

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

FORM 8-K

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

Date of Report (Date of earliest event reported): July 30, 2021

iMedia Brands, Inc.

(Exact name of registrant as specified in its charter)

**Minnesota
(State or other jurisdiction
of incorporation)**

**001-37495
(Commission
File Number)**

**41-1673770
(IRS Employer
Identification No.)**

**6740 Shady Oak Road,
Eden Prairie, Minnesota 55344-3433
(Address of principal executive offices) (Zip Code)**

**(952) 943-6000
(Registrants telephone number, including area code)**

**Not applicable
(Former name or former address, if changed since last report)**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.01 par value	IMBI	The Nasdaq Stock Market, LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

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.

Item 1.01 Entry into a Material Definitive Agreement.

Revolving Loan Facility

On July 30, 2021, iMedia Brands, Inc. (the “Company”) and certain of its subsidiaries, as borrowers, entered into a loan and security agreement (the “Loan Agreement”) with Siena Lending Group LLC and the other lenders party thereto from time to time, Siena Lending Group LLC, as agent (the “Agent”), and certain additional subsidiaries of the Company, as guarantors thereunder. The Loan Agreement has a three-year term and provides for up to a \$80 million revolving line of credit. Subject to certain conditions, the Loan Agreement also provides for the issuance of letters of credit in an aggregate amount up to \$5,000,000 which, upon issuance, would be deemed advances under the revolving line of credit. Proceeds of borrowings shall be used to refinance all indebtedness owing to PNC Bank, National Association, to pay the fees, costs, and expenses incurred in connection with the Loan Agreement and the transactions contemplated thereby, for working capital purposes, and for such other purposes as specifically permitted pursuant to the terms of the Loan Agreement. The Company’s obligations under the Loan Agreement are secured by substantially all of its assets and the assets of its subsidiaries as further described in the Loan Agreement.

Subject to certain conditions, borrowings under the Loan Agreement bear interest at 4.50% per annum in excess of the London interbank offered rate for deposits in dollars (“LIBOR”) for a period of 30 days as published in The Wall Street Journal three business days prior to the first day of each calendar month, or 0.50% per annum, whichever is greater or, if LIBOR is no longer available, a successor rate to be chosen by the Agent in consultation with the Company or a base rate.

The Loan Agreement contains customary representations and warranties and financial and other covenants and conditions, including, among other things, minimum liquidity requirements of not less than \$7,500,000 as of the end of any fiscal month and a maximum senior net leverage ratio of not less than 2.50:1.00 as of the last day of each fiscal quarter. In addition, the Loan Agreement places restrictions on the Company’s ability to incur additional indebtedness or prepay existing indebtedness, to create liens or other encumbrances, to sell or otherwise dispose of assets, to merge or consolidate with other entities, and to make certain restricted payments, including payments of dividends to shareholders. The Company also pays a monthly fee at a rate equal to 0.50% per annum of the average daily unused amount of the credit facility for the previous month.

The full terms and conditions of this financing are set forth in the Loan Agreement. A copy of the Loan Agreement is filed as Exhibit 10.1 hereto and is incorporated by reference herein.

Term Loan

On July 30, 2021, two of the Company’s subsidiaries, VVI Fulfillment Center, Inc. and EP Properties, LLC (collectively, the “Borrowers”), and the Company, as guarantor, entered into that certain Promissory Note Secured by Mortgages (the “Note”) with GreenLake Real Estate Finance LLC (“GreenLake”) whereby GreenLake agreed to make a secured term loan (the “Term Loan”) available to the Borrowers in the original amount of \$28,500,000.00. The Note is secured by, among other things, mortgages encumbering the Company’s owned properties in Eden Prairie, Minnesota and Bowling Green, Kentucky (collectively, the “Mortgages”) as well as other assets as described in the Note. Proceeds of borrowings shall be used to (i) pay fees and expenses related to the transactions contemplated by the Note, (ii) make certain payments approved by GreenLake to third parties, and (iii) provide for working capital and general corporate purposes of the Company. The Company has also pledged the stock that it owns in the Borrowers to secure its guarantor obligations.

The Note is scheduled to mature on July 31, 2024. The borrowings, which include all amounts advanced under the Note, bear interest at 10.00% per annum or, at the election of the Lender upon no less than 30 days prior written notice to the Borrowers, at a floating rate equal to the prime rate plus 200 basis points.

The Borrowers may prepay the Note in full (but not in part) before July 30, 2022 (the “Lockout Date”) upon payment of a prepayment premium equal to the amount of interest that would have accrued from the date of prepayment through the Lockout Date. After the Lockout Date, the Note may be prepaid in full or in any installment greater than or equal to \$100,000 without any prepayment penalty or premium on 90 days’ prior written notice from Borrowers to GreenLake.

The Note contains customary representations and warranties and financial and other covenants and conditions, including, a requirement that the Borrowers comply with all covenants set forth in the Loan Agreement described above. The Note also contains certain customary events of default.

The full terms and conditions of this financing are set forth in the Note. A copy of the Note is filed as Exhibit 10.2 hereto and is incorporated by reference herein.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information set forth under Item 1.01 above is incorporated by reference into this Item 2.03.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

The following exhibits are being filed with this Current Report on Form 8-K:

Exhibit No.	Description
<u>10.1</u>	<u>Loan and Security Agreement, dated July 30, 2021, by and among the iMedia Brands, Inc., as the lead borrower, certain of its subsidiaries party thereto as borrowers, Siena Lending Group LLC and the other financial institutions party thereto from time to time, Siena Lending Group LLC, as agent, and VVI Fulfillment Center, Inc., EP Properties, LLC and Portal Acquisition Company, as guarantors.</u>
<u>10.2</u>	<u>Promissory Note Secured by Mortgages, dated July 30, 2021, by and among VVI Fulfillment Center, Inc. and EP Properties, LLC, as borrowers, and GreenLake Real Estate Finance LLC, as lender.</u>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURES

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

Date: August 5, 2021

iMedia Brands, Inc.

By: */s/ Timothy A. Peterman*

Timothy A. Peterman
Chief Executive Officer

LOAN AND SECURITY AGREEMENT

Dated as of July 30, 2021

among

SIENA LENDING GROUP LLC,

as Agent,

SIENA LENDING GROUP LLC,

and the other financial institutions party hereto from time to time,

as Lenders

**IMEDIA BRANDS, INC.,
VALUEVISION RETAIL, INC.,
FL ACQUISITION COMPANY,
PW ACQUISITION COMPANY, LLC,
VALUEVISION MEDIA ACQUISITIONS, INC.,
TCO, LLC,
JWH ACQUISITION COMPANY,
NORWELL TELEVISION, LLC,
867 GRAND AVENUE LLC,
VALUEVISION INTERACTIVE, INC.,**

as Borrowers

and

**VVI FULFILLMENT CENTER, INC.,
EP PROPERTIES, LLC
PORTAL ACQUISITION COMPANY
as Guarantors**

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Loan and Security Agreement

This Loan and Security Agreement (as it may be amended, restated or otherwise modified from time to time, this “*Agreement*”) is entered into as of July 30, 2021 among (1) SIENA LENDING GROUP LLC, as agent for the Lenders (in such capacity, together with its successors and assigns “*Agent*”), (2) the lenders from time to time party hereto (each of such lenders, together with its successors and permitted assigns, is referred to hereinafter as a “*Lender*”), (3) IMEDIA BRANDS, INC., a Minnesota corporation (“*iMedia*”), VALUEVISION INTERACTIVE, INC., a Minnesota corporation (“*Value Interactive*”), VALUEVISION RETAIL, INC., a Delaware corporation (“*Value Retail*”), PW ACQUISITION COMPANY, LLC, a Minnesota limited liability company (“*PW Acquisition*”), FL ACQUISITION COMPANY, a Minnesota corporation (“*FL Acquisition*”), VALUEVISION MEDIA ACQUISITIONS, INC., a Delaware corporation (“*Value Media*”), TCO, LLC, a Delaware limited liability company (“*TCO*”), JWH ACQUISITION COMPANY, a Minnesota corporation (“*JWH Acquisition*”), NORWELL TELEVISION, LLC, a Delaware limited liability company (“*Norwell*”), and 867 GRAND AVENUE LLC, a Minnesota limited liability company (“*867 Grand Avenue*” and together with iMedia, Value Interactive, Value Retail, PW Acquisition, FL Acquisition, Value Media, TCO, JWH Acquisition, Norwell, and any other Person who from time to time becomes a Borrower hereunder, collectively, the “*Borrowers*” and each individually, a “*Borrower*”) and (4) VVI FULFILLMENT CENTER, INC., a Minnesota corporation (“*VVI Fulfillment*”), EP PROPERTIES, LLC, a Minnesota limited liability company (“*EP Properties*”), PORTAL ACQUISITION COMPANY, a Minnesota corporation (“*Portal*”) and each other of the Affiliates of the Borrowers signatory to this Agreement from time to time as guarantors, if any (each a “*Guarantor*” and collectively, the “*Guarantors*”). The Schedules and Exhibits to this Agreement are an integral part of this Agreement and are incorporated herein by reference. Terms used, but not defined elsewhere, in this Agreement are defined in Schedule B.

1. LOANS AND LETTERS OF CREDIT.

1.1 Amount of Loans / Letters of Credit.

(a) **Revolving Loans and Letters of Credit.** Subject to the terms and conditions contained in this Agreement, including Sections 1.3 and 1.6, each Lender with a Revolving Loan Commitment shall (severally, not jointly and severally) from time to time prior to the Maturity Date, at Borrowing Agent’s request, (i) make revolving loans to Borrowers (“*Revolving Loans*”), and (ii) make, or cause or permit a Participant (as defined in Section 10.10) to make, letters of credit (“*Letters of Credit*”) available to Borrowers in an amount not to exceed such Lender’s Pro Rata Share of such Revolving Loans and/or Letters of Credit; *provided*, that after giving effect to each such Revolving Loan and each such Letter of Credit, (A) the outstanding balance of all Revolving Loans and the Letter of Credit Balance will not exceed the lesser of (x) the Maximum Revolving Facility Amount, and (y) the Borrowing Base, and (B) none of the other Loan Limits for Revolving Loans will be exceeded. All Revolving Loans shall be made in and repayable in Dollars. Any Revolving Loans repaid may be reborrowed in accordance with the terms herein.

1.2 Reserves re Revolving Loans / Letters of Credit. Agent may, from time to time, establish and revise reserves against the Borrowing Base in such amounts and of such types as Agent deems appropriate in its Permitted Discretion (“*Reserves*”); *provided* that, the amount of any Reserve established by Agent shall have a reasonable relationship to the event, condition, other circumstance, or fact that is the basis for such Reserve. To the extent that an event, condition or circumstance as to any eligible asset is addressed pursuant to the treatment thereof within the applicable definition of such terms, Agent shall not also establish a Reserve to address the same event, condition or circumstance. Such Reserves shall be available for Borrowing Agent to view in Passport 6.0 simultaneously with the imposition thereof; *provided*, that, unless an Event of Default has occurred and is continuing, Agent shall provide email notice advising Borrowing Agent of such Reserves two (2) Business Days prior to the imposition of such Reserves (during which period (x) Agent shall be available to discuss any such proposed Reserves with the Borrowing Agent to afford the Borrowing Agent an opportunity to take such action as may be required so that the event, condition or circumstance that is the basis for such Reserve no longer exists in the manner and to the extent satisfactory to the Agent in its Permitted Discretion and (y) Borrowers may not obtain any new Revolving Loan or Letter of Credit to the extent that, after giving pro forma effect to such proposed Reserves, such Revolving Loan or Letter of Credit would cause the outstanding balance of all Revolving Loans and the Letter of Credit Balance to exceed the lesser of (a) the Maximum Revolving Facility Amount and (b) the Borrowing Base). Without limiting the foregoing, references to Reserves shall include the Dilution Reserve. In no event shall the establishment of a Reserve in respect of a particular actual or contingent liability obligate any Lender to make advances to pay such liability or otherwise obligate any Lender with respect thereto.

1.3 Protective Advances. Any contrary provision of this Agreement or any other Loan Document notwithstanding, Agent is hereby authorized by Borrowers at any time during the existence of a Default or an Event of Default, regardless of (a) whether any of the other applicable conditions precedent set forth in Section 1.6 hereof have not been satisfied or the commitment of Lenders to make Loans hereunder has been terminated for any reason, or (b) any other contrary provision of this Agreement, to make Revolving Loans to, or for the benefit of, Borrowers that Agent, in its sole discretion, deems necessary or desirable (i) to preserve or protect the Collateral, or any portion thereof, (ii) to enhance the likelihood of, or maximize the amount of, repayment of the Loans and other Obligations, or (iii) to pay any other amount chargeable to Borrowers pursuant to the terms of this Agreement (the “*Protective Advances*”). Agent shall endeavor to provide written notice to Borrowers of the any such Protective Advance simultaneously with the making thereof, but Agent shall have no liability for failure to provide any such notice. Any contrary provision of this Agreement or any other Loan Document notwithstanding, Agent may direct the proceeds of any Protective Advance to Borrowers or to such other Person as Agent determines in its sole discretion. All Protective Advances shall be payable immediately upon demand.

1.4 Notice of Borrowing; Manner of Revolving Loan Borrowing. Borrowing Agent shall request each Revolving Loan by an Authorized Officer submitting such request via Passport 6.0 (or, if requested by Agent, by delivering, in writing or via an Approved Electronic Communication, a Notice of Borrowing substantially in the form of Exhibit A hereto) (each such request a “*Notice of Borrowing*”). Subject to the terms and conditions of this Agreement, including Sections 1.1 and 1.6, Agent shall, except as provided in Section 1.3, deliver the amount of the Revolving Loan requested in the Notice of Borrowing for credit to any account of Borrowers at a bank in the United States of America as Borrowing Agent may specify (*provided* that such account must be one identified on Section 39 of the Information Certificates and approved by Agent as an account to be used for funding of loan proceeds) by wire transfer of immediately available funds (a) on the same day if the Notice of Borrowing is received by Agent on or before 11:00 a.m. Eastern Time on a Business Day, or (b) on the immediately following Business Day if the Notice of Borrowing is received by Agent after 11:00 a.m. Eastern Time on a Business Day, or is received by Agent on any day that is not a Business Day. Agent shall charge to the Revolving Loan Agent’s usual and customary fees for the wire transfer of each Loan. The Revolving Loans shall be made by the Lenders contemporaneously and in accordance with their Pro Rata Shares. It is understood that (a) no Lender shall be responsible for any failure by any other Lender to perform its obligation to make the Revolving Loans (or other extension of credit) hereunder, nor shall any commitment of any Lender be increased or decreased as a result of any failure by any other Lender to perform its obligations hereunder, and (b) no failure by any Lender to perform its obligations hereunder shall excuse any other Lender from its obligations hereunder.

1.5 Other Provisions Applicable to Letters of Credit. Lenders (acting through Agent) shall, on the terms and conditions set forth in this Agreement (including the terms and conditions set forth in Section 1.1 and Section 1.6), make Letters of Credit available to Borrowers either by issuing them, or by causing other financial institutions to issue them supported by Lenders' guaranty or indemnification; *provided*, that after giving effect to each Letter of Credit, the Letter of Credit Balance will not exceed the Letter of Credit Limit. Notwithstanding anything in this Agreement, the parties agree upon request of Borrower Agent and consent of the Required Lenders (not to be unreasonably withheld or delayed) that in connection with Lenders' option (acting through Agent) to make Letters of Credit available to Borrowers by causing other financial institutions (an "**Issuing Bank**") to issue Letters of Credit, Agent may cause or permit any Participant under this Agreement to cause other financial institutions to issue such Letters of Credit and thereafter (a) all such Letters of Credit shall be treated for all purposes under this Agreement as if such Letters of Credit were requested by Borrowing Agent and made available by Lenders in accordance with their Pro Rata Share, (b) such Participant's support of such Letters of Credit in the form of a guaranty or indemnification shall be treated as if such support had been made by Lenders in accordance with their Pro Rata Share, (c) Borrowers hereby unconditionally and irrevocably, jointly and severally agree to pay to Agent for the benefit of Lenders in accordance with their Pro Rata Share the amount of each payment or disbursement made by such Participant or the applicable issuer under any such Letter of Credit honoring any demand for payment thereunder upon demand in accordance with the reimbursement provisions of this Section 1.5 and agrees that such reimbursement obligations of Borrowers constitute Obligations under this Agreement, and (d) any and all amounts paid by such Participant or the applicable issuer in respect of any such Letter of Credit will, at the election of Agent, be treated for all purposes as a Revolving Loan, and be payable, in the same manner as a Revolving Loan. Borrowers agree to execute all documentation reasonably required by Agent and/or the issuer of any Letter of Credit in connection with any such Letter of Credit. Borrowers hereby unconditionally and irrevocably, jointly and severally agree to reimburse Lenders and/or the applicable issuer for each payment or disbursement made by Lenders and/or the applicable issuer under any Letter of Credit honoring any demand for payment made thereunder, in each case on the date that such payment or disbursement is made. Borrowers' reimbursement obligations hereunder shall be irrevocable and unconditional under all circumstances, including (w) any lack of validity or enforceability of any Letter of Credit, this Agreement or any other Loan Document, (x) the existence of any claim, set-off, defense or other right which any Loan Party may have at any time against a beneficiary named in a Letter of Credit, any transferee of any Letter of Credit (or any Person for whom any such transferee may be acting), Agent, any Lender, any Participant, the applicable issuer under any Letter or Credit, or any other Person, whether in connection with any Letter of Credit, this Agreement, any other Loan Document, the transactions contemplated herein or any unrelated transactions (including any underlying transaction between any Loan Party and the beneficiary named in any Letter of Credit), (y) any lack of validity, sufficiency or genuineness of any document which Agent or the applicable issuer has determined complies on its face with the terms of the applicable Letter of Credit, even if such document should later prove to have been forged, fraudulent, invalid or insufficient in any respect or any statement therein shall have been untrue or inaccurate in any respect, or (z) the surrender or impairment of any security for the performance or observance of any of the terms hereof. Any and all amounts paid by Agent and/or Lenders and any Participant in respect of a Letter of Credit will, at the election of Agent, be treated for all purposes as a Revolving Loan, and bear interest, and be payable, in the same manner as a Revolving Loan.

1.6 Conditions of Making the Loans and Issuing Letters of Credit. Each Lender's obligation to make any Loan or issue or cause any Letter of Credit to be issued under this Agreement is subject to the following conditions precedent (as well as any other conditions set forth in this Agreement or any other Loan Document), all of which must be satisfied in a manner acceptable to Agent and Lenders (and as applicable, pursuant to documentation which in each case is in form and substance acceptable to Agent) as of each day that such Loan is made or such Letter of Credit is issued, as applicable:

(a) **Loans and Letters of Credit Made and/or Issued on the Closing Date:** With respect to Loans made, and/or Letters of Credit issued, on the Closing Date, (i) each applicable Loan Party shall have duly executed and/or delivered, or, as applicable, shall have caused such other applicable Persons to have duly executed and/or delivered, to Agent such agreements, instruments, documents and/or certificates listed on the closing checklist attached hereto as **Exhibit B**; (ii) Agent shall have completed its business and legal due diligence pertaining to the Loan Parties, their respective businesses and assets, with results thereof satisfactory to Agent in its sole discretion; (iii) each Lender's obligations and commitments under this Agreement shall have been approved by such Lender's Credit Committee; (iv) after giving effect to such Loans and Letters of Credit, as well as to the payment of all critical trade payables (other than those owing to AT&T Inc. and CSC Holdings, LLC and their respective Subsidiaries and Affiliates older than sixty (60) days past due and the consummation of all transactions contemplated hereby to occur on the Closing Date), closing costs and any book overdraft, Minimum Liquidity shall be no less than \$20,000,000 and (v) Borrowers shall have paid to Agent all fees due on the date hereof, and shall have paid or reimbursed Agent for all of Agent's and Lenders' costs, charges and expenses incurred through the Closing Date (and in connection herewith, Borrowers hereby irrevocably authorize Agent to charge such fees, costs, charges and expenses as Revolving Loans); and

(b) **All Loans and/or Letters of Credit:** With respect to Loans made and/or Letters of Credit issued, on the Closing Date and/or at any time thereafter, in addition to the conditions specified in clause (a) above as applicable, (i) Borrowers shall have provided to Agent such information as Agent may require in order to determine the Borrowing Base, as of such borrowing or issue date, after giving effect to such Loans and/or Letters of Credit, as applicable; (ii) each applicable Loan Party shall have duly executed and/or delivered, or, as applicable, shall have caused such other applicable Persons to have duly executed and/or delivered, to Agent such further agreements, instruments, documents, proxies and certificates as Agent may require in connection therewith; (iii) each of the representations and warranties set forth in this Agreement and in the other Loan Documents shall be true and correct in all material respects (without duplication of materiality qualifiers therein) as of the date such Loan is made and/or such Letter of Credit is issued (or to the extent any representations or warranties are expressly made solely as of an earlier date, such representations and warranties shall be true and correct in all material respects (without duplication of materiality qualifiers therein) as of such earlier date), both before and after giving effect thereto; and (iv) no Default or Event of Default shall be in existence, both before and after giving effect thereto.

1.7 Repayments.

(a) **Revolving Loans/Letters of Credit.** If at any time for any reason whatsoever (including without limitation as a result of currency fluctuations) (i) the sum of the outstanding balance of all Revolving Loans and the Letter of Credit Balance exceeds the lesser of (x) the Maximum Revolving Facility Amount and (y) the Borrowing Base, or (ii) any of the Loan Limits for Revolving Loans or Letters of Credit are exceeded, then in each case, Borrowers will immediately and jointly and severally pay to Agent (for the benefit of the Lenders) such amounts (or, with respect to the Letter of Credit Balance, provide cash collateral to Agent in the manner set forth in clause (c) below) as shall cause Borrowers to eliminate such excess (such excess, an "**Overadvance**").

(b) **Reserved.**

(c) **Maturity Date Payments / Cash Collateral.** All remaining outstanding monetary Obligations (including, all accrued and unpaid fees described in the Fee Letter) shall be payable in full on the Maturity Date. Without limiting the generality of the foregoing, if, on the Maturity Date, there are any outstanding Letters of Credit, then on such date Borrowers shall provide to Agent cash collateral in an amount equal to 103% of the Letter of Credit Balance to secure all of the Obligations (including estimated attorneys' fees and other expenses) relating to said Letters of Credit, pursuant to a cash pledge agreement in form and substance reasonably satisfactory to Agent.

(d) **Currency Due.** If, notwithstanding the terms of this Agreement or any other Loan Document, Agent receives any payment from or on behalf of Borrowers or any other Person in a currency other than the Currency Due, Agent may convert the payment (including the monetary proceeds of realization upon any Collateral and any funds then held in a cash collateral account) into the Currency Due at exchange rate selected by Agent in the manner contemplated by Section 6.2(b) and Borrowers shall jointly and severally reimburse Agent on demand for all reasonable costs they incur with respect thereto. To the extent permitted by law, the obligation shall be satisfied only to the extent of the amount actually received by Agent upon such conversion.

1.8 Prepayments / Voluntary Termination / Application of Prepayments.

(a) **Mandatory Prepayment.** In the event the value of Borrowers' Inventory, as so determined pursuant to such appraisal, is less than anticipated by Agent, such that the Revolving Loans against Eligible Inventory, Eligible In-Transit Inventory and Eligible Slow Moving Inventory, are in fact in excess of such Advances permitted hereunder, then, promptly upon Agent's demand for same, Borrowers shall make mandatory prepayments of the then outstanding Revolving Advances so as to eliminate the excess Advance.

(b) **Voluntary Termination of Loan Facilities.** Borrowers may, on at least ten (10) Business Days prior and irrevocable written notice received by Agent, permanently terminate the Loan facilities by repaying all of the outstanding Obligations, including all principal, interest and fees with respect to the Revolving Loans, and an Early Payment/Termination Premium in the amount specified in the paragraph under the heading "Early Termination Fee" in the Fee Letter; the foregoing notwithstanding, a Borrower may rescind such written notice if it states that the proposed payment in full of the Obligations is to be made with the proceeds of third party Indebtedness and if the closing for such Indebtedness does not happen on or before the date of the proposed termination set forth in such notice (in which case, a new notice shall be required to be sent in connection with any subsequent termination). If, on the date of a voluntary termination pursuant to this Section 1.8(b), there are any outstanding Letters of Credit, then on such date, and as a condition precedent to such termination, Borrowers shall provide to Agent cash collateral in an amount equal to 103% of the Letter of Credit Balance to secure all of the Obligations (including estimated documented attorneys' fees and other expenses which shall be reasonable prior to an Event of Default) relating to said Letters of Credit, pursuant to a cash pledge agreement in form and substance reasonably satisfactory to Agent. From and after such date of termination, Lenders shall have no obligation whatsoever to extend any additional Loans or Letters of Credit and all of its lending commitments hereunder shall be terminated.

1.9 Obligations Unconditional.

(a) The payment and performance of all Obligations shall constitute the absolute and unconditional obligations of each Loan Party and shall be independent of any defense or rights of set-off, recoupment or counterclaim which any Loan Party or any other Person might otherwise have against Agent, any Lender or any other Person. All payments required by this Agreement and/or the other Loan Documents shall be made in Dollars (unless payment in a different currency is expressly provided otherwise in the applicable Loan Document).

(b) If, at any time and from time to time after the Closing Date (or at any time before or after the Closing Date with respect to (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines or directives thereunder or issued in connection therewith, or (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case for purposes of this clause (y) pursuant to Basel III, regardless of the date enacted, adopted or issued), (i) any change in any existing law, regulation, treaty or directive or in the interpretation or application thereof, (ii) any new law, regulation, treaty or directive enacted or application thereof, or (iii) compliance by Agent or any Lender with any request or directive (whether or not having the force of law) from any Governmental Authority, central bank or comparable agency (A) subjects Agent or any Lender to any tax, levy, impost, deduction, assessment, charge or withholding of any kind whatsoever with respect to any Loan Document, or changes the basis of taxation of payments to Agent or any Lender of any amount payable thereunder (other than (1) Indemnified Taxes, (2) Excluded Taxes and (3) Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes), or (B) imposes on Agent or any Lender any other condition or increased cost in connection with the transactions contemplated thereby or participations therein, and the result of any of the foregoing is to increase the cost to Agent or any Lender of making or continuing any Loan or Letter of Credit or to reduce any amount receivable hereunder or under any other Loan Documents, then, in any such case, Borrowers shall promptly and jointly and severally pay to Agent or such Lender, when notified to do so by Agent or such Lender (together with a certificate provided by Agent or such Lender setting forth in reasonable detail the amount necessary to compensate such Lender or Agent, any additional amounts necessary to compensate Agent or such Lender, on an after-tax basis, for such additional cost or reduced amount as determined by Agent or such Lender; provided that Borrowers shall not be required to compensate Agent or any Lender for any increased costs or reductions incurred more than 180 days before the date that Agent or such Lender, as the case may be, notifies Borrowers of such change giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor; provided, further, that, if such change giving rise to such increased costs or reductions is retroactive, then the 180 day period referred to above shall be extended to indicate the period of retroactive effect thereof. Each such notice of additional amounts payable pursuant to this Section 1.9(b) submitted by Agent or Lender to Borrowing Agent shall, absent manifest error, be final, conclusive and binding for all purposes.

(b) This Section 1.9 shall remain operative even after the Termination Date and shall survive the payment in full of all of the Obligations.

1.10 Reversal of Payments. To the extent that any payment or payments made to or received by Agent or any Lender pursuant to this Agreement or any other Loan Document are subsequently invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid to any trustee, receiver or other Person under any state, federal or other bankruptcy or other such applicable law, then, to the extent thereof, such amounts (and all Liens, rights and remedies therefore) shall be revived as Obligations (secured by all such Liens) and continue in full force and effect under this Agreement and under the other Loan Documents as if such payment or payments had not been received by Agent or such Lender. This Section 1.10 shall remain operative even after the Termination Date and shall survive the payment in full of all of the Obligations.

1.11 Independent Obligations. The Revolving Loans shall be made by the Lenders contemporaneously and in accordance with their Pro Rata Shares. It is understood that (a) no Lender shall be responsible for any failure by any other Lender to perform its obligation to make the Revolving Loans (or other extension of credit) hereunder, nor shall any commitment of any Lender be increased or decreased as a result of any failure by any other Lender to perform its obligations hereunder, and (b) no failure by any Lender to perform its obligations hereunder shall excuse any other Lender from its obligations hereunder.

1.12 Revolving Loans by Agent and Settlement Among Lenders.

(a) Agent, on behalf of the Lenders, shall disburse all loans and advances to the Borrowing Agent and shall handle all collections of Collateral and repayment of all Obligations. If Agent elects to require that any Lender make funds available to Agent, prior to a disbursement by Agent to Borrowing Agent, Agent shall advise each Lender by telephone, facsimile or e-mail of the amount of such Lender's Pro Rata Share of the Revolving Loan requested by Borrowers no later than noon (Eastern time) on the date of funding of such Revolving Loan, and each such Lender shall pay Agent on such date such Lender's Pro Rata Share of such requested Revolving Loan, in same day funds, by wire transfer to Agent's Account, or such other account as may be identified in writing by Agent to Lenders from time to time; provided, that no Lender shall have an obligation to make any Revolving Loan, if (i) one or more of the applicable conditions precedent set forth in Section 1.6 will not be satisfied on the requested date for the applicable Revolving Loan unless such condition has been waived, or (ii) the requested Revolving Loan would exceed the Excess Availability on such requested date for the applicable Revolving Loan. It is understood that for purposes of advances to the Borrowing Agent and for purposes of this Section 1.12, unless Agent has made the election referred to in the immediately preceding sentence, Agent will be using the funds of Agent, and pending settlement, all interest accruing on such advances shall be payable to Agent.

(b) Unless Agent shall have been notified in writing by any Lender prior to any advance to the Borrowing Agent that such Lender will not make the amount which would constitute its Pro Rata Share of the borrowing on such date available to Agent, Agent may assume that such Lender shall make such amount available to Agent on a Settlement Date, and in reliance upon such assumption, Agent may make available to the Borrowing Agent a corresponding amount. A certificate of Agent submitted to any Lender with respect to any amount owing under this subsection shall be conclusive, absent manifest error. If such Lender's Pro Rata Share of such borrowing is not in fact made available to Agent by such Lender on the Settlement Date, Agent shall be entitled to recover from the Borrowers, on demand, such Lender's Pro Rata Share of such borrowing, together with interest thereon (for the account of Agent) at the rate per annum applicable to such borrowing, without prejudice to any rights which Agent may have against such Lender under Section 10.19 hereof. Nothing contained herein shall be deemed to obligate Agent to make available to the Borrowers the full amount of a requested advance when Agent has any notice (written or otherwise) that any of the Lenders will not advance its Pro Rata Share thereof.

(c) On each Settlement Date, Agent and the Lenders shall each remit to the other, in immediately available funds, all amounts necessary so as to ensure that, as of the Settlement Date, the Lenders shall have advanced their respective Pro Rata Share of all outstanding Revolving Loans. Each Lender's obligation to make the settlements pursuant to this Section 1.12(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (v) any set-off, counterclaim, recoupment, defense or other right which any such Lender or Borrower may have against Agent, the other the Borrowers, any other Lender or any other person, (w) the occurrence or continuance of a Default or Event of Default, (x) any adverse change in the condition (financial or otherwise) of the Borrowers, or any of them, (y) any breach of this Agreement or any other Loan Document by the Borrowers, or any of them, or any other Lender or (z) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

2. INTEREST AND FEES; LOAN ACCOUNT.

2.1 Interest. All Loans and other monetary Obligations shall bear interest at the interest rate set forth in Section 3 of Schedule A, and accrued interest shall be payable (a) on the first day of each month in arrears, (b) upon a prepayment of such Loan in accordance with Section 1.8, and (c) on the Maturity Date; *provided*, that after the occurrence and during the continuation of an Event of Default and notice by the Agent to the Borrowers at the option of the Agent or at the direction of the Required Lenders, all Loans and other monetary Obligations shall bear interest at a rate per annum equal to two (2) percentage points in excess of the rate otherwise applicable thereto (the “*Default Rate*”), and all such interest shall be payable on demand. Changes in the interest rate shall be effective as of the date of any change in the Base Rate or LIBOR Rate, as applicable.

2.2 Fees. Borrowers shall jointly and severally pay Agent, for its own benefit or the benefit of Lenders as indicated in the Fee Letter, the fees set forth on in the Fee Letter on the dates set forth therein, which fees are in addition to all fees and other sums payable by Borrowers or any other Person to Agent and Lenders under this Agreement or under any other Loan Document, and, in each case are not refundable once paid.

2.3 Computation of Interest and Fees. All interest and fees shall be calculated daily on the outstanding monetary Obligations based on the actual number of days elapsed in a year of 360 days.

2.4 Loan Account; Monthly Accountings. Agent shall maintain a loan account for Borrowers reflecting all outstanding Loans and the Letters of Credit Balance, along with interest accrued thereon and such other items reflected therein (the “*Loan Account*”), and shall provide Borrowing Agent with a monthly accounting reflecting the activity in the Loan Account, viewable by Borrowing Agent on Passport 6.0. Each accounting shall be deemed correct, accurate and binding on Borrowers and an account stated (except for reverses and reapplications of payments made and corrections of errors discovered by Agent), unless Borrowing Agent notifies Agent in writing to the contrary within thirty (30) days after such accounting is rendered, describing the nature of any alleged errors or omissions. However, Agent’s failure to maintain the Loan Account or to provide any such accounting shall not affect the legality or binding nature of any of the Obligations. Interest, fees and other monetary Obligations due and owing under this Agreement (including fees and other amounts paid by Agent to issuers of Letters of Credit) may, in Agent’s discretion, be charged to the Loan Account, and will thereafter be deemed to be Revolving Loans and will bear interest at the same rate as other Revolving Loans.

