UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended June 27, 2017

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

Commission file number: 001-36749

THE HABIT RESTAURANTS, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware	**36-4791171**
(State or Other Jurisdiction of Incorporation or Organization)	**(I.R.S. Employer Identification No.)**

17320 Red Hill Avenue, Suite 140, Irvine, CA 92614
(Address of Principal Executive Offices and Zip Code)

(949) 851-8881
(Registrant's Telephone Number, Including Area Code)

Securities registered pursuant to Section 12(b) of the Act:

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer", "accelerated filer", "smaller reporting company", and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	☐	Accelerated filer	☒
Non-accelerated filer	☐ (Do not check if a smaller reporting company)	Smaller reporting company	☐
		Emerging growth company	☒

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☒

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

As of July 31, 2017, there were 20,332,639 shares of the Registrant's Class A Common Stock, par value $0.01 per share, outstanding and 5,691,685 shares of the Registrant's Class B Common Stock, par value $0.01 per share, outstanding.

THE HABIT RESTAURANTS, INC.

TABLE OF CONTENTS

PART I-FINANCIAL INFORMATION

ITEM 1. Financial Statements

THE HABIT RESTAURANTS, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS

(in thousands, except share data)	June 27, 2017 (Unaudited)	December 27, 2016
ASSETS		
Cash and cash equivalents	$ 45,311	$ 44,192
Accounts receivable	6,074	5,145
Inventory	1,477	1,519
Prepaid expenses and other current assets	1,485	1,672
Total current assets	54,347	52,528
Property and equipment, net	118,228	102,857
Tradenames	12,500	12,500
Goodwill	9,967	9,967
Deposits and other assets, net	3,121	2,907
Deferred tax assets	148,368	149,607
Total long-term assets	292,184	277,838
Total assets	$ 346,531	$ 330,366
LIABILITIES AND STOCKHOLDERS' EQUITY		
Liabilities		
Accounts payable	$ 12,263	$ 9,734
Employee-related accruals	6,799	6,359
Accrued expenses	6,500	5,608
Income tax payable	167	167
Amounts payable to related parties under Tax Receivable Agreement, current portion	2,011	2,014
Sales taxes payable	1,777	2,314
Deferred rent, current portion	1,106	769
Deferred franchise income, current portion	105	170
Total current liabilities	30,728	27,135
Deferred rent, net of current portion	16,423	14,465
Deemed landlord financing	10,616	6,036
Deferred franchise income, net of current portion	1,265	1,250
Amounts payable to related parties under Tax Receivable Agreement, net of current portion	138,195	137,593
Total liabilities	197,227	186,479
Commitments and contingencies (Note 8)		
Stockholders' equity		
Class A common stock, par value $0.01 per share; 70,000,000 shares authorized and 20,278,263 shares issued and outstanding at June 27, 2017 and 20,178,937 shares issued and outstanding at December 27, 2016.	203	202
Class B common stock, par value $0.01 per share; 70,000,000 shares authorized and 5,743,811 shares issued and outstanding at June 27, 2017 and 5,821,122 shares issued and outstanding at December 27, 2016.	57	58
Additional paid-in capital	111,773	110,056
Retained earnings	10,352	7,397
The Habit Restaurants, Inc. stockholders' equity	122,385	117,713
Non-controlling interests	26,919	26,174
Total stockholders' equity	149,304	143,887
Total liabilities and stockholders' equity	$ 346,531	$ 330,366

See notes to condensed consolidated financial statements (unaudited).

THE HABIT RESTAURANTS, INC.

CONDENSED CONSOLIDATED STATEMENTS OF INCOME (UNAUDITED)

	13 Weeks Ended		26 Weeks Ended	
	June 27, 2017	June 28, 2016	June 27, 2017	June 28, 2016
(amounts in thousands except share and per share data)				
Revenue	$ 83,332	$ 71,116	$ 161,968	$ 138,073
Operating expenses				
Restaurant operating costs (excluding depreciation and amortization)				
Food and paper cost	26,256	21,150	49,093	41,252
Labor and related expenses	27,051	22,892	53,034	44,313
Occupancy and other operating expenses	13,613	11,340	26,688	21,828
General and administrative expenses	8,325	7,524	16,088	14,125
Exchange related expenses	120	253	236	360
Depreciation and amortization expense	4,467	3,579	8,716	6,991
Pre-opening costs	735	533	1,130	793
Loss on disposal of assets	12	36	24	75
Total operating expenses	80,579	67,307	155,009	129,737
Income from operations	2,753	3,809	6,959	8,336
Other expenses				
Interest expense, net	37	149	195	277
Income before income taxes	2,716	3,660	6,764	8,059
Provision for income taxes	1,003	1,164	2,303	2,169
Net income	$ 1,713	$ 2,496	$ 4,461	$ 5,890
Less: net income attributable to non-controlling interests	(601)	(1,305)	(1,506)	(3,319)
Net income attributable to The Habit Restaurants, Inc.	$ 1,112	$ 1,191	$ 2,955	$ 2,571
Net income attributable to The Habit Restaurants, Inc. per share Class A common stock:				
Basic	$ 0.05	$ 0.07	$ 0.15	$ 0.17
Diluted	$ 0.05	$ 0.07	$ 0.15	$ 0.17
Weighted average shares of Class A common stock outstanding:				
Basic	20,259,140	16,657,886	20,223,913	15,353,798
Diluted	20,325,493	16,658,172	20,269,425	15,356,621

See notes to condensed consolidated financial statements (unaudited).

THE HABIT RESTAURANTS, INC.

CONDENSED CONSOLIDATED STATEMENT OF CHANGES IN STOCKHOLDERS' EQUITY (UNAUDITED)

(amounts in thousands except share data)	Common Stock A		Common Stock B		Additional Paid-in Capital	Retained Earnings	Non-controlling Interests	Total
	Shares	Amounts	Shares	Amounts				
Stockholders' equity at December 27, 2016	20,178,937	$ 202	5,821,122	$ 58	$ 110,056	$ 7,397	$ 26,174	$ 143,887
Net income	—	—	—	—	—	2,955	1,506	4,461
Deferred tax assets	—	—	—	—	466	—	—	466
Tax distributions	—	—	—	—	—	—	(637)	(637)
Other distributions	—	—	—	—	—	—	(44)	(44)
Exchanges	71,977	1	(71,977)	(1)	—	—	—	—
Restricted stock units vested	27,349	—	—	—	—	—	—	—
Non-controlling interests adjustment	—	—	—	—	429	—	(429)	—
Forfeiture of Class B common stock	—	—	(5,334)	—	—	—	—	—
Stock-based compensation	—	—	—	—	822	—	349	1,171
Stockholders' equity at June 27, 2017	20,278,263	$ 203	5,743,811	$ 57	$ 111,773	$ 10,352	$ 26,919	$ 149,304

See notes to condensed consolidated financial statements (unaudited).

THE HABIT RESTAURANTS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (UNAUDITED)

	26 Weeks Ended	
	June 27, 2017	June 28, 2016
(amounts in thousands)		
Cash flows from operating activities:		
Net income	$ 4,461	$ 5,890
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization expense	8,716	6,991
Amortization of financing fees	—	21
Stock-based compensation	1,171	867
Loss on disposal of assets	24	75
Deferred income taxes	2,303	2,169
Deferred rent	190	65
Changes in assets and liabilities:		
Accounts receivable	1,175	1,590
Inventory	42	(12)
Prepaid expenses	193	16
Deposits and other assets	(213)	(297)
Accounts payable	1,653	77
Employee-related accruals	440	431
Accrued expenses	(59)	(291)
Income taxes payable	(6)	(7)
Sales taxes payable	(537)	(536)
Net cash provided by operating activities	19,553	17,049
Cash flows from investing activities:		
Purchase of property and equipment	(17,702)	(13,086)
Net cash used in investing activities	(17,702)	(13,086)
Cash flows from financing activities:		
Tax distributions to LLC members	(637)	(1,030)
Other distributions to LLC members	(44)	(46)
Payments on deemed landlord financing	(51)	(33)
Net cash used in financing activities	(732)	(1,109)
Net change in cash and cash equivalents	$ 1,119	$ 2,854
Cash and cash equivalents, beginning of period	44,192	46,991
Cash and cash equivalents, end of period	$ 45,311	$ 49,845
SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION		
Cash paid for interest	$ 396	$ 292
Cash paid for income taxes	$ 6	$ 7
NON-CASH FINANCING		
Deemed landlord financing	$ 4,631	$ 2,260
Unpaid purchase of property and equipment	$ 3,687	$ 2,892

See notes to condensed consolidated financial statements (unaudited).

Note 1—Nature of Operations and Basis of Presentation

The condensed consolidated financial statements of The Habit Restaurants, Inc. include the accounts of The Habit Restaurants, LLC and its subsidiaries (collectively the "Company"). All significant intercompany balances and transactions have been eliminated in consolidation. The Habit Restaurants, Inc. was formed as a Delaware corporation on July 24, 2014, as a holding company for the purposes of facilitating an initial public offering (the "IPO") of shares of Class A common stock. The Company acquired, by merger, entities that were members of The Habit Restaurants, LLC. The Company accounted for the merger as a non-substantive transaction in a manner similar to a transaction between entities under common control pursuant to Accounting Standards Codification ("ASC") *ASC 805-50 Transactions between Entities under Common Control*, and as such, recognized the assets and liabilities transferred at their carrying amounts on the date of transfer. The Habit Restaurants, Inc. is a holding company with no direct operations that holds as its principal assets an equity interest in The Habit Restaurants, LLC and shares of subsidiaries, each of which in turn holds as its principal asset an equity interest in The Habit Restaurants, LLC, and relies on The Habit Restaurants, LLC to provide the Company with funds necessary to meet any financial obligations. As such, the Company has no independent means of generating revenue. In February 2013, HBG Franchise, LLC ("Franchise"), a wholly-owned subsidiary of The Habit Restaurants, LLC and a Delaware limited liability company, was formed to begin franchising the Company's restaurant concept.

During the 26-week period ended June 27, 2017, 71,977 common units in The Habit Restaurants, LLC ("LLC Units") were exchanged by the existing owners of The Habit Restaurants, LLC (the "Continuing LLC Owners"), and a corresponding number of shares of Class B common stock were cancelled in connection with such exchanges, for shares of Class A common stock. In addition, 27,349 restricted stock units vested during the 26-week period ended June 27, 2017 and 5,334 LLC Units were forfeited, and a corresponding number of shares of Class B common stock were then cancelled in connection with the forfeitures, during the 26-week period ended June 27, 2017. As a result of these exchanges, vesting of restricted stock units and forfeitures, as of June 27, 2017, The Habit Restaurants, Inc. directly or indirectly held 20,278,263 LLC Units, representing a 77.9% economic interest in The Habit Restaurants, LLC, and continues to exercise exclusive control over the Habit Restaurants, LLC, as its sole managing member.

In connection with the recapitalization and the Company's IPO, The Habit Restaurants, LLC limited liability company agreement (the "LLC Agreement") was amended and restated to, among other things, create a single new class of non-voting LLC Units. The existing owners of The Habit Restaurants, LLC continue to hold LLC Units, and such existing owners (other than The Habit Restaurants, Inc. and its wholly-owned subsidiaries) were issued a number of shares of our Class B common stock equal to the number of LLC Units held by them. These LLC Units continue to be subject to any vesting, forfeiture, repurchase or similar provisions pursuant to the Pre-IPO agreement. Each share of Class B common stock provides its holder with no economic rights but entitles the holder to one vote on matters presented to The Habit Restaurants, Inc.'s stockholders. Holders of Class A common stock and Class B common stock generally vote together as a single class on all matters presented to our stockholders for their vote or approval, except as otherwise required by applicable law. The Class B common stock is not publicly traded and does not entitle its holders to receive dividends or distributions upon a liquidation, dissolution or winding up of The Habit Restaurants, Inc.

As the sole managing member of The Habit Restaurants, LLC, the Company has the right to determine when distributions will be made to the unit holders of The Habit Restaurants, LLC, and the amount of any such distributions (in each case subject to the requirements with respect to the tax distributions described below). If The Habit Restaurants, Inc. authorizes a distribution, such distribution will be made to the unit holders of The Habit Restaurants, LLC, including The Habit Restaurants, Inc., pro rata in accordance with their respective ownership of the LLC Units (other than, for clarity, certain non-pro rata distributions to the Company to satisfy certain of the Company's obligations). Notwithstanding the foregoing, The Habit Restaurants, LLC bears the cost of or reimburses The Habit Restaurants, Inc. for certain expenses incurred by The Habit Restaurants, Inc. The Company also entered into a tax receivable agreement ("TRA").

The Habit Restaurants, LLC is treated by its members as a partnership for federal and applicable state income tax purposes and, as such, generally is not expected to be subject to income tax (except that it may be required to withhold and remit tax as a withholding agent). Instead, taxable income is allocated to holders of LLC Units, including the Company. Accordingly, the Company incurs income taxes on its allocable share of any net taxable income of The Habit Restaurants, LLC and also incurs expenses related to its operations. Pursuant to the LLC Agreement, The Habit Restaurants, LLC is required to make tax distributions to the holders of LLC Units, except that The Habit Restaurants, LLC's ability to make such distributions may be subject to various limitations and restrictions, including the operating results of its subsidiaries, its cash requirements and financial condition, the applicable provisions of Delaware law that may limit the amount of funds available for distribution to its members, compliance by The Habit Restaurants, LLC and its subsidiaries with restrictions, covenants and financial ratios related to existing or future indebtedness, and other agreements entered into by The Habit Restaurants, LLC or its subsidiaries with third parties. In addition to tax expenses, The Habit Restaurants, Inc. incurs expenses related to its operations, plus payments under the TRA, which the Company expects will be significant. The Company intends to cause The Habit Restaurants, LLC to make distributions or, in the case of certain expenses, payments in an amount sufficient to allow The Habit Restaurants, Inc. to pay its taxes and operating expenses, including distributions to fund any ordinary course payments due under the TRA. Under the terms of the Company's LLC Agreement, no member shall be obligated personally for any debt, obligation, or liability of the Company.

The Company is headquartered in Irvine, California, and, as of June 27, 2017, managed and operated 175 fast casual restaurants as "The Habit Burger Grill" in California, Arizona, Utah, New Jersey, Florida, Idaho, Virginia and Maryland. The restaurant's menu includes charbroiled hamburgers, specialty sandwiches, fresh salads, and shakes and malts.

Additionally, with the formation of Franchise, the Company began franchising its restaurant concept. Franchise's future operations are dependent upon the success of the Company's restaurant concept. The Company has entered into three licensing and five franchise agreements through June 27, 2017. The Company had three licensed locations and 11 franchised locations from which it generates revenues as of June 27, 2017, which operate in California, Arizona, Nevada, Washington and the United Arab Emirates.

The accompanying condensed consolidated financial statements have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission (the "SEC"). Accordingly, they do not include all of the information and footnotes required by generally accepted accounting principles in the United States ("GAAP") for complete financial statements. It is the Company's opinion that all adjustments considered necessary for the fair presentation of its results of operations, financial position, and cash flows for the periods presented have been included and are of a normal, recurring nature. The results of operations for interim periods are not necessarily indicative of the results to be expected for a full year. These financial statements should be read in conjunction with the audited financial statements and notes thereto for the year ended December 27, 2016, included in the Company's annual report on Form 10-K. The Company uses a 52 or 53-week fiscal year ending on the last Tuesday of the calendar year. In a 52-week fiscal year, each quarter includes 13 weeks of operations. In a 53-week fiscal year, the first, second and third quarters each include 13 weeks of operations and the fourth quarter includes 14 weeks of operations. Fiscal year 2016, which ended on December 27, 2016, was a 52-week fiscal year. Fiscal year 2017, which will end on December 26, 2017, is also a 52-week fiscal year.

Note 2—Summary of Significant Accounting Policies

Use of Estimates—The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported in the condensed consolidated financial statements and accompanying notes. Actual results could differ from those estimates.

Concentration of Credit Risk—Financial instruments, which potentially subject the Company to concentrations of credit risk, consist primarily of cash and cash equivalents. At June 27, 2017 and December 27, 2016, the Company maintained approximately $13 million and $12 million, respectively, of its day-to-day operating cash balances with a major financial institution, of which $0.1 million and $0.2 million, respectively, represents restricted cash in an impound account for franchisees in the state of Washington. The remaining $32 million at both June 27, 2017 and December 27, 2016, respectively, was invested with a major financial institution and consisted entirely of U.S. Treasury instruments with a maturity of three months or less at the date of purchase. At June 27, 2017 and December 27, 2016 and at various times during the periods then ended, cash and cash equivalents balances were in excess of Federal Depository Insurance Corporation insured limits. While the Company monitors the cash balances in its operating accounts on a daily basis and adjusts the cash balances as appropriate, these cash balances could be impacted if the underlying financial institutions fail or are subject to other adverse conditions in the financial markets. To date, the Company has experienced no loss or lack of access to cash in its operating accounts.

Fair Value Measurements—The carrying amounts of cash and cash equivalents, accounts receivable, accounts payable and all other current liabilities approximate fair values due to the short maturities of these instruments.

Income Taxes—The Company records a tax provision for the anticipated tax consequences of the reported results of operations. The provision for income taxes is computed using the asset and liability method, under which deferred tax assets and liabilities are recognized for the expected future tax consequences of temporary differences between the financial reporting and tax basis of assets and liabilities, and for operating losses and tax credit carryforwards. Deferred tax assets and liabilities are measured using the currently enacted tax rates that apply to taxable income in effect for the years in which those tax assets are expected to be realized or settled. The Company may record a valuation allowance, if conditions are applicable, to reduce deferred tax assets to the amount that is believed more likely than not to be realized.

Non-controlling Interests—The non-controlling interests on the condensed consolidated statements of income represents the portion of earnings or loss before income taxes attributable to the economic interest in the Company's subsidiary, The Habit Restaurants, LLC, held by the Continuing LLC Owners. Non-controlling interests on the condensed consolidated balance sheet represents the portion of net assets of the Company attributable to the non-controlling Continuing LLC Owners, based on the portion of the LLC Units owned by such unit holders. As of June 27, 2017 the non-controlling interest was 22.1%.

Earnings per Share—Basic earnings per share ("basic EPS") is computed by dividing net income attributable to The Habit Restaurants, Inc. by the weighted average number of shares outstanding for the reporting period. Diluted earnings per share ("diluted EPS") gives effect during the reporting period to all dilutive potential shares outstanding resulting from employee stock-based awards.
The following table sets forth the calculation of basic and diluted earnings per share for the 13 and 26 weeks ended June 27, 2017 and June 28, 2016, respectively:

	13 Weeks Ended		26 Weeks Ended	
(amounts in thousands, except share and per share data)	June 27, 2017	June 28, 2016	June 27, 2017	June 28, 2016
Numerator:				
Net income attributable to controlling and non-controlling interests	$ 1,713	$ 2,496	$ 4,461	$ 5,890
Less: net income attributable to non-controlling interests	$ (601)	$ (1,305)	$ (1,506)	$ (3,319)
Net income attributable to The Habit Restaurants, Inc.	$ 1,112	$ 1,191	$ 2,955	$ 2,571
Denominator:				
Weighted average shares of Class A common stock outstanding				
Basic	20,259,140	16,657,886	20,223,913	15,353,798
Diluted	20,325,493	16,658,172	20,269,425	15,356,621
Net income attributable to The Habit Restaurants, Inc. per share Class A common stock				
Basic	$ 0.05	$ 0.07	$ 0.15	$ 0.17
Diluted	$ 0.05	$ 0.07	$ 0.15	$ 0.17
Below is a reconciliation of basic and diluted share counts				
Basic	20,259,140	16,657,886	20,223,913	15,353,798
Dilutive effect of stock options and restricted stock units	66,353	286	45,512	2,823
Diluted	20,325,493	16,658,172	20,269,425	15,356,621

Diluted earnings per share of Class A common stock is computed similarly to basic earnings per share except the weighted average shares outstanding are increased to include additional shares from the assumed exercise of any common stock equivalents using the treasury method, if dilutive. The Company's Class B common stock represent voting interests and do not participate in the earnings of the Company. Accordingly, there is no earnings per share related to the Company's Class B common stock. The Company's LLC Units are considered common stock equivalents for this purpose. The number of additional shares of Class A common stock related to these common stock equivalents is calculated using the if-converted method. The potential impact of the exchange of the 5,743,811 LLC Units on the diluted EPS had no impact and were therefore excluded from the calculation.

As of June 27, 2017, there were 2,525,275 options authorized under our 2014 Omnibus Incentive Plan of which 1,269,013 and 640,111 had been granted as of June 27, 2017 and June 28, 2016, respectively. The number of dilutive shares of Class A common stock related to these options was calculated using the treasury stock method and 33,786 and 4,024 shares and 29,414 and 2,738 shares have been excluded from the diluted EPS for the 13 and 26 weeks ended June 27, 2017 and June 28, 2016, respectively, because they were anti-dilutive.

Recent Accounting Pronouncements—In May 2017, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2017-09, Compensation-Stock Compensation (Topic 718) – Scope of Modification Accounting. This update applies to entities that change the terms or conditions of a share-based payment award. This update will provide clarity and reduce (i) the diversity in practice and (ii) cost and complexity when applying the guidance in Topic 718, Compensation-Stock Compensation, to a change to the terms or conditions of a share-based payment award. This update is effective for annual periods, and interim periods within those annual periods, beginning after December 15, 2017 with early adoption permitted. This guidance should be applied prospectively to an award modified on or after that adoption date. The Company is currently evaluating the impact the provision of this guidance will have on its consolidated financial statements.

In February 2016, the FASB issued ASU No. 2016-02 "Leases," which supersedes ASC 840 "Leases" and creates a new topic, ASC 842 "Leases." This update requires lessees to recognize a lease liability and a lease asset for all leases, including operating leases, with a term greater than 12 months on its balance sheet. The update also expands the required quantitative and qualitative disclosures surrounding leases. This update is effective for fiscal years beginning after December 15, 2018 and interim periods within those fiscal years, with early adoption permitted. This update will be applied using a modified retrospective transition approach for leases existing at, or entered into after, the beginning of the earliest comparative period presented in the financial statements. The Company anticipates taking advantage of the practical expedient options. The Company's operating lease obligations as of June 27, 2017 were approximately $220.8 million. The discounted minimum remaining operating lease obligations will be the starting point for determining the right-of-use asset and lease liability. The Company expects that adoption of the new guidance will have a material impact on its consolidated balance sheets due to recognition of the right-of-use asset and lease liability related to current operating leases. The Company is using their current lease software to continue the process of validating occupancy information in preparation for retrospective reporting, disclosure and audit for this standard update on its consolidated financial statements.

In May 2014, the FASB issued ASU 2014-09, Revenue from Contracts with Customers. This ASU is a comprehensive new revenue recognition model that requires a company to recognize revenue to depict the transfer of goods or services to a customer at an amount that reflects the consideration it expects to receive in exchange for those goods or services. This update is effective for annual reporting periods beginning after December 15, 2017, with early adoption permitted. Accordingly, the Company will adopt this ASU on December 27, 2017. Companies may use either a full retrospective or a modified retrospective approach to adopt this ASU. The Company does not believe the standard will impact recognition of revenue from company-operated restaurants or royalty revenue from franchisees and licensees, but will have an impact on the recognition of initial franchise and license fees. The Company has evaluated this standard and has concluded the adoption of this standard on recognition of revenue from franchise and license agreements will not have a significant impact on its consolidated financial statements and has decided to use the full retrospective method upon adoption.

Recently Adopted Accounting Pronouncements— In January 2017, the FASB issued ASU 2017-04, Intangibles – Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment. To simplify the subsequent measurement of goodwill, the amendments eliminate Step 2 from the goodwill impairment test. Under the new guidance, the recognition of an impairment charge is calculated based on the amount by which the carrying amount exceeds the reporting unit's fair value; however, the loss recognized should not exceed the total amount of goodwill allocated to that reporting unit. The guidance should be applied on a prospective basis, and is effective for annual or any interim goodwill impairment tests in fiscal years beginning after December 15, 2019. Early adoption is permitted for interim or annual goodwill impairment tests performed on testing dates after January 1, 2017. The Company adopted this standard in the first quarter of fiscal year 2017 and there was no impact on its consolidated financial statements.

In August 2016, the FASB issued ASU 2016-15, Classification of Certain Cash Receipts and Cash Payments (Topic 230). This update provides clarification regarding how certain cash receipts and cash payments are presented and classified in the statement of cash flows. This update addresses eight specific cash flow issues with the objective of reducing the existing diversity in practice. This update is effective for annual and interim periods for fiscal years beginning after December 15, 2017. Early adoption is permitted. The update will be applied on a retrospective basis. The Company adopted this standard in the first quarter of fiscal year 2017 and there was no classification impact on its consolidated financial statements.

In March 2016, the FASB issued ASU No. 2016-09 Compensation - Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting. The amendments in this update simplify several aspects of the accounting for employee share-based payment transactions, including the accounting for income taxes, forfeitures and statutory tax withholding requirements, as well as classification in the statement of cash flows. This update is effective for fiscal years beginning after December 15, 2016. The Company adopted this guidance in the first quarter of fiscal year 2017 and it did not have a material effect on the Company's consolidated financial statements.

Note 3—Non-controlling Interests

Pursuant to the LLC Agreement, the Continuing LLC Owners have the right to exchange their LLC Units, together with a corresponding number of shares of Class B common stock (which will be cancelled in connection with any such exchange) for, generally, at the option of the Company (such determination to be made by the disinterested members of our board of directors), (i) shares of our Class A common stock on a one-for-one basis, subject to customary conversion rate adjustments for stock splits, stock dividends and reclassifications or (ii) cash consideration. At any time that an effective registration statement is on file with the SEC with respect to the shares of Class A Common Stock to be issued upon an exchange, The Habit Restaurants, Inc. may not provide cash consideration upon an exchange to a Continuing LLC Owner without the Continuing LLC Owner's prior consent. The Company amended its LLC Agreement in May 2016, pursuant to which the Company processes exchange requests every other week, rather than weekly, effective in June 2016. The Company further amended its LLC Agreement in March 2017, pursuant to which the Company processes exchange requests monthly, effective in May 2017.

The non-controlling interests represents the portion of earnings or loss attributable to the economic interest held by the non-controlling Continuing LLC Owners. The non-controlling interests upon the completion of the IPO was 65.5%. Upon completion of the follow-on offering in April 2015, the non-controlling interests portion was 47.1%. The non-controlling interests portion changes as Continuing LLC Owners exchange their LLC Units, together with a corresponding number of shares of Class B common stock, for Class A common stock and the non-controlling interests on the condensed consolidated balance sheet were adjusted to reflect the non-controlling interests portion as of June 27, 2017, which was 22.1%. Net income attributable to non-controlling interests is calculated based on the non-controlling interests ownership percentage in effect at that time. The table below represents the weighted average non-controlling interests for the periods presented (dollar amounts in thousands):

	13 Weeks Ended		26 Weeks Ended	
	June 27, 2017	June 28, 2016	June 27, 2017	June 28, 2016
Income before income taxes	$ 2,716	$ 3,660	$ 6,764	$ 8,059
Weighted average non-controlling interests ownership percentage	22.1%	35.7%	22.3%	41.2%
Net income attributable to non-controlling interests	$ 601	$ 1,305	$ 1,506	$ 3,319

Note 4—Fair Value Measurements

Fair value measurements enable the reader of the financial statements to assess the inputs used to develop those measurements by establishing a hierarchy for ranking the quality and reliability of the information used to determine fair values. The Company classifies and discloses assets and liabilities carried at fair value in one of the following three categories:

Level 1: Quoted market prices in active markets for identical assets or liabilities.

Level 2: Observable market-based inputs or unobservable inputs that are corroborated by market data.

Level 3: Unobservable inputs that are not corroborated by market data.

The fair values of the Company's investments in marketable securities are based on quoted prices in active markets for identical assets. The fair value of the investments in marketable securities was approximately $32 million at both June 27, 2017 and December 27, 2016, and the Company classified such investments as Level 1. These investments consist entirely of U.S. Treasury instruments with a maturity of three months or less at the date of purchase and the interest income received from these instruments is included in interest expense, net in the condensed consolidated statements of income. These amounts are included in cash and cash equivalents in the accompanying condensed consolidated balance sheets.

Note 5—Property and Equipment, net

Property and equipment consists of the following (amounts in thousands):

	June 27, 2017	December 27, 2016
Leasehold improvements	$ 80,837	$ 73,112
Equipment	43,488	39,132
Furniture and fixtures	22,545	21,056
Buildings under deemed landlord financing	10,852	6,221
Smallwares	1,660	1,483
Vehicles	1,927	1,669
Construction in progress	14,230	8,863
	175,539	151,536
Less: Accumulated depreciation and amortization	(57,311)	(48,679)
	$ 118,228	$ 102,857

Depreciation expense was approximately $4,467,000 and $3,579,000 and $8,716,000 and $6,991,000 for the 13 and 26 weeks ended June 27, 2017 and June 28, 2016, respectively.

As a result of the application of build-to-suit lease guidance contained in ASC 840-40-55, the Company has determined that it was the accounting owner of a total of 21 buildings under deemed landlord financing as of June 27, 2017 and the accounting owner of a total of 14 buildings under deemed landlord financing as of December 27, 2016, and they are included in the Company's property and equipment, respectively. Included in the buildings under deemed landlord financing is the estimated construction costs of the landlord for the shell building.

Note 6—Income Taxes

The Habit Restaurants, Inc. is subject to U.S. federal and state income taxation on its allocable portion of the income of The Habit Restaurants, LLC. The "Provision for income taxes" in the accompanying condensed consolidated statements of income for the 26 weeks ended June 27, 2017 and June 28, 2016 is based on an estimate of the Company's annualized effective income tax rate. The Habit Restaurants, LLC operates as a limited liability company which is not itself subject to federal income tax. Accordingly, the portion of the Company's subsidiary earnings attributable to the non-controlling interests are subject to tax when reported as a component of the non-controlling interests' taxable income.

As a result of the recapitalization and the IPO that occurred in fiscal year 2014, the portion of The Habit Restaurants, LLC's income attributable to The Habit Restaurants Inc. is now subject to U.S. federal, state and local income taxes and is taxed at the prevailing corporate tax rates. The income tax provision reflects a tax rate of 34.05% and 26.56% for the 26 weeks ended June 27, 2017 and June 28, 2016, respectively. The effective tax rate varies significantly from the federal statutory rate due to the income attributable to the non-controlling interests which is not taxed at the entity level. The income tax provision would reflect an effective tax rate of 41.05% and 41.83% for the 26 week periods ended June 27, 2017 and June 28, 2016, respectively, if all of the income was taxed at Habit Restaurants, Inc. and the impact of discrete items and the non-controlling interests was disregarded.

Tax Receivable Agreement

In connection with the IPO that occurred in fiscal year 2014, the Company entered into a TRA. Under the TRA, the Company generally will be required to pay to the Continuing LLC Owners 85% of the amount of cash savings, if any, in U.S. federal, state or local tax that the Company actually realizes directly or indirectly (or are deemed to realize in certain circumstances) as a result of (i) certain tax attributes created as a result of the IPO and any sales or exchanges (as determined for U.S. federal income tax purposes) to or with the Company of their interests in The Habit Restaurants, LLC for shares of our Class A common stock or cash, including any basis adjustment relating to the assets of The Habit Restaurants, LLC and (ii) tax benefits attributable to payments made under the TRA (including imputed interest). The Habit Restaurants, Inc. generally will retain 15% of the applicable tax savings. The amount payable to the Continuing LLC Owners under the TRA is disclosed in the accompanying condensed consolidated balance sheets. In addition, the TRA provides for interest, at a rate equal to one year LIBOR, accrued from the due date (without extensions) of the corresponding tax return to the date of payment specified by the TRA. To the extent that the Company is unable to timely make payments under the TRA for any reason, such payments will be deferred and will accrue interest at a rate equal to one year LIBOR plus 200 basis points until paid (although a rate equal to one year LIBOR will apply if the inability to make payments under the TRA is due to limitations imposed on the Company or any of our subsidiaries by a debt agreement in effect on the date of the IPO). The Company's ability to make payments under the TRA and to pay its tax liabilities to taxing authorities generally will depend on our receipt of cash distributions from The Habit Restaurants, LLC.

Pursuant to the LLC Agreement, the Continuing LLC Owners have the right to exchange their LLC Units, together with a corresponding number of shares of Class B common stock (which will be cancelled in connection with any such exchange) for, generally, at the option of The Habit Restaurants, Inc. (such determination to be made by the disinterested members of our board of directors), (i) shares of our Class A common stock on a one-for-one basis, subject to customary conversion rate adjustments for stock splits, stock dividends and reclassifications or (ii) cash consideration (generally calculated based on the volume-weighted average price of the Class A common stock of The Habit Restaurants, Inc., as displayed under the heading Bloomberg VWAP on the Bloomberg page designated for the Class A common stock of The Habit Restaurants, Inc. for the 15 trading days immediately prior to the delivery date of a notice of exchange). At any time that an effective registration statement is on file with the SEC with respect to the shares of Class A common stock to be issued upon an exchange, The Habit Restaurants, Inc. may not provide cash consideration upon an exchange to a Continuing LLC Owner without the Continuing LLC Owner's prior consent. These exchanges are expected to result in increases in the tax basis of the assets of The Habit Restaurants, LLC that otherwise would not have been available. Increases in tax basis resulting from such exchanges may reduce the amount of tax that The Habit Restaurants, Inc. would otherwise be required to pay in the future. This tax basis may also decrease gains (or increase losses) on future dispositions of certain assets to the extent tax basis is allocated to those assets.

If the IRS or a state or local taxing authority challenges the tax basis adjustments that give rise to payments under the TRA and the tax basis adjustments are subsequently disallowed, the recipients of payments under the agreement will not reimburse any payments the Company previously made to them. Any such disallowance would be taken into account in determining future payments under the TRA and would, therefore, reduce the amount of any such future payments. Nevertheless, if the claimed tax benefits from the tax basis adjustments are disallowed, the Company's payments under the TRA could exceed its actual tax savings, and the Company may not be able to recoup payments under the TRA that were calculated on the assumption that the disallowed tax savings were available.

The TRA provides that (i) in the event that the Company materially breaches the TRA, (ii) if, at any time, the Company elects an early termination of the TRA, or (iii) upon certain mergers, asset sales, other forms of business combinations or other changes of control, the Company's (or our successor's) obligations under the TRA (with respect to all LLC Units, whether or not LLC Units have been exchanged or acquired before or after such transaction) would accelerate and become payable in a lump sum amount equal to the present value of the anticipated future tax benefits calculated based on certain assumptions, including that the Company would have sufficient taxable income to fully utilize the deductions arising from the tax deductions, tax basis and other tax attributes subject to the TRA. The Company's payment obligations under the TRA with respect to interests in The Habit Restaurants, LLC treated as sold for U.S. federal income tax purposes to the Company in connection with the IPO are calculated based on the IPO price of our Class A common stock net of underwriting discounts.

As a result of the foregoing, (i) the Company could be required to make payments under the TRA that are greater than or less than the specified percentage of the actual tax savings the Company realizes in respect of the tax attributes subject to the agreements and (ii) the Company may be required to make an immediate lump sum payment equal to the present value of the anticipated future tax savings, which payment may be made years in advance of the actual realization of such future benefits, if any of such benefits are ever realized. In these situations, the Company's obligations under the TRA could have a substantial negative impact on its liquidity and could have the effect of delaying, deferring or preventing certain mergers, asset sales, other forms of business combinations or other changes of control. There can be no assurance that the Company will be able to finance its obligations under the TRA in a manner that does not adversely affect its working capital and growth requirements.

Payments under the TRA are intended to be treated as additional consideration for the applicable interests in The Habit Restaurants, LLC treated as sold or exchanged (as determined for U.S. federal income tax purposes) to or with the Company, except with respect to certain actual or imputed interest amounts payable under the TRA.

As of June 27, 2017, the Company recorded a liability of $140.2 million, representing the payments due to the Continuing LLC Owners under the TRA. The increase in the TRA liability during the 26 weeks ended June 27, 2017 is a result of the exchanges of LLC Units for shares of Class A common stock by the Continuing LLC Owners during the period.

Payments are due under the TRA for a given year if the Company has a net realized tax benefit. The realized tax benefit is intended to measure the decrease or increase in the actual tax liability of the Company attributable to the tax benefits defined in the TRA (i.e., basis adjustments and imputed interest), using a "with and without" methodology. Payments are anticipated to be made under the TRA for approximately 20-25 years, with a payment due after the filing of the Company's federal income tax return, which is due on or about October 15th of any given year (including extensions). The payments are to be made in accordance with the terms of the TRA. The Company shall pay or cause to be paid within five business days after the obligations became due (i.e. payable within 95-125 calendar days after the due date of the federal income tax return (taking into account valid extensions) dependent upon the type of holder of the TRA). The timing of the payments are subject to certain contingencies including whether the Company will have sufficient taxable income to utilize all of the tax benefits defined in the TRA.

Obligations pursuant to the TRA are obligations of the Company. They do not impact the non-controlling interest. These obligations are not income tax obligations and have no impact on the tax provision or the allocation of taxes.

Note 7—Long-Term Debt

On July 23, 2014, the Company refinanced its long-term debt with California Bank & Trust into a $35 million credit facility (the "Credit Facility") that matured on July 23, 2017. All borrowings under the Credit Facility bore interest at a variable rate based upon the Company's election, of (i) the base rate plus, or (ii) LIBOR, plus, in either case, an applicable margin based on certain financial results of the Company (as defined in the Credit Facility agreement). The Credit Facility also required payment for commitment fees that accrued on the daily unused commitment of the lender at 0.25% per annum, payable quarterly. This Credit Facility was paid down in November 2014 with a portion of the net proceeds from the IPO. As of June 27, 2017 and December 27, 2016, there were no borrowings outstanding against the Credit Facility, respectively.

The Credit Facility was secured by all the assets of the Company and the Company was required to comply with certain financial covenants therein. The Credit Facility contained customary representations, warranties, negative and affirmative covenants, including a funded debt to EBITDA ratio of 2.00 to 1.00, a fixed charge coverage ratio of 1.25 to 1.00 and a requirement that EBITDA must be greater than zero for 75% or more of all restaurants open at least six months. As of June 27, 2017, the Company was in compliance with all covenants.

Note 8—Commitments and Contingencies

Future commitments—The Company's growth strategy includes new restaurant openings during fiscal year 2017 and beyond. In connection with the build out of the restaurants, the Company may be obligated for a portion of the start-up and/or construction costs. As of June 27, 2017, the Company had approximately $10.8 million in such commitments related to new restaurants.

Litigation—The Company is involved in various claims and legal actions that arise in the ordinary course of business. Management does not believe that the ultimate resolution of these actions will have a material adverse effect on the Company's consolidated financial position, results of operations, liquidity and capital resources. A significant increase in the number of litigated claims or an increase in amounts owing under successfully litigated claims could materially adversely affect the Company's business, financial condition, results of operations, and cash flows.

Note 9—Management Incentive Plans

Stock-based compensation is included in general and administrative expenses on the accompanying condensed consolidated statements of income. The stock-based compensation expense related to the 2014 Omnibus Incentive Plan and to units issued under The Habit Restaurants, LLC Management Incentive Plan is summarized in the table below for the periods indicated: (in thousands)

	13 Weeks Ended		26 Weeks Ended	
	June 27, 2017	June 28, 2016	June 27, 2017	June 28, 2016
Stock-based compensation expense	$ 673	$ 521	$ 1,171	$ 867
Total	$ 673	$ 521	$ 1,171	$ 867

2014 Omnibus Incentive Plan

Prior to the completion of the Company's IPO, the board of directors adopted The Habit Restaurants, Inc. 2014 Omnibus Incentive Plan (the "2014 Omnibus Incentive Plan") and, subsequent to the IPO, all equity-based awards have been granted under the 2014 Omnibus Incentive Plan. The 2014 Omnibus Incentive Plan also permits grants of cash bonuses beginning in fiscal year 2015. This plan authorizes 2,525,275 total options and restricted stock units. No awards may be granted under the plan after November 19, 2024.

The purpose of the 2014 Omnibus Incentive Plan is to advance the Company's interests by providing for the grant to eligible individuals of equity-based and other incentive awards.

The 2014 Omnibus Incentive Plan is administered by our board of directors or a committee of our board of directors (the "Administrator"). The Administrator has the authority to, among other things, interpret the 2014 Omnibus Incentive Plan, determine eligibility for, grant and determine the terms of awards under the 2014 Omnibus Incentive Plan, and to do all things necessary to carry out the purposes of the 2014 Omnibus Incentive Plan. The Administrator's determinations under the 2014 Omnibus Incentive Plan are conclusive and binding. The Administrator will determine the time or times at which an award will vest or become exercisable. The maximum term of an award will not exceed ten years from the date of grant.

Non-Qualified Stock Options:

The following table sets forth information about the fair value of the non-qualified stock option grants on the date of grant using the Black-Scholes option-pricing model and the weighted average assumptions used for such a grant for the 26 weeks ended June 27, 2017:

	Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value
Outstanding and expected to vest at December 27, 2016	491,440	$ 22.69	9.1	$ —
Granted	465,491	$ 16.27		
Forfeited	(15,263)	$ 20.99		
Exercised	—	$ —		
Outstanding and expected to vest at June 27, 2017	941,668	$ 19.54	9.1	$ —
Exercisable at June 27, 2017	125,954	$ 24.55	8.2	$ —

The aggregate intrinsic value in the table above is obtained by subtracting the weighted average exercise price from the fair value of the underlying common stock as of June 27, 2017 and multiplying this result by the related number of options outstanding and expected to vest at June 27, 2017. The fair value of the common stock as of June 27, 2017 used in the above calculation was $15.85 per share, the closing price of the Company's Class A common stock on June 27, 2017, the last trading day of the second quarter.

There was approximately $4.0 million of total unrecognized compensation costs related to options granted under the Plan as of June 27, 2017. That cost is expected to be recognized over a weighted average period of 3.9 years.

Restricted Stock Units:

A summary of stock-based compensation activity related to restricted stock units for the 26 weeks ended June 27, 2017 are as follows:

	Units	Weighted Average Fair Value	Weighted Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value
Outstanding and expected to vest at December 27, 2016	145,047	$ 22.38	9.0	$ 2,589,089
Granted	133,411	$ 15.94		
Forfeited	(5,107)	$ 19.21		
Vested	(27,349)	$ 23.23		
Outstanding and expected to vest at June 27, 2017	246,002	$ 18.86	9.2	$ 3,899,132

The aggregate intrinsic value in the table above is obtained by multiplying the related number of units outstanding and expected to vest at June 27, 2017 by the fair value of the common stock as of June 27, 2017. The fair value of the common stock as of June 27, 2017 used in the above calculation was $15.85 per share, the closing price of the Company's common stock on June 27, 2017, the last trading day of the second quarter.

The fair value of the restricted stock units is the quoted market value of our common stock on the date of grant. As of June 27, 2017, total unrecognized stock-based compensation expense related to non-vested restricted stock units was approximately $4.1 million. That cost is expected to be recognized over a weighted average period of 4.0 years.

The Habit Restaurants, LLC Management Incentive Plan

In connection with the IPO, the Company converted all of the outstanding vested and unvested Class C units into an equivalent amount of vested and unvested LLC Units of The Habit Restaurants, LLC, respectively. As of June 27, 2017 there was approximately $1.3 million of total unrecognized stock-based compensation expense related to these units. That cost is expected to be recognized over a weighted average period of 1.5 years.

