 19102  Attn: Vice President, Legal  <b>Springfield Town Center</b>  Management Office  6500 Springfield Mall  Springfield, VA 22150  Attn: General Manager  <b>Goulston &amp; Storrs PC</b>  885 Third Avenue, 18 <sup>th</sup> Floor  New York, NY 10022	Saks Off Fifth Retail Location  (849)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			Attn: David J. Rabinowitz, Esq.	
Saks Fifth Avenue LLC	Potomac Mills 2700 Potomac Mills Circle Woodbridge, VA	Mall at Potomac Mills, LLC	<b>Mall at Potomac Mills, LLC</b>  c/o Simon Property Group  225 West Washington Street  Indianapolis, IN 46204  Attn: General Counsel  <b>Mall at Potomac Mills, LLC</b>  c/o M.S. Management Associates, Inc.  /o Simon Property Group, Inc.  225 West Washington Street  Indianapolis, IN 46204  Attn: General Counsel	Saks Off Fifth Retail Location  (755)
Saks Fifth Avenue LLC	Westlake Center 400 Pine Street Seattle, WA	Westlake Center, LLC	<b>Westlake Center, LLC</b>  Westlake Center  350 N. Orleans St., Suite 300  Chicago, IL 60654-1607  Attn: Law/Lease Administration Department  <b>Westlake Center</b>	Saks Off Fifth Retail Location  (404)

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			1601 Fifth Ave, Suite 610  Seattle, WA 98101  Attn: General Manager	
Saks & Company LLC	Shrewsbury Plaza 260 Shrewsbury Plaza Shrewsbury, NJ (839)	SP 35 L.P.	SP 35 L.P.  c/o National Realty & Development Corp.  3 Manhattanville Road, Purchase, New York 10577	SOF Retail Location  (839)
Hudson's Bay Company	Eaton Centre 176 Yonge Street Toronto, ON	Ontrea Inc.	Ontrea Inc.  c/o Cadillac Fairview Corporation Limited  20 Queen Street West, Toronto, Ontario  M5H 3R4  Att: Executive VP National Operations	Saks Fifth Avenue
Hudson's Bay Company	Sherway Gardens 25 The West Mall Toronto, ON	Ontrea Inc.	Ontrea Inc.  c/o Cadillac Fairview Corporation Limited  20 Queen Street West, Toronto, Ontario  M5H 3R4  Att: Executive VP National Operations	Saks Fifth Avenue
Hudson's Bay Company	Chinook Centre Calgary, AB	Ontrea Inc.	Ontrea Inc.	Saks Fifth Avenue

<b>Company (Entity of Record)</b>	<b>Common Name and Address</b>	<b>Lessor Name</b>	<b>Lessor Contact Information</b>	<b>Purpose/Use</b>
			c/o Cadillac Fairview Corporation Limited  20 Queen Street West, Toronto, Ontario  M5H 3R4  Att: Executive VP National Operations	
Hudson's Bay Company	Tanger Outlet 8555 Campeau Drive Kanata, ON	Riocan Holdings (TJV) Inc. & 1633272 Alberta ULC.	Riocan Management Inc.  700 Lawrence Avenue West, suite 315  Toronto, Ontario M6A 3B4, Att: Danny Kissoon	Saks Off Fifth
Hudson's Bay Company	The Outlet Collection 300 Taylor Road Niagara-On-The-Lake, ON	The Outlet Collection (Niagara) Limited	The Outlet Collection (Niagara) Limited  c/o Ivanhoe Cambridge  95 Wellington Street west, Suite 300  Toronto, Ontario M5H 2Y4  Att: Legal Affairs	Saks Off Fifth
Hudson's Bay Company	Vaughan Mills 1 Bass Pro Mills Drive Vaughan, ON	Ivanhoe Cambridge II Inc.	Ivanhoe Cambridge II Inc.  c/o Ivanhoe Cambridge  95 Wellington Street west, Suite 300  Toronto, Ontario M5H 2Y4  Att: Legal Affairs	Saks Off Fifth



<b>Company (Entity of Record)</b>	<b>Common Name and Address</b>	<b>Lessor Name</b>	<b>Lessor Contact Information</b>	<b>Purpose/Use</b>
Hudson's Bay Company	Premium Outlets Halton Hills 13850 Steeles Avenue West Halton Hills, ON	Halton Hills Shopping Centre Partnership	Halton Hills Shopping Centre Partnership  c/o Simon Property Group- Premium Outlets  105 Eisenhower Parkway, 1 <sup>st</sup> floor  Roseland, NJ 07068  Att:Matthew Broas,SVP and Legal Counsel	Saks Off Fifth
Hudson's Bay Company	Crossiron Mills 261055 Crossiron Bvld Rocky View, AB	Crossiron Mills Holdings Inc.	Crossiron Mills Holdings Inc.  c/o Ivanhoe Cambridge  95 Wellington Street west, Suite 300  Toronto, Ontario M5H 2Y4  Att: Legal Affairs	Saks Off Fifth
Hudson's Bay Company	Queensway (Sherway) 1950 The Queensway Toronto, ON	Horner Developments Ltd, Paul Mantella Limited & F.M & F Properties Limited	Horner Developments Ltd, Paul Mantella Limited & F.M & F Properties Limited  c/o Fima Developments  313 Horner avenue  Toronto, Ontario M8W 1Z5  Att: Jason Ffidani	Saks Off Fifth
Hudson's Bay Company	South Edmonton Common 1620-99th Street NW Edmonton, AB	Cameron Corporation	Cameron Corporation  10180-111 Street  Edmonton, Alberta	Saks Off Fifth

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			T5k 1K6  Att: Sarb Dhaliwal, VP Property Management	
Hudson's Bay Company	Rideau Street 73 Rideau Street Ottawa, ON	Riocan-HBC Limited Partnership	Riocan-HBC Limited Partnership  698 Lawrence Avenue West  Toronto, Ontario M6A 3A5  Att: SVP & General Counsel	Saks Off Fifth
Hudson's Bay Company	Tsawwassen Mills 5000 Canoe Pass Way Tsawwassen, BC	Ivanhoe Cambridge II Inc.	Ivanhoe Cambridge II Inc.  c/o Ivanhoe Cambridge  95 Wellington Street west, Suite 300  Toronto, Ontario M5H 2Y4  Att: Legal Affairs	Saks Off Fifth
Hudson's Bay Company	Outlet Collection Winnipeg 555 Sterling Lyon Parkway Winnipeg, MB	The Outlet Collection at Winnipeg Limited & Seasons Retail Corp.	The Outlet Collection at Winnipeg Limited & Seasons Retail Corp.  c/o Ivanhoe Cambridge  95 Wellington Street west, Suite 300  Toronto, Ontario M5H 2Y4  Att: Legal Affairs	Saks Off Fifth

<b>Company (Entity of Record)</b>	<b>Common Name and Address</b>	<b>Lessor Name</b>	<b>Lessor Contact Information</b>	<b>Purpose/Use</b>
Hudson's Bay Company	Place Ste. Foy 2450 Blvd. Laurier Ste. Foy, QC	Ivanhoe Ste-Foy Inc.	Ivanhoe Ste-Foy Inc.  c/o Ivanhoe Cambridge  95 Wellington Street west, Suite 300  Toronto, Ontario M5H 2Y4  Att: Legal Affairs	Saks Off Fifth
Hudson's Bay Company	Pickering Town Centre 1355 Kingston Road Pickering, ON	OPB Realty Inc.	OPB Realty Inc.  c/o Cushman Wakefield asset Services Inc.  One Queen Street East, Suite 300  Toronto, Ontario M5C 2W5  Att: Randy Scharfe, Managing Director	Saks Off Fifth
Hudson's Bay Company	Bramalea City Centre 25 Peel Centre Drive Brampton, ON	Morguard Corporation & Bramalea Centre Equities Inc.	Morguard Corporation & Bramalea Centre Equities Inc.  c/o Morguard Investments Limited  55 City Centre Drive  Mississauga, Ontario L5B 1M3  Att: VP Retail Property Management	Saks Off Fifth
Hudson's Bay Company	Skyview 13554 137 Avenue NW Edmonton, AB	Skyview Equities Inc.	Skyview Equities Inc.  c/o Triovest Realty Advisors Inc.	Saks Off Fifth

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
			40 University Avenue, Suite 1200  Toronto, Ontario M5J 1T1 Att : John Crombie,	
Hudson's Bay Company	Park Royal 755 Park Royal North North Vancouver, BC	Park Royal Shopping Centre Holdings Inc.	Park Royal Shopping Centre Holdings Inc.  100 Park Royal South, 3 <sup>rd</sup> Floor,  West Vancouver, B.C. V7T 1A3  Att : Vp, Retail Shopping Centre	Saks Off Fifth
Hudson's Bay Company	Markville S. C. 5000 Hwy #7 & McCowan Markham, ON	Ontrea Inc.	Ontrea Inc.  c/o Cadillac Fairview Corporation Limited  20 Queen Street West, Toronto, Ontario  M5H 3R4  Att: Executive VP National Operations	Saks Off Fifth
Hudson's Bay Company	Les Galeries D'Anjou 7895 Boul. Les Galeries D'Anjou Anjou, QC	Les Galeries D'Anjou Leaseholds Inc.	Les Galeries D'Anjou Leaseholds Inc.  c/o Cadillac Fairview Corporation Limited  20 Queen Street West, Toronto, Ontario  M5H 3R4  Att: Executive VP National Operations	Saks Off Fifth

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
Hudson's Bay Company	Market Mall 3625 Shaganappi Trail N.W. Calgary, AB	Cadillac Fairview Corporation Limited & Ivanhoe Cambridge II Inc.	Cadillac Fairview Corporation Limited & Ivanhoe Cambridge II Inc.  c/o Cadillac Fairview Corporation Limited  20 Queen Street West, Toronto, Ontario  M5H 3R4  Att: Executive VP National Operations	Saks Off Fifth

**U.S. ENTITIES – Saks Leased Distribution Centers, Warehouses and Office Locations**

Company (Entity of Record)	Common Name and Address	Lessor Name	Lessor Contact Information	Purpose/Use
Saks Fifth Avenue LLC	LAVERGNE One Waldenbooks Drive LaVergne, TN	DCT/SPF Borders General Partnership	<b>DCT/SPF Borders General Partnership</b>  <b>Prologis Management LLC</b>  9020 Overlook Blvd, Suite 203  Brentwood, TN 37027  Attn: Market Officer  <b>Prologis</b>  1800 Wazee Street, Suite 500  Denver, CO	Distribution Center

<b>Company (Entity of Record)</b>	<b>Common Name and Address</b>	<b>Lessor Name</b>	<b>Lessor Contact Information</b>	<b>Purpose/Use</b>
			Attn: General Counsel	
Saks & Company LLC	WEST HUBBARD 1716 W. Hubbard Street Chicago, IL	SCCA Store Holdings Real Property LLC	SCCA Store  Holdings Real Property LLC  c/o Saks Incorporated  26100 Cedar Road  Beachwood, OH44122   Saks Incorporated  12 E. 49 <sup>th</sup> Street  New York, NY 10017	Support Office
Saks Fifth Avenue Real Property LLC	JACKSON 3455 West Highway 80 Jackson, MS			Office
Saks & Company LLC	WINDOW DISPLAYS 34-48 56th Street Woodside, NY	Woodside Property 56, LLC	Woodside Property 56, LLC  c/o Americorp Management Inc.  181 Hillside Avenue, Williston Park, New York 11596	Office

<b>Company (Entity of Record)</b>	<b>Common Name and Address</b>	<b>Lessor Name</b>	<b>Lessor Contact Information</b>	<b>Purpose/Use</b>
Saks & Company LLC	225 Liberty Street, New York, NY	Multiple floors	<b>WFP TOWER B CO. L.P.</b>  c/o Brookfield Financial Properties, L.P.  250 Vesey Street, 15th Floor,  New York, New York 10281-1023	NYC Corporate Office
Saks & Company LLC	250 Vesey Street, New York, NY	Multiple floors	<b>WFP TOWER D CO. L.P.</b>  c/o Brookfield Financial Properties, L.P.  250 Vesey Street, 15th Floor,  New York, New York 10281-1023	NYC Corporate Office
Saks & Company LLC	Suite B, 5350 Peachtree Road, Chamblee, GA	PRITCHETT PROPERTIES	PRITCHETT PROPERTIES  5546 Peachtree Road  Chamblee, GA 30341  Attention: John Pritchett	Storage Facility
Saks Fifth Avenue LLC	Suite 2.21, Shops at Canal Place,' One Canal Place, New Orleans, LA	Wilson Canal Place II, LLC	Wilson Canal Place II, LLC  c/o O'Connor Property Management  230 Royal Palm Way, Ste. 102  Palm Beach, FL 33480	Storage Facility
Saks & Company LLC	Suites F & G, 1197 Rochester Road, Troy, MI	TROY TECH COMMONS, LLC	Troy Tech Commons, LLC  42850 Mound Road	Storage Facility

<b>Company (Entity of Record)</b>	<b>Common Name and Address</b>	<b>Lessor Name</b>	<b>Lessor Contact Information</b>	<b>Purpose/Use</b>
			Sterling Heights, MI 48314-3256  (586) 731-9525	
Saks & Company LLC	Dadeland Mall, 7535 Dadeland Mall, Miami, FL 33156	SDG Dadeland Associates, Inc.	SDG Dadeland Associates, Inc. c/o Simon Property Group, L.P.  225 West Washington Street  Indianapolis, Indiana 46204-3438  Attention: Legal Department	Storage Facility
Saks & Company LLC	Suite 2500, The Gardens on El Paseo' 73-545 El Paseo, Palm Desert, CA 92260	El Paseo Land Company, LLC	El Paseo Land Company, LLC  c/o The Taubman Company LLC  200 East Long Lake Road, Suite 300  Bloomfield Hills, MI 48304-2324  Attn: Lease Administration   El Paseo Land Company, LLC  c/o The Taubman Company LLC  200 East Long Lake Road, Suite 300  Bloomfield Hills, MI 48304-2324  Attn: General Counsel	Storage Facility



<b>Company (Entity of Record)</b>	<b>Common Name and Address</b>	<b>Lessor Name</b>	<b>Lessor Contact Information</b>	<b>Purpose/Use</b>
Saks Fifth Avenue LLC	20 Seyon Street Watertown, MA	CPI 20 Seyon, LLC	Freeborn & Peters LLP  311 South Wacker Drive, Suite 3000  Chicago, IL 60606  Attn: Anne R. Garr Esq.	Storage Facility
Saks & Company LLC	36 Midland Ave Port Chester, NY	WU/LH 36 MIDLAND L.L.C.	WU/LH 36 MIDLAND L.L.C.  c/o GTJ REIT, Inc.  60 Hempstead Avenue — Suite 718  West Hempstead, NY 11552	Storage Facility
Saks & Company LLC	25 Keystone Blvd., Pottsville, PA 17901	Exeter 25 Keystone, LLC	<b>Exeter 25 Keystone, LLC</b>  101 West Elm Street, Suite 600,  Conshohocken, PA 19428  Attn: Legal Department	Saks Fifth Avenue Distribution Center (593)

**Schedule 5.09**

**Chief Executive Offices, Registered Offices, Principal Place of Business**

<b>CANADIAN ENTITIES</b>		
<b>Company</b>	<b>Registered Office</b>	<b>Chief Executive Office/Principal Place of Business</b>
Hudson's Bay Company	401 Bay Street, Suite 500  Toronto, Ontario  M5H 2Y4	401 Bay Street, Suite 500  Toronto, Ontario  M5H 2Y4

<b>U.S. ENTITIES</b>		
<b>Company</b>	<b>Registered Office</b>	<b>Chief Executive Office/Principal Place of Business</b>
Lord & Taylor Acquisition Inc.	251 Little Falls Drive, Wilmington, DE 19808	225 Liberty Street, 31st Floor, New York, NY 10281
Lord & Taylor Acquisition 2 Inc.	251 Little Falls Drive, Wilmington, DE 19808	225 Liberty Street, 31st Floor, New York, NY 10281
Lord & Taylor Holdings LLC	251 Little Falls Drive, Wilmington, DE 19808	225 Liberty Street, 31st Floor, New York, NY 10281
Lord & Taylor LLC	251 Little Falls Drive, Wilmington, DE 19808	225 Liberty Street, 31st Floor, New York, NY 10281
LT Card Company LLC	100 Shockoe Slip 2 <sup>nd</sup> Floor, Richmond, VA 23219	225 Liberty Street, 31st Floor, New York, NY 10281
Saks Incorporated	2908 Poston Avenue, Nashville, TN 37203	225 Liberty Street, 31st Floor, New York, NY 10281
Saks & Company LLC	251 Little Falls Drive, Wilmington, DE 19808	225 Liberty Street, 31st Floor, New York, NY 10281
Saks Fifth Avenue LLC	84 State St. 6 <sup>th</sup> Flr, Boston, MA 02109	225 Liberty Street, 31st Floor, New York, NY 10281
Merchandise Credit, LLC	100 Shockoe Slip 2 <sup>nd</sup> Floor, Richmond, VA 23219	225 Liberty Street, 31st Floor, New York, NY 10281
SAKS DIRECT, LLC	251 Little Falls Drive, Wilmington, DE 19808	225 Liberty Street, 31st Floor, New York, NY 10281

<b>LUXEMBOURG ENTITIES</b>		
<b>Company</b>	<b>Registered Office</b>	<b>Chief Executive Office/Principal Place of Business</b>
HBC Europe Holding S.à r.l.	6, rue Eugene Ruppert L-2453 Luxembourg	6, rue Eugene Ruppert L-2453 Luxembourg
HBC Europe Finance S.à r.l.	6, rue Eugene Ruppert L-2453 Luxembourg	6, rue Eugene Ruppert L-2453 Luxembourg

**Schedule 5.10**  
**Environmental Matters**

None.

**Schedule 5.11  
Insurance**

	Limits	Deductible/ SIR	Carrier
<b>Canada-Only Policies (All Banners)</b>			
Property	\$1B	\$1MM	AIG of Canada
<i>General Liability</i>	\$2MM / \$8MM Agg	\$1M/ \$8M Agg	Aviva
Wrap-Up Liability	\$10MM	\$50,000	Zurich
Umbrella Liability	\$8MM	\$10,000	Aviva
Automobile Liability	\$2MM / \$8MM Agg	\$1M / \$8M Agg	Aviva
Garage Automobile	\$2MM	\$5,000	Aviva
Professional Liability (Avantem) 2019	\$1MM / \$2MM	\$10,000	Liberty
Consumer Protection Bond (Sask)	\$20,000	N/A	Travelers
Willis Canada AIG Engineering fee	Hidden Service Fee		AIG of Canada
Jewelry Stock Throughput Policy CANADA ONLY			WTW Lloyds

<b>L&amp;T-Only Policies</b>			
Workers' Compensation - Ohio	\$250,000	\$0	State of Ohio
Workers' Compensation - Ohio Fee			State of Ohio
NFIP - Flood - Cheektowaga, NY	500K bldg./500K BPP	various	NFIP/Fidelity
NFIP - Flood - Danbury, CT ** Survey Required	20K bldg./20K BPP	various	NFIP/Fidelity
NFIP - Flood-Wayne NJ Willowbrook LT038	131000	various	NFIP/Fidelity
NFIP Flood Additional for Willowbrook	500K bldg./500K		

LT038	BPP		
NFIP - Flood - West Nyack	500K bldg./500K BPP	various	NFIP/Fidelity
NFIP - Flood - Syracuse, NY	500K bldg./500K BPP	various	NFIP/Wright
Liquor Bonds (3 Bonds)	\$1,000 each	N/A	State of NY
License Bond (John Allan @ Saks)	\$14,421	N/A	Chubb
Utility Bond - FL Power & Light (for Wilkes Barre) Bond Amount: \$7,160	\$7,160	N/A	Fidelity & Deposit Co of MD
Utility Bond - FL Power & Light (for Boca Raton) Bond Amount: \$30,900	N/A	N/A	Westchester Fire Insurance Co.
Aircraft	Hull \$9,240,000 / Liability 500 MM	Various	AIG

<b>GILT GHBC -Only Policies</b>			
Foreign Package -GILT Portion		Various	ICSP

<b>North American Policies</b>	<b>LT 13% SAKS48% HB 39%</b>		
Marine Cargo - Stock Throughput	20 MM	\$50,000	Lloyd's
<u>Excess Liability (3 Layers)</u>			
Excess Liability (1st)	\$27 MM XS \$10MM	-	Liberty
Excess Liability (2nd)	\$13 MM X \$37 MM	-	Axis

2nd Excess Liability TRIA	TRIA		Axis
Excess Liability (3rd)	\$150 MM X \$50 MM	-	(Multiple)
Excess Liability Total:	<b>\$200MM</b>		
Automobile Liability	Various	Various	Lloyds
Employed Lawyers	5MM	\$100K	ACE
Environmental Liability (3 year premium paid in 18-19)	25 MM	\$250,000	Ironshore
Business Travel Accident 3Yr Policy	20 MM	Various	
Master Invoice ACE Insurance Pol A BTA			ACE
Renewal 2nd Annual installment 2019 BTA			ACE
Cyber Liability 60MM			
Cyber Liability	10 MM	\$2,500,000	XL/ AXA
Cyber Liability - Excess 1st	10 MM XS 10 MM	-	Lloyds Syndicates
Cyber Liability - Excess 2nd	10MM XS of 20MM	-	Lloyd's Syndicates
Cyber Liability - Excess 3rd	20MM XS of 30MM	-	Lloyds Syndicates
Cyber Liability - Excess 4th	10MM XS of 50MM	-	Lloyd's Syndicates
Cyber Totals:			
Fine Arts	13.5M	\$5,000	AXA
<u><i>Traditional D &amp; O 155 MM *</i></u>			
Primary Directors and Officers	\$10MM	\$500,000	AIG
Excess Directors and Officers (1st)	\$10MM XS \$10MM	-	Allianz
Excess Directors and Officers (2nd)	\$10MM XS \$20MM	-	Zurich
Excess Directors and Officers (3rd)	\$10MM XS \$30MM	-	Berkley
Excess Directors and Officers (4th)	\$40MM XS \$40MM	-	Lloyds Syndicates (Aspen, QBE HCC,