2.5 Further Obligations; Maximum Lawful Rate. With respect to all monetary Obligations for which the interest rate is not otherwise specified herein (whether such Obligations arise hereunder or under any other Loan Document, or otherwise), such Obligations shall bear interest at the rate(s) in effect from time to time with respect to the applicable Loan and shall be payable upon demand by Agent. In no event shall the interest charged with respect to any Loan or any other Obligation exceed the maximum amount permitted under applicable law. Notwithstanding anything to the contrary herein or elsewhere, if at any time the rate of interest payable or other amounts hereunder or under any other Loan Document (the “*Stated Rate*”) would exceed the highest rate of interest or other amount permitted under any applicable law to be charged (the “*Maximum Lawful Rate*”), then for so long as the Maximum Lawful Rate would be so exceeded, the rate of interest and other amounts payable shall be equal to the Maximum Lawful Rate; provided, that if at any time thereafter the Stated Rate is less than the Maximum Lawful Rate, Borrowers shall, to the extent permitted by applicable law, continue to pay interest and such other amounts at the Maximum Lawful Rate until such time as the total interest and other such amounts received is equal to the total interest and other such amounts which would have been received had the Stated Rate been (but for the operation of this provision) the interest rate payable or such other amounts payable. Thereafter, the interest rate and such other amounts payable shall be the Stated Rate unless and until the Stated Rate again would exceed the Maximum Lawful Rate, in which event this provision shall again apply. In no event shall the total interest or other such amounts received by Agent, for the benefit of Lenders, exceed the amount which it could lawfully have received had the interest and other such amounts been calculated for the full term hereof at the Maximum Lawful Rate. If, notwithstanding the prior sentence, Agent, for the benefit of Lenders, has received interest or other such amounts hereunder in excess of the Maximum Lawful Rate, such excess amount shall be applied to the reduction of the principal balance of the Loans or to other Obligations (other than interest) payable hereunder, and if no such principal or other Obligations are then outstanding, such excess or part thereof remaining shall be paid to Borrowers. In computing interest payable with reference to the Maximum Lawful Rate applicable to any Lender, such interest shall be calculated at a daily rate equal to the Maximum Lawful Rate divided by the number of days in the year in which such calculation is made.

2.6 Certain Provisions Regarding the LIBOR Rate.

(a) If Agent or any Lender in good faith determines (which determination shall be binding and conclusive on the Borrowers absent manifest error) that adequate and reasonable means do not exist for ascertaining the LIBOR Rate, then Agent shall promptly notify the Borrowing Agent thereof and, so long as such circumstances shall continue, the Loans shall, unless then repaid in full, automatically bear interest at a per annum rate determined by reference to the Base Rate plus the margin with respect thereto set forth in Section 3 of Schedule A.

(b) If any change in, or the adoption of any new, law or regulation, or any change in the interpretation of any applicable law or regulation by any governmental or other regulatory body charged with the administration thereof, would make it (or in the good faith judgment of the Agent or any Lender cause a substantial question as to whether it is) unlawful for Agent and Lenders to make, maintain or fund loans based on the LIBOR Rate, then Agent shall promptly notify Borrowers and, so long as such circumstances shall continue, the Loans shall automatically bear interest at a per annum rate determined by reference to the Base Rate plus the margin with respect thereto set forth in Section 3 of Schedule A.

3. SECURITY INTEREST GRANT / POSSESSORY COLLATERAL / FURTHER ASSURANCES.

3.1 Grant of Security Interest. To secure the full payment and performance of all of the Obligations and subject to the Intercreditor Agreement, each Loan Party hereby assigns to Agent for the benefit of Lenders and grants to Agent for the benefit of Lenders a continuing security interest in all property of such Loan Party, whether tangible or intangible, real or personal, now or hereafter owned, existing, acquired or arising and wherever now or hereafter located, and whether or not eligible for lending purposes, including: (a) all Accounts (whether or not Eligible Consumer Accounts) and all Goods whose sale, lease or other disposition by such Loan Party has given rise to Accounts and have been returned to, or repossessed or stopped in transit by, such Loan Party; (b) all Chattel Paper (including Electronic Chattel Paper), Instruments, Documents, and General Intangibles (including all patents, patent applications, trademarks, trademark applications, trade names, trade secrets, goodwill, copyrights, copyright applications, registrations, licenses, software, franchises, customer lists, tax refund claims, claims against carriers and shippers, guarantee claims, contracts rights, payment intangibles, security interests, security deposits and rights to indemnification); (c) all Inventory (whether or not Eligible Inventory, Eligible In-Transit Inventory or Eligible Slow Moving Inventory); (d) all Goods (other than Inventory), including Equipment, Farm Products, Health-Care-Insurance Receivables, vehicles, and Fixtures; (e) all Investment Property, including, without limitation, all rights, privileges, authority, and powers of such Loan Party as an owner or as a holder of Pledged Equity, including, without limitation, all economic rights, all control rights, authority and powers, and all status rights of such Loan Party as a member, equity holder or shareholder, as applicable, of each Issuer; (f) all Deposit Accounts, bank accounts, deposits and cash; (g) all Letter-of-Credit Rights; (h) all Commercial Tort Claims listed in Section 40 of the Information Certificates and all other commercial tort claims (whether now existing or hereafter arising); (i) all Supporting Obligations; (j) any other property of such Loan Party now or hereafter in the possession, custody or control of a Lender or any agent or any parent, Affiliate or Subsidiary of a Lender or any Participant with a Lender in the Loans, for any purpose (whether for safekeeping, deposit, collection, custody, pledge, transmission or otherwise), and (k) all additions and accessions to, substitutions for, and replacements, products and Proceeds of the foregoing property, including proceeds of all insurance policies insuring the foregoing property, and all of such Loan Party's books and records relating to any of the foregoing and to such Loan Party's business. Notwithstanding the foregoing, no Loan Party shall pledge, and the Collateral shall not include, (i) Equipment or other property owned by any Loan Party on the date hereof or hereafter acquired that is subject to a Lien securing capitalized leases and purchase money Indebtedness permitted to be incurred pursuant to clause (a) of the definition of Permitted Liens to the extent and for so long as the documentation providing for such capitalized leases and purchase money Indebtedness prohibits the creation of a Lien on such assets other than to the extent that any such term or prohibition would be rendered ineffective after giving effect to Section 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) or any other applicable law (including the Bankruptcy Code), (ii) any United States intent-to-use trademark applications to the extent that the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark applications under applicable Federal law or would result in the loss by such Loan Party of any material rights therein, (iii) assets and property (including any contracts, instruments, chattel paper or any permit or license issued by a Governmental Authority) to the extent such assets and property are subject to a term or provision or a rule of law, statute or regulation or any applicable requirement of any Governmental Authority that restricts, prohibits, or requires a consent (that has not been obtained) of a Person (other than such Loan Party) to, the creation, attachment or perfection of the security interest granted herein, or that would cause or result in the termination thereof or a default thereunder enabling such other Person to enforce any remedy with respect thereto, and any such restriction, prohibition and/or requirement of consent is effective and enforceable under applicable law and is not rendered ineffective by applicable law (including, without limitation, pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC) or such prohibition has not been waived or the appropriate Person or Governmental Authority has otherwise consented to the creation of such security interest, (iv) Restricted Accounts and (v) Excluded Equity; *provided*, that with respect to any such limitation described in the foregoing clauses (i) and (iii), (1) immediately upon the ineffectiveness, lapse or termination of any such restriction, the Collateral shall include, and such Loan Party shall be deemed to have granted a Lien on such property under the applicable Loan Documents as if such restriction had never been in effect; and (2) notwithstanding any such restriction, the Collateral shall, to the extent such restriction does not by its terms apply thereto and such rights and proceeds do not otherwise constitute Excluded Collateral, include all rights incident or appurtenant to any such property, and the right to receive all proceeds derived from, or in connection with the sale, assignment or transfer of, such property (collectively, "**Excluded Collateral**").

3.2 Possessory Collateral. Subject to the Intercreditor Agreement, promptly, but in any event no later than ten (10) Business Days after any Loan Party's receipt of any portion of the Collateral evidenced by an agreement, Instrument or Document, including any Tangible Chattel Paper, in each case with a value in excess of \$500,000, and any Investment Property consisting of certificated securities, such Loan Party shall deliver the original thereof to Agent together with an appropriate endorsement or other specific evidence of assignment thereof to Agent (in form and substance acceptable to Agent). If an endorsement or assignment of any such items shall not be made for any reason, Agent is hereby irrevocably authorized, as attorney and agent-in-fact (coupled with an interest) for each Loan Party, to endorse or assign the same on such Loan Party's behalf.

3.3 Further Assurances.

(a) Each Loan Party will, at the time that any Loan Party forms any direct or indirect Subsidiary, acquires any direct or indirect Subsidiary after the Closing Date, within thirty (30) days of such event (or such later date as permitted by Agent in its sole discretion) (i) cause such new Subsidiary to become a Loan Party and to grant Agent, for the benefit of Lenders, a first priority Lien (subject to Permitted Liens and the Intercreditor Agreement) in and to the assets (other than Excluded Collateral) of such newly formed or acquired Subsidiary, (ii) provide, or cause the applicable Loan Party to provide, to Agent, for the benefit of Lenders, a pledge agreement and appropriate certificates and powers or financing statements, pledging all of the direct or beneficial ownership interest in such new Subsidiary in form and substance reasonably satisfactory to Agent (which pledge, if reasonably requested by Agent, shall be governed by the laws of the jurisdiction of such Subsidiary), and (iii) provide to Agent all other documentation as it may reasonably require, including one or more opinions of counsel reasonably satisfactory to Agent if Agent determines such opinion of counsel is required, which, in its opinion, is appropriate with respect to the execution and delivery of the applicable documentation referred to above (including policies of title insurance, flood certification documentation or other documentation with respect to all Real Property owned in fee and subject to a mortgage). Any document, agreement, or instrument executed or issued pursuant to this Section 3.3 shall constitute a Loan Document.

(b) Each Loan Party will, and will cause each of the other Loan Parties to, at any time upon the reasonable request of Agent, execute or deliver to Agent any and all financing statements, fixture filings, security agreements, pledges, assignments, mortgages, deeds of trust, opinions of counsel, and all other documents (the "**Additional Documents**") that Agent may reasonably request in form and substance reasonably satisfactory to Agent, to create, perfect, and continue to be perfected or to better perfect Agent's Liens in all of the assets of each of the Loan Parties (whether now owned or hereafter owned, arising or acquired, tangible or intangible, real or personal), to create and perfect Liens in favor of Agent, for the benefit of Lenders, in any Real Property acquired by any other Loan Party with a fair market value in excess of \$500,000, and in order to fully consummate all of the transactions contemplated hereby and under the other Loan Documents. To the maximum extent permitted by applicable law, if any Borrower or any other Loan Party refuses or fails to execute or deliver any reasonably requested Additional Documents within a reasonable period of time following the request to do so, each Borrower and each other Loan Party hereby authorizes Agent to execute any such Additional Documents in the applicable Loan Party's name and authorizes Agent to file such executed Additional Documents in any appropriate filing office.

(c) Each Loan Party shall, at its own cost and expense, promptly and duly take, execute, acknowledge and deliver (and/or use commercially reasonable efforts to cause such other applicable Person to take, execute, acknowledge and deliver) all such further acts, documents, agreements and instruments as Agent shall deem reasonably necessary in order to (i) carry out the intent and purposes of the Loan Documents and the transactions contemplated thereby, (ii) establish, create, preserve, protect and perfect a first priority Lien (subject only to Permitted Liens) in favor of Agent, for the benefit of Lenders, in all Collateral (wherever located) from time to time owned by the Loan Parties, (iii) cause each Loan Party to guarantee all of the Obligations, all pursuant to documentation that is in form and substance satisfactory to Agent in its Permitted Discretion and (iv) facilitate the exercise and enforcement of rights and remedies with respect to the Collateral. Without limiting the foregoing and subject to the terms hereof and the Intercreditor Agreement, each Loan Party shall, at its own cost and expense, promptly and duly take, execute, acknowledge and deliver (and/or use commercially reasonable efforts to cause such other applicable Person to take, execute, acknowledge and deliver) to Agent all promissory notes, security agreements, agreements with landlords, mortgagees and processors and other bailees, subordination and intercreditor agreements and other agreements, instruments and documents, in each case in form and substance reasonably acceptable to Agent, as Agent may request from time to time to perfect, protect, and maintain Agent's security interests in the Collateral, including the required priority thereof, and to fully carry out the transactions contemplated by the Loan Documents.

3.4 UCC Financing Statements. Each Loan Party authorizes Agent to file, transmit, or communicate, as applicable, from time to time, Uniform Commercial Code financing statements, along with amendments and modifications thereto, in all filing offices selected by Agent, listing such Loan Party as the debtor and Agent as the secured party, and describing the collateral covered thereby in such manner as Agent may elect, including using descriptions such as “all personal property of debtor” or “all assets of debtor” or words of similar effect. Each Loan Party also hereby ratifies its authorization for Agent to have filed in any filing office any financing statements filed prior to the date hereof.

4. CERTAIN PROVISIONS REGARDING ACCOUNTS, INVENTORY, COLLECTIONS, APPLICATIONS OF PAYMENTS, INSPECTION RIGHTS, AND APPRAISALS.

4.1 Cash Management. Each Loan Party hereby represents and warrants that all Deposit Accounts and all other depository and other accounts maintained by each Loan Party as of the Closing Date are described in Section 39 of the Information Certificates, which description includes for each such account the name of the Loan Party maintaining such account, the name of the financial institution at which such account is maintained, the account number, and the purpose of such account. After the Closing Date, no Loan Party shall open any new Deposit Accounts or any other depository or other accounts without the prior written consent of Agent and without updating Section 39 of the Information Certificates to reflect such Deposit Accounts or other accounts, as applicable. No Deposit Accounts or other accounts of any Loan Party shall at any time constitute a Restricted Account other than accounts expressly indicated on Section 39 of the Information Certificates as being a Restricted Account (and each Loan Party hereby represents and warrants that each such account shall at all times meet the requirements set forth in the definition of Restricted Account to qualify as a Restricted Account). Each Loan Party will, at its expense and subject to the Intercreditor Agreement, establish (and revise from time to time as Agent may require in its Permitted Discretion) procedures acceptable to Agent, in Agent’s Permitted Discretion, for the collection of checks, wire transfers and all other proceeds of all of such Loan Party’s Accounts and other Collateral (“*Collections*”), which shall include depositing all Collections received by such Loan Party into one or more bank accounts maintained in the name of such Loan Party (but as to which upon the occurrence and during the continuance of a Springing DACA Event, Agent will have exclusive access) (each, a “*Springing DACA Account*”), under an arrangement acceptable to Agent in its Permitted Discretion with a depository bank satisfactory to Agent in its Permitted Discretion, pursuant to which all funds deposited into each Springing DACA Account are, upon the occurrence and during the continuance of a Springing DACA Event, to be transferred to Agent in such manner, and with such frequency, as Agent shall specify. Each Borrower agrees to execute, and to cause its depository banks and other financial institutions at which Deposit Accounts are maintained to execute, such springing deposit account control agreements and other documentation as Agent shall require in its Permitted Discretion from time to time in connection with the foregoing, all in form and substance satisfactory to Agent in its Permitted Discretion, and in any event such arrangements and documents must be in place on the Closing Date with respect to accounts in existence on the Closing Date, in each case excluding Restricted Accounts. Prior to the Closing Date, Borrower shall deliver to Agent a complete and executed Authorized Accounts form regarding Borrower’s operating accounts into which the proceeds of Loans are to be paid in the form of Exhibit D annexed hereto.

4.2 Application of Payments. All amounts paid to or received by Agent or any Lender in respect of the monetary Obligations, from whatever source (whether from any Borrower or any other Loan Party pursuant to such other Loan Party's guaranty of the Obligations, any realization upon any Collateral, or otherwise) shall, unless otherwise directed by Borrowing Agent with respect to any particular payment (unless an Event of Default shall then be continuing, in which event Agent may disregard Borrowing Agent's direction), be applied by Agent to the Obligations in such order as Agent may elect, and absent such election shall be applied as follows:

- (a) FIRST, to reimburse Agent for all out-of-pocket costs and expenses, and all indemnified losses, incurred by Agent which are reimbursable to Agent in accordance with this Agreement and/or any of the other Loan Documents,
- (b) SECOND, to any accrued but unpaid interest on any Protective Advances,
- (c) THIRD, to the outstanding principal of any Protective Advances,
- (d) FOURTH, ratably to reimburse each Lender for all fees and out-of-pocket costs and expenses, and all indemnified losses, incurred by each Lender which are reimbursable to such Lender in accordance with this Agreement and/or any of the other Loan Documents,
- (e) FIFTH, to any unpaid accrued interest on the Obligations,
- (f) SIXTH, to the outstanding principal of the Obligations, and, to the extent required by this Agreement, to cash collateralize the Letter of Credit Balance, and

(g) SEVENTH, to the payment of any other outstanding Obligations which have become due and payable and otherwise not paid pursuant to clauses "FIRST" through "SIXTH" above; and after payment in full in cash of all of the outstanding monetary Obligations, any further amounts paid to or received by Agent or any Lender in respect of the Obligations (so long as no monetary Obligations are outstanding) shall be paid over to Borrowers or such other Person(s) as may be legally entitled thereto. For purposes of determining the Borrowing Base, such amounts will be credited to the Loan Account and the Collateral balances to which they relate upon Agent's receipt of an advice from Agent's Bank (set forth in Section 5 of Schedule A) that such items have been credited to Agent's account at Agent's Bank (or upon Agent's deposit thereof at Agent's Bank in the case of payments received by Agent in kind), in each case subject to final payment and collection. However, for purposes of computing interest on the Obligations, and solely after the occurrence of a Springing DACA Event, such items shall be deemed applied by Agent two Business Days after Agent's receipt of advice of deposit thereof at Agent's Bank.

4.3 (e) Notification of Assignment of Receivables. At any time upon the occurrence and during the continuance of any Event of Default or if the Agent deems it necessary in its Permitted Discretion to preserve or protect the Collateral or Agent's rights therein, Agent shall have the right to send notice of the assignment of, and Agent's security interest in and Lien on, the Accounts to any and all Customers or any third party holding or otherwise concerned with any of the Collateral and, thereafter, Agent shall have the sole right to collect the Accounts, take possession of the Collateral, or both. Agent's actual collection expenses, including, but not limited to, stationery and postage, telephone and telegraph, secretarial and clerical expenses and the salaries of any collection personnel used for collection, may be charged as a Revolving Loan and added to the Obligations.

4.4 Power of Attorney. Agent shall have the right to receive, endorse, assign and/or deliver in the name of Agent or any Borrower any and all checks, drafts and other instruments for the payment of money relating to the Accounts, and each Borrower hereby waives notice of presentment, protest and non-payment of any instrument so endorsed. Each Borrower hereby constitutes Agent or Agent's designee as such Borrower's attorney with power (i) at any time: (A) to endorse such Borrower's name upon any notes, acceptances, checks, drafts, money orders or other evidences of payment or Collateral; (B) to sign such Borrower's name on any invoice or bill of lading relating to any of the Accounts, drafts against Customers, and assignments of Accounts; (C) to send verifications of Accounts to any Customer; (D) to sign such Borrower's name on any other documents or instruments deemed necessary or appropriate by Agent to preserve, protect, or perfect Agent's interest in the Collateral and to file same; and (E) to receive and open all mail addressed to any Borrower in connection with the administration of any lockbox or similar services; and (ii) at any time following the occurrence and during the continuance of a Default or Event of Default: (A) to demand payment of the Accounts; (B) to enforce payment of the Accounts by legal proceedings or otherwise; (C) to exercise all of such Borrower's rights and remedies with respect to the collection of the Accounts and any other Collateral; (D) to settle, adjust, compromise, extend or renew the Accounts; (E) to settle, adjust or compromise any legal proceedings brought to collect Accounts; (F) to prepare, file and sign such Borrower's name on a proof of claim in bankruptcy or similar document against any Customer; (G) to prepare, file and sign such Borrower's name on any notice of Lien, assignment or satisfaction of Lien or similar document in connection with the Accounts; and (H) to do all other acts and things necessary to carry out this Agreement. All acts of said attorney or designee are hereby ratified and approved, and said attorney or designee shall not be liable for any acts of omission or commission nor for any error of judgment or mistake of fact or of law, unless done maliciously or with gross (not mere) negligence or willful misconduct (as determined by a court of competent jurisdiction in a final non-appealable judgment); this power being coupled with an interest is irrevocable while any of the Obligations remain unpaid. Agent shall have the right at any time following the occurrence and during the continuance of an Event of Default or Default, to change the address for delivery of mail addressed to any Borrower to such address as Agent may designate and to receive, open and dispose of all mail addressed to any Borrower.

Any and all sums paid, and any and all costs, expenses, liabilities, obligations and reasonable attorneys' fees incurred, by Agent with respect to the foregoing shall be added to and become part of the Obligations, shall be payable on demand, and shall bear interest at a rate equal to the highest interest rate applicable to any of the Obligations at such time. Each Loan Party agrees that Agent's rights under the foregoing power of attorney and/or any of Agent's other rights under this Agreement or the other Loan Documents shall not be construed to indicate that Agent is in control of the business, management or properties of such Loan Party.

4.5 Reserved.

4.6 Reserved.

4.7 Access to Collateral, Books and Records. At reasonable times during business hours (and prior to the occurrence and continuance of an Event of Default, following reasonable advance notice), Agent and/or its representatives or agents shall have the right to inspect the Collateral, and the right to examine and copy each Loan Party's books and records. Each Loan Party agrees to give Agent access to any or all of such Loan Party's, and each of its Subsidiaries', premises to enable Agent to conduct such inspections and examinations. Such inspections and examinations shall be at Borrowers' expense and the charge therefor shall be \$1,500 per person per day (or such higher amount as shall represent Agent's then current standard charge), plus out-of-pocket expenses; *provided, that* Borrowers shall only be required to reimburse Agent for up to two (2) such inspection and examination in any 12 consecutive month period plus any additional inspections and examinations that are conducted during the existence of an Event of Default. Upon the occurrence and during the continuance of an Event of Default, Agent may, at Borrowers' expense, use each Loan Party's personnel, computer and other equipment, programs, printed output and computer readable media, supplies and premises for the collection, sale or other disposition of Collateral to the extent Agent, in its sole discretion, deems appropriate. Each Loan Party hereby irrevocably authorizes all accountants and other financial professional third parties to disclose and deliver to Agent, at Borrowers' expense, all financial information, books and records, work papers, management reports and other information in their possession regarding the Loan Parties.

4.8 Appraisals. Each Loan Party will permit Agent and each of its representatives or agents to conduct appraisals and valuations of the Collateral at such times and intervals as Agent may designate. Such appraisals and valuations shall be at Borrowers' expense; *provided, that*, Borrowers shall only be required to reimburse Agent for up to two (2) appraisals and valuations in any 12 consecutive month period plus any additional appraisals and valuations that are conducted during the existence of an Event of Default.

5. REPRESENTATIONS, WARRANTIES AND COVENANTS.

To induce Agent and Lenders to enter into this Agreement, each Loan Party represents, warrants and covenants as follows (it being understood and agreed that (a) each such representation and warranty (i) will be made as of the date hereof and be deemed remade as of each date on which any Loan is made or Letter of Credit is issued (except to the extent any such representation or warranty expressly relates only to any earlier and/or specified date, in which case such representation or warranty will be made as of such earlier and/or specified date), and (ii) shall not be affected by any knowledge of, or any investigation by, Agent or any Lender, and (b) each such covenant shall continuously apply with respect to all times commencing on the date hereof and continuing until the Termination Date):

5.1 Existence and Authority. Each Loan Party is duly organized, incorporated, validly existing and in good standing under the laws of its jurisdiction of organization (which jurisdiction is identified in Section 3 of the Information Certificates) and is qualified to do business in each jurisdiction in which the operation of its business requires that it be qualified (which each such jurisdiction is identified in Section 15 of the Information Certificates), except where the failure to be so qualified could not reasonably be expected to result in a Material Adverse Effect. Each Loan Party will, and will cause each of its Subsidiaries to, at all times preserve and keep in full force and effect such Person's valid existence and good standing in its jurisdiction of organization and, except as could not reasonably be expected to result in a Material Adverse Effect, good standing with respect to all other jurisdictions in which it is qualified to do business and any rights, franchises, permits, licenses, accreditations, authorizations, or other approvals material to their businesses. Each Loan Party has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Loan Documents to which it is a party and to carry out the transactions contemplated thereby. The execution, delivery and performance by each Loan Party of this Agreement and all of the other Loan Documents to which such Loan Party is a party (a) have been duly and validly authorized, (b) do not (i) violate such Loan Party's Organic Documents, (ii) any material agreement or instrument to which such Loan Party is a party, (iii) violate any law or regulation, or any court order which is binding upon any Loan Party or its property, except as would not have a Material Adverse Effect, (c) will not require the consent of any Governmental Authority, any party to a Material Contract or any other Person, all of which will have been duly obtained, made or compiled prior to the Closing Date and which are in full force and effect, and (d) will not conflict with, nor result in any breach in any of the provisions of or constitute a default under or result in the creation of any Lien except Permitted Liens upon any asset of such Loan Party under the provisions of any agreement, instrument, Organic Document or other instrument to which such Loan Party is a party or by which it or its property is a party or by which it may be bound. This Agreement and each of the other Loan Documents have been duly executed and delivered by, and are enforceable against each of the Loan Parties who have signed them, in accordance with their respective terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization, moratorium, public policy or similar laws of general applicability affecting the enforcement of creditors' rights and (b) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). Section 18 of the Information Certificates sets forth the ownership of each Borrower (other than iMedia) as of the Closing Date. Section 20 of the Information Certificates sets forth the ownership of each of Borrowers' Subsidiaries as of the Closing Date.

5.2 Names; Trade Names and Styles. The name of each Loan Party set forth in Section 1 of each Information Certificate is its correct and complete legal name as of the date hereof, and no Loan Party has used any other name at any time in the past five years, or at any time will use any other name, in any tax filing made in any jurisdiction. Listed in Section 8 of the Information Certificate are all prior names used by each Loan Party at any time in the past five years. Listed in Section 7 of the Information Certificate are all of the present and prior trade names used by any Loan Party at any time in the past five years. Borrowers shall give Agent at least thirty (30) days' prior written notice (and will deliver an updated Section 7 or Section 8 of the Information Certificate, as applicable, to reflect the same) before it or any other Loan Party changes its legal name or does business under any other name.

5.3 Title to Collateral; Third Party Locations; Permitted Liens. Each Loan Party has, and at all times will continue to have, good and marketable title to all of the Collateral. The Collateral now is, and at all times will remain, free and clear of any and all Liens, except for Permitted Liens. Agent now has, and will at all times continue to have, a first-priority or second-priority, as applicable, pursuant to the term of the Intercreditor Agreement, perfected and enforceable security interest in all of the Collateral for the benefit of Lenders, and each Loan Party will at all times defend Agent and each Lender and the Collateral against all claims of others, subject only to Permitted Liens. None of the Collateral which is Equipment is, or will at any time, be affixed to any real property that is not subject to a Mortgage in favor of Agent in such a manner, or with such intent, as to become a fixture. Except for leases or subleases as to which Borrowers shall use commercially reasonable efforts to deliver to Agent a landlord's waiver if required by the section labeled "Post Closing Deliverables and Covenants" on *Exhibit B* or by Agent after the Closing Date for any locations with Collateral in excess of \$500,000 in form and substance reasonably satisfactory to Agent, no Loan Party is or will be a lessee or sublessee under any real property lease or sublease. Except for warehouses as to which Borrowers shall use commercially reasonable efforts to deliver to Agent a warehouseman's waiver if required by the section labeled "Post Closing Deliverables and Covenants" on *Exhibit B* or by Agent after the Closing Date for any locations with Collateral in excess of \$500,000 in form and substance reasonably satisfactory to Agent, no Loan Party is or will at any time be a bailor of any Goods at any warehouse or otherwise. Prior to causing or permitting any Collateral to at any time be located upon premises other than the locations listed in Sections 27-32 of the Information Certificate, in which any third party (including any landlord, warehouseman, or otherwise) has an interest, Borrowers shall give Agent no less than 30 days written notice thereof and the applicable Loan Party shall use commercially reasonable efforts to cause each such third party to execute and deliver to Agent, in form and substance reasonably acceptable to Agent, such waivers, collateral access agreements, and subordinations as Agent shall specify, so as to, among other things, ensure that Agent's rights in the Collateral are, and will at all times continue to be, superior to the rights of any such third party and that Agent has access to such Collateral. Each applicable Loan Party will keep at all times in full force and effect, and will comply in all material respects at all times with all the terms of, any lease of real property where any of the Collateral now or in the future may be located.

5.4 Accounts, Chattel Paper and Inventory.

(a) As of each date reported by Borrowers, all Accounts which Borrowers have then reported to Agent as then being Eligible Consumer Accounts comply in all respects with the criteria for eligibility set forth in the definition of Eligible Consumer Accounts. All such Accounts and Chattel Paper are genuine and in all respects what they purport to be, arise out of a completed, bona fide and unconditional and non-contingent sale and delivery of goods or rendition of services by Borrowers in the ordinary course of its business and in accordance with the terms and conditions of all purchase orders, contracts or other documents relating thereto, to the best of the applicable Borrower's knowledge, each Account Debtor thereunder had the capacity to contract at the time any contract or other document giving rise to such Accounts and Chattel Paper were executed, and the transactions giving rise to such Accounts and Chattel Paper comply with all applicable laws and governmental rules and regulations in all material respects.

(b) As of each date reported by Borrowers, all Inventory which Borrowers have then reported to Agent as then being Eligible Inventory, Eligible In-Transit Inventory or Eligible Slow Moving Inventory complies in all respects with the criteria for eligibility set forth in the definition of Eligible Inventory, Eligible In-Transit Inventory or Eligible Slow Moving Inventory, as applicable.

5.5 Electronic Chattel Paper. To the extent that any Loan Party obtains or maintains any Electronic Chattel Paper with an individual or aggregate value in excess of \$500,000, promptly after written request of Agent, such Loan Party shall take all steps reasonably necessary to create, store and assign the record or records comprising the Electronic Chattel Paper in such a manner as to grant Agent control of such Electronic Chattel Paper in accordance with the UCC and all “transferable records” as that term is defined in Section 16 of the Uniform Electronic Transaction Act and Section 201 of the Federal Electronic Signatures in Global and National Commerce Act, as in effect in any relevant jurisdiction of such Loan Party.

5.6 Capitalization; Investment Property.

(a) No Loan Party, directly or indirectly, owns, or shall at any time own, any Equity Interests of any other Person except as set forth in Sections 20 and 41 of the Information Certificates as of the Closing Date, which such Sections of the Information Certificates list all Investment Property owned by each Loan Party as of the Closing Date, except in each case for Permitted Investments.

(b) None of the Pledged Equity has been issued or otherwise transferred in violation of the Securities Act, or other applicable laws of any jurisdiction to which such issuance or transfer may be subject.

(c) The Pledged Equity pledged by each Loan Party hereunder constitutes all of the issued and outstanding Equity Interests of each Issuer owned by such Loan Party.

(d) All of the Pledged Equity has been duly and validly issued and is fully paid and non-assessable, and the holders thereof are not entitled to any preemptive, first refusal, or other similar rights. Except as set forth in the Organic Documents for TCO, there are no outstanding options, warrants or similar agreements, documents, or instruments with respect to any of the Pledged Equity.

(e) Reserved.

(f) Each Loan Party will take any and all actions required or requested by Agent, from time to time, to (i) cause Agent to obtain exclusive control of any Investment Property in a manner reasonably acceptable to Agent and (ii) obtain from any Issuers and such other Persons as Agent shall specify, for the benefit of Agent, written confirmation of Agent’s exclusive control over such Investment Property and take such other actions as Agent may request to perfect Agent’s security interest in any Investment Property. For purposes of this Section 5.6, Agent shall have exclusive control of Investment Property if (A) pursuant to Section 3.2, such Investment Property consists of certificated securities and the applicable Loan Party delivers such certificated securities to Agent (with all appropriate endorsements); (B) such Investment Property consists of uncertificated securities and the Issuer thereof agrees, pursuant to documentation in form and substance reasonably satisfactory to Agent, that it will comply with instructions originated by Agent without further consent by the applicable Loan Party; and (C) such Investment Property consists of security entitlements and either (x) Agent becomes the entitlement holder thereof or (y) the appropriate securities intermediary agrees, pursuant to documentation in form and substance reasonably satisfactory to Agent, that it will comply with entitlement orders originated by Agent without further consent by the applicable Loan Party. Each Loan Party that is a limited liability company or a partnership hereby represents and warrants that it has not, and at no time will, elect pursuant to the provisions of Section 8-103 of the UCC to provide that its Equity Interests are securities governed by Article 8 of the UCC.

(g) No Loan Party owns, or has any present intention of acquiring, any “margin security” or any “margin stock” within the meaning of Regulations T, U or X of the Board of Governors of the Federal Reserve System (herein called “margin security” and “margin stock”). None of the proceeds of the Loans will be used, directly or indirectly, for the purpose of purchasing or carrying, or for the purpose of reducing or retiring any Indebtedness which was originally incurred to purchase or carry, any margin security or margin stock or for any other purpose which might constitute the transactions contemplated hereby a “purpose credit” within the meaning of said Regulations T, U or X, or cause this Agreement to violate any other regulation of the Board of Governors of the Federal Reserve System or the Exchange Act, or any rules or regulations promulgated under such statutes.