Note 10—Subsequent Events

On August 2, 2017, The Habit Restaurants, LLC executed a new $20 million credit facility with Bank of the West (the "New Credit Facility") that matures on August 2, 2019. All borrowings under the New Credit Facility will bear interest at a variable rate based upon LIBOR plus the applicable margin for LIBOR loans (as defined in the New Credit Facility agreement). The New Credit Facility has no unused commitment fees.

The New Credit Facility is secured by all the assets of The Habit Restaurants, LLC, and the Company is required to comply with certain financial covenants therein. The New Credit Facility contains customary representations, warranties, negative and affirmative covenants, including a maximum lease adjusted leverage ratio of 4.00 to 1.00 and a minimum EBITDA of $21.4 million for the twelve month period then ended at the end of each fiscal quarter.

ITEM 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

The Habit Restaurants, Inc. was formed July 24, 2014 and prior to the IPO had not conducted any activities, other than (i) those incident to its formation, (ii) the merger transactions resulting in it holding interests, indirectly through its wholly-owned subsidiaries, in the Habit Restaurants, LLC (such interests collectively represented a less than 20% interest in the Habit Restaurants, LLC) and (iii) the preparation of the IPO registration statement. We conduct our business through The Habit Restaurants, LLC and its subsidiaries. The following discussion should be read in conjunction with our unaudited condensed consolidated financial statements and accompanying notes included elsewhere in this Quarterly Report on Form 10-Q. The following discussion includes certain forward-looking statements that involve risk, uncertainties and assumptions. For a discussion of important factors, including the continuing development of our business and other factors which could cause actual results to differ materially from the results referred to in the historical information and the forward-looking statements presented herein, see "Risk Factors" in our Annual Report on Form 10-K for the year ended December 27, 2016 (our "Annual Report").

We operate on a 52- or 53-week fiscal year that ends on the last Tuesday of the calendar year. Each quarterly period has 13 weeks, except for a 53-week year when the fourth quarter has 14 weeks. Our 2016 fiscal year consisted of 52 weeks and our 2017 fiscal year will consist of 52 weeks.

Unless the context requires otherwise, references to ''The Habit Burger Grill,'' ''The Habit,'' the ''Company,'' ''we,'' ''our'' or ''us'' refer collectively to The Habit Restaurants, Inc. and its consolidated subsidiaries.

Cautionary Note Regarding Forward-Looking Statements

In addition to historical information, this discussion and analysis contains forward-looking statements that involve risks and uncertainties such as the number of restaurants we intend to open and projected capital expenditures. Forward-looking statements are neither historical facts nor assurances of future performance. Instead, they are based on our current beliefs, expectations and assumptions regarding the future of our business, future plans and strategies, and other future conditions. Forward-looking statements can be identified by words such as "anticipate," "believe," "envision," "estimate," "expect," "intend," "may," "plan," "predict," "project," "target," "potential," "will," "would," "could," "should," "continue," "ongoing," "contemplate" and other similar expressions, although not all forward-looking statements contain these identifying words. These statements reflect our current views with respect to future events, are based on assumptions and are subject to risks and uncertainties. We may not actually achieve the plans, intentions or expectations disclosed in our forward-looking statements, and you should not place undue reliance on our forward-looking statements. Actual results or events could differ materially from the plans, intentions and expectations disclosed in the forward-looking statements we make, including, but not limited to, those discussed in "Cautionary Note Regarding Forward-Looking Statements" and "Risk Factors" as filed in our Annual Report.

Overview

The Habit Burger Grill is a burger-centric, fast casual restaurant concept that specializes in preparing fresh, made-to-order char-grilled burgers and sandwiches featuring USDA choice tri-tip steak, grilled chicken and sushi-grade albacore tuna cooked over an open flame. In addition, we feature fresh made-to-order salads and an appealing selection of sides, shakes and malts. The char-grilled preparation of our fresh burgers topped with caramelized onions and fresh produce has generated tremendous consumer response resulting in our burger being named the "best tasting burger in America" in July 2014 in a comprehensive survey conducted by one of America's leading consumer magazines. We operate in the approximately $47 billion fast casual restaurant segment, which we believe has created significant recent disruption in the restaurant industry and has historically gained market share from adjacent restaurant segments, resulting in significant growth opportunities for restaurant concepts such as The Habit.

History and Operations

The first location opened in Santa Barbara, California in 1969. Our restaurant concept has been, and continues to be built around a distinctive and diverse menu, headlined by fresh, char-grilled burgers and sandwiches made-to-order over an open flame and topped with fresh ingredients. Our Chief Executive Officer, Russell W. Bendel, joined The Habit in 2008, after KarpReilly, LLC ("KarpReilly"), a private investment firm based in Greenwich, Connecticut, acquired an equity interest in us in 2007. At the time of KarpReilly's investment, we had 17 locations. Since then, we have grown our brand on a disciplined basis designed to capitalize on the large market opportunity available to us and, as of June 27, 2017, we had 189 locations, which includes 14 franchised/licensed locations. Our highly experienced management team has created and refined the infrastructure to create replicable restaurant-level systems, processes and training procedures that can deliver a high-quality experience that is designed to consistently exceed our customers' expectations.

Growth Strategies and Outlook

We plan to continue to expand our business, drive comparable restaurant sales growth and enhance our competitive positioning by executing on the following strategies:

- expand our restaurant base;
- increase our comparable restaurant sales;
- opportunistically open more drive-thru locations; and
- enhance operations and leverage our infrastructure to improve long-term profitability.

We had 189 restaurants in 10 U.S. states and in the United Arab Emirates as of June 27, 2017, which includes 11 franchised and three licensed locations from which we generate revenue, but excludes the seven licensed locations in Santa Barbara County, California. We opened 13 company-operated restaurants and four franchised restaurants from December 27, 2016 through June 27, 2017. We expect to open a total of 31 to 33 company-operated restaurants and five to seven franchised/licensed restaurants in 2017. To increase comparable restaurant sales, we plan to continue delivering superior customer experiences, increasing customer frequency, attracting new customers and improving per customer spend. We believe we are well positioned for future growth, with a developed corporate infrastructure capable of supporting our expanding restaurant base. Additionally, we believe we have an opportunity to enhance our profitability as we benefit from increased economies of scale. However, these growth rates cannot be guaranteed.

Exchanges

During the 26 weeks ended June 27, 2017, 71,977 common units in The Habit Restaurants, LLC ("LLC Units") were exchanged by the existing owners of The Habit Restaurants, LLC (the "Continuing LLC Owners"), and a corresponding number of shares of Class B common stock were then cancelled in connection with such exchanges, for shares of Class A common stock. In addition, 27,349 restricted stock units vested during the 26-week period ended June 27, 2017 and 5,334 LLC Units were forfeited, and a corresponding number of shares of Class B common stock were then cancelled in connection with the forfeitures, during the 26-week period ended June 27, 2017. As a result of these exchanges, vesting of restricted stock units and forfeitures, as of June 27, 2017, The Habit Restaurants, Inc. directly or indirectly held 20,278,263 LLC Units, representing a 77.9% economic interest in The Habit Restaurants, LLC, and continues to exercise exclusive control over the Habit Restaurants, LLC, as its sole managing member.

Tax Receivable Agreement ("TRA")

In connection with the IPO, we entered into the TRA. Under the TRA, we generally will be required to pay to the continuing LLC Owners 85% of the amount of cash savings, if any, in U.S. federal, state or local tax that we actually realize directly or indirectly (or are deemed to realize in certain circumstances) as a result of (i) certain tax attributes created as a result of the IPO and any sales or exchanges (as determined for U.S. federal income tax purposes) to or with us of their interests in The Habit Restaurants, LLC for shares of our Class A common stock or cash, including any basis adjustment relating to the assets of The Habit Restaurants, LLC and (ii) tax benefits attributable to payments made under the TRA (including imputed interest). The Habit Restaurants, Inc. and its subsidiaries generally will retain 15% of the applicable tax savings.

The Habit Restaurants, Inc. may accumulate cash balances in future years resulting from distributions from The Habit Restaurants, LLC exceeding our tax or other liabilities. To the extent The Habit Restaurants, Inc. does not use such cash balances to pay a dividend on Class A common stock and instead decides to hold such cash balances, Continuing LLC Owners who exchange LLC Units for shares of Class A common stock in the future could also benefit from any value attributable to such accumulated cash balances.

Key Measures We Use to Evaluate Our Performance

In assessing the performance of our business, we consider a variety of performance and financial measures. The key measures for determining how our business is performing are revenue, comparable restaurant sales growth, restaurant contribution and number of new restaurant openings.

Restaurant Revenue

Revenue consists of sales of food and beverages in company-operated restaurants and mobile event based catering trucks, net of promotional allowances and employee meals. Several factors impact our revenue in any period, including the number of restaurants in operation and per restaurant sales.

Franchise/License Revenue

Franchise/license revenue consists of fees charged to, and royalty revenue collected from, franchise/license owners who enter into a franchise/license agreement with us. We currently recognize franchise/license revenue when all material obligations have been performed and conditions have been satisfied, typically when operations of a new franchise or licensed restaurant have commenced. The fees collected by the Company upon signing a franchise/license agreement are deferred until operations have commenced.

Comparable Corporate Restaurant Sales Growth

Comparable corporate restaurant sales growth reflects the change in year-over-year sales for the comparable restaurant base. We include restaurants in the comparable restaurant base in the accounting period following its 18th full period of operations. Each of our periods is the applicable four or five week reporting period, except for the 12th period of a 53-week year, which contains six weeks. As of the end of fiscal years 2012, 2013, 2014, 2015 and 2016 there were 36, 51, 68, 90 and 114 company-operated restaurants, respectively, in our comparable restaurant base and as of the end of the 26 weeks ended June 27, 2017 there were 128 company-operated restaurants in the comparable restaurant base. This measure highlights performance of existing restaurants, as the impact of new restaurant openings is excluded.

Comparable corporate restaurant sales growth is generated by increases in customer traffic or increases in per customer spend. Per customer spend can be influenced by changes in menu prices and/or the mix and number of items sold per transaction.

Measuring our comparable restaurant sales growth allows us to evaluate the performance of our existing restaurant base. Various factors impact comparable restaurant sales, including:

- our ability to operate restaurants effectively and efficiently to meet consumer expectations;
- opening of new restaurants in the vicinity of existing locations;
- consumer recognition of our brand and our ability to respond to changing consumer preferences;
- pricing and changes in operating hours;
- customer traffic;
- per customer spend and average transaction amount;
- local competition;
- marketing and promotional efforts;
- introduction of new menu items; and
- overall economic trends, particularly those related to consumer spending.

The following table shows our quarterly company-operated comparable restaurant sales growth since 2012:

	Fiscal Year 2012				Fiscal Year 2013				Fiscal Year 2014			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
Comparable Restaurant Sales Growth	4.9%	3.6%	2.7%	3.0%	1.5%	3.4%	3.6%	5.5%	6.0%	6.3%	16.2%	13.2%
Comparable Restaurants	31	33	34	36	39	45	47	51	56	60	66	68

	Fiscal Year 2015				Fiscal Year 2016				26 Weeks Ended June 27, 2017	
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2
Comparable Restaurant Sales Growth	12.6%	8.9%	2.9%	3.3%	2.0%	4.0%	0.2%	1.7%	0.9%	0.1%
Comparable Restaurants	72	81	86	90	97	107	113	114	119	128

Restaurant Contribution

Restaurant contribution is defined as revenue less restaurant operating costs, which are food and paper costs, labor and related expenses, occupancy and other operating expenses. We expect restaurant contribution to increase in proportion to the number of new company-operated restaurants we open and our continued comparable restaurant sales growth. Fluctuations in restaurant contribution margin can also be attributed to those factors discussed below for the components of restaurant operating costs.

Restaurant Development

The schedule below reflects the number of restaurants opened during a particular reporting period. In fiscal 2016 we closed one company-operated restaurant. Before we open new company-operated restaurants, we incur pre-opening costs. Pre-opening costs consist of costs directly associated with the opening of new restaurants and incurred prior to opening, including management labor costs, staff labor costs during training, food and supplies used during training, marketing costs and other related pre-opening costs. These are generally incurred over the three to five months prior to opening. Pre-opening costs also include net occupancy costs incurred between the date of possession and opening date of our restaurants. Some of our restaurants open with an initial start-up period of higher than normal sales volumes, which subsequently decrease to stabilized levels. Typically, our new restaurants have stabilized sales after approximately 13 to 26 weeks of operation, at which time the restaurant's sales typically begin to grow on a consistent basis. In new markets, the length of time before average sales for new restaurants stabilize is less predictable and can be longer as a result of our limited knowledge of these markets and consumers' limited awareness of our brand. New restaurants may not be profitable, and their sales performance may not follow historical patterns. The number and timing of restaurant openings has had, and is expected to continue to have, an impact on our results of operations. The following table shows the growth in our restaurant base for the fiscal years 2014, 2015 and 2016, respectively and for the 26 weeks ended June 27, 2017.

	26 Weeks Ended	Fiscal Year Ended		
	June 27, 2017	2016	2015	2014
Company-operated restaurant base				
Beginning of period	162	137	109	85
Openings	13	26	28	24
Closures	—	(1)	—	—
Restaurants at end of period	175	162	137	109
Franchised/licensed restaurants(1)				
Beginning of period	10	5	1	—
Openings	4	5	4	1
Restaurants at end of period	14	10	5	1
Total restaurants				
Beginning of period	172	142	110	85
Openings	17	31	32	25
Closures	—	(1)	—	—
Restaurants at end of period	189	172	142	110
Year-over-year growth				
Total restaurants		21.1%	29.1%	29.4%

(1) Does not include seven licensed locations in Santa Barbara County, California that are operated by Reichard Bros. Enterprises, Inc. and from which the Company is not entitled to royalties.

EBITDA and Adjusted EBITDA

EBITDA represents net income before interest expense, net, provision for income taxes, depreciation and amortization. Adjusted EBITDA represents EBITDA and certain items that we do not consider representative of our ongoing operating performance, as identified in the reconciliation table below.

EBITDA and Adjusted EBITDA as presented in this report are supplemental measures of our performance that are neither required by, nor presented in accordance with, GAAP. EBITDA and Adjusted EBITDA are not measurements of our financial performance under GAAP and should not be considered as alternatives to net income, operating income or any other performance measures derived in accordance with GAAP or as alternatives to cash flow from operating activities as a measure of our liquidity. In addition, in evaluating EBITDA and Adjusted EBITDA, you should be aware that in the future we will incur expenses or charges such as those added back to calculate EBITDA and Adjusted EBITDA. Our presentation of EBITDA and Adjusted EBITDA should not be construed as an inference that our future results will be unaffected by these or other unusual or nonrecurring items.

EBITDA and Adjusted EBITDA have limitations as analytical tools, and you should not consider them in isolation, or as substitutes for analysis of our results as reported under GAAP, including that (i) they do not reflect our cash expenditures, or future requirements for capital expenditures or contractual commitments, (ii) they do not reflect changes in, or cash requirements for, our working capital needs, (iii) they do not reflect the interest expense, or the cash requirements necessary to service interest or principal payments, on our debt, (iv) although depreciation and amortization are non-cash charges, the assets being depreciated and amortized will often have to be replaced in the future, and EBITDA and Adjusted EBITDA do not reflect any cash requirements for such replacements, (v) they do not adjust for all non-cash income or expense items that are reflected in our statements of cash flows, (vi) they do not reflect the impact of earnings or charges resulting from matters we consider not to be indicative of our ongoing operations, and (vii) other companies in our industry may calculate these measures differently than we do, limiting their usefulness as comparative measures.

We compensate for these limitations by providing specific information regarding the GAAP amounts excluded from such non-GAAP financial measures. We further compensate for the limitations in our use of non-GAAP financial measures by presenting comparable GAAP measures prominently.

We believe EBITDA and Adjusted EBITDA facilitate operating performance comparisons from period to period by isolating the effects of some items that vary from period to period without any correlation to core operating performance or that vary widely among similar companies. These potential differences may be caused by variations in capital structures (affecting interest expense), tax positions (such as the impact on periods or companies of changes in effective tax rates or income from operations) and the age and book depreciation of facilities and equipment (affecting relative depreciation expense). We also present EBITDA and Adjusted EBITDA because (i) we believe these measures are frequently used by securities analysts, investors and other interested parties to evaluate companies in our industry, (ii) we believe investors will find these measures useful in assessing our ability to service or incur indebtedness and (iii) we use EBITDA and Adjusted EBITDA internally as benchmarks to evaluate our operating performance or compare our performance to that of our competitors.

The following table sets forth reconciliations of EBITDA and Adjusted EBITDA to our net income:

	13 Weeks Ended		26 Weeks Ended	
Adjusted EBITDA Reconciliation	**June 27, 2017**	**June 28, 2016**	**June 27, 2017**	**June 28, 2016**
(amounts in thousands)				
Net income	$ 1,713	$ 2,496	$ 4,461	$ 5,890
Non-GAAP adjustments:				
Provision for income taxes	1,003	1,164	2,303	2,169
Interest expense, net	37	149	195	277
Depreciation and amortization	4,467	3,579	8,716	6,991
EBITDA	7,220	7,388	15,675	15,327
Stock-based compensation expense[a]	673	521	1,171	867
Loss on disposal of assets[b]	12	36	24	75
Pre-opening costs[c]	735	533	1,130	793
Exchange related expenses[d]	120	253	236	360
Adjusted EBITDA	$ 8,760	$ 8,731	$ 18,236	$ 17,422

(a) Includes non-cash, stock-based compensation.

(b) Loss on disposal of assets includes the loss on disposal of assets related to retirements and replacements or write-offs of leasehold improvements, furniture, fixtures or equipment.

(c) Pre-opening costs consist of costs directly associated with the opening of new restaurants and incurred prior to opening, including management labor costs, staff labor costs during training, food and supplies used during training, marketing costs and other related pre-opening costs. These are generally incurred over the three to five months prior to opening. Pre-opening costs also include net occupancy costs incurred between the date of possession and opening date of our restaurants.

(d) This category includes costs associated with the exchange of LLC Units into shares of Class A common stock by the Continuing LLC Owners pursuant to its Amended and Restated Limited Liability Company Agreement, dated as of April 5, 2015, as amended on May 16, 2016 and further amended on March 22, 2017 (as amended, the "LLC Agreement").

Critical Accounting Policies

Our discussion and analysis of operating results and financial condition are based upon our condensed consolidated financial statements. The preparation of our financial statements in accordance with GAAP requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue, expenses and related disclosures of contingent assets and liabilities. We base our estimates on past experience and other assumptions that we believe are reasonable under the circumstances, and we evaluate these estimates on an ongoing basis. Our critical accounting policies are those that materially affect our financial statements and involve difficult, subjective or complex judgments by management. Although these estimates are based on management's best knowledge of current events and actions that may impact us in the future, actual results may be materially different from the estimates. There have been no significant changes to our critical accounting estimates as discussed in our Annual Report on From 10-K for the fiscal year ended December 27, 2016.

Income Taxes and Tax Receivable Agreement

We are subject to U.S. federal income taxes, in addition to state and local taxes, with respect to our allocable share of any net taxable income of The Habit Restaurants, LLC.

The Company accounts for uncertain tax positions in accordance with ASC 740, Income Taxes. ASC 740 prescribes a recognition threshold and measurement process for accounting for uncertain tax positions and also provides guidance on various related matters such as derecognition, interest, penalties, and required disclosures. The Company continues to maintain an uncertain tax liability of $167,000 at June 27, 2017. However, the Company continues to not recognize interest expense for uncertain tax positions for the period ended June 27, 2017 as the Company believes that the exposure would be immaterial. In the future, if an uncertain tax position arises, interest and penalties will be accrued and included on the provision for income taxes line of the Statements of Consolidated Income. The Company files tax returns in U.S. federal and state jurisdictions. Generally, the Company is subject to examination by U.S. federal (or state and local) income tax authorities for three to four years from the filing of a tax return.

In connection with the IPO, we entered into the TRA. Under the TRA, we generally are required to pay to the Continuing LLC Owners 85% of the amount of cash savings, if any, in U.S. federal, state or local tax that we actually realize directly or indirectly (or are deemed to realize in certain circumstances) as a result of (i) certain tax attributes created as a result of the IPO and any sales or exchanges (as determined for U.S. federal income tax purposes) to or with us of their interests in The Habit Restaurants, LLC for shares of our Class A common stock or cash, including any basis adjustment relating to the assets of The Habit Restaurants, LLC and (ii) tax benefits attributable to payments made under the TRA (including imputed interest). The Habit Restaurants, Inc. generally will retain 15% of the applicable tax savings. In addition, the TRA provides for interest, at a rate equal to one year LIBOR, accrued from the due date (without extensions) of the corresponding tax return to the date of payment specified by the TRA. To the extent that we are unable to timely make payments under the TRA for any reason, such payments will be deferred and will accrue interest at a rate equal to one year LIBOR plus 200 basis points until paid (although a rate equal to one year LIBOR will apply if the inability to make payments under the TRA is due to limitations imposed on us or any of our subsidiaries by a debt agreement in effect on the date of the IPO). Our ability to make payments under the TRA and to pay our own tax liabilities to taxing authorities generally will depend on our receipt of cash distributions from The Habit Restaurants, LLC. See the section entitled "Item 1A, Risk Factors—Risks Related to Our Business and Industry."

Pursuant to the LLC Agreement, the Continuing LLC Owners have the right to exchange their LLC Units, together with a corresponding number of shares of Class B common stock (which will be cancelled in connection with any such exchange) for, generally, at the option of The Habit Restaurants, Inc. (such determination to be made by the disinterested members of our board of directors), (i) shares of our Class A common stock on a one-for-one basis, subject to customary conversion rate adjustments for stock splits, stock dividends and reclassifications or (ii) cash consideration (generally calculated based on the volume-weighted average price of the Class A common stock of The Habit Restaurants, Inc., as displayed under the heading Bloomberg VWAP on the Bloomberg page designated for the Class A common stock of The Habit Restaurants, Inc. for the 15 trading days immediately prior to the delivery date of a notice of exchange). At any time that an effective registration statement is on file with the Securities and Exchange Commission with respect to the shares of Class A Common Stock to be issued upon an exchange, The Habit Restaurants, Inc. may not provide cash consideration upon an exchange to a Continuing LLC Owner without the Continuing LLC Owner's prior consent. These exchanges are expected to result in increases in the tax basis of the assets of The Habit Restaurants, LLC that otherwise would not have been available. Increases in tax basis resulting from such exchanges may reduce the amount of tax that The Habit Restaurants, Inc. would otherwise be required to pay in the future. This tax basis may also decrease gains (or increase losses) on future dispositions of certain assets to the extent tax basis is allocated to those assets. The Company amended its LLC Agreement in May 2016, pursuant to which the Company processes exchange requests every other week, rather than weekly, effective in June 2016. The Company further amended its LLC Agreement in March 2017, pursuant to which the Company processes exchanges monthly, effective in May 2017.

If the IRS or a state or local taxing authority challenges the tax basis adjustments that give rise to payments under the TRA and the tax basis adjustments are subsequently disallowed, the recipients of payments under the agreement will not reimburse us for any payments we previously made to them. Any such disallowance would be taken into account in determining future payments under the TRA and would, therefore, reduce the amount of any such future payments. Nevertheless, if the claimed tax benefits from the tax basis adjustments are disallowed, our payments under the TRA could exceed our actual tax savings, and we may not be able to recoup payments under the TRA that were calculated on the assumption that the disallowed tax savings were available.

The TRA provides that (i) in the event that we materially breach the TRA, (ii) if, at any time, we elect an early termination of the TRA, or (iii) upon certain mergers, asset sales, other forms of business combinations or other changes of control, our (or our successor's) obligations under the TRA (with respect to all LLC Units, whether or not LLC Units have been exchanged or acquired before or after such transaction) would accelerate and become payable in a lump sum amount equal to the present value of the anticipated future tax benefits calculated based on certain assumptions, including that we would have sufficient taxable income to fully utilize the deductions arising from the tax deductions, tax basis and other tax attributes subject to the TRA.

As a result of the foregoing, (i) we could be required to make payments under the TRA that are greater than or less than the specified percentage of the actual tax savings we realize in respect of the tax attributes subject to the agreements and (ii) we may be required to make an immediate lump sum payment equal to the present value of the anticipated future tax savings, which payment may be made years in advance of the actual realization of such future benefits, if any of such benefits are ever realized. In these situations, our obligations under the TRA could have a substantial negative impact on our liquidity and could have the effect of delaying, deferring or preventing certain mergers, asset sales, other forms of business combinations or other changes of control. There can be no assurance that we will be able to finance our obligations under the TRA in a manner that does not adversely affect our working capital and growth requirements.

Payments under the TRA are intended to be treated as additional consideration for the applicable interests in The Habit Restaurants, LLC treated as sold or exchanged (as determined for U.S. federal income tax purposes) to or with us, except with respect to certain actual or imputed interest amounts payable under the TRA.

Results of Operations

Thirteen Weeks Ended June 27, 2017 Compared to Thirteen Weeks Ended June 28, 2016

The following table presents selected consolidated comparative results of operations for the 13 weeks ended June 27, 2017 compared to the 13 weeks ended June 28, 2016. Our operating results are presented as a percentage of total revenue, with the exception of restaurant operating costs, depreciation and amortization expense, pre-opening costs and loss on disposal of assets, which are presented as a percentage of restaurant revenue. Our financial results for these periods are not necessarily indicative of the financial results that we will achieve in future periods. Certain totals for the table below may not sum to 100% due to rounding.

Consolidated Statement of Operations Data:	13 Weeks Ended				Increase / (Decrease)	
(amounts in thousands)	June 27, 2017		June 28, 2016		$	%
Revenue						
Restaurant revenue	$ 83,050	99.7%	$ 70,953	99.8%	$ 12,097	17.0%
Franchise/license revenue	282	0.3%	163	0.2%	119	73.0%
Total revenue	83,332	100.0%	71,116	100.0%	12,216	17.2%
Operating expenses						
Restaurant operating costs (excluding depreciation and amortization)						
Food and paper costs	26,256	31.6%	21,150	29.8%	5,106	24.1%
Labor and related expenses	27,051	32.6%	22,892	32.3%	4,159	18.2%
Occupancy and other operating expenses	13,613	16.4%	11,340	16.0%	2,273	20.0%
General and administrative expenses	8,325	10.0%	7,524	10.6%	801	10.6%
Exchange related expenses	120	0.1%	253	0.4%	(133)	-52.6%
Depreciation and amortization expense	4,467	5.4%	3,579	5.0%	888	24.8%
Pre-opening costs	735	0.9%	533	0.8%	202	37.9%
Loss on disposal of assets	12	0.0%	36	0.1%	(24)	-66.7%
Total operating expenses	80,579	96.7%	67,307	94.6%	13,272	19.7%
Income from operations	2,753	3.3%	3,809	5.4%	(1,056)	-27.7%
Other expenses						
Interest expense, net	37	0.0%	149	0.2%	(112)	-75.2%
Income before income taxes	2,716	3.3%	3,660	5.1%	(944)	-25.8%
Provision for income taxes	1,003	1.2%	1,164	1.6%	(161)	-13.8%
Net income	$ 1,713	2.1%	$ 2,496	3.5%	$ (783)	-31.4%

Restaurant revenue. Restaurant revenue increased $12.1 million, or 17.0%, for the 13 weeks ended June 27, 2017 as compared to the 13 weeks ended June 28, 2016, primarily due to a $3.4 million increase in sales from new restaurants which were opened in the current year and a $8.5 million increase in sales from restaurants opened prior to the 2017 period that did not fall into the comparable restaurant base. Comparable restaurant sales increased $0.1 million, or 0.1%, in the 13 weeks ended June 27, 2017 as compared to the comparable 2016 period. Comparable restaurant sales growth was primarily due to an increase in traffic of 0.3% partially offset by a decrease in average transaction amount of 0.2% in the 13 weeks ended June 27, 2017 as compared to the comparable 2016 period. The increase in revenue was also due in part to increased revenue of $0.4 million for catering trucks during the 13 weeks ended June 27, 2017 as compared to the 13 weeks ended June 28, 2016. We had eight catering trucks operating in the 13 weeks ended June 27, 2017 compared to five catering trucks operating in the 13 weeks ended June 28, 2016. The increase was partially offset by a decrease in sales of $0.3 million due to the closure of one restaurant in fiscal 2016.

Franchise/license revenue. Franchise/license revenue increased $119,000 for the 13 weeks ended June 27, 2017 compared to the comparable 2016 period. The increase was due in part to an increase in royalty revenue of $104,000 in the current period as compared to the prior period, primarily as a result of the increased number of franchised/licensed locations.

Food and paper costs. Food and paper costs increased $5.1 million, or 24.1%, for 13 weeks ended June 27, 2017 as compared to the comparable 2016 period, primarily due to the increase in restaurant sales. As a percentage of revenue, food and paper costs increased to 31.6% in the 13 weeks ended June 27, 2017 from 29.8% in the prior year quarter. This increase was primarily driven by increases in beef, chicken and produce costs in the current period.

Labor and related expenses. Labor and related expenses increased $4.2 million, or 18.2%, for the 13 weeks ended June 27, 2017 as compared to the comparable 2016 period, primarily due to the increased labor costs needed to support new restaurants and higher restaurant sales. As a percentage of revenue, labor and related expenses increased to 32.6% in the second quarter of 2017 compared to 32.3% in the comparable quarter of 2016. Labor costs were higher primarily due to wage rate increases for hourly employees. On January 1, 2017, the State of California's (where most of our restaurants are located) minimum wage was raised to $10.50 per hour, therefore we expect to see increased labor costs to continue.

Occupancy and other operating expenses. Occupancy and other operating expenses increased $2.3 million, or 20.0%, for the 13 weeks ended June 27, 2017 as compared to the comparable period in 2016, primarily due to new restaurants. As a percentage of revenue, occupancy and other operating expenses increased to 16.4% in the second quarter of 2017 from 16.0% in the comparable quarter of 2016 primarily due to higher rent costs, higher utilities costs and higher property insurance expenses in the current period as a percentage of restaurant revenue partially offset by a decrease in repairs and maintenance costs as a percentage of restaurant revenue. We expect to see higher rent costs to continue in the current fiscal year.

General and administrative expenses. General and administrative expenses increased $0.8 million, or 10.6%, for the second quarter of 2017 as compared to the prior year quarter, primarily due to costs associated with supporting an increased number of restaurants, including the increasing number of administrative employees, and field and corporate supervision. As a percentage of revenue, general and administrative expenses decreased to 10.0% for the 13 weeks ended June 27, 2017 compared to 10.6% in the comparable quarter of 2016.

Exchange related expenses. Exchange related expenses, which are costs associated with the exchange of LLC Units to Class A common stock by the Continuing LLC Owners, were $0.1 million for the second quarter of 2017 as compared to $0.3 in the prior year quarter.

Depreciation and amortization expenses. Depreciation and amortization increased $0.9 million, or 24.8%, for the second quarter of 2017 as compared to the prior year quarter, primarily due to the increased number of restaurants. As a percentage of revenue, depreciation and amortization increased to 5.4% in the second quarter of 2017 compared to 5.0% in the comparable quarter of 2016.

Pre-opening costs. Pre-opening costs increased $0.2 million for the second quarter of 2017 as compared to the prior year quarter. The company opened 10 new company-operated restaurants in the second quarter of 2017 compared to six new company-operated restaurants in the second quarter of 2016. Pre-opening costs also include expenses incurred for restaurants that are set to open in the near future. As a percentage of revenue, pre-opening costs increased slightly to 0.9% in the second quarter of 2017 compared to 0.8% in the comparable quarter of 2016.

Interest expense, net. Interest expense, net was $37,000 for the second quarter of 2017 as compared to $149,000 in the prior year quarter.

Provision for income taxes. Income tax expense was $1.0 million for the second quarter of 2017 compared to $1.2 million in the prior year quarter.

Twenty Six Weeks Ended June 27, 2017 Compared to Twenty Six Weeks Ended June 28, 2016

The following table presents selected consolidated comparative results of operations for the 26 weeks ended June 27, 2017 compared to the 26 weeks ended June 28, 2016. Our operating results are presented as a percentage of total revenue, with the exception of restaurant operating costs, depreciation and amortization expense, pre-opening costs and loss on disposal of assets, which are presented as a percentage of restaurant revenue. Our financial results for these periods are not necessarily indicative of the financial results that we will achieve in future periods. Certain totals for the table below may not sum to 100% due to rounding.

Consolidated Statement of Operations Data:	**26 Weeks Ended**				**Increase / (Decrease)**	
(amounts in thousands)	**June 27, 2017**		**June 28, 2016**		**$**	**%**
Revenue						
Restaurant revenue	$ 161,357	99.6%	$ 137,766	99.8%	$ 23,591	17.1%
Franchise/license revenue	611	0.4%	307	0.2%	304	99.0%
Total revenue	161,968	100.0%	138,073	100.0%	23,895	17.3%
Operating expenses						
Restaurant operating costs (excluding depreciation and amortization)						
Food and paper costs	49,093	30.4%	41,252	29.9%	7,841	19.0%
Labor and related expenses	53,034	32.9%	44,313	32.2%	8,721	19.7%
Occupancy and other operating expenses	26,688	16.5%	21,828	15.8%	4,860	22.3%
General and administrative expenses	16,088	9.9%	14,125	10.2%	1,963	13.9%
Offering and exchange related expenses	236	0.1%	360	0.3%	(124)	-34.4%
Depreciation and amortization expense	8,716	5.4%	6,991	5.1%	1,725	24.7%
Pre-opening costs	1,130	0.7%	793	0.6%	337	42.5%
Loss on disposal of assets	24	0.0%	75	0.1%	(51)	-68.0%
Total operating expenses	155,009	95.7%	129,737	94.0%	25,272	19.5%
Income from operations	6,959	4.3%	8,336	6.0%	(1,377)	-16.5%
Other expenses						
Interest expense, net	195	0.1%	277	0.2%	(82)	-29.6%
Income before income taxes	6,764	4.2%	8,059	5.8%	(1,295)	-16.1%
Provision for income taxes	2,303	1.4%	2,169	1.6%	134	6.2%
Net income	$ 4,461	2.8%	$ 5,890	4.3%	$ (1,429)	-24.3%

Restaurant revenue. Restaurant revenue increased $23.6 million, or 17.1%, for the 26 weeks ended June 27, 2017 as compared to the 26 weeks ended June 28, 2016, primarily due to a $4.2 million increase in sales from new restaurants which were opened in the current year and a $18.5 million increase in sales from restaurants opened prior to the 2017 period that did not fall into the comparable restaurant base. Comparable restaurant sales increased $0.6 million, or 0.5%, in the 26 weeks ended June 27, 2017 as compared to the comparable 2016 period. Comparable restaurant sales growth was primarily due to an increase in average transaction amount of 0.6% partially offset by a decrease in traffic of 0.1% in the 26 weeks ended June 27, 2017 as compared to the comparable 2016 period. The increase in revenue was also due in part to increased revenue of $0.8 million for catering trucks during the 26 weeks ended June 27, 2017 as compared to the 26 weeks ended June 28, 2016. We had eight catering trucks operating in the 26 weeks ended June 27, 2017 compared to five catering trucks operating in the 26 weeks ended June 28, 2016. The increase was partially offset by a decrease in sales of $0.5 million due to the closure of one restaurant in fiscal 2016.

Franchise/license revenue. Franchise/license revenue increased $304,000 for the 26 weeks ended June 27, 2017 compared to the comparable 2016 period. The increase was due in part to increased franchise fees of $105,000 in the current period for four franchised locations that were opened during the period compared to one franchised location opened in the prior period. The increase was also due to an increase in royalty revenue of $156,000 in the current period as compared to the prior period, primarily as a result of the increased number of franchised/licensed locations.

Food and paper costs. Food and paper costs increased $7.8 million, or 19.0%, for 26 weeks ended June 27, 2017 as compared to the comparable 2016 period, primarily due to the increase in restaurant sales. As a percentage of revenue, food and paper costs increased to 30.4% in the 26 weeks ended June 27, 2017 from 29.9% in the prior year period. This increase was primarily driven by increases in chicken and produce costs in the current period.

Labor and related expenses. Labor and related expenses increased $8.7 million, or 19.7%, for the 26 weeks ended June 27, 2017 as compared to the comparable 2016 period, primarily due to the increased labor costs needed to support new restaurants and higher restaurant sales. As a percentage of revenue, labor and related expenses increased to 32.9% in the 26 weeks ended June 27, 2017 compared to 32.2% in the comparable period of 2016. Labor costs were higher primarily due to wage rate increases for hourly employees and the associated benefit costs for those increased wages. On January 1, 2017, the State of California's (where most of our restaurants are located) minimum wage was raised to $10.50 per hour, therefore we expect to see increased labor costs to continue.

Occupancy and other operating expenses. Occupancy and other operating expenses increased $4.9 million, or 22.3%, for the 26 weeks ended June 27, 2017 as compared to the comparable period in 2016, primarily due to new restaurants. As a percentage of revenue, occupancy and other operating expenses increased to 16.5% in the 26 weeks ended June 27, 2017 from 15.8% in the comparable period of 2016 primarily due to higher rent and common area maintenance costs, higher utilities costs and higher property insurance expenses in the current period as a percentage of restaurant revenue. We expect to see higher rent costs to continue in the current fiscal year.

General and administrative expenses. General and administrative expenses increased $2.0 million, or 13.9%, for the 26 weeks ended June 27, 2017 as compared to the prior year period, primarily due to costs associated with supporting an increased number of restaurants, including the increasing number of administrative employees, and field and corporate supervision. As a percentage of revenue, general and administrative expenses decreased to 9.9% for the 26 weeks ended June 27, 2017 compared to 10.2% in the comparable period of 2016.

Exchange related expenses. Exchange related expenses, which are costs associated with the exchange of LLC Units to Class A common stock by the Continuing LLC Owners, were $0.2 million for the 26 weeks ended June 27, 2017 compared to $0.4 million in the comparable prior year period.

Depreciation and amortization expenses. Depreciation and amortization increased $1.7 million, or 24.7%, for the 26 weeks ended June 27, 2017 as compared to the prior year period, primarily due to the increased number of restaurants. As a percentage of revenue, depreciation and amortization increased to 5.4% in the 26 weeks ended June 27, 2017 compared to 5.1% in the comparable period of 2016.

Pre-opening costs. Pre-opening costs increased $0.3 million for the 26 weeks ended June 27, 2017 as compared to the prior year period. The company opened 13 new company-operated restaurants in the 26 weeks ended June 27, 2017 compared to nine new company-operated restaurants that opened in the comparable prior year period. Pre-opening costs also include expenses incurred for restaurants that are set to open in the near future. As a percentage of revenue, pre-opening costs increased slightly to 0.7% in the 26 weeks ended June 27, 2017 compared to 0.6% in the comparable period of 2016.

Interest expense, net. Interest expense, net was $0.2 million for the 26 weeks ended June 27, 2017 compared to $0.3 million in the prior year period.

Provision for income taxes. Income tax expense was $2.3 million for the 26 weeks ended June 27, 2017 compared to $2.2 million in the prior year period.

Liquidity and Capital Resources

Our primary uses of cash are for operational expenditures and capital investments, including new stores, store remodels, store relocations, store fixtures and ongoing infrastructure improvements. Historically, our main source of liquidity has been cash flows from operations.

The significant components of our working capital are liquid assets such as cash, cash equivalents and receivables, reduced by accounts payable and accrued expenses. Our working capital position benefits from the fact that we generally collect cash from sales to customers the same day or within several days of the related sale, while we typically have longer payment terms with our vendors.

Potential Impacts of Market Conditions on Capital Resources

We have continued to experience increases in comparable restaurant sales and operating cash flows. However, the restaurant industry continues to be challenged and uncertainty exists as to the sustainability of these favorable trends.

We believe that expected cash flow from operations and our existing cash balance at June 27, 2017 are adequate to fund operating lease obligations, capital expenditures and working capital obligations for at least the next 12 months. However, our ability to continue to meet these requirements and obligations will depend on, among other things, our ability to achieve anticipated levels of revenue and cash flow and our ability to manage costs and working capital successfully.

Summary of Cash Flows

Our primary sources of liquidity and cash flows are derived from our existing cash balance at June 27, 2017 and our operating cash flows. We use these to fund capital expenditures for new company-operated restaurant openings, reinvest in our existing restaurants, invest in infrastructure and information technology and maintain working capital. Our working capital position benefits from the fact that we generally collect cash from sales to customers the same day, or in the case of credit or debit card transactions, within several days of the related sale, and we typically have 20 to 30 days to pay our vendors.

The material changes in working capital from December 27, 2016 to June 27, 2017 were comprised of a $1.8 million increase in current assets and a $3.6 million increase in current liabilities. The increase in current assets was primarily due to a $1.1 million increase in cash primarily attributed to the cash flow from the restaurants and timing of payables and accrued expenses. The increase in current liabilities was primarily due to higher accounts payable and accrued expenses of $3.4 million which was due to the timing of payments.

	26 Weeks Ended	
(amounts in thousands)	June 27, 2017	June 28, 2016
Consolidated Statement of Cash Flows Data:		
Net cash provided by operating activities	$ 19,553	$ 17,049
Net cash used in investing activities	(17,702)	(13,086)
Net cash used in financing activities	$ (732)	$ (1,109)

Cash Flows Provided by Operating Activities

Net cash provided by operating activities increased by $2.6 million to $19.6 million for the 26 weeks ended June 27, 2017 from $17.0 million for the 26 weeks ended June 28, 2016. There was an increase in the current period in restaurant contribution partially offset by increased general and administrative expenses. The net effect of these changes created an increase in cash provided by operations of $0.2 million. There was also an increase in the current period of $1.6 million related to the change in accounts payable.

Cash Flows Used in Investing Activities

Net cash used in investing activities increased by $4.6 to $17.7 million for the 26 weeks ended June 27, 2017 from $13.1 million for the 26 weeks ended June 28, 2016. There were 13 new company-operated restaurants opened during the 26 weeks ended June 27, 2017 compared to nine new company-operated restaurants opened during the 26 weeks ended June 28, 2016. These amounts also include capital expenditures for future restaurant openings, remodels, maintaining our existing restaurants and other projects.

Cash Flows Used in Financing Activities

Net cash used in financing activities decreased by $0.4 million to $0.7 million for the 26 weeks ended June 27, 2017 from $1.1 million for the 26 weeks ended June 28, 2016. The difference was mainly attributed to lower tax distributions in the current period of $0.4 million.

Credit Facility

We entered into a credit facility on July 23, 2014 with California Bank & Trust, which expired on July 23, 2017. The credit facility provided for up to $35 million in borrowing capacity to fund the development of new restaurants with borrowings limited to the lesser of 50% or $500,000 of the cost of each new restaurant. Borrowings under the facility were collateralized by substantially all assets of the Company including cash accounts, accounts receivable, general intangibles, inventory, equipment, furniture and fixtures. We rolled over our existing term loans with California Bank & Trust into the credit facility, and therefore this credit facility was our only outstanding loan agreement. The amount previously outstanding under the term loans was considered a drawn-upon portion of the credit facility.