			Navigators)
Excess Directors and Officers (5th)	\$20MM XS of \$80MM	-	Axis
Excess Directors and Officers (6th)	\$20MM XS of \$100MM	-	Berkshire
Excess Directors and Officers (7th)	\$20MM XS of \$120MM	-	Chubb
Excess Directors and Officers (8th)	\$15 MM XS of \$140 MM	-	CNA
<u><b>D &amp; O Side A 45 MM</b></u>			
Excess Directors & Officers SIDE A ONLY	15 MM XS of 155 MM	-	AIG
Excess Directors & Officers SIDE A 1st XS	15 MM XS of 170 MM	-	XL
Excess Directors & Officers Side A 2nd XS	15 MM XS of 185 MM	-	AWAC
Germany (local placement )	Limits are part of primary \$20MM layer		AIG Europe Limited
US (local placement )			National Union Fire
Ireland (local placement )			AIG Europe Limited
Luxembourg (local placement )			AIG Europe Limited
Puerto Rico (local placement )			AIG
Crime	10 MM	\$250,000	Great American
Special Crime (3-Year premium paid in in 16-17 (\$38,664) and 19-20) Invoiced in CAD	25 MM	\$0	Great American
Fiduciary	10 MM	\$100,000	AIG of Canada
Excess Fiduciary	10 MM XS 10 MM	-	ACE
USA (local placement) Fiduciary			National Union Fire



<b>** Broker invoiced Canadian and US Terrorism Separately. Once the US invoicing received, the coverage amounts will be Adjusted.</b>			
<b>Terrorism Combined US To Be Confirmed</b>	600MM/ 1.2B AGG	\$1,000,000	Lloyds
<b>US Terrorism Policy 2019 Endorsement</b>	\$20MM XS of \$5MM		Lloyds
<b>Terrorism - PRIMARY Canada Only</b>	6MM 11MM AGG		Lloyds
<b>Terrorism - FIRST EXCESS Canada Only</b>	20MM 40MM AGG	\$1,000,000	Lloyds
<b>Terrorism - 2nd Excess Canada Only</b>	25MM XS50MM		Lloyds
<b>Terrorism - 3rd EXCESS Canada Only</b>	200MM XS 400MM		Lloyds
<b>SERVICE FEES WILLIS 4 Installments</b>	396,000		WILLIS
<b>Oliver Wyman Actuarial Consulting, Inc.</b>	35,500		Marsh

<b>U.S.-Only Policies</b>			
<b>Property Willis New York Portion</b>	\$1B	\$1,000,000	Various/Lloyds
<b>Property US Only Bermuda Portion</b>	Incl above	Incl	Various
<b>Jewelry Stock Throughput Policy US ONLY</b>		\$50,000	
<b>Jewelry Stock throughput REFUND</b>			
<b>General Liability Total-4 Installments</b>	\$1MM/\$25MM Agg	\$250,000	Safety National
<b>General Liability- Puerto Rico (only) with TRIA</b>	\$1MM/2MM Agg	\$0	Fulcro PR
<b>Excess Liability 1st layer TRIA US ONLY</b>			
<b>Auto \$50,499.00/Garage Keepers \$21842.00</b>	\$1MM/\$250K	Various	Safety National
<b>Workers Compensation &amp; Employers Liability Total - 4 Installments</b>	Statutory	\$500,000	Safety National
<b>Workers Compensation - Puerto Rico (only)</b>	Statutory		
<b>Workers Comp Audit 2016-2017 Additional</b>			Safety National Casualty

Umbrella Liability-Primary	\$9MM	Underlying	AWAC
Off Shore Punitive Damages (GL)	\$9MM	N/A	AWAC
Foreign Package -US Portion	4MM	Various	ICSP
<b>Rolling Owners Interest Program (Based on construction at any given time)</b>			
Owners Interest GL Ins. CO	\$1MM/\$2MM		Colony
Owners Interest Excess Liability	\$10MM x of primary		Colony Ins. Co.
<i>Total Rolling O.I. Program Premiums</i>			
<b>Saks-Only Policies</b>			
Workers' Compensation - Ohio	\$250,000	\$0	State of Ohio
Excess Workers Compensation in OH	500,000	N/A	Safety National
Ohio Bureau of Workers Compensation			
Workers' Compensation - Washington State			
Workers Comp Retro WI -Saks Only			Safety National
General Liability- Fronted policy			Safety National
<i>General Liability - Florida</i>	\$1MM/ \$2MM	N/A	Travelers
<i>Public Charities Bond Massachusetts Saks Key to the Cure Fund</i>			Chubb
Utility Bond- UGI, Central Penn Gas Bond Amount: \$14,421	\$1,000	N/A	Westchester Fire
Bond - Florida Power & Light Company Bond Amount: \$17,304	\$100,000	N/A	Westchester Fire
Bond - U.S. Customs Importer/Broker	\$300,000	N/A	Westchester Fire
Utility Bond - Braintree Electric Light Bond Amount \$16,000	\$16,000	N/A	Westchester Fire
Utility Bond - Delmarva Power & Light Bond Amount \$7,615	\$14,421	N/A	Westchester Fire
Utility Bond - Potomac - Pepco	\$100,000	N/A	Westchester Fire

<b>Bond Amount: \$67,225</b>			
<b>NFIP - Flood - 7687 Kendall Dr., Miami, FL Dadeland</b>	500K BPP	various	NFIP/Wright
<b>NFIP - Flood - Estero, FL</b>	500K BPP	various	NFIP/Wright
<b>NFIP - Flood - Sunrise, FL</b>	500K BPP	various	NFIP/Wright
<b>NFIP - Flood - Aventura, FL</b>	500K BPP	various	NFIP/Wright
<b>NFIP - Flood - Boca Raton, FL</b>	500K BPP	various	NFIP/Wright
<b>NFIP - Flood - Syracuse, NY</b>	500K BPP	various	NFIP/Wright
<b>NFIP - Flood - Milpitas, CA</b>	500K BPP	various	NFIP/Wright
<b>NFIP - Flood - Petaluma, CA</b>	500K BPP	various	NFIP/Wright
<b>NFIP - Flood - Chesterfield, MO</b>	500K BPP	various	NFIP/Wright
<b>NFIP - Flood - Bal Harbour, FL</b>	500K BPP	various	NFIP/Wright
<b>NFIP - Flood - Livermore, CA</b>	500K BPP	various	NFIP/Wright
<b>NFIP-Flood 81 South 8th St Miami FL S668</b>	500K BPP	various	NFIP/Wright
<b>NFIP - Flood - Tucson, AZ S440</b>	500K BPP	various	NFIP/Wright
<b>NFIP - Flood - Naples, FL SOF 401</b>	500K BPP	various	NFIP/Wright
<b>NFIP - Flood 668 Brickell Miami</b>			
<b>NFIP - Flood Ala Moana 403</b>			
<b>NFIP - Flood - Honolulu, HI S660</b>	500K BPP	various	NFIP/Wright

	Limits (INR)	Deductible	Carrier
<b>Property</b>	□ 400,740,000		TATA AIG
<b>General Liability</b>	□ 335,300		TATA AIG
<b>Umbrella</b>	□ 660,000,000		TATA AIG

HBC INDIA AS Reported

**Asset Insurance**

TATA AIG

**Comprehensive General Liability &**

TATA AIG

**Umbrella Policy**  
**Employee Dishonesty**

**TATA AIG**

**Schedule 5.12**  
**Taxes**

**Hudson's Bay Company**

**(i) Taxation years or other relevant periods with respect to any Charges that have not yet been assessed by the CRA or the applicable provincial, local or foreign Governmental Authorities**

1. Federal and Provincial corporate income tax returns for Hudson's Bay Company for taxation year ended February 2, 2019 were filed on July 18, 2019. The Alberta Notice of Assessment was issued on August 9, 2019 and the return was assessed as filed. The Federal and Quebec corporate income tax assessments have not yet been issued, however we do not expect the assessments to differ from the filed corporate income tax returns.
2. Federal & Provincial indirect tax returns – monthly returns for P08 2018 filed in October 2018 and P9 2018 filed in November 2018.

**(ii) the taxation years or other relevant periods with respect to any Charges that are currently being audited by the CRA or any other applicable Governmental Authority**

1. The Federal income tax audit for Hudson's Bay Company for the taxation year ended February 1, 2014 is close to completion. CRA has issued an Audit Proposal letter dated August 28, 2019. We provided a response on September 27, 2019. There are issues which are still being discussed, however none are significant issues. The Federal income tax audit for Hudson's Bay Company for the taxation year ended January 31, 2015 has been completed. CRA has issued an Audit Proposal letter dated August 28, 2019. We provided a response on September 9, 2019 which was agreed to on September 11, 2019. A Notice of Reassessment was issued on September 13, 2019 showing no taxes owing. The Federal income tax audit for Zellers Inc. for the taxation year ended February 1, 2014 is close to completion. CRA issues an Audit Proposal letter dated August 28, 2019. We provided a response on September 27, 2019. There are issues still being discussed, however none are significant issues. Based on the corporate income tax returns filed, there were no corporate income taxes payable due to the utilization of non-capital losses carried forward from prior taxation years for both Hudson's Bay Company and Zellers Inc. Any adjustments resulting from the Audit Proposal letters should not result in corporate income taxes payable due to the non-capital losses carried forward from prior taxation years. CRA has not yet commenced its electronic audit nor its field audit of Hudson's Bay Company for the taxation year ended January 31, 2016. However, CRA had indicated that they expect the audit to commence by January 1, 2020. Zellers Inc. and Hudson's Bay Company were amalgamated on February 2, 2014, so the February 1, 2014 taxation year is the final tax year for Zellers Inc.
2. Hudson's Bay Company is under audit by Manitoba Finance for provincial Retail Sales Tax. The audit period is July 1, 2013 to June 30, 2018.

**(iii) any assessments or threatened assessments in connection with such audit, or otherwise currently outstanding**

1. As indicated above, we have received Audit Proposal letters in connection with the income tax audits for Hudson's Bay Company for the taxation years ended February 1, 2014 and January 31, 2015. We have also received an Audit Proposal letter for Zellers Inc., for its last

taxation year of February 1, 2014. Any adjustments resulting from the Audit Proposal letters should not result in corporate income taxes payable due to the non-capital losses carried forward from prior taxation years.

2. Manitoba Finance proposed an assessment for \$131,833 on September 10, 2019 for Manitoba RST due on marketing flyers. Additional issues are still under audit review and there are no proposed assessments in relation to the issues at this time.

**(iv) the most recent taxation year or other relevant periods with respect to any Charges that an audit by CRA or the applicable provincial, local or foreign Governmental Authorities has been completed**

1. The Federal corporate income tax audit has been completed for Hudson's Bay Company for the tax year ended February 2, 2013 and Zellers Inc. for the tax year ended October 5, 2013. There have been no provincial income tax audits for either Hudson's Bay Company or Zellers Inc. for a number of years.

Note that although the tax audits for Hudson's Bay Company and Zellers Inc. have been completed for the tax years up to and including the 2013 tax year, a waiver was filed by Zellers in respect of certain restructuring expenses in its tax year ended January 31, 1999. However, given the time that has elapsed no tax reserve exists for this issue.

2. Indirect tax audits:

GST/HST – period ending 2016-01-30

QST – period ending 2017-04-29

BC PST – period ending 2016-01-30

SK PST – period ending 2009-01-31

**Lord & Taylor**

**(i) Taxation years or other relevant periods with respect to any Charges that have not yet been assessed by the IRS or the applicable state, local or foreign Governmental Authorities**

- Lord & Taylor is included with Saks in the US federal consolidated income tax return. The IRS completed their audit of the 2014 return.

**(ii) The taxation years or other relevant periods with respect to any Charges that are currently being audited by the IRS or any other applicable Governmental Authority**

- Lord & Taylor is included in the Combined Lord & Taylor Inc. & Subsidiaries New York State and New York City income tax return. Lord & Taylor has pending income tax audit in New York State for the tax years ended February 1, 2014 through January 31, 2015 and in New York City for the tax years ended February 2, 2013 through January 31, 2015.
- Lord & Taylor has sales tax audits pending or in appeals in Connecticut. Lord & Taylor has sales tax audits pending in New Jersey.

**(iii) Any assessments or threatened assessments in connection with such audit, or otherwise currently outstanding**

- Not applicable.

**(IV) the most recent taxation year or other relevant periods with respect to any Charges that an audit by IRS or the applicable state, local or foreign Governmental Authorities has been completed**

- The IRS has completed their audit of the 2014 consolidated federal income tax return

**Saks**

**(i) Taxation years or other relevant periods with respect to any Charges that have not yet been assessed by the IRS or the applicable state, local or foreign Governmental Authorities**

- Saks is included with LT in the US federal consolidated income tax return. The IRS completed their audit of the 2014 return.

**(ii) The taxation years or other relevant periods with respect to any Charges that are currently being audited by the CRA or any other applicable Governmental Authority**

- Saks Incorporated has pending income tax audits in New York State for the tax years ended February 2, 2014 through January 31, 2016 and New York City for the tax years ended February 1, 2014 through January 31, 2015.
- Saks Incorporated has sales tax audits pending or in appeals in Connecticut. Saks Incorporated has sales tax audits pending in Illinois, Louisiana and Colorado.

**(iii) Any assessments or threatened assessments in connection with such audit, or otherwise currently outstanding**

- \$500K preliminary assessment (includes interest and penalties) for Saks Incorporated and its subsidiaries in connection with the NYC Income Tax Audit for February 1, 2014 and January 31, 2015.

**(iv) The most recent taxation year or other relevant periods with respect to any Charges that an audit by IRS or the applicable state, local or foreign Governmental Authorities has been completed**

- The IRS has completed their audit of the 2014 consolidated federal income tax return

**Schedule 5.13**  
**Canadian Pensions Plans**

1. Hudson's Bay Company Pension Plan (Defined Benefits and Defined Contribution Plan components).
2. The most recently filed actuarial valuation in respect of the Hudson's Bay Company Pension Plan (defined benefit provision) was performed as of January 1, 2018. As at that date the plan did not have a Pension Plan Unfunded Liability.



**Schedule 5.14**  
**Subsidiaries; Other Equity Interests; Equity Interests in the Loan Parties**

**Part (a) – Loan Parties and Subsidiaries**

<b>Loan Parties</b>	<b>Jurisdiction of Formation</b>
Hudson's Bay Company	Canada
Lord & Taylor Acquisition Inc.	Delaware
Lord & Taylor Acquisition 2 Inc.	Delaware
Lord & Taylor Holdings LLC	Delaware
Lord & Taylor LLC	Delaware
LT Card Company LLC	Virginia
Saks Incorporated	Tennessee
Saks & Company LLC	Delaware
Saks Fifth Avenue LLC	Massachusetts
Merchandise Credit, LLC	Virginia
SAKS DIRECT, LLC	Delaware
HBC Europe Holding S.à r.l.	Luxembourg
HBC Europe Finance S.à r.l.	Luxembourg

<b>Secured Loan Parties</b>	<b>Jurisdiction of Formation</b>
Hudson's Bay Company	Canada
Lord & Taylor Acquisition Inc.	Delaware
Lord & Taylor Acquisition 2 Inc.	Delaware
Lord & Taylor Holdings LLC	Delaware
Lord & Taylor LLC	Delaware
LT Card Company LLC	Virginia
Saks Incorporated	Tennessee
Saks & Company LLC	Delaware
Saks Fifth Avenue LLC	Massachusetts
Merchandise Credit, LLC	Virginia
SAKS DIRECT, LLC	Delaware

<b>Immaterial Subsidiaries</b>	<b>Jurisdiction of Formation</b>
HBC Avantem Insurance Agency Inc.	Ontario
Snospmis Limited	Canada
RSCL Distribution Services Inc.	Canada
2472596 Ontario Inc.	Ontario
2472598 Ontario Inc.	Ontario
Hudson's Bay Services Private Limited	India
Creative Design Studios, LLC	Delaware
Saks Fifth Avenue Puerto Rico, Inc.	Delaware
Club Libby Lu, Inc.	Illinois
Café SFA-Minneapolis LLC	California
Fifth Floor Restaurant at SFA LLC	New York
Sixth Floor Restaurant at SFA LLC	New York
The Restaurant at Saks Fifth Avenue Corporation	New York
Nonsuch LLC	Delaware
Street-Works Development LLC	Delaware
GHBC Groupe Holdings, Inc.	Delaware
GHBC City, Inc.	Delaware
GHBC Shared Services, Inc.	Delaware
GHBC Groupe, Inc.	Delaware

GGI Realty Services, Inc.	New York
GHBC City Collections, LLC	Delaware
GHBC Groupe Collections, LLC	Delaware
GHBC City Unlimited Company	Ireland
GHBC Unlimited Company	Ireland
GHBC Credit Company Unlimited Company	Ireland
HBC Europe S.à.r.l.	Luxembourg
HBC Europe Holdco LLC	Delaware

<b>Unrestricted Subsidiaries</b>	<b>Jurisdiction of Formation</b>
Each Real Estate Subsidiary	See below

<b>Real Estate Subsidiaries</b>	<b>Jurisdiction of Formation</b>
Snospmis Limited	Canada
HBC YSS 1 LP Inc.	Ontario
HBC YSS 2 LP Inc.	Ontario
HBC YSS 1 Limited Partnership	Ontario
HBC YSS 2 Limited Partnership	Ontario
RioCan-HBC Limited Partnership	Ontario
RioCan-HBC General Partner Inc.	Ontario
2472596 Ontario Inc.	Ontario
2472598 Ontario Inc.	Ontario
HBCRP LP	Ontario
HBC Retained Properties GP Inc.	Ontario
LT Parent Propco LLC	Delaware
LT Propco LLC	Delaware
LT 424 LLC	Delaware
HBC-Simon, LLC	Delaware
Saks & Company Real Property LLC	Delaware
SCCA Store Holdings Real Property LLC	Delaware
Saks Fifth Avenue Real Property LLC	Delaware
Saks Columbus Real Property LLC	Delaware
Saks Richmond Real Property LLC	Delaware
12 East 49 <sup>th</sup> Street LLC	Delaware
Saks Fifth Avenue HoldCo LLC	Delaware
Saks Fifth Avenue HoldCo II LLC	Delaware
Saks Flagship Real Property LLC	Delaware
LT Bay Shore Leasehold LLC	Delaware
LT Braintree Leasehold LLC	Delaware
LT Bridgewater LLC	Delaware
LT Burlington Leasehold LLC	Delaware
LT Carousel Leasehold LLC	Delaware
LT Columbia LLC	Delaware
LT Danbury Leasehold LLC	Delaware
LT Eastchester LLC	Delaware
LT Fair Oaks LLC	Delaware
LT Freehold Raceway LLC	Delaware
LT Garden City LLC	Delaware
LT Garden State Leasehold LLC	Delaware
LT King of Prussia LLC	Delaware
LT Livingston Leasehold LLC	Delaware
LT Manhasset LLC	Delaware
LT Natick Leasehold LLC	Delaware

LT Northbrook Leasehold LLC	Delaware
LT Palisades Leasehold LLC	Delaware
LT Quakerbridge Leasehold LLC	Delaware
LT Ridgewood LLC	Delaware
LT Rockaway Town LLC	Delaware
LT Stamford LLC	Delaware
LT Twelve Oaks LLC	Delaware
LT Tysons Corner Leasehold LLC	Delaware
LT Walden Galleria LLC	Delaware
LT Walt Whitman Leasehold LLC	Delaware
LT Westfarms Leasehold LLC	Delaware
LT Westfield LLC	Delaware
LT Willowbrook LLC	Delaware
LT Woodfield LLC	Delaware
Saks Atlanta Leasehold LLC	Delaware
Saks Beachwood Leasehold LLC	Delaware
Saks Beverly Hills LLC	Delaware
Saks Chevy Chase Leasehold LLC	Delaware
Saks Chicago Place Leasehold LLC	Delaware
Saks Dadeland Leasehold LLC	Delaware
Saks Fashion Show Leasehold LLC	Delaware
Saks North Star LLC	Delaware
Saks South Coast Leasehold LLC	Delaware
Saks Troy LLC	Delaware
Saks Tysons Corner LLC	Delaware
Saks Walt Whitman Leasehold LLC	Delaware
Saks-LT Master Mezzanine I LLC	Delaware
HBS Global Properties LLC	Delaware

Excluded Subsidiaries	Jurisdiction of Formation
HBC Netherlands B.V.	Netherlands

Inactive Subsidiaries
None.

**Outstanding rights to purchase any Equity Interests in any Subsidiary of a Loan Party**

None.

**Part (b) - Other Equity Interests**

In addition to the equity interests held in the entities listed in Part (a) above:

Entity Owned	Loan Party or Restricted Subsidiary (Record Owner)	Interest Owned
Peruvian Avenue Corporation	Saks & Company LLC	23%
Pinstripes, Inc.	Lord & Taylor Acquisition Inc. (indirectly through Nonsuch LLC)	1,250,000 Series F Convertible Preferred Shares

**Schedule 5.18**  
**Intellectual Property Matters**

None.

**Schedule 5.19**  
**Collective Bargaining Agreements**

**Hudson's Bay Company**

**Union Collective Bargaining Agreements**

1. Collective Agreement between Hudson's Bay Company ("HBC"), HBC (The Bay, Victoria City Centre) and United Food and Commercial Workers, Local 1518 effective until January 31, 2020.
2. Collective Agreement between HBC and United Steelworkers of America, Local Union 898 effective until January 31, 2019.
3. Collective Agreement between HBC (Portage and Memorial Blvd.) and National Automobile, Aerospace, Transportation and General Workers Union of Canada (now Unifor) (Local 468) effective March 15, 2022.
4. Collective Agreement between HBC (Sherway) and Unifor (Local 40) effective until December 31, 2019.
5. Collective Agreement between HBC (Kitchener) and Unifor Canada (Local 40) effective December 31, 2019.
6. Collective Agreement between RSCL Distribution Services Inc. and United Food and Commercial Workers, International Union Local 206 (formerly local 1993) March 31, 2021.
7. Collective Agreement between Hudson's Bay Company (100 Metropolitan Road Toronto) and Unifor (Local 40) effective until May 31, 2020.
8. Collective Agreement between HBC (VLC) and Teamsters Local Union 31 effective until March 31, 2022.
9. The Bay / HBC in Ontario only continues to be bound by the province-wide Ontario United Brotherhood of Carpenters & Joiners of America Collective Agreement effective May 1, 2013.