(h) No Loan Party shall vote to enable, or take any other action to cause or to permit, any Issuer to issue any Equity Interests of any nature, or to issue any other securities or interests convertible into or granting the right to purchase or exchange for any Equity Interests of any nature of any Issuer.

(i) No Loan Party shall take, or fail to take, any action that would in any manner impair the value or the enforceability of Agent’s Lien on any of the Investment Property, or any of Agent’s rights or remedies under this Agreement or any other Loan Document with respect to any of the Investment Property.

(j) In the case of any Loan Party which is an Issuer, such Issuer agrees that the terms of Section 7.3(g)(iii) of this Agreement shall apply to such Loan Party with respect to all actions that may be required of it pursuant to such Section 7.3(g)(iii) regarding the Investment Property issued by it.

5.7 Commercial Tort Claims. No Loan Party has any Commercial Tort Claims with a claimed value in excess of \$500,000 pending other than those listed in Section 40 of the Information Certificates, and each Loan Party shall promptly (but in any case no later than ten (10) Business Days thereafter) notify Agent in writing upon incurring or otherwise obtaining a Commercial Tort Claim after the date hereof against any third party. Such notice shall constitute such Loan Party’s authorization to amend such Section 40 of the applicable Information Certificate to add such Commercial Tort Claim and shall automatically be deemed to amend such Section 40 to include such Commercial Tort Claim.

5.8 Jurisdiction of Organization; Location of Collateral. Sections 14 and 27-32 of the Information Certificates set forth as of the Closing Date (a) each place of business of each Loan Party (including its chief executive office), (b) all locations where all Inventory, Equipment, and other Collateral owned by each Loan Party is kept, and (c) whether each such Collateral location and/or place of business (including each Loan Party’s chief executive office) is owned by a Loan Party or leased (and if leased, specifies the complete name and notice address of each lessor). No Collateral is located outside the United States or in the possession of any lessor, bailee, warehouseman or consignee, except as expressly indicated in Sections 27-32 of the Information Certificates as of the Closing Date. Each Loan Party will give Agent at least thirty (30) days’ prior written notice before changing its jurisdiction of organization, opening any additional place of business or changing its chief executive office or the location of its books and records and such notice shall constitute such Loan Party’s authorization to amend the applicable section of the Information Certificate of such Loan Party and such section shall automatically be deemed to be so amended upon the date specified therefor in the notice provided by such Loan Party to Agent hereunder.

5.9 Financial Statements and Reports; Solvency.

(a) All financial statements delivered to Agent or any Lender by or on behalf of any Loan Party have been, and at all times will be, prepared in conformity with GAAP in all material respects and completely and fairly reflect the financial condition of each Loan Party and its Subsidiaries covered thereby, at the times and for the periods therein stated.

(b) As of the date hereof (after giving effect to the Loans and Letters of Credit to be made or issued on the date hereof (including the execution and delivery of the Term Debt Documents, the Seller Debt Documents and the making of extensions of credit thereunder on the date hereof), and the consummation of the transactions contemplated hereby, and as of each other day that any Loan or Letter of Credit is made or issued (after giving effect thereof), (i) the fair saleable value of all of the assets and properties of the Borrowers, on a consolidated basis, exceeds the aggregate liabilities and Indebtedness of each such Loan Party (including contingent liabilities), (ii) each Loan Party is able to pay its debts as they come due, (iii) the Loan Parties, on a consolidated basis, have sufficient capital to carry on their business as now conducted and as proposed to be conducted, (iv) no Loan Party is contemplating the filing of any petition under any state, federal, or other bankruptcy or insolvency law, and (v) no Loan Party has knowledge of any Person contemplating the filing of any such petition against any Loan Party.

5.10 Tax Returns and Payments; Pension Contributions. Each Loan Party has timely filed all tax returns and reports required by applicable law, has timely paid all applicable Taxes, assessments, deposits and contributions owing by such Loan Party and will timely pay all such items in the future as they became due and payable, except to the extent that such Loan Party (a) in good faith contests its obligation to pay such Taxes by appropriate proceedings promptly and diligently instituted and conducted; (b) posts bonds or takes any other commercially reasonable steps required to keep the contested taxes from becoming a Lien upon any of the Collateral unless such Lien is at all times junior and subordinate in priority to the Liens in favor of the Agent (except only with respect to property taxes that have priority as a matter of applicable state law) and enforcement of such Lien is stayed during the period prior to the final resolution or disposition of such dispute and (c) maintains adequate reserves therefor in conformity with GAAP. As of the Closing Date, no Loan Party is aware of any claims or adjustments proposed for any prior tax years that could result in additional taxes becoming due and payable by any Loan Party. Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other applicable laws. Each Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter or opinion letter from the Internal Revenue Service to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service. To the best knowledge of each Loan Party, nothing has occurred that would prevent or cause the loss of such tax-qualified status. There are no pending or, to the best knowledge of any Loan Party, threatened claims (other than normal claims for benefits in the ordinary course), actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to result in liabilities in excess of \$500,000 on any Loan Party. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in liabilities individually or in the aggregate on any Loan Party in excess of \$500,000. No ERISA Event has occurred. Each Loan Party and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained, in each case except as could not reasonably be expected to result in liabilities individually or in the aggregate to any Loan Party or any ERISA Affiliate in excess of \$500,000. 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 60% or higher. No Loan Party nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA except as could not reasonably be expected to result in liabilities individually or in the aggregate to the Loan Parties in excess of \$500,000.

5.11 Compliance with Laws; Intellectual Property; Licenses.

(a) Each Loan Party has complied, and will continue at all times to comply with all provisions of all applicable laws and regulations, including those relating to the ownership, use or operations of real or personal property, the conduct and licensing of each Loan Party's business, the payment and withholding of Taxes, ERISA and other employee matters, and safety and environmental matters, unless any non-compliance would not reasonably be expected to have a Material Adverse Effect.

(b) No Loan Party has received written notice of default or violation with respect to any judgment, order, writ, injunction, decree, demand or assessment issued by any court or any federal, state, local, municipal or other Governmental Authority relating to any aspect of any Loan Party's business, affairs, properties or assets as of the Closing Date. No Loan Party has received written notice of or been charged with, or is, to the knowledge of any Loan Party, under investigation with respect to, any violation in any material respect of any provision of any applicable law as of the Closing Date. No Loan Party or any real property owned, leased or used in the operation of the business of any Loan Party is subject to any federal, state or local investigation to determine whether any remedial action is needed to address any hazardous materials or an environmental release (as that term is defined under environmental and health and safety laws) at, on, or under any real property currently leased, owned or used by a Loan Party nor is a Loan Party liable for any environmental release identified or under investigation at, on or under any real property previously owned, leased or used by a Loan Party. No Loan Party has any contingent liability with respect to any environmental release, environmental pollution or hazardous material on any real property now or previously owned, leased or operated by it as of the Closing Date.

(c) No Loan Party owns any Intellectual Property as of the Closing Date, except as set forth in Sections 34-36 of the Information Certificates. Except as set forth in Section 37 of the Information Certificates as of the Closing Date, none of the Intellectual Property owned by any Loan Party is the subject of any licensing or franchise agreement pursuant to which such Loan Party is the licensor or franchisor. Each Loan Party shall promptly (but in any event within thirty (30) days thereafter) notify Agent in writing of any additional Intellectual Property acquired or arising after the Closing Date and shall submit to Agent a supplement to Sections 34-37 of the Information Certificates to reflect such additional rights (*provided*, that such Loan Party's failure to do so shall not impair Agent's security interest therein). Each Loan Party shall execute a separate security agreement granting Agent a security interest in such Intellectual Property (whether owned on the Closing Date or thereafter), in form and substance acceptable to Agent and suitable for registering such security interest in such Intellectual Property with the United States Patent and Trademark Office and/or United States Copyright Office, as applicable (*provided*, that such Loan Party's failure to do so shall not impair Agent's security interest therein). Each Loan Party owns or has, and will at all times continue to own or have, the valid right to use all material patents, trademarks, copyrights, software, computer programs, equipment designs, network designs, equipment configurations, technology and other Intellectual Property used, marketed and sold in such Loan Party's business, and each Loan Party is in compliance, and will continue at all times to comply, in all material respects with all licenses, user agreements and other such agreements regarding the use of Intellectual Property. No Loan Party has any knowledge that, or has received any notice claiming that, any of such Intellectual Property infringes upon or violates the rights of any other Person.

(d) Each Loan Party has and will continue at all times to have, all federal, state, local and other licenses and permits required to be maintained in connection with such Loan Party's business operations, and its ownership, use and operation of any real property, and all such licenses and permits, necessary for the operation of the business are valid and will remain in full force and effect, except where the failure to have any such licenses or permits could not reasonably be expected to result in a Material Adverse Effect. Each Loan Party has, and will continue at all times to have, complied with the requirements of such licenses and permits except where any failure to comply could not reasonably be expected to result in a Material Adverse Effect, and as of the Closing Date, has received no written notice of any pending or threatened proceedings for the suspension, termination, revocation or limitation thereof. As of the Closing Date, no Loan Party is aware of any facts or conditions that could reasonably be expected to cause or permit any of such licenses or permits to be voided, revoked or withdrawn.

(e) In addition to and without limiting the generality of clause (a) above, (i) comply in all material respects with applicable provisions of ERISA and the IRC with respect to all Plans, and (ii) without the prior written consent of Agent, not take any action or fail to take action the result of which could result in a Loan Party or ERISA Affiliate incurring a material liability to the PBGC or to a Multiemployer Plan (other than to pay contributions or premiums payable in the ordinary course). With respect to each Pension Plan (other than a Multiemployer Plan) except as could not reasonably be expected to result in material liability to the Loan Parties, the Loan Parties and the ERISA Affiliates shall (y) satisfy in full and in a timely manner, all of the contribution and funding requirements of the IRC and of ERISA, and (z) pay, or cause to be paid, to the PBGC in a timely manner, all premiums required pursuant to ERISA.

5.12 Litigation. Section 50 of the Information Certificates discloses all claims, proceedings, litigation or investigations pending or (to the best of each Loan Party's knowledge) threatened against any Loan Party as of the Closing Date. There is no claim, suit, litigation, proceeding or investigation pending or (to the best of each Loan Party's knowledge) threatened by or against or affecting any Loan Party in any court or before any Governmental Authority (or any basis therefor known to any Loan Party) which would reasonably be expected to result, either separately or in the aggregate in any Material Adverse Effect, or in any material impairment in the ability of any Loan Party to carry on its business in substantially the same manner as it is now being conducted.

5.13 Use of Proceeds. All proceeds of all Loans and Letters of Credit shall be used by Borrowers solely (a) with respect to Loans made on the Closing Date, to refinance certain indebtedness owing to PNC Bank, National Association, (b) to pay the fees, costs, and expenses incurred in connection with this Agreement, the other Loan Documents, and the transactions contemplated hereby and thereby, (c) for Borrowers' working capital purposes and (d) for such other purposes as specifically permitted pursuant to the terms of this Agreement. All proceeds of all Loans and Letters of Credit will be used solely for lawful business purposes.

5.14 Insurance.

(a) Each Loan Party will at all times carry property, liability and other insurance, with insurers acceptable to Agent, in such form and amounts, and with such deductibles and other provisions, as are customary for similarly situated companies and reasonably acceptable to Agent, and upon Agent's request, Borrowers will provide Agent with evidence satisfactory to Agent that such insurance is, at all times, in full force and effect. A true and complete listing of such insurance as of the Closing Date, including issuers, coverages and deductibles, is set forth in Section 49 of the Information Certificates. Each property insurance policy shall name Agent as lender loss payee and shall contain a lender's loss payable clause or endorsement in form acceptable to Agent, each liability insurance policy shall name Agent as an additional insured, and each business interruption insurance policy shall be collaterally assigned to Agent, all in form and substance reasonably satisfactory to Agent. All policies of insurance shall provide that they may not be cancelled or changed without at least thirty (30) days' prior written notice to Agent (or ten (10) days in the case of cancellation for non-payment of premium), and shall otherwise be in form and substance reasonably satisfactory to Agent. Borrowers shall advise Agent promptly of any policy cancellation, non-renewal, reduction, or material amendment that is adverse to Agent and Lenders with respect to any insurance policies maintained by any Loan Party or any receipt by any Loan Party of any notice from any insurance carrier regarding any intended or threatened cancellation, non-renewal, reduction or material amendment that is adverse to Agent and Lenders of any of such policies, and Borrowers shall promptly deliver to Agent copies of all notices and related documentation received by any Loan Party in connection with the same.

(b) Borrowers shall deliver to Agent no later than fifteen (15) days prior to the expiration of any then current insurance policies, insurance certificates evidencing renewal of all such insurance policies required by this Section 5.14. Borrowers shall deliver to Agent, upon Agent's request, certificates evidencing such insurance coverage in such form as Agent shall reasonably request. If any Loan Party fails to provide Agent with a certificate of insurance or other evidence of the continuing insurance coverage required by this Agreement within the time period set forth in the first sentence of this Section 5.14(b), Agent may purchase insurance required by this Agreement at Borrowers' expense. This insurance may, but need not, protect any Loan Party's interests.

5.15 Financial, Collateral and Other Reporting / Notices. Each Loan Party has kept and will at all times keep adequate records and books of account with respect to its business activities and the Collateral in which proper entries are made in accordance with GAAP reflecting all its financial transactions. Each Loan Party will cause to be prepared and furnished to Agent, in each case in a form and in such detail as is acceptable to Agent the following items (the items to be provided under this Section 5.15 shall be delivered to Agent by posting on Passport 6.0 (or, if requested by Agent, by another form of Approved Electronic Communication or in writing)) and documents required to be delivered pursuant to Section 5.15(a) or (b) or Section 5.1(f) (to the extent any such documents are included in materials otherwise filed with the Securities and Exchange Commission) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which iMedia posts such documents, or provides a link thereto on iMedia's website.

(a) **Annual Financial Statements.** Not later than one hundred twenty (120) days after the close of each Fiscal Year, unqualified, audited financial statements of each Loan Party as of the end of such Fiscal Year, including balance sheet, income statement, and statement of cash flow for such Fiscal Year, on a consolidated basis, audited and certified (without qualification) by a firm of independent certified public accountants of recognized standing selected by Borrowers but acceptable to Agent, together with a copy of any management letter issued in connection therewith. Concurrently with the delivery of such financial statements, Borrowing Agent shall deliver to Agent a Compliance Certificate, indicating whether (i) Borrowers are in compliance with each of the covenants specified in Section 5.26, and setting forth a detailed calculation of such covenants, and (ii) any Default or Event of Default is then in existence;

(b) **Quarterly Financial Statements.** Not later than forty five (45) days after the end of each fiscal quarter hereafter, unaudited interim financial statements of each Loan Party as of the end of such fiscal quarter and of the portion of such Fiscal Year then elapsed, including balance sheet, income statement, statement of cash flow, and results of their respective operations during such fiscal quarter and the then-elapsed portion of the Fiscal Year, together with comparative figures for the same periods in the immediately preceding Fiscal Year and the corresponding figures from the budget for the Fiscal Year covered by such financial statements, in each case on a consolidated basis, certified by an Authorized Officer of Borrowing Agent as prepared in accordance with GAAP and fairly presenting the consolidated financial position and results of operations (including management discussion and analysis of such results) of each Loan Party for such month and period subject only to changes from ordinary course year-end audit adjustments and except that such statements need not contain footnotes. Concurrently with the delivery of such financial statements, Borrowing Agent shall deliver to Agent a Compliance Certificate, indicating whether (i) Borrowers are in compliance with each of the covenants specified in Section 5.26, and setting forth a detailed calculation of such covenants, and (ii) any Default or Event of Default is then in existence;

(c) **Interim Financial Statements.** Not later than thirty (30) days after the end of each month hereafter, including the last month of each Fiscal Year, unaudited interim financial statements of each Loan Party as of the end of such month and of the portion of such Fiscal Year then elapsed, including balance sheet, income statement, statement of cash flow, and results of their respective operations during such month and the then-elapsed portion of the Fiscal Year, together with comparative figures for the same periods in the immediately preceding Fiscal Year and the corresponding figures from the budget for the Fiscal Year covered by such financial statements, on a consolidated basis, certified by an Authorized Officer of Borrowing Agent as prepared in accordance with GAAP and fairly presenting the consolidated financial position and results of operations (including management discussion and analysis of such results) of each Loan Party for such month and period subject only to changes from ordinary course year-end audit adjustments and except that such statements need not contain footnotes. Concurrently with the delivery of such financial statements, Borrowing Agent shall deliver to Agent a Compliance Certificate, indicating whether (i) Borrowers are in compliance with each of the covenants specified in Section 5.26, and setting forth a detailed calculation of such covenants, and (ii) any Default or Event of Default is then in existence;

(d) **Collateral Reports / Insurance Certificates / Information Certificates / Other Items.** The items described on Schedule D hereto by the respective dates set forth therein.

(e) **Projections, Etc.** Not later than thirty (30) days after the end of each Fiscal Year commencing with the fiscal year ending January 31, 2022, monthly business projections for the following Fiscal Year for the Loan Parties on a consolidated basis, which projections shall include profit and loss projections, balance sheet projections, income statement projections and cash flow projections, together with appropriate supporting details and a statement of underlying assumptions used in preparing such projections;

(f) **Shareholder Reports, Etc.** To the extent the following are not publicly available on <https://investors.imediabrands.com> or on the website of the Securities and Exchange Commission, promptly after the sending or filing thereof, as the case may be, copies of any proxy statements, financial statements or reports which each Loan Party has made available to its shareholders and copies of any regular, periodic and special reports or registration statements which any Loan Party files with the Securities and Exchange Commission or any Governmental Authority which may be substituted therefor, or any national securities exchange;

(g) **ERISA Reports.** Copies of any annual report to be filed pursuant to the requirements of ERISA in connection with each Pension plan subject thereto promptly upon request by Agent and in addition, each Loan Party shall notify Agent promptly and within ten (10) Business Days upon having knowledge of any ERISA Event; and

(h) **Reserved.**

(i) **Notification of Certain Changes.** Borrowers will promptly (and in no case later than the earlier of (i) five (5) Business Days after the occurrence of any of the following and (ii) such other date that such information is required to be delivered pursuant to this Agreement or any other Loan Document) notify Agent in writing of: (i) the occurrence of any Default or Event of Default, (ii) the occurrence of any event that has had, or could reasonably be expected to have, a Material Adverse Effect, (iii) [reserved], (iv) any investigation, action, suit, proceeding or claim (or any development with respect to any existing investigation, action, suit, proceeding or claim) relating to any Loan Party, the Collateral or which could reasonably be expected to have a Material Adverse Effect, (v) any violation or asserted violation of any applicable law (including OSHA or any environmental laws), if an adverse resolution could reasonably be expected to have a Material Adverse Effect or otherwise result in material liability to any Loan Party, (vi) any other event or the existence of any circumstance that has resulted in, or could reasonably be expected to result in a Material Adverse Effect, (vii) any actual or alleged breaches of any Material Contract or termination or threat to terminate any Material Contract or any material amendment to or modification of a Material Contract, or the execution of any new Material Contract by any Loan Party, (viii) any change in any Loan Party's certified accountant, (iv) promptly upon learning thereof, report to Agent all matters materially affecting the value, enforceability or collectability of any portion of the Collateral, including any Borrower's reclamation or repossession of, or the return to any Borrower of, a material amount of goods or claims or disputes asserted by any Customer or other obligor. In the event of each such notice under this Section 5.15(i), Borrowers shall give notice to Agent of the action or actions that each Loan Party has taken, is taking, or proposes to take with respect to the event or events giving rise to such notice obligation.

(j) **Other Information.** Promptly upon request, such other data and information (financial and otherwise) as Agent, from time to time, may reasonably request, bearing upon or related to the Collateral or each Loan Party's business or financial condition or results of operations.

5.16 Litigation Cooperation. Should any third-party suit, regulatory action, or any other judicial, administrative, or similar proceeding be instituted by or against Agent or any Lender with respect to any Collateral or in any manner relating to any Loan Party, this Agreement, any other Loan Document or the transactions contemplated hereby, each Loan Party shall, without expense to Agent or any Lender, make available each Loan Party, such Loan Party's officers, and employees, and any Loan Party's books and records, without charge, to the extent that Agent may deem them reasonably necessary in order to prosecute or defend any such suit or proceeding.

5.17 Maintenance of Collateral, Etc. Each Loan Party will maintain all of the Collateral in good working condition, ordinary wear and tear excepted, and no Loan Party will use the Collateral for any unlawful purpose.

5.18 Material Contracts. Except as expressly disclosed in Section 53 of the Information Certificates (as updated from time to time in accordance with Section 5.29), no Loan Party is (a) a party to any contract which has had or could reasonably be expected to have a Material Adverse Effect or (b) in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any contract to which it is a party or by which any of its assets or properties is bound, which default, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect (a "**Material Contract**").

5.19 No Default. No Default or Event of Default has occurred and is continuing.

5.20 No Material Adverse Change. Since January 30, 2021, there has been no material adverse change in the financial condition, business, operations, or properties of any Loan Party.

5.21 Full Disclosure. No written report, notice, certificate, information or other statement delivered or made (including, in electronic form) by or on behalf of any Loan Party or any of their respective Affiliates to Agent or any Lender in connection with this Agreement or any other Loan Document contains or will at any time contain any untrue statement of a material fact, or omits or will at any time omit to state any material fact necessary to make any statements contained herein or therein not misleading. Except for matters of a general economic or political nature which do not affect any Loan Party uniquely, there is no fact presently known to any Loan Party which has not been disclosed to Agent or any Lender, which has had or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

5.22 Sensitive Payments. No Loan Party (a) has made or will at any time make any contributions, payments or gifts to or for the private use of any governmental official, employee or agent where either the payment or the purpose of such contribution, payment or gift is illegal under the applicable laws of the United States or the jurisdiction in which made or any other applicable jurisdiction, (b) has established or maintained or will at any time establish or maintain any unrecorded fund or asset for any purpose or made any false or artificial entries on its books, (c) has made or will at any time make any payments to any Person with the intention that any part of such payment was to be used for any purpose other than that described in the documents supporting the payment, or (d) has engaged in or will at any time engage in any “trading with the enemy” or other transactions violating any rules or regulations of the Office of Foreign Assets Control or any similar applicable laws, rules or regulations.

5.23 Reserved.

5.24 Term Debt Permitted Indebtedness; Seller Note Permitted Indebtedness.

(a) Borrowers have furnished Agent a true, correct and complete copy of each of the Term Debt Documents. No statement or representation made in any of the Term Debt by Borrowers or any other Loan Party or, to Borrowers’ knowledge, any other Person, contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they are made, not misleading in any material respect as of the time that such statement or representation is made. Each of the representations and warranties of the Loan Parties set forth in each of the Term Debt Documents are true and correct in all respects.

(b) Borrowers have furnished Agent a true, correct and complete copy of each of the Seller Debt Documents.

(c) Each Borrower and each other Loan Party acknowledges that Agent is entering into this Agreement and extending credit and making the Loans in reliance upon the Intercreditor Agreement and this Section 5.24.

5.25 Negative Covenants. No Loan Party shall, and no Loan Party shall permit any of its Subsidiaries to, without Agent’s prior written consent:

(a) merge or consolidate with another Person, except that (i) a Loan Party may merge or consolidate with another Loan Party so long as (A) in connection with any merger or consolidation to which a Borrower is a party, such Borrower must be the surviving entity of merger or consolidation and (B) in connection with any merger or consolidation between a Loan Party and any of its Subsidiaries which is not a Loan Party, such Loan Party must be the surviving entity of merger or consolidation and (ii) a Loan Party may merge or consolidate with another Person for any mergers or consolidations in connection with any Permitted Acquisitions so long as the survivor of any such merger or consolidation is or becomes a Loan Party in connection with such transaction in accordance with the terms of this Agreement;

(b) acquire any assets except (i) for Permitted Acquisitions and (ii) in the ordinary course of business and as otherwise expressly permitted by this Agreement;

(c) enter into any transaction outside the ordinary course of business that is not expressly permitted by this Agreement, it being understood that any issuance of Equity Interests by iMedia are within the ordinary course of business;

(d) sell, transfer, return, or dispose of any Collateral or other assets, other than:

(i) the sale by Loan Parties of Inventory in the ordinary course of its business,

(ii) any sale, lease, transfer or other disposition by a Loan Party to any other Loan Party and the transfer by iMedia of its owned real property in Eden Prairie, Minnesota to EP Properties, LLC on the Closing Date as required by the Term Debt Documents,

(iii) any sale, disposition, or transfer of obsolete, worn-out or unneeded Equipment,

(iv) any sale, lease, transfer or other disposition constituting a Permitted Investment,

(v) the dissolution or liquidation of any Subsidiary so long as the assets of any such Subsidiary are contributed to a Loan Party,

(vi) dispositions and transfers of cash and cash equivalents in the ordinary course of business and not in violation of this Agreement; and

(vii) dispositions of Term Loan Priority Collateral (as defined in the Intercreditor Agreement) permitted under the terms of the Term Debt Documents;

(e) make any loans to, or investments in, any Affiliate or other Person in the form of money or other assets; *provided*, that (i) Borrowers may make loans and investments in their respective domestic Subsidiaries that are Loan Parties, (ii) a Loan Party may make loans to, and investments in, another Loan Party, (iii) a Loan Party may acquire Permitted Investments, (iv) a Loan Party may receive minority investments in Persons given to such Loan Party by such Person in exchange for services provided by the applicable Loan Party, (v) a Loan Party may make loans not involving the transfer of cash or cash equivalents to officers, directors, employees or consultants of such Loan Party for the purchase of equity interests, or rights to acquire equity interests, issued for compensatory purposes, (vi) the Loan Parties may make investments to consummate Permitted Acquisitions, (vii) a Loan Party make investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss, and (viii) investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, in each case in the ordinary course of business;

(f) incur any Indebtedness other than the Obligations and Permitted Indebtedness;

(g) create, incur, assume or suffer to exist any Lien or other encumbrance of any nature whatsoever, other than in favor of Agent to secure the Obligations, on any of the Collateral whether now or hereafter owned, other than Permitted Liens;

(h) guaranty or otherwise become liable with respect to the obligations of any Person other than (i) the Obligations, (ii) guarantees in respect of Permitted Indebtedness and (iii) guarantees of lease obligations given in the ordinary course of business not to exceed \$3,500,000 in the aggregate at any time;

(i) pay or declare any dividends or other distributions on any Loan Party's Equity Interests or redeem, retire, purchase or otherwise acquire, directly or indirectly, any Equity Interests of any Loan Party; provided, however, that notwithstanding the foregoing, (i) the Loan Parties and their Subsidiaries may declare and make dividend payments or other distributions payable solely in the common stock or other Equity Interests of such Person and any Loan Party or any of its Subsidiaries (other than iMedia) may make any distributions on any Equity Interests held by any Loan Party that serves as its parent, (ii) iMedia make payments for withholding taxes to the extent required in connection with the exercise of employee stock options in exchange for common stock of any such Person pursuant to any net exercise provision described in the documents governing such stock options in an amount not to exceed \$750,000 in any year, (iii) so long as Borrowers' have Excess Availability of not less than \$25,000,000 both prior to and after giving effect to such payment, iMedia may repurchase its stock in an amount not to exceed \$2,000,000 in the aggregate in any fiscal year or \$4,500,000 during the period commencing on the Closing Date and ending on the Scheduled Maturity Date;

(j) reserved;

(k) dissolve or elect to dissolve (except for any dissolution or election to dissolve by any Loan Party (other than iMedia) so long as Agent receives ten (10) Business Days' prior written notice thereof and the assets of any such entity that has dissolved or elected to dissolve have been contributed to another Borrower);

(l) engage, directly or indirectly, in a business other than the business which is being conducted on the date hereof or any business reasonably related, incidental or ancillary thereto, wind up its business operations or cease substantially all, or any material portion, of its normal business operations, or suffer any material disruption, interruption or discontinuance of a material portion of its normal business operations;

(m) pay any principal or other amount on any Indebtedness that is contractually subordinated to Agent and Lenders in violation of the applicable subordination or intercreditor agreement or optionally prepay, redeem, defease, purchase, or otherwise acquire any Indebtedness of any Loan Party or its Subsidiaries, other than the Obligations in accordance with this Agreement or the Term Debt Permitted Indebtedness and the Seller Debt Permitted Indebtedness;

(n) enter into any transaction with an Affiliate other than (i) transactions between or among Loan Parties expressly permitted by this Agreement (ii) transactions on arms-length terms in the ordinary course of business in a manner consistent with past practices and (iii) loans and/or extensions of credit to employees (or consultants functioning in similar capacities as an employee) extended in the ordinary course of business in an amount not to exceed \$500,000 outstanding at any time, (iv) distributions permitted under Section 5.25(i) and (v) the payment of reasonable customary compensation and benefits and reimbursements of out-of-pocket costs to, and the provision of indemnity on behalf of, directors, officers, consultants, employees and members of the boards of directors of the Loan Parties and their subsidiaries;

(o) change its jurisdiction of organization or enter into any transaction which has the effect of changing its jurisdiction of organization except as provided for in Section 5.8;

(p) agree, consent, permit or otherwise undertake to amend or otherwise modify any of the terms or provisions of any Loan Party's Organic Documents, except for such amendments or other modifications required by applicable law or that are not adverse to Agent or Lenders;

(q) enter into or assume any agreement prohibiting the creation or assumption of any Lien on the Collateral to secure the Obligations upon its properties or assets, whether now owned or hereafter acquired, other than this Agreement and any other agreement relating to Permitted Indebtedness, applicable law and customary restrictions in leases, subleases, licenses and sublicenses or asset sale agreements otherwise permitted by this Agreement so long as such restrictions relate only to the assets subject thereto;

(r) agree, consent, permit or otherwise undertake to amend or otherwise modify any of the terms or provisions of any Term Debt Loan Document in violation of the Intercreditor Agreement or

(s) agree, consent, permit or otherwise undertake to amend or otherwise modify any of the terms or provisions of any Seller Debt Loan Document or

(t) (i) divide or enter into any plan of division pursuant to section 18-217 of the Delaware Limited Liability Company Act or any similar statute or provision under any applicable law or otherwise, (ii) dispose of any property through a plan of division under the Delaware Limited Liability Company Act or any comparable transaction under any similar law or (iii) make any payment or distribution pursuant to a plan of division under the Delaware Limited Liability Company Act or any comparable transaction under any similar law.

5.26 Financial Covenants. Each Loan Party shall comply with the Financial Covenants described on Schedule E.

5.27 Employee and Labor Matters. As of the Closing Date, there is (a) no unfair labor practice complaint pending or, to the knowledge of any Borrower, threatened against any Loan Party or its Subsidiaries before any Governmental Authority and no grievance or arbitration proceeding pending or threatened against any Loan Party or its Subsidiaries which arises out of or under any collective bargaining agreement and that could reasonably be expected to result in a material liability, (b) no strike, labor dispute, slowdown, stoppage or similar action or grievance pending or threatened in writing against any Loan Party or its Subsidiaries that could reasonably be expected to result in a material liability, or (c) to the knowledge of any Borrower, after due inquiry, no union representation question existing with respect to the employees of any Loan Party or its Subsidiaries and no union organizing activity taking place with respect to any of the employees of any Loan Party or its Subsidiaries. As of the Closing Date, none of any Loan Party or its Subsidiaries has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act or similar state law, which remains unpaid or unsatisfied. The hours worked and payments made to employees of each Loan Party and its Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable legal requirements. All material payments due from any Loan Party or its Subsidiaries on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of Borrowers, except where the failure to do so could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

5.28 Post Closing Matters. Loan Parties shall execute and deliver the documents and take such actions (or cause such actions to be taken by other Persons) as are set forth in the section labeled "Post Closing Deliverables and Covenants" on *Exhibit B*, in each case, on or prior to the deadlines specified on *Exhibit B* (or such later dates as Agent may agree in its sole discretion).

5.29 Updates to the Information Certificate. Deliver to Agent promptly as shall be required to maintain the related representations and warranties as true and correct, updates to the following Sections of the Information Certificates: 27-32 (Locations), 1 (Legal Name), 3 (Type of Entity; State of Organization) 18 (Equityholders), 40 (Commercial Tort Claims), 43 (Letter-of-Credit Rights) and 53 (Material Contacts); provided, that absent the occurrence and continuance of any Event of Default, such updates shall be required solely on a monthly basis in connection with delivery of a Compliance Certificate with respect to the applicable month. Any such updated Schedules delivered by Borrowers to Agent in accordance with this Section 5.29 shall automatically and immediately be deemed to supplement or amend and restate, as applicable, the prior version of such sections of the Information Certificates previously delivered to Agent and attached to and made part of this Agreement.

6. LIMITATION OF LIABILITY AND INDEMNITY.

6.1 Limitation of Liability. In no circumstance will Agent, any Lender, any Participant, any of their respective successors and assigns, any of their respective Affiliates, or any of their respective directors, officers, employees, attorneys or agents (the “**Released Parties**”) be liable for lost profits or other special, punitive, or consequential damages. Notwithstanding any provision in this Agreement to the contrary, this Section 6.1 shall remain operative even after the Termination Date and shall survive the payment in full of all of the Loans.