The credit facility contained customary representations, warranties, negative and affirmative covenants, including a funded debt to EBITDA ratio of 2.00 to 1.00, a fixed charge coverage ratio of 1.25 to 1.00 and a requirement that EBITDA must be greater than zero for 75% or more of all restaurants open at least six months. We were required to make monthly payments of accrued unpaid interest due as of each payment date, but are not required to pay the outstanding principal, if any, until the maturity date. Borrowings under the credit facility bore interest, at our option, at either (i) a rate determined by reference to the applicable LIBOR rate plus an applicable margin or (ii) a prime rate as published by the *Wall Street Journal* in its "Money Rates" or similar chart. In addition, we paid a fee equal to 0.25% per annum of the unused portion of the facility quarterly and at maturity. As of June 27, 2017, we had no outstanding debt under the credit facility.

On August 2, 2017, The Habit Restaurants, LLC executed a new $20 million credit facility with Bank of the West (the "New Credit Facility") that matures on August 2, 2019. All borrowings under the New Credit Facility will bear interest at a variable rate based upon LIBOR plus the applicable margin for LIBOR loans (as defined in the New Credit Facility agreement). The New Credit Facility has no unused commitment fees.

The New Credit Facility is secured by all the assets of The Habit Restaurants, LLC, and the Company is required to comply with certain financial covenants therein. The New Credit Facility contains customary representations, warranties, negative and affirmative covenants, including a maximum lease adjusted leverage ratio of 4.00 to 1.00 and a minimum EBITDA of $21.4 million for the twelve month period then ended at the end of each fiscal quarter.

Contractual Obligations

The following table presents our commitments and contractual obligations as of June 27, 2017, as well as our long-term obligations:

(amounts in thousands)	Total	2017	2018-2019	2020-2021	2022 and thereafter
Long-term debt obligations(1)	$ —	$ —	$ —	$ —	$ —
Interest payments on long-term debt obligations(2)	6	6	—	—	—
Operating lease obligations(3)	220,796	9,877	49,964	49,306	111,649
Deemed landlord financing(4)	8,478	520	1,898	1,713	4,347
Purchase obligations	556	225	331	—	—
Total	$ 229,836	$ 10,628	$ 52,193	$ 51,019	$ 115,996

(1) On July 23, 2014, we refinanced our long-term debt into a $35 million credit facility that matured on July 23, 2017. Term debt of $11.1 million outstanding at the time of the refinancing became our initial borrowings under the credit facility. This credit facility was paid down with the proceeds from the IPO.
(2) Represents the fee of 0.25% per annum of the unused portion of the facility.
(3) Includes base lease terms that are included in the lease term in accordance with accounting guidance related to leases.
(4) Includes principal and interest payments during the base lease terms for restaurant locations where we have been deemed to be the accounting owner of the landlord's shell.

Off-Balance Sheet Arrangements

As of June 27, 2017, we did not have any material off-balance sheet arrangements, except for restaurant leases.

JOBS Act

We qualify as an "emerging growth company" as defined in Section 2(a)(19) of the Securities Act, as modified by the JOBS Act. Section 107 of the JOBS Act provides that an emerging growth company can take advantage of the extended transition period provided in Section 7(a)(2)(B) of the Securities Act for complying with new or revised accounting standards. In other words, an emerging growth company can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have irrevocably elected not to avail ourselves of this extended transition period and, as a result, we will adopt new or revised accounting standards on the relevant dates on which adoption of such standards is required for other public companies.

Subject to certain conditions set forth in the JOBS Act, we are also eligible for and intend to take advantage of certain exemptions from various reporting requirements applicable to other public companies that are not emerging growth companies, including (i) the exemption from the auditor attestation requirements with respect to internal control over financial reporting under Section 404 of the Sarbanes-Oxley Act, (ii) the exemptions from say-on-pay, say-on-frequency and say-on-golden parachute voting requirements and (iii) reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements. We may take advantage of these exemptions until we are no longer an emerging growth company. We will continue to be an emerging growth company until the earliest to occur of (i) the date on which we are deemed to be a "large accelerated filer" as defined in Rule 12b-2 under the Securities Exchange Act of 1934, as amended, or the Exchange Act, (ii) the last day of the fiscal year in which we had total annual gross revenue of $1 billion or more during such fiscal year (as indexed for inflation), (iii) the date on which we have issued more than $1 billion in non-convertible debt in the prior three-year period or (iv) the last day of the fiscal year following the fifth anniversary of the completion of our initial public offering, which is December 31, 2019.

ITEM 3. Quantitative and Qualitative Disclosure about Market Risk

Interest Rate Risk

We are exposed to market risk from changes in interest rates on debt. As of June 27, 2017, we had no outstanding borrowings.

We manage our interest rate risk through normal operating and financing activities and, when determined appropriate, through the use of derivative financial instruments.

Inflation

The primary inflationary factors affecting our operations are food, labor costs, energy costs and materials used in the construction of new restaurants. Increases in the minimum wage directly affect our labor costs. Many of our leases require us to pay taxes, maintenance, repairs, insurance and utilities, all of which are generally subject to inflationary increases. Finally, the cost of constructing our restaurants is subject to inflationary increases in the costs of labor and material. Over the past five years, inflation has not significantly affected our operating results.

Commodity Price Risk

We purchase certain products that are affected by commodity prices and are, therefore, subject to price volatility caused by weather, market conditions and other factors which are not considered predictable or within our control. Although these products are subject to changes in commodity prices, certain purchasing contracts or pricing arrangements we use contain risk management techniques designed to minimize price volatility. In many cases, we believe we will be able to address material commodity cost increases by adjusting our menu pricing or changing our product delivery strategy. However, increases in commodity prices, without adjustments to our menu prices, could increase restaurant operating costs as a percentage of restaurant sales.

ITEM 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures, as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, as of the end of the period covered by this Quarterly Report on Form 10-Q.

There are inherent limitations to the effectiveness of any system of disclosure controls and procedures, including the possibility of human error and the circumvention or overriding of the controls and procedures. Our disclosure controls and procedures are designed to provide reasonable assurance of achieving their control objectives.

Based on that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that as of June 27, 2017, our disclosure controls and procedures were effective to provide reasonable assurance that the information required to be disclosed by the Company in the reports it files or submits with the Securities and Exchange Commission is recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms and is accumulated and communicated to our management, including the principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

Changes in Internal Control over Financial Reporting

There have been no changes in our internal control over financial reporting that occurred during our most recent fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II-OTHER INFORMATION

ITEM 1. Legal Proceedings

We are currently involved in various claims and legal actions that arise in the ordinary course of business, most of which are covered by insurance. We do not believe that the ultimate resolution of these actions will have a material adverse effect on our business, financial condition, results of operations, liquidity or capital resources nor do we believe that there is a reasonable possibility that we will incur material loss as a result of such actions. However, a significant increase in the number of these claims or an increase in amounts owing under successful claims could have a material adverse effect on our business, financial condition and results of operations.

ITEM 1A. Risk Factors.

A description of the risk factors associated with our business is contained in the "Risk Factors" section of our Annual Report on Form 10-K for our fiscal year ended December 27, 2016. There have been no material changes to our Risk Factors as previously reported.

ITEM 2. Unregistered Sales of Equity Securities and Use of Proceeds.

Recent Sales of Unregistered Securities

None.

ITEM 3. Defaults Upon Senior Securities.

None.

ITEM 4. Mine Safety Disclosures.

None.

ITEM 5. Other Information.

None.

ITEM 6. Exhibits

Exhibit Number	Exhibit Description	Description of Exhibit Incorporated Herein by Reference				Filed Herewith
		Form	File No.	Filing Date	Exhibit Number	
10.1	Loan and Security Agreement between The Habit Restaurants, LLC and Bank of the West, dated August 2, 2017					X
31.1	Certification of Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002					X
31.2	Certification of Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002					X
32.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002					X
32.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002					X
101.INS	XBRL Instance Document					X
101.SCH	XBRL Taxonomy Extension Schema Document					X
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document					X
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document					X
101.LAB	XBRL Taxonomy Extension Label Linkbase Document					X
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document					X

Signatures

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

The Habit Restaurants, Inc.
(Registrant)

August 3, 2017
Date

/s/ Ira Fils
Ira Fils
Chief Financial Officer and Secretary
(On behalf of the Registrant and as Principal Financial Officer)

Exhibit 10.1

LOAN AND SECURITY AGREEMENT

Dated as of August 2, 2017

$20,000,000

THE HABIT RESTAURANTS, LLC

and

CERTAIN OTHER PERSONS FROM TIME TO TIME PARTY HERETO,

as Borrowers,

BANK OF THE WEST,

as Agent,

and

THE LENDERS THAT ARE PARTIES HERETO,

as Lenders

TABLE OF CONTENTS

LIST OF EXHIBITS AND SCHEDULES

LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT (this "Agreement") is dated as of August 2, 2017, among (i) **THE HABIT RESTAURANTS, LLC**, a Delaware limited liability company ("Borrower Agent" or the "Company"), and certain other Persons party to this Agreement from time to time as a borrower (together with the Borrower Agent, each a "Borrower" and, collectively, "Borrowers"), (ii) the Persons from time to time signatory hereto as guarantors, (iii) the financial institutions party to this Agreement from time to time as lenders (collectively, "Lenders"), and (iv) **BANK OF THE WEST** ("Bank of the West"), as administrative agent and collateral agent for the Lenders (in such capacity, together with its successors and permitted assigns in such capacity, "Agent").

R E C I T A L S:

WHEREAS, the Borrowers have requested that the Lenders and the Issuing Bank make loans and other financial accommodations to the Borrowers in an aggregate amount of up to $20,000,000; and

WHEREAS, the Lenders and the Issuing Bank have agreed to make such loans and other financial accommodations to the Borrowers on the terms and subject to the conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

SECTION 1. DEFINITIONS; RULES OF CONSTRUCTION

1.1 Definitions

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

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

"Account Debtor": a Person obligated under an Account, Chattel Paper or General Intangible.

"Acquisition": a transaction or series of transactions resulting in (a) the acquisition of a business, division, or substantially all assets of a Person; (b) the acquisition of record or beneficial ownership of 50% or more of the Equity Interests of a Person; or (c) the merger, consolidation or combination of a Borrower or Subsidiary with another Person.

"Adjusted Base Rate": for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Rate in effect on such day plus 0.50%, or (c) the One-Month LIBOR Rate (adjusted for reserves) on such date (or, if such date is not a Business Day, the immediately preceding Business Day) plus 1%. Any change in the Adjusted Base Rate due to a change in the Prime Rate, or the Federal Funds Rate, or the One-Month LIBOR Rate shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Rate or the One-Month LIBOR Rate, respectively.

"Adjusted Base Rate Loan": a Revolver Loan that bears interest based on the Adjusted Base Rate.

"Affected Lender": as defined in **Section 13.4** of this Agreement.

"Affiliate": with respect to any Person, 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.

"Agent": as defined in the preamble to this Agreement.

"Agent Indemnitees": Agent and its officers, directors, employees, Affiliates, agents and attorneys.

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

"Agreement": as defined in the preamble to this Agreement.

"Allocable Amount": as defined in **Section 5.12.3**.

"Anti-Corruption Laws": all laws, rules, and regulations of any jurisdiction in which the Obligors or any of their respective Subsidiaries conduct business from time to time concerning or relating to bribery or corruption.

"Anti-Terrorism Law": any Applicable Law applicable to the Obligors or any of their respective Subsidiaries relating to terrorism or money laundering, including any applicable provision of the Patriot Act, the Currency and Foreign Transactions Reporting Act (also known as the Bank Secrecy Act, 31 U.S.C. §§ 5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959), the Trading With the Enemy Act (50 U.S.C. § 1 et seq., as amended) and Executive Order 13224 (effective September 24, 2001).

"Applicable Debt": as defined in the definition of "Weighted Average Life to Maturity."

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

"Applicable Margin": the per annum margin set forth below:

LIBOR Loan	Adjusted Base Rate Loan	Letter of Credit Fee
1.75%	0.00%	1.75%

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

"Asset Disposition": a sale, lease, license, consignment, transfer or other disposition of Property of an Obligor, including a disposition of Property in connection with a sale-leaseback transaction or synthetic lease.

"Assignment and Acceptance": an assignment agreement between a Lender and Eligible Assignee, substantially in the form of **Exhibit A**.

"Bail-In Action": 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": shall mean, 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 the West": as defined in the preamble to this Agreement, together with its successors and permitted assigns.

"Bank of the West Indemnitees": Bank of the West and its officers, directors, employees, Affiliates, agents and attorneys.

"Bank Product": any of the following products, services or facilities extended to any Obligor or Subsidiary by a Lender or any of its Affiliates: (a) Cash Management Services; (b) products under Hedging Agreements; (c) commercial credit card and merchant card services; and (d) leases and other banking products or services as may be requested by any Obligor or Subsidiary, other than Letters of Credit.

"Bankruptcy Code": Title 11 of the United States Code.

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

"Borrowed Money": with respect to any Obligor, without duplication, its (a) Debt that (i) arises from the lending of money by any Person to such Obligor; (ii) is evidenced by notes, drafts, bonds, debentures, credit documents or similar instruments; (iii) accrues interest or is a type upon which interest charges are customarily paid (excluding trade payables owing in the Ordinary Course of Business); (iv) was issued or assumed as full or partial payment for Property; (b) Capital Leases; (c) reimbursement obligations with respect to letters of credit (including Letters of Credit) to the extent not paid within three (3) Business Days of the date such reimbursement obligations becoming due and payable; and (d) guaranties of any Debt of the foregoing types owing by another Person. Notwithstanding the foregoing, "Borrowed Money" shall exclude earn-outs and similar obligations unless such earn-outs and similar obligations are non-contingent obligations under GAAP and have not been paid within three Business Days of becoming due and payable.

"Borrower" or "Borrowers": as defined in the preamble to this Agreement.

"Borrower Agent": as defined in the preamble to this Agreement.

"Borrower Materials": reports, financial statements and other written materials delivered by Borrowers hereunder.

"Borrowing": a Loan or group of Loans that are made on the same day or are converted into a Loan or Loans on the same day.

"Business Day": shall mean a day, other than a Saturday or Sunday, on which the Lenders are open for business for the funding of corporate loans, and, with respect to the One-Month LIBOR Rate, a day on which dealings are carried on in the London interbank market and banks are open for business in London.

"Capital Lease": any lease that is required to be capitalized for financial reporting purposes in accordance with GAAP. For the avoidance of doubt, notwithstanding any change in GAAP after the Closing Date that would require lease obligations that would be treated as operating leases as of the Closing Date to be classified and accounted for as capital leases or otherwise reflected on the Obligors' consolidated balance sheet, for the purposes of determining compliance with any covenant contained herein, such obligations shall be treated in the same manner as operating leases are treated as of the Closing Date to the extent provided in **Section 1.2**.

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

"Cash Collateral Account": a demand deposit, money market or other account established by Agent at such financial institution as Agent may select in its reasonable discretion, which account shall be subject to a Lien in favor of Agent.

"Cash Collateralize": the delivery of cash (or, in the case of any LC Obligation or Letter of Credit, a backstop letter of credit to the extent reasonably satisfactory to the Issuing Bank) to Agent, as security for the payment of any inchoate or other contingent Obligations, in an amount equal to (a) with respect to LC Obligations, 105% of the aggregate LC Obligations, and (b) with respect to any other inchoate or other contingent Obligations for which a claim or demand for payment has been made in writing on or prior to such time or in respect of matters or circumstances known to Agent at such time that could be reasonably expected to result in a loss, cost, damage or expense, Agent's good faith, reasonable estimate of the amount that is due or could become due, including all fees and other amounts relating to such Obligations. "Cash Collateralization" has a correlative meaning.

"Cash Equivalents": (a) marketable obligations issued by, or unconditionally guaranteed by, the United States government or any agency or instrumentality thereof and backed by the full faith and credit of the United States government, in each case maturing within 12 months of the date of acquisition; (b) certificates of deposit, time deposits and bankers' acceptances maturing within 12 months of the date of acquisition, and overnight bank deposits, in each case which are issued by Bank of the West, any Lender or a commercial bank organized under the laws of the United States or any state or district thereof, rated A-1 (or better) by S&P or P-1 (or better) by

Moody's at the time of acquisition, and (unless issued by a Lender) not subject to offset rights; (c) repurchase obligations with a term of not more than 30 days for underlying investments of the types described in clauses (a) and (b) of this definition entered into with any bank described in clause (b) of this definition; (d) commercial paper issued by Bank of the West, any Lender or rated A-1 (or better) by S&P or P-1 (or better) by Moody's, and maturing within twelve months of the date of acquisition; and (e) shares of any money market fund that has substantially all of its assets invested continuously in the types of investments referred to above in this definition, has net assets of at least $500,000,000 and has the highest rating obtainable from either Moody's or S&P.

"Cash Management Services": any services provided from time to time by Bank of the West, any Lender or any of their respective Affiliates to any Obligor or Subsidiary in connection with operating, collections, payroll, trust, or other depository or disbursement accounts, including automated clearinghouse, e-payable, electronic funds transfer, wire transfer, controlled disbursement, overdraft, depository, information reporting, lockbox and stop payment services.

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

"CFC": a Person that is a "controlled foreign corporation" under Section 957 of the Code.

"CFC Holding Company": a Subsidiary (including a disregarded entity for U.S. federal income tax purposes) (i) substantially all of the assets of which consist of equity or, if applicable, intercompany debt of one or more direct or indirect Subsidiaries that are CFCs or other CFC Holding Companies and (ii) that conducts no material business other than holding such equity and, if applicable, intercompany debt.

"Change in Law": the occurrence, after the date of this Agreement, of (a) the adoption, taking effect or phasing in of any law, rule, regulation or treaty; (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority; or (c) the making, issuance or application of any request, guideline, requirement or directive (whether or not having the force of law) by any Governmental Authority; provided, however, that "Change in Law" shall include, regardless of the date enacted, adopted or issued, all requests, guidelines, requirements or directives (i) under or relating to the Dodd-Frank Wall Street Reform and Consumer Protection Act, or (ii) promulgated pursuant to Basel III by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any similar authority) or any United States Governmental Authority.

"Claims": all claims, liabilities, obligations, losses, damages, penalties, judgments, proceedings, interest, costs and expenses of any kind (including remedial response costs, reasonable and, subject to the limitations set forth in the last sentence of **Section 3.4**, documented attorneys' fees and Extraordinary Expenses) at any time (including after Full Payment of the Obligations or replacement of Agent or any Lender) incurred by any Indemnitee or asserted against any Indemnitee by any Obligor or other Person, in any way relating to (a) any Loans, Letters of Credit, Loan Documents, Borrower Materials, Reports or the use thereof or transactions relating thereto, (b) any action taken or omitted in connection with any Loan Documents, (c) the existence or perfection of any Liens under the Loan Documents, or realization upon any Collateral, (d) exercise of any rights or remedies under any Loan Documents or Applicable Law in connection

with the Loan Documents, or (e) failure by any Obligor to perform or observe any terms of any Loan Document, in each case including all reasonable and documented out-of-pocket costs and out-of-pocket expenses relating to any investigation, litigation, arbitration or other proceeding (including an Insolvency Proceeding or appellate proceedings), whether or not the applicable Indemnitee is a party thereto.

"Closing Date": August 2, 2017, which is the date on which each of the conditions precedent set forth on **Section 6.1** either have been satisfied or have been waived.

"Code": the Internal Revenue Code of 1986.

"Collateral": all Property of any Obligor described in **Section 7.1**, all Property of any Obligor described in any Security Documents as security for any Obligations, and all other Property that now or hereafter secures (or is intended to secure) any Obligations; provided, however, that notwithstanding anything to the contrary herein, the Collateral shall not include any Excluded Assets.

"Commitment": for any Lender, the aggregate amount of such Lender's Revolver Commitment. "Commitments" means the aggregate amount of all Revolver Commitments.

"Commodity Exchange Act": the Commodity Exchange Act (7 U.S.C. § 1 et seq.).

"Company": as defined in the preamble to this Agreement.

"Company LLC Agreement": Fifth Amended and Restated Limited Liability Company Agreement, dated as of April 6, 2015, as amended by Amendment No. 1 and Amendment No. 2, and as the same may be amended, supplemented or modified from time to time in accordance with this Agreement.

"Competitor" means any Person which is a direct competitor of a Borrower or its Subsidiaries if, at the time of a proposed assignment, Agent or the assigning Lender has actual knowledge that such Person is a direct competitor of a Borrower or its Subsidiaries; provided, that in connection with any assignment or participation, the assignee or Participant with respect to such proposed assignment or participation that is an investment bank, a commercial bank, a finance company, a fund, or other Person which merely has an economic interest in any such direct competitor, and is not itself such a direct competitor of a Borrower or its Subsidiaries, shall not be deemed to be a direct competitor for the purposes of this definition.

"Compliance Certificate": a certificate, substantially in the form of **Exhibit D** by which Borrower Agent certifies compliance with **Section 10.3**.

"Consolidated Funded Indebtedness": as of any date of determination, all Debt for Borrowed Money of Obligors and their respective Subsidiaries, determined on a consolidated basis in accordance with GAAP, that by its terms matures more than one year after the date of determination, and any such Debt maturing within one year from such date that is renewable or extendable at the option of Obligors and their respective Subsidiaries, as applicable, to a date more than one year from such date, including, in any event, but without duplication, with respect to Obligors and their respective Subsidiaries, the Revolver Loans, Letters of Credit (to the extent not

paid within three (3) Business Days of the date such reimbursement obligations becoming due and payable) and the amount of their Capital Leases.

"Consolidated Net Income": with respect to any Person for any period, the net income (loss) of such Person and its Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP; provided, however, that there shall be excluded therefrom (a) effects of adjustments (including the effects of such adjustments pushed down to Obligors and their Subsidiaries) in the consolidated financial statements of Borrower Agent and its Subsidiaries pursuant to GAAP attributable to the application of recapitalization accounting or purchase accounting, as the case may be, in relation to any consummated Acquisition or joint venture investment or the amortization or write-off or write-down of any amounts thereof, net of taxes, (b) the cumulative effect of a change in accounting principles and changes as a result of the adoption or modification of accounting policies during such period whether effected through a cumulative effect adjustment or a retroactive application, in each case in accordance with GAAP, (c) any net after-tax effect of gains or losses (less all fees, expenses and charges relating thereto) attributable to asset dispositions or abandonments or the sale or other disposition of any Equity Interests of any Person other than in the Ordinary Course of Business, as determined in good faith by Borrower Agent and (d) any income (or loss) resulting from changes in value of earn-out obligations.

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

"Control": 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.

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

"Debt": as applied to any Person, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP: (a) Borrowed Money; (b) all obligations of such Person to pay the deferred purchase price of property or services (other than (i) accrued expenses and trade account payables in the Ordinary Course of Business, (ii) accruals

for payroll accrued in the Ordinary Course of Business and (iii) earn-outs and similar obligations unless such earn-outs and similar obligations are non-contingent obligations under GAAP and have not been paid within three (3) Business Days of becoming due and payable); (c) net obligations owing by such Person under any Hedging Agreements; (d) 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; provided, that, if such indebtedness is not assumed by a personal liability of such Person then the amount of such indebtedness shall be limited to the lesser of (i) the unpaid amount of such indebtedness and (ii) the book value of the assets securing such indebtedness; (e) all Contingent Obligations to the extent that the "primary obligations" (as defined in the definition of Contingent Obligations) related thereto constitute Debt; (f) [reserved]; and (g) in the case of an Obligor, without duplication, the principal amount of Obligations. The Debt of a Person shall include any recourse Debt of any partnership in which such Person is a general partner or joint venture to the extent such Person is liable therefor, and the amount of any net obligation under any Hedging Agreement on any date shall be deemed to be the Swap Termination Value as of such date.

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

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

"Defaulting Lender": any Lender or other Recipient that, as determined by Agent, (a) has failed to perform any funding obligations hereunder, and such failure is not cured within three (3) Business Days; (b) has notified Agent or any Borrower that such Lender does not intend to comply with its funding obligations hereunder or has made a public statement to the effect that it does not intend to comply with its funding obligations hereunder or under any other credit facility; (c) has failed, within two (2) Business Days following request by Agent, to confirm in a manner satisfactory to Agent that such Lender will comply with its funding obligations hereunder; (d) has, or has a direct or indirect parent that has, become the subject of an Insolvency Proceeding (other than via an Undisclosed Administration) or taken any action in furtherance thereof; or (e) has, or has a direct or indirect parent that has, become the subject of a Bail-In Action; provided, however, that a Lender shall not be a Defaulting Lender solely by virtue of a Governmental Authority's ownership of an equity interest in such Lender or parent 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 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 or become the subject of a Bail-In Action.

"Disqualified Institutions": (a) any Person that has been designated as a "Disqualified Institution" by written notice (including via e-mail) delivered on or prior to (or, with the consent of Agent, following) the date of this Agreement, by Borrower Agent to Agent and (b) any Person that is a Competitor of any Obligor or Subsidiary thereof designated by written notice (including via e-mail) from Borrower Agent to Agent from time to time; provided that to the extent Persons are identified as Disqualified Institutions after the Closing Date pursuant to any of clauses (a) or (b) hereof, the inclusion of such Persons as Disqualified Institutions shall not retroactively apply

to disqualify such Persons with respect to amounts previously acquired pursuant to prior assignments or participations; provided further that any Person that the Borrowers designate as no longer being a "Disqualified Institution" by written notice to the Administrative Agent from time to time shall no longer constitute a Disqualified Institution for all purposes under the Loan Documents upon such designation.

"Distribution": any declaration or payment of a distribution (including distributions to fund pass through income tax obligations), interest or dividend on any Equity Interest (other than payment-in-kind); any distribution, advance or repayment of Debt owing to a holder of Equity Interests; or any purchase, redemption, or other acquisition or retirement for value of any Equity Interest.

"Dollars": lawful money of the United States.

"Domestic Subsidiary": any Subsidiary that is incorporated or organized under the laws of the United States of America, any state thereof or the District of Columbia.

"EBITDA": for any applicable period and determined on a consolidated basis for Parent and its Subsidiaries, Consolidated Net Income plus

(a) without duplication, the sum of the following for such applicable period (to the extent deducted in determining such Consolidated Net Income for such period):

(i) total interest expense;

(ii) provision for taxes based on income, profits or capital gains, including, without limitation, federal, state, local, franchise and similar taxes and foreign withholding taxes paid or accrued during such period including penalties and interest related to such taxes or arising from any tax examinations;

(iii) depreciation and amortization as set forth in the statement of cash flows of Parent and its Subsidiaries;

(iv) Transaction Expenses;

(v) (1) non-recurring, unusual or extraordinary expenses, charges and losses in an aggregate amount not to exceed $1,000,000, (2) closing costs and expenses paid in cash in an aggregate amount not to exceed $250,000 in connection with the closure or disposition of non-performing or under-performing restaurant locations to the extent such restaurant locations are permitted to be closed pursuant to the terms hereof and (3) costs associated with compliance with the requirements of the Sarbanes-Oxley Act of 2002 and other Public Company Costs in an aggregate amount not to exceed $3,000,000;

(vi) non-cash expenses, charges and losses (including reserves, impairment charges or asset write-offs, write-offs of deferred financing fees, losses from investments recorded using the equity method), in each case other than (A) any non-cash charge representing amortization of a prepaid cash item that was paid and not expensed in a prior period and (B) any non-cash charge relating to write-offs, write-downs or reserves with respect to

accounts receivable in the normal course or inventory; *provided* that if any non-cash charges referred to in this clause (vi) represents an accrual or reserve for potential cash items in any future period, (1) the Borrower Agent may elect not to add back such non-cash charge in the current period and (2) to the extent the Borrower Agent elects to add back such non-cash charge, the cash payment in respect thereof in such future period shall be subtracted from EBITDA in such future period to such extent paid;

(vii) expenses, charges and losses (i) for which the Obligors and their Subsidiaries are reimbursed (pursuant to indemnity, insurance or otherwise) or (ii) so long as (1) Borrower Agent has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by an indemnifying party, insurer or otherwise, (2) Agent has been provided with evidence reasonably satisfactory to it that such expenses, charges or losses are covered by such indemnity, insurance or otherwise and (3) such amount is in fact reimbursed within 365 days (or such later date as agreed to by Agent) of the date of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so reimbursed within such 365 days (or such later date as agreed by Agent));

(viii) pre-opening and opening costs, charges and expenses in connection with a new restaurant location in an amount not to exceed $150,000 per new location;

(ix) costs, charges and expenses in connection with the exchange of Class B Shares for Class A Shares in an amount not to exceed $2,000,000 in the aggregate; and

(x) non-cash compensation expense (including deferred non-cash compensation expense), or other non-cash expenses or charges, arising from the sale or issuance of Equity Interests, the granting of stock options, and the granting of stock appreciation rights and similar arrangements (including any repricing, amendment, modification, substitution, or change of any such Equity Interests, stock option, stock appreciation rights, or similar arrangements) minus the amount of any such expenses or charges when paid in cash to the extent not deducted in the computation of Consolidated Net Income;

minus

(b) without duplication and to the extent included in arriving at such Consolidated Net Income, extraordinary income or non-cash gains (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced EBITDA in any prior period);

in each case, determined on a consolidated basis in accordance with GAAP.

"EEA Financial Institution": (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": any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority": 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.

"Eligible Assignee": a Person that is (a) a Lender, Affiliate of a Lender or Approved Fund; (b) any other financial institution approved by Borrower Agent (which approval shall not be unreasonably withheld or delayed, and shall be deemed given if no objection is made within fifteen Business Days after written notice to Borrower Agent of a failure to respond to the proposed assignment and provided further that it shall be reasonable for Borrower Agent to reject any assignment to a Disqualified Institution) and Agent, which extends credit facilities of this type in its ordinary course of business and whose becoming an assignee would not constitute a prohibited transaction under Section 4975 of the Code or any other Applicable Law; and (c) upon the occurrence and during the continuation of any Event of Default, any Person acceptable to Agent in its discretion; provided, however, any assignment to a financial institution in respect of Revolver Loans shall also require the approval of the Issuing Bank and Swingline Lender.

"Enforcement Action": any action to enforce any Obligations (other than Secured Bank Product Obligations) or Loan Documents or to exercise any rights or remedies relating to any Collateral (whether by judicial action, self-help, notification of Account Debtors, exercise of setoff or recoupment, exercise of any right to act in an Obligor's Insolvency Proceeding or to credit bid Obligations, or otherwise).

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

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

"Environmental Release": a release as defined in CERCLA or under any other Environmental Law applicable to the business of the Obligors and their respective Subsidiaries.

"Equity Interest": the interest of any (a) shareholder in a corporation; (b) partner in a partnership (whether general, limited, limited liability or joint venture); (c) member in a limited liability company; or (d) other Person having any other form of equity security or ownership interest.

"ERISA": the Employee Retirement Income Security Act of 1974.

"ERISA Affiliate": any trade or business (whether or not incorporated) under common control with an Obligor 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": (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by any Obligor or ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it 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 any Obligor or ERISA Affiliate from a Multiemployer Plan or written notification that a Multiemployer Plan is in reorganization (within the meaning of Section 4241 of ERISA); (d) the filing under Section 4041(c) of ERISA of a notice of intent to terminate any Pension Plan, the treatment of a Pension Plan or Multiemployer amendment as a termination under Section 4041 or 4041A of ERISA, or the institution in writing of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) a written determination that any Pension Plan is considered an at-risk plan (within the meaning of Section 430 of the Code or Section 303 of ERISA) or a Multiemployer Plan is in critical or endangered status (within the meaning of Section 432 of the Code or Section 305 of ERISA or the Pension Protection Act of 2006); (f) an event or condition that constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (g) 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 any Obligor or ERISA Affiliate; or (h) a failure by an Obligor or ERISA Affiliate to meet all applicable funding or contribution requirements under the Code and ERISA in respect of a Pension Plan or Multiemployer Plan, whether or not waived (unless such failure is corrected by the final due date for the plan year for which such failure occurred).

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

"Event of Default": as defined in **Section 11.1**.

"Excluded Account": each Deposit Account that (i) contains no more than $10,000 at any time (and $30,000 in the aggregate for all such Deposit Accounts), (ii) is used primarily for payroll or employee benefit plans, (iii) is used exclusively as a tax account, (iv) is used exclusively as an escrow account, or (v) is used exclusively as a fiduciary or trust account.

"Excluded Assets": as defined in **Section 7.1**.

"Excluded Subsidiary": each (a) Subsidiary constituting a Foreign Subsidiary under clause (i) of the definition thereof, (b) direct or indirect Domestic Subsidiary of a CFC or a CFC Holding Company, (c) CFC Holding Company, (d) any Subsidiary prohibited or restricted by Applicable Law from providing a Guaranty or whose Guaranty would require governmental (including regulator) consent, approval, license or authorization or would result in material adverse tax consequences as reasonably determined by Borrower Agent in consultation with Agent, and (e) Habit Employment, L.P.

"Excluded Swap Obligation": with respect to an Obligor, each Swap Obligation as to which, and only to the extent that, such Obligor's guaranty of or grant of a Lien as security for such Swap Obligation is or becomes illegal under the Commodity Exchange Act because the Obligor does not constitute an "eligible contract participant" as defined in the Commodity Exchange Act (determined after giving effect to any keepwell, support or other agreement for the benefit of such Obligor and all guarantees of Swap Obligations by other Obligors) when such guaranty or grant of Lien becomes effective with respect to the Swap Obligation. If a Hedging Agreement governs more than one Swap Obligation, only the Swap Obligation(s) or portions thereof described in the foregoing sentence shall be Excluded Swap Obligation(s) for the applicable Obligor.

"Excluded Tax": with respect to Agent, any Lender, Issuing Bank or any other recipient of a payment to be made by or on account of any Obligation (each, a "Recipient"), (a) any tax imposed on or measured by the net income or net profits (however denominated) of any Recipient (including any franchise taxes imposed in lieu of such taxes and any branch profits taxes), in each case imposed by the jurisdiction (or by any political subdivision or taxing authority thereof) in which such Recipient is organized or the jurisdiction (or by any political subdivision or taxing authority thereof) in which such Recipient's principal office or relevant office for receiving payments from or on account of the Borrowers or making funds available to or for the benefit of the Borrowers, or, in the case of any Lender, its applicable Lending Office, is located; (b) any tax imposed as a result of a present or former connection between such Recipient and the jurisdiction or taxing authority imposing the tax (other than any such connection arising solely from such Recipient having executed, delivered or performed its obligations or received payment under, or enforced its rights or remedies under, this Agreement or any other Loan Document); (c) taxes resulting from a Recipient's failure to comply with the requirements of **Section 5.11** of this Agreement; (d) any United States federal withholding taxes that are or would be required to be withheld pursuant to a law, and based upon the applicable withholding rate, in effect at the time such Recipient becomes a party to this Agreement (or designates a new Lending Office), except in each case to the extent that (i) such Recipient (or its assignor, if any) was previously entitled to receive an amount pursuant to **Section 5.10.1 or 5.10.2** of this Agreement, if any, with respect to such withholding tax at the time such Recipient becomes a party to this Agreement (or designates a new Lending Office), and (ii) additional United States federal withholding taxes are imposed after the time such Recipient becomes a party to this Agreement (or designates a new Lending Office), as a result of a change in law, rule, regulation, order or other decision with respect to any of the foregoing by any Governmental Authority; (e) any United States federal withholding taxes imposed under FATCA; (f) U.S. backup withholding Taxes; (g) Taxes resulting from the gross negligence or willful misconduct of the Agent or the Recipient; and (h) penalties, interest and additions to Tax relating to any of the foregoing.

"Extraordinary Expenses": subject to the limitations set forth in the last sentence of **Section 3.4**, all documented and reasonable out-of-pocket costs, out-of-pocket expenses or advances that Agent may incur during an Event of Default, or during the pendency of an Insolvency Proceeding of an Obligor, including those relating to (a) any audit, inspection, repossession, storage, repair, appraisal, insurance, manufacture, preparation or advertising for sale, sale, collection, or other preservation of or realization upon any Collateral; (b) any action, arbitration or other proceeding (whether instituted by or against Agent, any Lender, any Obligor, any representative of creditors of an Obligor or any other Person) in any way relating to any Collateral (including the validity,

perfection, priority or avoidability of Agent's Liens with respect to any Collateral), Loan Documents, Letters of Credit or Obligations, including any lender liability or other Claims; (c) the exercise, protection or enforcement of any rights or remedies of Agent in, or the monitoring of, any Insolvency Proceeding; (d) settlement or satisfaction of any taxes, charges or Liens with respect to any Collateral; (e) any Enforcement Action; and (f) negotiation and documentation of any modification, waiver, workout, restructuring or forbearance with respect to any Loan Documents or Obligations. Such costs, expenses and advances include storage fees, insurance costs, permit fees, utility reservation and standby fees, documented and reasonable out-of-pocket costs, appraisal fees, brokers' fees and commissions, auctioneers' fees and commissions, accountants' fees, environmental study fees, wages and salaries paid to employees of any Obligor or independent contractors in liquidating any Collateral, and out-of-pocket travel expenses.

"FATCA": Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any applicable intergovernmental agreements and related legislation or official administrative rules, guidance or practices with respect thereto.

"Federal Funds Rate": for any period, a fluctuating interest rate per annum equal, for each day during such period, to (a) the weighted average of interest rates on overnight federal funds transactions with members of the Federal Reserve System on the applicable Business Day (or on the preceding Business Day, if the applicable day is not a Business Day), as published by the Federal Reserve Bank of New York on the next Business Day; or (b) if no such rate is published on the next Business Day, the average rate (rounded up, if necessary, to the nearest 1/8 of 1%) charged to Bank of the West on the applicable day on such transactions, as reasonably determined by Agent.

"Fiscal Quarter": each fiscal quarter of the Parent and its Subsidiaries in each fiscal year consisting of 13 weeks of operations (or, in the case of a 53-week fiscal year, 14 weeks of operations for the fourth fiscal quarter).

"Fiscal Year": the fiscal year of Parent and its Subsidiaries.

"FLSA": the Fair Labor Standards Act of 1938.

"Food Security Act": means 7 U.S.C. §1631, Protection of Purchasers of Farm Products, of the Food Security Act of 1985.

"Foreign Lender": any Lender that is organized under the laws of a jurisdiction other than the laws of the United States, or any state or district thereof.

"Foreign Plan": any employee benefit plan or arrangement (a) maintained or contributed to by any Obligor or Subsidiary that is not subject to the laws of the United States; or (b) mandated by a government other than the United States for employees of any Obligor or Subsidiary.

"Foreign Subsidiary": a Subsidiary (i) that is not a Domestic Subsidiary, (ii) substantially all the assets of which, directly or indirectly, constitute equity interests or indebtedness of one or

more CFCs or CFC Holding Companies, or (iii) that is a Domestic Subsidiary of a Subsidiary described in clause (i) or (ii).

"Fronting Exposure": a Defaulting Lender's Pro Rata share of LC Obligations or Swingline Loans, as applicable, except to the extent allocated to other Lenders under **Section 4.2**.

"Full Payment": with respect to any Obligations, (a) the full cash payment thereof, including any interest, fees and other charges accruing during an Insolvency Proceeding (whether or not allowed in the proceeding), but excluding contingent indemnification obligations for which no claim or demand has been made; and (b) if such Obligations are LC Obligations or inchoate or contingent in nature (other than indemnification obligations which are either contingent or inchoate to the extent no claims giving rise thereto have been asserted), (i) Cash Collateralization thereof (or delivery of a backstop letter of credit reasonably acceptable to Agent in its reasonable discretion, in the amount of required Cash Collateral) or (ii) the full termination thereof. No Loans shall be deemed to have been paid in full until all Commitments related to such Loans have expired or been terminated.

"GAAP": generally accepted accounting principles in effect in the United States from time to time; provided, however, that if Borrower Agent notifies Agent that Borrower Agent requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof on the operation of such provision (or if Agent notifies Borrower Agent that the Required Lenders request an amendment to any provision hereof for such purposes), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then Agent and Borrower Agent agree that they will negotiate in good faith amendments to the provisions of this Agreement that are directly affected by such accounting change with the intent of having the respective positions of the Lenders and Borrowers after such accounting change conform as nearly as possible to their respective positions as of the date of this Agreement and, until any such amendments have been agreed upon and agreed to by the Required Lenders, the provisions in this Agreement shall be calculated as if no such accounting change had occurred.

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

"Governmental Authority": any federal, state, local, foreign or other agency, authority, body, commission, court, instrumentality, political subdivision, or other entity or officer exercising executive, legislative, judicial, regulatory or administrative functions for any governmental, judicial, investigative, regulatory or self-regulatory authority (including any applicable supranational bodies, such as the European Union or the European Central Bank).

"Guarantor Payment": as defined in **Section 5.12.3**.

"Guarantors": HBG Franchise, LLC, a Delaware limited liability company and each other Person who guarantees payment or performance of any Obligations. For the avoidance of doubt, no Excluded Subsidiary shall be required to be a Guarantor.

"Guaranty": each guaranty agreement executed by a Guarantor in favor of Agent.

"Hedging Agreement": any "swap agreement" as defined in Section 101(53B)(A) of the Bankruptcy Code.

"Indemnified Taxes": Taxes other than Excluded Taxes imposed on or with respect to any payment made by Borrowers in respect of Loans pursuant to any Loan Document.

"Indemnitees": Agent Indemnitees, Lender Indemnitees, Issuing Bank Indemnitees and Bank of the West Indemnitees.

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

"Intellectual Property": all intellectual Property of a Person, including inventions, designs, patents, copyrights, trademarks, service marks, trade names, trade secrets, URLs, domain names, social media accounts, internet keywords, websites, confidential or proprietary information, customer lists, know-how, software and databases; all embodiments or fixations thereof and all related documentation, applications, registrations and franchises; all licenses or other rights to use any of the foregoing; and all books and records relating to the foregoing.

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

"Intercompany Subordination Agreement": the Subordination Agreement of even date herewith, among Obligors and Agent.

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

"Investment": any advance, loan, extension of credit (by way of guarantee or otherwise) or capital contribution to, or purchase of any Equity Interests (including any Acquisition), bonds, notes, debentures or other debt securities of, or any assets constituting a business unit of, or any other investment in, any Person; provided that, capital expenditures shall not in and of themselves constitute "Investments".

"IP Assignment": a collateral assignment or security agreement pursuant to which an Obligor assigns or grants a security interest in its interests in copyrights, patents, trademarks or other intellectual property to Agent, as security for the Obligations.

"IRS": the United States Internal Revenue Service.

"Issuing Bank": Bank of the West or any Affiliate of Bank of the West, or any replacement issuer appointed pursuant to **Section 2.4.4**.

"Issuing Bank Indemnitees": Issuing Bank and its officers, directors, employees, Affiliates, agents and attorneys.

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

"LC Conditions": the following conditions necessary for issuance of a Letter of Credit: (a) each of the conditions set forth in **Section 6.2**; (b) after giving effect to such issuance, total LC Obligations do not exceed the Letter of Credit Sublimit and the Revolver Usage at such time does not exceed the Revolver Commitments; (c) the expiration date of such Letter of Credit is (i) no more than 365 or 366, as applicable, days from issuance, in the case of standby Letters of Credit; provided that, standby Letters of Credit may provide for automatic renewal for successive periods of 365 or 366, as applicable, days unless the Issuing Bank elects not to extend, (ii) no more than 120 days from issuance, in the case of documentary Letters of Credit, and (iii) no later than six months after the Revolver Termination Date, in the case of all Letters of Credit, unless Cash Collateralized by such date or Borrowers have delivered a backstop letter of credit reasonably acceptable to Issuing Bank in its reasonable discretion, in the amount of required Cash Collateral; (d) the Letter of Credit and payments thereunder are denominated in Dollars; and (e) the purpose and the form of the proposed Letter of Credit is reasonably satisfactory to Agent and Issuing Bank in their Permitted Discretion.