**Saks**

3. Collective Bargaining Agreement amongst and between Saks Incorporated, SCCA Store Holdings, Inc. and Chicago Joint Board, Retail, Wholesale, and Department Store Union - UFCW (RWDSU) and RWDSU Local 291, effective until January 31, 2020.
4. Collective Bargaining Agreement amongst and between Saks Fifth Avenue and Chicago and Midwest Regional Joint Board, Workers United, affiliated with SIEU, effective until April 30, 2022.
5. Collective Bargaining Agreement between Saks Fifth Avenue and Chicago Joint Board, Retail, Wholesale, and Department Store Union - UFCW (RWDSU) and RWDSU Local 291, effective until July 31, 2020.

6. Collective Bargaining Agreement between Saks Fifth Avenue and Local 25, New York New Jersey Regional Joint Board, Workers United, affiliated with SIEU, covering May 1, 2014 through April 30, 2021.
7. Collective Bargaining Agreement between Saks Fifth Avenue and Local 1102, RWDSU, UFCW, effective until June 30, 2021.
8. Collective Bargaining Agreement between Saks Fifth Avenue and International Union of Operating Engineers Local Union Number 30, AFL-CIO, effective until May 31, 2023.
9. Collective Bargaining Agreement between Saks Fifth Avenue and New York Building and Construction Trade Council's Maintenance Organization, AFL-CIO, effective until April 30, 2023
10. AFL-CIO, Carpenters, District Council for New York City and Vicinity (Carpenters) effective until December 31, 2023.

[REDACTED]

[REDACTED]

**Schedule 5.22(a)**  
**DDAs**

**Hudson's Bay Company**

<i>Disbursement Accounts</i>						
<b>Company (Owner)</b>	<b>Name of Bank</b>	<b>Type of Account (Description)</b>	<b>Transit #</b>	<b>Account #</b>	<b>Currency</b>	<b>Blocked</b>
Hudson's Bay Company	The Toronto-Dominion Bank	Euro Account	████	████████	EURO	No
Hudson's Bay Company	The Toronto-Dominion Bank	Sterling Account	████	████████	STERLING	No
Hudson's Bay Company	The Toronto-Dominion Bank	Hbc Head Office #1 Deposit & Disbursement	████	████████	CDN\$	Yes
Hudson's Bay Company	The Toronto-Dominion Bank	Hbc Head Office #1 USD Deposit & Disbursement	████	████████	US\$	Yes
Hudson's Bay Company	The Toronto-Dominion Bank	Hbc Visa Returns Disbursement	████	████████	CDN\$	Yes
Hudson's Bay Company	The Toronto-Dominion Bank	Hbc On-Line Bill Payments	████	████████	CDN\$	Yes
Hudson's Bay Company	The Toronto-Dominion Bank	HBC Golf Tour	████	████████	CDN\$	Yes
Hudson's Bay Company	The Toronto-Dominion Bank	Hudson's Bay Company Re Zellers Visa Returns Disbursement	████	████████	CDN\$	Yes
Hudson's Bay Company	Royal Bank of Canada	Hbc Head Office #1 Deposit & Disbursement	████	████████	CDN\$	No
Hudson's Bay Company	Royal Bank of Canada	Hbc Head Office #1 USD Deposit & Disbursement	████	████████	US\$	No
Hudson's Bay	Royal Bank of Canada	Hbc Payroll PCA-EFT Disbursement	████	████████	CDN\$	No

<i>Disbursement Accounts</i>						
<b>Company (Owner)</b>	<b>Name of Bank</b>	<b>Type of Account (Description)</b>	<b>Transit #</b>	<b>Account #</b>	<b>Currency</b>	<b>Blocked</b>
Company						
Hudson's Bay Company	Royal Bank of Canada	Hbc EES-EFT Disbursement	████	██████	CDN\$	No
Hudson's Bay Company	Royal Bank of Canada	Hbc Canada Post - PAD Disbursement	████	██████	CDN\$	No
Hudson's Bay Company	Royal Bank of Canada	Hbc Manulife - PAD Disbursement	████	██████	CDN\$	No
Hudson's Bay Company	Royal Bank of Canada	Hbc Tax Filing - PAD Disbursement	████	██████	CDN\$	No
Hudson's Bay Company	Royal Bank of Canada	Hbc Bay - Coin Disbursement	████	██████	CDN\$	No
Hudson's Bay Company	Royal Bank of Canada	Hbc Home Outfitters - Coin Disbursement	████	██████	CDN\$	No
Hudson's Bay Company	Royal Bank of Canada	Payroll Group 1	████	██████	CDN\$	No
Hudson's Bay Company	Royal Bank of Canada	Hbc Bay Credit Card Pmts. Return Disbursement	████	██████	CDN\$	No
Hudson's Bay Company	Royal Bank of Canada	Hbc Credit Card Pmts. In-Store Deposit	████	██████	CDN\$	No
Hudson's Bay Company	Royal Bank of Canada	HBC set aside funds (share redemption)	████	██████	CDN\$	No
Hudson's Bay Company	Royal Bank of Canada	EFT payments	████	██████	CDN\$	No
Hudson's Bay Company	Royal Bank of Canada	Fusion Checks	████	██████	CDN\$	No



<i>Disbursement Accounts</i>						
<b>Company (Owner)</b>	<b>Name of Bank</b>	<b>Type of Account (Description)</b>	<b>Transit #</b>	<b>Account #</b>	<b>Currency</b>	<b>Blocked</b>
Hudson's Bay Company	Royal Bank of Canada	Fusion Checks	████	████	US\$	No

<i>Depository Accounts</i>						
<b>Company (Owner)</b>	<b>Name of Bank</b>	<b>Type of Account (Description)</b>	<b>Transit #</b>	<b>Account #</b>	<b>Currency</b>	<b>Blocked</b>
Hudson's Bay Company	The Toronto-Dominion Bank	Hbc Bay Store Deposits - Visa	████	████	CDN\$	Yes
Hudson's Bay Company	The Toronto-Dominion Bank	Hbc Deposits - Gift Card	████	████	CDN\$	Yes
Hudson's Bay Company	The Toronto-Dominion Bank	Hbc Bay Store Deposits – Debit Card	████	████	CDN\$	Yes
Hudson's Bay Company	The Toronto-Dominion Bank	Hudson's Bay Company Re Zellers Deposits - Visa	████	████	CDN\$	Yes
Hudson's Bay Company	The Toronto-Dominion Bank	Hudson's Bay Company Re Zellers Deposits – Debit Card	████	████	CDN\$	Yes
Hudson's Bay Company	Royal Bank of Canada	Hbc Bay Store Deposits	████	████	CDN\$	Yes
Hudson's Bay Company	Royal Bank of Canada	Hbc Bay Store Deposits – Credit Card Deposits	████	████	CDN\$	Yes
Hudson's Bay Company	Royal Bank of Canada	Hbc Home Outfitters Store Deposits	████	████	CDN\$	Yes
Hudson's Bay Company	Royal Bank of Canada	Hbc Bay Store Deposits USD	████	████	US\$	Yes
Hudson's Bay	Royal Bank of	Hbc Home Outfitters	████	████	US\$	Yes

<i>Depository Accounts</i>						
Company (Owner)	Name of Bank	Type of Account (Description)	Transit #	Account #	Currency	Blocked
Company	Canada	Store Deposits USD				
Hudson's Bay Company	Royal Bank of Canada	Hbc Head Office Deposits USD	████	████	US\$	Yes
Hudson's Bay Company	Royal Bank of Canada	Hbc Head Office Deposits	████	████	CDN\$	Yes
Hudson's Bay Company	Royal Bank of Canada	Hbc	████	████	CDN\$	Yes

<i>Other – Disbursement and Depository</i>						
Company (Owner)	Name of Bank	Type of Account (Description)	Transit #	Account #	Currency	Blocked
Hudson's Bay Company	BAML	Hudson's Bay Company - US	████	████	US\$	No
Hudson's Bay Company	CITI	HBC High Interest	████	████	CDN\$	No
Hudson's Bay Company	BAML	HBC High Interest	████	████	US\$	No
Hudson's Bay Company	Royal Bank of Canada	HBC High Interest	████	████	CDN\$	No

**Lord & Taylor**

Company (Owner)	Name of Bank	Type of Account (Description)	Account #	Currency	Blocked
Lord & Taylor LLC	Bank of America	LT Master Disbursement	████	US\$	No
Lord & Taylor LLC	Bank of America	LT Payroll	████	US\$	No
Lord & Taylor LLC	Bank of America	LT AP	████	US\$	No





Lord & Taylor LLC	Bank of America	L&T Store Deposits	████████	US\$	No
Lord & Taylor LLC	Bank of America	L&T Store Deposits	████████	US\$	No
Lord & Taylor LLC	Bank of America	L&T Store Deposits	████████	US\$	No
Lord & Taylor LLC	Bank of America	L&T Store Deposits	████████	US\$	No
Lord & Taylor LLC	Bank of America	L&T Store Deposits	████████	US\$	No
Lord & Taylor LLC	Bank of America	L&T Store Deposits	████████	US\$	No
Lord & Taylor LLC	Bank of America	L&T Store Deposits	████████	US\$	No
Lord & Taylor LLC	Bank of America	L&T Store Deposits	████████	US\$	No
Lord & Taylor LLC	Bank of America	L&T Store Deposits	████████	US\$	No
Lord & Taylor LLC	Bank of America	L&T Store Deposits	████████	US\$	No
Lord & Taylor LLC	Bank of America	L&T Store Deposits	████████	US\$	No
Lord & Taylor LLC	Bank of America	L&T Store Deposits	████████	US\$	No
Lord & Taylor LLC	Bank of America	L&T Store Deposits	████████	US\$	No
Lord Taylor Acquisition Inc.	Bank of America	LTA Account	████████	US\$	No
Lord & Taylor LLC	Bank of America	L&T Store Deposits	████████	US\$	No

**Saks**

Company (Owner)	Type of Account (Description)	Name of Bank	Account #	Currency	Blocked
Saks Incorporated	Store Master Depository	Wells Fargo	████████	US\$	No
Saks Incorporated	Master Depository	Wells Fargo	████████	US\$	Yes

Saks Incorporated	Master Disbursement	Wells Fargo	████████	US\$	No
Saks Incorporated	Payroll Account	Wells Fargo	████████	US\$	No
Saks Incorporated	Disbursement - Payroll Account	Wells Fargo	████████	US\$	No
Saks Incorporated	Disbursement - Accounts Payable	Wells Fargo	████████	US\$	No
Saks Incorporated	Disbursement - Expense Payable	Wells Fargo	████████	US\$	No
Saks Incorporated	Corporate Deposit	Wells Fargo	████████	US\$	No
Saks Incorporated	Sales Tax	Wells Fargo	████████	US\$	No
Saks Foundation	Saving	Wells Fargo	██████████	US\$	No
Saks Incorporated	Disbursement - Fusion	Wells Fargo	████████	US\$	No

**Schedule 5.22(b)**  
**Credit Card Arrangements**

**Hudson's Bay Company**

<b>Name of Agreement</b>	<b>Name of Parties</b>	<b>Date of Agreement</b>
Co-Branded and Private Label Credit Card Program Agreement	Capital One, National Association, Capital One Bank (USA), National Association (operating through Capital One Bank (Canada Branch)) and Hudson's Bay Company, Lord & Taylor LLC and Saks Incorporated	October 22, 2014
Select Merchant Payment Instrument Processing Agreement	Lord & Taylor LLC, Hudson's Bay Company, Saks & Company LLC, Paymentech, LLC and JPMorgan Chase Bank, N.A. <sup>1</sup>	January 9, 2017
Amended and Restated Corporate Merchant Services Agreement	The Toronto-Dominion Bank and Hudson's Bay Company	March 1, 2017
Agreement for American Express Acceptance	Amex Bank of Canada and Hudson's Bay Company	September 5, 2014
Merchant Agreement	Hudson's Bay Company, Lord & Taylor LLC, PayPal, Inc., and PayPal CA Limited	April 9, 2013
Acceptance Agreement for China Union Pay Card	Bank of China (Canada) and Hudson's Bay Company	August 12, 2015
China UnionPay Acquiring Services Merchant Terms and Conditions	Bank of China (Canada) and Hudson's Bay Company	August 12, 2015
Payment Services Merchant Pilot Agreement	Riverpay, Inc., Hudson's Bay Company	April 1, 2018

**Lord & Taylor and Saks**

<b>Name of Agreement</b>	<b>Name of Parties</b>	<b>Date of Agreement</b>
Merchant Services Agreement	Discover Financial Services LLC, and Lord & Taylor LLC	October 3, 2006
Merchant Agreement	Hudson's Bay Company, Lord & Taylor LLC, PayPal, Inc., and PayPal Canada, Limited	April 9, 2013
Agreement for American Express Acceptance	American Express Travel Related Services Company, LLC and Lord & Taylor Holdings, LLC	April 1, 2014
Merchant Services Agreement	Discover Card Services, Inc. and Saks	January 30, 1990

<sup>1</sup> Certain Immaterial Subsidiaries, being GHBC City Unlimited Company and GHBC Unlimited Company are also each a party to the Select Merchant Payment Instrument Processing Agreement.

	Fifth Avenue	
Agreement for American Express Acceptance	American Express Travel Related Services Company, LLC and Saks & Company	April 1, 2014
Payment Services Merchant Pilot Agreement	Riverpay, Inc., Saks & Co	April 1, 2018



**Schedule 5.24**  
**Material Contracts**

None.

**Schedule 5.26**  
**Customs Brokers/Carrier Agreements<sup>2</sup>**

<b>INTERNATIONAL CARRIER REPORT - BORROWERS TO SEEK INCLUSION IN BORROWING BASE OF INVENTORY IN POSSESSION OF THESE ENTITIES<sup>3</sup></b>			
<b>Carrier Name</b>	<b>Banner</b>	<b>Carrier Type</b>	<b>Address</b>
Damco Canada Inc. and affiliates	HBC	Air Freight Forwarding Carrier and Ocean Carrier	2576 Matheson Blvd., East Mississauga, Ontario
Evergreen Shipping Agency (America) Corp.	HBC	Ocean Carrier	200 Granville Street Suite 1010, Vancouver, BC V6C 1S4
Hyundai Merchant Marine Co	HBC	Ocean Carrier	1755, Wittington Place Suite 300, Farmers Branch Texas , 75235
MSC Mediterranean Shipping Company SA	SAKS/HBC	Ocean Carrier	360 St-Jacques West – Suite 900, Montreal Quebec, H2Y 1P5
COSCO Shipping Lines Co. Ltd	HBC	Ocean Carrier	100 Lighting Way, Secaucus, NJ 07094

<b>INTERNATIONAL CARRIER REPORT - BORROWERS NOT INTENDING TO SEEK INCLUSION IN BORROWING BASE OF INVENTORY IN POSSESSION OF THESE ENTITIES</b>			
<b>Carrier Name</b>	<b>Banner</b>	<b>Carrier Type</b>	<b>Address</b>
Livingston International Inc.	HBC	Customs Broker	405 The West Mall Toronto, ON M9C 5K7
Canada Post Corporation	HBC	Courier	1 Dundas St W Suite 500 Toronto ON M5G 2L5
Purolator Inc.	HBC	Courier	5995 Avebury Rd. Mississauga, Ontario, Canada
Dynamex Inc.	HBC	Major Home Fashion Delivery	6860 Rexwood Road Mississauga, ON L4V 1L8
Roy Specialized Delivery Services Inc.	HBC	Major Home Fashion Delivery	531, rue Pépin Sherbrooke (Québec) J1L 1X3

<sup>2</sup> Certain Loan Parties have entered into numerous arrangements with trucking companies, none of which, on an individual basis are deemed to be material to such Loan Party.

<sup>3</sup> The Loan Parties shall use commercially reasonable efforts to deliver to the Agent, in form and substance reasonably satisfactory to the Agent, Customs Broker/Carrier Agreements duly executed by the six applicable customs brokers, freight forwarders, consolidators, carriers or other shipping agents indicated herein.

Joseph Eletto Transfer, Inc.	L&T/Saks	Land Carrier	600 West John Street Hicksville, NY 11801
Landstar System Inc.	L&T	Land Carrier	13410 Sutton Park Drive, South Jacksonville, Florida 32224
American National Logistics, Inc.	L&T/Saks	Land Carrier	202 N San Jacinto St, Rockwall, TX 75087
Dot-Line Transportation	L&T	Land Carrier	PO Box 8739 Fountain Valley, CA 92728-8739
Covenant Transportation Group, Inc.	L&T/Saks	Land Carrier	400 Birmingham Hwy, Chattanooga, TN 37419
Celadon Group, Inc.	L&T	Land Carrier	9503 East 33rd Street Indianapolis, IN 46235 - 4207
Daybreak Express	L&T	Land Carrier	500 Avenue P, Newark, NJ 07105
Eastern Freight Ways Inc	L&T	Land Carrier	212 Blackhorse Ln, North Brunswick Township, NJ 08902
Roadscholar Transport	L&T	Land Carrier	130 Monahan Avenue Dunmore, PA 18512
Sharp Transportation Inc	L&T	Land Carrier	390 N 900 E, Wellsville, UT 84339
C.H. Robinson	L&T	Land Carrier	300 Harmon Meadow Blvd #300, Secaucus, NJ 07094
Con-way Inc.	L&T/Saks	Land Carrier	2211 Old Earhart Road Suite 100 Ann Arbor, MI 48105-2751
FedEx Corporation	L&T/Saks	Land/Air Carrier	3610 Hacks Cross Rd, Memphis, TN 38125, United States
Newgistics	L&T/Saks	Land Carrier	2700 Via Fortuna, Suite 300 Austin, TX 78746
Schneider National	L&T/Saks	Land Carrier	3101 Packerland Dr, Green Bay, WI 54313
Brinks Global Services USA	Saks	High Value Land Carrier	580 5th Avenue 4th floor New York, NY 10036
Savino Del Benne	Saks	Air Carrier	14910 183rd St #2, Springfield Gardens, NY 11413

**NON INTERNATIONAL CARRIERS (Domestic)**

Carrier Name	Banner	Carrier Type	Address
CN RAIL	HBC	Rail Carrier	935 de La Gauchetière Street West Montreal, Quebec H3B 2M9 Canada
TRANSX LTD	HBC	Land Carrier	2595 Inkster Boulevard Winnipeg, Manitoba R3C 2E6 Canada
PROWEST TRANSPORT	HBC	Land Carrier	9900 River Dr, Richmond, BC V6X 3S3, Canada
GARDEWINE NORTH	HBC	Land Carrier	60 Eagle Drive, Winnipeg, MB - R2R 1V5, Canada
REMCO FORWARDING LIMITED	HBC	Land Carrier	1 Wilkinson Road, Brampton, ON L6T 4M6, Canada
LANDTRAN LOGISTICS INC	HBC	Land Carrier	4819 90A Ave NW, Edmonton, AB T6B 2Y3, Canada
KELTIC TRANSPORTATION INC	HBC	Land Carrier	90 MacNaughton Ave, Moncton, NB E1H 3L9, Canada
MINIMAX TRANSPORTATION	HBC	Land Carrier	605 Education Rd. ON, CAN. K6H 6C7
KRG LOGISTICS INC	HBC	Land Carrier	170 Traders Blvd E, Mississauga, ON L4Z 1W7, Canada
HERCULES TRANSPORT	HBC	Land Carrier	P.O. Box 536 3452 Hwy. 145 N. Choudrant, LA 71227
CP RAIL (REMIT TORONTO)	HBC	Rail Carrier	7550 Ogden Dale Road S.E. Calgary, AB T2C 4X9
MCKEVITT TRUCKING	HBC	Land Carrier	1200 Carrick Street Thunder Bay, ON P7B 5P9
GROUPE ROBERT INC. (ROUGEMONT)	HBC	Land Carrier	20 Boulevard Marie-Victorin, Boucherville, QC J4B 1V5
Landstar System Inc.	L&T	Land Carrier	13410 Sutton Park Drive, South Jacksonville, Florida 32224
American National Logistics, Inc.	L&T/Saks	Land Carrier	202 N San Jacinto St, Rockwall, TX 75087
Dot-Line Transportation	L&T	Land Carrier	PO Box 8739 Fountain Valley, CA 92728-8739

Covenant Transportation Group, Inc.	L&T/Saks	Land Carrier	400 Birmingham Hwy, Chattanooga, TN 37419
Daybreak Express	L&T	Land Carrier	500 Avenue P, Newark, NJ 07105
Eastern Freight Ways Inc	L&T	Land Carrier	212 Blackhorse Ln, North Brunswick Township, NJ 08902
Roadscholar Transport	L&T	Land Carrier	130 Monahan Avenue Dunmore, PA 18512
FedEx Corporation	L&T/Saks	Land/Air Carrier	3610 Hacks Cross Rd, Memphis, TN 38125, United States
Schneider National	L&T/Saks	Land Carrier	3101 Packerland Dr, Green Bay, WI 54313
Brinks Global Services USA	Saks	High Value Land Carrier	580 5th Avenue 4th floor New York, NY 10036
MARITIMEONTARIO FREIGHT LINES LIMITED	HBC	Land Carrier	1 Maritime Ontario Blvd, Brampton, ON L6S 6G4
SURE TRACK COURIER LTD	HBC	Land Carrier	321 Courtland Ave, Concord, ON L4K 4T2
Traffic Tech Inc.	HBC	Land Carrier	550 Matheson Blvd E, Mississauga, ON L4Z 4G3
Bison Transport Services Ltd.	HBC	Land Carrier	5840 Shawson Dr, Mississauga, ON L4W 3W5
TRANSPORT BOURRET INC	HBC	Land Carrier	6050 Dixie Rd, Mississauga, ON L5T 1A6
LIBERTY LINEHAUL INC.	US	Land Carrier	214 Boida Ave, Ayr, ON N0B 1E0
1-BRIDGE LOGISTICS	HBC	Land Carrier	08 - 21300 Gordon Way, Richmond, BC V6W 1M2
LOGISTICS IN VISION ENTERPRISES INC	HBC	Land Carrier	6961 Vine St #202 Indian Head Park, IL 60525