6.2 Indemnity/Currency Indemnity.

(a) Each Loan Party hereby agrees to indemnify the Released Parties and hold them harmless from and against any and all claims, debts, liabilities, losses, demands, obligations, actions, causes of action, fines, penalties, costs and expenses (including attorneys’ fees and consultants’ fees), of every nature, character and description (including, without limitation, natural resources damages, property damage and claims for personal injury), which the Released Parties may sustain or incur based upon or arising out of any of the transactions contemplated by this Agreement or any other Loan Documents or any of the Obligations, including any transactions or occurrences relating to the issuance of any Letter of Credit, any Collateral relating thereto, any drafts thereunder and any errors or omissions relating thereto (including, without limitation, any loss or claim due to any action or inaction taken by the issuer of any Letter of Credit, Agent or any Lender) (and for this purpose any charges to Agent and/or any Lender by any issuer of Letters of Credit shall be conclusive as to their appropriateness and may be charged to the Loan Account), or any other matter, including any breach of any covenant or representation or warranty relating to any environmental and health and safety laws or an environmental release, cause or thing whatsoever occurred, done, omitted or suffered to be done by Agent or any Lender relating to any Loan Party or the Obligations (except any such amounts sustained or incurred solely as the result of the gross negligence or willful misconduct of such Released Parties, as finally determined by a court of competent jurisdiction). Notwithstanding any provision in this Agreement to the contrary, this Section 6.2 shall remain operative even after the Termination Date and shall survive the payment in full of all of the Obligations.

(b) If, for the purposes of obtaining or enforcing judgment in any court in any jurisdiction with respect to this Agreement or any Loan Document, it becomes necessary to convert into the currency of such jurisdiction (the “**Judgment Currency**”) any amount due under this Agreement or under any Loan Document in any currency other than the Judgment Currency (the “**Currency Due**”) (or for the purposes of Section 1.7(d)), then, to the extent permitted by law, conversion shall be made at the exchange rate reasonably selected by Agent on the Business Day before the day on which judgment is given (or for the purposes of Section 1.7(d), on the Business Day on which the payment was received by the Agent). In the event that there is a change in such exchange rate between the Business Day before the day on which the judgment is given and the date of receipt by the Agent of the amount due, each Loan Party shall to the extent permitted by law, on the date of receipt by Agent, pay such additional amounts, if any, or be entitled to receive reimbursement of such amount, if any as may be necessary to ensure that the amount received by Agent on such date is the amount in the Judgment Currency which (when converted at such exchange rate on the date of receipt by Agent in accordance with normal banking procedures in the relevant jurisdiction) is the amount then due under this Agreement or such Loan Document in the Currency Due. If the amount of the Currency Due (including any Currency Due for purposes of Section 1.7(c)) which the Agent is so able to purchase is less than the amount of the Currency Due (including any Currency Due for purposes of Section 1.7(c)) originally due to it, each Loan Party shall to the extent permitted by law jointly and severally indemnify and save Agent and Lenders harmless from and against loss or damage arising as a result of such deficiency.

7. EVENTS OF DEFAULT AND REMEDIES.

7.1 Events of Default. The occurrence of any of the following events shall constitute an “*Event of Default*”:

(a) if any warranty, representation, statement, report or certificate made or delivered to Agent or any Lender by or on behalf of any Loan Party is untrue or misleading in any material respect;

(b) if any Loan Party fails to pay to Agent or any Lender, (i) when due, any principal or interest payment required under this Agreement or any other Loan Document, or (ii) within three (3) Business Days when due, any other monetary Obligation;

(c) (1) if any Loan Party defaults in the due observance or performance of any covenant, condition or agreement contained in Section 3.2, 4.1, 4.6, 4.7, 4.8, 5.2, 5.3, 5.13, 5.14, 5.15, 5.17, 5.24, 5.25, 5.26, 5.28 or 5.29 of this Agreement; or

(2) if any Loan Party defaults in the due observance or performance of any covenant, condition or agreement contained in any provision of this Agreement or any other Loan Document and not addressed in clauses Sections 7.1(a), (b) or (c)(1), and the continuance of such default unremedied for a period of fifteen (15) Business Days; *provided*, that such fifteen (15) Business Day grace period shall not be available for any default that is not reasonably capable of being cured within such period or for any intentional default;

(d) Any judgment or judgments are rendered against any Loan Party for an aggregate amount in excess of \$500,000 or against all Loan Parties for an aggregate amount in excess of \$500,000 and (i) enforcement proceedings shall have been commenced by a creditor upon such judgment, (ii) there shall be any period of thirty (30) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, shall not be in effect, or (iii) any such judgment results in the creation of a Lien upon any of the Collateral (other than a Permitted Liens);

(e) any default with respect to any Indebtedness (other than the Obligations) of any Loan Party in a principal amount in excess of \$500,000 if (i) such default shall consist of the failure to pay such Indebtedness when due, whether by acceleration or otherwise, or (ii) the effect of such default is to permit the holder, with or without notice or lapse of time or both, to accelerate the maturity of any such Indebtedness or to cause such Indebtedness to become due prior to the stated maturity thereof (without regard to the existence of any subordination or intercreditor agreements);

(f) [reserved];

(g) if any Loan Party shall apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of it or any of its properties, admit in writing its inability to pay its debts as they mature, make a general assignment for the benefit of creditors, be adjudicated a bankrupt or insolvent or be the subject of an order for relief under the Bankruptcy Code or under any bankruptcy or insolvency law of a foreign jurisdiction, or file a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or an answer admitting the material allegations of a petition filed against it in any proceeding under any such law, or take or permit to be taken any action in furtherance of or for the purpose of effecting any of the foregoing;

(h) the commencement of an involuntary case or other proceeding against any Loan Party seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar applicable law or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property and the same is not dismissed within sixty (60) days, or if an order for relief is entered against any Loan Party under any bankruptcy insolvency or other similar applicable law as now or hereafter in effect;

(i) the actual or attempted revocation or termination of, or limitation or denial of liability under, any guaranty of any of the Obligations, or any security document securing any of the Obligations, by any Loan Party;

(j) if any Loan Party makes any payment on account of any Indebtedness or obligation which has been contractually subordinated to the Obligations other than payments which are not prohibited by the applicable subordination provisions pertaining thereto, or if any Person who has subordinated such Indebtedness or obligations attempts to limit or terminate any applicable subordination provisions pertaining thereto;

(k) if a Change of Control occurs;

(l) if any Lien purported to be created by any Loan Document shall cease to be a valid perfected first priority Lien (subject only to any priority accorded by law to Permitted Liens) on any material portion of the Collateral, except as a result of any action taken by, or inaction or failure on the part of, Agent or failure by Agent to maintain possession of Collateral, or any Loan Party shall assert in writing that any Lien purported to be created by any Loan Document is not a valid perfected first priority lien (subject only to any priority accorded by law to Permitted Liens) on the assets or properties purported to be covered thereby;

(m) if any of the Loan Documents shall cease to be in full force and effect (other than as a result of the discharge thereof in accordance with the terms thereof or by written agreement of all parties thereto);

(n) reserved;

(o) (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted in liability of any Loan Party or any ERISA Affiliate under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of \$500,000, (ii) the existence of any Lien under Section 430(k) or Section 6321 of the Code or Section 303(k) or Section 4068 of ERISA on any assets of a Loan Party or any ERISA Affiliate, or (iii) a Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of \$500,000;

(p) If (i) any Loan Party is enjoined, restrained or in any way prevented by any Governmental Authority from conducting any material part of its business, (ii) any Loan Party suffers the loss, revocation or termination of any material license, permit, lease or agreement necessary to its business, or (iii) there is a cessation of any material part of any Loan Party's business for a material period of time; or

(q) Any Loan Party's operations taken as a whole are materially interrupted at any time for more than 10 consecutive days, unless such Loan Party shall (i) be entitled to receive for such period of interruption, proceeds of business interruption insurance sufficient to assure that its per diem cash needs during such period is at least equal to its average per diem cash needs for the consecutive three month period immediately preceding the initial date of interruption and (ii) receive such proceeds in the amount described in clause (i) preceding not later than thirty (30) days following the initial date of any such interruption; provided, however, that notwithstanding the provisions of clauses (i) and (ii) of this section, an Event of Default shall be deemed to have occurred if such Loan Party shall be receiving the proceeds of business interruption insurance for a period of thirty (30) consecutive days;

(r) (i) an "Event of Default" (as defined in the Term Debt Loan Agreement or the Seller Debt Note) has occurred under the Term Debt Loan Documents, which "Event of Default" shall not have been cured within any applicable grace period or waived at any time by the Term Debt Agent or Seller; (ii) termination or breach of the Intercreditor Agreement by Borrowers, (iii) the attempt by any Borrower to terminate or challenge in writing the validity of its obligations under the Intercreditor Agreement or (iv) the Intercreditor Agreement ceases to be enforceable.

7.2 Remedies with Respect to Lending Commitments/Acceleration/Etc.. Upon the occurrence and during the continuance of an Event of Default Agent may, in Agent's sole discretion, and Agent shall, at the direction of the Required Lenders (a) terminate all or any portion of the commitments to lend to or extend credit to Borrowers under this Agreement and/or any other Loan Document, without prior notice to any Loan Party, and/or (b) demand payment in full of all or any portion of the Obligations (whether or not payable on demand prior to such Event of Default), together with the Early Payment/Termination Premium in the amount specified in the Fee Letter, and demand that the Letters of Credit be cash collateralized in the manner described in Section 1.7(c) and/or (c) take any and all other and further actions and avail itself of any and all rights and remedies available to Agent under this Agreement, any other Loan Document, under law and/or in equity. Notwithstanding the foregoing sentence, upon the occurrence of any Event of Default described in Section 7.1(g) or Section 7.1(h), without notice, demand or other action by Agent or any Lender all of the Obligations (including without limitation the Early Payment/Termination Premium in the amount specified in the Fee Letter) shall immediately become due and payable whether or not payable on demand prior to such Event of Default.

7.3 Remedies with Respect to Collateral. Without limiting any rights or remedies Agent may have pursuant to this Agreement, the other Loan Documents, under applicable law or otherwise, upon the occurrence and during the continuance of an Event of Default:

(a) **Any and All Remedies.** Agent may take any and all actions and avail itself of any and all rights and remedies available to Agent under this Agreement, any other Loan Document, under law or in equity, and the rights and remedies herein and therein provided shall be cumulative and not exclusive of any rights or remedies provided by applicable law or otherwise.

(b) **Collections; Modifications of Terms.** Agent may but at the direction of Required Lenders shall (i) notify all appropriate parties that the Collateral, or any part thereof, has been assigned to Agent; (ii) demand, sue for, collect and give receipts for and take all necessary or desirable steps to collect any Collateral or Proceeds in its or any Loan Party's name, and apply any such collections against the Obligations as Agent may elect; (iii) take control of any Collateral and any cash and non-cash Proceeds of any Collateral; (iv) enforce, compromise, extend, renew settle or discharge any rights or benefits of each Loan Party with respect to or in and to any Collateral, or deal with the Collateral as Agent may deem advisable; and (v) make any compromises, exchanges, substitutions or surrenders of Collateral Agent deems necessary or proper in its reasonable discretion, including extending the time of payment, permitting payment in installments, or otherwise modifying the terms or rights relating to any of the Collateral, all of which may be effected without notice to, consent of, or any other action of any Loan Party and without otherwise discharging or affecting the Obligations, the Collateral or the security interests granted to Agent under this Agreement or any other Loan Document.

(c) **Insurance.** Agent may file proofs of loss and claim with respect to any of the Collateral with the appropriate insurer, and may endorse in its own and each Loan Party's name any checks or drafts constituting Proceeds of insurance. Any Proceeds of insurance received by Agent may be applied by Agent against payment of all or any portion of the Obligations as Agent may elect in its reasonable discretion.

(d) **Possession and Assembly of Collateral.** Agent may take possession of the Collateral. Upon Agent's request and subject to the Intercreditor Agreement, each Loan Party shall assemble the Collateral and make it available to Agent at a place or places to be designated by Agent.

(e) **Set-off; Sharing of Payments.**

(i) Agent and each Lender may and without any notice to, consent of or any other action by any Loan Party (such notice, consent or other action being expressly waived), set-off or apply (i) any and all deposits (general or special, time or demand, provisional or final) at any time held by or for the account of Agent, Lender or any Affiliate of Agent or any Lender, and/or (ii) any Indebtedness at any time owing by Agent, any Lender or any Affiliate of Agent or any Lender or any Participant in the Loans to or for the credit or the account of any Loan Party, to the repayment of the Obligations irrespective of whether any demand for payment of the Obligations has been made; *provided*, that if any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to Agent for further application in accordance with the provisions of Section 10.21 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff.

(ii) If any Lender, directly or through an Affiliate or branch office thereof, obtains any payment of any Obligation of any Loan Party (whether voluntary, involuntary or through the exercise of any right of setoff or the receipt of any Collateral, Proceeds or "proceeds" (as defined under the applicable UCC) of Collateral) other than pursuant to Section 4.2 and such payment exceeds the amount such Lender would have been entitled to receive if all payments had gone to, and been distributed by, Agent in accordance with the provisions of the Loan Documents, such Lender shall purchase for cash from other Lenders such participations in their Obligations as necessary for such Lender to share such excess payment with such Lenders to ensure such payment is applied as though it had been received by Agent and applied in accordance with this Agreement (or, if such application would then be at the discretion of the Borrower, applied to repay the Obligations in accordance herewith); *provided*, however, that (A) if such payment is rescinded or otherwise recovered from such Lender in whole or in part, such purchase shall be rescinded and the purchase price therefor shall be returned to such Lender without interest and (B) such Lender shall, to the fullest extent permitted by applicable requirements of law, be able to exercise all its rights of payment (including the right of setoff) with respect to such participation as fully as if such Lender were the direct creditor of the applicable Loan Party in the amount of such participation.

(f) **Disposition of Collateral.**

(i) *Sale, Lease, etc. of Collateral.* Agent may, without demand, advertising or notice, all of which each Loan Party hereby waives (except as the same may be required by the UCC or other applicable law), at any time or times in one or more public or private sales or other dispositions, for cash, on credit or otherwise, at such prices and upon such terms as determined by Agent (provided such price and terms are commercially reasonable within the meaning of the UCC to the extent such sale or other disposition is subject to the UCC requirements that such sale or other disposition must be commercially reasonable) (A) sell, lease, license or otherwise dispose of any and all Collateral, and/or (B) deliver and grant options to a third party to purchase, lease, license or otherwise dispose of any and all Collateral. Agent may sell, lease, license or otherwise dispose of any Collateral in its then-present condition or following any preparation or processing deemed necessary by Agent in its reasonable discretion. Agent may be the purchaser at any such public or private sale or other disposition of Collateral, and in such case Agent may make payment of all or any portion of the purchase price therefor by the application of all or any portion of the Obligations due to Agent and Lenders to the purchase price payable in connection with such sale or disposition. Agent may, if it deems it reasonable, postpone or adjourn any sale or other disposition of any Collateral from time to time by an announcement at the time and place of the sale or disposition to be so postponed or adjourned without being required to give a new notice of sale or disposition; **provided, however**, that Agent shall provide the applicable Loan Party with written notice of the time and place of such postponed or adjourned sale or disposition. Each Loan Party hereby acknowledges and agrees that Agent's compliance with any requirements of applicable law in connection with a sale, lease, license or other disposition of Collateral will not be considered to adversely affect the commercial reasonableness of any sale, lease, license or other disposition of such Collateral.

(ii) *Deficiency.* Each Loan Party shall remain liable for all amounts of the Obligations remaining unpaid as a result of any deficiency of the Proceeds of the sale, lease, license or other disposition of Collateral after such Proceeds are applied to the Obligations as provided in this Agreement.

(iii) *Warranties; Sales on Credit.* Agent may sell, lease, license or otherwise dispose of the Collateral without giving any warranties and may specifically disclaim any and all warranties, including but not limited to warranties of title, possession, merchantability and fitness. Each Loan Party hereby acknowledges and agrees that Agent's disclaimer of any and all warranties in connection with a sale, lease, license or other disposition of Collateral will not be considered to adversely affect the commercial reasonableness of any such disposition of the Collateral. If Agent sells, leases, licenses or otherwise disposes of any of the Collateral on credit, Borrowers will be credited only with payments actually made in cash by the recipient of such Collateral and received by Agent and applied to the Obligations. If any Person fails to pay for Collateral acquired pursuant to this Section 7.3(f) on credit, Agent may re-offer the Collateral for sale, lease, license or other disposition.

(g) **Investment Property; Voting and Other Rights; Irrevocable Proxy.**

(i) All rights of each Loan Party to exercise any of the voting and other consensual rights which it would otherwise be entitled to exercise in accordance with the terms hereof with respect to any Investment Property, and to receive any dividends, payments, and other distributions which it would otherwise be authorized to receive and retain in accordance with the terms hereof with respect to any Investment Property, shall immediately, at the election of Agent (without requiring any notice) cease, and all such rights shall thereupon become vested solely in Agent, and Agent (personally or through an agent) shall thereupon be solely authorized and empowered, without notice, to (A) transfer and register in its name, or in the name of its nominee, the whole or any part of the Investment Property, it being acknowledged by each Loan Party that any such transfer and registration may be effected by Agent through its irrevocable appointment as attorney-in-fact pursuant to Section 7.3(g)(ii) and Section 4.4 of this Agreement, (B) exchange certificates and/or instruments representing or evidencing Investment Property for certificates and/or instruments of smaller or larger denominations, (C) exercise the voting and all other rights as a holder with respect to all or any portion of the Investment Property (including, without limitation, all economic rights, all control rights, authority and powers, and all status rights of each Loan Party as a member or as a shareholder (as applicable) of the Issuer), (D) collect and receive all dividends and other payments and distributions made thereon, (E) notify the parties obligated on any Investment Property to make payment to Agent of any amounts due or to become due thereunder, (F) endorse instruments in the name of each Loan Party to allow collection of any Investment Property, (G) enforce collection of any of the Investment Property by suit or otherwise, and surrender, release, or exchange all or any part thereof, or compromise or renew for any period (whether or not longer than the original period) any liabilities of any nature of any Person with respect thereto, (H) consummate any sales of Investment Property or exercise any other rights as set forth in Section 7.3(f) hereof, (I) otherwise act with respect to the Investment Property as though Agent was the outright owner thereof, and (J) exercise any other rights or remedies Agent may have under the UCC, other applicable law, or otherwise.

(ii) EACH LOAN PARTY HEREBY IRREVOCABLY CONSTITUTES AND APPOINTS AGENT AS ITS PROXY AND ATTORNEY-IN-FACT FOR SUCH LOAN PARTY WITH RESPECT TO ALL OF EACH SUCH LOAN PARTY'S INVESTMENT PROPERTY WITH THE RIGHT, EXERCISABLE SOLELY DURING THE CONTINUANCE OF AN EVENT OF DEFAULT TO TAKE ANY OF THE FOLLOWING ACTIONS: (A) TRANSFER AND REGISTER IN AGENT'S NAME, OR IN THE NAME OF ITS NOMINEE, THE WHOLE OR ANY PART OF THE INVESTMENT PROPERTY, (B) VOTE THE PLEDGED EQUITY, WITH FULL POWER OF SUBSTITUTION TO DO SO, (C) RECEIVE AND COLLECT ANY DIVIDEND OR ANY OTHER PAYMENT OR DISTRIBUTION IN RESPECT OF, OR IN EXCHANGE FOR, THE INVESTMENT PROPERTY OR ANY PORTION THEREOF, TO GIVE FULL DISCHARGE FOR THE SAME AND TO INDORSE ANY INSTRUMENT MADE PAYABLE TO ANY LOAN PARTY FOR THE SAME, (D) EXERCISE ALL OTHER RIGHTS, POWERS, PRIVILEGES, AND REMEDIES (INCLUDING ALL ECONOMIC RIGHTS, ALL CONTROL RIGHTS, AUTHORITY AND POWERS, AND ALL STATUS RIGHTS OF EACH LOAN PARTY AS A MEMBER OR AS A SHAREHOLDER (AS APPLICABLE) OF THE ISSUER) TO WHICH A HOLDER OF THE PLEDGED COLLATERAL WOULD BE ENTITLED (INCLUDING, WITH RESPECT TO THE PLEDGED EQUITY, GIVING OR WITHHOLDING WRITTEN CONSENTS OF MEMBERS OR SHAREHOLDERS, CALLING SPECIAL MEETINGS OF MEMBERS OR SHAREHOLDERS, AND VOTING AT SUCH MEETINGS), AND (E) TAKE ANY ACTION AND TO EXECUTE ANY INSTRUMENT WHICH AGENT MAY DEEM NECESSARY OR ADVISABLE TO ACCOMPLISH THE PURPOSES OF THIS AGREEMENT. THE APPOINTMENT OF AGENT AS PROXY AND ATTORNEY-IN-FACT IS COUPLED WITH AN INTEREST AND SHALL BE VALID AND IRREVOCABLE UNTIL (X) ALL OF THE OBLIGATIONS (OTHER THAN CONTINGENT INDEMNIFICATION OBLIGATIONS) HAVE BEEN PAID IN FULL IN CASH IN ACCORDANCE WITH THE PROVISIONS OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, (Y) AGENT AND LENDERS HAVE NO FURTHER OBLIGATIONS UNDER THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, AND (Z) THE COMMITMENTS UNDER THIS AGREEMENT HAVE EXPIRED OR HAVE BEEN TERMINATED (IT BEING UNDERSTOOD AND AGREED THAT SUCH OBLIGATIONS WILL BE AUTOMATICALLY REINSTATED IF AT ANY TIME PAYMENT, IN WHOLE OR IN PART, OF ANY OF THE OBLIGATIONS IS RESCINDED OR MUST OTHERWISE BE RESTORED OR RETURNED BY AGENT FOR ANY REASON WHATSOEVER, INCLUDING, WITHOUT LIMITATION, AS A PREFERENCE, FRAUDULENT CONVEYANCE, OR OTHERWISE UNDER ANY BANKRUPTCY, INSOLVENCY, OR SIMILAR LAW, ALL AS THOUGH SUCH PAYMENT HAD NOT BEEN MADE; IT BEING FURTHER UNDERSTOOD THAT IN THE EVENT PAYMENT OF ALL OR ANY PART OF THE OBLIGATIONS IS RESCINDED OR MUST BE RESTORED OR RETURNED, ALL REASONABLE AND DOCUMENTED OUT-OF-POCKET COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ALL REASONABLE ATTORNEYS' FEES AND DISBURSEMENTS) INCURRED BY AGENT IN DEFENDING AND ENFORCING SUCH REINSTATEMENT SHALL HEREBY BE DEEMED TO BE INCLUDED AS A PART OF THE OBLIGATIONS). SUCH APPOINTMENT OF AGENT AS PROXY AND AS ATTORNEY-IN-FACT SHALL BE VALID AND IRREVOCABLE AS PROVIDED HEREIN NOTWITHSTANDING ANY LIMITATIONS TO THE CONTRARY SET FORTH IN ANY ORGANIC DOCUMENTS OF ANY LOAN PARTY, ANY ISSUER, OR OTHERWISE.

(iii) In order to further effect the foregoing transfer of rights in favor of Agent, during the continuance of an Event of Default, each Loan Party hereby authorizes and instructs each Issuer of Investment Property pledged by such Loan Party to comply with any instruction received by such Issuer from Agent without any other or further instruction from such Loan Party, and each Loan Party acknowledges and agrees that each Issuer shall be fully protected in so complying, and to pay any dividends, distributions, or other payments with respect to any of the Investment Property directly to Agent.

(iv) Upon exercise of the proxy set forth herein, all prior proxies given by any Loan Party with respect to any of the Pledged Equity or other Investment Property, as applicable (other than to Agent), are hereby revoked, and no subsequent proxies (other than to Agent) will be given with respect to any of the Pledged Equity or any of the other Investment Property, as applicable, unless Agent otherwise subsequently agrees in writing. Agent, as proxy, will be empowered and may exercise the irrevocable proxy to vote the Pledged Equity and/or the other Investment Property at any and all times during the existence of an Event of Default, including, without limitation, at any meeting of shareholders or members, as the case may be, however called, and at any adjournment thereof, or in any action by written consent, and may waive any notice otherwise required in connection therewith. To the fullest extent permitted by applicable law, Agent shall have no agency, fiduciary, or other implied duties to any Loan Party, any Issuer, any Loan Party, or any other Person when acting in its capacity as such proxy or attorney-in-fact. Each Loan Party hereby waives and releases any claims that it may otherwise have against Agent with respect to any breach, or alleged breach, of any such agency, fiduciary, or other duty.

(v) Any transfer to Agent or its nominee, or registration in the name of Agent or its nominee, of the whole or any part of the Investment Property shall be made solely for purposes of effectuating voting or other consensual rights with respect to the Investment Property in accordance with the terms of this Agreement and is not intended to effectuate any transfer of ownership of any of the Investment Property. Notwithstanding the delivery by Agent of any instruction to any Issuer or any exercise by Agent of an irrevocable proxy or otherwise, Agent shall not be deemed the owner of, or assume any obligations or any liabilities whatsoever of the owner or holder of, any Investment Property unless and until Agent expressly accepts such obligations in a duly authorized and executed writing and agrees in writing to become bound by the applicable Organic Documents or otherwise becomes the owner thereof under applicable law (including through a sale as described in Section 7.3(f) hereof). The execution and delivery of this Agreement shall not subject Agent to, or transfer or pass to Agent, or in any way affect or modify, the liability of any Loan Party under the Organic Documents of any Issuer or any related agreements, documents, or instruments or otherwise. In no event shall the execution and delivery of this Agreement by Agent, or the exercise by Agent of any rights hereunder or assigned hereby, constitute an assumption of any liability or obligation whatsoever of any Loan Party to, under, or in connection with any of the Organic Documents of any Issuer or any related agreements, documents, or instruments or otherwise.

(h) **Election of Remedies.** Agent shall have the right in Agent's sole discretion to determine which rights, security, Liens and/or remedies Agent may at any time pursue, foreclose upon, relinquish, subordinate, modify or take any other action with respect to, without in any way impairing, modifying or affecting any of Agent's other rights, security, Liens or remedies with respect to such Property, or any of Agent's rights or remedies under this Agreement or any other Loan Document.

(i) **Agent's Obligations.** Each Loan Party agrees that Agent shall not have any obligation to preserve rights to any Collateral against prior parties or to marshal any Collateral of any kind for the benefit of any other creditor of any Loan Party or any other Person. Agent shall not be responsible to any Loan Party or any other Person for loss or damage resulting from Agent's failure to enforce its Liens or collect any Collateral or Proceeds or any monies due or to become due under the Obligations or any other liability or obligation of any Loan Party to Agent.

(j) **Waiver of Rights by Loan Parties.** Except as otherwise expressly provided for in this Agreement or by non-waivable applicable law, each Loan Party waives: (i) presentment, demand and protest and notice of presentment, dishonor, notice of intent to accelerate, notice of acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all commercial paper, accounts, contract rights, documents, instruments, chattel paper and guaranties at any time held by Agent or any Lender on which any Loan Party may in any way be liable, and hereby ratifies and confirms whatever Agent and such Lender may do in this regard, (ii) all rights to notice and a hearing prior to Agent's taking possession or control of, or to Agent's replevy, attachment or levy upon, the Collateral or any bond or security which might be required by any court prior to allowing Agent to exercise any of its remedies and (iii) the benefit of all valuation, appraisal, marshalling and exemption laws.

8. LOAN GUARANTY.

8.1 Guaranty. Each Guarantor hereby agrees that it is jointly and severally liable for, and absolutely and unconditionally guarantees to Agent and Lenders, the prompt payment when due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter, all of the Obligations and all costs and expenses, including all court costs and attorneys' and paralegals' fees (including allocated costs of in-house counsel and paralegals) and expenses paid or incurred by Agent or Lenders in endeavoring to collect all or any part of the Obligations from, or in prosecuting any action against, any Borrower, or any Guarantor of all or any part of the Obligations (and such costs and expenses paid or incurred shall be deemed to be included in the Obligations). Each Guarantor further agrees that the Obligations may be extended or renewed in whole or in part without notice to or further assent from it, and that it remains bound upon its guaranty notwithstanding any such extension or renewal. All terms of this Loan Guaranty apply to and may be enforced by or on behalf of any branch or Affiliate of Agent or any Lender that extended any portion of the Obligations.

8.2 Guaranty of Payment. This Loan Guaranty is a guaranty of payment and not of collection. Each Guarantor waives any right to require Agent or any Lender to sue or otherwise take action against any Borrower, any other Guarantor, or any other Person obligated for all or any part of the Obligations, or otherwise to enforce its payment against any Collateral securing all or any part of the Obligations.

8.3 No Discharge or Diminishment of Loan Guaranty.

(a) Except as otherwise expressly provided for herein, the obligations of each Guarantor hereunder are unconditional and absolute and not subject to any reduction, limitation, impairment or termination for any reason (other than the indefeasible payment in full in cash of all of the Obligations), including: (i) any claim of waiver, release, extension, renewal, settlement, surrender, alteration, or compromise of any of the Obligations, by operation of law or otherwise; (ii) any change in the corporate existence, structure or ownership of any Borrower or any other Guarantor; (iii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting any Borrower or any other Guarantor, or their assets or any resulting release or discharge of any obligation of any Borrower or any other Guarantor; or (iv) the existence of any claim, setoff or other rights which any Guarantor may have at any time against any Borrower, any other Guarantor, Agent, any Lender, or any other Person, whether in connection herewith or in any unrelated transactions.

(b) The obligations of each Guarantor hereunder are not subject to any defense or setoff, counterclaim, recoupment, or termination whatsoever by reason of the invalidity, illegality, or unenforceability of any of the Obligations or otherwise, or any provision of applicable law or regulation purporting to prohibit payment by any Borrower or any other Guarantor, of the Obligations or any part thereof.

(c) Further, the obligations of any Guarantor hereunder are not discharged or impaired or otherwise affected by: (i) the failure of Agent or any Lender to assert any claim or demand or to enforce any remedy with respect to all or any part of the Obligations; (ii) any waiver or modification of or supplement to any provision of any agreement relating to the Obligations; (iii) any release, non-perfection, or invalidity of any indirect or direct security for all or any part of the Obligations or all or any part of any obligations of any Guarantor; (iv) any action or failure to act by Agent or any Lender with respect to any Collateral; or (v) any default, failure or delay, willful or otherwise, in the payment or performance of any of the Obligations, or any other circumstance, act, omission or delay that might in any manner or to any extent vary the risk of such Guarantor or that would otherwise operate as a discharge of any Guarantor as a matter of law or equity (other than the indefeasible payment in full in cash of all of the Obligations).

8.4 Defenses Waived. To the fullest extent permitted by applicable law, each Guarantor hereby waives any defense based on or arising out of any defense of any Guarantor or the unenforceability of all or any part of the Obligations from any cause, or the cessation from any cause of the liability of any Guarantor, other than the indefeasible payment in full in cash of all of the Obligations. Without limiting the generality of the foregoing, each Guarantor irrevocably waives acceptance hereof, presentment, demand, protest and, to the fullest extent permitted by law, any notice not provided for herein, as well as any requirement that at any time any action be taken by any Person against any Borrower, or any other Person. Each Guarantor confirms that it is not a surety under any state law and shall not raise any such law as a defense to its obligations hereunder. Agent may, at its election, foreclose on any Collateral held by it by one or more judicial or nonjudicial sales, accept an assignment of any such Collateral in lieu of foreclosure or otherwise act or fail to act with respect to any Collateral, compromise or adjust any part of the Obligations, make any other accommodation with any Borrower or any other Guarantor or exercise any other right or remedy available to it against any Borrower or any other Guarantor, without affecting or impairing in any way the liability of any Guarantor under this Loan Guaranty except to the extent the Obligations have been fully and indefeasibly paid in cash. To the fullest extent permitted by applicable law, each Guarantor waives any defense arising out of any such election even though that election may operate, pursuant to applicable law, to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against any Borrower or any other Guarantor or any security.

8.5 Rights of Subrogation. No Guarantor will assert any right, claim or cause of action, including, without limitation, a claim of subrogation, contribution or indemnification that it has against any Borrower or any other Guarantor, or any Collateral, until the Termination Date.

8.6 Reinstatement; Stay of Acceleration. If at any time any payment of any portion of the Obligations is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, or reorganization of any Borrower or any other Person, or otherwise, each Guarantor's obligations under this Loan Guaranty with respect to that payment shall be reinstated at such time as though the payment had not been made and whether or not Agent or any Lender is in possession of this Loan Guaranty. If acceleration of the time for payment of any of the Obligations is stayed upon the insolvency, bankruptcy or reorganization of any Borrower, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the Obligations shall nonetheless be payable by the Loan Parties forthwith on demand by Agent. This Section 8.6 shall remain operative even after the Termination Date and shall survive the payment in full of all of the Obligations.

8.7 Information. Each Guarantor assumes all responsibility for being and keeping itself informed of Borrowers' financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Obligations and the nature, scope and extent of the risks that each Guarantor assumes and incurs under this Loan Guaranty, and agrees that neither Agent nor any Lender shall not have any duty to advise any Guarantor of information known to it regarding those circumstances or risks.

8.8 Termination. To the maximum extent permitted by law, each Guarantor hereby waives any right to revoke this Loan Guaranty as to future Obligations. If such a revocation is effective notwithstanding the foregoing waiver, each Guarantor acknowledges and agrees that (a) no such revocation shall be effective until written notice thereof has been received by Agent, (b) no such revocation shall apply to any Obligations in existence on the date of receipt by Agent of such written notice (including any subsequent continuation, extension, or renewal thereof, or change in the interest rate, payment terms, or other terms and conditions thereof), (c) no such revocation shall apply to any Obligations made or created after such date to the extent made or created pursuant to a legally binding commitment of Lender, (d) no payment by any Borrower, any other Guarantor, or from any other source, prior to the date of Agent's receipt of written notice of such revocation shall reduce the maximum obligation of any Guarantor hereunder, and (e) any payment, by any Borrower or from any source other than a Guarantor which has made such a revocation, made subsequent to the date of such revocation, shall first be applied to that portion of the Obligations as to which the revocation is effective and which are not, therefore, guaranteed hereunder, and to the extent so applied shall not reduce the maximum obligation of any Guarantor hereunder.