"LC Documents": all documents, instruments and agreements (including LC Requests and LC Applications) delivered by Borrowers or any other Obligor or Subsidiary to Issuing Bank or Agent in connection with any Letter of Credit.

"LC Obligations": the sum (without duplication) of (a) all amounts owing by Borrowers for any drawings under Letters of Credit; and (b) the stated amount of all outstanding Letters of Credit.

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

"Lease Adjusted Leverage Ratio": means, as of any date of determination, the ratio of:

(a) (i) Consolidated Funded Indebtedness, plus (ii) eight (8) times Rental Expense for the trailing 12-month period then ended, divided by

(b) (i) EBITDA for the trailing 12-month period then ended, plus (ii) Rental Expense for the trailing 12-month period then ended.

"Lender Indemnitees": Lenders and their officers, directors, employees, Affiliates, agents and attorneys.

"Lenders": as defined in the preamble to this Agreement, including Agent in its capacity as a provider of Swingline Loans and any other Person who hereafter becomes a "Lender" pursuant to an Assignment and Acceptance.

"Lending Office": the office designated as such by the applicable Lender at the time it becomes party to this Agreement or thereafter by notice to Agent and Borrower Agent.

"Letter of Credit": any standby or documentary letter of credit issued by Issuing Bank for the account of a Borrower, or any indemnity, guarantee, exposure transmittal memorandum or similar form of credit support issued by Agent or Issuing Bank for the benefit of a Borrower.

"Letter of Credit Sublimit": $10,000,000.

"LIBOR Loan": Revolver Loans bearing interest based upon the One-Month LIBOR Rate.

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

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

"Lien": any Person's interest in Property securing an obligation owed to, or a claim by, such Person, including any lien, security interest, pledge, hypothecation, trust, reservation, encroachment, easement, right-of-way, covenant, condition, restriction, leases, or other title exception or encumbrance, excluding, for the avoidance of doubt, the interest of any lessor in an operating lease and any transfer restrictions under securities laws.

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

"Loan": a Revolver Loan.

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

"Loan Year": each 12 month period commencing on the Closing Date and on each anniversary of the Closing Date.

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

"Material Adverse Effect": the effect of any event or circumstance that, taken alone or in conjunction with other events or circumstances, (a) has or could be reasonably expected to have a material adverse effect (i) on the business, results of operations, Properties or financial condition of Borrowers and their Subsidiaries, taken as a whole, (ii) on the enforceability of any material provision of any Loan Document or (iii) on the validity or priority of Agent's Liens on any material portion of the Collateral; (b) impairs in any material respect the ability of the Obligors as a whole to perform their obligations under the Loan Documents, including repayment of any Obligations; or (c) otherwise impairs in any material respect the ability of Agent or the Lenders to enforce or collect the Obligations or to realize upon the Collateral in accordance with the Loan Documents.

"Moody's": Moody's Investors Service, Inc., and its successors.

"Mortgage": a mortgage, deed of trust or deed to secure debt in which an Obligor grants a Lien on its Real Estate owned in fee to Agent, as security for the Obligations.

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

"Notice of Borrowing": a Notice of Borrowing, substantially in the form of **Exhibit E**, to be provided by Borrower Agent to request a Borrowing of Revolver Loans.

"Obligations": all (a) principal of and premium, if any, on the Loans, (b) LC Obligations and other obligations of Obligors with respect to Letters of Credit, (c) interest, expenses, fees, indemnification obligations, Extraordinary Expenses and other amounts payable by Obligors under the Loan Documents, (d) Secured Bank Product Obligations, and (e) other Debts, obligations and liabilities of any kind owing by Obligors pursuant to the Loan Documents, whether now existing or hereafter arising, whether evidenced by a note or other writing, whether allowed in any Insolvency Proceeding, whether arising from an extension of credit, issuance of a letter of credit, acceptance, loan, guaranty, indemnification or otherwise, and whether direct or indirect, absolute or contingent, due or to become due, primary or secondary, or joint or several; provided, that Obligations of an Obligor shall not include its Excluded Swap Obligations.

"Obligor": each Borrower and each Guarantor.

"OFAC": means The Office of Foreign Assets Control of the U.S. Department of the Treasury.

"One-Month LIBOR Rate" shall mean a fluctuating rate of interest as of and adjusted on each Business Day that is equal from time to time to the rate per annum determined by Agent equal to the London interbank offered rate for an interest period of one month as administered by the ICE Benchmark Administration (or any other Person that takes over the administration of such

rate) for deposits in U.S. dollars with a term equivalent to such interest period appearing on the applicable page or screen at Bloomberg.com (or, in the event such rate does not appear on a Bloomberg.com page or screen, on the appropriate page or screen of such other information service that publishes such rate as shall be selected by Agent from time to time in its reasonable discretion) at approximately 11:00 a.m., London time on that day (or, if such day is not a Business Day, the immediately preceding Business Day); provided that, except as set forth below, in no event shall the One-Month LIBOR Rate be less than zero; and provided, further, that the One-Month LIBOR Rate may be adjusted from time to time in Agent's discretion for reserve requirements, deposit insurance assessment rates and other regulatory costs on that day (or, if such day is not a Business Day, the immediately preceding Business Day). Notwithstanding the foregoing, the prohibition on the One-Month LIBOR Rate being less than zero shall not apply to interest accruing on any portion of the principal outstanding under this Agreement that is subject to an interest rate derivative agreement, such as a swap, cancellable swap, cap, corridor, or collar.

"Ordinary Course of Business": any business practice currently or previously engaged in by the Obligors, and any similar, ancillary, complementary or other business practice reasonably related thereto or that is a reasonable extension, development or expansion thereof.

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

"OSHA": the Occupational Safety and Hazard Act of 1970.

"Other Agreement": (a) each LC Document, fee letter, Lien Waiver, Intercompany Subordination Agreement, any Mortgage, Compliance Certificate or note now or hereafter delivered by an Obligor to Agent or a Lender in connection with any transactions relating hereto or (b) each other document, instrument or agreement (other than this Agreement or a Security Document) now or hereafter delivered by an Obligor to Agent or a Lender in connection with any transactions relating hereto, in each case under this clause (b), that is identified as a Loan Document.

"Other Taxes": all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Loan Document, except any such Taxes described in clause (b) of the definition of Excluded Taxes that are imposed with respect to an assignment, grant of a participation, designation of a new office for receiving payments by or on account of any Borrower or other transfer (other than an assignment or designation of a new office made pursuant to **Section 3.8**).

"PACA": the Perishable Agricultural Commodities Act.

"Parent": means The Habit Restaurants, Inc., a Delaware corporation.

"Participant": as defined in **Section 13.2**.

"Patriot Act": the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001).

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

"PBGC": the Pension Benefit Guaranty Corporation.

"Pension Plan": any employee pension benefit plan (as defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Obligor or ERISA Affiliate or to which the Obligor or ERISA Affiliate contributes or has an obligation to contribute.

"Permitted Acquisition": means any Acquisition constituting a repurchase of any franchise owned restaurant location or the purchase of the Hamburger Habit so long as immediately before and after giving effect to such Acquisition (i) no Event of Default shall have occurred and be continuing or result therefrom, (ii) Obligors are in compliance with all financial covenants in **Section 10.3** on a Pro Forma Basis, and (iii) any new Subsidiary complies, to the extent required, with the applicable provisions of **Section 10.1.9**.

"Permitted Asset Disposition":

(a) an Asset Disposition that is a sale or disposition of Cash Equivalents or Inventory in the Ordinary Course of Business; provided, however, that if an Event of Default exists, then no Asset Disposition of Inventory shall occur under this clause (a) following three (3) Business Days' prior written notice from Agent to Borrower Agent to discontinue such Asset Dispositions;

(b) Asset Dispositions of Property (other than Inventory and Accounts) that, in the aggregate during any Fiscal Year, has a fair market or book value (whichever is greater) of $500,000 or less;

(c) so long as no Event of Default has occurred and is continuing, an Asset Disposition that is a disposition of Inventory that is obsolete, unmerchantable or otherwise unsalable in the Ordinary Course of Business;

(d) so long as no Event of Default has occurred and is continuing, an Asset Disposition other than Inventory (including, but not limited to, Intellectual Property rights) that is no longer necessary, used or useful for such Obligor's business in the Ordinary Course of Business;

(e) so long as no Event of Default has occurred and is continuing, an Asset Disposition that is a termination of a lease of real or personal Property that is not necessary for the Ordinary Course of Business and could not reasonably be expected to have a Material Adverse Effect;

(f) an Asset Disposition that is a disposition of Property (i) between and among Obligors or (ii) by a non-Obligor Subsidiary to an Obligor or to another non-Obligor Subsidiary;

(g) licensing, on a non-exclusive basis, of Intellectual Property in the Ordinary Course of Business;

(h) an abandonment, or cessation of maintenance or enforcement, of Intellectual Property, in each case that is (i) in the Ordinary Course of Business, (ii) with respect to Intellectual Property that is not material to the business of the Borrower, and (iii) not materially adverse to the interests of the Lenders;

(i) the leasing, occupancy agreements or sub-leasing of Property in the Ordinary Course of Business and which do not materially interfere with the business of Borrower Agent or its Subsidiaries;

(j) so long as no Event of Default has occurred and is continuing, the sale or discount, in each case without recourse, of accounts receivable arising in the Ordinary Course of Business, but only in connection with the compromise or collection thereof;

(k) casualty events with respect to any Obligor's tangible Property;

(l) dispositions of any Obligor's Real Estate and any improvements thereon arising in connection with any condemnation or eminent domain proceedings or sale, including by way of a like kind exchange under Section 1031 of the Code;

(m) dispositions (x) from Subsidiaries that are not Obligors to Obligors or (y) among Subsidiaries that are not Obligors;

(n) the conversion of any restaurant location (and associated Property) from an ownership to franchise model, so long as (i) Borrowers and their Subsidiaries are in pro forma compliance with the financial covenants set forth in **Section 10.3**, such compliance to be determined on the basis of the most recently delivered financial statements pursuant to **Sections 10.1.2(a)** or **(b)** as though such Asset Disposition had been consummated on the first day of the fiscal period covered thereby and (ii) Borrower Agent shall have delivered to Agent, at least five Business Days prior to the date on which such Asset Disposition is to be consummated, calculations in reasonable detail evidencing compliance with sub-clause (i) above;

(o) the disposition of any non-performing or under-performing restaurant locations (and associated Property), provided that no more than ten (10) such restaurant locations may be so disposed in any trailing twelve-month period; or

(p) other Asset Dispositions approved in writing by Agent and Required Lenders.

"Permitted Contingent Obligations": Contingent Obligations (a) arising from endorsements of Payment Items for collection or deposit in the Ordinary Course of Business; (b) arising from Hedging Agreements permitted hereunder; (c) existing on the Closing Date, and any extension or renewal thereof that does not increase the amount of such Contingent Obligation when extended or renewed unless such increase results from an increase in the primary obligation that is otherwise permitted hereunder; (d) incurred in the Ordinary Course of Business with respect to surety, appeal or performance bonds, or other similar obligations; (e) arising from customary indemnification obligations in favor of purchasers in connection with a Permitted Acquisition, any other Investment or any Asset Disposition, in each case to the extent permitted hereunder; (f) arising under the Loan Documents or other Debt not prohibited by this Agreement; (g) constituting Investments permitted by this Agreement; (h) pursuant to guaranties by an Obligor

of another Obligor with respect to operating leases, contracts and other commitments entered into in the Ordinary Course of Business; (i) to the extent such guaranties are permitted by **Section 10.2.1**; or (j) other Contingent Obligations in an aggregate amount of $500,000 or less at any one time outstanding.

"Permitted Discretion": a determination made in the exercise, in good faith, of reasonable business judgment from the perspective of a secured lender.

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

"Permitted Purchase Money Debt": Purchase Money Debt of Borrowers and Subsidiaries that is unsecured or secured only by a Purchase Money Lien, as long as the aggregate principal amount does not exceed $2,000,000 outstanding at any one time.

"Permitted Seller Debt" : unsecured debt incurred in accordance with **Section 10.2.1** and in connection with a Permitted Acquisition, or any other acquisition constituting an Investment permitted under this Agreement, payable to the seller in connection therewith and containing subordination terms (or subject to a subordination agreement in favor of Agent and Lenders) and other terms and conditions acceptable to Agent in its Permitted Discretion.

"Person": any individual, corporation, limited liability company, partnership, joint venture, association, trust, unincorporated organization, Governmental Authority or other entity.

"Plan": any employee benefit plan (as defined in Section 3(3) of ERISA) established by an Obligor or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, an ERISA Affiliate.

"Platform": as defined in **Section 14.3.3**.

"Prime Rate": the rate of interest announced by Bank of the West from time to time as its prime rate. Such rate is set by Bank of the West on the basis of various factors, including its 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 rate. Any change in such rate publicly announced by Bank of the West shall take effect at the opening of business on the day specified in the announcement.

"Pro Forma Basis" for the purposes of calculating EBITDA for any measurement period, if at any time during such measurement period (and after the Closing Date), the Company or any of its Subsidiaries shall have made a Permitted Acquisition, EBITDA for such measurement period shall be calculated after giving *pro forma* effect thereto (including *pro forma* adjustments arising out of events which are directly attributable to such Permitted Acquisition, are factually supportable, and are expected to have a continuing impact, in each case to be mutually and reasonably agreed upon by Borrowers and Agent) or in such other manner acceptable to Agent as if any such Permitted Acquisition or adjustment occurred on the first day of such measurement period; provided in each case, Borrowers shall have delivered to Agent in respect of such Permitted Acquisition, historical audited financial statements of the target for the immediately preceding three year period (to the extent available) or a quality of earnings report reasonably acceptable to Agent in respect of unaudited financial statements of the target for the same three year period.

"Pro Rata": with respect to any Lender, a percentage (rounded to the ninth decimal place) determined (a) while Revolver Commitments are outstanding, by dividing the amount of such Lender's outstanding Revolver Commitment by the aggregate amount of all outstanding Revolver Commitments and (b) at any other time, by dividing the amount of such Lender's Loans and LC Obligations by the aggregate amount of all outstanding Loans and LC Obligations.

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

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

"Public Company Costs" means costs relating to compliance with the provisions of the Securities Act and the Exchange Act, in each case as applicable to companies with equity or debt securities held by the public, the rules of national securities exchange companies with listed equity or debt securities, directors' compensation, fees and expense reimbursement, costs relating to investor relations, shareholder meetings and reports to shareholders or debtholders, directors' and officers' insurance, listing fees and all executive, legal and professional fees related to the foregoing.

"Purchase Money Debt": (a) Debt (other than the Obligations), including Capital Leases, for payment of any of the purchase price of fixed assets (including Real Estate) or construction or improvement thereof; (b) Debt (other than the Obligations), including Capital Leases, incurred within ninety (90) days before or after acquisition of any fixed assets (including Real Estate), for the purpose of financing any of the purchase price or for the construction or improvement thereof; and (c) any renewals, extensions or refinancings (but not increases (other than any additions and accessions and increases in the amount of any accrued and unpaid interest on such Debt, plus the amount of any penalty or premium required to be paid under the terms of the instrument or documents governing such Debt and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the renewal, extension or refinancing)) thereof.

"Purchase Money Lien": a Lien that secures Purchase Money Debt, encumbering (i) in the case of personal Property, only the fixed assets acquired with such Debt (including, in the case of Purchase Money Debt subject to a master lease or similar agreement, all fixed assets acquired with such Debt) and accessions thereto, and the proceeds thereof and constituting a Capital Lease or a purchase money security interest under the UCC, or, (ii) in the case of Real Estate, such Real Estate, associated fixtures located on such Real Estate and related rights and interests appurtenant to such Real Estate pursuant to a customary mortgage or deed of trust.

"Qualified ECP": an Obligor with total assets exceeding $10,000,000 or that constitutes an "eligible contract participant" under the Commodity Exchange Act and can cause another Person to qualify as an "eligible contract participant" under Section 1a(18)(A)(v)(II) of such act.

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

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

"Real Estate Lease" means any lease, rental agreement or other occupancy agreement to which any Obligor is a party as lessee, tenant or occupant pertaining to the leasing or operation of real property, including without limitation a restaurant, an Obligor's executive office, storage facility or support center.

"Recipient": as defined in "Excluded Tax."

"Refinancing Conditions": the following conditions for Refinancing Debt: (a) it is in an aggregate principal amount that does not exceed the principal amount of the Debt being extended, renewed or refinanced plus any unpaid accrued interest thereon, premium or similar amount required to be paid, including, but not limited to, underwriting discounts, defeasance costs, commissions and fees and expenses, including in the form of original issue discount or upfront fees, incurred in connection with any of the foregoing; (b) other than any Refinancing Debt in respect of Purchase Money Debt, at the time of incurrence of issuance thereof, it has (i) a final maturity no sooner than and (ii) a Weighted Average Life to Maturity no less than, in each case, the Debt being extended, renewed or refinanced; (c) if applicable, it is subordinated to the Obligations at least to the same extent as the Debt being extended, renewed or refinanced; (d) the representations, covenants and defaults applicable to it are not, when taken as a whole, materially less favorable to Borrowers than those applicable to the Debt being extended, renewed or refinanced; and (e) upon giving effect to it, no Event of Default shall have occurred and be continuing.

"Refinancing Debt": Borrowed Money that is the result of an extension, renewal or refinancing of Debt permitted under **Section 10.2.1(b)**, **(c)**, **(d)**, **(e)**, **(f)**, **(h)**, **(i)** or **(p)**.

"Register": as defined in **Section 13.3.4**.

"Reimbursement Date": as defined in **Section 2.4.2**.

"Related Real Estate Documents": with respect to any fee-owned Real Estate subject to a Mortgage, the following, in form and substance reasonably satisfactory to Agent: (a) a mortgagee title insurance policy (or binding commitments therefor) covering Agent's interest under the Mortgage, in a form and amount (not to exceed in any event the fair market value of the Real Estate covered thereby) and by an insurer reasonably acceptable to Agent, which must be fully paid on the effective date of the Mortgage; (b) such assignments of leases, estoppel letters, attornment agreements, consents, waivers and releases as Agent may reasonably require with respect to other Persons having an interest in the Real Estate as are customarily required by real estate lenders for similarly situated Real Estate in order to adequately protect Agent's interest in the Real Estate; provided, however, that to the extent not obviating Agent's ability to seek or obtain mortgagee title

insurance policies in accordance with clause (a) of this definition, obtaining any third party documents under this clause (b) shall be subject to the exercise of commercially reasonable efforts by Borrower; provided further that no subordination agreements shall be required with respect to leases or subleases that are permitted by **Section 10.2.2(z)** hereof; (c) either (i) a current, as-built survey of the Real Estate certified by a licensed surveyor reasonably acceptable to Agent sufficient to delete the standard survey exception from the mortgagee title insurance policy issued in connection with the applicable Mortgage, or (ii) such documentation as is sufficient for the title company to remove the standard survey exception from the applicable mortgagee title insurance policy; (d) a life-of-loan flood hazard determination and, if a building on the Real Estate is located in a flood plain, an acknowledged notice to borrower and flood insurance in an amount, with endorsements and by an insurer, in each case in compliance with all applicable flood laws; (e) an appraisal of the Real Estate that is no older than 180 days from the date of issuance, prepared by an appraiser reasonably acceptable to Agent, and in form and substance reasonably satisfactory to Required Lenders and compliant with the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended from time to time; (f) environmental assessment report prepared by environmental engineers reasonably acceptable to Agent prepared within six (6) months prior to the Closing Date (or the recording date of the Mortgage, in the case of Mortgages recorded after the Closing Date), provided, that an environmental database (i.e., 'desktop') assessment may be accepted by Agent in lieu of an environmental assessment if the delivery of environmental assessment report is not reasonably practical or Agent otherwise determines such assessment report is otherwise not required in its Permitted Discretion; and (g) such other documents, instruments or agreements as Agent may reasonably require with respect to any environmental risks regarding the Real Estate.

"Rental Expense" means, for any period, for Parent and its Subsidiaries on a consolidated basis, the lease expense of the Parent and Subsidiaries determined in accordance with GAAP for Real Estate Leases, as disclosed in the Parent's income statements reported in their Form 10-Q or Form 10-K, as applicable.

"Replacement Lender": as defined in **Section 13.4**.

"Replacement Notice": as defined in **Section 13.4**.

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

"Reportable Event": 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.

"Required Lenders": subject to **Section 4.2**, Lenders having, (a) while Revolver Commitments are outstanding, outstanding Revolver Commitments in excess of 50% of the aggregate outstanding Revolver Commitments; and (b) if the Revolver Commitments have terminated, outstanding Revolver Loans and LC Obligations in excess of 50% of the aggregate outstanding Revolver Loans and LC Obligations; provided, however, that at any time there is less than three Lenders (counting Lenders that are Affiliates as a single Lender), "Required Lenders" shall mean all Lenders; provided, further, however, that the Commitments and Loans of any Defaulting Lender shall be excluded from such calculation.

"Reserve Percentage": the reserve percentage (expressed as a decimal, rounded up to the nearest 1/8th of 1%) applicable to member banks under regulations issued by the Board of Governors for determining the maximum reserve requirement for Eurocurrency liabilities.

"Restricted Investment": any Investment by an Obligor, other than:

(a) Investments in Subsidiaries existing on the Closing Date;

(b) Investments existing on the Closing Date set forth on **Schedule 10.2.5** or Investments consisting of an extension, modification, replacement, renewal or reinvestment of any such Investment existing on the Closing Date; provided, that the amount of such Investments may not be increased except as required or contemplated by the terms of such Investment or as otherwise permitted hereunder;

(c) Investments in cash and Cash Equivalents that, to the extent required under this Agreement, are subject to Agent's Lien and control;

(d) guarantees and loans and advances permitted under **Section 10.2.1** and **Section 10.2.7**, respectively;

(e) any Investments (i) in any Obligor, (ii) by any non-Obligor Subsidiary in any other non-Obligor Subsidiary or (iii) by any Obligor in any non-Obligor Subsidiary;

(f) Permitted Acquisitions;

(g) Investments acquired in connection with the settlement of delinquent Accounts in the Ordinary Course of Business or in connection with any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of such Account Debtors;

(h) the receipt and holding of promissory notes and other non-cash consideration received in connection with any Asset Disposition permitted by **Section 10.2.6**;

(i) Investments in Hedging Agreements to the extent permitted under **Section 10.2.14**;

(j) deposits, prepayments and other credits to suppliers made in the Ordinary Course of Business;

(k) extensions of trade credit in the Ordinary Course of Business and Investments received in satisfaction or partial satisfaction thereof from financial troubled Account Debtors to the extent reasonably necessary in order to prevent or limit loss;

(l) Investments made in the Ordinary Course of Business and resulting from pledges and deposits constituting Permitted Liens;

(m) Permitted Contingent Obligations;

(n) Investments of any Person in existence at the time such Person becomes a Subsidiary; provided that such Investment was not created in anticipation of such Person becoming a Subsidiary;

(o) Investments to the extent made with the proceeds of, or paid for by the issuance of, any Equity Interests issued by (or capital contributions to) the Borrowers that are used by the Borrowers or any of their Subsidiaries substantially contemporaneously to make such Investment; and

(p) other Investments in an aggregate amount outstanding at any time not to exceed $500,000.

"Restrictive Agreement": an agreement (other than a Loan Document) that (a) conditions or restricts the right of any Obligor to incur or repay Borrowed Money or to grant Liens on any assets, (b) materially restricts the right of any non-Obligor Subsidiary to declare or make Distributions or to repay any intercompany Debt owing to any Obligor or (c) materially restricts the right of any Obligor to modify, extend or renew any agreement evidencing Borrowed Money.

"Revolver Commitment": for any Lender, its obligation to make Revolver Loans and to participate in LC Obligations up to the maximum principal amount shown opposite such Lender's name on **Schedule 1.1**, as hereafter modified pursuant to an Assignment and Acceptance to which it is a party. "Revolver Commitments" means the aggregate amount of such commitments of all Lenders.

"Revolver Commitment Termination Date": the earliest to occur of (a) the Revolver Termination Date; (b) the date on which Borrowers terminate all Revolver Commitments pursuant to **Section 2.1.4(a)**; or (c) the date on which all Revolver Commitments are terminated pursuant to **Section 11.2**.

"Revolver Loan": a loan made pursuant to **Section 2.1.1** and any Swingline Loan.

"Revolver Termination Date": the date that is two (2) years from the Closing Date.

"Revolver Usage": (a) the aggregate amount of outstanding Revolver Loans; plus (b) the aggregate outstanding LC Obligations.

"Royalties": all royalties, fees, expense reimbursement and other amounts payable by a Borrower under a License.

"S&P": Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business, and its successors.

"Sanctioned Entity": (a) a country or a government of a country, (b) an agency of the government of a country, (c) an organization directly or indirectly controlled by a country or its government, (d) a Person resident in or determined to be resident in a country, in each case, that is subject to or the target of comprehensive Sanctions administered by OFAC, to the extent applicable to the Obligors (including, at the time of this Agreement, Balkans, Belarus, Burma, Cote D'Ivoire

(Ivory Coast), Cuba, Democratic Republic of Congo, Iran, Iraq, Liberia, North Korea, Sudan, Syria, and Zimbabwe).

"Sanctioned Person": at any time, (a) any Person listed on any Sanctions-related list of designated Persons maintained by OFAC or the U.S. Department of State and the United Nations Security Council, the European Union, any European Union member state, Her Majesty's Treasury of the United Kingdom or other relevant sanctions authority in a jurisdiction in which the Obligors conduct business, (b) any Person operating, organized or resident in a Sanctioned Entity or (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b).

"Sanctions": all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State, and (b) to the extent applicable to the Obligors, the United Nations Security Council, the European Union, any European Union member state, Her Majesty's Treasury of the United Kingdom or other relevant sanctions authority in a jurisdiction in which the Obligors conduct business.

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

"Secured Bank Product Obligations": Debt, obligations and other liabilities with respect to Bank Products owing by a Borrower or Subsidiary to a Secured Bank Product Provider; provided, that Secured Bank Product Obligations shall not include its Excluded Swap Obligations.

"Secured Bank Product Provider": (a) Bank of the West or any of its Affiliates; and (b) any other Lender or Affiliate of a Lender that is providing a Bank Product, provided such provider delivers a Secured Bank Product Provider Agreement to Agent within 10 days following the later of the Closing Date or creation of the Bank Product.

"Secured Bank Product Provider Agreement": means an agreement in substantially the form of **Exhibit H**, executed and delivered by any Lender or Affiliate (other than Bank of the West) that is providing a Bank Product, (a) describing the Bank Product and setting forth the maximum amount to be secured by the Collateral and the methodology to be used in calculating such amount, and (b) agreeing to be bound by **Section 12.13**.

"Secured Parties": Agent, Issuing Bank, Lenders and Secured Bank Product Providers.

"Security Documents": this Agreement, the Guaranties, Mortgages, IP Assignments, Stock Pledges and all other documents, instruments and agreements executed and delivered by the Obligors now or hereafter securing (or given with the intent to secure or perfect any security interests) any Obligations.

"Senior Officer": the chairman of the board, president, treasurer, controller, chief executive officer, chief financial officer or principal accounting officer of a Borrower or, if the context requires, any other Obligor.

"Settlement Report": a report summarizing Revolver Loans and participations in LC Obligations outstanding as of a given settlement date, allocated to Lenders on a Pro Rata basis in accordance with their Revolver Commitments.

"Solvent": as to any Person, such Person at any time of determination (a) owns Property the fair salable value of which (on a going concern basis) is greater than the amount required to pay all of its debts (including contingent liabilities); (b) owns Property the fair salable value of which (on a going concern basis) is greater than the amount that will be required to pay the probable liability of such Person on its debts and other liabilities, including contingent liabilities, as such debt and other liabilities become absolute and matured; (c) has capital that is not unreasonably small in relation to the business of such Person contemplated as of such time; and (d) does not intend to incur, or believe that it will incur, debts, including current obligations, beyond its ability to pay such debts as they mature in the ordinary course of business. For purposes of this definition, the amount of any contingent liability shall be computed as the amount that, in the list of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"Stock Certificates": stock certificates and any other certificated equity interests (if any) of Borrower Agent and its material wholly-owned Subsidiaries (other than any Excluded Assets) to the extent possession of such certificates perfects a security interest therein.

"Stock Pledges": the stock pledges to be executed by each Obligor, in favor of Agent, whereby each Obligor pledges the certificated Equity Interests of its Subsidiaries (subject to **Section 7.7**) as security for the Obligations.

"Subsidiary": any entity more than 50% of whose voting securities or Equity Interests are owned by an Obligor or any combination of Obligors (including indirect ownership by an Obligor through other entities in which an Obligor directly or indirectly owns more than 50% of the voting securities or Equity Interests).

"Swap Obligations": with respect to an Obligor, its obligations under a Hedging Agreement that constitutes a "swap" within the meaning of Section 1a(47) of the Commodity Exchange Act.

"Swap Termination Value ": in respect of any one or more Hedging Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Hedging Agreements, (a) for any date on or after the date such Hedging Agreements 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) of this definition, the amount(s) determined as the mark-to-market value(s) for such Hedging Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Hedging Agreements (which may include a Lender or any Affiliate of a Lender).

"Swingline Lender": Bank of the West or any permitted replacement agent that has funded Swingline Loans.

"Swingline Loan": any Borrowing of Revolver Loans funded with the Swingline Lender's funds, until such Borrowing is settled among Lenders or repaid by Borrowers.

"Swingline Loan Cap": $0.

"Tax Receivable Agreement": that certain Tax Receivable Agreement dated as of November 25, 2014 by and among Parent, its wholly-owned Subsidiaries, Borrower and each member of the Borrower identified on Annex A thereto, as amended through the date hereof and as further amended, supplemented or modified from time to time in accordance with this Agreement.

"Taxes": 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.

"Transactions": the execution and delivery of the Loan Documents on the Closing Date.

"Transaction Expenses" means any fees or expenses incurred or paid by Parent or its Subsidiaries in connection with the Transactions.

"Transferee": any actual or potential Eligible Assignee, Participant or other Person acquiring an interest in any Obligations in accordance with the provisions of this Agreement.

"U.S. Person": "United States Person" as defined in Section 7701(a)(30) of the Code.

"UCC": the Uniform Commercial Code as in effect in the state of New York or, when the laws of any other jurisdiction govern the perfection or enforcement of any Lien, the Uniform Commercial Code of such jurisdiction.

"UCC Filing Collateral": Collateral consisting of assets of the Obligors for which a security interest can be perfected by filing a UCC financing statement.

"Undisclosed Administration": in relation to a Lender or a parent thereof that directly or indirectly controls such Lender, the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official by a supervisory authority or regulator under or based on the law in the country where such Lender or parent, as the case may be, is subject to home jurisdiction supervision if Applicable Law requires that such appointment is not to be publicly disclosed.

"United States" or "U.S.": United States of America.

"Upstream Payment": a Distribution by a Subsidiary of a Borrower to such Borrower.

"USCO": the United States Copyright Office.

"USPTO": the United States Patent and Trademark Office.

"Value": as of any date of determination, the face amount of an Account, net of any returns, rebates, discounts (calculated on the shortest terms), credits, allowances or Taxes (including sales, excise or other taxes) that have been or could be claimed by the Account Debtor or any other Person.

"Weighted Average Life to Maturity": when applied to any Debt at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment by (b) the then outstanding principal amount of such Debt; provided that for purposes of determining the Weighted Average Life to Maturity of any Refinancing Debt or any Debt that is being modified, refinanced, refunded, renewed, replaced or extended (the "Applicable Debt"), the effects of any amortization or prepayments made on such Applicable Debt prior to the date of the applicable modification, refinancing, refunding, renewal, replacement or extension shall be disregarded.

"Write-Down and Conversion Powers": 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.

1.2 Accounting Terms

. Under the Loan Documents (except as otherwise specified herein or therein), all accounting terms shall be interpreted, all accounting determinations shall be made, and all financial statements shall be prepared, in accordance with GAAP applied on a basis consistent with the most recent audited financial statements of Borrowers delivered to Agent before the Closing Date and using the same inventory valuation method as used in such financial statements, except for any change required or permitted by GAAP if Borrowers' certified public accountants concur in such change, the change is disclosed to Agent, and **Section 10.3** and all other relevant provisions of the Loan Documents are amended in a manner reasonably satisfactory to Required Lenders and the Borrowers to take into account the effects of the change.

1.3 Uniform Commercial Code

. As used herein, the following terms are defined in accordance with the UCC in effect in the state of New York from time to time: "Chattel Paper," "Commercial Tort Claim," "Deposit Account," "Document," "Equipment," "General Intangibles," "Goods," "Instrument," "Investment Property," "Letter-of-Credit Right" and "Supporting Obligation."

1.4 Certain Matters of Construction

. The terms "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. Any pronoun used shall be deemed to cover all genders. The terms "including" and "include" shall mean "including, without limitation" and, for purposes of each Loan Document, the parties agree that the rule of *ejusdem generis* shall not be applicable to limit any provision. The term "or" has, and except as otherwise indicated, the inclusive meaning represented by the phrase "and/or." Section titles appear as a matter of convenience only and shall not affect the interpretation of any Loan Document. All references to (a) laws or statutes include all related rules, regulations, interpretations, amendments and successor statutes or provisions; (b) any document, instrument or agreement include any amendments, waivers and other modifications, extensions or renewals (to the extent not prohibited by the Loan Documents); (c) a Section means, unless the context otherwise requires, a Section of this Agreement; (d) exhibits or schedules mean, unless the context otherwise requires, exhibits and schedules attached hereto, which are hereby incorporated by reference; (e) any Person includes such Person's successors and

permitted assigns; (f) [reserved]; or (g) discretion of Agent, Issuing Bank or any Lender mean the sole discretion of such Person, unless otherwise explicitly provided in this Agreement or any other Loan Document. All references to Value, Loans, Letters of Credit, Obligations and other amounts herein shall be denominated in Dollars, unless expressly provided otherwise, and all determinations (including calculations of financial covenants) made from time to time under the Loan Documents shall be made in light of the circumstances existing at such time. Unless otherwise expressly set forth herein or in any other Loan Document, when the performance of any covenant, duty or obligation under any Loan Document (including, without limitation, covenants, duties or obligations in respect of the payment of any Obligations) is stated to be required on a day which is not a Business Day, the date of such performance shall extend to the immediately succeeding Business Day (which, with respect to the payment of any Obligations, shall include daily accrued interest for any such extended period). No provision of any Loan Documents shall be construed against any party by reason of such party having, or being deemed to have, drafted the provision. A reference to Borrowers' "knowledge" or similar concept means actual knowledge of a Senior Officer, or knowledge that a Senior Officer would have obtained if he or she had engaged in good faith and diligent performance of his or her duties, including reasonably specific inquiries of employees or agents and a good faith attempt to ascertain the matter.

1.5 Certain Calculations

. For purposes of making all calculations of the financial covenants set forth in **Section 10.3**, all components of such calculations shall be adjusted to include or exclude, as the case may be, without duplication, such components of such calculations attributable to any business or assets that have been acquired or disposed of by the Company or its Subsidiaries after the first day of the applicable period of determination and prior to the end of such period, as determined in good faith by Borrower Agent on a Pro Forma Basis.

1.6 Time References

. Unless the context of this Agreement or any other Loan Document clearly requires otherwise, all references to time of day refer to Pacific standard time or Pacific daylight saving time, as in effect in Los Angeles, California on such day. For purposes of the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each means "to but excluding"; provided that, with respect to a computation of fees or interest payable to Agent or any Lender, such period shall in any event consist of at least one full day.

SECTION 2. CREDIT FACILITIES

2.1 Revolver Commitment

.

2.1.1 Revolver Loans

. Each Lender agrees, severally on a Pro Rata basis up to its Revolver Commitment, on the terms set forth herein, to make Revolver Loans to Borrowers from time to time through the Revolver Commitment Termination Date. The Revolver Loans may be repaid and reborrowed as provided herein. In no event shall Lenders have any obligation to honor a request for a Revolver Loan if the Revolver Usage at such time would exceed the Revolver Commitment.

2.1.2 Revolver Notes

. The Revolver Loans made by each Lender and interest accruing thereon shall be evidenced by the records of Agent and such Lender, subject to **Section**

13.3.4. At the request of any Lender, Borrowers shall deliver to such Lender a promissory note in substantially the form of **Exhibit 2.1.2** evidencing its Revolver Loans.

2.1.3 Use of Proceeds

. The proceeds of Revolver Loans shall be used by Borrowers solely (a) to pay Obligations in accordance with this Agreement; and (b) for lawful purposes of Borrowers, including working capital, Permitted Acquisitions and other transactions not prohibited by this Agreement.

2.1.4 Voluntary Reduction or Termination of Revolver Commitments

.

(a) The Revolver Commitments shall terminate on the Revolver Commitment Termination Date, unless sooner terminated in accordance with this Agreement. Upon prior written notice to Agent at any time, Borrowers may, at their option, terminate the Revolver Commitments under this credit facility. Any notice of termination given by Borrowers shall be irrevocable, unless delivered in connection with a refinancing transaction, in which case it may be conditioned on consummation of such refinancing. On the Revolver Termination Date, Borrowers shall make Full Payment of all Obligations in respect of the outstanding Revolver Commitments, Revolver Loans and all other amounts owing to Lenders in respect thereof.

(b) Borrowers may permanently reduce the Revolver Commitments, on a Pro Rata basis for each Lender, without penalty or premium, except as otherwise provided in **Section 3.9** (if applicable), upon prior written notice to Agent delivered at any time, which notice shall specify the amount of the reduction and shall be irrevocable once given. Each reduction shall be in a minimum amount of $1,000,000, or an increment of $100,000 in excess thereof.

2.2 [Reserved]

.

2.3 Letter of Credit Facility

.

2.3.1 Issuance of Letters of Credit

. Issuing Bank shall issue Letters of Credit from time to time (or until the Revolver Commitment Termination Date, if earlier), on the terms set forth herein, including the following:

(a) Each Borrower acknowledges that Issuing Bank's issuance of any Letter of Credit is conditioned upon Issuing Bank's receipt of a LC Application with respect to the requested Letter of Credit, as well as such other instruments and agreements as Issuing Bank may customarily require for issuance of a letter of credit of similar type and amount. Issuing Bank shall have no obligation to issue any Letter of Credit unless (i) Issuing Bank receives a LC Request and LC Application at least three Business Days prior to the requested date of issuance (or such shorter period as is acceptable to Agent and the Issuing Bank); (ii) each LC Condition is satisfied; and (iii) if a Defaulting Lender exists, Borrower Agent or such Lender has entered into arrangements reasonably satisfactory to Agent and Issuing Bank to eliminate any Fronting Exposure associated with such Lender. If, in sufficient time to act, Issuing Bank receives written notice from Required Lenders that a LC Condition has not been satisfied, Issuing Bank shall not issue the requested Letter of Credit until such notice is withdrawn in writing by the Required Lenders or until Required Lenders have waived such condition in accordance with this Agreement. Prior to receipt of any such notice, Issuing Bank shall not be deemed to have knowledge of any failure of LC Conditions.

(b) Letters of Credit may be requested by a Borrower to support obligations incurred in the Ordinary Course of Business, or as otherwise approved by Agent. The renewal or extension of any Letter of Credit shall be treated as the issuance of a new Letter of Credit, except that delivery of a new LC Application shall be required at the discretion of Issuing Bank.

(c) Borrowers assume all risks of the acts, omissions or misuses of any Letter of Credit by the beneficiary. In connection with issuance of any Letter of Credit, none of Agent, Issuing Bank or any Lender shall be responsible for the existence, character, quality, quantity, condition, packing, value or delivery of any goods purported to be represented by any Documents; any differences or variation in the character, quality, quantity, condition, packing, value or delivery of any goods from that expressed in any Documents; the form, validity, sufficiency, accuracy, genuineness or legal effect of any Documents or of any endorsements thereon (so long as they appear on their face to comply with the Letter of Credit); the time, place, manner or order in which shipment of goods is made; partial or incomplete shipment of, or failure to ship, any goods referred to in a Letter of Credit or Documents; any deviation from instructions, delay, default or fraud by any shipper or other Person in connection with any goods, shipment or delivery; any breach of contract between a shipper or vendor and a Borrower; errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex, telecopy, e-mail, telephone or otherwise; errors in interpretation of technical terms; the misapplication by a beneficiary of any Letter of Credit or the proceeds thereof; or any consequences arising from causes beyond the control of Issuing Bank, Agent or any Lender, including any act or omission of a Governmental Authority, except as the result of the gross negligence or willful misconduct of Issuing Bank, Agent or such Lender. The rights and remedies of Issuing Bank under the Loan Documents shall be cumulative. Issuing Bank shall be fully subrogated to the rights and remedies of each beneficiary whose claims against Borrowers are discharged with proceeds of any Letter of Credit. In the event of a conflict between the terms of any LC Application and this Agreement, the provisions of this Agreement shall govern.

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

2.3.2 Reimbursement; Participations

.

(a) If Issuing Bank honors any request for payment under a Letter of Credit, Borrowers shall pay to Issuing Bank, on the next Business Day following notice to Borrower Agent of such payment ("Reimbursement Date"), the amount paid by Issuing Bank under such Letter of Credit and, to the extent not paid by Borrowers on the Reimbursement Date, such amount shall automatically be converted to a Revolver Loan and accrue interest at the

Adjusted Base Rate plus the Applicable Margin from the Reimbursement Date until paid by Borrowers. The obligation of Borrowers to reimburse Issuing Bank for any payment made under a Letter of Credit shall be absolute, unconditional, irrevocable, and joint and several, and shall be paid without regard to any lack of validity or enforceability of any Letter of Credit or the existence of any claim, setoff, defense or other right that Borrowers may have at any time against the beneficiary. Whether or not Borrower Agent submits a Notice of Borrowing, Borrowers shall be deemed to have requested a Borrowing of Adjusted Base Rate Loans in an amount necessary to pay all amounts due Issuing Bank on any Reimbursement Date and each Lender agrees to fund its Pro Rata share of such Borrowing whether or not the Commitments have terminated or the applicable conditions in **Section 6** are satisfied.

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

(c) The obligation of each Lender to make payments to Agent for the account of Issuing Bank in connection with Issuing Bank's payment under a Letter of Credit shall be absolute, unconditional and irrevocable, not subject to any counterclaim, setoff, qualification or exception whatsoever, and shall be made in accordance with this Agreement under all circumstances, irrespective of any lack of validity or unenforceability of any Loan Documents; any draft, certificate or other document presented under a Letter of Credit having been determined to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or the existence of any setoff or defense that any Obligor may have with respect to any Obligations. Issuing Bank does not assume any responsibility for any failure or delay in performance or any breach by any Borrower or other Person of any obligations under any LC Documents. Issuing Bank does not make to Lenders any express or implied warranty, representation or guaranty with respect to the Collateral, LC Documents or any Obligor. Issuing Bank shall not be responsible to any Lender for any recitals, statements, information, representations or warranties contained in, or for the execution, validity, genuineness, effectiveness or enforceability of any LC Documents; the validity, genuineness, enforceability, collectibility, value or sufficiency of any Collateral or the perfection of any Lien therein; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Obligor.