Simard	HBC	Land Carrier	1212 32e Avenue, Lachine, QC H8T 3K7
ASA Logistics	US	Land Carrier	1105 Schrock Rd, Columbus, OH 43229, USA
Big E Transportation	US	Land Carrier	3901 West Broad Street Richmond, VA 23230
Eletto	US	Land Carrier	1000 Semmes Avenue P.O. Box 1216 Richmond, VA 23218-1216
Performance Team	US	Land Carrier	145 Talmadge Rd Ste 6, Edison, NJ 08817, USA
UPS FREIGHT	US	Land Carrier	
Dependable Hawaiian Express	US	Land Carrier	703 N Nimitz Hwy, Honolulu, HI 96817, USA
LIBERTY WEST INC	US	Land Carrier	214 Boida Ave, Ayr, ON N0B 1E0
DURKEE DRAYAGE COMPANY INC	US	Land Carrier	3655 Collins Ave, Richmond, CA 94806, USA
TCA Logistics	US	Land Carrier	Hicksville, NY, USA
A&S KINARD LOGISTICS LLC	US	Land Carrier	310 N Zarfoss Dr, York, PA 17404, USA
RED LINE TOWING INC	US	Land Carrier	347 Main Street, Dickson City,, PA 18519, US
LAND AIR EXPRESS INC	US	Land Carrier	
COMMERCIAL TRAILER LEASING INC	US	Land Carrier	03 Eisenhower Pkwy, Roseland, NJ 07068, USA
YRC	US	Land Carrier	
UNITED EXPRESS SYSTEM INC	US	Land Carrier	5 S. 350 Frontenac Rd. Naperville, IL 60563
WEND	US	Land Carrier	
CROWLEY LOGISTICS INC	US	Land Carrier	2250 Point Blvd #340, Elgin, IL 60123, USA

J B HUNT TRANSPORT INC	US	Land Carrier	615 J.B Hunt Drive, Lowell, AR 72745-9142
PILOT AIR FREIGHT CORPORATION	US	Land Carrier	6710 Maritz Drive, Mississauga, ON L5W 1L8
Universal Packaging	US	Land Carrier	12870 Nw 107th Court Dr Medley, FL 33178
DYNAMIC/NEW DEAL	US	Land Carrier	125 Pennsylvania Ave South Kearny, NJ 07032
HES TRANS INC	US	Land Carrier	90 Dayton Ave Bldg#5 Ste 203, Passaic, NJ 07055, USA
R & L CARRIERS INC	US	Land Carrier	600 Gillam Rd. Wilmington, OH 45177
SALSON LOGISTICS	US	Land Carrier	4382 Moreland Ave, Conley, GA 30288, USA
BEST TRANSPORTATION	US	Land Carrier	1103 Schrock Road Suite 100 Columbus, OH, 43229
ADAMS THIRD WAVE	US	Land Carrier	1147, 316 N Loomis St h2, Chicago, IL 60607, United States
KANE FREIGHT LINES INC	US	Land Carrier	Stauffer Industrial Park  Kane Administration Building  Scranton, PA 18501  United States
DHL WORLDWIDE EXPRESS	US	Land Carrier	6 Belsize Dr #101, Toronto, ON M4S 1L4
TRIPLE CROWN LOGISTICS INC	US	Land Carrier	Ocala, FL, USA
COYOTE A UPS COMPANY	US	Land Carrier	1930 Derry Road East Mississauga , ON L5S 1E2 Canada
ESTES FORWARDING WORLDWIDE LLC	US	Land Carrier	400 Capital Ln Suite 300, Middletown, PA 17057, USA

## Schedule 6.02 Financial and Collateral Reporting

	Included
<b>A. Due on the 16th day of each Fiscal Month (1)</b>	
1. Borrowing Base Certificate	
<b>B. Quarterly (within 45 days after the end of first three Fiscal Quarters) (2) (3) (4)</b>	
- Consolidated and consolidating Balance Sheet of Parent and its Subsidiaries	
- Consolidated and consolidating Statements of Income or Operations of Parent and its Subsidiaries	
- Consolidated and consolidating Cash Flows of Parent and its Subsidiaries	
- Calculation of Consolidated Fixed Charge Coverage Ratio reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries from such Consolidated Fixed Charge Coverage Ratio Compliance Certificate	
<b>C. Annually (within 90 days after Fiscal Year End) (4) (5)</b>	
Forecasts on a monthly basis of:	
- Availability	
- Canadian Availability	
- U.S. Availability	
Forecasts on a quarterly basis of:	
- Consolidated and consolidating (by Borrower) Balance Sheet of Parent and its Subsidiaries	
- Consolidated and consolidating (by Borrower) Statements of Income or Operations of Parent and its Subsidiaries	
- Consolidated and consolidating (by Borrower) Cash Flows of Parent and its Subsidiaries	
<b>D. Annually (within 120 days after Fiscal Year End (6)(4)(7))</b>	
Audited annual financial statements including:	
- Consolidated and consolidating Balance Sheet of Parent and its Subsidiaries	
- Consolidated and consolidating Statements of Income or Operations of Parent and its Subsidiaries	
- Consolidated and consolidating Shareholders' Equity of Parent and its Subsidiaries	
- Consolidated and consolidating Cash Flows of Parent and its Subsidiaries	
- Calculation of Consolidated Fixed Charge Coverage Ratio reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries from such Consolidated Fixed Charge Coverage Ratio Compliance Certificate	

(1) Provided that at any time that an Accelerated Borrowing Base Delivery Event has occurred and is continuing, such Borrowing Base Certificate shall be delivered on Wednesday of each week (or, if Wednesday is not a Business Day, on the next succeeding Business Day), as of the close of business on the immediately preceding Saturday

(2) Setting forth in each case in comparative form the figures for (A) the corresponding Fiscal Quarter of the previous Fiscal Year and (B) the corresponding portion of the previous Fiscal Year

(3) Or with respect to any Fiscal Quarter which is also the end of a Fiscal Year, 90 days

(4) All consolidating statements to be presented by each Borrower and its Subsidiaries on a consolidated basis

(5) Each such forecast being for the immediately following Fiscal Year

(6) Setting forth in each case in comparative form the figures for the previous Fiscal Year

(7) Only Consolidated Statements required to be audited



**Schedule 7.01**  
**Existing Liens**

1. UCC Financing Statement #20140187401 filed on January 15, 2014 with the Delaware Department of State, as continued, amended or otherwise modified, with Lord & Taylor Acquisition Inc. as debtor and Wells Fargo Equipment Finance, Inc. as secured party in relation to an aircraft lease.
2. UCC Financing Statement #20152575206 filed on June 16, 2015 with the Delaware Department of State, as continued, amended or otherwise modified, with SAKS & COMPANY LLC as debtor and BC INTERNATIONAL GROUP, INC. as secured party in connection with a concession agreement where BC International Group, Inc. supplies its own inventory and employees within SAKS & COMPANY LLC's locations and retains title of its inventory, which is not included in the borrowing base.
3. Judgment lien against Saks Incorporated filed on February 8, 2007 in the New York County Clerk's Office, as continued, amended or otherwise modified, in favor of Betsy Becker as creditor in the amount of \$118,743.01. To the best of Saks Incorporated's knowledge there have been no steps taken in relation to enforcement of the judgement and no notice of enforcement have been received by Saks Incorporated.
4. PPSA financing statement Reference file number 749341143 and Quebec RPDRM filings, against Hudson's Bay Company, Riocan - HBC Limited Partnership and Riocan - HBC General Partner Inc. as debtors by Computershare Trust Company of Canada as secured party relating to property located at 585 St. Catherine Street, Montreal, Quebec, which is filed against the Canadian Borrower as a consequence of it being the nominee title holder of such real property.

**Schedule 7.02**  
**Existing Investments**

The following Investments, in the amounts outstanding as of the Effective Date, were made prior to the Effective Date:

**Hudson's Bay Company**

1. Investment made into RioCan-HBC Limited Partnership and the General Partner, Riocan-HBC General Partner Inc.
2. Investments made into HBC YSS I Limited Partnership and the General Partner HBC YSS I LP Inc.
3. Investments made into HBC YSS 2 Limited Partnership and the General Partner HBC YSS 2 LP Inc.
4. Investments made into HBCRP LP and the General Partner HBC Retained Properties GP Inc.
5. Investment made into HBS Global Properties LLC.
6. Investments made into the following Immaterial Subsidiaries:
  - a. HBC Avantem Insurance Agency Inc.
  - b. Snospmis Limited
  - c. RSCL Distribution Services Inc.
  - d. Hudson's Bay Services Private Limited
  - e. 2472596 Ontario Inc.
  - f. 2472598 Ontario Inc.
  - g. HBC Europe Holdco LLC
  - h. HBC Europe S.à.r.l.

**Lord & Taylor**

1. Investments made into LT Parent Propco LLC
2. Investment made into GHBC Groupe Holdings, Inc.
3. Investment made into Street-Works Development LLC
4. Investments made into the following Immaterial Subsidiaries:
  - a. Creative Design Studios, LLC
  - b. Nonsuch LLC

**Saks**

1. Investments made into Saks Fifth Avenue Holdco LLC
2. Investments made into Saks & Company Real Property LLC
3. Investments made into SCCA Store Holdings Real Property LLC
4. Investments made into Saks Fifth Avenue Real Property LLC
5. Investments made into Saks Columbus Real Property LLC
6. Investments made into Saks Richmond Real Property LLC
7. Investment made into HBS Global Properties LLC
8. Investments made into Saks Fifth Avenue Puerto Rico, Inc.
9. Investments made into Club Libby Lu, Inc.

**HBC Europe Holding S.à.r.l.**

1. Investment made into GHBC Credit Company Unlimited Company
2. Investment made into GHBC City Unlimited Company
3. Investment made into GHBC Unlimited Company
4. Investment made into HBC Europe S.à.r.l.
5. Investment made into the following Immaterial Subsidiary:
  - a. Hudson's Bay Services Private Limited

**Schedule 7.03**  
**Existing Indebtedness**

1. Loan agreement entered into on March 21, 2017, between Hudson's Bay Company, as Borrower, and ANSR ON JV Holdings, LLC, as Lender, with USD\$700,000 outstanding at the Effective Date, with an interest rate of 4.33%.
2. Promissory note issued on October 31, 2017 by Hudson's Bay Company to RioCan Real Estate Investment Trust with CAD\$24,084,400 outstanding at the Effective Date, with an interest rate of Prime plus 1%.
3. Promissory note issued on September 30, 2019 by Hudson's Bay Company to HBC Europe Holdco LLC with USD\$86,505,180.84 outstanding at the Effective Date, with an interest rate of 1.85%.

**Schedule 7.05**  
**Permitted Dispositions**

None.

**Schedule 7.09**  
**Affiliate Transactions**

None.

**Schedule 10.02**  
**Agent's Office; Certain Addresses for Notice**

**If to the Loan Parties:**

Hudson's Bay Company  
225 Liberty Street, 31<sup>st</sup> floor  
New York, NY 10281  
Attention: David Schwartz  
Telephone: (646) 802-2274  
E-Mail: david.schwartz@hbc.com

And to:

Hudson's Bay Company  
698 Lawrence Avenue West  
Toronto, ON M6A 3A5  
Attention: Patricia Heaney  
Telephone: (416) 256-6727  
Facsimile: (416) 256-6746  
E-Mail: patricia.heaney@hbc.com

Website: <http://investor.hbc.com/>

with a copy to:

Stikeman Elliott LLP  
5300 Commerce Court West, 199 Bay Street  
Toronto, ON M5L1B9  
Attention: Jennifer Legge  
Telephone: (416) 869-5660  
Facsimile: (416) 947-0866  
E-Mail: jlegge@stikeman.com

**If to the Agent, L/C Issuer & Swing Line Lender and U.S. Agent's Office**

Bank of America N.A.  
100 Federal Street, 9th Floor  
Boston, Massachusetts 02110  
Attention: Mr. Brian Lindblom  
Telephone: (617) 434-1353  
Facsimile: (617) 310-2872  
E-mail: brian.p.lindblom@baml.com

with a copy to:

Morgan Lewis & Bockius LLP  
One Federal Street  
Boston, Massachusetts 02110-1726

Attention: Matthew F. Furlong, Esq.  
Telephone: (617) 341-7740  
Facsimile: (617) 341-7701  
E-mail: [matthew.furlong@morganlewis.com](mailto:matthew.furlong@morganlewis.com)

**Canadian Agent's Office**

Bank of America, N.A.  
181 Bay Street, 4th Floor  
Toronto ON M5J 2V8, Canada  
Attention: Sylwia Durkiewicz  
Telephone: (416) 349-2839  
Facsimile: (312) 453-4041  
Email: [sylwia.durkiewicz@baml.com](mailto:sylwia.durkiewicz@baml.com)



## EXHIBIT A-1

### FORM OF U.S. REVOLVING LOAN NOTICE

Date: \_\_\_\_\_, \_\_\_\_\_

To: Bank of America, N.A., as Agent

Ladies and Gentlemen:

Reference is made to the Amended and Restated Credit Agreement dated as of October 11, 2019 (as amended, restated, supplemented or otherwise modified and in effect from time to time, the “Credit Agreement”), by, among others, (i) Hudson’s Bay Company, a corporation organized under the federal laws of Canada, as the Canadian Borrower (in such capacity, the “Canadian Borrower”), and as Lead Borrower for itself and the other Borrowers party thereto from time to time (in such capacity, the “Lead Borrower”), (ii) Lord & Taylor Acquisition Inc., a Delaware corporation, as the U.S. Borrower (in such capacity, the “U.S. Borrower”, and together with the Canadian Borrower, each a “Borrower” and collectively, the “Borrowers”), (iii) the Guarantors party thereto from time to time, (iv) the Lenders party thereto from time to time (the “Lenders”), (v) Bank of America, N.A., as Administrative Agent and Collateral Agent (in such capacities, the “Agent”), (vi) Bank of America, N.A. and each other L/C Issuer referred to therein (collectively, the “L/C Issuer”), and (vii) Bank of America, N.A., as Swing Line Lender. Capitalized terms used herein and not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

1. On behalf of the U.S. Borrower, the Lead Borrower hereby requests (select one)<sup>1</sup>:

☐ a U.S. Revolving Borrowing

☐ a conversion of U.S. Revolving Loans from \_\_\_\_\_ (Type of U.S. Revolving Loan being converted)

☐ a continuation of LIBOR Rate Loans or CDOR Rate Loans

(a) On \_\_\_\_\_ (a Business Day)<sup>2</sup>

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<sup>1</sup> A U.S. Revolving Borrowing must be a borrowing consisting of simultaneous U.S. Revolving Loans of the same Type and (i) in the case of LIBOR Rate Loans, must have the same Interest Period, or (ii) in the case of CDOR Rate Loans, must have the same CDOR Period.

<sup>2</sup> Each notice of a U.S. Revolving Borrowing, each Conversion of U.S. Revolving Loans from one Type to the other, and each continuation of LIBOR Rate Loans and CDOR Rate Loans must be received by the Agent not later than 11:00 a.m. (i) three Business Days prior to the requested date of any U.S. Revolving Borrowing of, Conversion to or continuation of LIBOR Rate Loans or CDOR Rate Loans or of any Conversion of LIBOR Rate Loans or CDOR Rate Loans to Prime Rate Loans, and (ii) one Business Day prior to the requested date of any Borrowing of Prime Rate Loans; provided, however, that if the Lead Borrower wishes to request any U.S. Revolving Borrowing to be made to the U.S. Borrower, or continued or converted, in currency other than Dollars, the applicable notice must be received not later than 11:00 a.m. four Business Days prior to the requested date of such U.S. Revolving

- (b) In the amount of \_\_\_\_\_, and comprised of \_\_\_\_\_ Loans  
(Type of Revolving Loan being requested, converted to or continued)<sup>3</sup>
- (c) For [LIBOR Rate Loans][CDOR Rate Loans]: with an [Interest Period][CDOR  
Period] of \_\_\_\_\_<sup>4</sup>

The Lead Borrower hereby represents and warrants that (a) the U.S. Revolving Borrowing requested herein complies with Section 2.02 and the other provisions of the Credit Agreement and (b) the conditions specified in Sections 4.01 and 4.02 of the Credit Agreement have been satisfied on and as of the date specified in Item 1(a) above.

[signature page follows]

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Borrowing and if the Lead Borrower wishes to request LIBOR Rate Loans or CDOR Rate Loans having an Interest Period (or CDOR Period, as applicable) other than one, two, three or six months in duration as provided in the definition of "Interest Period" (or "CDOR Period", as applicable), the applicable notice must be received by the Agent not later than 11:00 a.m. four Business Days prior to the requested date of such U.S. Revolving Borrowing, Conversion or continuation, whereupon the Agent shall give prompt notice to the Lenders of such request and determine whether the requested Interest Period (or CDOR Period, as applicable) is acceptable to all of them.

<sup>3</sup> To include whether such U.S. Revolving Loans are to be made in Dollars or Canadian Dollars. U.S. Revolving Loans made in Dollars (other than Swing Line Loans) shall be either Base Rate Loans or LIBOR Rate Loans as the U.S. Borrower may request subject to and in accordance with Section 2.02 of the Credit Agreement. U.S. Revolving Loans made in Cdn\$ shall only be CDOR Rate Loans. Each Borrowing of, Conversion to or continuation of LIBOR Rate Loans and CDOR Rate Loans shall be in a principal amount of \$5,000,000 (or Cdn\$5,000,000) or a whole multiple of \$1,000,000 (or Cdn\$1,000,000) in excess thereof. If the Lead Borrower fails to specify a Type of U.S. Revolving Loan herein or if the Lead Borrower fails to give a timely notice requesting a Conversion or continuation, then the applicable U.S. Revolving Loans shall be made as, or Converted to, applicable Prime Rate Loans.

<sup>4</sup> The Lead Borrower may request a U.S. Revolving Borrowing of LIBOR Rate Loans with an Interest Period of one, two, three or six months (or such other period that is twelve months or seven days as requested by the Lead Borrower, to the extent available to all applicable Lenders). The Lead Borrower may request a U.S. Revolving Borrowing of CDOR Rate Loans with a CDOR Period of one, two, three or six months (or such other period that is twelve months or seven days as requested by the Lead Borrower, to the extent available to all applicable Lenders). If no election of Interest Period (or CDOR Period, as applicable) is specified, then the Lead Borrower will be deemed to have specified an Interest Period (or CDOR Period, as applicable) of one month. After giving effect to all Revolving Borrowings, all Conversions of Revolving Loans from one Type to the other, and all continuations of Revolving Loans as the same Type, there shall not be more than eight (8) Interest Periods (or CDOR Periods, as applicable) in effect for each Borrower with respect to each Type of Revolving Loan consisting of LIBOR Rate Loans or CDOR Rate Loans.

Dated as of the date above first written.

**HUDSON'S BAY COMPANY**, as Lead Borrower

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT A-2

### FORM OF CANADIAN REVOLVING LOAN NOTICE

Date: \_\_\_\_\_, \_\_\_\_\_

To: Bank of America, N.A., as Agent

Ladies and Gentlemen:

Reference is made to the Amended and Restated Credit Agreement dated as of October 11, 2019 (as amended, restated, supplemented or otherwise modified and in effect from time to time, the “Credit Agreement”), by, among others, (i) Hudson’s Bay Company, a corporation organized under the federal laws of Canada, as the Canadian Borrower (in such capacity, the “Canadian Borrower”), and as Lead Borrower for itself and the other Borrowers party thereto from time to time (in such capacity, the “Lead Borrower”), (ii) Lord & Taylor Acquisition Inc., a Delaware corporation, as the U.S. Borrower (in such capacity, the “U.S. Borrower”, and together with the Canadian Borrower, each a “Borrower” and collectively, the “Borrowers”), (iii) the Guarantors party thereto from time to time, (iv) the Lenders party thereto from time to time (the “Lenders”), (v) Bank of America, N.A., as Administrative Agent and Collateral Agent (in such capacities, the “Agent”), (vi) Bank of America, N.A. and each other L/C Issuer referred to therein (collectively, the “L/C Issuer”), and (vii) Bank of America, N.A., as Swing Line Lender. Capitalized terms used herein and not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

2. On behalf of the Canadian Borrower, the Lead Borrower hereby requests (select one)<sup>5</sup>:

- ☐ a Canadian Revolving Borrowing
- ☐ a conversion of Canadian Revolving Loans from \_\_\_\_\_ (Type of Canadian Revolving Loan being converted)
- ☐ a continuation of LIBOR Rate Loans or CDOR Rate Loans

(a) On \_\_\_\_\_ (a Business Day)<sup>6</sup>

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<sup>5</sup> A Canadian Revolving Borrowing must be a borrowing consisting of simultaneous Canadian Revolving Loans of the same Type and (i) in the case of LIBOR Rate Loans, must have the same Interest Period, or (ii) in the case of CDOR Rate Loans, must have the same CDOR Period.