8.9 Maximum Liability. The provisions of this Loan Guaranty are severable, and in any action or proceeding involving any federal or state corporate law or other law governing business entities, or any state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Guarantor under this Loan Guaranty would otherwise be held or determined to be avoidable, invalid or unenforceable on account of the amount of such Guarantor's liability under this Loan Guaranty, then, notwithstanding any other provision of this Loan Guaranty to the contrary, the amount of such liability shall, without any further action by the Loan Parties, Agent or any Lender, be automatically limited and reduced to the highest amount that is valid and enforceable as determined in such action or proceeding (such highest amount determined hereunder being the relevant Guarantor's "*Maximum Liability*"). This Section with respect to the Maximum Liability of each Guarantor is intended solely to preserve the rights of Agent and Lenders to the maximum extent not subject to avoidance under applicable law, and no Guarantor nor any other Person shall have any right or claim under this Section with respect to such Maximum Liability, except to the extent necessary so that the obligations of any Guarantor hereunder shall not be rendered voidable under applicable law. Each Guarantor agrees that the Obligations may at any time and from time to time exceed the Maximum Liability of each Guarantor without impairing this Loan Guaranty or affecting the rights and remedies of Agent and Lenders hereunder, *provided*, that, nothing in this sentence shall be construed to increase any Guarantor's obligations hereunder beyond its Maximum Liability.

8.10 Contribution. In the event any Guarantor shall make any payment or payments under this Loan Guaranty or shall suffer any loss as a result of any realization upon any collateral granted by it to secure its obligations under this Loan Guaranty (such Guarantor a “**Paying Guarantor**”), each other Guarantor (each a “**Non-Paying Guarantor**”) shall contribute to such Paying Guarantor an amount equal to such Non-Paying Guarantor’s “Applicable Percentage” of such payment or payments made, or losses suffered, by such Paying Guarantor. For purposes of this Section 8.10, each Non-Paying Guarantor’s “Applicable Percentage” with respect to any such payment or loss by a Paying Guarantor shall be determined as of the date on which such payment or loss was made by reference to the ratio of (a) such Non-Paying Guarantor’s Maximum Liability as of such date (without giving effect to any right to receive, or obligation to make, any contribution hereunder) or, if such Non-Paying Guarantor’s Maximum Liability has not been determined, the aggregate amount of all monies received by such Non-Paying Guarantor from Borrowers after the date hereof (whether by loan, capital infusion or by other means) to (b) the aggregate Maximum Liability of all Loan Parties hereunder (including such Paying Guarantor) as of such date (without giving effect to any right to receive, or obligation to make, any contribution hereunder), or to the extent that a Maximum Liability has not been determined for any Guarantor, the aggregate amount of all monies received by such Loan Parties from Borrowers after the date hereof (whether by loan, capital infusion or by other means). Nothing in this provision shall affect any Guarantor’s several liability for the entire amount of the Obligations (up to such Guarantor’s Maximum Liability). Each of the Loan Parties covenants and agrees that its right to receive any contribution under this Loan Guaranty from a Non-Paying Guarantor shall be subordinate and junior in right of payment to the payment in full in cash of all of the Obligations. This provision is for the benefit of Agent, each Lender and the Loan Parties and may be enforced by any one, or more, or all of them in accordance with the terms hereof.

8.11 Liability Cumulative. The liability of each Guarantor under this Section 8 is in addition to and shall be cumulative with all liabilities of each Guarantor to Agent and each Lender under this Agreement and the other Loan Documents to which such Guarantor is a party or in respect of any obligations or liabilities of the other Loan Parties, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

9. PAYMENTS FREE OF TAXES; OBLIGATION TO WITHHOLD; PAYMENTS ON ACCOUNT OF TAXES.

9.1 Taxes.

(a) Any and all payments by or on account of any obligation of the Loan Parties hereunder or under any other Loan Document shall to the extent permitted by applicable laws be made free and clear of and without reduction or withholding for any Taxes, except as required by applicable law. If, however, applicable laws require the Loan Parties to withhold or deduct any Tax, such Tax shall be withheld or deducted in accordance with such laws as the case may be, upon the basis of the information and documentation to be delivered pursuant to clause (e) below.

(b) If any Loan Party shall be required by applicable law to withhold or deduct any Taxes from any payment, then (i) such Loan Party shall withhold or make such deductions as are required based upon the information and documentation it has received pursuant to clause (e) below, (ii) such Loan Party shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the applicable law, and (iii) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the Loan Parties shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section) the Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made. Upon request by Agent or any Lender or other Recipient, Borrowers shall deliver to Agent or such Lender or such other Recipient, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment of Indemnified Taxes, a copy of any return required by applicable law to report such payment or other evidence of such payment reasonably satisfactory to Agent or such Lender or such other Recipient, as the case may be.

(c) Without limiting the provisions of subsections (a) and (b) above, the Loan Parties shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(d) Without limiting the provisions of subsections (a) through (c) above, each Loan Party shall, and does hereby, on a joint and several basis indemnify Agent, each Lender and each other Recipient (and their respective directors, officers, employees, affiliates and agents) and shall make payment in respect thereof within ten (10) days after written demand therefor, for the full amount of any Indemnified Taxes and Other Taxes (including Indemnified Taxes and Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid or incurred by Agent, such Lender or any other Recipient on account of, or in connection with any Loan Document or a breach by a Loan Party thereof, and any penalties, interest and related expenses and losses arising therefrom or with respect thereto (including the fees, charges and disbursements of any counsel or other tax advisor for Agent, any Lender or any other Recipient (or their respective directors, officers, employees, affiliates, and agents)), whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of any such payment or liability delivered to Borrowers shall be conclusive absent manifest error. Notwithstanding any provision in this Agreement to the contrary, this Section 9.1 shall remain operative even after the Termination Date and shall survive the payment in full of all of the Loans.

(e) If Agent, any Lender or any Participant is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document, Agent and each Lender, as applicable, shall deliver to Borrowers and each such Participant shall deliver to such Lender granting the participation, at the time or times prescribed by applicable laws or reasonably requested by the Borrowers or such Lender granting the participation, such properly completed and executed documentation as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, Agent and each Lender shall deliver to Borrowers and each Participant shall deliver to Agent and such Lender granting the participation, at the time or times prescribed by applicable laws or reasonably requested by the Borrowers or such Lender granting the participation, such properly completed and executed documentation prescribed by applicable laws or by the taxing authorities of any jurisdiction or such other reasonably requested information as will enable Borrowers or such Lender granting the participation, as the case may be, to determine (i) whether or not payments made hereunder or under any other Loan Document are subject to Taxes or information reporting requirements, (ii) if applicable, the required rate of withholding or deduction, and (iii) such Lender's or Participant's entitlement to any available exemption from, or reduction of, applicable Taxes in respect of all payments to be made to such Recipient by the Loan Parties pursuant to this Agreement or otherwise to establish such Recipient's status for withholding tax purposes in the applicable jurisdiction. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 9.1(e)(i), (ii) or (iii)) shall not be required if in the Lender's or Participant's reasonable judgment such completion, execution or submission would subject such Lender or Participant to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender or Participant (this provision shall be referred to as the "**Lender Documentation Exception**").

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

(i) Each Lender (or Participant) that is a “United States person” within the meaning of Section 7701(a)(30) of the Code shall deliver to Borrowers (or such Lender granting a participation as applicable) on or about the date on which such Lender becomes a lender (or such Participant is granted a participation) under this Agreement (and from time to time thereafter upon the reasonable request of the Borrowers or such Lender granting such participation), executed copies of Internal Revenue Service Form W-9 (or any successor form), certifying that such Lender (or such Participant) is exempt from U.S. federal backup withholding tax;

(ii) Each Lender (or Participant) that is not a “United States person” within the meaning of Section 7701(a)(30) of the Code (a “*Non-U.S. Recipient*”) shall deliver to Borrowers (and such Lender granting a participation in case the Non-U.S. Recipient is a Participant) on or prior to the date on which such Non-U.S. Recipient becomes a lender (or such Participant is granted a participation) under this Agreement (and from time to time thereafter upon the reasonable request of Borrowers or such Lender granting such participation but only if such Non-U.S. Recipient is legally entitled to do so), whichever of the following is applicable: (A) executed copies of Internal Revenue Service Form W-8BEN (or any successor form) or Form W-8BEN-E (or any successor form) claiming eligibility for benefits of an income tax treaty to which the United States is a party; (B) executed copies of Internal Revenue Service Form W-8ECI (or any successor form); (C) to the extent a Non-U.S. Recipient is not the beneficial owner, executed copies of Internal Revenue Service Form W-8IMY (or any successor form) and all required supporting documentation; (D) each Non-U.S. Recipient claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, shall provide (x) a certificate to the effect that such Non-U.S. Recipient is not (I) a “bank” within the meaning of section 881(c)(3)(A) of the Code, (II) a “10 percent shareholder” of the Borrowers 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 and (y) executed copies of Internal Revenue Service Form W-8BEN (or any successor form) or Form W-8BEN-E (or any successor form); and/or (E) executed copies of any other form prescribed by applicable law (including FATCA) as a basis for claiming exemption from or a reduction in United States Federal withholding tax together with such supplementary documentation as may be prescribed by applicable law to permit Borrowers or any Lender granting a participation, to determine the withholding or deduction required to be made;

(iii) If a payment made to Agent or any Lender (or Participant) under any Loan Document would be subject to United States federal withholding Tax imposed by FATCA if Agent or such Lender (or such Participant) were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), Agent or such Lender (or such Participant) shall deliver to the Borrowers and such Lender granting such participation at the time or times prescribed by law and at such time or times reasonably requested by the Borrowers or such Lender granting such participation such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrowers or such Lender granting such participation as may be necessary for the Borrowers and such Lender granting such participation to comply with their obligations under FATCA and to determine that such Lender or such Participant has complied with such Lender’s or such Participant’s obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this (iii), “FATCA” shall include any amendments made to FATCA after the date of this Agreement; and

(iv) If any form or certification previously delivered by any Lender (or any Participant) expires or becomes obsolete or inaccurate in any respect, such Lender (or any Participant) shall update such form or certification or promptly notify Borrowers (or such Lender granting a participation) of its legal inability to do so.

(f) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 9.1 (including by the payment of additional amounts pursuant to this Section 9.1), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this Section 9.1(f) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 9.1(f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 9.1(f) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person. For purposes of this Section 9.1(f), all references to “refund” shall include the monetary benefit of a credit received in lieu of a refund of Taxes.

(g) Each party’s obligations under this Section 9.1 shall survive any assignment of rights by any Lender or any Participant and the repayment, satisfaction or discharge of all obligations under any Loan Document.

10. GENERAL PROVISIONS.

10.1 Notices.

(a) Notice by Approved Electronic Communications.

Agent, each Lender and each of its Affiliates is authorized to transmit, post or otherwise make or communicate, in its sole discretion (but shall not be required to do so), by Approved Electronic Communications in connection with this Agreement or any other Loan Document and the transactions contemplated therein. Agent is hereby authorized to establish procedures to provide access to and to make available or deliver, or to accept, notices, documents and similar items by posting to Passport 6.0. Each of the Loan Parties, Agent and each Lender hereby acknowledges and agrees that the use of Passport 6.0 and other Approved Electronic Communications is not necessarily secure and that there are risks associated with such use, including risks of interception, disclosure and abuse and each indicates it assumes and accepts such risks by hereby authorizing Agent, each Lender and each of its Affiliates to transmit Approved Electronic Communications. Passport 6.0 and all Approved Electronic Communications shall be provided “as is” and “as available”. None of Agent, any Lender or any of its Affiliates or related persons warrants the accuracy, adequacy or completeness of Passport 6.0 or any other electronic platform or electronic transmission and disclaims all liability for errors or omissions therein. No warranty of any kind is made by Agent, any Lender or any of its Affiliates or related persons in connection with Passport 6.0 or any other electronic platform or electronic transmission, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects. Each Borrower and each other Loan Party executing this Agreement agrees that neither Agent, nor any Lender has responsibility for maintaining or providing any equipment, software, services or any testing required in connection with Passport 6.0, any Approved Electronic Communication or otherwise required for Passport 6.0 or any Approved Electronic Communication.

Prior to the Closing Date, Borrowing Agent shall deliver to Agent a complete and executed Client User Form regarding Borrowing Agent's use of Passport 6.0 in the form of Exhibit C annexed hereto.

No Approved Electronic Communications shall be denied legal effect merely because it is made electronically. Approved Electronic Communications that are not readily capable of bearing either a signature or a reproduction of a signature may be signed, and shall be deemed signed, by attaching to, or logically associating with such Approved Electronic Communication, an E-Signature, upon which Agent, each Lender and the Loan Parties may rely and assume the authenticity thereof. Each Approved Electronic Communication containing a signature, a reproduction of a signature or an E-Signature shall, for all intents and purposes, have the same effect and weight as a signed paper original. Each E-Signature shall be deemed sufficient to satisfy any requirement for a "signature" and each Approved Electronic Communication shall be deemed sufficient to satisfy any requirement for a "writing", in each case including pursuant to this Agreement, any other Loan Document, the Uniform Commercial Code, the Federal Uniform Electronic Transactions Act, the Electronic Signatures in Global and National Commerce Act and any substantive or procedural law governing such subject matter. Each party or beneficiary hereto agrees not to contest the validity or enforceability of an Approved Electronic Communication or E-Signature under the provisions of any applicable law requiring certain documents to be in writing or signed; *provided*, that nothing herein shall limit such party's or beneficiary's right to contest whether an Approved Electronic Communication or E-Signature has been altered after transmission.

(b) **All Other Notices.**

All notices, requests, demands and other communications under or in respect of this Agreement or any transactions hereunder, other than those approved for or required to be delivered by Approved Electronic Communications (including via Passport 6.0 or otherwise pursuant to Section 10.1(a)), shall be in writing and shall be personally delivered or mailed (by prepaid registered or certified mail, return receipt requested), sent by prepaid recognized overnight courier service, or by email to the applicable party at its address or email address indicated below,

If to Agent:

Siena Lending Group LLC
9 W Broad Street, Suite 540
Stamford, Connecticut 06902
Attention: Steve Sanicola
Email: ssanicola@sienalending.com

with a copy to:

Otterbourg P.C.
230 Park Avenue
New York, NY 10169
Attention: Jason I. Miller, Esq.
Email: jmiller@otterbourg.com

If to any Lender, to the address set forth on Schedule F for such Lender.

If to Borrowers or any other Loan Party:

iMedia Brands, Inc.
6740 Shady Oak Road
Eden Prairie, Minnesota 55344
Attention: Chief Financial Officer
Telephone: 952-943-6000
Facsimile: 952-943-6111
Email: mwageman@imediabrand.com

with a copy to:

Faegre Drinker Biddle & Reath LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
Attention: Nicole J. Leimer
Email: nicole.leimer@faegredrinker.com

or, as to each party, at such other address as shall be designated by such party in a written notice to the other party delivered as aforesaid. All such notices, requests, demands and other communications shall be deemed given (i) when personally delivered, (ii) three (3) Business Days after being deposited in the mails with postage prepaid (by registered or certified mail, return receipt requested), (iii) one (1) Business Day after being delivered to the overnight courier service, if prepaid and sent overnight delivery, addressed as aforesaid and with all charges prepaid or billed to the account of the sender, or (iv) when sent by email transmission to an email address designated by such addressee and the sender receives a confirmation of transmission.

10.2 Severability. If any provision of this Agreement or any other Loan Document is held invalid or unenforceable, either in its entirety or by virtue of its scope or application to given circumstances, such provision shall thereupon be deemed modified only to the extent necessary to render same valid, or not applicable to given circumstances, or excised from this Agreement or such other Loan Document, as the situation may require, and this Agreement and the other Loan Documents shall be construed and enforced as if such provision had been included herein as so modified in scope or application, or had not been included herein or therein, as the case may be.

10.3 Integration. This Agreement and the other Loan Documents represent the final, entire and complete agreement between each Loan Party party hereto and thereto, Agent and Lenders and supersede all prior and contemporaneous negotiations, oral representations and agreements, all of which are merged and integrated into this Agreement. THERE ARE NO ORAL UNDERSTANDINGS, REPRESENTATIONS OR AGREEMENTS BETWEEN THE PARTIES THAT ARE NOT SET FORTH IN THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS.

10.4 Waivers. The failure of Agent or any Lender at any time or times to require any Loan Party to strictly comply with any of the provisions of this Agreement or any other Loan Documents shall not waive or diminish any right of Agent or any Lender later to demand and receive strict compliance therewith. Any waiver of any default shall not waive or affect any other default, whether prior or subsequent, and whether or not similar. None of the provisions of this Agreement or any other Loan Document shall be deemed to have been waived by any act or knowledge of Agent or any Lender or any of their agents or employees, but only by a specific written waiver signed by an authorized officer of Agent and delivered to Borrowers. Once an Event of Default shall have occurred, it shall be deemed to continue to exist and not be cured or waived unless specifically cured pursuant to the terms of this Agreement or waived in writing by an authorized officer of Agent and Required Lenders and delivered to Borrowers. Each Loan Party waives demand, protest, notice of protest and notice of default or dishonor, notice of payment and nonpayment, release, compromise, settlement, extension or renewal of any commercial paper, Instrument, Account, General Intangible, Document, Chattel Paper, Investment Property or guaranty at any time held by Agent or any Lender on which such Loan Party is or may in any way be liable, and notice of any action taken by Agent or any Lender, unless expressly required by this Agreement or by applicable law, and notice of acceptance hereof.

10.5 Amendment.

(a) No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent with respect to any departure by any Loan Party therefrom, shall be effective unless the same shall be in writing and signed by Agent, the Required Lenders (or by Agent with the consent of the Required Lenders), and the Loan Parties, and then such waiver shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such waiver, amendment, or consent shall, unless in writing and signed by all the Lenders directly affected thereby (or by Agent with the consent of all the Lenders directly affected thereby), in addition to Agent, the Required Lenders (or by Agent with the consent of the Required Lenders), and the Borrowers, do any of the following:

(i) increase or extend the Commitment of such Lender (or reinstate any Commitments previously terminated);

(ii) postpone or delay any date fixed for, or reduce or waive, any scheduled installment of principal or any payment of interest, fees or other amounts (other than principal) due to such Lender hereunder or under any other Loan Document (for the avoidance of doubt, mandatory prepayments pursuant to Sections 1.8(a) and (b) may be postponed, delayed, reduced, waived or modified with the consent of the Required Lenders);

(iii) reduce the principal of, or the rate of interest specified herein (it being agreed that waiver of the default interest margin shall only require the consent of Required Lenders) or the amount of interest payable in cash specified herein on the Loans of such Lender, or of any fees or other amounts payable hereunder or under any other Loan Document for such Lender;

(iv) change the percentage of the Commitments or of the aggregate unpaid principal amount of the Loans which shall be required for the Lenders or any of them to take any action hereunder;

(v) amend, modify or eliminate Section 1.6 or 5.28;

(vi) amend this Section 10.5 or, subject to the terms of this Agreement, the definition of Required Lenders, the definition of Pro Rata Share or any provision providing for consent or other action by all Lenders;

(vii) discharge any Loan Party from its respective payment Obligations under the Loan Documents, or release all or substantially all of the Collateral, except as otherwise may be provided in this Agreement or the other Loan Documents; or

(viii) amend or modify Section 4.2;

(ix) it being agreed that all Lenders shall be deemed to be directly affected by an amendment or waiver of the type described in the preceding clauses (v), (vi), (vii) and (viii).

(b) No amendment, waiver or consent shall, unless in writing and signed by Agent, and the Required Lenders or all Lenders directly affected thereby or all the Lenders, as the case may be (or by Agent with the consent of the Required Lenders or all the Lenders directly affected thereby or all the Lenders), affect the rights or duties of Agent under this Agreement or any other Loan Document.

(c) Notwithstanding anything to the contrary contained in this Section 10.5 or any other provision of this Agreement or any other Loan Document, Agent and the Borrower may amend or modify this Agreement and any other Loan Document (without the consent of any Lender) to (i) cure any ambiguity, omission, defect or inconsistency therein, and (ii) grant a new Lien for the benefit of the Agent and Lenders, extend an existing Lien over additional assets for the benefit of the Lenders or join additional Persons as Loan Parties.

(d) No amendment, waiver, modification, elimination, or consent shall, without written consent of Agent, the Borrowers and the Required Lenders, amend, modify, or eliminate the definition of Borrowing Base or any of the defined terms that are used in such definition to the extent that any such change results in more credit being made available to the Borrowers based upon the Borrowing Base (unless such amendment is to increase the credit being made available to Borrowers following an amendment to decrease the credit available to the Borrowers under the Borrowing Base; provided, that, such availability shall not exceed the amount available on the Closing Date).

(e) Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that any of the matters governed by Section 10.5(a)(i) through (iii) that affect such Defaulting Lender may not be amended without the consent of such Defaulting Lender.

(f) In the event that (i) Agent or Borrowers request the consent of a Lender pursuant to this Section 10.5 with respect to any action to be taken by Lenders or Agent hereunder that requires the consent authorization, or agreement of all Lenders or all Lenders affected thereby, and such consent is denied by such Lender but otherwise obtained from the Required Lenders but not of all Lenders or all Lenders affected thereby, (ii) any Lender (other than Agent) makes a request for increased costs pursuant to Section 1.9(b) or (iii) any Lender (other than Agent) invokes the Lender Documentation Exception, then Agent or Borrowing Agent may, at its option, require such Lender to assign its interest in the Loans and its Revolving Loans Commitment to Agent or to another Lender or to any other Person designated by Agent or Borrower and reasonably acceptable to Agent (the "Designated Lender"), for a price equal to (i) the then outstanding principal amount thereof plus (ii) accrued and unpaid interest and fees due such Lender, which interest and fees shall be paid when collected from Borrowers. In the event Agent or Borrowing Agent elects to require any Lender to assign its interest to Agent or to the Designated Lender, Agent or Borrower will so notify such Lender in writing within thirty (30) days following such Lender's denial, and such Lender will assign its interest to Agent or the Designated Lender no later than five (5) Business Days following receipt of such notice pursuant to the applicable documentation executed by such Lender, Agent or the Designated Lender, as appropriate, and Agent.

10.6 Time of Essence. Time is of the essence in the performance by each Loan Party of each and every obligation under this Agreement and the other Loan Documents.

10.7 Expenses, Fee and Costs Reimbursement. Borrowers hereby agree to promptly and jointly and severally pay (a) all fees, costs and expenses of Agent on its behalf or on behalf of Lenders (including Agent's underwriting fees) and (b) all out of pocket fees, costs and expenses of one main legal counsel to Agent (and one local counsel in each relevant jurisdiction and one special or regulatory counsel for each relevant subject matter to the extent reasonably necessary), and appraisers, accountants, consultants and other professionals and advisors retained by or on behalf of, Agent on its behalf or on behalf of Lenders all of which shall be reasonable, prior to the occurrence and continuance of an Event of Default, and documented in connection with: (i) all loan proposals and commitments pertaining to the transactions contemplated hereby (whether or not such transactions are consummated), (ii) the examination, review, due diligence investigation, documentation, negotiation, and closing of the transactions contemplated by the Loan Documents (whether or not such transactions are consummated), (iii) the creation, perfection and maintenance of Liens pursuant to the Loan Documents, (iv) the performance by Agent or any Lender of its rights and remedies under the Loan Documents, (v) the administration of the Loans (including usual and customary fees for wire transfers and other transfers or payments received by Agent or any Lender on account of any of the Obligations) and Loan Documents, (vi) any amendments, modifications, consents and waivers to and/or under any and all Loan Documents (whether or not such amendments, modifications, consents or waivers are consummated), (vii) any periodic public record searches conducted by or at the request of Agent (including, title investigations and public records searches), pending litigation and tax lien searches and searches of applicable corporate, limited liability company, partnership and related records concerning the continued existence, organization and good standing of Loan Parties), (viii) protecting, storing, insuring, handling, maintaining, auditing, examining, valuing or selling any Collateral, (ix) any litigation, dispute, suit or proceeding relating to any Loan Document, and (x) any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all of the Loan Documents (it being agreed that such costs and expenses may include the costs and expenses of workout consultants, investment bankers, financial consultants, appraisers, valuation firms and other professionals and advisors retained by or on behalf of Agent), and (c) without limitation of the preceding clauses (a) and (b), all out of pocket costs and expenses of Agent in connection with Agent's reservation of funds in anticipation of the funding of the initial Loans to be made hereunder. Any fees, costs and expenses owing by Borrowers or any other Loan Party hereunder shall be due and payable within three (3) days after written demand therefor.

10.8 Benefit of Agreement; Assignability.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the respective successors, assigns, heirs, beneficiaries and representatives of Borrowers, each other Loan Party party hereto, Agent and each Lender; *provided*, that (a) neither any Borrower nor any other Loan Party may assign or transfer any of its rights under this Agreement without the prior written consent of Agent, and any prohibited assignment shall be void and (b) assignments by any Lender shall be subject to Sections 0 through 0. No consent by Agent to any assignment shall release any Loan Party from its liability for any of the Obligations. Agent and each Lender shall have the right to assign all or any of its rights and obligations under the Loan Documents to one or more other Persons subject to Section 10.8(b), and each Loan Party agrees, to the extent applicable, to execute any agreements, instruments and documents reasonably requested by Agent in connection with any such assignments. Notwithstanding any provision of this Agreement or any other Loan Document to the contrary, each Lender may at any time pledge or grant a security interest in all or any portion of its rights under this Agreement and the other Loan Documents to secure obligations of such Lender, including any pledge or grant to secure obligations to a Federal Reserve Bank.

(b) **Lender Assignments.** Each Lender may sell, transfer, negotiate or assign all or a portion of its rights and obligations hereunder (including all or a portion of its Commitments and its rights and obligations with respect to its portion of the Loans) (each a "Sale") to:

- (i) any existing Lender;
- (ii) any Affiliate or Approved Fund of any existing Lender;
- (iii) any other Person acceptable to (x) Agent and (y) which acceptance shall not be unreasonably withheld or delayed, Borrowers;

provided, however, that:

(A) in the event an Event of Default has occurred and is continuing, the consent of Borrowers shall not be required for any Sale;

(B) the consent of Borrower shall be deemed to have been given unless an objection is delivered to Agent within ten (10) Business Days after notice of a proposed Sale is delivered to Borrowers;

(C) for each Revolving Loan, the aggregate outstanding principal amount (determined as of the effective date of the applicable Assignment and Acceptance) of the Revolving Loan and the Commitments subject to any such Sale shall be in a minimum amount of \$5,000,000, unless such Sale is made to an existing Lender or an Affiliate or Approved Fund of any existing Lender, is of the assignor's (together with its Affiliates and Approved Funds) entire interest in such facility or is made with the prior consent of Agent.

Notwithstanding the foregoing, Agent's refusal to accept a Sale to a Loan Party, a Subsidiary or Affiliate of a Loan Party, or the imposition of conditions or limitations (including limitations on voting) upon Sales to such Persons, shall not be deemed to be unreasonable. No assignment hereunder shall be permitted if to any Ineligible Assignee.

(c) **Procedure.** The assignee and assignor parties to each Sale made in reliance on clause (b) above (other than those described in clause (e) below) shall execute and deliver to Agent an Assignment and Acceptance evidencing such Sale, together with any existing note subject to such Sale (or any affidavit of loss therefor acceptable to Agent), any Tax forms required to be delivered pursuant to Section 9 and payment of an assignment fee in the amount of \$3,500 to Agent, unless waived or reduced by Agent, provided that (1) if a Sale by a Lender is made to an Affiliate or an Approved Fund of such assigning Lender, then no assignment fee shall be due in connection with such Sale, and (2) if a Sale by a Lender is made to an assignee that is not an Affiliate or Approved Fund of such assignor Lender, and concurrently to one or more Affiliates or Approved Funds of such Assignee, then only one assignment fee of \$3,500 (unless waived or reduced by Agent) shall be due in connection with such Sale. Upon receipt of all the foregoing, and conditioned upon such receipt and, if such Sale is made in accordance with Section 10.9, upon Agent consenting to such Sale, from and after the effective date specified in the Assignment and Acceptance, Agent shall record or cause to be recorded in the Register the information contained in such Assignment and Acceptance.

(d) **Effectiveness.** Subject to the Register recording requirements by Agent relating to an Assignment and Acceptance pursuant to Section 10.9, (i) the assignee thereunder shall become a party hereto and, to the extent that rights and obligations under the Loan Documents have been assigned to such assignee pursuant to such Assignment and Acceptance, shall have the rights and obligations of a Lender, (ii) any applicable note shall be transferred to such assignee through such entry and (iii) the assignor thereunder shall, to the extent that rights and obligations under this Agreement have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (except for those surviving the termination of the Commitments and the payment in full of the Obligations) and be released from its obligations under the Loan Documents, other than those relating to events or circumstances occurring prior to such assignment (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under the Loan Documents, such Lender shall cease to be a party hereto).

10.9 Recordation of Assignment. In respect of any Sale of all or any portion of any Lender's interest in this Agreement and/or any other Loan Documents at any time and from time to time, the following provisions shall be applicable:

(a) Borrowers, or any agent appointed by Borrowers, shall maintain a register (the "**Register**") in which there shall be recorded the name and address of each Person holding any Loans or any commitment to lend hereunder, and the principal amount and stated interest payable to such Person hereunder or committed by such Person under such Person's lending commitment. Borrowers hereby irrevocably appoint Agent (and/or any subsequent Agent appointed by Agent then maintaining the Register) as Borrowers' non-fiduciary agent for the purpose of maintaining the Register.

(b) In connection with any Sale as aforesaid, the transferor/assignor shall deliver to Agent then maintaining the Register an assignment and assumption agreement executed by the transferor/assignor and the transferee/assignee, setting forth the specifics of the subject transaction, including but not limited to the amount and nature of Obligations and/or lending commitments being transferred or assigned (and being assumed, as applicable), and the proposed effective date of such transfer or assignment and the related assumption (if applicable).

(c) Subject to receipt of any required tax forms reasonably required by Agent, Agent shall record the subject transfer, assignment and assumption in the Register. Anything contained in this Agreement or other Loan Document to the contrary notwithstanding, no Sale shall be effective until it is recorded in the Register pursuant to this Section 10.9(c). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error; and each Borrower, Agent and each Lender shall treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement and the other Loan Documents. The Register shall be available for inspection by each Borrower and each Lender at any reasonable time and from time to time upon reasonable prior notice.

10.10 Participations. Anything in this Agreement or any other Loan Document to the contrary notwithstanding, each Lender may, at any time and from time to time, without in any manner affecting or impairing the validity of any Obligations, sell to one or more Persons participating interests in its Loans, commitments and/or other interests hereunder and/or under any other Loan Document (any such Person, a "Participant"). In the event of a sale by any Lender of a participating interest to a Participant, (a) such Lender's obligations hereunder and under the other Loan Documents shall remain unchanged for all purposes, (b) Borrowers and Agent shall continue to deal solely and directly with each other in connection with such Lender's rights and obligations hereunder and under the other Loan Documents and (c) all amounts payable by Borrowers shall be determined as if such Lender had not sold such participation and shall be paid directly to such Lender; provided, however, a Participant shall be entitled to the benefits of Section 9.1 as if it were a Lender if Borrowers are notified of the Participation and the Participant complies with Section 9.1(e). Borrowers agree that if amounts outstanding under this Agreement or any other Loan Document are due and payable (as a result of acceleration or otherwise), each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement and the other Loan Documents to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement; provided, that such right of set-off shall not be exercised without the prior written consent of such Lender and shall be subject to the obligation of each Participant to share with such Lender its share thereof. Borrowers also agree that each Participant shall be entitled to the benefits of Section 10.9 as if it were a Lender. Notwithstanding the granting of any such participating interests: (x) Borrowers shall look solely to Lenders for all purposes of this Agreement, the Loan Documents and the transactions contemplated hereby, (y) Borrowers shall at all times have the right to rely upon any amendments, waivers or consents signed by Agent and Required Lenders as being binding upon all of the Participants, and (z) all communications in respect of this Agreement and such transactions shall remain solely between Borrowers, Agent and Lenders (exclusive of Participants) hereunder. Each Lender granting a participation hereunder shall maintain, as a non-fiduciary agent of Borrowers, a register as to the participations granted and transferred under this Section containing the same information specified in Section 10.9 on the Register as if each Participant were a Lender to the extent required to cause the Loans to be in registered form for the purposes of Sections 163(f), 165(j), 871, 881, and 4701 of the Code.

10.11 Headings; Construction. Section and subsection headings are used in this Agreement only for convenience and do not affect the meanings of the provisions that they precede.

10.12 USA PATRIOT Act Notification. Agent hereby notifies the Loan Parties that pursuant to the requirements of the USA PATRIOT Act, it may be required to obtain, verify and record certain information and documentation that identifies such Person, which information may include the name and address of each such Person and such other information that will allow Agent to identify such Persons in accordance with the USA PATRIOT Act.

10.13 Counterparts; Email Signatures. This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same agreement. This Agreement may be executed by signatures delivered by electronic mail, each of which shall be fully binding on the signing party.