(d) No Issuing Bank Indemnitee shall be liable to any Lender or other Person for any action taken or omitted to be taken in connection with any Letter of Credit or LC Document except as a result of its gross negligence or willful misconduct. Issuing Bank may refrain from taking any action with respect to a Letter of Credit until it receives written instructions from Required Lenders.

2.3.3 Cash Collateral

. If any LC Obligations, whether or not then due or payable, shall for any reason be outstanding at any time (a) that an Event of Default has occurred and the Obligations have been accelerated or the Commitments have been terminated, (b) after the Revolver Commitment Termination Date, or (c) within seven (7) Business Days prior to the Revolver Termination Date, then Borrowers shall, at Issuing Bank's or Agent's request, Cash Collateralize the stated amount of all outstanding Letters of Credit and pay to Issuing Bank the amount of all other LC Obligations. Borrowers shall, if notified by 10:00 a.m. (Los Angeles time) by Issuing Bank or Agent from time to time, Cash Collateralize the Fronting Exposure of any Defaulting Lender on the same Business Day (and otherwise on the Business Day following receipt of such notification). If Borrowers fail to provide any Cash Collateral as required hereunder, Lenders may (and shall upon direction of Agent) advance, as Revolver Loans, the amount of the Cash Collateral required (whether or not the Commitments have terminated or the applicable conditions in **Section 6** are satisfied).

2.3.4 Resignation of Issuing Bank

. The Issuing Bank may, upon thirty (30) days' notice to Borrower Agent and the Lenders, resign as the Issuing Bank; provided that on or prior to the expiration of such 30-day period with respect to such resignation, the Issuing Bank shall have identified a successor Issuing Bank (which, as long as no Event of Default exists, shall be reasonably acceptable to Borrower Agent) willing to accept its appointment as successor Issuing Bank. In the event of any such resignation of the Issuing Bank, Borrower Agent shall be entitled to appoint from among the Lenders willing to accept such appointment a successor Issuing Bank hereunder; provided that no failure by Borrower Agent to appoint any such successor shall affect the resignation of the Issuing Bank, except as expressly provided above. If the Issuing Bank resigns as an Issuing Bank, it shall retain all the rights and obligations of an Issuing Bank hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as an Issuing Bank and all Obligations with respect thereto (including the right to require the Lenders to make Adjusted Base Rate Loans or fund risk participations in Letters of Credit).

SECTION 3. INTEREST, FEES AND CHARGES

3.1 Interest

.

3.1.1 Rates and Payment of Interest

.

(a) The Obligations (including, to the extent permitted by Applicable Law, interest not paid when due), shall bear interest at the One-Month LIBOR Rate, plus the Applicable Margin for LIBOR Loans; provided that if for any reason the One-Month LIBOR Rate is not available to Agent, the Obligations shall bear interest at the Adjusted Base Rate in effect from time to time, plus the Applicable Margin for Adjusted Base Rate Loans.

(b) During an Insolvency Proceeding with respect to any Borrower or the continuation of an Event of Default under **Section 11.1(a)**, or during any other Event of Default that continues for at least 30 days after its occurrence, if Agent or Required Lenders in their discretion so elect, Obligations shall bear interest at the Default Rate (whether before or after any judgment) from and after such election until such Event of Default is cured or waived. Each Borrower acknowledges that the cost and expense to Agent and Lenders due to an Event of Default are difficult to ascertain and that the Default Rate is fair and reasonable compensation for this.

(c) Interest shall accrue from the date a Loan is advanced or Obligation is incurred or payable, until paid in full by Borrowers. If a Loan is repaid on the same day made, one day's interest shall accrue. Interest (including interest at the Default Rate) accrued on the Loans shall be due and payable in arrears, (i) on the last Business Day of each calendar month; and (ii) on the Revolver Termination Date. Interest (including interest at the Default Rate) accrued on any other Obligations shall be due and payable as provided in the Loan Documents and, if no payment date is specified, shall be due and payable within 30 days following written demand therefor.

3.2 Fees

.

3.2.1 [Reserved]

.

3.2.2 LC Facility Fees

. Borrowers shall pay (a) to Agent, for the Pro Rata benefit of Lenders, a fee equal to the Applicable Margin in effect for LIBOR Loans times the average daily stated amount of outstanding Letters of Credit, which fee shall be payable quarterly in arrears, on the last Business Day of each calendar quarter; (b) to Issuing Bank, for its own account, a fronting fee equal to 0.25% of the stated amount of each outstanding Letter of Credit, which fee shall be payable on the date of issuance; and (c) to Issuing Bank, for its own account, all customary and documented out-of-pocket charges associated with the issuance, amending, negotiating, payment, processing, transfer and administration of Letters of Credit, which charges shall be paid as and when incurred. At such time as the Obligations accrue interest at the Default Rate under Section 3.1.1(b), and without duplication of such increase, the fee payable under **Section 3.2.2(a)** shall be increased by 2% per annum.

3.3 Computation of Interest, Fees, Yield Protection

. All interest, as well as fees and other charges calculated on a per annum basis, shall be computed for the actual days elapsed, based on a year of 360 days with respect to LIBOR Loans, and 365 days with respect to Adjusted Base Rate Loans. Each determination by Agent of any interest, fees or interest rate hereunder shall be final, conclusive and binding for all purposes, absent manifest error. All fees shall be fully earned when due and shall not be subject to rebate, refund or proration, except as specifically provided for herein or in any other Loan Document. All fees payable under **Section 3.2** are compensation for services and are not, and shall not be deemed to be, interest or any other charge for the use, forbearance or detention of money. A reasonably detailed certificate as to amounts payable by Borrowers under **Sections 3.4**, **3.6**, **3.7**, **3.9** or **5.10** (which shall include the method for calculating such amount), submitted to Borrower Agent by Agent or the affected Lender, as applicable, shall be final, conclusive and binding for all purposes, absent demonstrable error, and Borrowers shall pay such amounts to the appropriate party within fifteen (15) days following receipt of the certificate. Failure to, or delay on the part of, Agent or the affected Lender to demand compensation pursuant to any of **Sections 3.4**, **3.6**, **3.7**, **3.9** or **5.10** shall not constitute a waiver of Agent or such affected Lender's right to demand such compensation; provided that the Borrowers shall not be required to compensate Agent or the affected Lender pursuant to any such Section for any increased costs, reductions or other amounts incurred (other than pursuant to **Section 5.10**) more than 180 days prior to the date that Agent or such affected Lender, as applicable, notifies Borrower Agent of circumstances or events giving rise to such increased costs, reductions or other amounts and of Agent's or such affected Lender's intention to claim compensation therefor; provided, further, that, if the circumstance or event giving rise to such increased costs, reductions

or other amounts is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

3.4 Reimbursement Obligations

. Upon presentation of reasonable back-up documentation, Borrowers shall reimburse Agent for all Extraordinary Expenses. Without duplication of any Extraordinary Expenses, Borrowers shall also reimburse Agent for all reasonable and documented out-of-pocket legal, accounting, appraisal, consulting, and other reasonable and documented out-of-pocket fees, costs and expenses actually incurred by Agent in connection with (a) negotiation and preparation of any Loan Documents, including any amendment or other modification thereof; (b) administration of and actions relating to any Collateral, Loan Documents and transactions contemplated thereby, including any actions taken to perfect or maintain priority of Agent's Liens on any Collateral, to maintain any insurance required hereunder or to verify Collateral, in each case, in accordance with this Agreement or any other Loan Document; and (c) subject to the limits of **Section 10.1.1(b)**, each inspection, audit or appraisal with respect to any Obligor or Collateral, whether prepared by Agent's personnel or a third party. If, for any reason (including inaccurate reporting on financial statements or a Compliance Certificate), it is reasonably determined prior to Full Payment of all of the Obligations that (a) a higher Applicable Margin should have applied to a period than was actually applied, then, following Agent's consultation with Borrower, the proper margin shall be applied retroactively and Borrowers shall, within three (3) Business Days of request, pay to Agent, for the Pro Rata benefit of Lenders, an amount equal to the difference between the amount of interest and fees that would have accrued using the proper margin and the amount actually paid and no Default or Event of Default shall be deemed to have occurred as a result of such non-payment (and no such shortfall amount shall be deemed overdue or accrue interest at the Default Rate) unless such shortfall amount is not paid on or prior to the third Business Day of such three (3) Business Day period, or (b) a lower Applicable Margin should have applied to a period than was actually applied, then, following Borrower Agent's request and confirmation by the Agent, the proper margin shall be applied retroactively and Agent shall, within three (3) Business Days of request, credit Borrowers an amount equal to the difference between the amount of interest and fees that would have accrued using the proper margin and the amount actually paid. All amounts payable by Borrowers under this Section shall be due within thirty (30) days of receipt by the Borrower Agent of an invoice relating thereto setting forth such expense in reasonable detail (other than with respect to fees and expenses accrued through the Closing Date, which shall be paid on the Closing Date if such documentation reasonably supporting such fees and expenses is provided within three (3) days prior to the Closing Date). Except as expressly provided herein or in any other Loan Document, all reimbursement obligations set forth herein or in any other Loan Document, including Extraordinary Expenses, shall be limited, (i) in the case of legal fees and expenses, except as expressly provided in **Section 14.2**, to the reasonable and documented fees, disbursements and other charges of one primary counsel to Agent, plus, if reasonably necessary, one local counsel in each applicable jurisdiction which, in each case, shall exclude allocated costs of in-house counsel, and (ii) in the case of other consultants and advisers engaged in accordance with this Agreement, to the reasonable and documented fees and expenses of such Person, subject to any applicable limitations in **Section 10.1.1(b)**.

3.5 Illegality

. If any Lender reasonably determines that any Change in 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 Loans, or to determine or charge

interest rates based upon the One-Month LIBOR 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, then, on notice thereof by such Lender to Agent, any obligation of such Lender to make LIBOR Loans shall be suspended until such Lender notifies Agent that the circumstances giving rise to such determination no longer exist. Upon delivery of such notice, Borrowers shall prepay or, at Borrower Agent's election, convert all LIBOR Loans of such Lender to Adjusted Base Rate Loans immediately, if such Lender may not lawfully continue to maintain such LIBOR Loans. Upon any such prepayment or conversion, Borrowers shall also pay accrued interest on the amount so prepaid or converted.

3.6 Inability to Determine Rates

. If Required Lenders notify Agent, in connection with a request for a Borrowing of a LIBOR Loan, that they have, or if Agent has, reasonably determined that (a) adequate and reasonable means do not exist for determining the One-Month LIBOR Rate or (b) the One-Month LIBOR Rate does not adequately and fairly reflect the cost to the Lenders of funding such Loan, then Agent will promptly so notify Borrower Agent and each Lender. Thereafter, the obligation of Lenders to make or maintain affected LIBOR Loans shall be suspended until Agent (upon instruction by Required Lenders) withdraws such notice. Upon receipt of such notice, Borrower Agent may revoke any pending request for a Borrowing of a LIBOR Loan or, failing that, will be deemed to have submitted a request for an Adjusted Base Rate Loan.

3.7 Increased Costs; Capital Adequacy

.

3.7.1 Change in Law

. If any Change in Law after the date of this Agreement shall:

(a) impose, modify or deem applicable any reserve, liquidity, 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 calculating the One-Month LIBOR Rate) or Issuing Bank;

(b) subject any Lender or Issuing Bank to any Tax with respect to any Loan, Loan Document, Letter of Credit or participation in LC Obligations, or change the basis of taxation of payments to such Lender or Issuing Bank in respect thereof (in each case, except for Indemnified Taxes or Other Taxes which are governed by **Section 5.10** and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender or Issuing Bank, and, for the avoidance of doubt, without duplication of Section 5.10); or

(c) impose on any Lender, Issuing Bank or interbank market any other condition, cost or expense materially affecting any Loan, Loan Document, Letter of Credit, participation in LC Obligations, or Commitment;

and the result thereof shall be to increase the cost to such Lender of making or maintaining any Loan or Commitment, or to increase the cost to such Lender or Issuing Bank of participating in, issuing or maintaining any Letter of Credit, or to reduce the amount of any sum received or receivable by such Lender or Issuing Bank hereunder (whether of principal, interest or any other amount) by an amount reasonably deemed by such Lender or Issuing Bank to be material, then,

within fifteen (15) days after written demand of such Lender or Issuing Bank (which shall set forth in reasonable detail the amount(s) due and the basis therefor), Borrowers will pay to such Lender or Issuing Bank, as applicable, such additional amount or amounts as will compensate such Lender or Issuing Bank, as applicable, for such additional costs incurred or reduction suffered; provided, however, that such amounts shall only be payable by Borrowers under this **Section 3.7** if it is such Lender's or such Issuing Bank's general policy or practice to demand compensation in similar circumstances under comparable provisions of other similar financing agreements.

3.7.2 Capital Adequacy

. If any Lender or Issuing Bank determines that any Change in Law affecting such Lender or Issuing Bank or any Lending Office of such Lender or such Lender's or Issuing Bank's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's, Issuing Bank's or holding company's capital as a consequence of this Agreement, or such Lender's or Issuing Bank's Commitments, Loans, Letters of Credit or participations in LC Obligations, to a level below that which such Lender, Issuing Bank or holding company could have achieved but for such Change in Law (taking into consideration such Lender's, Issuing Bank's and holding company's policies with respect to capital adequacy or liquidity), then from time to time upon receipt in reasonable detail (which detail shall not include any confidential or price sensitive information or any other information to the extent prohibited by law) of the amounts due and the basis therefor, Borrowers will pay to such Lender or Issuing Bank, as the case may be, such additional amount or amounts as will compensate it or its holding company for any such reduction suffered.

3.8 Mitigation

. If any Lender gives a notice under **Section 3.5** or requests compensation under **Section 3.7**, or if Borrowers are required to pay any additional amounts with respect to a Lender under **Section 5.10**, then such Lender shall use reasonable efforts to designate a different Lending Office or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (a) would eliminate the need for such notice or reduce amounts payable or to be withheld in the future, as applicable; and (b) in each case, would not subject such Lender to any material unreimbursed cost or expense and would not otherwise be materially disadvantageous to such Lender or unlawful. Borrowers shall pay all reasonable and documented out-of-pocket costs and expenses incurred by any Lender in connection with any such designation or assignment.

3.9 Funding Losses

. If for any reason (other than default by a Lender) (a) any Borrowing of a LIBOR Loan does not occur on the date specified therefor in a Notice of Borrowing (whether or not withdrawn), or (b) Borrowers fail to repay a LIBOR Loan when required hereunder, then Borrowers shall pay to Agent its customary administrative charge and to each Lender all resulting losses and expenses (excluding, in each case under this **Section 3.9**, loss of anticipated profits or the Applicable Margin), but including any loss or expense arising from liquidation or redeployment of funds or from fees payable to terminate deposits of matching funds. Lenders shall not be required to purchase Dollar deposits in any interbank or offshore Dollar market to fund any LIBOR Loan, but this Section shall apply as if each Lender had purchased such deposits.

3.10 Maximum Interest

. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed

the maximum rate of non-usurious interest permitted by Applicable Law ("maximum rate"). If Agent or any Lender shall receive interest in an amount that exceeds the maximum rate, the excess interest shall be applied to the principal of the Obligations or, if it exceeds such unpaid principal, refunded to Borrowers. In determining whether the interest contracted for, charged or received by Agent or a Lender exceeds the maximum rate, such Person may, to the extent permitted by Applicable Law, (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.

SECTION 4. LOAN ADMINISTRATION

4.1 Manner of Borrowing and Funding Revolver Loans

.

4.1.1 Notice of Borrowing – Revolver Loans

.

(a) Whenever Borrowers desire funding of a Borrowing of Revolver Loans, Borrower Agent shall give Agent a Notice of Borrowing. Such notice must be received by Agent no later than (unless otherwise agreed by Agent in its sole discretion) 11:00 a.m. (Los Angeles time) (i) at least one Business Day prior to the requested funding date, in the case of Adjusted Base Rate Loans (or on the requested funding date in the case of Adjusted Base Rate Loans to be made on the Closing Date), and (ii) at least three Business Days prior to the requested funding date, in the case of LIBOR Loans (or on at least one Business Day prior to the requested funding date in the case of LIBOR Loans to be made on the Closing Date). Notices received after 11:00 a.m. (Los Angeles time) shall be deemed received on the next Business Day. Each Notice of Borrowing shall be irrevocable (except notices in respect of Loans to be made on the Closing Date, or the closing date of any Permitted Acquisition or other permitted Investment, may be conditioned on the occurrence thereof) and shall specify (A) the amount of the Borrowing, and (B) the requested funding date (which must be a Business Day).

(b) Unless payment is otherwise timely made by Borrowers, the becoming due of any Obligations (whether principal, interest, fees or other charges, including Extraordinary Expenses, LC Obligations, Cash Collateral and Secured Bank Product Obligations but excluding Obligations other than principal, interest, scheduled fees and LC Obligations, which are being disputed by written notice to Agent and in good faith by Borrower Agent and are not more than thirty (30) days past due) shall be deemed to be a request for Adjusted Base Rate Loans on the due date, in the amount of such Obligations then due. The proceeds of such Revolver Loans shall be disbursed as direct payment of the relevant Obligation. In addition, Agent may, at its option, charge such Obligations against any operating, investment or other account of a Borrower maintained with Agent or any of its Affiliates.

(c) If Borrowers maintain any disbursement account with Agent or any Affiliate of Agent, then presentation for payment of any Payment Item when there are insufficient funds to cover it shall be deemed to be a request for an Adjusted Base Rate Loan on the date of such presentation, in the amount of the Payment Item. The proceeds of such Revolver Loan may be disbursed directly to the disbursement account.

4.1.2 [Reserved]

.

4.1.3 Fundings by Lenders

. Each Lender shall timely honor its Revolver Commitment by funding its Pro Rata share of each Borrowing of Revolver Loans that are properly requested hereunder. Except for Borrowings to be made as Swingline Loans, Agent shall endeavor to notify each Lender of each Notice of Borrowing (or deemed request for a Borrowing) by 12:00 noon (Los Angeles time) on the date prior to the proposed funding date for Adjusted Base Rate Loans or by 3:00 p.m. (Los Angeles time) at least three Business Days before any proposed funding of LIBOR Loans. Each Lender shall fund to Agent such Lender's Pro Rata share of the Borrowing to the account specified by Agent in immediately available funds not later than 2:00 p.m. (Los Angeles time) on the requested funding date, unless Agent's notice is received after the times provided above, in which case such Lender shall fund its Pro Rata share by 11:00 a.m. (Los Angeles time) on the next Business Day. Subject to its receipt of such amounts from Lenders, Agent shall disburse the proceeds of the Revolver Loans as directed by Borrower Agent. Unless Agent shall have received (in sufficient time to act) written notice from a Lender that it does not intend to fund its Pro Rata share of a Borrowing, Agent may assume that such Lender has deposited or promptly will deposit its share with Agent, and Agent may disburse a corresponding amount to Borrowers. If a Lender's share of any Borrowing or of any settlement pursuant to **Section 4.1.4(b)** is not received by Agent, then Borrowers agree to repay to Agent **on written demand** the amount of such share, together with interest thereon from the date disbursed until repaid, at the rate applicable to the Borrowing.

4.1.4 Swingline Loans; Settlement

.

(a) Agent shall advance Swingline Loans to Borrowers in an aggregate outstanding amount of up to the Swingline Loan Cap upon Borrower Agent's request therefor in accordance with this **Section 4.1.4(a)**. Each Swingline Loan shall constitute a Revolver Loan for all purposes, except that payments thereon shall be made to Agent for its own account and shall accrue at the interest rate for Adjusted Base Rate for Revolver Loans from the date made until payment by Borrowers. The obligation of Borrowers to repay Swingline Loans shall be evidenced by the records of Agent and need not be evidenced by any promissory note. Whenever Borrowers desire funding of a Borrowing of Swingline Loans, Borrower Agent shall give Agent a Notice of Borrowing. Such notice must be received by Agent no later than (unless otherwise agreed by Agent in its sole discretion) 1:00 p.m. (Los Angeles time) on the requested funding date. Notices received after 1:00 p.m. (Los Angeles time) shall be deemed received on the next Business Day. Each Notice of Borrowing shall be irrevocable and shall specify (A) the amount of the Borrowing and (B) the requested funding date (which must be a Business Day).

(b) Settlement of Swingline Loans and other Revolver Loans among Lenders and Agent shall take place on a date determined from time to time by Agent (but at least weekly), on a Pro Rata basis in accordance with the Settlement Report delivered by Agent to Lenders. Between settlement dates, Agent may in its reasonable discretion apply payments on Revolver Loans to Swingline Loans, regardless of any designation by Borrowers or any provision herein to the contrary. Each Lender's obligation to make settlements with Agent is absolute and unconditional, without offset, counterclaim or other defense, and whether or not the Commitments have terminated or the applicable conditions in **Section 6** are satisfied. If, due to an Insolvency Proceeding with respect to a Borrower or otherwise, any Swingline Loan may not be settled among

Lenders hereunder, then each Lender shall be deemed to have purchased from Agent a Pro Rata participation in such Revolver Loan and shall transfer the amount of such participation to Agent, in immediately available funds, within one Business Day after Agent's request therefor.

4.1.5 Notices

. Borrower Agent on behalf of itself or any or all of the Borrowers may request Loans and transfer funds based on telephonic or e-mailed instructions to Agent. Borrower Agent shall confirm each such request by prompt delivery to Agent of a Notice of Borrowing, but if it differs materially from the action taken by Agent or Lenders, the records of Agent and Lenders shall govern. Neither Agent nor any Lender shall have any liability for any loss suffered by a Borrower as a result of Agent or any Lender acting upon its understanding of telephonic or e-mailed instructions from a person believed in good faith by Agent or any Lender to be a person authorized to give such instructions on a Borrower's behalf.

4.2 Defaulting Lender

.

4.2.1 Reallocation of Pro Rata Share; Amendments

. For purposes of determining Lenders' obligations to fund or participate in Loans or Letters of Credit, Agent may exclude the Commitments and Loans of any Defaulting Lender(s) from the calculation of Pro Rata shares. A Defaulting Lender shall have no right to vote on any amendment, waiver or other modification of a Loan Document, except as provided in **Section 14.1.1(c)**.

4.2.2 Payments; Fees

. Agent may, in its discretion, receive and retain any amounts payable to a Defaulting Lender under the Loan Documents, and a Defaulting Lender shall be deemed to have assigned to Agent such amounts until all Obligations owing to Agent, non-Defaulting Lenders and other Secured Parties have been paid in full. Agent may apply such amounts to the Defaulting Lender's defaulted obligations, use the funds to Cash Collateralize such Lender's Fronting Exposure, or readvance the amounts to Borrowers hereunder. A Lender shall not be entitled to receive any fees accruing hereunder during the period in which it is a Defaulting Lender. If any LC Obligations owing to a Defaulting Lender are reallocated to other Lenders, fees attributable to such LC Obligations under **Section 3.2.2** shall be paid to such Lenders. Agent shall be paid all fees attributable to LC Obligations that are not reallocated.

4.2.3 Cure

. Borrower Agent, Agent and Issuing Bank may agree in writing that a Lender is no longer a Defaulting Lender. At such time, Pro Rata shares shall be reallocated without exclusion of such Lender's Commitments and Loans, and the Revolver Usage and other exposures under the Revolver Commitments shall be reallocated among the applicable Lenders and settled by Agent (with appropriate payments by the reinstated Lender) in accordance with the readjusted Pro Rata shares. Unless expressly agreed by Borrower Agent, Agent and Issuing Bank, no reinstatement of a Defaulting Lender shall constitute a waiver or release of claims against such Lender. The failure of any Lender to fund a Loan, to make a payment in respect of LC Obligations or otherwise to perform its obligations hereunder shall not relieve any other Lender of its obligations, and no Lender shall be responsible for default by another Lender.

4.3 [Reserved]

.

4.4 Borrower Agent

. Each Borrower hereby designates Borrower Agent as its representative and agent for all purposes under the Loan Documents, including requests for Loans

and Letters of Credit, designation of interest rates, delivery or receipt of communications, preparation and delivery of any Borrower Materials and financial reports, receipt and payment of Obligations, requests for waivers, amendments or other accommodations, actions under the Loan Documents (including in respect of compliance with covenants), and all other dealings with Agent, Issuing Bank or any Lender. Borrower Agent hereby accepts such appointment. Agent and Lenders shall be entitled to rely upon, and shall be fully protected in relying upon, any notice or communication (including any notice of borrowing) delivered by Borrower Agent on behalf of any Borrower. Agent and Lenders may give any notice to, or communication with, a Borrower hereunder to Borrower Agent on behalf of such Borrower. Each of Agent, Issuing Bank and Lenders shall have the right, in its discretion, to deal exclusively with Borrower Agent for any or all purposes under the Loan Documents. Each Borrower agrees that any notice, election, communication, representation, agreement or undertaking made on its behalf by Borrower Agent shall be binding upon and enforceable against it.

4.5 One Obligation

. The Loans, LC Obligations and other Obligations constitute one general obligation of Borrowers and are secured by Agent's Lien on all Collateral; provided, however, Agent and each Lender shall be deemed to be a creditor of, and the holder of a separate claim against, each Borrower to the extent of any Obligations jointly or severally owed by such Borrower.

4.6 Effect of Termination

. On the effective date of the termination of all Commitments and maturity of all Loans, the Obligations shall be immediately due and payable, and any Lender may terminate its and its Affiliates' Bank Products (including, only with the consent of Agent, any Cash Management Services). Until Full Payment of the Obligations, all undertakings of Borrowers contained in the Loan Documents shall continue, and Agent shall retain its Liens in the Collateral and all of its rights and remedies under the Loan Documents. Agent shall not be required to terminate its Liens unless it receives Cash Collateral or a written agreement, in each case reasonably satisfactory to it, protecting Agent and Lenders from the dishonor or return of any Payment Items previously applied to the Obligations. **Sections 2.4**, **3.4**, **3.6**, **3.7**, **3.9**, **5.5**, **5.9**, **5.10**, **5.11**, **12**, **14.2**, this Section, and each indemnity or waiver given by an Obligor or Lender in any Loan Document, shall survive Full Payment of the Obligations (except as expressly provided for in any written release relating thereto). Upon Full Payment of the Obligations (other than contingent indemnity Obligations which have not been asserted), Agent will promptly, at Borrowers' sole expense, execute and deliver any termination statements, lien releases, discharges of security interests, and other similar discharge or release documents (and, if applicable, in recordable form) as are reasonably necessary or appropriate to release, as of record, Agent's Liens and all notices of security interests and liens previously filed by Agent.

SECTION 5. PAYMENTS

5.1 General Payment Provisions

. All payments of Obligations shall be made in Dollars, and subject to **Section 5.10**, without offset, counterclaim or defense of any kind, free of (and without deduction for) any Taxes, except as otherwise provided in this Agreement, and in immediately available funds, not later than 12:00 noon (Los Angeles time) on the due date. Any payment after such time shall be deemed made on the next Business Day. Borrower Agent on behalf of Borrowers, may, at the time of payment, specify to Agent the Obligations to which such payment is to be applied, but Agent shall in all events retain the right to apply such payment in

such manner as Agent, subject to the provisions hereof, may determine to be appropriate. If any payment under the Loan Documents shall be stated to be due on a day other than a Business Day, the due date shall be extended to the next Business Day and such extension of time shall be included in any computation of interest and fees. Any prepayment of Loans shall be applied first to Adjusted Base Rate Loans and then to LIBOR Loans (unless otherwise requested by the Borrowers).

5.2 Repayment of Revolver Loans

. Revolver Loans shall be due and payable in full on the Revolver Termination Date, unless payment is sooner required hereunder. Revolver Loans may be prepaid from time to time, without penalty or premium, except as otherwise provided in **Section 3.9**, if applicable.

5.3 [Reserved]

.

5.4 [Reserved]

.

5.5 Payment of Other Obligations

. Obligations other than Loans, including LC Obligations and Extraordinary Expenses, shall be paid by Borrowers as provided in the Loan Documents or, if no payment date is specified, within thirty (30) days of receipt of written request (with reasonably detailed supporting documentation) by Agent.

5.6 Marshaling; Payments Set Aside

. None of Agent or Lenders shall be under any obligation to marshal any assets in favor of any Obligor or against any Obligations. If any payment by or on behalf of Borrowers is made to Agent, Issuing Bank or any Lender, or Agent, Issuing Bank or any Lender exercises a 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 Agent, Issuing Bank or such Lender in its discretion) to be repaid to a trustee, receiver or any other Person, then to the extent of such recovery, the Obligation originally intended to be satisfied, and all Liens, rights and remedies relating thereto, shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred.

5.7 Application and Allocation of Payments

.

5.7.1 Application

. Payments made by Borrowers hereunder shall be applied (a) first, as specifically required hereby; (b) second, to Obligations then due and owing; (c) third, to other Obligations specified by Borrowers; and (d) fourth, as determined by Agent in its reasonable discretion.

5.7.2 Post-Default Allocation

. Notwithstanding anything in any Loan Document to the contrary, during the continuance of an Event of Default, monies to be applied to the Obligations, whether arising from payments by Obligors, realization on the Collateral, setoff or otherwise, shall be allocated as follows:

(i) FIRST, to all costs and expenses, including Extraordinary Expenses, owing to Agent (other than costs and expenses in respect of Secured Bank Product Obligations);

(ii) SECOND, to all amounts owing to Agent on Swingline Loans;

(iii) THIRD, to all amounts owing to Issuing Bank;

(iv) FOURTH, to all Obligations constituting fees (other than Secured Bank Product Obligations);

(v) FIFTH, to all Obligations (other than Secured Bank Product Obligations) constituting interest, including post-petition interest after the commencement of an Insolvency Proceeding whether or not such interest is an allowable claim in such Insolvency Proceeding;

(vi) SIXTH, to Cash Collateralization of LC Obligations;

(vii) SEVENTH, to all Loans and to Secured Bank Product Obligations arising under Hedging Agreements (including Cash Collateralization thereof); and

(viii) EIGHTH, to all other Secured Bank Product Obligations;

(ix) LAST, to all remaining Obligations.

Amounts shall be applied to payment of each category of Obligations only after Full Payment of all preceding categories. If amounts are insufficient to satisfy a category, Obligations in the category shall be paid on a pro rata basis. Amounts distributed with respect to any Secured Bank Product Obligation shall be calculated using the methodology reported to Agent for such Obligation (but no greater than the maximum amount reported to Agent). Agent shall have no obligation to calculate the amount of any Secured Bank Product Obligation and may request a reasonably detailed calculation thereof from the applicable Secured Bank Product Provider. If the provider fails to deliver the calculation within five Business Days following request, Agent may assume the amount is zero. The allocations set forth in this Section are solely to determine the rights and priorities among Secured Parties, and may be changed (other than any change meant to make this **Section 5.7.2** apply other than during the continuance of an Event of Default) by agreement among them without the consent of any Obligor. This Section is not for the benefit of or enforceable by any Obligor, and each Borrower irrevocably waives the right to direct the application of any payments or Collateral proceeds subject to this Section.

5.7.3 Defaulting Lender Waterfall

. Notwithstanding anything in any Loan Document to the contrary, any payment of principal, interest, fees or other amounts received by Agent for the account of a Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to this **Section 5.7**, **Article VIII** or otherwise, and including any amounts made available to Agent by such Defaulting Lender), shall be applied at such time or times as may be determined by Agent as follows:

(i) FIRST, to the payment of any amounts owing by such Defaulting Lender to Agent hereunder;

(ii) SECOND, to the payment on a pro rata basis of any amounts owing by that Defaulting Lender to the Issuing Bank hereunder;

(iii) THIRD, if so determined by Agent or requested by the Issuing Bank, to be held as Cash Collateral for future Fronting Exposure with respect to such Defaulting Lender of any participation in any Letter of Credit;

(iv) FOURTH, as Borrowers 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 Agent;

(v) FIFTH, if so determined by Agent and Borrowers, to be held in a non-interest bearing deposit account and released pro rata in order to satisfy obligations of such Defaulting Lender to fund future Commitments and participations in Letter of Credit or Swingline Loans under this Agreement;

(vi) SIXTH, to the payment of any amounts owing to Lenders or the Issuing Bank as a result of any judgment of a court of competent jurisdiction obtained by any Lender or the Issuing Bank against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement;

(vii) SEVENTH, so long as no Event of Default exists, to the payment of any amounts owing to Borrowers as a result of any judgment of a court of competent jurisdiction obtained by Borrowers against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and

(viii) LAST, to such Defaulting Lender or as otherwise conferred thereunder or directed by a court of competent jurisdiction;

provided, however, that if (x) such payment is a payment of the principal amount of any Loans or Letters of Credit 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 LC Conditions were satisfied or waived, such payment shall be applied solely to pay the Loans of, and LC Obligations owed to, all Lenders other than Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or LC Obligations owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in LC Obligations are held by Lenders pro rata in accordance with the Commitments hereunder without giving effect to **Section 5.7.2**. 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 5.7.3** shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

5.7.4 Erroneous Application

. Agent shall not be liable for any application of amounts made by it in good faith and, if any such application is subsequently determined to have been made in error, the sole recourse of any Lender or other Person to which such amount should have been made shall be to recover the amount from the Person that actually received it (and, if such amount was received by any Lender, such Lender hereby agrees to return it).

5.8 [Reserved]

.

5.9 Account Stated

. Agent shall maintain in accordance with its usual and customary practices account(s) evidencing the Debt of Borrowers hereunder. Any failure of Agent to record anything in a loan account, or any error in doing so, shall not limit or otherwise affect the obligation of Borrowers to pay any amount owing hereunder. Entries made in a loan account shall constitute presumptive evidence of the information contained therein; provided, however, that entries in the Register shall control over entries in any loan account. If any information contained in a loan account is provided to or inspected by any Person, the information shall be conclusive and binding on such Person for all purposes absent manifest error, except to the extent such Person notifies Agent in writing within 30 days after receipt or inspection that specific information is subject to dispute. Nothing in this Section 5.9 shall be interpreted to override **Section 13.3.4**.

5.10 Taxes

.

5.10.1 Payments Free of Taxes

. All payments by Obligors with respect to any Loan or Letter of Credit under a Loan Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes, except as required by Applicable Law. If Applicable Law requires any Obligor or Agent to withhold or deduct any Tax (including backup withholding or withholding Tax), the withholding or deduction shall be based on information provided pursuant to **Section 5.11** (to the extent permitted by Applicable Law) and the Obligor or Agent (as applicable) shall be entitled to make such deduction or withholding and shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with Applicable Law. If the withholding or deduction is made on account of Indemnified Taxes or Other Taxes, the sum payable by Borrowers shall be increased so that Agent, Lender or Issuing Bank, as applicable, receives an amount equal to the sum it would have received if no such withholding or deduction (including deductions applicable to additional sums payable under this Section) had been made. Without limiting the foregoing and without duplication of other amounts payable by the Borrowers under this Section, Borrowers shall timely pay all Other Taxes to the relevant Governmental Authorities in accordance with Applicable Law.

5.10.2 Tax Indemnification by Borrowers

. Borrowers shall indemnify, hold harmless and reimburse (within 30 days after demand therefor) Agent, Lenders and Issuing Bank for any Indemnified Taxes or Other Taxes (including those attributable to amounts payable under this Section) paid by Agent, any Lender or Issuing Bank, with respect to any Loans or Letters of Credit under the Loan Documents, whether or not such Taxes were properly asserted by the relevant Governmental Authority, and including all penalties, interest and reasonable expenses relating thereto, other than any penalties determined by a final and non-appealable judgment of a court of competent jurisdiction (or documented in any settlement agreement) to have resulted from the gross negligence, bad faith or willful misconduct of Agent, such Lender, or such Issuing Bank. Notwithstanding the above, if the Borrower Agent reasonably believes that such Taxes were not correctly or legally asserted, Agent, such Lender or such Issuing Bank, as applicable, will use reasonable efforts to cooperate with the Borrower Agent to obtain a refund of such Taxes (which shall be repaid to the Borrower Agent) so long as such efforts would not, in the sole determination of the Agent, such Lender, or such Issuing Bank, result in any additional out-of-pocket costs or expenses not reimbursed by Obligors or be otherwise materially disadvantageous to the Agent, such Lender, or such Issuing Bank, as applicable. A certificate as to the calculations of any such

payment or liability shall be delivered to Borrower Agent by Agent, or by a Lender or Issuing Bank (with a copy to Agent), shall be conclusive, absent manifest error. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by a Borrower to a relevant Governmental Authority, Borrower Agent shall deliver to Agent a receipt from the Governmental Authority evidencing such payment or other evidence of payment reasonably satisfactory to Agent.

5.10.3 Refunds

. If any Lender or Issuing Bank determines, in its sole discretion, that it has received a refund in respect of any Indemnified Taxes or Other Taxes as to which indemnification or additional amounts have been paid to it by Borrowers pursuant to this **Section 5.10**, it shall promptly remit such refund (but only to the extent of indemnity payments made, or additional amounts paid, by Borrowers under this **Section 5.10** with respect to the Indemnified Taxes or Other Taxes giving rise to such refund) to such Borrower, net of all out-of-pocket expense of such Lender or Issuing Bank, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that such Borrower, upon the request of Lender or Issuing Bank, as the case may be, agrees promptly to return such refund, plus any penalties, interest or other charges imposed on such party by the relevant Governmental Authority, to such party in the event such party is required to repay such refund to the relevant Governmental Authority. This subsection shall not be construed to require any Lender or Issuing Bank, as the case may be, to make available its tax returns (or any other information relating to its taxes that it deems confidential) to Borrowers or any other Person.

5.11 Lender Tax Information

.

5.11.1 Status of Lenders

. Each Recipient shall deliver documentation and information to Agent and Borrower Agent, at the times and in form required by Applicable Law or reasonably requested by Agent or Borrower Agent, sufficient to permit Agent or Borrowers to determine (a) whether or not payments made with respect to Obligations are subject to Taxes or information reporting requirements, (b) if applicable, the required rate of withholding or deduction, and (c) such Recipient's entitlement to any available exemption from, or reduction of, applicable Taxes for such payments or otherwise to establish such Recipient's status for withholding tax purposes in the applicable jurisdiction.

5.11.2 Documentation

. Without limiting the generality of the foregoing, if a Borrower is resident for tax purposes in the United States,

(a) any Recipient that is a "United States person" within the meaning of Section 7701(a)(30) of the Code shall deliver to Agent and Borrower Agent two duly signed and properly completed copies of IRS Form W-9 or such other documentation or information prescribed by Applicable Law on or prior to the date on which such Lender becomes a Lender hereunder, upon the expiration, obsolescence or invalidity of any previously delivered form and after the occurrence of any change in circumstance relating to the Lender requiring a change in the most recent form previously delivered by it to Borrower Agent (and from time to time thereafter upon request by Agent or Borrower Agent), in each case certifying that such Lender is entitled to receive payments hereunder without deduction or withholding of any United States federal backup withholding tax;

(b) any Foreign Lender shall deliver to Agent and Borrower Agent (i) on or prior to the date on which such Lender becomes a Lender hereunder, (ii) upon the expiration, obsolescence or invalidity of any previously delivered form, and (iii) after the occurrence of any change in circumstances relating to the Lender requiring a change in the most recent form previously delivered by it to Borrower Agent (and from time to time thereafter upon request by Agent or Borrower, but only if such Foreign Lender is legally entitled to do so), (a) two duly signed and properly completed copies of IRS Form W-8BEN or W-8BEN-E claiming eligibility for benefits of an income tax treaty to which the United States is a party; (b) two duly signed and properly completed copies of IRS Form W-8ECI; (c) two duly signed and properly completed copies of IRS Form W-8IMY and all required supporting documentation; (d) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, two duly signed and properly completed copies of IRS Form W-8BEN or W-8BEN-E and a certificate showing such Foreign Lender is not (i) a "bank" within the meaning of section 881(c)(3)(A) of the Code, (ii) a "10 percent shareholder" of any Obligor within the meaning of section 881(c)(3)(B) of the Code, or (iii) a "controlled foreign corporation" described in section 881(c)(3)(C) of the Code; or (e) any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in withholding tax, together with such supplementary documentation necessary to allow Agent and Borrowers to determine the withholding or deduction required to be made, including, if applicable, any documentation necessary to prevent withholding under Sections 1471 or 1472 of the Code (as of the date hereof, and any regulations promulgated thereunder and any interpretation or other guidance issued in connection therewith); and

(c) if payment of an Obligation to a Lender 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), such Lender shall deliver to Borrower Agent and Agent at the time(s) prescribed by Applicable Law and otherwise as reasonably requested by Borrower Agent or Agent such documentation prescribed by Applicable Law (including Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrower Agent or Agent as may be necessary for them to comply with their obligations under FATCA and to determine that such Lender has complied with its obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (c), "FATCA" shall include any amendments made to FATCA after the date hereof.

(d) On or before the date Agent becomes a party to this Agreement, Agent shall provide to the Borrower Agent two duly-signed, properly completed copies of the documentation prescribed in clause (i) or (ii) below, as applicable (together with all required attachments thereto): (i) IRS Form W-9 or any successor thereto, or (ii) (A) IRS Form W-8ECI or any successor thereto, and (B) with respect to payments received on account of any Lender, a U.S. branch withholding certificate on IRS Form W-8IMY or any successor thereto evidencing its agreement with the Borrower Agent to be treated as a U.S. Person for U.S. federal withholding purposes. At any time thereafter, Agent shall provide updated documentation previously provided (or a successor form thereto) when any documentation previously delivered has expired or become obsolete or invalid or otherwise upon the reasonable request of the Borrower.

Each Lender and Agent agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification,

provide such successor form, or promptly notify the Borrower Agent and the Agent in writing of its legal inability to do so.

5.11.3 Lender Obligations

. Each Lender and Issuing Bank shall promptly notify Borrowers and Agent of any change in circumstances that would change any claimed Tax exemption or reduction. Each Lender and Issuing Bank shall indemnify, hold harmless and reimburse (within 10 days after demand therefor) Borrowers and Agent for any Taxes, losses, claims, liabilities, penalties, interest and expenses (including reasonable attorneys' fees) incurred by or asserted against a Borrower or Agent by any Governmental Authority due to such Lender's or Issuing Bank's failure to deliver, or inaccuracy or deficiency in, any documentation required to be delivered by it pursuant to this Section. Each Lender and Issuing Bank authorizes Agent to set off any amounts due to Agent under this Section against any amounts payable to such Lender or Issuing Bank under any Loan Document.

5.12 Nature and Extent of Each Borrower's Liability

.

5.12.1 Joint and Several Liability

. Each Borrower agrees that it is jointly and severally liable for, and absolutely and unconditionally guarantees to Agent and Lenders the prompt payment and performance of, all Obligations and all agreements under the Loan Documents. Each Borrower agrees that its guaranty obligations hereunder constitute a continuing guaranty of payment and not of collection, that such obligations shall not be discharged until Full Payment of the Obligations, and that such obligations are absolute and unconditional, irrespective of, as relates to the other Obligors, (a) the genuineness, validity, regularity, enforceability, subordination or any future modification of, or change in, any Obligations of such other Borrower or Loan Document to which such other Borrower is bound as relates to such other Borrower, or any other document, instrument or agreement to which any other Obligor is or may become a party or be bound; (b) the absence of any action to enforce this Agreement (including this Section) or any other Loan Document, or any waiver, consent or indulgence of any kind granted to such other Borrower by Agent or any Lender with respect thereto; (c) the existence, value or condition of, or failure to perfect a Lien or to preserve rights against, any security or guaranty for the Obligations or any action, or the absence of any action, by Agent or any Lender in respect thereof (including the release of any security granted by such other Obligor or guaranty); (d) the insolvency of any other Obligor; (e) any election by Agent or any Lender in an Insolvency Proceeding for the application of Section 1111(b)(2) of the Bankruptcy Code; (f) any borrowing or grant of a Lien by any other Borrower, as debtor-in-possession under Section 364 of the Bankruptcy Code or otherwise; (g) the disallowance of any claims of Agent or any Lender against any Obligor for the repayment of any Obligations under Section 502 of the Bankruptcy Code or otherwise; or (h) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, except, in each case under this **Section 5.12.1**, Full Payment of all Obligations.