<sup>6</sup> Each notice of a Canadian Revolving Borrowing, each Conversion of Canadian Revolving Loans from one Type to the other, and each continuation of LIBOR Rate Loans and CDOR Rate Loans must be received by the Agent not later than 11:00 a.m. (i) three Business Days prior to the requested date of any Canadian Revolving Borrowing of, Conversion to or continuation of LIBOR Rate Loans or CDOR Rate Loans or of any Conversion of LIBOR Rate Loans or CDOR Rate Loans to Prime Rate Loans, and (ii) one Business Day prior to the requested date of any Borrowing of Prime Rate Loans; provided, however, that if the Lead Borrower wishes to request any Canadian Borrowing to be made to the Canadian Borrower, or continued or converted, in currency other than Canadian Dollars, the applicable notice must be received not later than 11:00a.m. four Business Days prior to the requested

- (b) In the amount of \_\_\_\_\_, and comprised of \_\_\_\_\_ Loans  
(Type of Canadian Revolving Loan being requested, converted to or continued)<sup>7</sup>
- (c) For [LIBOR Rate Loans][CDOR Rate Loans]: with an [Interest Period][CDOR  
Period] of \_\_\_\_\_<sup>8</sup>

The Lead Borrower hereby represents and warrants that (a) the Canadian Revolving Borrowing requested herein complies with Section 2.02 and the other provisions of the Credit Agreement and (b) the conditions specified in Sections 4.01 and 4.02 of the Credit Agreement have been satisfied on and as of the date specified in Item 1(a) above.

[signature page follows]

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date of such Canadian Borrowing (provided that Borrowings to the Canadian Borrower in Dollars are not subject to the four day notice period but rather will be made upon notice described in clauses (i) and (ii) above) and if the Lead Borrower wishes to request LIBOR Rate Loans or CDOR Rate Loans having an Interest Period (or CDOR Period, as applicable) other than one, two, three or six months in duration as provided in the definition of "Interest Period" (or "CDOR Period", as applicable), the applicable notice must be received by the Agent not later than 11:00 a.m. four Business Days prior to the requested date of such Canadian Revolving Borrowing, Conversion or continuation, whereupon the Agent shall give prompt notice to the applicable Lenders of such request and determine whether the requested Interest Period (or CDOR Period, as applicable) is acceptable to all of them.

<sup>7</sup> To include whether such Canadian Revolving Loans are to be made in Dollars or Canadian Dollars. All Canadian Revolving Loans shall be made in either Dollars or Cdn\$. Canadian Revolving Loans made to the Canadian Borrower shall be either CDOR Rate Loans or Canadian Index Rate Loans (if made in Cdn\$) or LIBOR Rate Loans or U.S. Index Rate Loans (if made in Dollars) as the Canadian Borrower may request subject to and in accordance with Section 2.02 of the Credit Agreement. Each Borrowing of, Conversion to or continuation of LIBOR Rate Loans and CDOR Rate Loans shall be in a principal amount of \$5,000,000 (or Cdn\$5,000,000) or a whole multiple of \$1,000,000 (or Cdn\$1,000,000) in excess thereof. If the Lead Borrower fails to specify a Type of Canadian Revolving Loan herein or if the Lead Borrower fails to give a timely notice requesting a Conversion or continuation, then the applicable Canadian Revolving Loans shall be made as, or Converted to, applicable Prime Rate Loans.

<sup>8</sup> The Lead Borrower may request a Canadian Revolving Borrowing of LIBOR Rate Loans with an Interest Period of one, two, three or six months (or such other period that is twelve months or seven days as requested by the Lead Borrower, to the extent available to all the Lenders). The Lead Borrower may request a Canadian Revolving Borrowing of CDOR Rate Loans with a CDOR Period of one, two, three or six months (or such other period that is twelve months or seven days as requested by the Lead Borrower, to the extent available to all the Lenders). If no election of Interest Period (or CDOR Period, as applicable) is specified, then the Lead Borrower will be deemed to have specified an Interest Period (or CDOR Period, as applicable) of one month. After giving effect to all Revolving Borrowings, all Conversions of Canadian Revolving Loans from one Type to the other, and all continuations of Revolving Loans as the same Type, there shall not be more than eight (8) Interest Periods (or CDOR Periods, as applicable) in effect for each Borrower with respect to each Type of Loan consisting of LIBOR Rate Loans or CDOR Rate Loans.

Dated as of the date above first written.

**HUDSON'S BAY COMPANY**, as Lead Borrower

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT A-3

### FORM OF U.S. FILO TERM LOAN NOTICE

Date: \_\_\_\_\_, \_\_\_\_\_

To: Bank of America, N.A., as Agent

Ladies and Gentlemen:

Reference is made to the Amended and Restated Credit Agreement dated as of October 11, 2019 (as amended, restated, supplemented or otherwise modified and in effect from time to time, the “Credit Agreement”), by, among others, (i) Hudson’s Bay Company, a corporation organized under the federal laws of Canada, as the Canadian Borrower (in such capacity, the “Canadian Borrower”), and as Lead Borrower for itself and the other Borrowers party thereto from time to time (in such capacity, the “Lead Borrower”), (ii) Lord & Taylor Acquisition Inc., a Delaware corporation, as the U.S. Borrower (in such capacity, the “U.S. Borrower”, and together with the Canadian Borrower, each a “Borrower” and collectively, the “Borrowers”), (iii) the Guarantors party thereto from time to time, (iv) the Lenders party thereto from time to time (the “Lenders”), (v) Bank of America, N.A., as Administrative Agent and Collateral Agent (in such capacities, the “Agent”), (vi) Bank of America, N.A. and each other L/C Issuer referred to therein (collectively, the “L/C Issuer”), and (vii) Bank of America, N.A., as Swing Line Lender. Capitalized terms used herein and not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

3. On behalf of the U.S. Borrower, the Lead Borrower hereby requests (select one):

- ☐ the initial FILO Term Loan Borrowing
- ☐ a conversion of the Outstanding Amount of the U.S. FILO Term Loan from \_\_\_\_\_ (Type of U.S. FILO Term Loan being converted)
- ☐ a continuation of LIBOR Rate Loans

(a) On \_\_\_\_\_ (a Business Day)<sup>9</sup>

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<sup>9</sup> A notice of the Borrowing of the U.S. FILO Term Loan, each notice of Conversion of the U.S. FILO Term Loan from one Type to the other, and each notice of continuation of LIBOR Rate Loans must be received by the Agent not later than 11:00 a.m. (i) three Business Days prior to the requested date of the FILO Term Loan Borrowing of, Conversion to or continuation of LIBOR Rate Loans or CDOR Rate Loans or of any Conversion of LIBOR Rate Loans or CDOR Loans to Prime Rate Loans, and (ii) one Business Day prior to the requested date of any Borrowing of Prime Rate Loans; provided however, that if the Lead Borrower wishes to request LIBOR Rate Loans or CDOR Rate Loans having an Interest Period (or CDOR Period, as applicable) other than one, two, three or six months in duration as provided in the definition of “Interest Period” (or “CDOR Period”, as applicable), the applicable notice must be received by the Agent not later than 11:00 a.m. four Business Days prior to the requested date of the FILO Term Loan Borrowing, Conversion or continuation, whereupon the Agent shall give prompt notice to the applicable Lenders of such request and determine whether the requested Interest Period (or CDOR Period, as applicable) is acceptable to all of them.

- (b) In the amount of \_\_\_\_\_, and comprised of \_\_\_\_\_ Loans  
(Type of FILO Loan being requested, converted to or continued)<sup>10</sup>
- (c) For LIBOR Rate Loans: with an Interest Period of \_\_\_\_\_<sup>11</sup>

The Lead Borrower hereby represents and warrants that (a) the FILO Term Loan Borrowing requested herein complies with Section 2.02 and the other provisions of the Credit Agreement and (b) the conditions specified in Sections 4.03 of the Credit Agreement have been satisfied on and as of the date specified in Item 1(a) above.

[signature page follows]

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<sup>10</sup> To include whether the U.S. FILO Term Loan is to be made in Dollars or Canadian Dollars. The U.S. FILO Term shall be either Base Rate Loans or LIBOR Rate Loans as the U.S. Borrower may request subject to and in accordance with Section 2.02 of the Credit Agreement. The U.S. FILO Term Loan made in Cdn\$ shall only be a CDOR Rate Loan. Any Borrowing of, Conversion to or continuation the U.S. FILO Term Loan shall be in the entire Outstanding Amount of the U.S. FILO Term Loan. If the Lead Borrower fails to specify a Type of U.S. FILO Term Loan herein or if the Lead Borrower fails to give a timely notice requesting a Conversion or continuation, then the U.S. FILO Term Loan shall be made as, or Converted to, a Prime Rate Loan.

<sup>11</sup> The Lead Borrower may request a Borrowing of U.S. FILO Term Loans as LIBOR Rate Loans or CDOR Rate Loans with an Interest Period (or CDOR Period, as applicable) of one, two, three or six months (or such other period that is twelve months or seven days as requested by the Lead Borrower, to the extent available to all the Lenders). If no election of Interest Period is specified, then the Lead Borrower will be deemed to have specified an Interest Period (or CDOR Period, as applicable) of one month.



Dated as of the date above first written.

**HUDSON'S BAY COMPANY**, as Lead Borrower

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT A-4

### CANADIAN FILO TERM LOAN NOTICE

Date: \_\_\_\_\_, \_\_\_\_\_

To: Bank of America, N.A., as Agent

Ladies and Gentlemen:

Reference is made to the Amended and Restated Credit Agreement dated as of October 11, 2019 (as amended, restated, supplemented or otherwise modified and in effect from time to time, the "Credit Agreement"), by, among others, (i) Hudson's Bay Company, a corporation organized under the federal laws of Canada, as the Canadian Borrower (in such capacity, the "Canadian Borrower"), and as Lead Borrower for itself and the other Borrowers party thereto from time to time (in such capacity, the "Lead Borrower"), (ii) Lord & Taylor Acquisition Inc., a Delaware corporation, as the U.S. Borrower (in such capacity, the "U.S. Borrower"), and together with the Canadian Borrower, each a "Borrower" and collectively, the "Borrowers"), (iii) the Guarantors party thereto from time to time, (iv) the Lenders party thereto from time to time (the "Lenders"), (v) Bank of America, N.A., as Administrative Agent and Collateral Agent (in such capacities, the "Agent"), (vi) Bank of America, N.A. and each other L/C Issuer referred to therein (collectively, the "L/C Issuer"), and (vii) Bank of America, N.A., as Swing Line Lender. Capitalized terms used herein and not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

4. On behalf of the Canadian Borrower, the Lead Borrower hereby requests (select one):

☐ the initial FILO Term Loan Borrowing

☐ a conversion of the Canadian FILO Term Loan from \_\_\_\_\_ (Type of Canadian FILO Term Loan being converted)

☐ a continuation of LIBOR Rate Loans or CDOR Rate Loans

(a) On \_\_\_\_\_ (a Business Day)<sup>12</sup>

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<sup>12</sup> The notice of the Borrowing of the Canadian FILO Term Loan, each notice of Conversion of the Canadian FILO Term Loan from one Type to the other, and each notice of continuation of LIBOR Rate Loans and CDOR Rate Loans must be received by the Agent not later than 11:00 a.m. (i) three Business Days prior to the requested date of any FILO Term Loan Borrowing of, Conversion to or continuation of LIBOR Rate Loans or CDOR Rate Loans or of any Conversion of LIBOR Rate Loans or CDOR Rate Loans to Prime Rate Loans, and (ii) one Business Day prior to the requested date of any Borrowing of Prime Rate Loans and if the Lead Borrower wishes to request LIBOR Rate Loans or CDOR Rate Loans having an Interest Period (or CDOR Period, as applicable) other than one, two, three or six months in duration as provided in the definition of "Interest Period" (or "CDOR Period", as applicable), the applicable notice must be received by the Agent not later than 11:00 a.m. four Business Days prior to the requested date of such Borrowing, Conversion or continuation, whereupon the Agent shall give prompt notice

- (b) In the amount of \_\_\_\_\_, and comprised of \_\_\_\_\_ Loans  
(Type of Canadian FILO Term Loan being requested, converted to or continued)<sup>13</sup>
- (c) For [LIBOR Rate Loans][CDOR Rate Loans]: with an [Interest Period][CDOR  
Period] of \_\_\_\_\_<sup>14</sup>

The Lead Borrower hereby represents and warrants that (a) the FILO Term Loan Borrowing requested herein complies with Section 2.02 and the other provisions of the Credit Agreement and (b) the conditions specified in Sections 4.03 of the Credit Agreement have been satisfied on and as of the date specified in Item 1(a) above.

[signature page follows]

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to the applicable Lenders of such request and determine whether the requested Interest Period (or CDOR Period, as applicable) is acceptable to all of them.

<sup>13</sup> To include whether the Canadian FILO Term Loan is to be made in Dollars or Canadian Dollars. The Canadian FILO Term Loan made to the Canadian Borrower shall be either a CDOR Rate Loan or Canadian Index Rate Loan (if made in Cdn\$) or a LIBOR Rate Loan or U.S. Index Rate Loan (if made in Dollars) as the Canadian Borrower may request subject to and in accordance with Section 2.02 of the Credit Agreement. The Borrowing of, Conversion to or continuation of LIBOR Rate Loans and CDOR Rate Loans shall be in the entire Outstanding Amount of the Canadian FILO Term Loan. If the Lead Borrower fails to specify a Type of Canadian FILO Term Loan herein or if the Lead Borrower fails to give a timely notice requesting a Conversion or continuation, then the Canadian FILO Term Loan shall be made as, or Converted to, a Prime Rate Loan.

<sup>14</sup> The Lead Borrower may request a Borrowing of the Canadian FILO Term Loan of LIBOR Rate Loans with an Interest Period of one, two, three or six months (or such other period that is twelve months or seven days as requested by the Lead Borrower, to the extent available to all the Lenders). The Lead Borrower may request a Borrowing of the Canadian FILO Term Loan of CDOR Rate Loans with a CDOR Period of one, two, three or six months (or such other period that is twelve months or seven days as requested by the Lead Borrower, to the extent available to all the Lenders). If no election of Interest Period (or CDOR Period, as applicable) is specified, then the Lead Borrower will be deemed to have specified an Interest Period (or CDOR Period, as applicable) of one month.

Dated as of the date above first written.

**HUDSON'S BAY COMPANY**, as Lead Borrower

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT B-1

### FORM OF U.S. SWING LINE LOAN NOTICE

Date: \_\_\_\_\_, \_\_\_\_\_

To: Bank of America, N.A., as Swing Line Lender  
Bank of America, N.A., as Agent

Ladies and Gentlemen:

Reference is made to the Amended and Restated Credit Agreement dated as of October 11, 2019 (as amended, restated, supplemented or otherwise modified and in effect from time to time, the "Credit Agreement"), by, among others, (i) Hudson's Bay Company, a corporation organized under the federal laws of Canada, as the Canadian Borrower (in such capacity, the "Canadian Borrower"), and as Lead Borrower for itself and the other Borrowers party thereto from time to time (in such capacity, the "Lead Borrower"), (ii) Lord & Taylor Acquisition Inc., a Delaware corporation, as the U.S. Borrower (in such capacity, the "U.S. Borrower", and together with the Canadian Borrower, each a "Borrower" and collectively, the "Borrowers"), (iii) the Guarantors party thereto from time to time, (iv) the Lenders party thereto from time to time (the "Lenders"), (v) Bank of America, N.A., as Administrative Agent and Collateral Agent (in such capacities, the "Agent"), (vi) Bank of America, N.A. and each other L/C Issuer referred to therein (collectively, the "L/C Issuer"), and (vii) Bank of America, N.A., as Swing Line Lender. Capitalized terms used herein and not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

On behalf of the U.S. Borrower, the Lead Borrower hereby requests a Swing Line Borrowing:

1. On \_\_\_\_\_ (a Business Day)<sup>15</sup>
2. In the amount of \$ \_\_\_\_\_<sup>16</sup>

The Swing Line Borrowing requested herein complies with the provisions of Section 2.04 of the Credit Agreement. The Swing Line Loan made to the U.S. Borrower in response to this U.S. Swing Line Loan Notice shall be a Loan bearing interest at the Base Rate.

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<sup>15</sup> Each notice of a Swing Line Borrowing must be received by the Swing Line Lender and the Agent not later than 11:00 a.m. on the requested date of any Swing Line Borrowing.

<sup>16</sup> Each Swing Line Borrowing must be in a minimum amount of \$100,000. All Swing Line Loans made to the U.S. Borrower shall only be made in Dollars.

**HUDSON'S BAY COMPANY**, as Lead Borrower

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT B-2

### FORM OF CANADIAN SWING LINE LOAN NOTICE

Date: \_\_\_\_\_, \_\_\_\_\_

To: Bank of America, N.A. (acting through its Canada branch), as Swing Line Lender  
Bank of America, N.A., as Agent

Ladies and Gentlemen:

Reference is made to the Amended and Restated Credit Agreement dated as of October 11, 2019 (as amended, restated, supplemented or otherwise modified and in effect from time to time, the "Credit Agreement"), by, among others, (i) Hudson's Bay Company, a corporation organized under the federal laws of Canada, as the Canadian Borrower (in such capacity, the "Canadian Borrower"), and as Lead Borrower for itself and the other Borrowers party thereto from time to time (in such capacity, the "Lead Borrower"), (ii) Lord & Taylor Acquisition Inc., a Delaware corporation, as the U.S. Borrower (in such capacity, the "U.S. Borrower", and together with the Canadian Borrower, each a "Borrower" and collectively, the "Borrowers"), (iii) the Guarantors party thereto from time to time, (iv) the Lenders party thereto from time to time (the "Lenders"), (v) Bank of America, N.A., as Administrative Agent and Collateral Agent (in such capacities, the "Agent"), (vi) Bank of America, N.A. and each other L/C Issuer referred to therein (collectively, the "L/C Issuer"), and (vii) Bank of America, N.A., as Swing Line Lender. Capitalized terms used herein and not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

On behalf of the Canadian Borrower, the Lead Borrower hereby requests a Swing Line Borrowing:

1. On \_\_\_\_\_ (a Business Day)<sup>17</sup>

2. In the amount of Cdn\$ \_\_\_\_\_<sup>18</sup>

The Swing Line Borrowing requested herein complies with the provisions of Section 2.04 of the Credit Agreement. The Swing Line Loan made to the Canadian Borrower in response to this Canadian Swing Line Loan Notice shall be a Canadian Index Rate Loan.

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<sup>17</sup> Each notice of a Swing Line Borrowing must be received by the Swing Line Lender and the Agent not later than 11:00 a.m. on the requested date of any Swing Line Borrowing.

<sup>18</sup> Each Swing Line Borrowing must be in a minimum amount of \$100,000. All Swing Line Loans made to the Canadian Borrower shall only be made in Canadian Dollars.

**HUDSON'S BAY COMPANY**, as Lead Borrower

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



## EXHIBIT C-1

### FORM OF U.S. REVOLVING NOTE

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#### *U.S. REVOLVING NOTE*

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\$ \_\_\_\_\_, \_\_\_\_\_

FOR VALUE RECEIVED, the undersigned (the “**U.S. Borrower**”) promises to pay to the order of \_\_\_\_\_ (hereinafter, with any subsequent holders, the “**U.S. Lender**”), c/o Bank of America, N.A., 100 Federal Street, 9<sup>th</sup> Floor, Boston, Massachusetts 02110, the principal sum of \_\_\_\_\_ (\$ \_\_\_\_\_), or, if less, the aggregate unpaid principal balance of U.S. Revolving Loans made by the U.S. Lender to or for the account of the U.S. Borrower pursuant to the Amended and Restated Credit Agreement dated as of October 11, 2019 (as amended, restated, supplemented or otherwise modified and in effect from time to time, the “**Credit Agreement**”) by, among others, (i) the U.S. Borrower and the other Borrowers party thereto from time to time, (ii) the Guarantors party thereto from time to time, (iii) Bank of America, N.A., as administrative agent and collateral agent (in such capacities, the “**Agent**”) for its own benefit and the benefit of the other Credit Parties referred to therein, (iv) Bank of America, N.A., as Swing Line Lender, (v) Bank of America, N.A. and each other L/C Issuer referred to therein (collectively, the “**L/C Issuer**”), and (vi) the U.S. Lender and the other lenders from time to time party thereto (individually, a “**Lender**” and, collectively, the “**Lenders**”), with interest at the rate and payable in the manner stated therein.

This is a “**Note**” to which reference is made in the Credit Agreement and is subject to all terms and provisions thereof. The principal of, and interest on, this Note shall be payable at the times, in the manner, and in the amounts as provided in the Credit Agreement and shall be subject to prepayment and acceleration as provided therein. Capitalized terms used herein and not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

The Agent’s books and records concerning the U.S. Revolving Loans, the accrual of interest thereon, and the repayment of such U.S. Revolving Loans, shall be prima facie evidence of the indebtedness to the U.S. Lender hereunder.

No delay or omission by the Agent or the U.S. Lender in exercising or enforcing any of the Agent’s or the U.S. Lender’s powers, rights, privileges, remedies, or discretions hereunder shall operate as a waiver thereof on that occasion nor on any other occasion. No waiver of any Event of Default shall operate as a waiver of any other Event of Default, nor as a continuing waiver of any such Event of Default.

The U.S. Borrower, and each endorser and guarantor of this Note, waives, to the extent permitted by applicable Law, presentment, demand, notice (other than any notice expressly required by the terms of the other Loan Documents), and protest, and also waives, to the extent expressly permitted by applicable Law, any delay on the part of the holder hereof. The U.S. Borrower assents to any extension or other indulgence (including, without limitation, the release or substitution of Collateral) permitted by the Agent and/or the U.S. Lender with respect to this Note and/or any Collateral or any extension or other indulgence with respect to any other liability or any collateral given to secure any other liability of the U.S. Borrower or any other Person obligated on account of this Note.

This Note shall be binding upon the U.S. Borrower, and each endorser and guarantor hereof, and upon their respective successors, assigns, and representatives, and shall inure to the benefit of the U.S. Lender and its successors, endorsees, and assigns.