10.14 GOVERNING LAW. THIS AGREEMENT, ALONG WITH ALL OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED OTHERWISE IN SUCH OTHER LOAN DOCUMENT) SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED THEREIN WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES (EXCEPT SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATION LAW). FURTHER, THE LAW OF THE STATE OF NEW YORK SHALL APPLY TO ALL DISPUTES OR CONTROVERSIES ARISING OUT OF OR CONNECTED TO OR WITH THIS AGREEMENT AND ALL SUCH OTHER LOAN DOCUMENTS WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES (EXCEPT SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATION LAW).

10.15 WAIVERS AND JURISDICTION.

(a) **CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL; CONSENT TO SERVICE OF PROCESS.** ANY LEGAL ACTION, SUIT OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK IN THE COUNTY OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK OR IN ANY OTHER COURT (IN ANY JURISDICTION) SELECTED BY AGENT IN ITS SOLE DISCRETION, AND EACH BORROWER AND EACH OTHER LOAN PARTY HEREBY ACCEPTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFOREMENTIONED COURTS. EACH BORROWER AND EACH OTHER LOAN PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION, INCLUDING, WITHOUT LIMITATION, ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, OR BASED ON UPON 28 U.S.C. § 1404, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING AND ADJUDICATION OF ANY SUCH ACTION, SUIT OR PROCEEDING IN ANY OF THE AFOREMENTIONED COURTS AND AMENDMENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY THE COURT. EACH BORROWER AND EACH OTHER LOAN PARTY HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM CONCERNING ANY RIGHTS UNDER THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR UNDER ANY AMENDMENT, WAIVER, AMENDMENT, INSTRUMENT, DOCUMENT OR OTHER AGREEMENT DELIVERED OR WHICH IN THE FUTURE MAY BE DELIVERED IN CONNECTION HEREWITH OR THEREWITH, OR ARISING FROM ANY FINANCING RELATIONSHIP EXISTING IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE OTHER TRANSACTION DOCUMENTS, AND AGREES THAT ANY SUCH ACTION, PROCEEDING OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH BORROWER AND EACH OTHER LOAN PARTY HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON ANY BORROWER OR ANY OTHER LOAN PARTY AND CONSENTS THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY CERTIFIED MAIL (RETURN RECEIPT REQUESTED) DIRECTED TO THE BORROWERS' NOTICE ADDRESS (ON BEHALF OF THE BORROWERS OR SUCH LOAN PARTY) SET FORTH IN SECTION 10.1 HEREOF AND SERVICE SO MADE SHALL BE DEEMED TO BE COMPLETED FIVE (5) DAYS AFTER THE SAME SHALL HAVE BEEN SO DEPOSITED IN THE MAIL, OR, AT AGENT'S OPTION, BY SERVICE UPON BORROWERS OR ANY OTHER LOAN PARTY IN ANY OTHER MANNER PROVIDED UNDER THE RULES OF ANY SUCH COURTS.

10.16 Publication. Each Borrower and each other Loan Party consents to the publication by Agent and each Lender of a tombstone, press releases or similar advertising material relating to the financing transactions contemplated by this Agreement, and Agent reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

10.17 Confidentiality. Agent and each Lender agrees not to disclose Confidential Information to any Person without the prior consent of Borrowers (whether received prior to or following the Closing Date); provided, however, that nothing herein contained shall limit any disclosure of the tax structure of the transactions contemplated hereby, or the disclosure of any information (a) to the extent required by applicable law, statute, rule, regulation or judicial process or in connection with the exercise of any right or remedy under any Loan Document, or as may be required in connection with the examination, audit or similar investigation of Agent, any Lender or any of its Affiliates, (b) to examiners, auditors, accountants or any regulatory authority, (c) to the officers, partners, managers, directors, employees, agents and advisors (including independent auditors, lawyers and counsel) of Agent, any Lender or any of their Affiliates on a need-to-know basis who are informed of the confidential nature thereof and directed to keep such information confidential, (d) in connection with any litigation or dispute which relates to this Agreement or any other Loan Document to which Agent or any Lender is a party or is otherwise subject, (e) [reserved], (f) to any assignee or participant (or prospective assignee or participant) which agrees to be bound by this Section 10.17 and (g) to any lender or other funding source of any Lender (each reference to Lender in the foregoing clauses shall be deemed to include the actual and prospective assignees and participants referred to in clause (f) and the lenders and other funding sources referred to in clause (g), as applicable for purposes of this Section 10.17), and provided further, that in no event shall Agent or any Lender be obligated or required to return any materials furnished by or on behalf of Borrowers or any other Loan Party. The obligations of Agent and each Lender under this Section 10.17 shall supersede and replace the obligations of Agent and each Lender under any confidentiality letter or provision in respect of this financing or any other financing previously signed and delivered by Agent or any Lender to Borrowers or any of their respective Affiliates.

10.18 Borrowing Agency Provisions.

(a) Appointment of Borrowing Agent. Each Borrower hereby irrevocably designates Borrowing Agent to be its attorney and agent and in such capacity to (i) borrow, (ii) request advances, (iii) request the issuance of Letters of Credit, (iv) sign and endorse notes, (v) execute and deliver all instruments, documents, applications, security agreements, reimbursement agreements and letter of credit agreements for Letters of Credit and all other certificates, notice, writings and further assurances now or hereafter required hereunder, (vi) make elections regarding interest rates, (vii) give instructions regarding Letters of Credit and agree with the issuer thereof upon any amendment, extension or renewal of any Letter of Credit and (viii) otherwise take action under and in connection with this Agreement and the other Loan Documents, all on behalf of and in the name such Borrower, and hereby authorizes Agent to pay over or credit all Loan proceeds hereunder in accordance with the request of Borrowing Agent.

(b) Co-Borrowing. The handling of this credit facility as a co-borrowing facility with a borrowing agent in the manner set forth in this Agreement is solely as an accommodation to the Borrowers and at their request. Neither Agent nor any Lender shall incur liability to any Borrower as a result thereof. To induce Agent and each Lender to do so and in consideration thereof, each Borrower hereby indemnifies Agent and each Lender and holds Agent and each Lender harmless from and against any and all liabilities, expenses, losses, damages and claims of damage or injury asserted against Agent or any Lender by any Person arising from or incurred by reason of the handling of the financing arrangements of Borrowers as provided herein, reliance by Agent or any Lender on any request or instruction from Borrowing Agent or any other action taken by Agent or any Lender with respect to this Section 10.18 except due to willful misconduct or gross (not mere) negligence by the indemnified party (as determined by a court of competent jurisdiction in a final and non-appealable judgment).

(c) Joint and Several Obligations. All Obligations shall be joint and several, and each Borrower shall make payment upon the maturity of the Obligations by acceleration or otherwise, and such obligation and liability on the part of each Borrower shall in no way be affected by any extensions, renewals and forbearance granted by Agent and Lenders to any Borrower, failure of Agent or any Lender to give any Borrower notice of borrowing or any other notice, any failure of Lender to pursue or preserve its rights against any Borrower, the release by Agent and Lenders of any Collateral now or thereafter acquired from any Borrower, and such agreement by each Borrower to pay upon any notice issued pursuant thereto is unconditional and unaffected by prior recourse by Agent and Lenders to the other Borrowers or any Collateral for such Borrower's Obligations or the lack thereof. Each Borrower waives all suretyship defenses.

10.19 Agent Provisions.

(a) Appointment and Duties.

(i) Each Lender hereby appoints Siena Lending Group LLC (together with any successor Agent pursuant to Section 10.19(j)) as Agent hereunder and authorizes Agent to (i) execute and deliver the Loan Documents and accept delivery thereof on its behalf from any Loan Party, (ii) take such action on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to Agent under such Loan Documents and (iii) exercise such powers as are reasonably incidental thereto.

(ii) Without limiting the generality of clause (a)(i) above, Agent shall have the sole and exclusive right and authority (to the exclusion of the Lenders), and are each hereby authorized, to (A) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with the Loan Documents (including in any proceeding described in Sections 7.1(g) or 7.1(h) or any other bankruptcy, insolvency or similar proceeding), and each Person making any payment in connection with any Loan Document to any Lender is hereby authorized to make such payment to Agent, (B) file and prove claims and file other documents necessary or desirable to allow the claims of the Lenders with respect to any Obligation in any proceeding described in Section 7.1(g) or (h) or any other bankruptcy, insolvency or similar proceeding (but not to vote, consent or otherwise act on behalf of such Person), (C) act as collateral agent for Agent and each Lender for purposes of the perfection of all Liens created by such agreements and all other purposes stated therein, (D) manage, supervise and otherwise deal with the Collateral, (E) take such other action as is necessary or desirable to maintain the perfection and priority of the Liens created or purported to be created by the Loan Documents, (F) except as may be otherwise specified in any Loan Document, exercise all remedies given to Agent and the Lenders with respect to the Loan Parties and/or the Collateral, whether under the Loan Documents, applicable requirements of law or otherwise and (G) execute any amendment, consent or waiver under the Loan Documents on behalf of any Lender that has consented in writing to such amendment, consent or waiver.

(iii) Under the Loan Documents, Agent (A) is acting solely on behalf of the Lenders (except to the limited extent provided in Section 10.9 with respect to the Register), with duties that are entirely administrative in nature, notwithstanding the use of the defined terms “Agent” or the terms “agent” and “collateral agent” and similar terms in any Loan Document to refer to Agent, which terms are used for title purposes only, (B) is not assuming any obligation under any Loan Document other than as expressly set forth therein or any role as agent, fiduciary or trustee of or for any Lender or any other Person and (C) shall have no implied functions, responsibilities, duties, obligations or other liabilities under any Loan Document, and each Lender by accepting the benefits of the Loan Documents hereby waives and agrees not to assert any claim against Agent based on the roles, duties and legal relationships expressly disclaimed in clauses (A) through (C) above.

(b) **Binding Effect.** Each Lender, by accepting the benefits of the Loan Documents, agrees that (i) any action taken by Agent or the Required Lenders (or, if expressly required hereby, a greater proportion of the Lenders) in accordance with the provisions of the Loan Documents, (ii) any action taken by Agent in reliance upon the instructions of Required Lenders (or, where so required, such greater proportion) and (iii) the exercise by Agent or the Required Lenders (or, where so required, such greater proportion) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders.

(c) Use of Discretion.

(i) Agent shall not be required to exercise any discretion or take, or to omit to take, any action, including with respect to enforcement or collection, except any action it is required to take or omit to take (A) under any Loan Document or (B) pursuant to instructions from the Required Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders).

(ii) Notwithstanding clause (c)(i) above, Agent shall not be required to take, or to omit to take, any action (A) unless, upon demand, Agent receives an indemnification satisfactory to it from the Lenders (or, to the extent applicable and acceptable to Agent, any other Person) against all liabilities that, by reason of such action or omission, may be imposed on, incurred by or asserted against Agent or any Related Person thereof or (B) that is, in the opinion of Agent or its counsel, contrary to any Loan Document or applicable requirement of law.

(d) **Exclusive Right to Enforce Rights and Remedies.** Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, Agent in accordance with the Loan Documents for the benefit of all the Lenders. In the event of a foreclosure or similar enforcement action by Agent on any of the Collateral pursuant to a public or private sale or other disposition (including pursuant to section 363(k), section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code), Agent (or any Lender, except with respect to a “credit bid” pursuant to section 363(k), section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code) may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition and Agent, as agent for and representative of the Lenders (but not any Lender or Lenders in its or their respective individual capacities) shall be entitled, upon instructions from Required Lenders, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale or disposition, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by Agent at such sale or other disposition. The foregoing shall not prohibit (i) Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Agent) hereunder and under the other Loan Documents, (ii) Agent or any Lender from exercising setoff rights in accordance with Section 7.3(e) or (iii) subject to the following paragraph, Agent or any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any bankruptcy or other debtor relief law; and *provided*, further, that if at any time there is no Person acting as Agent hereunder and under the other Loan Documents, then the Required Lenders shall have the rights otherwise ascribed to Agent pursuant to Sections 7.2 and 7.3 and in addition to the matters set forth in clauses (ii) and (iii) of the preceding proviso and subject to Section 7.3(e)(ii), any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders. In case of the pendency of any bankruptcy or other debtor relief proceeding or any other judicial proceeding relative to any Loan Party, Agent (irrespective of whether the principal of any Loans shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Agent shall have made any demand on any Loan Party) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Revolving Loans, Term Loan and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and Agent allowed in such judicial proceeding and to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same, and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to Agent and, in the event that Agent shall consent to the making of such payments directly to the Lenders, to pay to Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Agent and its agents and counsel, and any other amounts due Agent hereunder.

(e) **Delegation of Rights and Duties.** Agent may, upon any term or condition it specifies, delegate or exercise any of their respective rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Loan Document by or through any trustee, co-agent, employee, attorney-in-fact and any other Person (including any Lender). Any such Person shall benefit from this Section 10.19 to the extent provided by Agent.

(f) **Reliance and Liability.**

(i) Agent may, without incurring any liability hereunder, (A) rely on the Register to the extent set forth in Section 10.9, (B) consult with any of its Related Persons and, whether or not selected by it, any other advisors, accountants and other experts (including advisors to, and accountants and experts engaged by, any Loan Party) and (C) rely and act upon any document and information (including those transmitted by Approved Electronic Communication) and any telephone message or conversation, in each case believed by it to be genuine and transmitted, signed or otherwise authenticated by the appropriate parties.

(ii) Agent and its Related Persons shall not be liable for any action taken or omitted to be taken by any of them under or in connection with any Loan Document, and each Lender and Loan Party hereby waive and shall not assert (and Borrower shall cause each other Loan Party not a signatory hereto to waive and agree not to assert) any right, claim or cause of action based thereon, except to the extent of liabilities resulting from the gross negligence or willful misconduct of Agent or, as the case may be, such Related Person (each as determined in a final, non-appealable judgment by a court of competent jurisdiction) in connection with the duties expressly set forth herein. Without limiting the foregoing, Agent: (A) shall not be responsible or otherwise incur liability to any Lender or other Person for any action or omission taken in reliance upon the instructions of the Required Lenders or for the actions or omissions of any of its Related Persons selected with reasonable care (other than employees, officers and directors of Agent, when acting on behalf of Agent); (B) shall not be responsible to any Lender or other Person for the due execution, legality, validity, enforceability, effectiveness, genuineness, sufficiency or value of, or the attachment, perfection or priority of any Lien created or purported to be created under or in connection with, any Loan Document; (C) make no warranty or representation, and shall not be responsible, to any Lender or other Person for any statement, document, information, representation or warranty made or furnished by or on behalf of any Loan Party or any Related Person of any Loan Party in connection with any Loan Document or any transaction contemplated therein or any other document or information with respect to any Loan Party, whether or not transmitted or (except for documents expressly required under any Loan Document to be transmitted to the Lenders) omitted to be transmitted by Agent, including as to completeness, accuracy, scope or adequacy thereof, or for the scope, nature or results of any due diligence performed by Agent in connection with the Loan Documents; and (D) shall not have any duty to ascertain or to inquire as to the performance or observance of any provision of any Loan Document, whether any condition set forth in any Loan Document is satisfied or waived, as to the financial condition of any Loan Party or as to the existence or continuation or possible occurrence or continuation of any Default or Event of Default and shall not be deemed to have notice or knowledge of such occurrence or continuation unless it has received a notice from Borrower or any Lender describing such Default or Event of Default clearly labeled "notice of default" (in which case Agent shall promptly give notice of such receipt to all Lenders). For each of the items set forth in clauses (A) through (D) above, each Lender and the Loan Parties hereby waive and agree not to assert (and Borrower shall cause each other Loan Party not a signatory hereto to waive and agree not to assert) any right, claim or cause of action it might have against Agent based thereon.

(g) **Agent Individually.** Agent and its Affiliates may make loans and other extensions of credit to, acquire Equity Interests of, engage in any kind of business with, any Loan Party or Affiliate thereof as though it were not acting as Agent, and may receive separate fees and other payments therefor. To the extent Agent or any of its Affiliates makes any portion of the Revolving Loans or Term Loan or otherwise becomes a Lender hereunder, it shall have and may exercise the same rights and powers hereunder and shall be subject to the same obligations and liabilities as any other Lender and the terms "Lender" and "Required Lender" and any similar terms shall, except where otherwise expressly provided in any Loan Document, include Agent or such Affiliate, as the case may be, in its individual capacity as Lender or as one of the Required Lenders.

(h) **Lender Credit Decision.**

(i) Each Lender acknowledges that it shall, independently and without reliance upon Agent or any Lender or any of their Related Persons or upon any document (including any offering and disclosure materials in connection with the syndication of the Loans) solely or in part because such document was transmitted by Agent or any of its Related Persons, conduct its own independent investigation of the financial condition and affairs of each Loan Party and make and continue to make its own credit decisions in connection with entering into, and taking or not taking any action under, any Loan Document or with respect to any transaction contemplated in any Loan Document, in each case based on such documents and information as it shall deem appropriate. Except for documents expressly required by any Loan Document to be transmitted by Agent to the Lenders, Agent shall have no duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Loan Party or any Affiliate of any Loan Party that may come in to the possession of Agent or any of its Related Persons.

(ii) If any Lender has elected to abstain from receiving material non-public information (“MNPI”) concerning the Loan Parties or their Affiliates such Lender acknowledges that, notwithstanding such election, Agent and/or the Loan Parties will, from time to time, make available syndicate-information (which may contain MNPI) as required by the terms of, or in the course of administering the Revolving Loans to the credit contact(s) identified for receipt of such information on such Lender’s administrative questionnaire who are able to receive and use all syndicate-level information (which may contain MNPI) in accordance with such Lender’s compliance policies and contractual obligations and applicable law, including federal and state securities laws; *provided*, that if such contact is not so identified in such questionnaire, the relevant Lender hereby agrees to promptly (and in any event within one (1) Business Day) provide such a contact to Agent and the Loan Parties upon request therefor by Agent or the Loan Parties. Notwithstanding such Lender’s election to abstain from receiving MNPI, such Lender acknowledges that if such Lender chooses to communicate with Agent, it assumes the risk of receiving MNPI concerning the Loan Parties or their Affiliates.

(i) **Expenses; Indemnities; Withholding.**

(i) Each Lender agrees to reimburse Agent and its Related Persons (to the extent not reimbursed by any Loan Party), promptly upon demand, severally and ratably, for any reasonable costs and expenses (including fees, charges and disbursements of financial, legal and other advisors and Other Taxes paid in the name of, or on behalf of, any Loan Party) that may be incurred by Agent or its Related Persons in connection with the preparation, syndication, execution, delivery, administration, modification, consent, waiver or enforcement of, or the taking of any other action (whether through negotiations, through any work-out, bankruptcy, restructuring or other legal or other proceeding (including preparation for and/or response to any subpoena or request for document production relating thereto or otherwise)) in respect of, or legal advice with respect to its rights or responsibilities under, any Loan Document.

(ii) Each Lender further agrees to indemnify, defend and hold Agent and its Related Persons (to the extent not reimbursed by any Loan Party), in each case, severally and ratably, harmless from and against liabilities (including, to the extent not indemnified pursuant to Section 9, Taxes, interests and penalties imposed for not properly withholding or backup withholding on payments made to or for the account of any Lender) that may be imposed on, incurred by or asserted against Agent or its Related Persons in any matter relating to or arising out of, in connection with or as a result of any Loan Document, any related document or any other act, event or transaction related, contemplated in or attendant to any such document, or, in each case, any action taken or omitted to be taken by Agent or its Related Persons under or with respect to any of the foregoing; *provided*, that no Lender shall be liable to Agent or its Related Persons to the extent such liability has resulted primarily from the gross negligence or willful misconduct of Agent or, as the case may be, such Related Person, as determined by a court of competent jurisdiction in a final non-appealable judgment or order.

(iii) To the extent required by any requirement of law, Agent may withhold from any payment to any Lender under a Loan Document an amount equal to any applicable withholding Tax (including withholding Taxes imposed under Chapters 3 and 4 of Subtitle A of the Code). If the IRS or any other Governmental Authority asserts a claim that Agent did not properly withhold Tax from amounts paid to or for the account of any Lender (because the appropriate certification form was not delivered, was not properly executed, or fails to establish an exemption from, or reduction of, withholding Tax with respect to a particular type of payment, or because such Lender failed to notify Agent or any other Person of a change in circumstances which rendered the exemption from, or reduction of, withholding Tax ineffective, failed to maintain a Register and/or Participant Register or for any other reason), or Agent reasonably determines that it was required to withhold Taxes from a prior payment but failed to do so, such Lender shall promptly indemnify Agent fully for all amounts paid, directly or indirectly, by Agent as Tax or otherwise, including penalties and interest, and together with all expenses incurred by Agent, including legal expenses, allocated internal costs and out-of-pocket expenses. Agent may offset against any payment to any Lender under a Loan Document, any applicable withholding Tax that was required to be withheld from any prior payment to such Lender but which was not so withheld, as well as any other amounts for which Agent or Revolver Agent is entitled to indemnification from such Lender under this Section 10.19(i)(iii).

(j) **Resignation of Agent.**

(i) Agent may resign at any time by delivering notice of such resignation to the Lenders and Borrowers, effective on the date set forth in such notice or, if no such date is set forth therein, upon the date such notice shall be effective in accordance with the terms of this Section 10.19(j)(i). If Agent delivers any such notice, the Required Lenders shall have the right to appoint a successor Agent. If, after thirty (30) days after the date of the retiring Agent's notice of resignation, no successor Agent has been appointed by the Required Lenders that has accepted such appointment, then the retiring Agent may, on behalf of the Lenders, appoint a successor Agent from among the Lenders. Each resignation and appointment under this clause (i) shall be subject to the prior consent of Borrowers which may not be unreasonably withheld but shall not be required during the continuance of an Event of Default.

(ii) Effective immediately upon its resignation, (A) the retiring Agent shall be discharged from its duties and obligations under the Loan Documents, (B) the Lenders shall assume and perform all of the duties of the retiring Agent until a successor Agent shall have accepted a valid appointment hereunder, (C) the retiring Agent and its Related Persons shall no longer have the benefit of any provision of any Loan Document other than with respect to any actions taken or omitted to be taken while such retiring Agent was, or because such retiring Agent had been, validly acting as Agent under the Loan Documents and (D) subject to its rights under Section 10.19(c), the retiring Agent shall take such action as may be reasonably necessary to assign to the successor Agent its rights as Agent under the Loan Documents. Effective immediately upon its acceptance of a valid appointment as Agent a successor Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring Agent under the Loan Documents.

(k) **Release of Collateral or Guarantors.** Each Lender hereby consents to the release and hereby directs Agent to release (or, in the case of clause (ii)(B) below, release or subordinate) the following:

(i) any Subsidiary of Borrower from its guaranty of any Obligation if all of the Equity Interests of such Subsidiary owned by any Loan Party are sold or transferred in a transaction expressly permitted under the Loan Documents (including pursuant to a waiver or consent), to the extent that, after giving effect to such transaction, such Subsidiary would not be required to guaranty any Obligations pursuant to the Loan Documents; and

(ii) any Lien held by Agent for the benefit of the Lenders against (A) any Collateral that is sold, transferred, conveyed or otherwise disposed of by a Loan Party in a transaction expressly permitted by the Loan Documents (including pursuant to a valid waiver or consent), to the extent all Liens required to be granted in such Collateral pursuant to the Loan Documents after giving effect to such transaction have been granted, (B) any property subject to a Lien permitted hereunder in reliance upon clause (c) of the definition of Permitted Indebtedness and clause (a) of the definition of Permitted Liens and (C) all of the Collateral and all Loan Parties, upon (x) the occurrence of the Termination Date and (y) to the extent requested by Agent, receipt by Agent and the Lenders of liability releases from the Loan Parties each in form and substance satisfactory to Agent.

Each Lender hereby directs Agent, and Agent hereby agrees, upon receipt of reasonable advance written notice from Borrower, to execute and deliver or file such documents and to perform other actions reasonably necessary to release the guaranties and Liens when and as directed in this Section 10.19(k).

10.20 Settlements; Payments. The Outstanding Amount may fluctuate from day to day through Agent's disbursement of funds to, and receipt of funds from, Borrowers. In order to minimize the frequency of transfers of funds between Agent and each Lender, repayments of Loans may, at the election of Agent, be settled according to the procedures set forth in this Section 10.20. Notwithstanding the procedures set forth in this Section 10.20, each Lender's obligation to fund its portion of any advances made by Agent to Borrowers will commence on the date such advances are made by Agent. Such payments will be made by such Lender without set-off, counterclaim or reduction of any kind.

(a) Each Settlement Date Agent will advise each Lender by 1:00 p.m. (Eastern time) on a Business Day by telephone or written notice in accordance with this Agreement of the amount of each such Lender's Pro Rata Share of the Outstanding Amount. If payments are necessary to adjust the amount of such Lender's share of the Outstanding Amount to such Lender's Pro Rata Share of the Outstanding Amount, the party from which such payment is due will pay the other party, in same day funds, by wire transfer to the other's account, not later than 1:00 p.m. (Eastern time) on the Business Day immediately following the Settlement Date (provided that if Agent gives such notice at or prior to 1:00 p.m. (Eastern time) on the Settlement Date, such funding shall be made on the Settlement Date).

(b) On the first Business Day of each month (each, an "*Interest Settlement Date*"), Agent will advise each Lender by written notice in accordance with this Agreement of the amount of interest and fees charged to and collected from Borrowers for the preceding month in respect of the Loans. Provided that such Lender is not then a Defaulting Lender, Agent will pay to such Lender, by wire transfer to such Lender's account (as specified by such Lender in accordance with this Agreement) such Lender's Pro Rata Share of such interest and fees not later than the next Business Day following the Interest Settlement Date.

10.21 Defaulting Lender. If any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) such Defaulting Lender's Revolving Commitment and outstanding Revolving Loans shall be excluded for purposes of calculating the fee payable to Lenders in respect of the Unused Line Fee, and such Defaulting Lender shall not be entitled to receive any Unused Line Fee with respect to such Defaulting Lender's Revolving Commitment or Revolving Loans (in each case not including any fee in connection with any portion of such Defaulting Lenders Revolving Commitment that has been reallocated to non-Defaulting Lenders pursuant to Section 10.21(d) hereof).

(b) the Revolving Commitments and Loans of such Defaulting Lender shall not be included in determining whether all Lenders, the Required Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to Section 10.5).

(c) in the event a Defaulting Lender has defaulted on its obligation to fund any Revolving Loan, or purchase any participation pursuant to Section 1.5 hereof, until such time as the Default Excess with respect to such Defaulting Lender has been reduced to zero, any prepayments or repayments on account of the Revolving Loans or participations pursuant to Section 1.5, in each case to the extent they would be otherwise be payable to such Defaulting Lender, shall be applied first, to the payment of any amounts owing by such Defaulting Lender to Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the Issuing Bank or Letter of Credit guarantor/indemnitor hereunder; third, to provide cash collateral in the amount of 103% of the Issuing Bank's (or the Letter of Credit guarantor/indemnitor's, as the case may be) Fronting Exposure with respect to such Defaulting Lender; fourth, as the 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; fifth, if so determined by Agent and the Borrowers, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) provide cash collateral in the amount of 103% of the Issuing Bank's (or the Letter of Credit guarantor/indemnitor's, as the case may be) future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement; sixth, to the payment of any amounts owing to the Lenders, the Issuing Bank or the Letter of Credit guarantor/indemnitor as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the Issuing Bank or the Letter of Credit guarantor/indemnitor against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided, that, if (x) such payment is a payment of the principal amount of any Loans or Letter of Credit Balance in respect of which such Defaulting Lender has not fully funded its appropriate share and (y) such Loans or Letter of Credit Balance were made at a time when the conditions set forth in Section 1.6 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and Letter of Credit Balance owed to, all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or Letter of Credit Balance owed to, such Defaulting Lender. 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 10.21(c) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(d) If any Letter of Credit Balance exists at the time a Lender becomes a Defaulting Lender then:

(i) so long as no Default or Event of Default then exists, all or any part of such Letter of Credit Balance shall be reallocated among the non-Defaulting Lenders in accordance with their respective Pro Rata Shares of the total Revolving Commitments (calculated without regard to such Defaulting Lender's Revolving Commitments), provided that no Lender's Revolving Exposure shall exceed its Revolving Commitment;

(ii) if the reallocation described in paragraph (i) above cannot, or can only partially, be effected, the Borrowers shall within one (1) Business Day following notice by Agent, cash collateralize such Defaulting Lender's Pro Rata Share of Letter of Credit Balance (after giving effect to any partial reallocation pursuant to paragraph (i) above) for so long as any such Letter of Credit Balance remains are outstanding;

(iii) if the Borrowers cash collateralize any portion of such Defaulting Lender's Pro Rata Share of the Letter of Credit Balance pursuant to this Section 10.21(d), the Borrowers shall not be required to pay any Letter of Credit Fees to such Defaulting Lender with respect to the portion of such Defaulting Lender's Pro Rata Share of the Letter of Credit Balance which have been cash collateralized (and the Defaulting Lender shall not be entitled to receive any such fees);

(iv) if the Defaulting Lender's Pro Rata Share of the Letter of Credit Balance is reallocated pursuant to this Section 10.21(d), then the Letter of Credit Fees payable to the non-Defaulting Lenders shall be adjusted accordingly; and

(v) if any Defaulting Lender's Pro Rata Share of the Letter of Credit Balance is not cash collateralized or reallocated pursuant to this Section 10.21(d), then without prejudice to any rights or remedies of the applicable Letter of Credit guarantor/indemnitor or Issuing Bank hereunder, all Letter of Credit Fees payable hereunder with respect to such Defaulting Lender's Pro Rata Share of the Letter of Credit Balance shall be payable to the Issuing Bank or if applicable, the Letter of Credit guarantor/indemnitor.

(e) So long as any Lender is a Defaulting Lender, no Issuing Bank or Letter of Credit guarantor/indemnitor shall be required to issue, extend or increase any Letter of Credit or Letter of Credit Guaranty, in each case unless it is reasonably satisfied that the related exposure will be 100% covered by the Revolving Commitments of the non-Defaulting Lenders and/or cash collateral will be provided by the Borrowers, and participating interests in any such newly issued, extended or increased Letter of Credit or Letter of Credit guaranty/indemnification shall be allocated among non-Defaulting Lenders in a manner consistent with Section 10.21(d) (and Defaulting Lenders shall not participate therein).

(f) No reallocation permitted pursuant to Section 10.21(d) shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a non-Defaulting Lender as a result of such non-Defaulting Lender's increased exposure following such reallocation.

(g) In the event that Agent, the Issuing Bank and the Letter of Credit guarantor/indemnitor each agrees in writing that a Defaulting Lender has adequately remedied all matters which caused such Lender to become a Defaulting Lender, then the Pro Rata Shares of the Letter of Credit Balance of the Lenders shall be readjusted to reflect the inclusion of such Lender's Revolving Commitment and on such date such Lender shall purchase at par such of the Revolving Loans of the other Lenders or participations in the Revolving Loans as Agent shall determine may be necessary in order for such Lender to hold such Revolving Loans or participations in accordance with its Pro Rata Share; provided, that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while that Lender was a Defaulting Lender; provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender having been a Defaulting Lender.

(h) The rights and remedies with respect to a Defaulting Lender under this Section 10.21 are in addition to any other rights and remedies which the Borrowers, Agent, the Issuing Bank or the Letter of Credit guarantor/indemnitor, as applicable, may have against such Defaulting Lender.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, Borrowers, each other Loan Party signatory hereto, Agent and Lenders have signed this Agreement as of the date first set forth above.

Borrowers:

IMEDIA BRANDS, INC.

By: /s/ Timothy Peterman
Name: Timothy Peterman
Its: Chief Executive Officer, Assistant Secretary

VALUEVISION RETAIL, INC.

By: /s/ Timothy Peterman
Name: Timothy Peterman
Its: Chief Executive Officer, Assistant Secretary

FL ACQUISITION COMPANY

By: /s/ Timothy Peterman
Name: Timothy Peterman
Its: Chief Executive Officer, Assistant Secretary

PW ACQUISITION COMPANY, LLC

By: /s/ Timothy Peterman
Name: Timothy Peterman
Its: Chief Executive Officer, Assistant Secretary

VALUEVISION MEDIA ACQUISITIONS, INC.

By: /s/ Timothy Peterman
Name: Timothy Peterman
Its: Chief Executive Officer, Assistant Secretary

TCO, LLC

By: /s/ Timothy Peterman
Name: Timothy Peterman
Its: Chief Executive Officer, Assistant Secretary

Signature Page to Loan and Security Agreement

Agent:

SIENA LENDING GROUP LLC

By: /s/ Ernest Abati
Name: Ernest Abati
Its: Authorized Signatory

By: /s/ Anthony Lavino
Name: Anthony Lavino
Its: Authorized Signatory

Lenders:

SIENA LENDING GROUP LLC

By: /s/ Ernest Abati
Name: Ernest Abati
Its: Authorized Signatory

By: /s/ Anthony Lavino
Name: Anthony Lavino
Its: Authorized Signatory

JWH ACQUISITION COMPANY

By: /s/ Timothy Peterman
Name: Timothy Peterman
Its: Chief Executive Officer, Assistant Secretary

NORWELL TELEVISION, LLC

By: /s/ Timothy Peterman
Name: Timothy Peterman
Its: Chief Executive Officer, Assistant Secretary

867 GRAND AVENUE LLC

By: /s/ Timothy Peterman
Name: Timothy Peterman
Its: Chief Executive Officer, Assistant Secretary

VALUEVISION INTERACTIVE, INC.

By: /s/ Timothy Peterman
Name: Timothy Peterman
Its: Chief Executive Officer, Assistant Secretary

Signature Page to Loan and Security Agreement

Guarantors:

VVI FULFILLMENT CENTER, INC.