5.12.2 Waivers

.

(a) Each Borrower expressly waives all rights that it may have now or in the future under any statute, at common law, in equity or otherwise, to compel Agent or Lenders to marshal assets or to proceed against any other Obligor, other Person or security for the payment or performance of any Obligations before, or as a condition to, proceeding against such Borrower.

Each Borrower waives all defenses available to a surety, guarantor or accommodation co-obligor other than Full Payment of all Obligations and waives, to the maximum extent permitted by law, any right to revoke any guaranty of any Obligations as long as it is a Borrower. It is agreed among each Borrower, Agent and Lenders that, but for the provisions of this **Section 5.12**, Agent and Lenders would decline to make Loans and issue Letters of Credit. Each Borrower acknowledges that its guaranty pursuant to this Section is necessary to the conduct and promotion of its business, and can be expected to benefit such business.

(b) Following the occurrence of an Event of Default that is continuing, Agent and Lenders may, in their discretion, pursue such rights and remedies as they deem appropriate, including realization upon Collateral or any Real Estate by judicial foreclosure or nonjudicial sale or enforcement, without affecting any rights and remedies under this **Section 5.12**. If, in taking any action in connection with the exercise of any rights or remedies, Agent or any Lender shall forfeit any other rights or remedies, including the right to enter a deficiency judgment against any Borrower or other Person, whether because of any Applicable Laws pertaining to "election of remedies" or otherwise, each Borrower consents to such action and waives any claim based upon it to the extent permitted under Applicable Law, even if the action may result in loss of any rights of subrogation that any Borrower might otherwise have had. Any election of remedies that results in denial or impairment of the right of Agent or any Lender to seek a deficiency judgment against any Borrower shall not impair any other Borrower's obligation to pay the full amount of the Obligations. Each Borrower waives all rights and defenses arising out of an election of remedies, such as nonjudicial foreclosure with respect to any security for the Obligations, even though that election of remedies destroys such Borrower's rights of subrogation against any other Person. Agent may bid all or a portion of the Obligations at any foreclosure, trustee or other sale, including any private sale, and the amount of such bid need not be paid by Agent but shall be credited against the Obligations. The amount of the successful bid at any such sale, whether Agent or any other Person is the successful bidder, shall be conclusively deemed to be the fair market value of the Collateral, and the difference between such bid amount and the remaining balance of the Obligations shall be conclusively deemed to be the amount of the Obligations guaranteed under this **Section 5.12**, notwithstanding that any present or future law or court decision may have the effect of reducing the amount of any deficiency claim to which Agent or any Lender might otherwise be entitled but for such bidding at any such sale.

5.12.3 Extent of Liability; Contribution

.

(a) Notwithstanding anything herein to the contrary, each Borrower's liability under this **Section 5.12** shall be limited to the greater of (i) all amounts for which such Borrower is primarily liable, as described below, and (ii) such Borrower's Allocable Amount.

(b) If any Borrower makes a payment under this **Section 5.12** of any Obligations (other than amounts for which such Borrower is primarily liable) (a "Guarantor Payment") that, taking into account all other Guarantor Payments previously or concurrently made by any other Borrower, exceeds the amount that such Borrower would otherwise have paid if each Borrower had paid the aggregate Obligations satisfied by such Guarantor Payments in the same proportion that such Borrower's Allocable Amount bore to the total Allocable Amounts of all Borrowers, then such Borrower shall be entitled to receive contribution and indemnification payments from, and to be reimbursed by, each other Borrower for the amount of such excess, pro

rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment. The "Allocable Amount" for any Borrower shall be the maximum amount that could then be recovered from such Borrower under this **Section 5.12** without rendering such payment voidable under Section 548 of the Bankruptcy Code or under any applicable state fraudulent transfer or conveyance act, or similar statute or common law.

(c) Nothing contained in this **Section 5.12** shall limit the liability of any Borrower to pay Loans made directly or indirectly to that Borrower (including Loans advanced to any other Borrower and then re-loaned or otherwise transferred to, or for the benefit of, such Borrower), LC Obligations relating to Letters of Credit issued to support such Borrower's business, and all accrued interest, fees, expenses and other related Obligations with respect thereto, for which such Borrower shall be primarily liable for all purposes hereunder.

5.12.4 Joint Enterprise

. Each Borrower has requested that Agent and Lenders make this credit facility available to Borrowers on a combined basis, in order to finance Borrowers' business most efficiently and economically. Borrowers' business is a mutual and collective enterprise, and the successful operation of each Borrower is dependent upon the successful performance of the integrated group. Borrowers believe that consolidation of their credit facility will enhance the borrowing power of each Borrower and ease administration of the facility, all to their mutual advantage. Borrowers acknowledge that Agent's and Lenders' willingness to extend credit and to administer the Collateral on a combined basis hereunder is done solely as an accommodation to Borrowers and at Borrowers' request.

5.12.5 Subordination

. Each Borrower hereby subordinates any claims, including any rights at law or in equity to payment, subrogation, reimbursement, exoneration, contribution, indemnification or set off, that it may have at any time against any other Obligor, howsoever arising, to (and until) the Full Payment of all Obligations.

SECTION 6. CONDITIONS PRECEDENT

6.1 Conditions Precedent to Initial Loans

. The obligation of each Lender to provide the Commitments hereunder and to make the initial extensions of credit provided for hereunder is subject to the fulfillment, to the reasonable satisfaction of Agent and each Lender, or waiver by Required Lenders, of each of the following conditions precedent (the signing of this Agreement by a Lender being conclusively deemed to be its satisfaction or waiver of the conditions precedent):

(a) Each Loan Document shall have been duly executed and delivered to Agent by each of the Obligors party thereto.

(b) The Representations shall be true and correct in all material respects (without duplication of materiality qualifiers); provided, that to the extent any of the Representations are qualified by or subject to a "material adverse effect," "material adverse change" or similar term or qualification, the definition thereof shall be "Material Adverse Effect".

(c) Agent shall have received from the Borrowers and the Guarantors reasonably satisfactory customary legal opinions (including from Ropes & Gray LLP), perfection certificates, corporate documents and officers' and public officials' certifications; a customary notice of borrowing; organizational documents; customary evidence of authorization to enter into

the Loan Documents in respect of the Obligations; and good standing certificates in jurisdictions of formation/organization, in each case of the Obligors.

(d) Agent shall have received a solvency certificate from the chief financial officer or equivalent officer of Borrower Agent certifying that the Borrowers and their Subsidiaries, on a consolidated basis after giving effect to the Transactions, are Solvent, the form of which is attached as **Exhibit 6.1(d)**.

(e) With respect to the Obligations, all actions necessary to establish that Agent will have a perfected, first priority Lien (subject to Permitted Liens) on and security interest in all Collateral of Borrowers and the Guarantors under the Loan Documents shall have been taken.

(f) All fees earned, due and payable on the Closing Date pursuant to this Agreement and out-of-pocket expenses earned, due and payable on the Closing Date pursuant to this Agreement (to the extent invoiced at least two (2) Business Days prior to the Closing Date or such shorter period as Borrower Agent may agree) shall, upon the closing under the Loan Documents, have been paid (which amounts may be offset against the proceeds of the applicable Loans).

(g) Agent shall have received all documentation and other information requested in writing by Agent at least three (3) Business Days prior to the Closing Date required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the Patriot Act.

(h) Since December 27, 2016, no Material Adverse Effect shall have occurred.

(i) Agent shall have received the results of lien searches with respect to the Borrowers and their respective Subsidiaries in jurisdictions reasonably selected by it.

(j) Agent shall have received customary insurance certificates (including "earthquake" insurance), naming Agent, on behalf of the Lenders, as lenders loss payee or additional insured, as applicable, together with the appropriate additional insured endorsement;

(k) Prior to, or substantially concurrently with the initial funding hereunder, the refinancing of the Debt (if any) of the Obligors owing to California Bank and Trust shall have been consummated and all security interests and guarantees in connection therewith shall be unconditionally terminated and released.

6.2 Conditions Precedent to All Credit Extensions

. Agent, Issuing Bank and Lenders shall not be required to fund any Loans or arrange for issuance of any Letters of Credit, unless the following conditions are satisfied:

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

(b) The representations and warranties of each Obligor in the Loan Documents shall be true and correct in all material respects (provided that if a representation or warranty is by its terms already subject to a materiality qualifier, it shall not be further subject to the materiality qualifier in this Section) on the date of, and upon giving effect to, such funding, issuance or grant (except for representations and warranties that expressly relate to an earlier date);

(c) [Reserved]; and

(d) With respect to issuance of a Letter of Credit, the LC Conditions shall be satisfied.

Each request (or deemed request) by Borrowers for funding of a Loan (excluding, for avoidance of doubt, any conversion or continuation of an existing Loan) or issuance of a Letter of Credit shall constitute a representation by Borrowers that the applicable foregoing conditions are satisfied on the date of such request and on the date of such funding, issuance or grant.

6.3 Conditions Subsequent

. The obligation of the Lenders to continue to extend credit hereunder is subject to the fulfillment, on or before the date applicable thereto (as such date may be extended by Agent as set forth below), of the following conditions subsequent (the failure by Borrowers to so perform or cause to be performed such conditions subsequent as and when required by the term thereof (unless such date is extended, in writing, by Agent), shall constitute an Event of Default):

(a) Within thirty (30) days after the Closing Date (or such longer period as Agent may reasonably agree), Agent shall have received the appropriate lenders loss payee endorsements in respect of the Obligor's property insurance.

(b) Within ninety (90) days after the Closing Date (or such longer period as Agent may reasonably agree), all of Borrowers' principal cash management and other treasury services (including deposit accounts, lockboxes, funds transfer, and other treasury management services) shall be maintained at Bank of the West or one or more of the Lenders (except for Deposit Accounts that constitute Excluded Accounts).

All conditions precedent, covenants and representations and warranties contained in this Agreement and the other Loan Documents shall be deemed modified to the extent necessary to effect the foregoing provisions of this **Section 6.3** (and to permit the taking of the actions described above within the time periods required above, rather than as elsewhere provided in the Loan Documents); provided that (x) to the extent any representation and warranty would not be true or any provision of any covenant breached because the foregoing actions were not taken on the Closing Date, the respective representation and warranty shall be required to be true and correct in all material respects and the respective covenant complied with at the time the respective action is taken (or was required to be taken) in accordance with the foregoing provisions of this **Section 6.3** and (y) all representations and warranties and covenants relating to the Security Documents shall be required to be true or, in the case of any covenant, complied with, immediately after the actions required to be taken by this **Section 6.3** have been taken (or were required to be taken).

SECTION 7. COLLATERAL

7.1 Grant of Security Interest

.

7.1.1 To secure the prompt payment and performance of all Obligations, each Obligor party hereto hereby grants to Agent, for the benefit of itself and the Secured Parties, a continuing security interest in, and Lien upon, all of the following Property, whether now owned or hereafter acquired, and wherever located:

(a) all Accounts;

(b) all Chattel Paper, including electronic chattel paper;

(c) all Commercial Tort Claims shown on **Schedule 9.1.16** (as such Schedule is updated from time to time in accordance with this Agreement);

(d) all Deposit Accounts;

(e) all Documents;

(f) all General Intangibles, including Intellectual Property;

(g) all Goods, including Inventory, Equipment and fixtures;

(h) all Instruments;

(i) all Investment Property;

(j) all Letter-of-Credit Rights;

(k) all Supporting Obligations;

(l) Real Estate;

(m) all monies, whether or not in the possession or under the control of Agent, a Lender, or a bailee or Affiliate of Agent or a Lender, including any Cash Collateral;

(n) all accessions to, substitutions for, and all replacements, products, and cash and non-cash proceeds of the foregoing, including proceeds of and unearned premiums with respect to insurance policies, and claims against any Person for loss, damage or destruction of any Collateral; and

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

Notwithstanding anything to the contrary, the Collateral shall exclude the following: (a)(i) any governmental licenses or state or local franchises, charters and authorizations to the extent a security interest therein is prohibited by Applicable Law (after giving effect to the applicable anti-

assignment provisions of the UCC or other Applicable Law); (ii) pledges and security interests prohibited by Applicable Law (with no requirement to obtain the consent of any Governmental Authority or third party, including, without limitation, no requirement to comply with the Federal Assignment of Claims Act or any similar statute) (after giving effect to the applicable anti-assignment provisions of the UCC or other Applicable Law); (iii) any lease, license in which an Obligor is the licensee, permit or agreement to the extent that a grant of a security interest therein would violate or invalidate such lease, license, permit or agreement or create a right of termination in favor of any other party thereto or otherwise require consent thereunder (after giving effect to the applicable anti-assignment provisions of the UCC or other Applicable Law); (iv) motor vehicles, airplanes and other assets subject to certificates of title; (v) any assets to the extent a security interest in such assets could result in material adverse tax consequences, as reasonably determined by Obligors in consultation with the Agent; (vi) letter of credit rights (to the extent a security interest therein cannot be perfected by UCC filings) and commercial tort claims below $750,000; (vii) margin stock and stock and assets of unrestricted subsidiaries, captive insurance subsidiaries, not-for-profit subsidiaries, special purpose entities and immaterial subsidiaries; (viii) any fee-owned Real Estate with a fair market value (to be determined in good faith by the Obligors) of less than $1,000,000 or that is located in a jurisdiction other than the U.S.; provided, however, all Real Estate owned in fee by any Obligor as of the date hereof shall be deemed Collateral and shall be subject to a mortgage in favor of the Agent; (ix) any leasehold interests in Real Estate; (x) any asset held directly or indirectly by any Foreign Subsidiary; (xi) any intent-to-use trademark application prior to the filing of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under applicable federal law; (xii) interests in joint ventures and non-wholly owned subsidiaries which cannot be pledged without the consent of third parties (that are not Obligors) (after giving effect to the applicable anti-assignment provisions of the UCC or other Applicable Law); (xiii) any property subject to a purchase money or capital lease financing arrangement or similar arrangement permitted hereunder to the extent such documents governing such arrangement do not permit other liens on such property; (xiv) any assets acquired in connection with a Permitted Acquisition or permitted investment subject to liens permitted hereunder and which are subject to contractual arrangements prohibiting a lien securing the Obligations (that were not entered into in contemplation of such acquisition); (xv) assets where the cost of obtaining a security interest therein exceeds the practical benefit to the Lenders afforded thereby, in each case, as reasonably determined by the Agent and Obligors; (xvi) Excluded Accounts; and (xvii) Equity Interests of any Subsidiary that is a CFC or CFC Holdings Company in excess of sixty-six percent (66%) of the outstanding Equity Interests of such Subsidiary, and (b) the Obligors and Guarantors shall not be required with respect to any assets located outside the U.S. or assets that require action under the laws of any jurisdiction other than the U.S. to create or perfect a security interest in such assets, including any intellectual property registered in any jurisdiction other than the U.S. (it being understood that there shall be no security agreements or pledge agreements governed under the laws of any jurisdiction other than the U.S.) (the foregoing described in clauses (a)(i) through (xvii) and (b) are, collectively, the "Excluded Assets").

7.2 Lien on Deposit Accounts; Cash Collateral

.

7.2.1 Deposit Accounts. To further secure the prompt payment and performance of all Obligations, each Obligor hereby grants to Agent a continuing security interest in and Lien

upon all amounts credited to any Deposit Account of such Obligor (other than Excluded Accounts), including any sums in any blocked or lockbox accounts or in any accounts into which such sums are swept (in each case, other than Excluded Accounts). Each Obligor hereby authorizes and directs each bank or other depository to deliver to Agent, upon request during an Event of Default, all balances in any such Deposit Account (other than Excluded Accounts) maintained by such Obligor, without inquiry into the authority or right of Agent to make such request.

7.2.2 Cash Collateral

. Cash Collateral may be invested in Cash Equivalents, at Agent's discretion (and with the consent of Borrower Agent, as long as no Event of Default exists), but Agent shall have no duty to do so, regardless of any agreement or course of dealing with any Obligor, and shall have no responsibility for any investment or loss. Each Obligor hereby grants to Agent, as security for the Obligations, a security interest in all Cash Collateral held from time to time and all proceeds thereof, whether held in a Cash Collateral Account or otherwise. After the occurrence and during the continuance of an Event of Default, Agent may apply Cash Collateral first to the payment of Obligations secured by such Cash Collateral, and thereafter in accordance with the terms of this Agreement. Each Cash Collateral Account and all Cash Collateral shall be under the sole dominion and control of Agent, and no Obligor or other Person shall have any right to any Cash Collateral, until Full Payment of all Obligations.

7.3 Real Estate Collateral

. The Obligations shall also be secured by Mortgages upon all Real Estate owned in fee by Obligors, other than Real Estate owned by Obligors that constitutes an Excluded Asset. The Mortgages shall be duly recorded, at Obligors' expense, in each office where such recording is required to constitute a fully perfected Lien on the Real Estate covered thereby. Notwithstanding any provision in this Agreement to the contrary, it is understood and agreed that if pursuant to the applicable state law a mortgage tax will be owed on the full amount of the indebtedness evidenced hereby, then the amount secured by the applicable Mortgage shall be limited to an amount mutually agreed upon by Agent and Borrower Agent, but not less than 100% of the fair market value of the applicable Real Estate at the time the applicable Mortgage is delivered. If any Obligor acquires Real Estate hereafter, other than Real Estate that constitutes an Excluded Asset, Obligors shall, within ninety (90) days (as such date may be extended in writing from time to time by Agent) after such acquisition, execute and deliver a Mortgage in recordable form sufficient to create a first priority Lien in favor of Agent on such Real Estate subject to Permitted Liens, and shall deliver all Related Real Estate Documents (except as may be waived by Agent in its reasonable discretion).

7.4 Other Collateral

.

7.4.1 Commercial Tort Claims

. Unless otherwise previously disclosed to Agent in writing, Borrower Agent shall notify Agent in each Compliance Certificate delivered pursuant to **Section 10.1.1(d)** if, after the Closing Date or the date of the last such notification (as applicable), any Obligor has a Commercial Tort Claim for which a claim has been asserted, other than a Commercial Tort Claim for less than $750,000 (as reasonably determined by Borrower Agent), and shall promptly thereafter amend **Schedule 9.1.16** to include such claim, and shall take such actions as Agent reasonably deems appropriate to subject such claim to a duly perfected, first priority Lien in favor of Agent.

7.4.2 Certain After-Acquired Collateral

. Unless otherwise previously disclosed to Agent in writing, Borrower Agent shall notify Agent in each Compliance Certificate delivered pursuant to **Section 10.1.1(d)** if, after the Closing Date or the date of the last such notification (as applicable), any Obligor obtains any interest in any Collateral consisting of Deposit Accounts, Chattel Paper, Documents, Instruments, Intellectual Property, Investment Property or Letter-of-Credit Rights, in each case having a fair market value in excess of $50,000, and shall promptly take such actions as Agent reasonably deems appropriate to effect Agent's duly perfected, first priority Lien upon such Collateral.

7.5 No Assumption of Liability

. The Lien on Collateral granted hereunder is given as security only and shall not subject Agent or any Lender to, or in any way modify, any obligation or liability of Obligors relating to any Collateral.

7.6 Further Assurances

. All Liens granted to Agent under the Loan Documents are for the benefit of Secured Parties. Promptly upon reasonable request, Obligors shall deliver such instruments and agreements, and shall take such actions, as Agent reasonably deems appropriate under Applicable Law to evidence or perfect its Lien on any Collateral, or otherwise to give effect to the intent of this Agreement. Each Obligor authorizes Agent to file any financing statement that describes the Collateral as "all assets" or "all personal property" of such Obligor, or words to similar effect, and ratifies any action taken by Agent before the Closing Date to effect or perfect its Lien on any Collateral.

7.7 Subsidiary Stock

. Notwithstanding **Section 7.1** or any other provision of this Agreement or the other Loan Documents, the Collateral shall not include any equity or intercompany debt of any Excluded Subsidiary, other than 66% of the Equity Interests of any CFC or CFC Holding Company that is owned directly by an Obligor.

SECTION 8. COLLATERAL ADMINISTRATION

8.1 Administration of Deposit Accounts

. **Schedule 8.5** (as amended pursuant to this **Section 8.5** from time to time) sets forth all Deposit Accounts maintained by Obligors. Subject to **Section 6.3(e)**. Each Obligor shall be the sole account holder of such Deposit Account and shall not allow any other Person (other than Agent) to have control over such Deposit Account or any Property deposited therein. Each Obligor shall promptly notify Agent of any opening or closing of a Deposit Account (other than any Excluded Account) and, with the consent of Agent, will amend **Schedule 8.5** to reflect same.

8.2 General Provisions

.

8.2.1 Location of Restaurants

. S**chedule 8.6.1** sets forth all of the restaurant locations of each of the Obligors (as such Schedule may be updated from time to time pursuant to **Section 10.1.2(d)**).

8.2.2 Insurance of Collateral; Condemnation Proceeds

. Each Obligor shall maintain insurance with respect to tangible items of Collateral, covering casualty, hazard, theft, malicious mischief, flood and other risks, in amounts, with endorsements and with insurers (with a Best's Financial Strength Rating of at least A-VII, unless otherwise approved by Agent) as are reasonably satisfactory to Agent in its Permitted Discretion (it being understood and agreed that

the Obligors' insurance coverage in existence on the Closing Date is satisfactory to Agent). From time to time upon request (but no less frequently than annually), Obligors shall deliver to Agent the originals or certified copies of its insurance policies and updated flood plain searches. Unless Agent shall agree otherwise, each casualty and liability policy shall include satisfactory endorsements (i) showing Agent as lender loss payee, mortgagee under a standard mortgage clause or additional insured, as appropriate; (ii) require 30 days' prior written notice to Agent in the event of cancellation of the policy for any reason (or in the case of non-payment, at least ten (10) days' prior written notice); and (iii) specify that the interest of Agent shall not be impaired or invalidated by any act or neglect of any Obligor or the owner of the Property, nor by the occupation of the premises for purposes more hazardous than are permitted by the policy. If any Obligor fails to provide and pay for any insurance, Agent may, at its option, with written notice thereof to Borrower Agent, but shall not be required to, procure the insurance and charge Obligors therefor. Each Obligor agrees to deliver to Agent, promptly as rendered, copies of all claim reports made to insurance companies where the claim made is in excess of $100,000. While no Event of Default exists, Obligors may settle, adjust or compromise any insurance claim. If an Event of Default exists, only Agent shall be authorized to settle, adjust and compromise such claims.

8.2.3 Protection of Collateral

. All reasonable and documented out-of-pocket expenses of protecting, storing, warehousing, insuring, handling, maintaining and shipping any Collateral, all Taxes payable with respect to any Collateral (including any sale thereof), and all other payments required to be made by Agent to any Person to realize upon any Collateral, shall be borne and paid by Obligors. Agent shall not be liable or responsible in any way for the safekeeping of any Collateral, for any loss or damage thereto (except for reasonable care in its custody while Collateral is in Agent's actual possession), for any diminution in the value thereof, or for any act or default of any warehouseman, carrier, forwarding agency or other Person whatsoever, but the same shall be at Obligors' sole risk.

8.2.4 Defense of Title

. Each Obligor shall take all commercially reasonable actions to defend its title to Collateral and Agent's Liens therein against all Persons, claims and demands, except against Permitted Liens and holders of Permitted Liens.

8.3 Power of Attorney

. Each Obligor hereby irrevocably constitutes and appoints Agent (and all Persons designated by Agent) as such Obligor's true and lawful attorney (and agent-in-fact) for the purposes provided in this Section; provided, however, that notwithstanding anything hereunder to the contrary, Agent hereby agrees that it shall not, nor shall it designate any other Person in its stead, to exercise any powers granted pursuant to this **Section 8.7** (except as explicitly set forth in **Section 8.7(a)**) unless an Event of Default has occurred and is continuing. Agent, or Agent's designee, may, without notice (except as otherwise provided herein or in the other Loan Documents) and in either its or a Obligor's name, but at the cost and expense of Obligors:

(a) Endorse a Obligor's name on any Payment Item or other proceeds of Collateral (including proceeds of insurance) that come into Agent's possession or control; and

(b) During an Event of Default which is continuing, (i) notify any Account Debtors of the assignment of their Accounts, demand and enforce payment of Accounts by legal proceedings or otherwise, and generally exercise any rights and remedies with respect to

Accounts; (ii) settle, adjust, modify, compromise, discharge or release any Accounts or other Collateral, or any legal proceedings brought to collect Accounts or Collateral; (iii) sell or assign any Accounts and other Collateral upon such terms, for such amounts and at such times as Agent reasonably deems advisable; (iv) collect, liquidate and receive balances in Deposit Accounts or investment accounts, and take control, in any manner, of proceeds of Collateral; (v) prepare, file and sign a Obligor's name to a proof of claim or other document in a bankruptcy of an Account Debtor, or to any notice, assignment or satisfaction of Lien or similar document; (vi) receive, open and dispose of mail addressed to a Obligor, and notify postal authorities to deliver any such mail to an address designated by Agent; (vii) endorse any Chattel Paper, Document, Instrument, bill of lading, or other document or agreement relating to any Accounts, Inventory or other Collateral; (viii) use a Obligor's stationery and sign its name to verifications of Accounts and notices to Account Debtors; (ix) use information contained in any data processing, electronic or information systems relating to Collateral; (x) make and adjust claims under insurance policies; (xi) take any action as may be reasonably necessary or appropriate to obtain payment under any letter of credit, banker's acceptance or other instrument for which a Obligor is a beneficiary; and (xii) take all other actions as Agent deems reasonably appropriate to fulfill any Obligor's obligations under the Loan Documents.

SECTION 9. REPRESENTATIONS AND WARRANTIES

9.1 General Representations and Warranties

. To induce Agent and Lenders to enter into this Agreement and to make available the Commitments, Loans and Letters of Credit, each Borrower makes in respect of each Obligor as of the Closing Date, and at and as of the date of the making of each Revolver Loan, or other extension of credit made after the Closing Date, in each case, to the extent required pursuant to **Section 6**, each of the following representations and warranties to Agent and Lenders, which representations and warranties shall survive the execution and delivery of this Agreement:

9.1.1 Organization and Qualification

. The Company and each Subsidiary is duly organized, validly existing and, where applicable, in good standing under the laws of the jurisdiction of its organization, except to the extent expressly permitted under **Section 10.2.9**. The Company and each Subsidiary is duly qualified, authorized to do business and, where applicable, in good standing as a foreign corporation, limited liability company or other organization (as applicable) in each jurisdiction where failure to be so qualified could reasonably be expected to have a Material Adverse Effect.

9.1.2 Power and Authority

. Each Obligor is duly authorized to execute, deliver and perform the Loan Documents to which it is party. The execution, delivery and performance of the Loan Documents by the Obligors party thereto have been duly authorized by all necessary corporate or other organizational action (as applicable), and do not (a) require any consent or approval of any holders of Equity Interests of any Obligor, except those already obtained; (b) contravene the Organic Documents of any Obligor; (c) violate or cause a default under any Applicable Law; or (d) result in or require the imposition of any Lien (other than Permitted Liens) on any Property of any Obligor, except, solely with respect to any violation or default described in clause (c), as could not reasonably be expected to have a Material Adverse Effect.

9.1.3 Enforceability

. Each Loan Document is a legal, valid and binding obligation of each Obligor party thereto, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and subject to general principles of equity and good faith and fair dealing, regardless of whether considered in a proceeding in equity or at law.

9.1.4 Capital Structure

. **Schedule 9.1.4** shows as of the Closing Date, for each Obligor and each of its respective Subsidiaries, its name, jurisdiction of organization and authorized and issued Equity Interests and holders of its Equity Interests. Each Obligor has good title to its Equity Interests in its Subsidiaries, subject only to Permitted Liens, and all such Equity Interests are duly issued, fully paid and non-assessable (to the extent such concepts are relevant with respect to such Equity Interests). As of the Closing Date, there are no outstanding purchase options, warrants, subscription rights, agreements to issue or sell, convertible interests, phantom rights or powers of attorney relating to Equity Interests of any Borrower or Subsidiary.

9.1.5 Title to Properties; Priority of Liens

.

(a) **Schedule 9.1.5** sets forth all of the Real Estate owned in fee by Obligors other than Real Estate owned by Obligors that constitutes an Excluded Asset.

(b) Each Obligor has valid title to (or valid leasehold interests in) all of its Real Estate, and good title to (or valid leasehold interests in) all of its personal Property necessary to the conduct of its business, including all such Property reflected in any financial statements delivered to Agent or Lenders, in each case free of Liens except for Permitted Liens and any Liens that do not, in the aggregate, materially and adversely (i) interfere with the Ordinary Course of Business, (ii) interfere with the ability to utilize such assets for their intended purposes, or (iii) affect the value of such assets.

(c) Each Obligor and Subsidiary has paid and discharged all lawful claims that, if unpaid, could become a Lien on its Properties, other than Permitted Liens.

(d) To the extent required under this Agreement, all Liens of Agent in the Collateral, or with respect to the Real Estate subject to a Mortgage, upon proper recordation of the Mortgages in the applicable land records will, constitute duly perfected, first priority Liens, subject only to Permitted Liens.

9.1.6 [Reserved]

.

9.1.7 Financial Statements

.

(a) Borrowers have delivered to Agent (i) the audited consolidated financial statements of Parent, consisting of the audited consolidated balance sheet and the related audited consolidated statements of operations, changes in members'/stockholders' equity and cash flows for the Fiscal Year ended December 27, 2016 and (ii) the unaudited consolidated financial statements of Parent, consisting of the unaudited consolidated balance sheet and the related unaudited consolidated statements of income and cash flows for the Fiscal Quarter ended March 28, 2017 (collectively, the "**Historic Financial Statements**"). The Historic Financial

Statements (i) were prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby, except as may be indicated in the notes thereto and subject, in the case of unaudited financial statements, to the absence of footnotes and normal year-end adjustments and (ii) fairly present, in all material respects, the consolidated financial position and results of operations of the Parent as of the dates thereof and for the periods therein referred to (subject, in the case of unaudited financial statements, to the absence of footnotes and normal year-end adjustments). All projections delivered from time to time to Agent have been prepared in good faith, based on assumptions believed to be reasonable in light of the circumstances at such time (it being acknowledged and agreed by Agent that projections as to future events are not to be viewed as facts, are not a guarantee of performance, that actual results during the period or periods covered by such projections may differ from the projected results, and that such differences may be material).

(b) Since December 27, 2016, there has been no Material Adverse Effect.

(c) [Reserved].

(d) As of the Closing Date, immediately before and after giving effect to the Transactions, the Obligors, on a consolidated basis, are Solvent.

9.1.8 [Reserved]

.

9.1.9 Taxes

. Except to the extent the failure would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (a) each Obligor and each Subsidiary of any Obligor has filed all federal and state and local tax returns and other reports that it is required by law to file, and has paid, or made provision for the payment of, all Taxes upon it, its income and its Properties that are due and payable, except to the extent being Properly Contested, and (b) the provision for Taxes on the books of each Borrower and Subsidiary is adequate for all years not closed by applicable statutes, and for its current Fiscal Year.

9.1.10 Brokers

. There are no brokerage commissions, finder's fees or investment banking fees payable in connection with any transactions contemplated by the Loan Documents.

9.1.11 Intellectual Property

. Each Borrower and Subsidiary owns or has the lawful right to use all Intellectual Property reasonably necessary for the conduct of its business, without conflict with any rights of others, except where the failure to own or have the right to use such Intellectual Property could not, or where such conflict or the lapse, expiration or abandonment of such Intellectual Property could not, reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. There is no pending or, to any Borrower's knowledge, threatened Intellectual Property Claim with respect to any Borrower, any Subsidiary or any of their Property (including any Intellectual Property), except as could not reasonably be expected to have a Material Adverse Effect. All Intellectual Property registered in the United States (or applications for such registration) and material Licenses as in effect on the Closing Date (other than non-exclusive licenses to off-the-shelf software that is generally available to the public which have been licensed to such Obligor or Subsidiary pursuant to end-user licenses) of Intellectual Property owned, used or licensed by or to, any Obligor or Subsidiary are shown on **Schedule 9.1.11** (as

such Schedule may be updated from time to time pursuant to **Section 10.1.2(d)** to reflect changes to such registered and applied-for Intellectual Property and material Licenses of Intellectual Property resulting from transactions permitted under the Loan Documents).

9.1.12 Governmental Approvals

. Each Borrower and Subsidiary is in compliance in all material respects with, and is in good standing with respect to, all material Governmental Approvals necessary to conduct its business and to own, lease and operate its Properties. All necessary import, export or other licenses, permits or certificates for the import or handling of any goods or other Collateral have been procured and are in effect, and Borrowers and Subsidiaries have complied with all foreign and domestic laws with respect to the shipment and importation of any goods or Collateral, except where noncompliance could not reasonably be expected to have a Material Adverse Effect.

9.1.13 Compliance with Laws

. Each Borrower and Subsidiary has duly complied, and its Properties and business operations are in compliance, in all material respects with all Applicable Law, except where noncompliance could not reasonably be expected to have a Material Adverse Effect. As of the Closing Date, there are no pending written citations, notices or orders of material noncompliance issued to any Borrower or Subsidiary under any material Applicable Law. No Inventory has been produced in material violation of any material applicable provisions of the FLSA, PACA, Food Security Act or any applicable state counterpart statute.

9.1.14 Compliance with Environmental Laws

. Except as could not reasonably be expected to have a Material Adverse Effect, and except as disclosed on **Schedule 9.1.14**, (i) no Borrower's or any Subsidiary's operations, Real Estate or other Properties are, as a result of or in connection with the conduct of any Borrower or Subsidiary, subject to any federal, state or local investigation to determine whether any remedial action is needed to address any Environmental Release; (ii) no Borrower or any Subsidiary has received any Environmental Notice that remains outstanding or unresolved; and (iii) no Borrower or any Subsidiary has any material obligation to investigate or remediate any Environmental Release under any Environmental Law.

9.1.15 [Reserved]

.

9.1.16 Litigation

. Except as shown on **Schedule 9.1.16**, there are no proceedings or investigations pending or, to any Borrower's knowledge, threatened in writing against any Obligor or any Subsidiary of any Obligor, or any of their businesses, operations or Properties, that (a) relate to any Loan Documents or transactions contemplated thereby; or (b) could reasonably be expected to have a Material Adverse Effect. Except as shown on **Schedule 9.1.16** (as such schedule may be updated from time to time pursuant to **Section 10.1.2(d)** to reflect changes), no Obligor has a Commercial Tort Claim (other than a Commercial Tort Claim for less than $250,000 (as reasonably determined by Borrower Agent)). No Obligor or any Subsidiary of any Obligor is in default with respect to any order, injunction or judgment of any Governmental Authority, except as could not reasonably be expected to have a Material Adverse Effect.

9.1.17 No Defaults

. No event or circumstance has occurred or exists that constitutes a Default or Event of Default.

9.1.18 ERISA

. Except as disclosed on **Schedule 9.1.18**:

(a) Except as would not reasonably be expected to have a Material Adverse Effect, (i) each Plan is in compliance with the applicable provisions of ERISA, the Code, and other federal and state laws, (ii) each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and, to the knowledge of Obligors, nothing has occurred which would prevent, or cause the loss of, such qualification, (iii) each Obligor and ERISA Affiliate has met all applicable requirements under the Code, ERISA and the Pension Protection Act of 2006 and (iv) no application for a waiver of the minimum funding standards or an extension of any amortization period has been made with respect to any Plan.

(b) There are no pending or, to the knowledge of Obligors, 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 in or could reasonably be expected to have a Material Adverse Effect.

(c) Except as could not reasonably be expected to have a Material Adverse Effect, (i) no ERISA Event has occurred or is reasonably expected to occur; (ii) no Obligor or ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA; (iii) no Pension Plan or Multiemployer Plan has been terminated by its plan administrator or the PBGC; (iv) 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 at least 60%; and (v) no fact or circumstance exists that could reasonably be expected to cause the PBGC to institute proceedings to terminate a Pension Plan or Multiemployer Plan.

(d) Except as could not reasonably be expected to have a Material Adverse Effect, (i) all employer and employee contributions required by law or by the terms of the Foreign Plan have been made, or, if applicable, accrued, in accordance with normal accounting practices; (ii) no Obligor has incurred any obligation or liability in connection with the termination or withdrawal from a Foreign Plan; and (iii) each Foreign Plan has been registered as required and has been maintained in good standing with applicable regulatory authorities.

9.1.19 [Reserved]

.

9.1.20 Labor Relations

. Except as described on **Schedule 9.1.20**, as of the Closing Date , no Obligor or any Subsidiary of any Obligor is party to or bound by any collective bargaining agreement, management agreement or consulting agreement. There are no material grievances, disputes or controversies with any union or other organization of any Obligor's or any Subsidiary of any Obligor's employees, or, to any Borrower's knowledge, any asserted or threatened strikes, work stoppages or demands for collective bargaining, in each case, which could reasonably be expected to result in a Material Adverse Effect.

9.1.21 [Reserved]

.

9.1.22 Not a Regulated Entity

. No Obligor is required to be registered as an "investment company" within the meaning of the Investment Company Act of 1940.

9.1.23 Margin Stock

. No Obligor is engaged, principally or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock in a manner that would result in a violation of Regulation U. No Loan proceeds or Letters of Credit will be used by Borrowers to purchase or carry, or to reduce or refinance any Debt incurred to purchase or carry, any Margin Stock in violation of Regulations T, U or X of the Board of Governors.

9.1.24 [Reserved]

.

9.1.25 OFAC; Other Anti-Corruption Laws

. No Obligor nor any of its Subsidiaries is in material violation of any of the country or list based economic and trade sanctions administered and enforced by OFAC. No Obligor nor any of its Subsidiaries (a) is a Sanctioned Person or a Sanctioned Entity (b) is owned or controlled by a Sanctioned Person or Sanctioned Entity, (c) has its assets located in Sanctioned Entities, or (d) derives revenues from investments in, or transactions with Sanctioned Persons or Sanctioned Entities. No proceeds of any Loan or Letter of Credit made hereunder will be used by any Obligor to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity. The Obligors and their respective Subsidiaries and, to each Borrower's knowledge, their respective officers, directors, employees and agents are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects.

9.1.26 Patriot Act; Other Anti-Terrorism Laws

. To the extent applicable, each Obligor and each of its Subsidiaries is in compliance, in all material respects, with all Anti-Terrorism Laws and has not engaged in any transaction, investment, undertaking or activity that conceals the identity, source or destination of the proceeds from any category of prohibited offenses designated by the Organization for Economic Co-operation and Development's Financial Action Task Force on Money Laundering. No part of the proceeds of the Loans or Letter of Credit made hereunder will be used by any Obligor, directly or, to each Obligor's 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 United States Foreign Corrupt Practices Act of 1977, as amended.

9.2 Complete Disclosure

. None of the written factual information and written data furnished by or on behalf of any Obligor to Agent (including all such written information and data contained in the Loan Documents) for purposes of or in connection with this Agreement or any transaction contemplated herein, taken as a whole, contain any untrue statement of any material fact or omitted to state any material fact necessary to make such information and data, taken as a whole, not materially misleading at such time in light of the circumstances under which such information or data was furnished (after giving effect to all supplements thereto), it being understood and agreed that for purposes of this **Section 9.2**, such factual information and data shall not include pro forma financial information, projections, estimates (including financial estimates, forecasts, and other forward-looking information) or other forward-looking information or information of a general economic or general industry nature.

9.3 Amendment of Schedules

. Borrower Agent may amend any one or more of the Schedules to this Agreement (subject to prior notice to Agent) and any representation, warranty,

or covenant contained herein which refers to any such Schedule shall from and after the date of any such amendment refer to such Schedule as so amended and any Default or Event of Default that exists solely as a result of the failure to amend such Schedule shall from and after the date of any such amendment be waived automatically without further action by Agent or the Lenders; provided, however, (a) that in no event shall the failure to make an immaterial amendment to any such Schedule constitute a Default or Event of Default; (b) no Default or Event of Default shall exist or have occurred by virtue of any changes disclosed on such Schedules if the disclosed items would not have resulted in a Default or Event of Default if disclosed on the Closing Date, as applicable; and (c) the amendment of a Schedule shall not constitute a waiver or modification of any of the covenants contained in **Sections 10.1** or **10.2**.

SECTION 10. COVENANTS AND CONTINUING AGREEMENTS

10.1 Affirmative Covenants

. Until Full Payment of the Obligations, the Company shall, and shall cause each Subsidiary to, at all times:

10.1.1 Inspections; Appraisals

.

(a) Permit Agent, or any third party used for such purposes, from time to time, subject (except when a Default or an Event of Default exists) to reasonable notice and during normal business hours, to visit and inspect the Properties of the Company, any Borrower or Subsidiary (subject, in the case of any leased Real Estate, to the terms of the applicable lease and the right of the landlord of such Real Estate), inspect, audit and make extracts from any Borrower's or Subsidiary's books and records, and discuss with its officers, employees, agents, advisors and independent accountants (provided that Borrower Agent shall be given prior notice of, and a reasonable opportunity to be present for, such discussions with the Obligors' accountants) such Borrower's or Subsidiary's business, financial condition, assets, prospects and results of operations; provided, that Agent shall exercise such rights no more than one time in any Fiscal Year, unless an Event of Default exists and is continuing, and such rights shall be exercised in accordance with **Section 10.1.1(b)**. Lenders may participate in any such visit or inspection, at their own expense; provided, however, that in no event shall any inspection or audit be exercised by any Lender independently from the Agent. Neither Agent nor any Lender shall have any duty to Obligor to make any inspection, nor to share any results of any inspection or report with any Obligor. The Company and each Obligor acknowledges that all inspections and reports are prepared by Agent and Lenders for their purposes, and no Obligor shall not be entitled to rely upon them. Notwithstanding anything to the contrary in this Agreement, none of the Borrowers or any of their respective Subsidiaries will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter (x) that constitutes immaterial Intellectual Property that is not registered, applied for, or pending, non-financial trade secrets or non-financial proprietary information, (y) in respect of which disclosure to Agent (or Agent's representatives or contractors) is prohibited by Applicable Law or any binding agreement or (z) is subject to attorney-client or similar privilege or constitutes attorney work product.

(b) Reimburse Agent for all reasonable and documented out-of-pocket charges, costs and expenses of Agent in connection with examinations of any Obligor's books and records or any other financial or Collateral matters as Agent deems appropriate, up to one time per

Loan Year; provided, however, that if an examination is initiated during an Event of Default, all such charges, costs and expenses therefor shall be reimbursed by Borrowers without regard to such limits.