The liabilities of the U.S. Borrower, and of any endorser or guarantor of this Note, are joint and several, *provided, however*, the release by the Agent or the U.S. Lender of any one or more such Persons shall not release any other Person obligated on account of this Note. Each reference in this Note to the U.S. Borrower, any endorser, and any guarantor, is to such Person individually and also to all such Persons jointly. No Person obligated on account of this Note may seek contribution from any other Person also obligated unless and until all of the Obligations have been paid in full in cash.

THIS NOTE 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 NOTE AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

THE U.S. BORROWER 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 THE AGENT, ANY LENDER, THE L/C ISSUER, OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS NOTE, 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 THE U.S. BORROWER 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. THE U.S. BORROWER 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 APPLICABLE LAW. NOTHING IN THIS NOTE OR ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ANY CREDIT PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS NOTE OR IN ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

THE U.S. BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO ABOVE. THE U.S. BORROWER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

The U.S. Borrower makes the following waiver knowingly, voluntarily, and intentionally, and understands that the Agent and the U.S. Lender, in the establishment and maintenance of their respective relationship with the U.S. Borrower contemplated by this Note, are each relying thereon. THE U.S. BORROWER, EACH GUARANTOR, ENDORSER AND SURETY, AND THE U.S. LENDER, BY ITS ACCEPTANCE HEREOF, 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 NOTE OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). THE U.S. BORROWER (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 THE AGENT AND THE U.S. LENDER HAVE BEEN INDUCED TO ENTER INTO THE CREDIT AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS HEREIN.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the U.S. Borrower has caused this Note to be duly executed as of the date set forth above.

**U.S. BORROWER:**

**LORD & TAYLOR ACQUISITION INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT C-2

### FORM OF CANADIAN REVOLVING NOTE

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#### *CANADIAN REVOLVING NOTE*

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\$ \_\_\_\_\_, \_\_\_\_\_

FOR VALUE RECEIVED, the undersigned (the “**Canadian Borrower**”) promises to pay to the order of \_\_\_\_\_ (hereinafter, with any subsequent holders, the “**Canadian Lender**”), c/o Bank of America, N.A., 100 Federal Street, 9<sup>th</sup> Floor, Boston, Massachusetts 02110, the principal sum of \_\_\_\_\_ (\$ \_\_\_\_\_), or, if less, the aggregate unpaid principal balance of Canadian Revolving Loans made by the Canadian Lender to or for the account of the Canadian Borrower pursuant to the Amended and Restated Credit Agreement dated as of October 11, 2019 (as amended, restated, supplemented or otherwise modified and in effect from time to time, the “**Credit Agreement**”) by, among others, (i) the Canadian Borrower and the other Borrowers party thereto from time to time, (ii) the Guarantors party thereto from time to time, (iii) Bank of America, N.A., as administrative agent and collateral agent (in such capacities, the “**Agent**”) for its own benefit and the benefit of the other Credit Parties referred to therein, (iv) Bank of America, N.A., as Swing Line Lender, (v) Bank of America, N.A. and each other L/C Issuer referred to therein (collectively, the “**L/C Issuer**”), and (vi) the Canadian Lender and the other lenders from time to time party thereto (individually, a “**Lender**” and, collectively, the “**Lenders**”), with interest at the rate and payable in the manner stated therein.

This is a “**Note**” to which reference is made in the Credit Agreement and is subject to all terms and provisions thereof. The principal of, and interest on, this Note shall be payable at the times, in the manner, and in the amounts as provided in the Credit Agreement and shall be subject to prepayment and acceleration as provided therein. Capitalized terms used herein and not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

The Agent’s books and records concerning the Canadian Revolving Loans, the accrual of interest thereon, and the repayment of such Canadian Revolving Loans, shall be prima facie evidence of the indebtedness to the Canadian Lender hereunder.

No delay or omission by the Agent or the Canadian Lender in exercising or enforcing any of the Agent’s or the Canadian Lender’s powers, rights, privileges, remedies, or discretions hereunder shall operate as a waiver thereof on that occasion nor on any other occasion. No waiver of any Event of Default shall operate as a waiver of any other Event of Default, nor as a continuing waiver of any such Event of Default.

The Canadian Borrower, and each endorser and guarantor of this Note, waives, to the extent permitted by applicable Law, presentment, demand, notice (other than any notice expressly required by the terms of the other Loan Documents), and protest, and also waives, to the extent expressly permitted by applicable Law, any delay on the part of the holder hereof. The Canadian Borrower assents to any extension or other indulgence (including, without limitation, the release or substitution of Collateral) permitted by the Agent and/or the Canadian Lender with respect to this Note and/or any Collateral or any extension or other indulgence with respect to any other liability or any collateral given to secure any other liability of the Canadian Borrower or any other Person obligated on account of this Note.

This Note shall be binding upon the Canadian Borrower, and each endorser and guarantor hereof, and upon their respective successors, assigns, and representatives, and shall inure to the benefit of the Canadian Lender and its successors, endorsees, and assigns.

The liabilities of the Canadian Borrower, and of any endorser or guarantor of this Note, are joint and several, *provided, however*, the release by the Agent or the Canadian Lender of any one or more such Persons shall not release any other Person obligated on account of this Note. Each reference in this Note to the Canadian Borrower, any endorser, and any guarantor, is to such Person individually and also to all such Persons jointly. No Person obligated on account of this Note may seek contribution from any other Person also obligated unless and until all of the Obligations have been paid in full in cash.

THIS NOTE 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 NOTE AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

THE CANADIAN BORROWER 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 THE AGENT, ANY LENDER, THE L/C ISSUER, OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS NOTE, 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 THE CANADIAN BORROWER 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. THE CANADIAN BORROWER 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 APPLICABLE LAW. NOTHING IN THIS NOTE OR ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ANY CREDIT PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS NOTE OR IN ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

THE CANADIAN BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO ABOVE. THE CANADIAN BORROWER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

The Canadian Borrower makes the following waiver knowingly, voluntarily, and intentionally, and understands that the Agent and the Canadian Lender, in the establishment and maintenance of their respective relationship with the Canadian Borrower contemplated by this Note, are each relying thereon. THE CANADIAN BORROWER, EACH GUARANTOR, ENDORSER AND SURETY, AND THE CANADIAN LENDER, BY ITS ACCEPTANCE HEREOF, 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 NOTE OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). THE CANADIAN BORROWER (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 THE AGENT AND THE CANADIAN LENDER HAVE BEEN INDUCED TO ENTER INTO THE CREDIT AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS HEREIN.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the Canadian Borrower has caused this Note to be duly executed as of the date set forth above.

**CANADIAN BORROWER:**

**HUDSON'S BAY COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



## EXHIBIT C-3

### FORM OF U.S. SWING LINE NOTE

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#### *U.S. SWING LINE NOTE*

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\$ \_\_\_\_\_, \_\_\_\_\_

FOR VALUE RECEIVED, the undersigned (the “**U.S. Borrower**”) promises to pay to the order of BANK OF AMERICA, N.A. (hereinafter, with any subsequent holders, the “**Swing Line Lender**”), 100 Federal Street, 9<sup>th</sup> Floor, Boston, Massachusetts 02110, the principal sum of \_\_\_\_\_ (\$ \_\_\_\_\_), or, if less, the aggregate unpaid principal balance of U.S. Swing Line Loans made by the Swing Line Lender to or for the account of the U.S. Borrower pursuant to the Amended and Restated Credit Agreement dated as of October 11, 2019 (as amended, restated, supplemented or otherwise modified and in effect from time to time, the “**Credit Agreement**”) by, among others, (i) the U.S. Borrower and the other Borrowers party thereto from time to time, (ii) the Guarantors party thereto from time to time, (iii) Bank of America, N.A., as administrative agent and collateral agent (in such capacities, the “**Agent**”) for its own benefit and the benefit of the other Credit Parties referred to therein, (iv) the Swing Line Lender, (v) Bank of America, N.A. and each other L/C Issuer referred to therein (collectively, the “**L/C Issuer**”), and (vi) the other lenders from time to time party thereto (individually, a “**Lender**” and, collectively, the “**Lenders**”), with interest at the rate and payable in the manner stated therein.

This is a “**Swing Line Note**” to which reference is made in the Credit Agreement and is subject to all terms and provisions thereof. The principal of, and interest on, this U.S. Swing Line Note shall be payable at the times, in the manner, and in the amounts as provided in the Credit Agreement and shall be subject to prepayment and acceleration as provided therein. Capitalized terms used herein and not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

The Agent’s books and records concerning the U.S. Swing Line Loans, the accrual of interest thereon, and the repayment of such U.S. Swing Line Loans, shall be prima facie evidence of the indebtedness to the Swing Line Lender hereunder.

No delay or omission by the Agent or the Swing Line Lender in exercising or enforcing any of the Agent’s or the Swing Line Lender’s powers, rights, privileges, remedies, or discretions hereunder shall operate as a waiver thereof on that occasion nor on any other occasion. No waiver of any Event of Default shall operate as a waiver of any other Event of Default, nor as a continuing waiver of any such Event of Default.

The U.S. Borrower, and each endorser and guarantor of this U.S. Swing Line Note, waives, to the extent permitted by applicable Law, presentment, demand, notice (other than any notice expressly required by the terms of the other Loan Documents), and protest, and also waives, to the extent expressly permitted by applicable Law, any delay on the part of the holder hereof. The U.S. Borrower assents to any extension or other indulgence (including, without limitation, the release or substitution of Collateral) permitted by the Agent and/or the Swing Line Lender with respect to this U.S. Swing Line Note and/or any Collateral or any extension or other indulgence with respect to any other liability or any collateral given to secure any other liability of the U.S. Borrower or any other Person obligated on account of this U.S. Swing Line Note.

This U.S. Swing Line Note shall be binding upon the U.S. Borrower, and each endorser and guarantor hereof, and upon their respective successors, assigns, and representatives, and shall inure to the benefit of the Swing Line Lender and its successors, endorsees, and assigns.

The liabilities of the U.S. Borrower, and of any endorser or guarantor of this U.S. Swing Line Note, are joint and several, *provided, however*, the release by the Agent or the Swing Line Lender of any one or more such Persons shall not release any other Person obligated on account of this U.S. Swing Line Note. Each reference in this U.S. Swing Line Note to the Swing Line Borrower, any endorser, and any guarantor, is to such Person individually and also to all such Persons jointly. No Person obligated on account of this U.S. Swing Line Note may seek contribution from any other Person also obligated unless and until all of the Obligations have been paid in full in cash.

THIS U.S. SWING LINE NOTE 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 U.S. SWING LINE NOTE AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

THE U.S. BORROWER 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 THE AGENT, ANY LENDER, THE L/C ISSUER, OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS U.S. SWING LINE NOTE, 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 THE U.S. BORROWER 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. THE U.S.

DB1/ 106238839.5

BORROWER 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 APPLICABLE LAW. NOTHING IN THIS U.S. SWING LINE NOTE OR ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ANY CREDIT PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS U.S. SWING LINE NOTE OR IN ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

THE U.S. BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS U.S. SWING LINE NOTE OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO ABOVE. THE U.S. BORROWER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

The U.S. Borrower makes the following waiver knowingly, voluntarily, and intentionally, and understands that the Agent and the Swing Line Lender, in the establishment and maintenance of their respective relationship with the U.S. Borrower contemplated by this U.S. Swing Line Note, are each relying thereon. THE U.S. BORROWER, EACH GUARANTOR, ENDORSER AND SURETY, AND THE SWING LINE LENDER, BY ITS ACCEPTANCE HEREOF, 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 U.S. SWING LINE NOTE OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). THE U.S. BORROWER (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 THE AGENT AND THE SWING LINE LENDER HAVE BEEN INDUCED TO ENTER INTO THE CREDIT AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS HEREIN.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the U.S. Borrower has caused this U.S. Swing Line Note to be duly executed as of the date set forth above.

**U.S. BORROWER:**

**LORD & TAYLOR ACQUISITION INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT C-4

### FORM OF CANADIAN SWING LINE NOTE

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#### *CANADIAN SWING LINE NOTE*

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\$ \_\_\_\_\_, \_\_\_\_\_

FOR VALUE RECEIVED, the undersigned (the “**Canadian Borrower**”) promises to pay to the order of BANK OF AMERICA, N.A. (acting through its Canada branch) (hereinafter, with any subsequent holders, the “**Swing Line Lender**”), c/o Bank of America, N.A., 100 Federal Street, 9<sup>th</sup> Floor, Boston, Massachusetts 02110, the principal sum of \_\_\_\_\_ (\$ \_\_\_\_\_), or, if less, the aggregate unpaid principal balance of Canadian Swing Line Loans made by the Swing Line Lender to or for the account of the Canadian Borrower pursuant to the Amended and Restated Credit Agreement dated as of October 11, 2019 (as amended, restated, supplemented or otherwise modified and in effect from time to time, the “**Credit Agreement**”) by, among others, (i) the Canadian Borrower and the other Borrowers party thereto from time to time, (ii) the Guarantors party thereto from time to time, (iii) Bank of America, N.A., as administrative agent and collateral agent (in such capacities, the “**Agent**”) for its own benefit and the benefit of the other Credit Parties referred to therein, (iv) the Swing Line Lender, (v) Bank of America, N.A. and each other L/C Issuer referred to therein (collectively, the “**L/C Issuer**”), and (vi) lenders from time to time party thereto (individually, a “**Lender**” and, collectively, the “**Lenders**”), with interest at the rate and payable in the manner stated therein.

This is a “**Swing Line Note**” to which reference is made in the Credit Agreement and is subject to all terms and provisions thereof. The principal of, and interest on, this Canadian Swing Line Note shall be payable at the times, in the manner, and in the amounts as provided in the Credit Agreement and shall be subject to prepayment and acceleration as provided therein. Capitalized terms used herein and not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

The Agent’s books and records concerning the Canadian Swing Line Loans, the accrual of interest thereon, and the repayment of such Canadian Swing Line Loans, shall be prima facie evidence of the indebtedness to the Swing Line Lender hereunder.

No delay or omission by the Agent or the Swing Line Lender in exercising or enforcing any of the Agent’s or the Swing Line Lender’s powers, rights, privileges, remedies, or discretions hereunder shall operate as a waiver thereof on that occasion nor on any other

occasion. No waiver of any Event of Default shall operate as a waiver of any other Event of Default, nor as a continuing waiver of any such Event of Default.

The Canadian Borrower, and each endorser and guarantor of this Canadian Swing Line Note, waives, to the extent permitted by applicable Law, presentment, demand, notice (other than any notice expressly required by the terms of the other Loan Documents), and protest, and also waives, to the extent expressly permitted by applicable Law, any delay on the part of the holder hereof. The Canadian Borrower assents to any extension or other indulgence (including, without limitation, the release or substitution of Collateral) permitted by the Agent and/or the Swing Line Lender with respect to this Canadian Swing Line Note and/or any Collateral or any extension or other indulgence with respect to any other liability or any collateral given to secure any other liability of the Canadian Borrower or any other Person obligated on account of this Canadian Swing Line Note.

This Canadian Swing Line Note shall be binding upon the Canadian Borrower, and each endorser and guarantor hereof, and upon their respective successors, assigns, and representatives, and shall inure to the benefit of the Swing Line Lender and its successors, endorsees, and assigns.

The liabilities of the Canadian Borrower, and of any endorser or guarantor of this Canadian Swing Line Note, are joint and several, *provided, however*, the release by the Agent or the Swing Line Lender of any one or more such Persons shall not release any other Person obligated on account of this Canadian Swing Line Note. Each reference in this Canadian Swing Line Note to the Swing Line Borrower, any endorser, and any guarantor, is to such Person individually and also to all such Persons jointly. No Person obligated on account of this Canadian Swing Line Note may seek contribution from any other Person also obligated unless and until all of the Obligations have been paid in full in cash.

THIS CANADIAN SWING LINE NOTE 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 CANADIAN SWING LINE NOTE AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

THE CANADIAN BORROWER 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 THE AGENT, ANY LENDER, THE L/C ISSUER, OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS CANADIAN SWING LINE NOTE, 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 THE CANADIAN BORROWER 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. THE CANADIAN BORROWER 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 APPLICABLE LAW. NOTHING IN THIS CANADIAN SWING LINE NOTE OR ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ANY CREDIT PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS CANADIAN SWING LINE NOTE OR IN ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

THE CANADIAN BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS CANADIAN SWING LINE NOTE OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO ABOVE. THE CANADIAN BORROWER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

The Canadian Borrower makes the following waiver knowingly, voluntarily, and intentionally, and understands that the Agent and the Swing Line Lender, in the establishment and maintenance of their respective relationship with the Canadian Borrower contemplated by this Canadian Swing Line Note, are each relying thereon. THE CANADIAN BORROWER, EACH GUARANTOR, ENDORSER AND SURETY, AND THE SWING LINE LENDER, BY ITS ACCEPTANCE HEREOF, 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 CANADIAN SWING LINE NOTE OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). THE CANADIAN BORROWER (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 THE AGENT AND THE SWING LINE LENDER HAVE BEEN INDUCED TO ENTER INTO THE CREDIT AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS HEREIN.

**[SIGNATURE PAGE FOLLOWS]**



IN WITNESS WHEREOF, the Canadian Borrower has caused this Canadian Swing Line Note to be duly executed as of the date set forth above.

**CANADIAN BORROWER:**

**HUDSON'S BAY COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT C-5

### FORM OF U.S. FILO TERM LOAN NOTE

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#### *U.S. FILO TERM LOAN NOTE*

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\$ \_\_\_\_\_, \_\_\_\_\_,

FOR VALUE RECEIVED, the undersigned (the “**U.S. Borrower**”) promises to pay to the order of \_\_\_\_\_ (hereinafter, with any subsequent holders, the “**U.S. Lender**”), c/o Bank of America, N.A., 100 Federal Street, 9<sup>th</sup> Floor, Boston, Massachusetts 02110, the principal sum of \_\_\_\_\_ (\$ \_\_\_\_\_), or, if less, the aggregate unpaid principal balance of U.S. FILO Term Loan made by the U.S. Lender to or for the account of the U.S. Borrower pursuant to the Amended and Restated Credit Agreement dated as of October 11, 2019 (as amended, restated, supplemented or otherwise modified and in effect from time to time, the “**Credit Agreement**”) by, among others, (i) the U.S. Borrower and the other Borrowers party thereto from time to time, (ii) the Guarantors party thereto from time to time, (iii) Bank of America, N.A., as administrative agent and collateral agent (in such capacities, the “**Agent**”) for its own benefit and the benefit of the other Credit Parties referred to therein, (iv) Bank of America, N.A., as Swing Line Lender, (v) Bank of America, N.A. and each other L/C Issuer referred to therein (collectively, the “**L/C Issuer**”), and (vi) the U.S. Lender and the other lenders from time to time party thereto (individually, a “**Lender**” and, collectively, the “**Lenders**”), with interest at the rate and payable in the manner stated therein.

This is a “**Note**” to which reference is made in the Credit Agreement and is subject to all terms and provisions thereof. The principal of, and interest on, this Note shall be payable at the times, in the manner, and in the amounts as provided in the Credit Agreement and shall be subject to prepayment and acceleration as provided therein. Capitalized terms used herein and not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

The Agent’s books and records concerning the U.S. FILO Term Loan, the accrual of interest thereon, and the repayment of the U.S. FILO Term Loan, shall be prima facie evidence of the indebtedness to the U.S. Lender hereunder.

No delay or omission by the Agent or the U.S. Lender in exercising or enforcing any of the Agent’s or the U.S. Lender’s powers, rights, privileges, remedies, or discretions hereunder shall operate as a waiver thereof on that occasion nor on any other occasion. No waiver of any Event of Default shall operate as a waiver of any other Event of Default, nor as a continuing waiver of any such Event of Default.

The U.S. Borrower, and each endorser and guarantor of this Note, waives, to the extent permitted by applicable Law, presentment, demand, notice (other than any notice expressly required by the terms of the other Loan Documents), and protest, and also waives, to the extent expressly permitted by applicable Law, any delay on the part of the holder hereof. The U.S. Borrower assents to any extension or other indulgence (including, without limitation, the release or substitution of Collateral) permitted by the Agent and/or the U.S. Lender with respect to this Note and/or any Collateral or any extension or other indulgence with respect to any other liability or any collateral given to secure any other liability of the U.S. Borrower or any other Person obligated on account of this Note.

This Note shall be binding upon the U.S. Borrower, and each endorser and guarantor hereof, and upon their respective successors, assigns, and representatives, and shall inure to the benefit of the U.S. Lender and its successors, endorsees, and assigns.

The liabilities of the U.S. Borrower, and of any endorser or guarantor of this Note, are joint and several, *provided, however*, the release by the Agent or the U.S. Lender of any one or more such Persons shall not release any other Person obligated on account of this Note. Each reference in this Note to the U.S. Borrower, any endorser, and any guarantor, is to such Person individually and also to all such Persons jointly. No Person obligated on account of this Note may seek contribution from any other Person also obligated unless and until all of the Obligations have been paid in full in cash.

THIS NOTE 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 NOTE AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

THE U.S. BORROWER 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 THE AGENT, ANY LENDER, THE L/C ISSUER, OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS NOTE, 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 THE U.S. BORROWER 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. THE U.S. BORROWER 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 APPLICABLE LAW. NOTHING IN THIS NOTE OR ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ANY CREDIT PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS NOTE OR IN ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

THE U.S. BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO ABOVE. THE U.S. BORROWER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

The U.S. Borrower makes the following waiver knowingly, voluntarily, and intentionally, and understands that the Agent and the U.S. Lender, in the establishment and maintenance of their respective relationship with the U.S. Borrower contemplated by this Note, are each relying thereon. THE U.S. BORROWER, EACH GUARANTOR, ENDORSER AND SURETY, AND THE U.S. LENDER, BY ITS ACCEPTANCE HEREOF, 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 NOTE OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). THE U.S. BORROWER (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 THE AGENT AND THE U.S. LENDER HAVE BEEN INDUCED TO ENTER INTO THE CREDIT AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS HEREIN.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the U.S. Borrower has caused this Note to be duly executed as of the date set forth above.