By: /s/ Timothy Peterman
Name: Timothy Peterman
Its: Chief Executive Officer, Assistant Secretary

EP PROPERTIES, LLC

By: /s/ Timothy Peterman
Name: Timothy Peterman
Its: Chief Executive Officer, Assistant Secretary

PORTAL ACQUISITION COMPANY

By: /s/ Timothy Peterman
Name: Timothy Peterman
Its: Chief Executive Officer, Assistant Secretary

Signature Page to Loan and Security Agreement

Information Certificates

[See attached]

[Information Certificates]

Schedule A

Description of Certain Terms

1. Loan Limits for Revolving Loans and Letters of Credit:
- (a) Maximum Revolving Facility Amount: \$80,000,000
 - (b) Advance Rates:
 - (i) Accounts Advance Rate: 85% of Eligible Consumer Accounts; *provided*, that if Dilution exceeds 5%, Agent may at its option establish a Reserve on account of such excess (the “*Dilution Reserve*”).
 - (ii) Inventory Advance Rate: 85% of the NOLV Factor of the Eligible Inventory, Eligible In-Transit Inventory or Eligible Slow Moving Inventory, as applicable
 - (c) In-transit Credit Card Receipts Sublimit: \$3,500,000
 - (d) Sublimits:
 - (i) Sublimit on advances against the aggregate amount of Eligible Inventory, Eligible In-Transit Inventory and Eligible Slow Moving Inventory: \$40,000,000
 - (ii) Sublimit on advances against Eligible In-Transit Inventory: \$2,500,000
 - (iii) Sublimit on advances against all Eligible Slow Moving Inventory: \$2,000,000
 - (e) Letter of Credit Sublimit: \$5,000,000
3. Interest Rate for Revolving Loans: 4.50% per annum in excess of the LIBOR Rate (or if the Base Rate is then in effect pursuant to Section 2.6 or pursuant to the definition of LIBOR Rate, from the Closing Date, until adjusted pursuant to the terms of Section 2.1, 1.75% per annum in excess of the Base Rate).

4. Maximum Days re: Eligible Consumer Accounts:
- (a) Maximum days after original invoice date for Eligible Consumer Accounts: One hundred eighty (180) days
 - (b) Maximum days after original invoice due date for Eligible Consumer Accounts: Seven (7) days
5. Agent's Bank: Wells Fargo Bank, National Association and its affiliates
Siena Lending Group Depository Account
Wells Fargo Bank NA
Account # 4986311751
ABA Routing # 121 000 248
Reference: iMedia Brands, Inc.
(which bank may be changed from time to time by notice from Agent to Borrowers)
6. Scheduled Maturity Date: July 30, 2024
7. Revolving Loan Commitment of Lenders: Siena Lending Group LLC-\$80,000,000

Schedule B

Definitions

Unless otherwise defined herein, the following terms are used herein as defined in the UCC: Account, Account Debtor, Chattel Paper, Commercial Tort Claim, Deposit Account, Document, Electronic Chattel Paper, Equipment, Farm Product, Fixture, General Intangible, Goods, Health-Care-Insurance Receivable, Instruments, Inventory, Letter-of-Credit Rights, Proceeds, Supporting Obligations and Tangible Chattel Paper. As used in this Agreement, the following terms have the following meanings:

“*Accounts Advance Rate*” means the percentages set forth in Section 1(b)(i) of Schedule A.

“*Additional Documents*” has the meaning set forth in Section 3.3(b).

“*Advance Rates*” means, collectively, the Accounts Advance Rate and the Inventory Advance Rate.

“*Affiliate*” means, with respect to any Person, any other Person in control of, controlled by, or under common control with the first Person, and any other Person who has a substantial interest, direct or indirect, in the first Person or any of its Affiliates, including, any officer or director of the first Person or any of its Affiliates; *provided, however*, that neither Agent, any Lender nor any of its Affiliates shall be deemed an “Affiliate” of any Borrower for any purposes of this Agreement. For the purpose of this definition, a “substantial interest” shall mean the direct or indirect legal or beneficial ownership of more than ten (10%) percent of any class of equity or similar interest.

“*Agent*” has the meaning set forth in the heading to this Agreement.

“*Agreement*” and “*this Agreement*” have the meanings set forth in the heading to this Agreement.

“*Approved Electronic Communication*” means each notice, demand, communication, information, document and other material transmitted, posted or otherwise made or communicated by e-mail, facsimile, Passport 6.0, or any other equivalent electronic service, whether owned, operated or hosted by Agent, any of its Affiliates or any other Person, that any party is obligated to, or otherwise chooses to, provide to Agent pursuant to this Agreement or any other Loan Document, including any financial statement, financial and other report, notice, request, certificate and other information or material; *provided* that Approved Electronic Communications shall not include any notice, demand, communication, information, document or other material that Agent specifically instructs a Person to deliver in physical form.

“*Authorized Officer*” means the chief executive officer, chief financial officer or treasurer of any Borrower and each other Person designated from time to time by any of the foregoing officers of any Borrower in a notice to Agent, which designation shall continue in force and effect until terminated in a notice to Agent from any of the foregoing officers of any Borrower.

“*Approved Fund*” means, with respect to any Lender, any Person (other than a natural Person) that (i)(a) is or will be engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business or (b) temporarily warehouses loans for any Lender or any Person described in clause (a) above and (i) is advised or managed by (a) such Lender, (b) any Affiliate of such Lender or (c) any Person (other than an individual) or any Affiliate of any Person (other than an individual) that administers or manages such Lender.

“**Assignment and Acceptance**” means an Assignment and Acceptance Agreement substantially in the form of Exhibit G to the Agreement.

“**Average FICO Score**” shall mean, on any date of determination, the average FICO Score of all Persons participating in the Value Pay Plan for whom a FICO score has been obtained, as determined by Borrowing Agent in accordance with its practices in the ordinary course of business in effect on the Closing Date.

“**Bankruptcy Code**” means the United States Bankruptcy Code (11 U.S.C. § 101 et seq.).

“**Base Rate**” means, for any day, the greatest of (a) the per annum rate of interest which is identified as the “Prime Rate” and normally published in the Money Rates section of The Wall Street Journal (or, if such rate ceases to be so published, as quoted from such other generally available and recognizable source as Agent may select) (the “**Published Prime Rate**”) (and, if any such published rate is below zero, then the rate determined pursuant to this clause (a) shall be deemed to be zero), (b) the sum of the Federal Funds Rate plus 0.5%, (c) the most recently used LIBOR Rate plus 2.75% and (d) 3.25% per annum. Any change in the Base Rate due to a change in such Published Prime Rate or the Federal Funds Rate shall be effective on the effective date of such change in such Published Prime Rate or the Federal Funds Rate. Notwithstanding the foregoing, in no event shall the interest rate for any Loan based on the Base Rate be less than the interest rate that would have applied to such Loan if the interest rate for such Loan was based on the LIBOR Rate.

“**Borrowers**” has the meaning set forth in the Preamble to this Agreement.

“**Borrowing Agent**” means iMedia Brands, Inc., acting for itself in its capacity as a Borrower or in its capacity as agent for all of the Borrowers (including itself).

“**Borrowing Base**” means, as of any date of determination, the Dollar Equivalent Amount as of such date of determination of: (a) the aggregate amount of Eligible Consumer Accounts **multiplied by** the Accounts Advance Rate; **plus** (b) the aggregate amount of In-transit Credit Card Receipts **multiplied by** the Accounts Advance Rate (but in no event to exceed the In-transit Credit Card Receipts Sublimit); **plus** (c) the Net Orderly Liquidation Value of the applicable Eligible Inventory multiplied by the Inventory Advance Rate, but not to exceed the sublimit applicable to all Inventory, **plus** (d) the Net Orderly Liquidation Value of the applicable Eligible Slow Moving Inventory multiplied by the Inventory Advance Rate, but not to exceed the sublimit applicable to Eligible Slow Moving Inventory **plus** (e) the Net Orderly Liquidation Value of Eligible In-Transit Inventory multiplied by the Inventory Advance Rate, but not to exceed the sublimit applicable to Eligible In-Transit Inventory **minus** (f) all Reserves which Agent has established pursuant to Section 1.2.

“**Business Day**” means a day other than a Saturday or Sunday or any other day on which Agent or banks in New York are authorized to close.

“**Capitalized Lease**” means any lease which is or should be reflected on the balance sheet of the lessee as a finance lease thereunder in accordance with GAAP.

“Change of Control” shall mean (a) 100% of the Equity Interests of any Borrower (other than iMedia or TCO) is no longer owned or controlled by iMedia (including for the purposes of the calculation of percentage ownership, any Equity Interests into which any Equity Interests of any Borrower held by iMedia are convertible or for which any such Equity Interests of any Borrower or of any other Person may be exchanged and any Equity Interests issuable to iMedia upon exercise of any warrants, options or similar rights which may at the time of calculation be held by iMedia), (b) (i) any person or group of persons (within the meaning of Section 13(d) or 14(a) of the Exchange Act), other than an existing shareholders as of the date hereof who individually or as a group own at least 10% of the voting Equity Interest of iMedia, shall have acquired beneficial ownership (within the meaning of Rule 13d-3 promulgated by the SEC under the Exchange Act) of 35% or more of the voting Equity Interest of iMedia; or (ii) from and after the date hereof, individuals who on the date hereof constitute the Board of Directors of iMedia (together with any new directors whose election by such Board of Directors or whose nomination for election by the shareholders of iMedia was approved by a vote of a majority of the directors then still in office who were either directors on the date hereof or whose election or nomination for election was previously approved) cease for any reason to constitute a majority of the board of directors of iMedia then in office; or (c) any merger, consolidation or sale of substantially all of the property or assets of any Borrower or any direct or indirect Subsidiary of any Borrower except as permitted by Section 5.25(a); provided however it shall not be deemed to be a Change of Change under (A) section (b)(i) of this definition, if any person or group of persons (within the meaning of Section 13(d) or 14(a) of the Exchange Act) acquires beneficial ownership of (within the meaning of Rule 13d-3 promulgated by the SEC under the Exchange Act) 35% or more of the voting Equity Interest of iMedia and Agent provides prior written consent, which consent shall not be unreasonably withheld or delayed or (B) section (c) of this definition, if any merger, consolidations or sale of all or of the property or assets of any Borrower or any direct or indirect Subsidiary of any Borrower, occurs and following such transaction, the Borrower is either combined with iMedia or remains a wholly-owned direct or indirect subsidiary of iMedia or, in the case of TCO, at least 50% of the voting equity interests are owned directly or indirectly by iMedia.

“Closing Date” means July 30, 2021.

“Code” means the Internal Revenue Code of 1986, as amended.

“Collateral” means all property and interests in property in or upon which a security interest, mortgage, pledge or other Lien is granted pursuant to this Agreement or the other Loan Documents, including all of the property of each Loan Party described in Section 3.1.

“Collateral Pledge Agreements” means (a) that certain Collateral Pledge Agreement dated as of the date hereof by Borrowers as pledgors and Agent, as pledgee and (b) any other pledge agreement made by a pledgor in favor of Agent from time to time after the Closing Date.

“Collections” has the meaning set forth in Section 4.1.

“Commitments” means, the Revolving Loan Commitment.

“Compliance Certificate” means a compliance certificate substantially in the form of Exhibit F hereto to be signed by an Authorized Officer of Borrowing Agent.

“Confidential Information” means confidential information that any Loan Party or any of their subsidiaries and Affiliates furnishes to Agent or any Lender pursuant to any Loan Document concerning any Loan Party’s business, or its subsidiaries and Affiliates, but does not include any such information once such information has become, or if such information is, generally available to the public or available to Agent or any Lender (or other applicable Person) from a source other than the Loan Parties or their Affiliates which is not, to Agent’s or any Lender’s knowledge, bound by any confidentiality agreement in respect thereof.

“**Consolidated Adjusted EBITDA**” means, for the applicable period, for the Loan Parties on a consolidated basis, such Loan Parties’ consolidated adjusted EBITDA as publicly reported by the Borrowers in their financial statements for such period.

“**Customer**” shall mean and include the account debtor with respect to any Account and/or the prospective purchaser of goods, services or both with respect to any contract or contract right, and/or any party who enters into or proposes to enter into any contract or other arrangement with any Borrower, pursuant to which such Borrower is to deliver any personal property or perform any services.

“**Default**” means any event which with notice or passage of time, or both, would constitute an Event of Default.

“**Default Excess**” means with respect to any Defaulting Lender, the excess, if any, of such Defaulting Lender’s Pro Rata Share of the aggregate outstanding principal amount of all Revolving Loans (calculated as if all Defaulting Lenders (other than such Defaulting Lender) had funded their respective Pro Rata Shares of all Revolving Loans) over the aggregate outstanding principal amount of all Revolving Loans of such Defaulting Lender.

“**Default Rate**” has the meaning set forth in Section 2.1.

“**Defaulting Lender**” means, subject to Section 10.21(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies Agent and Borrowing Agent in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to Agent, or any other Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when due, (b) has notified Borrowing Agent and Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by Agent or Borrowing Agent, to confirm in writing to Agent and Borrowing Agent that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by Agent and Borrowing Agent), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 10.21(b)) upon delivery of written notice of such determination to Borrowing Agent, and each other Lender.

“Dilution” means, as of any date of determination, a percentage, based upon the experience of the immediately prior twelve (12) months, that is the result of dividing the Dollar Equivalent Amount of (a) bad debt write-downs, discounts, advertising allowances, credits, or other dilutive items with respect to Borrowers’ Accounts during such period, by (b) Borrowers’ billings with respect to Accounts during such period.

“Dilution Reserve” has the meaning set forth in Section 1(b)(i) of Schedule A.

“Dollar Equivalent Amount” means, at any time, (a) as to any amount denominated in Dollars, the amount hereof at such time, and (b) as to any amount denominated in a currency other than Dollars, the equivalent amount in Dollars as determined by Agent at such time that such amount could be converted into Dollars by Agent according to prevailing exchange rates selected by Agent.

“Dollars” or **“\$”** means United States Dollars, lawful currency for the payment of public and private debts.

“E-Signature” means the process of attaching to or logically associating with an Approved Electronic Communication an electronic symbol, encryption, digital signature or process (including the name or an abbreviation of the name of the party transmitting the Approved Electronic Communication) with the intent to sign, authenticate or accept such Approved Electronic Communication.

“Early Payment/Termination Premium” has the meaning set forth in the Fee Letter.

“Eligible Consumer Account” shall mean and include with respect to each Borrower, each Account of such Borrower arising in the ordinary course of business under the Value Pay Plan and which Agent, in its Permitted Discretion, shall deem to be an Eligible Consumer Account. An Account shall not be deemed eligible unless such Account is subject to Agent’s first priority perfected security interest and no other Lien (other than Permitted Liens), and is evidenced by an invoice or other documentary evidence satisfactory to Agent. In addition, no Account shall be an Eligible Consumer Account if:

- (a) the Customer fails to make any payment due under the Value Pay Plan within seven (7) days after the due date;
- (b) any covenant, representation or warranty contained in this Agreement with respect to such Account has been breached;
- (c) the Customer shall (i) apply for, suffer, or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property or call a meeting of its creditors, (ii) admit in writing its inability, or be generally unable, to pay its debts as they become due or cease operations of its present business, (iii) make a general assignment for the benefit of creditors, (iv) commence a voluntary case or proceeding under any state or federal bankruptcy laws (as now or hereafter in effect), (v) be adjudicated a bankrupt or insolvent, (vi) file a petition seeking to take advantage of any other law providing for the relief of debtors or (vii) acquiesce to, or fail to have dismissed, any petition which is filed against it in any involuntary case under such bankruptcy laws;
- (d) the sale is to a Customer outside the United States of America or Canada;

- (e) the Accounts of the Customer exceed a credit limit determined by Agent, (and which Agent has notified Borrowers in writing), in its Permitted Discretion, to the extent such Account exceeds such limit;
- (f) Agent believes, in its Permitted Discretion, that such Account will likely not be paid by reason of the Customer's financial inability to pay;
- (g) the Account is subject to any offset, deduction, defense, dispute, or counterclaim (to the extent of such offset, deduction, defense or counterclaim);
- (h) any return, rejection or repossession of the merchandise sold to create such Account has occurred;
- (i) such Account is not payable to a Borrower; or
- (j) such Account is not otherwise satisfactory to Agent as determined in good faith by Agent in the exercise of its Permitted Discretion.

"Eligible In-Transit Inventory" means all Inventory which satisfies the general criteria set forth below and which is otherwise acceptable to Agent in its sole discretion (*provided*, that Agent may, in its sole discretion, change the general criteria for acceptability of Eligible In-Transit Inventory and shall notify Borrowers of such change promptly thereafter) net of (a) accrued unpaid fees and expenses due by Borrowers to any customs broker, freight forwarder or carrier and (b) \$1,000 per container (or such other amount determined by Agent in its sole discretion) for the cost to transport such Inventory to one of Borrowers' store locations:

- (i) for which Borrowers have retained title or for which title has passed to Borrowers;
- (ii) which is insured to the full value thereof to the satisfaction of Agent;
- (iii) for which any Borrower or Agent shall have in its possession (i) true and correct copies of all applicable negotiable bills of lading or freight forwarder cargo receipt properly endorsed or (ii) all applicable non-negotiable bills of lading in Agent's name; and
- (iv) applicable commencing on the date that is forty-five (45) days after the Closing only, in respect of which Agent shall have received, if requested, a duly executed collateral access agreement from the applicable customs broker, freight forwarder or carrier for such Inventory, in form and substance satisfactory to Agent.

Eligible In-Transit Inventory shall not include Inventory being acquired pursuant to a trade Letter of Credit to the extent such trade Letter of Credit for the specific Inventory being claimed as collateral remains outstanding.

"Eligible Inventory" shall mean and include Inventory, excluding raw materials and work in process, with respect to each Borrower, which is not unmerchantable. Inventory shall not be deemed eligible unless such Inventory is subject to a perfected, first priority security interest in favor of Agent and no other Lien (other than a Permitted Liens). In addition, Inventory shall not be Eligible Inventory if it (i) does not conform to all standards imposed by any Governmental Authority which has regulatory authority over such goods or the use or sale thereof, (ii) is in transit, (iii) is located outside the United States or at a location that is not otherwise in compliance with this Agreement, (iv) constitutes Consigned Inventory, (v) is the subject of an Intellectual Property claim that in Agent's judgment would impair Agent's ability to realize on the Collateral or the value thereof; (vi) is subject to a License Agreement or other agreement that materially limits Agent's right to sell or otherwise dispose of such Inventory, unless Agent is a party to a Licensor/Agent Agreement with the Licensor under such License Agreement; or (vii) is situated at a location not owned by a Borrower unless the owner or occupier of such location has executed in favor of Agent a landlord or similar waiver.

“Eligible Slow Moving Inventory” shall mean and include Slow Moving Inventory that would otherwise constitute Eligible Inventory if not for the fact that such Inventory is Slow Moving Inventory.

“Equity Interests” means, with respect to a Person, all of the shares of stock, warrants, interests, participations, or other equivalents (regardless of how designated) of or in such Person, whether voting or nonvoting, including capital stock (or other ownership or profit interests or units), preferred stock, or any other “equity security” (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the Securities Exchange Commission under the Securities Exchange Act of 1934, as in effect from time to time).

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

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with a Loan Party 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 and section 302 of ERISA).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of any Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by a Loan Party or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon a Loan Party or any ERISA Affiliate.

“Event of Default” has the meaning set forth in Section 7.1.

“Excess Availability” means the amount, as determined by Agent, calculated at any date, equal to the difference of (a) the lesser of (x) the Maximum Revolving Facility Amount and (y) the Borrowing Base, minus (b) the outstanding balance of all Revolving Loans and the Letter of Credit Balance; **provided** that if any of the Loan Limits for Revolving Loans is exceeded as of the date of calculation, then Excess Availability shall be zero.

“Exchange Act” shall mean the Securities Exchange Act of 1934, as amended.

“**Excluded Collateral**” has the meaning set forth in Section 3.1.

“**Excluded Equity**” means the Equity Interests of VVI Fulfillment and EP Properties held by iMedia,

“**Excluded Taxes**” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of Agent, its lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof), or (ii) that are Other Connection Taxes; (b) United States federal withholding Taxes imposed on amounts payable to or for the account of such Recipient with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which such Recipient acquires such interest in the Loan or Commitment or acquires such participation, except in each case to the extent that, pursuant to Section 9.1 amounts with respect to such Taxes were payable either to such Recipient’s assignor (or Agent granting such participation) immediately before such assignment or grant of participation; (c) Taxes attributable to such Recipient’s failure to comply with Section 9.1(e); and (d) any withholding Taxes imposed pursuant to FATCA.

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

“**Fee Letter**” means that certain Fee Letter, dated as of the date hereof, between Borrowers and Agent.

“**Fiscal Year**” means the fiscal year of Borrowers which ends on the last Saturday in January of each year.

“**Fronting Exposure**” means, at any time there is a Defaulting Lender, with respect to the Issuing Bank (or the Letter of Credit guarantor/indemitor, as the case may be), such Defaulting Lender’s Pro Rata Share of the outstanding Letter of Credit Balance other than the Letter of Credit Balance as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or cash collateralized in accordance with the terms hereof.

“**GAAP**” means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the United States accounting profession), which are applicable to the circumstances as of the date of determination, in any case consistently applied.

“**Governmental Authority**” means the government of the United States of America or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“**Guaranty**”, “**Guaranteed**” or to “**Guarantee**”, as applied to any Indebtedness, liability or other obligation, means (a) a guaranty, directly or indirectly, in any manner, including by way of endorsement (other than endorsements of negotiable instruments for collection in the ordinary course of business), of any part or all of such Indebtedness, liability or obligation, and (b) an agreement, contingent or otherwise, and whether or not constituting a guaranty, assuring, or intended to assure, the payment or performance (or payment of damages in the event of non-performance) of any part or all of such Indebtedness, liability or obligation by any means (including, the purchase of securities or obligations, the purchase or sale of property or services, or the supplying of funds).

“**Guarantors**” has the meaning set forth in the heading to this Agreement.

“**In-Transit Credit Card Receipts**” shall mean the obligations owing by a credit card processor to the Borrowers on account of charges of a Customer prior to the credit card settlement date.

“**In-Transit Credit Card Receipts Sublimit**” means the amount set forth in Section 1(c) of Schedule A.

“**Indebtedness**” means (without duplication), with respect to any Person, (a) all obligations or liabilities, contingent or otherwise, for borrowed money, (b) all obligations represented by promissory notes, bonds, debentures or the like, or on which interest charges are customarily paid, (c) all liabilities secured by any Lien on property owned or acquired, whether or not such liability shall have been assumed, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person, (e) all obligations of such Person issued or assumed as the deferred purchase price of property or services (excluding trade payables which are not ninety (90) days past the agreed upon payment terms incurred in the ordinary course of business, but excluding the maximum potential amount payable under any earn-out or similar obligations until such time as the applicable earn-out targets are met and then only relating to the amount that actually becomes due and payable), (f) all Capitalized Leases of such Person, (g) all obligations (contingent or otherwise) of such Person as an account party or applicant in respect of letters of credit and/or bankers’ acceptances, or in respect of financial or other hedging obligations, (h) all Equity Interests issued by such Person subject to repurchase or redemption at any time on or prior to the Scheduled Maturity Date, other than voluntary repurchases or redemptions that are at the sole option of such Person, (i) all principal outstanding under any synthetic lease, off-balance sheet loan or similar financing product, and (j) all Guarantees, endorsements (other than for collection in the ordinary course of business) and other contingent obligations in respect of the obligations of others.

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

“**Ineligible Assignee**” means (a) any natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person), (b) any Loan Party or any of its Affiliates or (c) any Defaulting Lender or any Affiliate of any Defaulting Lender or any Person who, upon becoming a Lender hereunder, would constitute a Defaulting Lender or an Affiliate thereof.

“**Information Certificates**” means (a) as of the Closing Date, the Information Certificates annexed hereto and (b) as of any date after the Closing Date, the Information Certificates described in the immediately foregoing clause (a) as most recently updated and delivered to Agent, including any updates provided pursuant to Section 5.29.

“**Intellectual Property**” means the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including copyrights, copyright licenses, patents, patent licenses, trademarks and trademark licenses, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

“Intercreditor Agreement” means that certain Intercreditor Agreement dated as of the Closing Date between Agent and Term Debt Agent and acknowledged by Borrowers.

“Interest Expense” means, for the applicable period, for the Loan Parties on a consolidated basis, total interest expense (including interest attributable to Capitalized Leases in accordance with GAAP) and fees with respect to outstanding Indebtedness.

“In-Transit Credit Card Receipts” shall mean the obligations owing by a credit card processor to the Borrowers on account of charges of a Customer prior to the credit card settlement date.

“Inventory Advance Rate” means the percentage(s) set forth in Section 1(b)(ii) of Schedule A.

“Inventory Sublimit” means the amount(s) set forth in Section 1(d) of Schedule A.

“Investment Property” means the collective reference to (a) all “investment property” as such term is defined in Section 9-102 of the UCC, (b) all “financial assets” as such term is defined in Section 8-102(a)(9) of the UCC, and (c) whether or not constituting “investment property” as so defined, all Pledged Equity.

“Issuers” means the collective reference to each issuer of Investment Property.

“Judgment Currency” has the meaning set forth in Section 6.3(b).

“Lender” has the meaning set forth in the heading to this Agreement.

“Lender Documentation Exception” has the meaning set forth in the Section 9.1(e).

“Letter of Credit” has the meaning set forth in Section 1.1.

“Letter of Credit Balance” means the sum of (a) the aggregate undrawn face amount of all outstanding Letters of Credit and (b) all interest, fees and costs due or, in Agent’s estimation, likely to become due in connection therewith.

“Letter of Credit Limit” means the amount set forth in Section 1(e) of Schedule A.

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

“**LIBOR Rate**” means the greater of (a) a rate per annum equal to the London interbank offered rate for deposits in Dollars for a period of 30 days as published in The Wall Street Journal, three Business Days prior to the first day of each calendar month and (b) 0.50% per annum. If The Wall Street Journal does not publish the LIBOR Rate or Agent determines in good faith that the rate so published no longer accurately reflects the rate available to Agent and Lenders in the London Interbank Market or if such rate no longer exists or no longer accurately reflects the rate available to Agent and Lenders in the London Interbank Market, (each, a “**LIBOR Cessation Event**”), such rate will be (i) a comparable successor or alternative interbank rate selected by Agent (in consultation with Borrowers) for deposits in Dollars for a period of three months and for the outstanding principal amount of the Loans that is, at such time, broadly accepted by the commercial loan market in lieu of LIBOR as currently published so long as such comparable successor or alternative interbank rate is acceptable to the Agent in its Permitted Discretion for the purposes of this Agreement or (ii) solely if no such broadly accepted comparable successor or alternative interbank rate exists at such time that is acceptable to the Agent, a successor or alternative index rate as the Agent may determine, in consultation with Borrower, in its Permitted Discretion. If a LIBOR Cessation Event occurs, until such time that a replacement rate is established pursuant to the preceding clauses (i) and/or (ii), the Base Rate shall be the sole interest option available to the Borrowers.

“**License Agreement**” shall mean any agreement between any Borrower and a Licensor pursuant to which such Borrower is authorized to use the Intellectual Property in connection with the manufacturing, marketing, sale or other distribution of any Inventory of such Borrower or otherwise in connection with such Borrower’s business operations.

“**Licensor**” shall mean any Person from whom any Borrower obtains the right to use (whether on an exclusive or non-exclusive basis) any Intellectual Property of such Person in connection with such Borrower’s manufacture, marketing, sale or other distribution of any Inventory or otherwise in connection with such Borrower’s business operations.

“**Licensor/Agent Agreement**” shall mean an agreement between Agent and a Licensor, in form and content satisfactory to Agent, by which Agent is given the unqualified right, vis-a-vis such Licensor, to enforce Agent’s Liens with respect to and to dispose of any Borrower’s Inventory with the benefit of any Intellectual Property applicable thereto, irrespective of such Borrower’s default under any License Agreement with such Licensor.

“**Loan Account**” has the meaning set forth in Section 2.4.

“**Loan Documents**” means, collectively, this Agreement and all notes, guaranties, security agreements, mortgages, certificates, landlord’s agreements, Lock Box and Blocked Account agreements, the Fee Letter, the Collateral Pledge Agreement, and all other agreements, documents and instruments now or hereafter executed or delivered by any Borrower, any Loan Party in connection with, or to evidence the transactions contemplated by, this Agreement.

“**Loan Guaranty**” means Section 8 of this Agreement.

“**Loan Limits**” means, collectively, the Loan Limits for Revolving Loans and Letters of Credit set forth in Section 1 of Schedule A and all other limits on the amount of Loans and Letters of Credit set forth in this Agreement.

“**Loan Party**” means, individually, any Borrower, any Guarantor or any Subsidiary party to this Agreement; and “**Loan Parties**” means, collectively, Borrowers, Guarantors and all Subsidiaries party to this Agreement.

“**Loans**” means, collectively, the Revolving Loans.

“Material Adverse Effect” shall mean a material adverse effect on (a) the financial condition, results of operations, assets, business, or properties of the Borrowers, taken as a whole, (b) the Borrowers’ ability to duly and punctually pay or perform the Obligations in accordance with the terms thereof, (c) the value of the Collateral, or Agent’s Liens on the Collateral or the priority of any such Lien, or (d) the practical realization of the benefits of Agent’s and each Lender’s rights and remedies under this Agreement and the other Loan Documents.

“Material Contract” means has the meaning set forth in Section 5.18.

“Maturity Date” means the Scheduled Maturity Date (or if earlier the Termination Date), or such earlier date as the Obligations may be accelerated in accordance with the terms of this Agreement (including without limitation pursuant to Section 7.2).

“Maximum Lawful Rate” has the meaning set forth in Section 2.5.

“Maximum Liability” has the meaning set forth in Section 8.9.

“Maximum Revolving Facility Amount” means the amount set forth in Section 1(a) of Schedule A.

“Minimum Liquidity” means Excess Availability *plus* unrestricted cash *minus* outstanding or held checks.

“Mortgages” means each of the mortgages in favor of Agent on the following parcels of real property securing the Obligations: 6740 Shady Oak Road, Eden Prairie, MN 55344 and 4811 and 4813 Nashville Road, Bowling Green, KY 42101

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

“Net Income” means, for the applicable period, for Borrowers or Loan Parties on a consolidated basis, as applicable, the net income (or loss) of Borrowers or Loan Parties on a consolidated basis, as applicable, for such period, in each case of Borrowers or Loan Parties on a consolidated basis, as applicable, for such period.

“Net Orderly Liquidation Value” with respect to Eligible Inventory, Eligible In-Transit Inventory or Eligible Slow Moving Inventory, as applicable, means the net orderly liquidation value of such Eligible Inventory, Eligible In-Transit Inventory or Eligible Slow Moving Inventory, as applicable, as determined by Agent from time to time based upon the most recent Inventory appraisal received by the Agent prepared by an appraiser, and in a manner acceptable to Agent.

“NOLV Factor” means the quotient, expressed as a percentage, of (a) the Net Orderly Liquidation Value of Eligible Inventory, Eligible In-Transit Inventory or Eligible Slow Moving Inventory, as applicable, divided by (b) the book value of Eligible Inventory, Eligible In-Transit Inventory or Eligible Slow Moving Inventory, as applicable, which will be adjusted monthly or at such other times as Agent shall determine in its discretion.

“Non-Paying Guarantor” has the meaning set forth in Section 8.10.

“Non-U.S. Recipient” has the meaning set forth in Section 9.1(e)(ii).

“**Notice of Borrowing**” has the meaning set forth in Section 1.4.

“**Obligations**” means all present and future Loans, advances, debts, liabilities, fees, expenses, obligations, guaranties, covenants, duties and indebtedness at any time owing by any Borrower or any Loan Party to Agent and Lenders, whether evidenced by this Agreement, any other Loan Document or otherwise whether arising from an extension of credit, opening of a Letter of Credit, guaranty, indemnification or otherwise, whether direct or indirect (including those acquired by assignment and any participation by any Lender in Borrowers’ indebtedness owing to others), whether absolute or contingent, whether due or to become due, and whether arising before or after the commencement of a proceeding under the Bankruptcy Code or any similar statute.

“**Organic Documents**” means, with respect to any Person, the certificate of incorporation, articles of incorporation, certificate of formation, certificate of limited partnership, by-laws, operating agreement, limited liability company agreement, limited partnership agreement or other similar governance document of such Person.

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

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

“**Outstanding Amount**” means with respect to the revolving credit facility provided in this Agreement on any date, the sum of (a) the aggregate outstanding principal amount of all Revolving Loans as of such date, and (b) the amount of any outstanding Letters of Credit as of such date, after giving effect, without duplication, to any borrowings and prepayments or repayments of Revolving Loans and the issuance of any Letters of Credit.

“**Overadvance**” has the meaning set forth in Section 1.7(a).

“**Participant**” has the meaning set forth in Section 10.10.

“**Passport 6.0**” means the electronic and/or internet-based system approved by Agent for the purpose of making notices, requests, deliveries, communications, and for the other purposes contemplated in this Agreement or otherwise approved by Agent, whether such system is owned, operated or hosted by Agent, any of its Affiliates or any other Person.

“**Paying Guarantor**” has the meaning set forth in Section 8.10.

“**PBGC**” means the Pension Benefit Guaranty Corporation.

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

“**Pension Funding Rules**” means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and Multiemployer Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA, and any sections of the Code or ERISA related thereto that are enacted after the date of this Agreement.