10.1.2 Financial and Other Information

. Keep adequate records and books of account with respect to its business activities, in a manner to allow financial statements to be prepared in accordance with GAAP in all material respects; and furnish to Agent:

(a) within 90 days after the end of each Fiscal Year, Parent's consolidated Form 10-K filed with the SEC;

(b) within 45 days after the end of each Fiscal Quarter (other than the Parent's fourth Fiscal Quarter), Parent's consolidated Form 10-Q filed with the SEC;

(c) concurrently with delivery of financial statements under clauses (a) and (b) above (commencing with the third Fiscal Quarter ending September [__], 2017), (i) a Compliance Certificate executed by a Senior Officer of Borrower Agent and (ii) any updates to **Schedules 8.5**, **8.2.1**, **9.1.5**, **9.1.11**, **9.1.14**, **9.1.16** and **9.1.18** to reflect changes resulting from transactions permitted under the Loan Documents;

(d) concurrently with delivery of financial statements under clause (a) above, copies of all management letters and other material reports submitted to any Borrower by their accountants in connection with such financial statements;

(e) not later than ninety (90) days after the end of each Fiscal Year, the operating budget and cash flow projections of Borrower Agent and its Subsidiaries for the subsequent Fiscal Year, fiscal quarter by fiscal quarter;

(f) to the extent not otherwise required to be furnished to the Agent pursuant to any other clause of this **Section 10.1.2** or **Section 10.1.3**, promptly after the sending or filing thereof, copies of any proxy statements, financial statements or reports that Parent has made generally available to its shareholders; copies of any regular, periodic and special reports (including for the avoidance of doubt, any Form 8-K filings), or registration statements or prospectuses that Parent files with the SEC or any other Governmental Authority, or any securities exchange; and copies of any press releases or other statements made available by Parent to the public concerning material changes to or developments in the business of Parent; and

(g) such other reports and information (financial or otherwise) as Agent may reasonably request from time to time in connection with any Collateral or any Obligor's, Subsidiary's or other Obligor's financial condition or business, or any Upstream Payments and Distributions made or to be made pursuant Section 10.2.4(a).

Documents required to be delivered pursuant to clauses (a) and (b) above may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower Agent (or any direct or indirect parent of the Borrower Agent) posts such documents, or provides a link thereto on the website on the Internet at the website address listed on **Schedule 14.3.1**; or (ii) on which such documents are posted on the Borrower Agent's behalf on IntraLinks or another relevant 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 (i) upon written request by the Agent, the Borrower Agent shall deliver paper copies of such documents (which may be electronic copies delivered via electronic mail) to the Agent for further distribution to each Lender until a written request to cease delivering paper copies is given by the Agent and (ii) the Borrower Agent shall notify (which may be by facsimile or electronic mail) the Agent of the posting of any such documents and provide to the Agent by electronic mail electronic versions (*i.e.*, soft copies) of such documents. Notwithstanding anything contained herein, in every instance the Borrower Agent shall be required to provide paper copies of the Compliance Certificates required by clause (c) above to the Agent (which may be electronic copies delivered via electronic mail). Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Agent and maintaining its copies of such documents.

10.1.3 Notices

. Notify Agent in writing, promptly after a Senior Officer of an Obligor obtaining knowledge thereof, of any of the following that affects an Obligor: (a) the threat (in writing) or commencement of any proceeding or investigation, whether or not covered by insurance, if the foregoing could reasonably be expected to have a Material Adverse Effect; (b) any pending or threatened (in writing) labor dispute, strike or walkout, or the expiration (without renewal) of any material labor contract, if the foregoing could reasonably be expected to have a Material Adverse Effect; (c) [reserved]; (d) the existence of any Default or Event of Default; (e) any judgment in an amount exceeding $500,000 (net of insurance coverage therefor that has not been denied by the insurer); (f) the assertion of any Intellectual Property Claim that could reasonably be expected to have a Material Adverse Effect; (g) any violation or asserted violation of any Applicable Law (including ERISA, OSHA, FLSA, or any Environmental Laws) that could reasonably be expected to have a Material Adverse Effect; (h) any Environmental Release by an Obligor or on any Property owned, leased or occupied by an Obligor, if any such Environmental Release could reasonably be expected to have a Material Adverse Effect; or receipt of any Environmental Notice, if receipt of such Environmental Notice could reasonably be expected to have a Material Adverse Effect; or (i) the occurrence of any ERISA Event that could reasonably be expected to have a Material Adverse Effect.

10.1.4 Compliance with Laws

. Comply with all Applicable Laws, including to the extent applicable, ERISA, Environmental Laws, FLSA, OSHA, PACA, Anti-Terrorism Laws, Anti-Corruption Laws and laws regarding collection and payment of Taxes, and maintain all Governmental Approvals necessary to the ownership of its Properties or conduct of its business, unless failure to comply (other than failure to comply with Anti-Terrorism Laws, which must be complied with in all material respects) or maintain could not reasonably be expected to have a Material Adverse Effect. Subject to **Section 6.3**, the Obligors and their Subsidiaries will maintain in effect and enforce policies and procedures designed to ensure compliance by the Obligors and their respective Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions. Without limiting the generality of the foregoing, if any Borrower or any Subsidiary obtains knowledge (after reasonable inquiry) of an Environmental Release that occurs at or on any Properties of such Borrower or Subsidiary that could reasonably be expected to have a Material Adverse Effect, it shall act promptly and diligently to investigate and report to Agent and all appropriate Governmental Authorities the extent of, and subject to any right of such Borrower or Subsidiary to contest, take commercially reasonable action

to remediate, such Environmental Release as required by Environmental Law, whether or not directed to do so by any Governmental Authority.

10.1.5 Taxes

. Pay and discharge all federal and material state and local Taxes prior to the date on which they become delinquent or penalties attach, unless such Taxes are (i) being Properly Contested, or (ii) individually, and in the aggregate with other unpaid Taxes, not more than (x) $250,000, or (y) solely if the failure to make such payment or discharge such Taxes has resulted in a Lien on the Collateral which has priority senior to the Agent's Lien on the Collateral (unless bonded and stayed to the reasonable satisfaction of Agent), $50,000.

10.1.6 Insurance

. In addition to the insurance required hereunder with respect to Collateral, maintain insurance with insurers (with a Best Rating of at least A7, unless otherwise approved by Agent) reasonably satisfactory to Agent, (a) with respect to the Properties and business of any Obligor and its Subsidiaries of such type (including product liability, workers' compensation, larceny, embezzlement, or other criminal misappropriation insurance), in such amounts, and with such coverages and deductibles as are customary for companies similarly situated, and (b) business interruption insurance or its equivalent customary in the limited-service restaurants industry, or otherwise reasonably satisfactory to Agent, with deductibles reasonably satisfactory to Agent (it being understood and agreed that the Borrowers' insurance coverage in existence on the Closing Date is satisfactory to Agent).

10.1.7 Licenses

. (a) Keep each material License affecting any Collateral or any other material Property of Obligors and Subsidiaries in full force and effect, except where failure to do so could not reasonably be expected to have a Material Adverse Effect; and (b) notify Agent of any default or breach asserted by any Person to have occurred under any such material License, except where such default or breach could not reasonably be expected to have a Material Adverse Effect.

10.1.8 Future Subsidiaries

. Promptly notify Agent upon any Person becoming a Subsidiary and:

(a) if such Person is a wholly owned material Subsidiary and not an Excluded Subsidiary, (i) cause it, at the Borrower Agent's election, either to join this Agreement as a Borrower or guaranty the Obligations in a manner reasonably satisfactory to Agent, as applicable, in each case, within thirty (30) Business Days of formation or acquisition thereof (or such longer period as Agent may reasonably agree) and (ii) to execute and deliver such other documents, instruments and agreements and to take such other actions as Agent shall reasonably require to evidence and perfect a Lien in favor of Agent on all assets of such Person constituting Collateral, including, if reasonably requested by Agent, delivery of such legal opinions, in form and substance reasonably satisfactory to Agent, as it shall deem reasonably appropriate;

(b) if any Equity Interests or Debt of such Person are directly owned by any Obligor, to pledge such Equity Interests and promissory notes evidencing such Debt (except that, if such Subsidiary is a CFC or CFC Holding Company, the Equity Interests of such Subsidiary to be pledged shall be limited to sixty-six percent (66%) of the outstanding Equity Interests of such Subsidiary) within thirty (30) Business Days of such Person becoming a Subsidiary (or such longer

period as the Agent may reasonably agree) to secure obligations of any Borrower organized under the laws of the United States, in each case, in form and substance reasonably satisfactory to Agent.

10.1.9 Intellectual Property

. Keep all material Intellectual Property reasonably necessary to the conduct of the business of each Obligor in full force and effect, including timely filing any renewals required to maintain the Intellectual Property, except where the failure to maintain or have the right to use such Intellectual Property could not, or where the lapse, expiration or abandonment of such Intellectual Property could not, reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

10.2 Negative Covenants

. Until Full Payment of the Obligations, the Company shall not, and shall cause each Subsidiary not to:

10.2.1 Permitted Debt

. Create, incur, guarantee or suffer to exist any Debt, except:

(a) the Obligations;

(b) [reserved];

(c) Permitted Purchase Money Debt;

(d) Debt (other than the Obligations and Permitted Purchase Money Debt), but only to the extent outstanding on the Closing Date and not satisfied with the proceeds of the initial Loans;

(e) Debt with respect to Bank Products and Debt pursuant to Hedging Agreements permitted under **Section 10.2.14**;

(f) Debt that is in existence when a Person becomes a Subsidiary or that is secured by an asset when acquired by a Borrower or Subsidiary, as long as such Debt was not incurred in contemplation of such Person becoming a Subsidiary or such acquisition;

(g) Permitted Contingent Obligations;

(h) Refinancing Debt as long as each Refinancing Condition is satisfied;

(i) Debt that is not included in any of the preceding clauses of this Section, is not secured by a Lien;

(j) Debt of (i) any Obligor to any other Obligor, (ii) any Subsidiary that is not an Obligor to another Subsidiary that is not an Obligor, (iii) any Obligor to a Subsidiary that is not an Obligor; (iv) any Subsidiary that is not an Obligor to any Obligor, and (v) guaranty obligations of any Obligor in respect of Debt otherwise permitted hereunder of any Obligor provided all such Debt owing by an Obligor is subject to the Intercompany Subordination Agreement;

(k) Debt incurred to pay premiums under policies of insurance and related interest due thereunder;

(l) Debt attributable to credit card "charge-backs", debit cards, stored value cards or purchase cards (including so-called "procurement cards" or "P-cards") incurred in the Ordinary Course of Business;

(m) Debt which may be deemed to exist as a result of the existence of any worker's compensation, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance claims, guaranties, or similar obligations incurred in the Ordinary Course of Business;

(n) Debt in respect of netting services and overdraft protections in connection with Deposit Accounts in the Ordinary Course of Business;

(o) Debt incurred by a Borrower or any of its Subsidiaries arising from agreements providing for indemnification, earn-outs, adjustment of purchase price or similar obligations, in connection with Permitted Acquisitions, other permitted Investments or permitted dispositions of any business, asset or Subsidiary of Borrower or any of its Subsidiaries;

(p) [reserved];

(q) Debt incurred under appeal bonds and in the Ordinary Course of Business under performance, surety or statutory bonds;

(r) Debt composing Investments permitted hereunder; and

(s) unsecured Debt of a Borrower or Subsidiary owing to former employees, officers, or directors (or any spouses, ex-spouses, or estates of any of the foregoing) to finance the redemption (which shall be non-cash at the time of such redemption) or repurchase (which shall be non-cash at the time of such repurchase) of the Equity Interests of Parent permitted by **Section 10.2.4** that has been issued to such Persons at any time no Event of Default has occurred and is continuing;

provided that, at any time, the aggregate outstanding amount of all Debt incurred in respect of clauses (f), (i), (j)(iii) and (s) of this Section 10.2.1 does not exceed $2,000,000 at any time outstanding.

10.2.2 Permitted Liens

. Create or suffer to exist any Lien upon any of its Property, except the following (collectively, "Permitted Liens"):

(a) Liens in favor of Agent;

(b) [reserved];

(c) Purchase Money Liens securing Permitted Purchase Money Debt;

(d) Liens for Taxes not due and payable or being Properly Contested;

(e) statutory Liens (other than Liens for Taxes or imposed under ERISA) arising in the Ordinary Course of Business, but only if (i) payment of the obligations secured thereby is not yet due and payable or is being Properly Contested, and (ii) such Liens do not materially impair the value or use of the Property or materially impair operation of the business of any Borrower or Subsidiary;

(f) Liens incurred or deposits of cash made in the Ordinary Course of Business to secure the performance of tenders, bids, leases, contracts (except those relating to Borrowed Money), statutory obligations, Hedging Agreements, surety and appeal bonds, performance bonds and other similar obligations;

(g) Liens arising in the Ordinary Course of Business that are subject to Lien Waivers;

(h) Liens in respect of judgments that would not constitute an Event of Default hereunder;

(i) easements, rights-of-way, restrictions (including zoning restrictions), conditions, building code laws, covenants, other agreements of record, encroachments, protrusions and other similar encumbrances and other minor title defects affecting Real Estate, and other similar charges or encumbrances on Real Estate, that do not secure any monetary obligation and do not interfere in any material respect with the Ordinary Course of Business or impair Agent's Lien on Real Estate in any material respect, taken as a whole, and any exceptions on the final mortgagee title insurance policy issued in connection with any Mortgage; and such other minor defects of title or survey matters that are disclosed by current surveys that do not materially interfere with the current use of the Real Estate and do not otherwise impair Agent's Lien on Real Estate in any material respect;

(j) normal and customary rights of setoff upon deposits in favor of depository institutions, and Liens of a collecting bank on Payment Items in the course of collection;

(k) pledges or deposits of cash in the Ordinary Course of Business in connection with workers' compensation, unemployment insurance and other social security legislation;

(l) Liens securing Debt permitted under Section 10.2.1 that does not exceed in the aggregate $2,000,000 outstanding at any one time;

(m) Liens arising in the Ordinary Course of Business in favor of carriers, landlords, warehousemen, mechanics, materialmen, repairmen, laborers or suppliers or other like Liens arising under Applicable Law in the Ordinary Course of Business which are not overdue for a period of more than 60 days or which are being Properly Contested;

(n) Liens incurred in favor of insurance companies (or their financing affiliates) in connection with the financing of insurance premiums in the Ordinary Course of Business;

(o) any interest or title (and all encumbrances and other matters affecting such interest or title) of a lessor or sublessor under any lease not prohibited hereunder;

(p) Liens solely on any cash earnest money deposits made in connection with any letter of intent or purchase agreement permitted hereunder;

(q) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases of personal property entered into in the Ordinary Course of Business or to the extent permitted under the Loan Documents;

(r) any zoning restrictions or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any Real Estate not materially detracting from the value of such Real Estate;

(s) licenses of patents, trademarks and other intellectual property rights granted by Borrowers or any of their Subsidiaries in the Ordinary Course of Business and not interfering in any respect with the ordinary conduct of the business of Borrowers or such Subsidiary;

(t) Liens incurred in the Ordinary Course of Business on deposits made in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, trade contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of Borrowed Money);

(u) Liens in favor of customs and revenue authorities arising as a matter of law and in the Ordinary Course of Business to secure payment of customs duties in connection with the importation of goods;

(v) [reserved];

(w) existing Liens shown on **Schedule 10.2.2** and Liens securing Refinancing Debt; provided, that, any Liens relating to such Refinancing Debt shall only attach to the Property which was subject to the Liens so refinanced, accessions thereto, proceeds or products thereof;

(x) Possessory Liens in favor of brokers and dealers arising in connection with the acquisition of disposition of Investments that are not Restricted Investments; provided that such Liens (i) attach only to such Investments and (ii) secure only obligations incurred in the Ordinary Course of Business and arising in connection with the acquisition or disposition of such Investments and not any obligation in connection with margin financing;

(y) Liens on property in existence at the time such property is acquired pursuant to a Permitted Acquisition or other permitted Investment or on such property of a Subsidiary of an Obligor in existence at the time such Subsidiary is acquired pursuant to a Permitted Acquisition or other permitted Investment; provided that such Liens are not incurred in connection with or in anticipation of such Permitted Acquisition or other permitted Investment and do not attach to any other assets of any Obligor or any Subsidiary; and

(z) licenses, sublicenses, leases or subleases granted to third parties in the Ordinary Course of Business or not materially interfering with the business of the Borrowers or any Subsidiary.

10.2.3 Reserved

.

10.2.4 Distributions; Upstream Payments

. Declare or make any Distributions, except:

(a) Upstream Payments and Distributions to Parent and other Persons holding Equity Interests in the Company, as applicable, to the extent necessary to (i) permit the Company to make any payments required to be made under Section 4.3 of the Company LLC Agreement with respect to the Tax Receivable Agreement (other than the Early Termination Payment under (and as defined in) the Tax Receivable Agreement) (ii) permit the Company to make any payments required to be made under clauses (A), (B), (C) and (D) of Section 4.3(ii) of the Company LLC Agreement, in each case so long as such Distribution is made in connection with the investments, business activities, and entity structure of the Company and its Subsidiaries (as reasonably determined by the Company acting in good faith), (iii) permit the Company to make any payments required to be made under Section 4.4 of the Company LLC Agreement with respect to Tax Distributions (as defined in Section 4.4 of the Company LLC Agreement), and (iv) permit Parent to pay franchise taxes, audit costs, costs associated with compliance with the requirements of the Sarbanes-Oxley Act of 2002, other Public Company Costs, and other administrative costs and expenses customary for such a company;

(b) each Subsidiary of an Obligor may make Distributions to any Obligor;

(c) the Obligors and each Subsidiary may declare and make dividend payments or distributions payable solely in the common stock or other common Equity Interests of such Person;

(d) a Distribution to the extent permitted under **Section 10.2.16**; and.

(e) the Borrowers may make Distributions to Parent, the proceeds of which are used substantially contemporaneously, directly or indirectly, to redeem or repurchase Equity Interests from officers, directors, employees, advisors, service providers or consultants (or any spouses, ex-spouses, or estates of any of the foregoing) of Parent, any Obligor or any of its Subsidiaries, upon termination of employment in connection with the exercise of stock options, stock appreciation rights or other equity incentives or equity based incentives or in connection with the death or disability of such Persons; provided, that, in all such cases (i) the aggregate amount of such payments in respect of all such Equity Interests so redeemed or repurchased shall not exceed 5% of the Class A Equity Interests of Parent in the aggregate during the term of this Agreement, and (ii) immediately before and after making such Distribution, no Event of Default shall have occurred and be continuing or result therefrom.

10.2.5 Restricted Investments

. Make any Restricted Investment.

10.2.6 Disposition of Assets

. Make any Asset Disposition, except a Permitted Asset Disposition.

10.2.7 Loans

. Make any loans or other advances of money to any Person, except (a) advances to an officer or employee (i) for salary, travel expenses, commissions and similar items in the Ordinary Course of Business and (ii) for other purposes, so long as the advances under this clause (a) (together with loans made pursuant to clause (e)(ii) below) do not exceed $1,000,000 in the aggregate outstanding at any one time; (b) prepaid expenses and extensions of trade credit made in the Ordinary Course of Business; (c) deposits with financial institutions permitted hereunder; (d) (i) by any Obligor to another Obligor, (ii) by any Subsidiary that is not an Obligor to any other Subsidiary that is not an Obligor and (iii) by any Subsidiary that is not an Obligor to an Obligor so long as such Debt is subject to the Intercompany Subordination Agreement; and (e) advances or loans, each evidenced by promissory notes, to officers, directors or employees for the purchase by such officers, directors or employees of Equity Interests of Parent so long as either (i) Parent makes a capital contribution in cash in the full amount thereof to Borrowers or (ii) such loans (together with loans made pursuant to clause (a)(ii) above) do not otherwise exceed $1,000,000 in the aggregate outstanding at any one time.

10.2.8 [Reserved]

.

10.2.9 Fundamental Changes

. (a) Combine or consolidate with any Person, or liquidate, wind up its affairs or dissolve itself, in each case whether in a single transaction or in a series of related transactions; except, (i) any wholly-owned Subsidiary of any Obligor (other than any Borrower) may merge with and into or consolidate with any other wholly-owned Subsidiary of any Obligor (other than any Borrower), (ii) any Borrower may merge with and into or consolidate with any other Borrower and any Guarantor may merge with and into or consolidate with a Borrower or any other Guarantor; provided that in any merger involving a Borrower and a Guarantor, such Borrower shall be the continuing or surviving Person, (iii) mergers or consolidations of any Person with or into a Borrower or any Subsidiary if the acquisition of the Equity Interest in such Person by such Borrower or such Subsidiary would have been permitted pursuant to **Section 10.2.5** (so long as (x) in the case of a merger or consolidation involving a Borrower, a Borrower shall be the continuing or surviving Person, (y) if a Subsidiary is not the surviving or continuing Person, the surviving Person becomes a Subsidiary and complies with the applicable provisions of **Section 10.1.9** and there is compliance with all financial covenants in Section 10.3 on a Pro Forma Basis, and (z) no Event of Default shall have occurred and be continuing after giving effect thereto), (iv) mergers, combinations, or consolidations of any Subsidiary with any Person to consummate a Permitted Acquisition or other permitted Investment or a Permitted Asset Disposition with respect to the Equity Interests of such Subsidiary concurrently with such consummation, or (v) any Subsidiary that is not an Obligor may merge into any other Subsidiary that is not an Obligor; and (b) for any Obligor, without providing ten (10) Business Days' prior written notice to Agent (or such later notice as Agent may agree) of the same, change its (i) name, or (ii) form or state of organization; provided that at all times each Obligor shall maintain its state of organization in the United States.

10.2.10 Subsidiaries

. Form or acquire any Subsidiary after the Closing Date, except in accordance with **Sections 10.1.9**, **10.2.5** and **10.2.9**; or permit any existing Subsidiary to issue any additional Equity Interests except director's qualifying shares or Equity Interests issued

to an Obligor or Subsidiary (other than an Excluded Subsidiary) of an Obligor; provided, that, any such Equity Interest issued to an Obligor shall be promptly pledged by such Obligor to Agent in accordance with the Loan Documents to the extent required by, and subject to the limitations set forth in, this Agreement and the other Loan Documents, including **Section 7.7** (it being agreed and understood that no pledge of Excluded Assets shall be required).

10.2.11 Organic Documents

. Amend, modify or otherwise change any of its Organic Documents in a manner materially adverse to Agent and the Lenders in their respective capacities as such, except in connection with a transaction permitted under **Section 10.2.9**.

10.2.12 Accounting Changes

. Make any material change in accounting treatment or reporting practices, except as required by GAAP and in accordance with **Section 1.2**; or change its Fiscal Year, in each case, without the prior written consent of Agent (not to be unreasonably withheld).

10.2.13 Restrictive Agreements

. Become a party to any Restrictive Agreement, except a Restrictive Agreement (a) in effect on the Closing Date (and renewals, amendments and replacements thereof that are not otherwise prohibited by this Agreement); (b) relating to secured Debt permitted hereunder, as long as the restrictions apply only to collateral for such Debt; (c) [reserved]; (d) constituting customary restrictions on assignment in leases, Licenses and other contracts, (e) restrictions and conditions on any Excluded Subsidiary by the terms of any Debt of such Excluded Subsidiary permitted to be incurred hereunder; (f) restrictions by reason of any mandatory provision under any Applicable Law or required by any Governmental Authority having jurisdiction over an Obligor or a Subsidiary or any of their businesses but only to the extent such mandatory provision under any Applicable Law, rule, regulation or order does not otherwise result in any Event of Default under any Loan Document; (g) customary provisions in purchase and sale agreements to be executed by Obligors in connection with a Permitted Asset Disposition so long as such provisions apply only to the Property being sold; (h) Restrictive Agreements that are binding on a Subsidiary at the time such Subsidiary first becomes a Subsidiary, so long as such Restrictive Agreements were not entered into in contemplation of such Person becoming a Subsidiary; (i) Restrictive Agreements relating to restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the Ordinary Course of Business; (j) Restrictive Agreements that arise in connection with cash or other deposits permitted under **Section 10.2.2** or **10.2.5**, and limited to such cash or deposits; (k) Restrictive Agreements that contain negative pledges and restrictions on Liens in favor of any holder of Permitted Purchase Money Debt but solely to the extent any negative pledge relates to the property financed by or the subject of such Debt and the proceeds and products thereof; (l) customary provisions in shareholders' agreements and other similar agreements applicable to non-wholly-owned Subsidiaries or in joint venture agreements and other similar agreements applicable to joint ventures, in each case, permitted under **Section 10.2.5** and applicable solely to such non-wholly-owned Subsidiary or joint venture, as applicable; and (m) Restrictive Agreements governing Debt entered into after the Closing Date and permitted under **Section 10.2.1** that are, in the good faith judgment of Borrower Agent (after consulting with Agent in good faith), no more restrictive with respect to Obligors or any Subsidiary than customary market terms for Debt of such type (and, in any event, are no more restrictive than the restrictions contained in this Agreement), and provided that such restrictions will not affect any Obligor's ability to make any payments or perform its obligation required under the Loan Documents.

10.2.14 Hedging Agreements

. Enter into any Hedging Agreement, except as required under this Agreement or to hedge risks arising in the Ordinary Course of Business and not for speculative purposes, without the prior written consent of Agent.

10.2.15 Conduct of Business

. In the case of the Obligors, engage in any line of business substantially different from the business as conducted by the Obligors on the Closing Date and any business reasonably related, ancillary or complementary to, or a reasonable extension, development or expansion of, the business in which any Obligor is engaged on the date hereof.

10.2.16 Affiliate Transactions

. Enter into or be party to any transaction with an Affiliate of an Obligor, except:

(a) transactions expressly permitted by the Loan Documents;

(b) payment of reasonable compensation and employee benefit arrangements to directors, officers and employees for services actually rendered, and payment of reasonable fees, out-of-pocket and documented costs and indemnities paid for the benefit of directors, officers or employees of the Company or any of its Subsidiaries (other than Excluded Subsidiaries);

(c) transactions solely among Obligors and their respective Subsidiaries (other than Excluded Subsidiaries);

(d) transactions with Affiliates that were consummated prior to the Closing Date, as set forth on **Schedule 10.2.16**;

(e) the Company LLC Agreement;

(f) advances for commissions, reasonable out-of-pocket and documented travel expenses and other similar purposes in the Ordinary Course of Business to directors, officers and employees (other in respect of Excluded Subsidiaries);

(g) [reserved];

(h) transactions with Affiliates whether or not in the Ordinary Course of Business, upon fair and reasonable terms not less substantially favorable than would be obtained in a comparable arm's-length transaction with a non-Affiliate; and

(i) Upstream Payments and Distributions permitted pursuant to **Section 10.2.4** (other than by cross-reference to this **Section 10.2.16**).

10.2.17 Anti-Corruption Laws

. Use the proceeds of any Borrowing or Letter of Credit (a) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (b) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Entity, to the extent such activities, business or transaction would be prohibited by Sanctions if conducted by a corporation

incorporated in the United States, or (c) in any manner that would result in the material violation of any Sanctions applicable to any party hereto.

10.2.18 Amendments to Tax Receivable Agreement

. Amend, supplement or otherwise modify the Tax Receivable Agreement in a manner materially adverse to the interests of the Agent without the consent of the Agent (not to be unreasonably withheld, conditioned or delayed).

10.3 Financial Covenants

. Until Full Payment of the Obligations, Company and its Subsidiaries on a consolidated basis shall (to be certified by a Senior Officer of Borrower Agent in the Compliance Certificate provided in accordance with **Section 10.1.2(c)**):

10.3.1 Maximum Lease Adjusted Leverage Ratio

. Maintain a Lease Adjusted Leverage Ratio measured as at the last day of each Fiscal Quarter, of not greater than 4.00 to 1.00.

10.3.2 Minimum EBITDA

. Maintain EBITDA for the trailing twelve month period ended, measured as at the last day of each Fiscal Quarter, of not less than $21,400,000.

SECTION 11. EVENTS OF DEFAULT; REMEDIES ON DEFAULT

11.1 Events of Default

. Each of the following shall be an "Event of Default" if it occurs for any reason whatsoever, whether voluntary or involuntary, by operation of law or otherwise:

(a) A Borrower fails to pay (i) the principal amount of any Obligations when due (whether at stated maturity, on demand, upon acceleration or otherwise) or (ii) any of the other Obligations when due and such failure continues for three (3) Business Days;

(b) Any representation or warranty, of an Obligor made in writing in connection with any Loan Documents or transactions contemplated thereby is incorrect or misleading in any material respect when given;

(c) A Borrower breaches or fail to perform any covenant contained in (i) **Section 10.1.1**, and such breach or failure is not cured within ten (10) Business Days after a Senior Officer of Borrower Agent has knowledge thereof or receives written notice thereof from Agent, whichever is sooner; and (ii) **Sections 10.1.3(d)**, **10.2** and **10.3**;

(d) An Obligor breaches or fails to perform any other covenant (not specified in clause (a) or (c) above) contained in any Loan Documents, and such breach or failure is not cured within thirty (30) days after a Senior Officer of Borrower Agent has knowledge thereof or receives written notice thereof from Agent, whichever is sooner; provided, however, that such notice and opportunity to cure shall not apply if the breach or failure to perform is not capable of being cured within such period or is a willful breach by an Obligor;

(e) A Guarantor repudiates, revokes or attempts to revoke, in writing, its Guaranty; an Obligor denies or contests the validity or enforceability of any Loan Documents or Obligations, or the perfection or priority of any Lien on the Collateral granted to Agent having a fair market value, individually or in the aggregate, in excess of $50,000; or any Loan Document

ceases to be in full force or effect for any reason (other than in accordance with its terms or by reason of a waiver or release by Agent and Lenders);

(f) Any breach or default of an Obligor occurs and is continuing (after giving effect to any applicable grace period thereunder) under (i) any Hedging Agreement in excess of $2,000,000 resulting in an early termination event or equivalent event, or (ii) any instrument or agreement to which it is a party or by which it or any of its Properties is bound relating to any Debt (other than the Obligations) in excess of $2,000,000, if the maturity of or any payment with respect to such Debt may be accelerated or demanded due to such breach; provided, that the foregoing shall not apply to secured Debt that becomes due as a result of the sale, transfer or other disposition (including as a result of a casualty or condemnation event) of the Property or assets securing such Debt (to the extent such sale, transfer or other disposition is not prohibited under this Agreement);

(g) Any judgment or order for the payment of money is entered against an Obligor in an amount that exceeds, individually or cumulatively with all unsatisfied judgments or orders against all Obligors, $100,000 (net of insurance coverage therefor that has not been denied by the insurer), unless a stay of enforcement of such judgment or order is in effect, by reason of a pending appeal or otherwise, unless such judgment is discharged or satisfied in full, in each case within thirty (30) days;

(h) The Early Termination Payment under (and as defined in) the Tax Receivable Agreement is due (or reasonably likely to be due) prior to the term of this Agreement or any Obligor or any breach under the Tax Receivable Agreement has occurred that would allow the Early Termination Payment to be due prior to the Term of this Agreement;

(i) [Reserved];

(j) An Insolvency Proceeding is commenced by an Obligor; an Obligor makes an offer of settlement, extension or composition to its unsecured creditors generally; a trustee is appointed to take possession of any substantial Property of or to operate any material portion of the business of an Obligor and such appointment continues undischarged for sixty (60) days; or an Insolvency Proceeding is commenced against an Obligor and: the Obligor consents to institution of the proceeding, the petition commencing the proceeding is not timely contested by the Obligor, the petition is not dismissed or stayed within sixty (60) days after filing, or an order for relief is entered in the proceeding;

(k) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect or that constitutes grounds for appointment of a trustee for or termination by the PBGC of any Pension Plan or Multiemployer Plan, or an Obligor or ERISA Affiliate fails to pay when due any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan or any event similar to the foregoing occurs or exists with respect to a Foreign Plan, in each case under this **Section 11.1(k)**, where such event could reasonably be expected to have a Material Adverse Effect; or

(l) An Obligor or any of its Senior Officers is convicted for (i) a felony involving fraud or other financial matters committed in the conduct of the Obligor's business, or (ii) violating any state or federal law (including the Controlled Substances Act, Money Laundering Control Act of 1986 and Illegal Exportation of War Materials Act), in each case under the foregoing clauses (l)(i) and (l)(ii) that is reasonably expected to lead to forfeiture of any material portion of the Collateral.

11.2 Remedies upon Default

. If an Event of Default described in **Section 11.1(j)** occurs with respect to any Borrower, then to the extent permitted by Applicable Law, all Obligations (other than Secured Bank Product Obligations) shall become automatically due and payable and all Commitments shall terminate, without any action by Agent or notice of any kind. In addition, or if any other Event of Default exists, Agent may in its discretion (and shall upon written direction of Required Lenders) do any one or more of the following from time to time:

(a) declare any Obligations (other than Secured Bank Product Obligations) immediately due and payable, whereupon they shall be due and payable without diligence, presentment, demand, protest or notice of any kind, all of which are hereby waived by Borrowers to the fullest extent permitted by law;

(b) terminate, reduce or condition any Commitment;

(c) require Obligors to Cash Collateralize LC Obligations, Secured Bank Product Obligations and other Obligations that are contingent or not yet due and payable (other than indemnification obligations which are either contingent or inchoate to the extent no claims giving rise thereto have been asserted), and, if Obligors fail promptly to deposit such Cash Collateral, Agent may (and shall upon the direction of Required Lenders) advance the required Cash Collateral as Revolver Loans (whether or not the conditions in **Section 6** are satisfied); and

(d) exercise any other rights or remedies afforded under any agreement, by law, at equity or otherwise, including the rights and remedies of a secured party under the UCC. Such rights and remedies include the rights to (i) take possession of any Collateral; (ii) require Borrowers to assemble Collateral, at Borrowers' expense, and make it available to Agent at a place designated by Agent; (iii) enter any premises where Collateral is located and store Collateral on such premises until sold (and if the premises are owned or leased by a Borrower, Borrowers agree not to charge for such storage); and (iv) sell or otherwise dispose of any Collateral in its then condition, or after any further manufacturing or processing thereof, at public or private sale, with such notice as may be required by Applicable Law, in lots or in bulk, at such locations, all as Agent, in its reasonable discretion, deems advisable. Each Borrower agrees that 10 days' notice of any proposed sale or other disposition of Collateral by Agent shall be reasonable, and that any sale conducted on the internet or to a licensor of Intellectual Property shall be commercially reasonable. Agent may conduct sales on any Obligor's premises, without charge, and any sale may be adjourned from time to time in accordance with Applicable Law. Agent shall have the right to sell, lease or otherwise dispose of any Collateral for cash, credit or any combination thereof, and Agent may purchase any Collateral at public or, if permitted by law, private sale and, in lieu of actual payment of the purchase price, may credit bid and set off the amount of such price against the Obligations.

11.3 License

. Agent is hereby granted an irrevocable, non-exclusive license or other right to use, license or sub-license following the occurrence and during the continuance of an Event of Default (without payment of royalty or other compensation to any Person), for the sole purpose of enabling Agent to exercise the rights and remedies hereunder, any or all Intellectual Property of Borrowers, computer hardware and software, trade secrets, brochures, customer lists, promotional and advertising materials, labels, packaging materials and other Property, in advertising for sale, marketing, selling, collecting, completing manufacture of, or otherwise exercising any rights or remedies with respect to, any Collateral to the extent necessary or appropriate in order to sell, lease, dispose or otherwise manage in a commercially reasonable manner any of the Collateral. Each Borrower's rights and interests under Intellectual Property shall inure to Agent's benefit; provided, however, that nothing in this **Section 11.3** shall require any Obligor to grant any license that is prohibited by any rule of law, statute or regulation or is prohibited by, or constitutes a breach of default under or results in the termination of or gives rise to any right of acceleration, modification or cancellation under any contract, license, agreement, instrument or other document evidencing, giving rise to a right to use or theretofore granted with respect to such property; provided, further, that such licenses to be granted hereunder shall incorporate commercially reasonable terms reasonably necessary to preserve and maintain the Intellectual Property interests licensed, including, without limitation (a) with respect to Trademarks, reasonable quality control standards applicable to each such Trademark as in effect as of the date such licenses hereunder are granted, terms transferring and inuring goodwill arising from use back to such Obligor, terms prohibiting the mutilation, misuse, or alteration of Trademarks, and other reasonable terms consistent with such Obligor's historical practices and (b) with respect to private data, trade secrets and confidential information, commercially reasonable terms maintaining the private, secret and confidential status of such information through the imposition of reasonable obligations of confidentiality and restrictions on use at least meeting minimum legal requirements.

11.4 Setoff

. At any time during an Event of Default, Agent, Issuing Bank, Lenders, and any of their Affiliates are authorized, to the fullest extent permitted by Applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency), but excluding deposits in any Excluded Accounts, at any time held and other obligations (in whatever currency) at any time owing by Agent, Issuing Bank, such Lender or such Affiliate to or for the credit or the account of an Obligor against any Obligations, irrespective of whether or not Agent, Issuing Bank, such Lender or such Affiliate shall have made any demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured or are owed to a branch or office of Agent, Issuing Bank, such Lender or such Affiliate different from the branch or office holding such deposit or obligated on such indebtedness. The rights of Agent, Issuing Bank, each Lender and each such Affiliate under this **Section 11.4** are in addition to other rights and remedies (including other rights of setoff) that such Person may have. Notwithstanding the foregoing, no Lender, Issuing Bank or Affiliate thereof shall exercise any such right of setoff without the consent of Agent.

11.5 Remedies Cumulative; No Waiver

.

11.5.1 Cumulative Rights

. All agreements, warranties, guaranties, indemnities and other undertakings of Borrowers under the Loan Documents are cumulative and not in derogation of each other. The rights and remedies of Agent and Lenders under the Loan Documents are cumulative, may be exercised at any time and from time to time, concurrently or

in any order, and are not exclusive of any other rights or remedies available by agreement, by law, at equity or otherwise. All such rights and remedies shall continue in full force and effect until Full Payment of all Obligations.

11.5.2 Waivers

. No waiver or course of dealing shall be established by (a) the failure or delay of Agent or any Lender to require strict performance by Borrowers with any terms of the Loan Documents, or to exercise any rights or remedies with respect to Collateral or otherwise; (b) the making of any Loan or issuance of any Letter of Credit during a Default, Event of Default or other failure to satisfy any conditions precedent, unless expressly stated; or (c) acceptance by Agent or any Lender of any payment or performance by an Obligor under any Loan Documents in a manner other than that specified therein.

SECTION 12. AGENT

12.1 Appointment, Authority and Duties of Agent

.

12.1.1 Appointment and Authority

. Each Secured Party appoints and designates Bank of the West as Agent under all Loan Documents. Agent may, and each Secured Party authorizes Agent to, enter into all Loan Documents to which Agent is intended to be a party and accept all Security Documents, for the benefit of Secured Parties. Any action taken by Agent in accordance with the provisions of the Loan Documents, and the exercise by Agent of any rights or remedies set forth therein, together with all other powers reasonably incidental thereto, shall be authorized by and binding upon all Secured Parties. Without limiting the generality of the foregoing, Agent shall have the sole and exclusive authority to (a) act as the disbursing and collecting agent for Lenders with respect to all payments and collections arising in connection with the Loan Documents; (b) execute and deliver as Agent each Loan Document, including any intercreditor or subordination agreement, and accept delivery of each Loan Document; (c) act as collateral agent for Secured Parties for purposes of perfecting and administering Liens under the Loan Documents, and for all other purposes stated therein; (d) manage, supervise or otherwise deal with Collateral; or (e) take any Enforcement Action or otherwise exercise any rights or remedies with respect to any Collateral or under any Loan Documents; Applicable Law or otherwise. The duties of Agent are ministerial and administrative in nature only, and Agent shall not have a fiduciary relationship with any Secured Party, Participant or other Person, by reason of any Loan Document or any transaction relating thereto.

12.1.2 Duties

. Agent shall not have any duties except those expressly set forth in the Loan Documents. The conferral upon Agent of any right shall not imply a duty to exercise such right, unless instructed to do so by Lenders in accordance with this Agreement.

12.1.3 Agent Professionals

. Agent may perform its duties through agents and employees. Agent may consult with and employ Agent Professionals, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by an Agent Professional. Agent shall not be responsible for the negligence (other than gross negligence) or misconduct (other than willful misconduct) of any agents or Agent Professionals selected by it with reasonable care.

12.1.4 Instructions of Required Lenders

. The rights and remedies conferred upon Agent under the Loan Documents may be exercised without the necessity of joinder of any other party, unless required by Applicable Law. Agent may request instructions from Required Lenders or other Secured Parties with respect to any act (including the failure to act) in connection with any Loan Documents or Collateral, and may seek assurances to its satisfaction from Secured Parties of their indemnification obligations against Claims that could be incurred by Agent. Agent may refrain from any act until it has received such instructions or assurances, and shall not incur liability to any Person by reason of so refraining. Instructions of Required Lenders shall be binding upon all Secured Parties, and no Secured Party shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting pursuant to instructions of Required Lenders. Notwithstanding the foregoing, instructions by and consent of specific parties shall be required to the extent provided in **Section 14.1.1**. In no event shall Agent be required to take any action that, in its opinion, is contrary to Applicable Law or any Loan Documents or could subject any Agent Indemnitee to personal liability.

12.2 Agreements Regarding Collateral and Borrower Materials

.

12.2.1 Lien Releases; Care of Collateral

. Secured Parties authorize Agent to release (and Agent shall release) any Lien with respect to any Collateral (a) upon Full Payment of the Obligations; (b) that is the subject of a disposition or Lien that Borrowers certify in writing is a Permitted Asset Disposition or a Permitted Lien entitled to priority over Agent's Liens (and Agent may rely conclusively on any such certificate without further inquiry); (c) that does not constitute a material part of the Collateral; or (d) subject to **Section 14.1**, with the consent of Required Lenders. In connection with any release pursuant to the immediately preceding sentence of this **Section 12.2.1**, Agent shall promptly (after reasonable advance notice) execute and deliver to any Obligor, at such Obligor's expense, all documents that such Obligor shall reasonably request to evidence such release. Secured Parties authorize Agent to subordinate its Liens to any Purchase Money Lien or other Lien entitled to priority hereunder. Agent shall have no obligation to assure that any Collateral exists or is owned by an Obligor, or is cared for, protected or insured, nor to assure that Agent's Liens have been properly created, perfected or enforced, or are entitled to any particular priority, nor to exercise any duty of care with respect to any Collateral.

12.2.2 Possession of Collateral

. Agent and Secured Parties appoint each Lender as agent (for the benefit of Secured Parties) for the purpose of perfecting Liens in any Collateral held or controlled by such Lender, to the extent such Liens are perfected by possession or control. If any Lender obtains possession or control of any Collateral, it shall notify Agent thereof and, promptly upon Agent's request, deliver such Collateral to Agent or otherwise deal with it in accordance with Agent's instructions.

12.2.3 Reports

. Agent shall promptly provide to Lenders, when complete, any field audit, examination or appraisal report prepared for Agent with respect to any Obligor or Collateral ("Report"). Reports and Borrower Materials may be made available to Lenders by providing access to them on the Platform, but Agent shall not be responsible for system failures or access issues that may occur from time to time. Each Lender agrees (a) that Reports are not intended to be comprehensive audits or examinations, and that Agent or any other Person performing an audit or examination will inspect only specific information regarding the Obligations or Collateral and will rely significantly upon Borrowers' books, records and

representations; (b) that Agent makes no representation or warranty as to the accuracy or completeness of any Borrower Materials and shall not be liable for any information contained in or omitted from any Borrower Materials or any Report; and (c) without limiting any other confidentiality requirements hereunder, to keep all Borrower Materials and Reports confidential and strictly for such Lender's internal use, not to distribute any Report or Borrower Materials (or the contents thereof) to any Person (except to such Lender's Participants, attorneys and accountants), and to use all Borrower Materials and Reports solely for administration of the Obligations. Each Lender shall indemnify and hold harmless Agent and any other Person preparing a Report from any action such Lender may take as a result of or any conclusion it may draw from any Borrower Materials, as well as from any Claims arising as a direct or indirect result of Agent furnishing same to such Lender, via the Platform or otherwise.