**U.S. BORROWER:**

**LORD & TAYLOR ACQUISITION INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT C-6

### FORM OF CANADIAN FILO TERM LOAN NOTE

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#### CANADIAN FILO TERM LOAN NOTE

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\$ \_\_\_\_\_, \_\_\_\_\_

FOR VALUE RECEIVED, the undersigned (the “**Canadian Borrower**”) promises to pay to the order of \_\_\_\_\_ (hereinafter, with any subsequent holders, the “**Canadian Lender**”), c/o Bank of America, N.A., 100 Federal Street, 9<sup>th</sup> Floor, Boston, Massachusetts 02110, the principal sum of \_\_\_\_\_ (\$ \_\_\_\_\_), or, if less, the aggregate unpaid principal balance of Canadian FILO Term Loan made by the Canadian Lender to or for the account of the Canadian Borrower pursuant to the Amended and Restated Credit Agreement dated as of October 11, 2019 (as amended, restated, supplemented or otherwise modified and in effect from time to time, the “**Credit Agreement**”) by, among others, (i) the Canadian Borrower and the other Borrowers party thereto from time to time, (ii) the Guarantors party thereto from time to time, (iii) Bank of America, N.A., as administrative agent and collateral agent (in such capacities, the “**Agent**”) for its own benefit and the benefit of the other Credit Parties referred to therein, (iv) Bank of America, N.A., as Swing Line Lender, (v) Bank of America, N.A. and each other L/C Issuer referred to therein (collectively, the “**L/C Issuer**”), and (vi) the Canadian Lender and the other lenders from time to time party thereto (individually, a “**Lender**” and, collectively, the “**Lenders**”), with interest at the rate and payable in the manner stated therein.

This is a “**Note**” to which reference is made in the Credit Agreement and is subject to all terms and provisions thereof. The principal of, and interest on, this Note shall be payable at the times, in the manner, and in the amounts as provided in the Credit Agreement and shall be subject to prepayment and acceleration as provided therein. Capitalized terms used herein and not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

The Agent’s books and records concerning the Canadian FILO Term Loan, the accrual of interest thereon, and the repayment of the Canadian FILO Term Loan, shall be prima facie evidence of the indebtedness to the Canadian Lender hereunder.

No delay or omission by the Agent or the Canadian Lender in exercising or enforcing any of the Agent’s or the Canadian Lender’s powers, rights, privileges, remedies, or discretions hereunder shall operate as a waiver thereof on that occasion nor on any other occasion. No

waiver of any Event of Default shall operate as a waiver of any other Event of Default, nor as a continuing waiver of any such Event of Default.

The Canadian Borrower, and each endorser and guarantor of this Note, waives, to the extent permitted by applicable Law, presentment, demand, notice (other than any notice expressly required by the terms of the other Loan Documents), and protest, and also waives, to the extent expressly permitted by applicable Law, any delay on the part of the holder hereof. The Canadian Borrower assents to any extension or other indulgence (including, without limitation, the release or substitution of Collateral) permitted by the Agent and/or the Canadian Lender with respect to this Note and/or any Collateral or any extension or other indulgence with respect to any other liability or any collateral given to secure any other liability of the Canadian Borrower or any other Person obligated on account of this Note.

This Note shall be binding upon the Canadian Borrower, and each endorser and guarantor hereof, and upon their respective successors, assigns, and representatives, and shall inure to the benefit of the Canadian Lender and its successors, endorsees, and assigns.

The liabilities of the Canadian Borrower, and of any endorser or guarantor of this Note, are joint and several, *provided, however*, the release by the Agent or the Canadian Lender of any one or more such Persons shall not release any other Person obligated on account of this Note. Each reference in this Note to the Canadian Borrower, any endorser, and any guarantor, is to such Person individually and also to all such Persons jointly. No Person obligated on account of this Note may seek contribution from any other Person also obligated unless and until all of the Obligations have been paid in full in cash.

THIS NOTE 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 NOTE AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

THE CANADIAN BORROWER 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 THE AGENT, ANY LENDER, THE L/C ISSUER, OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS NOTE, 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 THE CANADIAN BORROWER 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. THE CANADIAN BORROWER 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 APPLICABLE LAW. NOTHING IN THIS NOTE OR ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ANY CREDIT PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS NOTE OR IN ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

THE CANADIAN BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO ABOVE. THE CANADIAN BORROWER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

The Canadian Borrower makes the following waiver knowingly, voluntarily, and intentionally, and understands that the Agent and the Canadian Lender, in the establishment and maintenance of their respective relationship with the Canadian Borrower contemplated by this Note, are each relying thereon. THE CANADIAN BORROWER, EACH GUARANTOR, ENDORSER AND SURETY, AND THE CANADIAN LENDER, BY ITS ACCEPTANCE HEREOF, 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 NOTE OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). THE CANADIAN BORROWER (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 THE AGENT AND THE CANADIAN LENDER HAVE BEEN INDUCED TO ENTER INTO THE CREDIT AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS HEREIN.

**[SIGNATURE PAGE FOLLOWS]**



IN WITNESS WHEREOF, the Canadian Borrower has caused this Note to be duly executed as of the date set forth above.

**CANADIAN BORROWER:**

**HUDSON'S BAY COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT D**

**[FORM OF] COMPLIANCE CERTIFICATE**

[date]

Financial Statement Date: \_\_\_\_\_

To: Bank of America, N.A., as Agent

Re: Amended and Restated Credit Agreement dated as of October 11, 2019 (as amended, restated, supplemented or otherwise modified and in effect from time to time, the “Credit Agreement”), by, among others, (i) Hudson’s Bay Company, a corporation organized under the federal laws of Canada (the “Parent”), as the Canadian Borrower (in such capacity, the “Canadian Borrower”), and as Lead Borrower for itself and the other Borrowers party thereto from time to time (in such capacity, the “Lead Borrower”), (ii) Lord & Taylor Acquisition Inc., a Delaware corporation, as the U.S. Borrower (in such capacity, the “U.S. Borrower”, together with the Canadian Borrower, each a “Borrower” and collectively, the “Borrowers”), (iii) the Guarantors party thereto from time to time, (iv) the Lenders party thereto from time to time (the “Lenders”), (v) Bank of America, N.A., as Administrative Agent and Collateral Agent (in such capacities, the “Agent”), (vi) Bank of America, N.A. and each other L/C Issuer referred to therein (collectively, the “L/C Issuer”), and (vii) Bank of America, N.A., as Swing Line Lender. Capitalized terms used herein and not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

Ladies and Gentlemen:

The undersigned Responsible Officer, in his/her capacity as a Responsible Officer of the Lead Borrower and not in his/her personal capacity, hereby certifies as of the date hereof that he/she is the \_\_\_\_\_ of the Lead Borrower and that, as such, he/she is authorized to execute and deliver this Compliance Certificate to the Agent on behalf of the Lead Borrower, and that:

[Use following paragraph 1 for Fiscal Year-end financial statements:]

[1. **[Attached hereto as Schedule 1 are] [Pursuant to the conditions set forth in Section 6.02 of the Credit Agreement, each of the following have been electronically delivered to the Agent:]** (a) the year-end audited Consolidated financial statements and related materials required by Section 6.01(a) of the Credit Agreement for the Parent and its Subsidiaries ended as of the above date, all in reasonable detail and prepared in accordance with IFRS together

with the report of a Registered Public Accounting Firm required by such section, and (b) the year-end consolidating financial statements and related materials required by Section 6.01(a) of the Credit Agreement for the Parent and its Subsidiaries ended as of the above date (all such consolidating statements being presented by each Borrower and its Subsidiaries on a consolidated basis), all in reasonable detail and prepared in accordance with GAAP or IFRS. Also **[attached hereto as Schedule 1 are] [pursuant to the conditions set forth in Section 6.02 of the Credit Agreement, the following have been electronically delivered to the Agent:]** a detailed calculation of the Consolidated Fixed Charge Coverage Ratio as required by Section 6.01(c) of the Credit Agreement, reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such Consolidated Fixed Charge Coverage Ratio. Such related financial information presents fairly in accordance with GAAP or IFRS, as applicable, the exclusion of the financial position and results of operations of all Unrestricted Subsidiaries. The materials described in this Section 1 are hereinafter referred to as the “**Current Financial Statements**”.]

[Use following paragraph 1 for Fiscal Quarter-end financial statements:]

[1. **[Attached hereto as Schedule 1 are] [Pursuant to the conditions set forth in Section 6.02 of the Credit Agreement, each of the following have been electronically delivered to the Agent:]** the unaudited Consolidated and consolidating financial statements and related materials required by Section 6.01(b) of the Credit Agreement for the Fiscal Quarter of the Parent and its Subsidiaries ended as of the above date. Such Consolidated financial statements fairly present in all material respects the financial condition, results of operations and cash flows of the Parent and its Subsidiaries as of the end of such Fiscal Quarter in accordance with GAAP or IFRS, as applicable, subject only to normal year-end audit adjustments and the absence of footnotes. Such consolidating financial statements are presented by each Borrower and its Subsidiaries on a consolidated basis and are fairly stated in all material respects when considered in relation to the Consolidated financial statements of the Parent and its Subsidiaries. Also **[attached hereto as Schedule 1 are] [pursuant to the conditions set forth in Section 6.02 of the Credit Agreement, the following have also been electronically delivered to the Agent:]** a detailed calculation of the Consolidated Fixed Charge Coverage Ratio as required by Section 6.01(c) of the Credit Agreement, reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such Consolidated Fixed Charge Coverage Ratio. Such related financial information presents fairly in accordance with GAAP or IFRS, as applicable, the exclusion of the financial position and results of operations of all Unrestricted Subsidiaries. The materials described in this Section 1 are hereinafter referred to as the “**Current Financial Statements**”.]

2. **[Attached hereto as Schedule [2] is a report setting forth the legal name and the jurisdiction of formation of each Loan Party and the locations of the chief executive office and domicile of each Loan Party.]**[There has been no

change in the legal name, the jurisdiction of formation of or the locations of the chief executive office and domicile of any Loan Party since the later of the Effective Date or the date of the last report containing such information included in the Compliance Certificate dated [ ].

[Use following paragraph 3 in annual Compliance Certificates:]

[3. Attached as Schedule [3] hereto are forecasts prepared by management of the Lead Borrower of (i) Availability, Canadian Availability and U.S. Availability, prepared on a monthly basis for the Fiscal Year 20[ ], and (ii) the Consolidated and consolidating by Borrower, balance sheets and statements of income or operations and cash flows of the Parent and its Subsidiaries on a quarterly basis for such Fiscal Year (all of the foregoing, collectively, the “**Projections**”), which Projections have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time of preparation of such Projections, it being understood that actual results may vary from such Projections and that such variations may be material.]

4. The undersigned has reviewed and is familiar with the terms of the Credit 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 Parent and its Subsidiaries during the accounting period covered by the Current Financial Statements.

5. To the undersigned’s knowledge, except as otherwise disclosed to the Agent pursuant to the Credit Agreement, no Default or Event of Default exists as of the date hereof. [If unable to provide the foregoing certification, fully describe the reasons therefor and circumstances thereof and any action taken or proposed to be taken with respect thereto on Schedule [4] attached hereto.]

6. Set forth in Schedule [5] hereto is a summary of all material changes in IFRS or GAAP used in the preparation of the Current Financial Statements.

7. As of the date hereof, Availability is \$ \_\_\_\_\_. As of the date hereof, a Covenant Compliance Event [is][is not] continuing.

8. Attached hereto as Schedule [6] (whether or not compliance with the covenant set forth in Section 7.15 of the Credit Agreement is then required) are reasonably detailed calculations demonstrating the Consolidated Fixed Charge Coverage Ratio, calculated in accordance with the terms of the Credit Agreement, with respect to the Measurement Period most recently ended.

9. Attached hereto as Schedule [7] is a discussion and analysis prepared by management of the Lead Borrower with respect to the Current Financial Statements.

10. Attached hereto as Schedule [8] is a current schedule of all Unrestricted Subsidiaries.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the undersigned, in his/her capacity as a Responsible Officer the Lead Borrower, has executed this certificate for and on behalf of the Lead Borrower, and has caused this certificate to be delivered this \_\_\_\_ day of \_\_\_\_\_, 20[ ].

HUDSON'S BAY COMPANY

By: \_\_\_\_\_

Name:

Title:

[Schedule 1  
to Compliance Certificate

FINANCIAL STATEMENTS AND RELATED DELIVERIES

(attached)]

[Schedule [2]  
to Compliance Certificate

CHANGES IN LEGAL NAMES, ETC.]



[Schedule [3]  
to Compliance Certificate

PROJECTIONS

(attached)]

Schedule [4]  
to Compliance Certificate

DESCRIPTION OF DEFAULTS OR EVENTS OF DEFAULT

Schedule [5]  
to Compliance Certificate

DESCRIPTION OF MATERIAL CHANGES IN IFRS OR GAAP

Schedule [6]<sup>19</sup>  
to Compliance Certificate

CONSOLIDATED FIXED CHARGE COVERAGE RATIO

1. Consolidated EBITDA for the four Fiscal Quarters  
(the “Measurement Period”) ending \_\_\_\_\_:
- (a) Earnings (loss) before interest expense,  
income taxes, depreciation and amortization  
expense: \_\_\_\_\_
- Plus the following, to the extent deducted in  
determining the foregoing (or minus, the  
following, to the extent added in determining  
the foregoing, as applicable):
- (b) business and organization restructuring/  
realignment charges: \_\_\_\_\_
- Plus/minus, as applicable
- (c) merger/acquisition cost and expenses: \_\_\_\_\_
- Plus/minus, as applicable
- (d) non-cash charges (including non-cash foreign  
currency gains or losses): \_\_\_\_\_
- Plus/minus, as applicable
- (e) the net income or loss from discontinued operations: \_\_\_\_\_
- Plus/minus, as applicable
- (f) normalizing adjustments, if any, related to transactions  
that are not associated with day-to-day operations or  
that arise from unusual or infrequently occurring  
events including discontinued operations: \_\_\_\_\_
- (g) Consolidated EBITDA [The sum of Line 1(a)  
through Line 1(f)]<sup>20 21</sup>: \_\_\_\_\_

<sup>19</sup> The descriptions of the calculations set forth herein are sometimes abbreviated for simplicity; however, the terms in the Credit Agreement shall govern for all purposes. All amounts shall be determined in accordance with GAAP or IFRS, as applicable, and calculated after giving pro forma effect to any transaction for which the Consolidated Fixed Charge Coverage Ratio must be satisfied.

<sup>20</sup> The calculation of Consolidated EBITDA for any period shall exclude the earnings of any Person that is not the Parent or a Restricted Subsidiary of the Parent; provided that Consolidated EBITDA shall be increased by the aggregate amount of dividends, distributions or other payments actually paid in cash or cash equivalents (or to the extent subsequently converted to cash or cash equivalents) to the Borrowers or a Restricted Subsidiary by such Person in respect of such period).

<sup>21</sup> There shall be included in determining Consolidated EBITDA for any period, without duplication, the Acquired EBITDA of any Person, property, business or asset acquired by the Parent or any Restricted Subsidiary during such period (but

2. Minus the following:

- (a) Capital Expenditures (net of tenant allowances paid by lessors and expenditures made by Persons other than a Loan Party for the account of the Parent and its Restricted Subsidiaries) made during such Measurement Period (other than Financed Capital Expenditures): \_\_\_\_\_

Plus

- (b) income taxes paid in cash during such Measurement Period: \_\_\_\_\_

- (c) The sum of Line 2(a) and Line 2(b): \_\_\_\_\_

3. Line 1(g) minus Line 2(c): \_\_\_\_\_

4. Debt Service Charges during such Measurement Period:

- (a) interest expense paid in cash during such Measurement Period: \_\_\_\_\_

Plus

- (b) scheduled payment of principal payments on account of Indebtedness during such Measurement Period: \_\_\_\_\_

Plus

- (c) Restricted Payments during such Measurement Period (other than Restricted Payments made to a Loan Party): \_\_\_\_\_

- (d) Debt Service Charges [The sum of Line 4(a) through and Line 4(c)]: \_\_\_\_\_

7. **CONSOLIDATED FIXED CHARGE COVERAGE RATIO**  
[Line 3 divided by Line 4(d)]: \_\_\_\_\_

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not the Acquired EBITDA of any related Person, property, business or assets to the extent not so acquired), to the extent not subsequently sold, transferred or otherwise disposed by the Parent or such Restricted Subsidiary during such period (each such Person, property, business or asset acquired and not subsequently so disposed of, an "Acquired Entity or Business") and the Acquired EBITDA of any Unrestricted Subsidiary that is converted into a Restricted Subsidiary during such period (each, a "Converted Restricted Subsidiary"), based on the actual Acquired EBITDA of such Acquired Entity or Business or Converted Restricted Subsidiary for such period (including the portion thereof occurring prior to such acquisition). There shall be excluded in determining Consolidated EBITDA for any period the Disposed EBITDA of any Person, property or business sold, transferred or otherwise disposed of or, closed or classified as discontinued operations (but if such operations are classified as discontinued due to the fact that they are subject to an agreement to dispose of such operations, only when and to the extent such operations are actually disposed of) by the Parent or any Restricted Subsidiary during such period (each such Person, property, business or asset so sold or disposed of, a "Sold Entity or Business") and the Disposed EBITDA of any Restricted Subsidiary that is converted into an Unrestricted Subsidiary during such period (each a "Converted Unrestricted Subsidiary"), based on the actual Disposed EBITDA of such Sold Entity or Business or Converted Unrestricted Subsidiary for such period (including the portion thereof occurring prior to such sale, transfer or disposition).

**Covenant:** During the continuance of a Covenant Compliance Event, no Loan Party shall, nor shall it permit any Restricted Subsidiary to, permit the Consolidated Fixed Charge Coverage Ratio, calculated as of the last day of each Fiscal Quarter on a trailing four quarters basis (commencing with the Fiscal Quarter immediately prior to the date that the Covenant Compliance Event occurs), to be less than 1.00:1.00.

Is a Covenant Compliance Event<sup>22</sup> continuing?                      Yes \_\_\_\_\_      No \_\_\_\_\_

If so, in compliance with covenant?                                      Yes \_\_\_\_\_      No \_\_\_\_\_

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<sup>22</sup> "Covenant Compliance Event" means Availability at any time is less than or equal to ten percent (10%) of the Revolving Loan Cap (calculated without giving effect to the FILO Term Loan Push Down Reserve, if applicable). For purposes hereof, the occurrence of a Covenant Compliance Event shall be deemed continuing until Availability has exceeded ten percent (10%) of the Revolving Loan Cap (calculated without giving effect to the FILO Term Loan Push Down Reserve, if applicable) for thirty (30) consecutive days, in which case a Covenant Compliance Event shall no longer be deemed to be continuing for purposes of this Agreement. The termination of a Covenant Compliance as provided herein shall in no way limit, waive or delay the occurrence of a subsequent Covenant Compliance Event in the event that the conditions set forth in this definition again arise.

Schedule [7]  
to Compliance Certificate

MANAGEMENT DISCUSSION AND ANALYSIS

Schedule [8]  
to Compliance Certificate

UNRESTRICTED SUBSIDIARIES



## EXHIBIT E

### 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>23</sup> Assignor identified in item 1 below ([the][each, an] “Assignor”) and [the][each]<sup>24</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>25</sup> hereunder are several and not joint.]<sup>26</sup> Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as further defined below, the “Credit Agreement”), receipt of a copy of which is hereby acknowledged by [the][each] 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 Credit Agreement, as of the Effective Date inserted by the Agent as contemplated below (i) all of [the Assignor’s][the respective Assignors’] rights and obligations in [its capacity as a [U.S.][Canadian] Lender][their respective capacities as [U.S.][Canadian] Lenders] under the Credit Agreement and the other Loan Documents 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, participations in L/C Obligations and Swing Line 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 [U.S.][Canadian] Lender)][the respective Assignors (in their respective capacities as [U.S.][Canadian] Lenders)] against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other Loan Documents 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>23</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>24</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>25</sup> Select as appropriate.

<sup>26</sup> Include bracketed language if there are either multiple Assignors or multiple Assignees.

1. Assignor[s]: \_\_\_\_\_

\_\_\_\_\_

2. Assignee[s]: \_\_\_\_\_

\_\_\_\_\_

[for each Assignee, indicate if [Affiliate][Approved Fund] of [*identify Lender*]]

3. Borrowers: (i) Hudson's Bay Company, a corporation organized under the federal laws of Canada, as the Canadian Borrower (in such capacity, the "Canadian Borrower"), and as Lead Borrower for itself and the other Borrowers party thereto from time to time (in such capacity, the "Lead Borrower"), (ii) Lord & Taylor Acquisition Inc., a Delaware corporation, as the U.S. Borrower (in such capacity, the "U.S. Borrower"), and together with the Canadian Borrower, each a "Borrower" and collectively, the "Borrowers").

4. Agent: Bank of America, N.A., as the Administrative Agent and Collateral Agent under the Credit Agreement (in such capacities, the "Agent").

5. Credit Agreement: Amended and Restated Credit Agreement dated as of October 11, 2019 (as amended, restated, supplemented or otherwise modified and in effect from time to time, the "Credit Agreement"), by, among others, (i) the Borrowers, (ii) the Guarantors party thereto from time to time, (iii) the Lenders party thereto from time to time (the "Lenders"), (iv) the Agent, (v) Bank of America, N.A. and each other L/C Issuer referred to therein (collectively, the "L/C Issuer"), and (vi) Bank of America, N.A., as Swing Line Lender.

6. Assigned Interest[s]:

<u>Assignor[s]</u> ] <sup>27</sup>	<u>Assignee[s]</u> <sup>28</sup>	<u>Facility Assigned</u> <sup>29</sup>	Amount of Assignor's [U.S.] [Canadian] Commitment /Loans <sup>30</sup>	Amount of [U.S.] [Canadian] Commitment/ Loans <u>Assigned</u> <sup>31</sup>	Percentage of Assignor's [U.S.] [Canadian] Commitment /Loans <u>Assigned</u> <sup>32</sup>	Resulting [U.S.] [Canadian] Commitment /Loans of <u>Assignor</u>	Resulting [U.S.] [Canadian] Commitment /Loans of <u>Assignee</u>
			\$	\$	%	\$	%
			\$	\$	%	\$	%

[7. Trade Date: \_\_\_\_\_] <sup>33</sup>

Effective Date: \_\_\_\_\_, 20\_\_ [TO BE INSERTED BY AGENT AND  
WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE  
REGISTER THEREFOR.]

<sup>27</sup> List each Assignor, as appropriate.

<sup>28</sup> List each Assignee, as appropriate.

<sup>29</sup> Fill in the appropriate terminology for the types of facilities under the Credit Agreement that are being assigned under this Assignment (e.g. "Revolving Loan", "FILO Term Loan").

<sup>30</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>31</sup> Subject to minimum amount requirements pursuant to Section 10.06(b)(i) of the Credit Agreement and subject to proportionate amount requirements pursuant to Section 10.06(b)(ii) of the Credit Agreement.

<sup>32</sup> Set forth, to at least 9 decimals, as a percentage of the [U.S.][Canadian] Commitments/Loans of all [U.S.][Canadian] Lenders thereunder.

<sup>33</sup> To be completed if the Assignor and the Assignee intend that the minimum assignment amount is to be determined as of

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: \_\_\_\_\_

[Consented to and]<sup>34</sup> Accepted:

BANK OF AMERICA, N.A., as  
Agent

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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<sup>34</sup> To the extent that the Agent's consent is required under Sections 10.06(b)(i)(B) or 10.06(b)(iii)(B) of the Credit Agreement, the Agent's consent is hereby given.

[Consented to:]<sup>35</sup>

HUDSON'S BAY COMPANY, as Lead Borrower

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Consented to:]<sup>36</sup>

BANK OF AMERICA, N.A., as  
Swing Line Lender and L/C Issuer

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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<sup>35</sup> To the extent required under Sections 10.06(b)(i)(B) or 10.06(b)(iii)(A) of the Credit Agreement.

<sup>36</sup> To the extent that the Swing Line Lender's and/or L/C Issuer's consent is required under Section 10.06(b)(iii)(B) of the Credit Agreement.

## ***ANNEX 1 TO ASSIGNMENT AND ASSUMPTION***

Reference is made to the Amended and Restated Credit Agreement dated as of October 11, 2019 (as amended, restated, supplemented or otherwise modified and in effect from time to time, the “Credit Agreement”), by, among others, (i) Hudson’s Bay Company, a corporation organized under the federal laws of Canada, as the Canadian Borrower (in such capacity, the “Canadian Borrower”), and as Lead Borrower for itself and the other Borrowers party thereto from time to time (in such capacity, the “Lead Borrower”), (ii) Lord & Taylor Acquisition Inc., a Delaware corporation, as the U.S. Borrower (in such capacity, the “U.S. Borrower”, and together with the Canadian Borrower, each a “Borrower” and collectively, the “Borrowers”), (iii) the Guarantors party thereto from time to time, (iv) the Lenders party thereto from time to time (the “Lenders”), (v) Bank of America, N.A., as Administrative Agent and Collateral Agent (in such capacities, the “Agent”), (vi) Bank of America, N.A. and each other L/C Issuer referred to therein (collectively, the “L/C Issuer”), and (vii) Bank of America, N.A., as Swing Line Lender. Capitalized terms used herein and not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

### **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 Credit 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 Loan Parties or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Loan Parties 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 [U.S.][Canadian] Lender under the Credit Agreement, (ii) it meets all the requirements to be an Eligible Assignee under the Credit Agreement (subject to such consents, if any, as may be required under Section 10.06(b) of the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a [U.S.][Canadian] Lender thereunder and, to the extent of [the][the relevant] Assigned Interest, shall have the obligations of a [U.S.][Canadian] 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 Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 6.01 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 Agent, any Arranger 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 Credit Agreement, duly completed and executed by [the][such] Assignee; and (b) agrees that (i) it will, independently and without reliance upon the Agent, any Arranger, [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 [U.S.][Canadian] Lender.

2. Payments. From and after the Effective Date, the 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 up 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 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 Assignment and Assumption and the transactions contemplated hereby shall be governed by, and construed in accordance with, the law of the State of New York.

4. Fees. Unless waived by the Agent in accordance with Section 10.06(b)(iv) of the Credit Agreement, this Assignment and Assumption shall be delivered to the Agent with a processing and recordation fee of \$3,500.

5. Delivery. If the Assignee is not a Lender, the Assignee shall deliver to the Agent an Administrative Questionnaire.

**EXHIBIT F**  
**FORM OF BORROWING BASE CERTIFICATE**  
(see attached)



## Hudson's Bay Company

Consolidated Borrowing Base Certificate for the period ending

(all in USD)

	Hudson's Bay Company	Lord & Taylor Acquisition	Consolidated
1. Inventory Availability	\$0	\$0	\$0
2. Credit Card/Trade Receivable Availability	\$0	\$0	\$0
3. Availability before Reserves	\$0	\$0	\$0
Less Reserves	\$0	\$0	\$0
A. Borrowing Base	\$0	\$0	\$0
B. Aggregate Commitments			\$0
Lesser of A or B	\$0	\$0	\$0
Plus/Minus Allocated Availability	\$0	\$0	
Availability before Total Outstandings	\$0	\$0	\$0
AVAILABILITY CALCULATION			
Revolving Loan Balance as of	\$0	\$0	\$0
ADD Documentary Letters of Credit	\$0	\$0	\$0
Standby Letters of Credit	\$0	\$0	\$0
Aggregate Revolving Exposure	\$0	\$0	\$0

### Availability

\$0

The undersigned, a Responsible Officer (as defined in the Credit Agreement referred to below) of Hudson's Bay Company (the "Lead Borrower"), represents and warrants that (A) the information set forth above is complete and correct and has been prepared in accordance with the requirements of that certain Amended and Restated Credit Agreement dated October 11, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by, among others, the Lead Borrower, the other Borrowers party thereto from time to time, the Guarantors party thereto from time to time, the Lenders party thereto from time to time, and Bank of America, N.A., as administrative agent and collateral agent and (B) no Default or Event of Default (as such terms are defined in the Credit Agreement) has occurred and is outstanding.

Authorized Signer:

Name:

Patricia Heaney

Title:

SVP, Treasurer

## Hudson's Bay Company

Consolidated Borrowing Base Certificate for the period ending

(all in USD)

<u>Hudson's Bay Company</u>	<u>Lord &amp; Taylor Acquisition</u>	<u>Consolidated</u>
-----------------------------	--	---------------------

1. Inventory Availability

2. Credit Card/Trade Receivable Availability

3. Availability before Reserves

Less Reserves

A. Borrowing Base

B. Aggregate Commitments

Lesser of A or B

Plus/Minus Allocated Availability

Availability before Total Outstandings

AVAILABILITY CALCULATION

Revolving Loan Balance as of

ADD	Documentary Letters of Credit
	Standby Letters of Credit

Aggregate Revolving Exposure

Availability

The undersigned, a Responsible Officer (as defined in the Credit Agreement referred to below) of Hudson's Bay Company (the "Lead Borrower"), represents and warrants that (A) the information set forth above is complete and correct and has been prepared in accordance with the requirements of that certain Amended and Restated Credit Agreement dated October 11, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by, among others, the Lead Borrower, the other Borrowers party thereto from time to time, the Guarantors party thereto from time to time, the Lenders party thereto from time to time, and Bank of America, N.A., as administrative agent and collateral agent and (B) no Default or Event of Default (as such terms are defined in the Credit Agreement) has occurred and is outstanding.

Authorized Signer:

Name: Patricia Heaney

Title: SVP, Treasurer

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Hudson's Bay Company - Canada

Canadian Borrowing Base Certificate for the period ending \_\_\_\_\_

Cert. #:	0
Date:	
Conversion Rate (CAD to USD):	Cor
Conversion Rate (USD to CAD):	Cor

Eligible Trade Receivables				Borrowing Base in CAD	Borrowing Base in USD
Gross Trade Receivables	As of: _____			-	-
Ineligibles				-	-
Eligible Trade Receivables (net of Taxes)				-	-
Eligible Accounts Receivable @ Advance Rate of 85%				-	-
TOTAL TRADE RECEIVABLE AVAILABILITY				-	-
Inventory:				COST	COST
Ending Stock Ledger Inventory:	As of: _____	for Ending Stock Ledger Inventory			-
ADD:					-
Total Inventory					-
LESS: Shrink Accrual Reserve					-
Damages (Store# 1924 & 5925)					-
RTVs (Store # 857)					-
Markdowns Not Booked					-
Other (Consignment; Liquidation; Samples; Closed Locations)					-
Liquidation Items (Category #973 (Bay))		\$	-		
Samples (Location #1805)		\$	-		
Closed Stores		\$	-		
Total Inventory Reserves					-
ELIGIBLE INVENTORY:	As of: _____				-
Net Recovery: Using Monthly Rates for Low Season			HBC		
Standard Advance Rate on Cost:					-
Borrowing Base Advance Rates: 90% of NOLV; 92.5% of NOLV in Seasonal Advance Rate Period					
TOTAL ELIGIBLE INVENTORY AVAILABILITY:					-
In-Transit Inventory					
Customs Cleared not DC Received	As of: _____				-
Shipped not Customs Cleared					-
Received at Agent not Shipped					-
Total					-
LESS: Ineligibles					-
Double Counted within Report					-
Diff. between L/C and PO					-
Items without title					-
Inventory at FF > 7 business days					-
Valuation Reserve - 5%					-
Total Ineligible					-
ELIGIBLE IN-TRANSIT INVENTORY:					-
Net Recovery: Using Monthly Rates for Low Season			HBC		
Standard Advance Rate on Cost:					-
Borrowing Base Advance Rates: 90% of NOLV; 92.5% of NOLV in Seasonal Advance Rate Period					
(when combined with Eligible Letter of Credit Inventory, not to exceed 20% of the sum of other Canadian Borrowing Base categories)					
TOTAL IN-TRANSIT INVENTORY AVAILABILITY:					-
Letter of Credit Inventory					
Total Import Letters of Credit US \$:	As of: _____			-	-
Current Canadian Dollar Exchange Rate	As of: _____			-	-
Total Import Letters of Credit CDN \$:				-	-
Less: Ineligibles (Inventory received/LC not drawn)				-	-
Less: 5% Reserve				-	-
Eligible Letter of Credit Inventory			HBC		-
Net Recovery: Using Monthly Rates for Low Season					-
Standard Advance Rate on Cost:					-
Borrowing Base Advance Rates: 90% of NOLV					
(when combined with Eligible Letter of Credit Inventory, not to exceed 20% of the sum of other Canadian Borrowing Base categories)					
TOTAL LETTER OF CREDIT INVENTORY AVAILABILITY				-	-
Credit Card Receivables					
Gross Receivables less Fees	As of: _____				-
Ineligibles					-
Credit Card Receivables @ Advance Rate			95.0%		-
Borrowing Base Advance Rates: 95%					
Reserves					
LESS: Customer Credit Liabilities Reserve - 25% of G/L Balance	As of: _____	G/L Total: _____			-
Sold, Not Delivered and Customer Deposits (100% of balance)					-
GST/PST/QST					-
Landlord Lien Rent Reserves (if waiver not received)					-
Vacation Accrual					-
In-Transit/LC Inventory Reserve (not to exceed 20% of the sum of other Borrowing Base categories)					-
Customer Deposits - Kleinfeld Bridal					-
Total Reserves					-
TOTAL CANADIAN BORROWING BASE					-
Lesser of the Aggregate Canadian Commitments or the Borrowing Base (Loan Cap)					-
Plus/Minus Allocated Availability					
Canadian Availability before Total Outstandings					-
Ending Borrowing Base Loan Balance					-
CAD Standby L/C's in USD					
GBP Standby L/C's in USD				Doc. L/C's in USD	\$ -
EUR Standby L/C's in USD					
Total L/C's Outstanding				Doc. L/C's in CAD	\$ -
Total Borrowing Base Exposure (including L/C's)					-
Net Canadian Availability after Credit Extensions					-

<u>Lord &amp; Taylor Acquisition Inc.</u>			
U.S. Borrowing Base Certificate for the period ending		Date:	
		Cert. No.	<u>0</u>
	<u>Lord &amp; Taylor LLC</u>	<u>Saks Incorporated</u>	<u>GILT Groupe Holdings, Inc.</u>
	<u>and other L&amp;T subsidiaries</u>	<u>and other Saks subsidiaries</u>	<u>and other GILT subsidiaries</u>
	<b>Consolidated</b>		
1. Inventory Availability			
2. Credit Card Receivable Availability			
3. Availability before Reserves			
Less Reserves			
A. U.S. Borrowing Base			
B. Aggregate U.S. Commitments			
Lesser of A or B			
Plus/Minus Allocated Availability			
U.S Availability before Total Outstandings			
AVAILABILITY CALCULATION			
Revolving Loan Balance as of			
	ADD	Documentary Letters of Credit	
		Standby Letters of Credit	
Aggregate U.S. Revolving Exposure			
Net U.S. Availability			

<u>Lord &amp; Taylor LLC (and other L&amp;T subsidiaries)</u>		
Period ending		Date: _____
		Cert. No. <u>0</u>
<b><u>Cost</u></b>		
End Finished Goods inventory per cost stock ledger as of:	<u>8/31/2019</u>	_____
LESS	Shrink Reserve	_____
	Markdown Reserve	_____
	RTV (#6082)	_____
	Sell Off/Other (#6083)	_____
	Damages (#6089)	_____
	Closed Locations	_____
Net Eligible Inventory		_____
ADD	Eligible In-Transit Inventory	_____
	On-Hand not received into perpetual	_____
		_____
Net Eligible In-Transit Inventory (not in excess of 20% of other Borrowing Base categories)		_____
Total Eligible Inventory		_____
Monthly NOLV:	<span style="background-color: yellow;">                    </span>	_____
Inventory Advance Rate (90% (or, during Seasonal Advance Period. 92.5%) x NOLV):		_____
<b>Inventory Availability</b>		
Eligible Credit Card Receivables		_____
LESS	Amounts over 5 days	_____
Net Eligible Credit Card Receivables		_____
Credit Card Receivable Advance Rate		_____
<b>Credit Card Receivables Availability</b>		
<b>Lord &amp; Taylor LLC Availability before Reserves</b>		
LESS	Gift Certificates/Gift Cards (25%)	_____
	Merchandise Credits/Due Bills (25%)	_____
	Lease Payment Reserve	_____
<b>Lord &amp; Taylor LLC Borrowing Base</b>		

<b><u>Saks Incorporated (and other Saks subsidiaries)</u></b>		
Period ending		Date: _____
		Cert. No. <u>0</u>
		<b><u>Cost</u></b>
End Finished Goods inventory per stock ledger (Excluding Saks Canada Location) as of	_____	_____
LESS	Shrink	_____
	Markdown reserve	_____
	Return to Vendor (#775)	_____
	Sell Off/Other (#7195)	_____
	Closed Stores	_____
Net Eligible Inventory		_____
ADD	Eligible In-Transit Inventory	_____
Net Eligible In-Transit Inventory (not in excess of 20% of other Borrowing Base categories)		_____
Total Eligible Inventory		_____
Monthly NOLV:	_____	_____
Inventory Advance Rate (90% (or, during Seasonal Advance Period. 92.5%) x NOLV):		_____
<b><u>Inventory Availability</u></b>		
Eligible Credit Card Receivables		_____
LESS	Amounts over 5 days	_____
Net Eligible Credit Card Receivables		_____
Credit Card Receivables Advance Rate		_____
<b><u>Credit Card Receivables Availability</u></b>		
<b><u>Saks Incorporated Availability before Reserves</u></b>		
LESS	Rent Reserve	_____
	Gift Certificates / Gift Cards (25%)	_____
	Merchandise Vouchers (25%)	_____
	Customer Deposits	_____
<b><u>Saks, Inc. Borrowing Base</u></b>		

**EXHIBIT G**  
**[RESERVED]**

## EXHIBIT H-1

### FORM OF U.S. TAX COMPLIANCE CERTIFICATE

#### (For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to the Amended and Restated Credit Agreement dated as of October 11, 2019 (as amended, restated, supplemented or otherwise modified and in effect from time to time, the “Credit Agreement”), by, among others, (i) Hudson’s Bay Company, a corporation organized under the federal laws of Canada, as the Canadian Borrower (in such capacity, the “Canadian Borrower”), and as Lead Borrower for itself and the other Borrowers party thereto from time to time (in such capacity, the “Lead Borrower”), (ii) Lord & Taylor Acquisition Inc., a Delaware corporation, as the U.S. Borrower (in such capacity, the “U.S. Borrower”, and together with the Canadian Borrower, each a “Borrower” and collectively, the “Borrowers”), (iii) the Guarantors party thereto from time to time, (iv) the Lenders party thereto from time to time (the “Lenders”), (v) Bank of America, N.A., as Administrative Agent and Collateral Agent (in such capacities, the “Agent”), (vi) Bank of America, N.A. and each other L/C Issuer referred to therein (collectively, the “L/C Issuer”), and (vii) Bank of America, N.A., as Swing Line Lender. Capitalized terms used herein and not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

Pursuant to the provisions of Section 3.01(e) of the Credit Agreement, the undersigned hereby certifies that (i) 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, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Agent and the Lead Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Lead Borrower and the Agent, and (2) the undersigned shall have at all times furnished the Lead Borrower and the 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.

[NAME OF LENDER]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_, 20[ ]



## EXHIBIT H-2

### FORM OF U.S. TAX COMPLIANCE CERTIFICATE

#### (For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to the Amended and Restated Credit Agreement dated as of October 11, 2019 (as amended, restated, supplemented or otherwise modified and in effect from time to time, the “Credit Agreement”), by, among others, (i) Hudson’s Bay Company, a corporation organized under the federal laws of Canada, as the Canadian Borrower (in such capacity, the “Canadian Borrower”), and as Lead Borrower for itself and the other Borrowers party thereto from time to time (in such capacity, the “Lead Borrower”), (ii) Lord & Taylor Acquisition Inc., a Delaware corporation, as the U.S. Borrower (in such capacity, the “U.S. Borrower”, and together with the Canadian Borrower, each a “Borrower” and collectively, the “Borrowers”), (iii) the Guarantors party thereto from time to time, (iv) the Lenders party thereto from time to time (the “Lenders”), (v) Bank of America, N.A., as Administrative Agent and Collateral Agent (in such capacities, the “Agent”), (vi) Bank of America, N.A. and each other L/C Issuer referred to therein (collectively, the “L/C Issuer”), and (vii) Bank of America, N.A., as Swing Line Lender. Capitalized terms used herein and not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

Pursuant to the provisions of Section 3.01(e) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to any Borrower 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 IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) 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.

[NAME OF PARTICIPANT]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_, 20[ ]

## EXHIBIT H-3

### FORM OF U.S. TAX COMPLIANCE CERTIFICATE

#### (For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to the Amended and Restated Credit Agreement dated as of October 11, 2019 (as amended, restated, supplemented or otherwise modified and in effect from time to time, the “Credit Agreement”), by, among others, (i) Hudson’s Bay Company, a corporation organized under the federal laws of Canada, as the Canadian Borrower (in such capacity, the “Canadian Borrower”), and as Lead Borrower for itself and the other Borrowers party thereto from time to time (in such capacity, the “Lead Borrower”), (ii) Lord & Taylor Acquisition Inc., a Delaware corporation, as the U.S. Borrower (in such capacity, the “U.S. Borrower”, and together with the Canadian Borrower, each a “Borrower” and collectively, the “Borrowers”), (iii) the Guarantors party thereto from time to time, (iv) the Lenders party thereto from time to time (the “Lenders”), (v) Bank of America, N.A., as Administrative Agent and Collateral Agent (in such capacities, the “Agent”), (vi) Bank of America, N.A. and each other L/C Issuer referred to therein (collectively, the “L/C Issuer”), and (vii) Bank of America, N.A., as Swing Line Lender. Capitalized terms used herein and not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

Pursuant to the provisions of Section 3.01(e) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) 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, (iv) none of its direct or indirect partners/members is a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to any Borrower 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: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E 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 (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) 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.

[NAME OF PARTICIPANT]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 20[ ]

## EXHIBIT H-4

### FORM OF U.S. TAX COMPLIANCE CERTIFICATE

#### (For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to the Amended and Restated Credit Agreement dated as of October 11, 2019 (as amended, restated, supplemented or otherwise modified and in effect from time to time, the “Credit Agreement”), by, among others, (i) Hudson’s Bay Company, a corporation organized under the federal laws of Canada, as the Canadian Borrower (in such capacity, the “Canadian Borrower”), and as Lead Borrower for itself and the other Borrowers party thereto from time to time (in such capacity, the “Lead Borrower”), (ii) Lord & Taylor Acquisition Inc., a Delaware corporation, as the U.S. Borrower (in such capacity, the “U.S. Borrower”, and together with the Canadian Borrower, each a “Borrower” and collectively, the “Borrowers”), (iii) the Guarantors party thereto from time to time, (iv) the Lenders party thereto from time to time (the “Lenders”), (v) Bank of America, N.A., as Administrative Agent and Collateral Agent (in such capacities, the “Agent”), (vi) Bank of America, N.A. and each other L/C Issuer referred to therein (collectively, the “L/C Issuer”), and (vii) Bank of America, N.A., as Swing Line Lender. Capitalized terms used herein and not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

Pursuant to the provisions of Section 3.01(e) of the Credit Agreement, the undersigned hereby certifies that (i) 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, (ii) 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)), (iii) with respect to the extension of credit pursuant to the Credit 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, (iv) none of its direct or indirect partners/members is a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Agent and the Lead Borrower 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: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E 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 (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Lead Borrower and the Agent, and (2) the undersigned shall have at all times furnished the Lead Borrower and the 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.

[NAME OF LENDER]

By: \_\_\_\_\_  
    Name: \_\_\_\_\_  
    Title: \_\_\_\_\_  
Date: \_\_\_\_\_, 20[ ]