12.3 Reliance By Agent

. Agent shall be entitled to rely, and shall be fully protected in relying, upon any certification, notice or other communication (including those by telephone, telex, telegram, telecopy or e-mail) believed by it to be genuine and correct and to have been signed, sent or made by the proper Person. Agent shall have a reasonable and practicable amount of time to act upon any instruction, notice or other communication under any Loan Document, and shall not be liable for any delay in acting, unless in breach of any express term of any Loan Document.

12.4 Action Upon Default

. Agent shall not be deemed to have knowledge of any Default or Event of Default, or of any failure to satisfy any conditions in **Section 6**, unless it has received written notice from a Borrower or Required Lenders specifying the occurrence and nature thereof. If any Lender acquires knowledge of a Default, Event of Default or failure of such conditions, it shall promptly notify Agent and the other Lenders thereof in writing. Each Secured Party agrees that, except as otherwise provided in any Loan Documents or with the written consent of Agent and Required Lenders, it will not take any Enforcement Action, accelerate Obligations, or exercise any right that it might otherwise have under Applicable Law to credit bid at foreclosure sales, UCC sales or other dispositions of Collateral, or to assert any rights relating to any Collateral.

12.5 Ratable Sharing

. If, other than as expressly provided herein, any Lender obtains any payment or reduction of any Obligation, whether through set-off or otherwise, in excess of its share of such Obligation, determined on a Pro Rata basis or in accordance with **Section 5.7.2**, as applicable, such Lender shall forthwith purchase from Agent, Issuing Bank and the other Lenders such participations in the affected Obligation as are necessary to share the excess payment or reduction on a Pro Rata basis or in accordance with **Section 5.7.2**, as applicable. If any of such payment or reduction is thereafter recovered from the purchasing Lender, the purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest. Notwithstanding the foregoing, if a Defaulting Lender obtains a payment or reduction of any Obligation, it shall immediately turn over the amount thereof to Agent for application under **Section 4.2.2** and it shall provide a written statement to Agent describing the Obligation affected by such payment or reduction.

12.6 Indemnification

. **EACH LENDER SHALL INDEMNIFY AND HOLD HARMLESS AGENT INDEMNITEES AND ISSUING BANK INDEMNITEES, TO THE EXTENT NOT REIMBURSED BY OBLIGORS, ON A PRO RATA BASIS, AGAINST ALL CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY SUCH INDEMNITEE; PROVIDED, THAT ANY CLAIM AGAINST (I) AN AGENT**

INDEMNITEE RELATES TO OR ARISES FROM ITS ACTING AS OR FOR AGENT (IN THE CAPACITY OF AGENT), AND (II) AN ISSUING BANK INDEMNITEE RELATES TO OR ARISES FROM ITS ACTING AS OR FOR ISSUING BANK (IN THE CAPACITY OF ISSUING BANK); PROVIDED FURTHER, THAT IN NO EVENT SHALL ANY LENDER HAVE ANY OBLIGATION HEREUNDER TO INDEMNIFY OR HOLD HARMLESS AN AGENT INDEMNITEE OR ISSUING BANK INDEMNITEE WITH RESPECT TO A CLAIM THAT IS DETERMINED IN A FINAL, NON-APPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION TO RESULT FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNITEE. In Agent's discretion, it may reserve for any Claims made against an Agent Indemnitee or Issuing Bank Indemnitee, and may satisfy any judgment, order or settlement relating thereto, from proceeds of Collateral prior to making any distribution of Collateral proceeds to Secured Parties. If Agent is sued by any receiver, trustee or other Person for any alleged preference or fraudulent transfer, then any monies paid by Agent in settlement or satisfaction of such proceeding, together with all interest, costs and expenses (including reasonable attorneys' fees) incurred in the defense of same, shall be promptly reimbursed to Agent by each Lender to the extent of its Pro Rata share to the extent not reimbursed by Obligors.

12.7 Limitation on Responsibilities of Agent

. Agent shall not be liable to any Secured Party for any action taken or omitted to be taken under the Loan Documents, except for losses directly and solely caused by Agent's gross negligence or willful misconduct. Agent does not assume any responsibility for any failure or delay in performance or any breach by any Obligor, Lender or other Secured Party of any obligations under the Loan Documents. Agent does not make any express or implied representation, warranty or guarantee to Secured Parties with respect to any Obligations, Collateral, Loan Documents or Obligor. No Agent Indemnitee shall be responsible to Secured Parties for any recitals, statements, information, representations or warranties contained in any Loan Documents or Borrower Materials; the execution, validity, genuineness, effectiveness or enforceability of any Loan Documents; the genuineness, enforceability, collectibility, value, sufficiency, location or existence of any Collateral, or the validity, extent, perfection or priority of any Lien therein; the validity, enforceability or collectibility of any Obligations; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Obligor or Account Debtor. No Agent Indemnitee shall have any obligation to any Secured Party to ascertain or inquire into the existence of any Default or Event of Default, the observance by any Obligor of any terms of the Loan Documents, or the satisfaction of any conditions precedent contained in any Loan Documents.

12.8 Resignation; Successor Agent

. Subject to the appointment and acceptance of a successor Agent as provided below, Agent may resign at any time by giving at least 30 days' written notice thereof to Lenders and Borrowers. Upon receipt of such notice, Required Lenders shall have the right, in consultation with Borrower Agent, to appoint a successor Agent which shall be (a) a Lender or an Affiliate of a Lender; or (b) a financial institution reasonably acceptable to Required Lenders and (provided no Event of Default exists) Borrower Agent who shall be a "U.S. person" and a "financial institution" within the meaning of Treasury Regulations Section 1.1441-1. If no successor agent is appointed prior to the effective date of Agent's resignation, the retiring Agent may appoint a successor agent that is a financial institution acceptable to it and that meets the qualifications set forth above, including the consent requirements, which shall be a Lender unless no Lender accepts the role; provided that in no event shall any such successor Agent be a

Defaulting Lender. In the absence of such appointment, Required Lenders shall on such date assume all rights and duties of Agent hereunder. Upon acceptance by a successor Agent of its appointment hereunder, such successor Agent shall thereupon succeed to and become vested with all the powers and duties of the retiring Agent without further act, and the retiring Agent shall be discharged from its duties and obligations (other than its duties of confidentiality) hereunder but shall continue to have the benefits of the indemnification set forth in **Sections 12.6** and **14.2**. Notwithstanding any Agent's resignation, the provisions of this **Section 12** shall continue in effect for its benefit with respect to any actions taken or omitted to be taken by it while Agent. Any successor to Bank of the West by merger or acquisition of stock or this loan shall continue to be Agent hereunder without further act on the part of any Secured Party or Obligor.

12.9 Due Diligence and Non-Reliance

. Each Lender acknowledges and agrees that it has, independently and without reliance upon Agent or any other Lenders, and based upon such documents, information and analyses as it has deemed appropriate, made its own credit analysis of each Obligor and its own decision to enter into this Agreement and to fund Loans and participate in LC Obligations hereunder. Each Secured Party has made such inquiries as it feels necessary concerning the Loan Documents, Collateral and Obligors. Each Secured Party acknowledges and agrees that the other Secured Parties have made no representations or warranties concerning any Obligor, any Collateral or the legality, validity, sufficiency or enforceability of any Loan Documents or Obligations. Each Secured Party will, independently and without reliance upon any other Secured Party, and based upon such financial statements, documents and information as it deems appropriate at the time, continue to make and rely upon its own credit decisions in making Loans and participating in LC Obligations, and in taking or refraining from any action under any Loan Documents. Except for notices, reports and other information expressly requested by a Lender, Agent shall have no duty or responsibility to provide any Secured Party with any notices, reports or certificates furnished to Agent by any Obligor or any credit or other information concerning the affairs, financial condition, business or Properties of any Obligor (or any of its Affiliates) which may come into possession of Agent or its Affiliates.

12.10 Remittance of Payments and Collections

.

12.10.1 Remittances Generally

. All payments by any Lender to Agent shall be made by the time and on the day set forth in this Agreement, in immediately available funds. If no time for payment is specified or if payment is due on demand by Agent and request for payment is made by Agent by 11:00 a.m. (Los Angeles time) on a Business Day, payment shall be made by Lender not later than 2:00 p.m. (Los Angeles time) on such day, and if request is made after 11:00 a.m. (Los Angeles time), then payment shall be made by 11:00 a.m. (Los Angeles time) on the next Business Day. Payment by Agent to any Secured Party shall be made by wire transfer, in the type of funds received by Agent. Any such payment shall be subject to Agent's right of offset for any amounts due from such payee under the Loan Documents.

12.10.2 Failure to Pay

. If any Secured Party fails to pay any amount when due by it to Agent pursuant to the terms hereof, such amount shall bear interest, from the due date until paid in full, at the rate determined by Agent as customary for interbank compensation for two Business Days and thereafter at the Default Rate for Adjusted Base Rate Loans. In no event shall Borrowers be entitled to receive credit for any interest paid by a Secured Party to Agent, nor shall

any Defaulting Lender be entitled to interest on any amounts held by Agent pursuant to **Section 4.2**.

12.10.3 Recovery of Payments

. If Agent pays an amount to a Secured Party in the expectation that a related payment will be received by Agent from an Obligor and such related payment is not received, then Agent may recover such amount from the Secured Party. If Agent determines that an amount received by it must be returned or paid to an Obligor or other Person pursuant to Applicable Law or otherwise, then, notwithstanding any other term of any Loan Document, Agent shall not be required to distribute such amount to any Secured Party. If any amounts received and applied by Agent to any Obligations are later required to be returned by Agent pursuant to Applicable Law, each Lender shall pay to Agent, **on demand**, such Lender's Pro Rata share of the amounts required to be returned.

12.11 Individual Capacities

. As a Lender, Bank of the West shall have the same rights and remedies under the Loan Documents as any other Lender, and the terms "Lenders," "Required Lenders" or any similar term shall include Bank of the West in its capacity as a Lender. Agent, Lenders and their Affiliates may accept deposits from, lend money to, provide Bank Products to, act as financial or other advisor to, and generally engage in any kind of business with, Obligors and their Affiliates, as if they were not Agent or Lenders hereunder, without any duty to account therefor to any Secured Party. In their individual capacities, Agent, Lenders and their Affiliates may receive information regarding Obligors, their Affiliates and their Account Debtors (including information subject to confidentiality obligations), and shall have no obligation to provide such information to any Secured Party.

12.12 [Reserved]

.

12.13 Bank Product Providers

. Each Secured Bank Product Provider, by delivery of a notice to Agent of a Bank Product, agrees to be bound by **Section 5.7** and this **Section 12**. Each Secured Bank Product Provider shall indemnify and hold harmless Agent Indemnitees, to the extent not reimbursed by Obligors, against all Claims that may be incurred by or asserted against any Agent Indemnitee in connection with such provider's Secured Bank Product Obligations.

12.14 No Third Party Beneficiaries

. This Section 12 (except with respect to Borrowers' rights under **Sections 12.2** and **12.8**) is an agreement solely among Secured Parties and Agent, and shall survive Full Payment of the Obligations. Except as set forth in this **Section 12.14**, this **Section 12** does not confer any rights or benefits upon Borrowers or any other Person. As between Borrowers and Agent, any action that Agent may take under any Loan Documents or with respect to any Obligations shall be conclusively presumed to have been authorized and directed by Secured Parties.

SECTION 13. BENEFIT OF AGREEMENT; ASSIGNMENTS

13.1 Successors and Assigns

. This Agreement shall be binding upon and inure to the benefit of Borrowers, Agent, Lenders, Secured Parties, and their respective successors and permitted assigns, except that (a) other than in connection with a transaction permitted hereunder, no Borrower shall have the right to assign its rights or delegate its obligations under any Loan Documents; and (b) any assignment by a Lender must be made in compliance with **Section 13.3**

and any assignment by Agent must be in compliance with **Section 12.8**. Agent shall treat the Person which made any Loan as the owner thereof for all purposes until such Person makes an assignment in accordance with **Section 13.3**. Any authorization or consent of a Lender shall be conclusive and binding on any subsequent transferee or assignee of such Lender.

13.2 Participations

.

13.2.1 Permitted Participants; Effect

. Subject to **Section 13.3.3**, any Lender may sell to a financial institution (other than to a Disqualified Institution to the extent the identities of Disqualified Institutions have been made available to Lender) ("Participant") a participating interest in the rights and obligations of such Lender under any Loan Documents. Despite any sale by a Lender of participating interests to a Participant, such Lender's obligations under the Loan Documents shall remain unchanged, it shall remain solely responsible to the other parties hereto for performance of such obligations, it shall remain the holder of its Loans and Commitments for all purposes, all amounts payable by Borrowers shall be determined as if it had not sold such participating interests, and Borrowers and Agent shall continue to deal solely and directly with such Lender in connection with the Loan Documents. Each Lender shall be solely responsible for notifying its Participants of any matters under the Loan Documents, and Agent and the other Lenders shall not have any obligation or liability to any such Participant. A Participant shall not be entitled to the benefits of **Section 5.10** unless Borrowers agree otherwise in writing. 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 "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations, or is otherwise required thereunder. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

13.2.2 Voting Rights

. Each Lender shall retain the sole right to approve, without the consent of any Participant, any amendment, waiver or other modification of a Loan Document other than that which forgives principal, interest or fees, reduces the stated interest rate or fees payable with respect to any Loan or Commitment in which such Participant has an interest, postpones the Revolver Termination Date or any date fixed for any regularly scheduled payment of principal, interest or fees on such Loan or Commitment, or releases, except as permitted hereunder, substantially all the value of the guarantees of the Obligations or substantially all Collateral.

13.3 Assignments

.

13.3.1 Permitted Assignments

. A Lender may assign to an Eligible Assignee (other than to a Disqualified Institution to the extent the identities of Disqualified Institutions have

been made available to Lender) any of its rights and obligations under the Loan Documents, as long as (a) each assignment is of a constant, and not a varying, percentage of the transferor Lender's rights and obligations under the Loan Documents and, in the case of a partial assignment, is in a minimum principal amount of $2,000,000 (unless otherwise agreed by Agent in its reasonable discretion) and integral multiples of $2,000,000 in excess of those amounts (or, if less, all of such Lender's remaining Loans and Commitments); (b) except in the case of an assignment in whole of a Lender's rights and obligations, the aggregate amount of the Commitments retained by the transferor Lender is at least $2,000,000 (unless otherwise agreed by Agent in its reasonable discretion); and (c) the parties to each such assignment shall execute and deliver to Agent, for its acceptance and recording, an Assignment and Acceptance. Nothing herein shall limit the right of a Lender to pledge or assign any rights under the Loan Documents to secure obligations of such Lender, including a pledge or assignment to a Federal Reserve Bank or any central bank; provided, however, that no such pledge or assignment shall release the Lender from its obligations hereunder nor substitute the pledge or assignee for such Lender as a party hereto.

13.3.2 Effect; Effective Date

. Upon delivery to Agent of an assignment notice in the form of **Exhibit B**, a processing fee of $3,500 (unless otherwise agreed by Agent in its discretion), the tax forms required by **Section 5.11** and the recordation of the assignment in the Register, the assignment shall become effective as specified in the notice (subject to **Section 13.3.4**), if it complies with this **Section 13.3**. From such effective date, and subject to recording of the assignment in the Register, the Eligible Assignee shall for all purposes be a Lender under the Loan Documents, and shall have all rights and obligations of a Lender thereunder. Upon consummation of an assignment, the transferor Lender, Agent and Borrowers shall make appropriate arrangements for issuance of replacement or new notes, if applicable. The transferee Lender shall comply with **Section 5.11** and deliver, upon request, an administrative questionnaire satisfactory to Agent.

13.3.3 Certain Assignees

. No assignment or participation may be made to a Borrower, Affiliate of a Borrower, Defaulting Lender, Disqualified Institution or natural person. Any assignment by a Defaulting Lender shall be effective only upon payment by the Eligible Assignee or Defaulting Lender to Agent of an aggregate amount sufficient, upon distribution (through direct payment, purchases of participations or other compensating actions as Agent deems appropriate), to satisfy all funding and payment liabilities then owing by the Defaulting Lender hereunder. If an assignment by a Defaulting Lender shall become effective under Applicable Law for any reason without compliance with the foregoing sentence, then the assignee shall be deemed a Defaulting Lender for all purposes until such compliance occurs.

13.3.4 Register

. Agent, acting as a non-fiduciary agent of Borrowers (solely for tax purposes), shall maintain at an office in the United States (a) a copy of each Assignment and Acceptance delivered to it, and (b) a register for recordation of the names and addresses of the Lenders and Commitments of, and the principal amounts (and stated interest) of the Loans and LC Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). Notwithstanding anything to the contrary herein, entries in the Register shall be conclusive, absent manifest error, and Borrowers, Agent and Lenders shall treat each lender recorded in such Register as a Lender and the owner of the amounts owing to it under the Loan Documents as reflected in the Register for all purposes under the Loan Documents, notwithstanding any notice to the

contrary. The Register shall be available for inspection by Borrowers or any Lender, from time to time upon reasonable notice.

13.4 Replacement of Certain Lenders

. If a Lender (a) fails to give its consent to any amendment, waiver or action for which consent of all Lenders was required and Required Lenders consented, (b) makes a claim for payments under **Section 3.5, 3.6**, **3.7**, **3.9** or **5.10**, or (c) is a Defaulting Lender or a Disqualified Institution (any such Lender described in clause (a), (b) or (c), an "Affected Lender"), then, in addition to any other rights and remedies that any Person may have, Agent or Borrowers (at their sole expense and effort, upon notice to such Lender and Agent and so long as no Event of Default has occurred and is continuing) may, by notice to such Lender within 120 days after such event (the "Replacement Notice"), require such Affected Lender to assign all of its rights and obligations under the Loan Documents, including its Loans and Revolver Commitment, without recourse, to one or more replacement Lenders (each, a "Replacement Lender") that is an Eligible Assignee, pursuant to appropriate Assignment and Acceptance(s), within 10 days after delivery of the applicable Replacement Notice; provided that (x) such assignment does not conflict with Applicable Laws; (y) Borrowers or the Replacement Lender(s) have reimbursed such Affected Lender for any administrative fee payable by such Affected Lender to Agent pursuant to **Section 13.3**; and (z) at the time of any such replacement of an Affected Lender described in **Section 13.4(a)**, each such Replacement Lender consents to the proposed amendment, waiver or action. Agent is irrevocably appointed as attorney-in-fact to execute any such Assignment and Acceptance on behalf of the Affected Lender if the Affected Lender fails to execute it. Such Affected Lender shall be entitled to receive, in cash, concurrently with such assignment, all amounts owed to it under the Loan Documents through the date of assignment, including, in the case of replacement of an Affected Lender described in **Section 13.4(b)**, all increased costs for and Taxes to which such Affected Lender is entitled to under such **Section 3.5, 3.6**, **3.7**, **3.9** or **5.10** through the date of such assignment. An Affected Lender shall not be required to make any such assignment and delegation if, on or before sixty (60) days after Agent's and the Affected Lender's receipt of the Replacement Notice, as a result of a waiver by such Affected Lender or otherwise, the circumstances entitling Borrower Agent to require such assignment and delegation cease to apply. Nothing in this **Section 13.4** shall limit or impair any rights that any Borrower or Agent may have against any Lender that is a Defaulting Lender.

SECTION 14. MISCELLANEOUS

14.1 Consents, Amendments and Waivers

.

14.1.1 Amendment

. Except as otherwise set forth in this Agreement (and except with respect to (x) any fee letter, any Lien Waiver or any LC Document, which, in each case, may be modified pursuant to a written agreement among the respective parties thereto in accordance with the terms of each such Other Agreement and (y) Compliance Certificates, which are not subject to this **Section 14.1**, no modification of any Loan Document, including any extension or amendment of a Loan Document or any waiver of a Default or Event of Default, shall be effective without the prior written agreement of Agent (with the consent of Required Lenders) and Borrower Agent on behalf of each Obligor party to such Loan Document; provided, however, that:

(a) without the prior written consent of Agent, no modification shall be effective with respect to any provision in a Loan Document that relates to any rights, duties or discretion of Agent;

(b) without the prior written consent of Issuing Bank, no modification shall be effective with respect to any LC Obligations, **Section 2.4** or any other provision in a Loan Document that relates to any rights, duties or discretion of Issuing Bank;

(c) without the prior written consent of each Lender directly and adversely affected thereby, including a Defaulting Lender, no modification shall be effective that would (i) increase the Commitment of such Lender; (ii) reduce the amount of, or waive or delay a scheduled payment of, any principal, interest or fees payable to such Lender (except as provided in **Section 4.2** and the waiver of default interest and waiver of mandatory prepayments), it being understood that the waiver of (or amendment to the terms of) any condition precedent, Default, Event of Default or any mandatory prepayment of the Loans shall not constitute an increase in a commitment or a delay of any payment of principal or interest; (iii) extend the Revolver Termination Date applicable to such Lender's Obligations (except the rescission of a prior acceleration); or (iv) amend this clause (c);

(d) (i) without the prior written consent of all Lenders (except any Defaulting Lender), no modification shall be effective that would (A) reduce the rate of interest on any Loan (other than any waiver of any increase in the interest rate applicable to any Loan pursuant to **Section 3.1.1(b)**) or any fee payable hereunder, (B) alter **Section 5.7.2**, **Section 7.1** (except to add Collateral), **Section 12.5** or **Section 14.1.1**; (C) except as permitted under this Agreement, release all or substantially all Collateral; (D) except in connection with a merger, disposition or similar transaction expressly permitted hereby, release all or substantially all of the value of the guarantees of the Obligations, (E) contractually subordinate any of Agent's Liens, or (F) amend the definitions of Pro Rata or Required Lenders; and (ii) without the prior written consent of all Lenders (except any Defaulting Lender), amend the definition of Required Lenders; and

(e) without the prior written consent of a Secured Bank Product Provider, no modification shall be effective that affects its relative payment priority under **Section 5.7.2**.

14.1.2 Limitations

. Only the consent of the parties to any agreement relating to fees or a Bank Product shall be required for modification of such agreement, and no Bank Product provider (in such capacity) shall have any right to consent to modification of any Loan Document other than its Bank Product agreement. Any waiver or consent granted by Agent or Lenders hereunder shall be effective only if in writing and only for the matter specified.

14.2 Indemnity

. **EACH BORROWER SHALL INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES AGAINST ANY CLAIMS (AS HEREIN DEFINED) THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY INDEMNITEE, INCLUDING CLAIMS ASSERTED BY ANY OBLIGOR OR OTHER PERSON OR ARISING FROM THE NEGLIGENCE OF AN INDEMNITEE**; provided however, that in no event shall any party to a Loan Document have any obligation thereunder to indemnify or hold harmless an Indemnitee with respect to a Claim to the extent that such Claim (x) is determined in

a final, non-appealable judgment by a court of competent jurisdiction to result from the gross negligence, bad faith or willful misconduct of such Indemnitee or such Indemnitee's Affiliates and its and their respective officers, directors, employees, advisors and agents or the material breach by an Indemnitee or such Indemnitee's Affiliate of its obligations under the Loan Documents and such breach resulted in such claim; (y) arises out of, or in connection with, any Claim, litigation, investigation or proceeding that does not involve an act or omission by Parent, the Borrowers or any of its or their respective Affiliates and that is brought by any such indemnified person against any other indemnified person (other than an Indemnitee acting in its capacity as agent, arranger or any other similar role in connection with the Loans unless such claim would otherwise be excluded pursuant to clause (x) above) and (z) settlements effected without Borrower Agent's prior written consent (not to be unreasonably withheld or delayed), but no consent of Borrowers shall be required if an Event of Default has occurred and is continuing, provided that, Borrowers shall have no obligation to reimburse any Indemnitee for fees and expenses unless such Indemnitee provides an undertaking in which such Indemnitee agrees to refund and return any and all amounts paid by Borrowers to such Indemnitee to the extent any of the foregoing items in clause (x) through (z) above occurs. The foregoing shall be limited, in the case of legal fees and expenses, to the reasonable and documented out-of-pocket fees, disbursements and other charges of one counsel to the indemnified persons taken as a whole and if necessary, one local counsel in any relevant jurisdiction (and, in the case of a conflict of interest, one additional counsel to the affected indemnified persons, taken as a whole, and if reasonably necessary, one local counsel in any relevant jurisdiction), in each case, excluding allocated costs of in-house counsel, arising out of or relating to this Agreement, the Borrowers' use or proposed use of proceeds of the Loans or the commitments and any other transactions connected therewith. This **Section 14.2** shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

14.3 Notices and Communications

.

14.3.1 Notice Address

. Subject to **Section 4.1.5**, all notices and other communications by or to a party hereto shall be in writing and shall be given to Borrower Agent on behalf of any Obligor, at Borrower Agent's address shown on **Schedule 14.3.1**, and to any other Person at its address shown on **Schedule 14.3.1** (or, in the case of a Person who becomes a Lender after the Closing Date, at the address shown on its Assignment and Acceptance), or at such other address as a party may hereafter specify by notice in accordance with this **Section 14.3**. Each communication shall be effective only (a) if given by facsimile transmission (or, with respect to non-material communications approved by Agent, or as otherwise expressly permitted by the Loan Documents, by other electronic transmission), when transmitted to the applicable facsimile number (or other electronic address), if confirmation of receipt is received; (b) if given by mail, three Business Days after deposit in the U.S. mail, with first-class postage pre-paid, addressed to the applicable address; or (c) if given by personal delivery, when duly delivered to the notice address with receipt acknowledged. Notwithstanding the foregoing, no notice to Agent or Issuing Bank, as applicable, pursuant to **Section 2.1.4**, **2.4**, or **4.1.1** shall be effective until actually received by the individual to whose attention at Agent such notice is required to be sent. Any written communication that is not sent in conformity with the foregoing provisions shall nevertheless be effective on the date actually received by the noticed party. Any notice received by Borrower Agent shall be deemed received by all Borrowers.

14.3.2 Electronic Communications; Voice Mail

. Electronic mail and internet websites may be used only for routine communications, such as delivery of Borrower Materials, administrative matters, distribution of Loan Documents, and matters permitted under **Section 4.1.5**. Agent and Lenders make no assurances as to the privacy and security of electronic communications. Electronic and voice mail may not be used as effective notice under the Loan Documents.

14.3.3 Platform

. Borrower Materials shall be delivered pursuant to procedures approved by Agent, including electronic delivery (if possible) upon request by Agent to an electronic system maintained by Agent ("Platform"). Borrowers shall notify Agent of each posting of Borrower Materials on the Platform and the materials shall be deemed received by Agent only upon its receipt of such notice. Borrower Materials and other information relating to this credit facility may be made available to Lenders on the Platform. The Platform is provided "as is" and "as available." Agent does not warrant the accuracy or completeness of any information on the Platform nor the adequacy or functioning of the Platform, and expressly disclaims liability for any errors or omissions in the Borrower Materials or any issues involving the Platform. 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 AGENT WITH RESPECT TO BORROWER MATERIALS, REPORTS OR THE PLATFORM. Lenders acknowledge that Borrower Materials and Reports may include material non-public information of Obligors and should not be made available to any personnel who do not wish to receive such information or who may be engaged in investment or other market-related activities with respect to any Obligor's securities. No Agent Indemnitee shall have any liability to Borrowers, Lenders or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) relating to use by any Person of the Platform or delivery of Borrower Materials and other information through the Platform, internet, e-mail, or any other electronic platform or messaging system except to the extent resulting from gross negligence or willful misconduct by Agent Indemnitee as determined in a final, non-appealable judgment by a court of competent jurisdiction.

14.3.4 Non-Conforming Communications

. Agent and Lenders may rely upon any communications purportedly given by or on behalf of any Borrower even if they were not made in a manner specified herein, were incomplete or were not confirmed, or if the terms thereof, as understood by the recipient, varied from a later confirmation. Each Borrower shall indemnify and hold harmless each Indemnitee (to the extent required by, and subject to the limitations in, **Section 14.2**) from any liabilities, losses, costs and expenses arising from any electronic or telephonic communication purportedly given by or on behalf of a Borrower.

14.4 Performance of Borrowers' Obligations

. Agent may, in its discretion, with three (3) Business Days' prior written notice to Borrower Agent at any time when a Default exists, or at any time an Event of Default has occurred and is continuing, at Borrowers' expense, pay any amount or do any act required of a Borrower under any Loan Documents or otherwise lawfully requested by Agent to (a) enforce any Loan Documents or collect any Obligations; (b) subject to **Section 8.6.2**, protect, insure, maintain or realize upon any Collateral; or (c) defend or maintain the validity or priority of Agent's Liens in any Collateral, including any payment of a judgment, insurance premium, warehouse charge, finishing or processing charge, or landlord claim, or any

discharge of a Lien. All payments, costs and expenses (including Extraordinary Expenses) of Agent under this Section shall be reimbursed to Agent by Borrowers, with interest from the date incurred until paid in full, at the Default Rate applicable to Adjusted Base Rate Loans. Any payment made or action taken by Agent under this Section shall be without prejudice to any right to assert an Event of Default or to exercise any other rights or remedies under the Loan Documents.

14.5 Credit Inquiries

. Agent and Lenders may (but shall have no obligation) to respond to usual and customary credit inquiries from third parties concerning any Obligor or Subsidiary.

14.6 Severability

. Wherever possible, each provision of the Loan Documents shall be interpreted in such manner as to be valid under Applicable Law. If any provision is found to be invalid under Applicable Law, it shall be ineffective only to the extent of such invalidity and the remaining provisions of the Loan Documents shall remain in full force and effect.

14.7 Cumulative Effect; Conflict of Terms

. The provisions of the Loan Documents are cumulative. The parties acknowledge that the Loan Documents may use several limitations or measurements to regulate similar matters, and they agree that these are cumulative and that each must be performed as provided. Except as otherwise provided in another Loan Document (by specific reference to the applicable provision of this Agreement), if any provision contained herein is in direct conflict with any provision in another Loan Document, the provision herein shall govern and control.

14.8 Counterparts

. Any Loan Document may be executed in counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of a signature page of any Loan Document by telecopy or other electronic means shall be effective as delivery of a manually executed counterpart of such agreement.

14.9 Entire Agreement

. The Loan Documents constitute the entire agreement, and supersede all prior understandings and agreements, among the parties relating to the subject matter thereof.

14.10 Relationship with Lenders

. The obligations of each Lender hereunder are several, and no Lender shall be responsible for the obligations or Commitments of any other Lender. Amounts payable hereunder to each Lender shall be a separate and independent debt. It shall not be necessary for Agent or any other Lender to be joined as an additional party in any proceeding for such purposes. Nothing in this Agreement and no action of Agent, Lenders or any other Secured Party pursuant to the Loan Documents or otherwise shall be deemed to constitute Agent and any Secured Party to be a partnership, joint venture or similar arrangement, nor to constitute control of any Obligor.

14.11 No Advisory or Fiduciary Responsibility

. In connection with all aspects of each transaction contemplated by any Loan Document, Borrowers acknowledge and agree that (a)(i) this credit facility and any related arranging or other services by Agent, any Lender, any of their Affiliates or any arranger are arm's-length commercial transactions between Borrowers and such Person; (ii) Borrowers have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate; and (iii) Borrowers are capable of evaluating, and understand and accept, the terms, risks and conditions of the transactions contemplated by the

Loan Documents; (b) each of Agent, Lenders, their Affiliates and any arranger is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for Borrowers, any of their Affiliates or any other Person, and has no obligation with respect to the transactions contemplated by the Loan Documents except as expressly set forth therein; and (c) Agent, Lenders, their Affiliates and any arranger may be engaged in a broad range of transactions that involve interests that differ from those of Borrowers and their Affiliates, and have no obligation to disclose any of such interests to Borrowers or their Affiliates. To the fullest extent permitted by Applicable Law, each Borrower hereby waives and releases any claims that it may have against Agent, Lenders, their Affiliates and any arranger with respect to any breach of agency or fiduciary duty in connection with any transaction contemplated by a Loan Document.

14.12 Confidentiality

. Each of Agent, Lenders and Issuing Bank (collectively, the "**Restricted Persons**" and, each a "**Restricted Person**") shall maintain the confidentiality of all Information (as defined below), except that Information may be disclosed (a) to its Affiliates, and to its and their partners, directors, officers, employees, agents, advisors and representatives (provided such Persons are informed of the confidential nature of the Information and instructed to keep it confidential); (b) to the extent requested by any governmental, regulatory or self-regulatory authority purporting to have jurisdiction over it or its Affiliates; provided that Agent or such Lender, as applicable, agrees to notify Borrower Agent prior to such disclosure to the extent practicable, unless Agent or such Lender is prohibited by Applicable Law, rule or regulation from so informing Borrower Agent, and except in connection with any request as part of a regulatory examination or audit; (c) to the extent required by Applicable Law or by any subpoena or other legal process (in which case Agent or such Lender, as applicable, agrees to notify Borrower Agent promptly thereof prior to such disclosure to the extent practicable, unless Agent or such Lender is prohibited by Applicable Law, rule or regulation from so informing Borrower Agent, and except in connection with any request as part of a regulatory examination or audit); (d) to any other party hereto; (e) in connection with any action or proceeding relating to any Loan Documents or Obligations; provided that Agent or such Lender, as applicable, agrees that it will notify Borrower Agent as soon as practicable prior to any such disclosure by such Person unless such notification is prohibited by Applicable Law, rule or regulation; (f) subject to an agreement containing provisions substantially the same as this Section, to any Transferee or any actual or prospective party (or its advisors) to any Bank Product; (g) with the consent of Borrower Agent; or (h) to the extent such Information (i) ceases to be confidential other than as a result of an act or omission of Agent or Lender or a breach of this Section, (ii) is publicly available at the time of disclosure or becomes publicly available other than as a result of a breach of this Section or (iii) is otherwise available to Agent, any Lender, Issuing Bank or any of their Affiliates on a nonconfidential basis from a source other than Borrowers. Notwithstanding the foregoing, Agent and Lenders may publish or disseminate general information concerning this credit facility for league table, tombstone and, after reasonable advance notice to Borrowers to give them an opportunity to review and comment on such materials, for advertising purposes, and may use Borrowers' logos, trademarks or product photographs in advertising materials. As used herein, "Information" means all information received from an Obligor or Subsidiary or Affiliates relating to it or its business, other than any such information that is available to Agent or any Lender thereof on a non-confidential basis prior to disclosure by an Obligor or any of its Subsidiaries or Affiliates. Any Person required to maintain the confidentiality of Information pursuant to this Section shall be deemed to have complied if it exercises a degree of care similar to that which it accords its own

confidential information. Each of Agent, Lenders and Issuing Bank acknowledges that (i) Information may include material non-public information; (ii) it has developed compliance procedures regarding the use of material non-public information; and (iii) it will handle such material non-public information in accordance with Applicable Law.

14.13 GOVERNING LAW

. **THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, UNLESS OTHERWISE SPECIFIED IN SUCH OTHER LOAN DOCUMENTS, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.**

14.14 Consent to Forum

. **EACH PARTY HERETO HEREBY CONSENTS TO THE NON-EXCLUSIVE JURISDICTION OF ANY FEDERAL OR STATE COURT SITTING IN OR WITH JURISDICTION OVER NEW YORK, NEW YORK, IN ANY PROCEEDING OR DISPUTE RELATING IN ANY WAY TO ANY LOAN DOCUMENTS. EACH PARTY HERETO IRREVOCABLY WAIVES ALL CLAIMS, OBJECTIONS AND DEFENSES THAT IT MAY HAVE REGARDING SUCH COURT'S PERSONAL OR SUBJECT MATTER JURISDICTION, VENUE OR INCONVENIENT FORUM. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS BY MAIL OR PERSONAL DELIVERY IN THE MANNER PROVIDED FOR NOTICES IN SECTION 14.3.1.** Nothing herein shall limit the right of any party hereto to bring proceedings against any other party hereto in any other court, nor limit the right of any party to serve process in any other manner permitted by Applicable Law. Nothing in this Agreement shall be deemed to preclude enforcement by Agent of any judgment or order obtained in any forum or jurisdiction.

14.15 Waivers

. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH OBLIGOR WAIVES (A) THE RIGHT TO TRIAL BY JURY IN ANY PROCEEDING OR DISPUTE OF ANY KIND RELATING IN ANY WAY, DIRECTLY OR INDIRECTLY, TO ANY LOAN DOCUMENT, OBLIGATION OR COLLATERAL, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR BY ANY LOAN DOCUMENT (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY); (B) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, PRESENTMENT, DEMAND, PROTEST, NOTICE OF PRESENTMENT, DEFAULT, NON-PAYMENT, MATURITY, RELEASE, COMPROMISE, SETTLEMENT, EXTENSION OR RENEWAL OF ANY COMMERCIAL PAPER, ACCOUNTS, DOCUMENTS, INSTRUMENTS, CHATTEL PAPER AND GUARANTIES AT ANY TIME HELD BY AGENT ON WHICH AN OBLIGOR MAY IN ANY WAY BE LIABLE, AND HEREBY RATIFIES ANYTHING AGENT MAY DO IN THIS REGARD; (C) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, NOTICE PRIOR TO TAKING POSSESSION OR CONTROL OF ANY COLLATERAL; (D) ANY BOND OR SECURITY THAT MIGHT BE REQUIRED BY A COURT PRIOR TO ALLOWING AGENT TO EXERCISE ANY RIGHTS OR REMEDIES; (E) THE BENEFIT OF ALL VALUATION, APPRAISEMENT AND EXEMPTION LAWS; (F) ANY CLAIM AGAINST AGENT, ISSUING BANK OR ANY LENDER, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) IN ANY WAY RELATING TO ANY ENFORCEMENT ACTION, OBLIGATIONS, LOAN DOCUMENTS OR TRANSACTIONS RELATING THERETO; AND (G) NOTICE OF ACCEPTANCE HEREOF.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AGENT, ISSUING BANK AND EACH LENDER WAIVES (A) THE RIGHT TO TRIAL BY JURY IN ANY PROCEEDING OR DISPUTE OF ANY KIND RELATING IN ANY WAY, DIRECTLY OR INDIRECTLY, TO ANY LOAN DOCUMENT, OBLIGATION OR COLLATERAL, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR BY ANY LOAN DOCUMENT (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY), AND (B) ANY CLAIM AGAINST ANY OBLIGOR OR ANY SUBSIDIARY THEREOF, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) IN ANY WAY RELATING TO ANY ENFORCEMENT ACTION, OBLIGATIONS, LOAN DOCUMENTS OR TRANSACTIONS RELATING THERETO, EXCEPT ONLY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) FOR WHICH AGENT, ISSUING BANK OR ANY SUCH LENDER HAS A VALID CLAIM FOR INDEMNIFICATION PURSUANT TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS

EACH PARTY HERETO ACKNOWLEDGES THAT THE FOREGOING WAIVERS ARE A MATERIAL INDUCEMENT TO EACH OTHER PARTY ENTERING INTO THIS AGREEMENT AND THAT THEY ARE RELYING UPON THE FOREGOING IN THEIR DEALINGS WITH SUCH OTHER PARTIES. EACH PARTY HERETO HAS REVIEWED THE FOREGOING WAIVERS WITH ITS LEGAL COUNSEL AND HAS KNOWINGLY AND VOLUNTARILY WAIVED ITS JURY TRIAL AND OTHER RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

14.16 Patriot Act Notice

. Agent and Lenders subject to the Patriot Act hereby notify Borrowers, Agent and Lenders that they are required to obtain, verify and record information that identifies each Borrower, including its legal name, address, tax ID number and other information that will allow Agent and Lenders to identify it in accordance with the Patriot Act. Agent and Lenders will also require information regarding each personal guarantor, if any, and may require information regarding Borrowers' management and owners, such as legal name, address, social security number and date of birth. In addition, if Agent or any Lender is expressly required by law or regulation to do so, it shall have the right to periodically conduct (a) Patriot Act searches, OFAC/PEP searches, and customary individual background checks for the Obligors and (b) OFAC/PEP searches and customary individual background checks for the Obligors' senior management and key principals, and Borrowers agree to use commercially reasonable efforts to cooperate in respect of the conduct of such searches and further agree that the reasonable and documented out-of-pocket costs and charges for such searches shall constitute expenses hereunder for which the Borrowers shall be liable.

[Remainder of page intentionally left blank; signatures begin on following page]

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the first date set forth above.

OBLIGORS

BORROWER AND BORROWER AGENT:

THE HABIT RESTAURANTS, LLC

By: /s/ Ira Fils
Name:Ira Fils
Title: Chief Financial Officer

GUARANTOR:

HBG FRANCHISE, LLC,
a Delaware limited liability company

By: /s/ Ira Fils
Name: Ira Fils
Title: Chief Financial Officer

AGENT:

BANK OF THE WEST

By: /s/ Jim Halton
Name:Jim Halton
Title: Vice President

LENDERS:

BANK OF THE WEST

By: /s/ Jim Halton
Name:Jim Halton
Title: Vice President

Schedule 1.1
to
Loan and Security Agreement

COMMITMENTS OF LENDERS

Lenders	**Revolver Loans Commitment**	**Total Commitments**	**Pro Rata Share**
Bank of the West	$20,000,000.00	$20,000,000.00	***100.000000000%***
Total	***$ 20,000,000.00***	***$ 20,000,000.00***	***100.000000000%***

Exhibit 31.1

CERTIFICATION OF PERIODIC REPORT UNDER SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Russell Bendel, certify that:

1. I have reviewed this quarterly report on Form 10-Q of The Habit Restaurants, Inc. (the "registrant");

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 3, 2017

/s/ Russell Bendel

Russell Bendel
Chief Executive Officer & President
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION OF PERIODIC REPORT UNDER SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Ira Fils, certify that:

1. I have reviewed this quarterly report on Form 10-Q of The Habit Restaurants, Inc. (the "registrant");

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 3, 2017

/s/ Ira Fils

Ira Fils
Chief Financial Officer and Secretary
(Principal Accounting and Financial Officer)

Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO SECTION 906
OF THE SARBANES-OXLEY ACT OF 2002

In connection with the quarterly report of The Habit Restaurants, Inc. (the "Company") on Form 10-Q for the fiscal quarter ended June 27, 2017 filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Russell Bendel, Chief Executive Officer & President of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company for the periods presented therein.

Date: August 3, 2017

/s/ Russell Bendel
Russell Bendel
Chief Executive Officer & President
(Principal Executive Officer)

Exhibit 32.2

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO SECTION 906
OF THE SARBANES-OXLEY ACT OF 2002

In connection with the quarterly report of The Habit Restaurants, Inc. (the "Company") on Form 10-Q for the fiscal quarter ended June 27, 2017 filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Ira Fils, Chief Financial Officer & Secretary of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company for the periods presented therein.

Date: August 3, 2017

/s/ Ira Fils
Ira Fils
Chief Financial Officer & Secretary
(Principal Accounting and Financial Officer)