“**Pension Plan**” means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by a Loan Party and or ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

“**Permitted Acquisition**” means the acquisition by any Borrower of all or substantially all the assets of any other Person or line of business of such other Person, or all of the equity interests of any other Person (referred to herein as the “**Acquired Entity**”); provided that (i) the Acquired Entity shall be in a similar or related line of business as that of Borrowers as conducted during the current and most recently concluded calendar year or a business that uses comparable assets and equipment; (ii) at the time of such acquisition (A) both before and after giving effect thereto, no Event of Default or Default shall have occurred and be continuing, and (B) Borrowers would be in compliance with the covenants set forth in Section 5.25 of this Agreement as of the most recently completed period ending prior to such acquisition for which the financial statements and Compliance Certificate required by Section 5.15 of this Agreement were required to be delivered, after giving pro forma effect to such acquisition and to any other event occurring after such period as to which pro forma recalculation is appropriate (including any other acquisition described in this definition occurring after such period) as if such acquisition (and the occurrence or assumption of any Indebtedness in connection therewith) had occurred as of the first day of such period; (iii) Borrowers shall not incur or assume any Indebtedness in connection with such acquisition, except for Permitted Indebtedness; (iv) Borrowers shall comply, and shall cause the Acquired Entity to comply, with the applicable provisions of Section 3.3 of this Agreement; (v) no Acquired Entity shall be organized or domiciled under the law of any jurisdiction outside the United States, Canada, or Western Europe; (vi) only to the extent that the aggregate amount paid in connection with such acquisition shall not be paid entirely with the proceeds of an issuance or incurrence of Indebtedness or issuance of equity interests and Borrowers shall paid a portion of the purchase price and other consideration with the proceeds of a Revolving Loan hereunder, (I) Borrower’s Minimum Liquidity immediately after giving effect to such acquisition will be not less than \$20,000,000; (vii) the aggregate consideration (which shall include any amount paid and any principal indebtedness or other liabilities assumed or incurred) for all such “Permitted Acquisitions” shall not exceed (x) \$20,000,000 in the aggregate during any fiscal year of Borrowers and (y) \$45,000,000 in the aggregate for all such acquisitions during the period between the Closing Date and the Scheduled Maturity Date; (viii) [reserved], (ix) Borrowers shall have delivered to Agent a certificate of the chief financial officer of Borrowers certifying as to Borrowers’ compliance with the requirements of this definition and setting forth in reasonable detail Borrowers’ calculation of the items set forth in clause (ii)(B) of this definition of “Permitted Acquisition” (in each case, in form and substance satisfactory to Agent) and attaching such supporting documentation as Agent may request and (x) no assets acquired in any such transaction(s) shall be included in the Borrowing Base until Agent has received a field examination and/or appraisal of such assets, in form and substance acceptable to Agent. For the purposes of calculating Minimum Liquidity under this definition, any assets being acquired in the proposed acquisition shall be included in the Borrowing Base on the date of closing so long as Agent has received an audit or appraisal of such assets as set forth in clause (x) above and so long as such assets satisfy the applicable eligibility criteria. The term “Permitted Acquisition” shall also include all other acquisitions to which Agent may consent in writing without reference to any of the foregoing tests.

“Permitted Discretion” means a determination made by Agent in the exercise of reasonable (from the perspective of an asset-based secured lender) business judgment exercised in good faith in accordance with customary business practices with comparable asset-based lending facilities.

“Permitted Indebtedness” means: (a) the Obligations; (b) the Indebtedness existing on the date hereof described in Section 46 of the Information Certificates; in each case along with extensions, refinancings, modifications, amendments and restatements thereof, **provided**, that (i) the principal amount thereof is not increased, (ii) if such Indebtedness is subordinated to any or all of the Obligations, the applicable subordination terms shall not be modified without the prior written consent of Agent, and (iii) the terms thereof are not modified to impose more burdensome terms upon any Loan Party; (c) Capitalized Leases and purchase money Indebtedness secured by Permitted Liens and Indebtedness consisting of the financing of insurance premiums in the ordinary course of business in an aggregate amount not exceeding \$3,000,000 at any time outstanding; (d) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business; (e) unsecured Indebtedness subordinated pursuant to a subordination agreement in form and substance satisfactory to Agent in its Permitted Discretion; (f) so long as it is subject to the Intercreditor Agreement, the Term Debt Permitted Indebtedness; (g) the Seller Debt Permitted Indebtedness, and any other seller indebtedness incurred in connection with a Permitted Acquisition so long as such other seller indebtedness is subordinated or subject to an intercreditor or subordination agreement in form and substance satisfactory to the Agent, (h) secured Indebtedness permitted under clause (i) of the definition of Permitted Lien, (i) any earn-outs that constitute Indebtedness incurred in connection with any Permitted Acquisition; (j) Indebtedness relating to reimbursement obligations for letters of credit that have been cash collateralized on the Closing Date and (k) other unsecured Indebtedness in an amount not to exceed \$500,000 in the aggregate at any time outstanding.

“Permitted Investments” means:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;

(b) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition thereof and, at the time of acquisition, having a rating of at least AA from Standard & Poor’s Ratings Services, a Division of the McGraw-Hill Companies, Inc. (“S&P”) or Aa from Moody’s Investors Service, Inc. (“Moody’s”);

(c) investments in commercial paper maturing within one year from the date of acquisition thereof and having, at such date of acquisition, a rating of at least A-2 from S&P or P-2 from Moody’s;

(d) investments in certificates of deposit, banker’s acceptances and time deposits maturing within one year from the date of acquisition thereof issued or guaranteed by or placed with and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof, or by any Agent which has a combined capital and surplus and undivided profits of not less than \$500,000,000;

(e) fully collateralized repurchase agreements with a term of not more than 120 days for securities described in clause (a) of this definition and entered into with a financial institution satisfying the criteria described in clause (d) of this definition; and

(f) money market funds that (i) comply with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated at least AA by S&P or Aa by Moody's and (iii) have portfolio assets of at least \$1,000,000.000.

"Permitted Liens" means (a) purchase money security interests in specific items of Equipment securing Permitted Indebtedness described under clause (c) of the definition of Permitted Indebtedness; (b) Liens disclosed in Section 47 of the Information Certificates; **provided, however**, that to qualify as a Permitted Lien, any such Lien described in Section 47 of the Information Certificates shall only secure the Indebtedness that it secures on the Closing Date and any permitted refinancing in respect thereof; (c) Liens for taxes, fees, assessments, or other governmental charges or levies, either not delinquent or being contested in good faith by appropriate proceedings (which proceedings have the effect of preventing the enforcement of such lien) for which adequate reserves in accordance with GAAP are being maintained, **provided**, that the same have no priority over any of Agent's security interests; (d) liens of materialmen, mechanics, carriers, or other similar liens arising in the ordinary course of business and securing obligations which are not delinquent or are being contested in good faith by appropriate proceedings (which proceedings have the effect of preventing the enforcement of such lien) for which adequate reserves in accordance with GAAP are being maintained; (e) Liens which constitute banker's liens, rights of set-off, or similar rights as to deposit accounts or other funds maintained with a bank or other financial institution (but only to the extent such banker's liens, rights of set-off or other rights are in respect of customary service charges relative to such deposit accounts and other funds, and not in respect of any loans or other extensions of credit by such bank or other financial institution to any Loan Party); (f) cash deposits or pledges of an aggregate amount not to exceed \$500,000 to secure the payment of worker's compensation, unemployment insurance, or other social security benefits or obligations, public or statutory obligations, surety or appeal bonds, bid or performance bonds, or other obligations of a like nature incurred in the ordinary course of business, (g) the Term Debt Permitted Liens to secure the Term Debt Permitted Indebtedness, (h) the Seller Debt Permitted Liens to secure the Seller Debt Permitted Indebtedness, (i) Liens in favor of the Agent for the benefit of the Agent and the Lenders, (j) Liens securing Indebtedness represented by financed insurance premiums in the ordinary course of business provided that such Liens do not extend to any property or assets other than the insurance policies being financed, (k) Liens securing Indebtedness permitted by clause (j) of the definition of Permitted Indebtedness, (l) Liens that are junior to the liens in favor of Agent securing indebtedness in an amount not to exceed \$500,000, (m) minor survey exceptions, minor encumbrances, ground leases, easements or reservations of, or rights of others for, licenses, rights-of-way, servitudes, sewers, electric lines, drains, telegraph and telephone and cable television lines, gas and oil pipelines and other similar purposes, or zoning, building codes or other restrictions (including without limitation, minor defects or irregularities in title and similar encumbrances), which do not in the aggregate interfere in any material respect with the ordinary course of business of the Borrowers and their Subsidiaries; (n) any exceptions listed on the title insurance policies delivered to and accepted by, the Term Debt Agent, (o) licenses, sublicenses or any other rights granted with respect to Intellectual Property in the ordinary course of business; (p) leases, subleases, licenses or sublicenses granted to others in the ordinary course of business which do not materially interfere with the ordinary conduct of the business; (q) landlords' and lessors' statutory Liens; (r) Liens arising from precautionary Uniform Commercial Code filings regarding "true" operating leases or, to the extent permitted under this Agreement, the consignment of goods to a Borrower or a Guarantor; (s) Liens in favor of customs and revenues authorities imposed by applicable Law arising in the ordinary course of business in connection with the importation of goods; (t) restrictive covenants affecting the use to which real property may be put; provided that the covenants are complied with; (u) zoning by-laws and other land use restrictions, including, without limitation, site plan agreements, development agreements and contract zoning agreements; and (w) Liens in favor of any credit card processor arising in the ordinary course of business under the applicable credit card arrangement and solely with respect to (i) any items returned by a customer who purchased such items thereunder, (ii) any reserve accounts established pursuant thereto or (iii) set off rights in favor of the applicable credit card processor solely relating to any payments due to any Borrower thereunder.

“**Person**” means any individual, sole proprietorship, partnership, joint venture, limited liability company, trust, unincorporated organization, association, corporation, government or any agency or political division thereof, or any other entity.

“**Plan**” means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained by any Loan Party or any such plan to which any Loan Party (or with respect to any plan subject to Section 412 or 430 of the Code or Section 302 or Title IV of ERISA, any ERISA Affiliate) is required to contribute.

“**Pledged Equity**” means the Equity Interests listed on Sections 20 and 41 of the Information Certificates, together with any other Equity Interests, certificates, options, or rights or instruments of any nature whatsoever in respect of the Equity Interests of any Person that may be issued or granted to, or held by, any Loan Party while this Agreement is in effect, and including, without limitation, to the extent attributable to, or otherwise related to, such pledged Equity Interests, all of such Loan Party’s (a) interests in the profits and losses of each Issuer, (b) rights and interests to receive distributions of each Issuer’s assets and properties, and (c) rights and interests, if any, to participate in the management or each Issuer related to such pledged Equity Interests.

“**Pro Rata Share**” means, with respect to a Lender’s obligation to make (I) all or a portion of the Revolving Loans, with respect to such Lender’s right to receive payments of interest, fees, and principal with respect to the Revolving Loans, and with respect to all other computations and other matters related to the Revolving Loan Commitments or the Revolving Loans, the percentage obtained by dividing (x) the Revolving Loan Exposure of such Lender by (y) the aggregate Revolving Loan Exposure of all Lenders and (II) all or a portion of the Term Loan, with respect to such Lender’s right to receive payments of interest, fees, and principal with respect to the Term Loan, and with respect to all other computations and other matters related to the Term Loan Commitments or the Term Loan, the percentage obtained by dividing (x) the Term Loan Commitment of such Lender by (y) the aggregate Term Loan Commitment of all Lenders.

“**Protective Advances**” has the meaning set forth in Section 1.3.

“**Recipient**” means any Agent, any Lender, any Participant, or any other recipient of any payment to be made by or on account of any Obligation of any Loan Party under this Agreement or any other Loan Document, as applicable.

“**Register**” has the meaning set forth in Section 10.9(a).

“**Released Parties**” has the meaning set forth in Section 6.1.

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

“**Reserves**” has the meaning set forth in Section 1.2.

“Restricted Accounts” means Deposit Accounts (a) established and used (and at all times will be used) solely for the purpose of paying current payroll obligations (including payroll, payroll taxes and other employee wage payments) of Loan Parties (and which do not (and will not at any time) contain any deposits other than those necessary to fund current payroll, payroll taxes and other employee wage payments), in each case in the ordinary course of business, or (b) maintained (and at all times will be maintained) solely in connection with an employee benefit plan, but solely to the extent that all funds on deposit therein are solely held for the benefit of, and owned by, employees (and will continue to be so held and owned) pursuant to such plan.

“Required Lenders” means, at any time, Lenders having or holding at least 50.1% of the aggregate Revolving Loan Exposure of all Lenders, *provided* that (x) if there are less than three (3) unaffiliated Lenders, Required Lenders shall mean all Lenders, and (y) the Revolving Commitment of, and the portion of the liabilities held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“Revolving Loans” has the meaning set forth in Section 1.1(a).

“Revolving Loan Commitment” means, with respect to each Lender, its Revolving Loan Commitment, and with respect to all Lenders, their Revolving Loan Commitments, in each case as such Dollar amounts are set forth beside such Lender’s name under the applicable heading on Schedule A to the Agreement or in the Assignment and Acceptance pursuant to which such Lender became a Lender under the Agreement, as such amounts may be reduced or increased from time to time pursuant to assignments made in accordance with the provisions of Section 10.8 of this Agreement; *provided* that the aggregate amount of the Revolving Loan Commitments shall in no event exceed the Total Revolving Loan Commitments.

“Revolving Loan Exposure” means, with respect to any Lender, as of any date of determination (a) prior to the termination of the Revolving Loan Commitments, the amount of such Lender’s Revolving Loan Commitment, and (b) after the termination of the Revolving Loan Commitments, the aggregate outstanding principal amount of the Revolving Loans of such Lender.

“Scheduled Maturity Date” means the date set forth in Section 6 of Schedule A.

“Securities Act” means the Securities of Act of 1933, as amended.

“Seller” means Synacor, Inc., a Minnesota corporation, together with its successors and permitted assigns.

“Seller Debt Documents” means, collectively, (i) the Seller Note and (ii) all other instruments, agreements and documents executed in connection therewith.

“Seller Debt Note” means the Secured Promissory Note dated as of the date hereof executed by iMedia, Portal and Seller.

“Seller Debt Permitted Indebtedness” means the Indebtedness evidenced by the Seller Debt Documents in an aggregate principal amount outstanding at any time not to exceed \$10,000,000.

“Seller Debt Permitted Liens” means, collectively all Liens in favor of the Seller Debt Lenders securing the Seller Debt Permitted Indebtedness.

“Senior Debt” means the outstanding principal amount of all Revolving Loans and issued and outstanding Letters of Credit under this Agreement and the outstanding principal balance of the Term Debt Permitted Indebtedness.

“**Senior Net Leverage Ratio**” means, as of the last day of any fiscal quarter of Borrowers, the ratio of (i) (a) Senior Debt as of the last day of any fiscal quarter of Borrowers *minus* (b) the total cash on deposit in the Borrowers’ Deposit Accounts (other than Restricted Accounts) as of the last day of such fiscal quarter *to* (ii) Borrowers’ Consolidated Adjusted EBITDA as publicly reported by the Borrowers in their financial statements for the most recent four fiscal quarters ended as of the last day of the most recent fiscal quarter then ended.

“**Settlement Date**” means Friday of each week (or if any Friday is not a Business Day on which all Lenders are open for business, the immediately preceding Business Day on which all Lenders are open for business), provided that, Agent, in its discretion, may require that the Settlement Date occur more frequently (even daily) so long as any Settlement Date chosen by Agent is a Business Day on which each Lender is open for business.

“**Slow Moving Inventory**” means Inventory that is more than five hundred forty (540) days old from date of last purchase.

“**Springing DACA Account**” has the meaning set forth in Section 4.1.

“**Springing DACA Event**” means (a) any date on which Borrower has Minimum Liquidity of less than \$10,000,000 or (b) the occurrence and continuance of an Event of Default under Section 7.1 (c) (arising from a breach of Section 5.26), Section 7.1(d), Section 7.1 (g), Section 7.1 (h) or Section 7.1(r).

“**Stated Rate**” has the meaning set forth in Section 2.5.

“**Subsidiary**” means any corporation or other entity of which a Person owns, directly or indirectly, through one or more intermediaries, more than 50% of the Equity Interests at the time of determination. Unless the context indicates otherwise, references to a Subsidiary shall be deemed to refer to a Subsidiary of Borrowers.

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

“**Term Debt Lender**” means GreenLake Real Estate Finance LLC, a California limited liability company, as lender under the Term Debt Documents, together with its successors and permitted assigns.

“**Term Debt Documents**” means, collectively, (i) the Term Debt Loan Agreement, and (ii) all other instruments, agreements and documents executed in connection therewith.

“**Term Debt Loan Agreement**” means the Promissory Note Secured By Mortgages dated as of the date hereof executed by VVI Fulfillment, EP Properties and iMedia in favor of the Term Debt Lender.

“**Term Debt Permitted Indebtedness**” means the Indebtedness evidenced by the Term Debt Documents in an aggregate principal amount outstanding at any time not to exceed the Maximum Priority Term Loan Debt (as defined in the Intercreditor Agreement).

“**Term Debt Permitted Liens**” means, collectively all Liens in favor of the Term Debt Lender securing the Term Debt Permitted Indebtedness.

“Termination Date” means the date on which all of the Obligations have been paid in full in cash (other than any contingent indemnification obligations or any Obligations which have been cash collateralized in accordance with the terms of this Agreement) and all of Agent’s lending commitments under this Agreement and under each of the other Loan Documents have been terminated.

“Total Revolving Loan Commitments” means, the Revolving Loan Commitments of all Lenders; *provided* that the aggregate amount of the Total Revolving Loan Commitments shall in no event exceed \$80,000,000.

“UCC” means, at any given time, the Uniform Commercial Code as adopted and in effect at such time in the State of New York or such other applicable jurisdiction.

“Value Pay Plan” shall mean that certain purchase plan offered by Borrowers to consumer Customers pursuant to which a consumer Customer may be approved to purchase Inventory through a payment plan of up to six (6) payments over five (5) months.

Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder (including determinations made pursuant to the exhibits hereto) shall be made, and all financial statements required to be delivered hereunder shall be prepared on a consolidated basis in accordance with GAAP consistently applied. If at any time any change in GAAP would affect the computation of any financial ratio or financial requirement set forth in any Loan Document, and either Borrowers or Agent shall so request, Lenders and Borrowers shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP; *provided*, that until so amended, (a) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (b) Borrowers shall provide to Agent financial statements and other documents required under this Agreement and the other Loan Documents which include a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Statement of Financial Accounting Standards 159 (Codification of Accounting Standards 825-10) to value any Indebtedness or other liabilities of any Loan Party at “fair value”, as defined therein.

References in this Agreement to “Articles”, “Sections”, “Annexes”, “Exhibits” or “Schedules” shall be to Articles, Sections, Annexes, Exhibits or Schedules of or to this Agreement unless otherwise specifically provided. Any term defined herein may be used in the singular or plural. “Include”, “includes” and “including” shall be deemed to be followed by “without limitation”. “Or” shall be construed to mean “and/or”. Except as otherwise specified or limited herein, references to any Person include the successors and assigns of such Person. References “from” or “through” any date mean, unless otherwise specified, “from and including” or “through and including”, respectively. Unless otherwise specified herein, the settlement of all payments and fundings hereunder between or among the parties hereto shall be made in lawful money of the United States and in immediately available funds. Time is of the essence for each performance obligation of the Loan Parties under this Agreement and each Loan Document. All amounts used for purposes of financial calculations required to be made herein shall be without duplication. References to any statute or act shall include all related current regulations and all amendments and any successor statutes, acts and regulations. References to any agreement, instrument or document (a) shall include all schedules, exhibits, annexes and other attachments thereto and (b) shall be construed as referring to such agreement, instrument or other document as from time to time amended, amended and restated, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, supplements or modifications set forth herein or in any other Loan Document). The words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights. Unless otherwise specified herein Dollar (\$) baskets set forth in the representations and warranty, covenants and event of default provisions of this Agreement (and other similar baskets) are calculated as of each date of measurement by the Dollar Equivalents thereof as of such date of measurement.

Schedule C

Reserved

Schedule D

Provide Agent and each Lender with each of the documents set forth below at the following times in form satisfactory to Agent:

Weekly	<ul style="list-style-type: none">• reporting of weekly sales, collections and credits,• a Value Pay Plan ageing summary and• updated In-transit Credit Card Receipts for the prior week.
Monthly (no later than the 20th day of each calendar month); <i>provided, that</i> any time after Borrower's Minimum Liquidity is less than \$10,000,000, such requirement shall be Weekly	<ul style="list-style-type: none">• summary Inventory reports (including breakout by category), and <p>A system generated perpetual inventory report to be submitted on a monthly basis that will capture inventory amounts by product line and related ineligibles in a form satisfactory to Siena.</p>
Monthly (no later than the 20th day of each calendar month)	<ul style="list-style-type: none">• accounts receivable ageings inclusive of reconciliations to the general ledger,• accounts payable schedules inclusive of reconciliations to the general ledger (including ageing of accrued cable access fees included in accounts payable),• Inventory reports (including breakout by category, including without limitation In-Transit Inventory),• monthly reporting of the prior month's Average FICO Score and• Borrowing Base Certificate in form and substance satisfactory to Agent (which shall be calculated as of the last day of the prior month and which shall not be binding upon Agent or restrictive of Agent's rights under this Agreement).

<p>Monthly (no later than 30 days after the end of each calendar month), as set forth in Section 5.15(c)</p>	<ul style="list-style-type: none"> • the unaudited interim financial statements of each Loan Party as of the end of such month and of the portion of such Fiscal Year then elapsed • Compliance Certificate • Updates to the Information Certificate required by Section 5.29
<p>Quarterly (no later than 45 days after the end of each calendar month), as set forth in Section 5.15(b)</p>	<ul style="list-style-type: none"> • the unaudited interim financial statements of each Loan Party as of the end of such quarter and of the portion of such Fiscal Year then elapsed • Compliance Certificate
<p>Yearly (no later than 120 days after the end of each Fiscal Year of Borrowers), as set forth in Section 5.15(a)</p>	<ul style="list-style-type: none"> • unqualified, audited financial statements of each Loan Party as of the end of such Fiscal Year • a Compliance Certificate
<p>Yearly (no later than 30 days after the end of each Fiscal Year of Borrowers), as set forth in Section 5.15(e)</p>	<ul style="list-style-type: none"> • monthly business projections for the following Fiscal Year for the Loan Parties on a consolidated basis
<p>Yearly (no later than the 120th day after the end of each Fiscal Year of Borrowers)</p>	<ul style="list-style-type: none"> • financial statements of each Guarantor, if any (to the extent such financial statements are not already consolidated with the financial statements of Borrowers).

<p>Promptly upon delivery or receipt, or request, as applicable, thereof</p>	<ul style="list-style-type: none">• copies of any and all written notices (including notices of default or acceleration), reports and other deliveries received by or on behalf of any Loan Party from or sent by or on behalf of any Loan Party to, any holder, agent or trustee with respect to any or all of the Term Debt Permitted Indebtedness and Seller Debt Permitted Indebtedness (in such holder's, agent's or trustee's capacity as such)• confirmatory assignment schedules as Agent may reasonably request• copies of Customer's invoices as Agent may reasonably request• evidence of shipment or delivery as Agent may reasonably request• such further schedules, documents and/or information regarding the Collateral as Agent may reasonably request including trial balances and test verifications.
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Schedule E

Financial Covenants

(a) **Minimum Liquidity.** Commencing with the first full month ending after the Closing Date, Borrowers shall not permit Minimum Liquidity as of the end of any fiscal month to be less than \$7,500,000.

(b) **Maximum Senior Net Leverage Ratio.** Borrowers shall maintain a Senior Net Leverage Ratio of 2.50:1:00, which shall be tested as of the last day of each fiscal quarter of Borrowers and be measured on a trailing-twelve-month basis.

PROMISSORY NOTE SECURED BY MORTGAGES

Notice to Borrower: This Loan calls for a Balloon Payment on Maturity

FOR VALUE RECEIVED, the undersigned Borrower hereby promises to pay to the order of Lender, the principal sum of the Loan Amount together with interest on the sums advanced and other sums herein referred to in this Note (the “**Loan**”).

1. **Basic Note Terms.** The following are the basic terms of this Note (and capitalized terms identified in the left column below constitute a defined term with the meaning set forth opposite such capitalized term, whether or not designated in quotes). To the extent there is any conflict between the provisions of this Section 1 and the remainder of this Note, this Section 1 shall control.

- 1.1. **Loan Date** July 30, 2021
- 1.2. **Borrower** **VVI FULFILLMENT CENTER, INC.**, a Minnesota corporation, and **EP PROPERTIES, LLC**, a Minnesota limited liability company, jointly and severally
- 1.3. **Lender** **GREENLAKE REAL ESTATE FINANCE LLC**, a California limited liability company and/or Assignees
- 1.4. **Loan Amount** TWENTY-EIGHT MILLION, FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$28,500,000.00) is hereby made available to Borrower.
- 1.5. **Fixed Rate** 10.00% per annum, which applies to all amounts advanced hereunder at anytime
- 1.6. **Maturity Date** July 31, 2024
- 1.7. **Extension Term** None
- 1.8. **Extension Fee** None
- 1.9. **Guarantor** iMedia Brands, Inc., a Minnesota corporation

1.10. Monthly Payments	Interest Payment	Tax Impound	Insurance Impound	Total Monthly Payment
	\$237,500.00	\$55,000.00	\$0.00	\$292,500.00

- 1.11. **Use of Loan Proceeds**
 - (a) The uses set forth in Section 5;
 - (b) An “**Initial Impound**” for taxes, including outstanding real estate taxes, and insurance to be calculated as of Closing;
 - (c) Those amounts approved by Lender for payments to third parties, in accordance with the Closing Statement at Closing;
 - (d) The remainder, if any, to the Borrower.

If the Loan Amount is insufficient to cover items 1.11(a) through 1.11(c) (the “**Shortfall**”) then Borrower shall deposit the Shortfall with Lender or Escrow Holder prior to Closing.

- 1.12. Origination Fee** \$997,500.00 to be paid to Lender’s Advisor Affiliate
- 1.13. Broker Fee** \$142,500.00
- 1.14. Broker** Camillia Somerville
- 1.15. Finder Fee** None
- 1.16. Finder** None
- 1.17. Exit Fee** None
- 1.18. Lockout Date for Prepayment** July 30, 2022
- 1.19. Property** Both individually and collectively, as the context may require, the following properties (as further described in Exhibit A to each Property’s respective Mortgage) (individually or collectively, as the context may require, “**Property**”):
- (a) 6700, 6740, & 6678–6698 Shady Oak Road, Eden Prairie, Minnesota 55344 (Parcel No. 01-116-22-34-0022);
 - (b) 4811 Nashville Road, Bowling Green, Kentucky 42101 (Parcel No. 041B-77B); and
 - (c) 4813 Nashville Road, Bowling Green, Kentucky 42101 (Parcel No. 041B-77D).
- 1.20. Loan Documents**
- (a) This Promissory Note Secured by Mortgages
 - (b) Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing encumbering the Property described in Section 1.19(a) above
 - (c) Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing encumbering the Property described in Section 1.19(b) above
 - (d) Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing encumbering the Property described in Section 1.19(c) above
 - (e) Leasehold Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing encumbering the leasehold estate of the Property described in Section 1.19(c) above
 - (f) Security Agreement executed by iMedia Brands, Inc., a Minnesota corporation
 - (g) Payment and Performance Guaranty executed by iMedia Brands, Inc., a Minnesota corporation
 - (h) Pledge and Security Agreement executed by the shareholder(s) of VVI Fulfillment Center, Inc., a Minnesota corporation
 - (i) Pledge and Security Agreement executed by the member(s) of EP Properties, LLC, a Minnesota limited liability company
 - (j) Acknowledgment and Control Agreement related to EP Properties, LLC, a Minnesota limited liability company

- (k) Irrevocable Stock Power executed by the shareholder(s) of VVI Fulfillment Center, Inc., a Minnesota corporation
- (l) Collateral Assignment of Deposits and Intangibles
- (m) Collateral Assignment of Contracts for each Property
- (n) Correction of Agreement
- (o) Indemnity Agreement for each Property
- (p) Subordination Agreements
- (q) Bond Pledge Agreement
- (r) Agreement of Further Assurances
- (s) Closing Statement
- (t) Amendment to the Operating Agreements and/or Bylaws of Borrower
- (u) Opinion Letter of Borrower's Counsel
- (v) Uniform Commercial Code Financing Statements
- (w) Any other documents evidencing or securing the obligations under this Note

as any such documents may be amended, restated, supplemented, or otherwise modified from time to time.

1.21. Additional Representations and Warranties None

- 1.22. Additional Covenants**
- (a) **Lease Approval and Subordination.** Borrower shall provide to Lender, for its review and written approval, copies of all new leases, lease amendments and renewals for leased spaces located on the Property before such new leases, lease amendments and renewals have been executed by the parties thereto. No new lease, lease amendment or renewal shall be effective without Lender's prior written approval. Upon the request of Lender, Borrower shall promptly provide to Lender an executed document, in a form acceptable to Lender in Lender's sole discretion, acknowledging and/or consenting to the subordination of any tenant's lease to the Mortgage.
 - (b) **Management Company.** In the event Borrower wishes to contract with a management company in connection with the operation of any facility located on the Property, Borrower shall provide to Lender, for its review and written approval, a copy of any management agreement before it has been executed by the parties thereto. Upon Lender's approval of such management agreement, Borrower shall promptly coordinate the full execution of a Collateral Assignment of Management Agreement.
 - (c) **Management and Control.** Without the prior written consent of Lender, in Lender's sole discretion:
 1. iMedia Brands, Inc. a Minnesota corporation, shall at all times be the sole shareholder of VVI Fulfillment Center, Inc., a Minnesota corporation; and
 2. iMedia Brands, Inc. a Minnesota corporation, shall at all times own 100% of the membership interest in EP Properties, LLC, a Minnesota limited liability company.

(d) **Cash Management.**

1. At Lender's election upon an Event of Default, Lender will establish one or more bank accounts as determined by Lender at Bank of America, N.A. or such other bank as Lender may elect (the "**Lock Box Accounts**") in the name of Lender or its affiliate with Borrower given revocable electronic transfer privileges. Thereafter, Borrower shall deposit (and direct any property manager to deposit) all income, rents, cash, proceeds and other revenues received by Borrower in the appropriate Lock Box Account on a daily basis as received. Borrower's tenants and credit card processor shall be irrevocably directed to deposit all proceeds and lease payments into the appropriate Lock Box Account. At Lender's request, Borrower shall enter into a contract with an armored car pick up company approved by Lender to pick up all cash on a weekly basis and deposit the cash in the appropriate Lock Box Account, if applicable.
2. So long as no Event of Default has occurred, Borrower may use its electronic transfer privileges to transfer the balance of the Lock Box Accounts into one or more operating accounts for Borrower. Borrower shall provide Lender with electronic access to view the balance of these operating accounts. Following an Event of Default, Borrower's electronic transfer privileges shall be revoked and Lender shall have the right, in its sole discretion, to selectively disburse the balance of the Lock Box Accounts to pay sums due under the Loan Documents including without limitation repayment of the principal balance of this Note and operating expenses of any of the Property that Lender desires to pay to protect its collateral.
3. Following an Event of Default, Borrower shall immediately, upon the request of Lender, direct all tenants at the Property, if any, to remit payments directly to the Lock Box Accounts or as otherwise directed by Lender. Lender shall also have the authority to so instruct the tenants at the Property and this provision of this Note shall constitute Borrower's express agreement giving Lender permission to require the tenants to pay rents as directed by Lender. Borrower hereby waives any claim whatsoever against any tenant that follows Lender's direction as to tendering rental and other payments to Lender in accordance with this provision. Nothing contained in this Section 1.22 or any other section or term or provision of this Note or any Loan Documents shall be construed to make Lender a mortgagee in possession.
4. Borrower shall be responsible for all fees of the Lock Box Accounts, which shall be deducted from the balance of the Lock Box Accounts or otherwise paid by Borrower. In connection with any assignment of the Loan, Lender shall have the right to cause the Lock Box Accounts to be transferred and entitled with such other designation as Lender may select to reflect an assignment or transfer. At Lender's request, the Lock Box Accounts may be transferred to another bank or financial institution.

- (e) **Appraisal Right.** Lender shall have the right to obtain an appraisal of the Property at Borrower's sole cost prepared by an appraiser designated or selected by Lender in Lender's sole discretion and subject to review and adjustment consistent with Lender's standard practices.

- (f) **Siena Loan**. Borrower and Guarantor shall at all times comply with the terms of that certain loan (the “**Siena Loan**”) with Siena Lending Group LLC, as agent for other lenders (in such capacity, “**Siena**”) evidenced by, among other things, Loan and Security Agreement of even date herewith (the “**Siena Loan Agreement**”) by and among Guarantor, as a borrower thereunder, and Borrower, as guarantors thereunder, as amended, restated, supplemented or otherwise modified from time to time; “**Siena Loan Documents**” means all “Loan Documents”, as such term is defined in the Siena Loan Agreement, as amended, restated, supplemented or otherwise modified from time to time.
- (g) **Bond Documents**. Borrower and Guarantor shall at all times comply with the terms of (1) that certain Taxable Industrial Revenue Bond Number R-1 issued by the Commonwealth of Kentucky and owned by VVI Fulfillment Center, Inc., a Minnesota corporation, and originally issued on December 1, 2014, that certain Memorandum of Agreement executed by the Commonwealth of Kentucky and VVI Fulfillment Center, Inc., a Minnesota corporation, and that certain Resolution No. 14-01 of the Fiscal Court of Warren County, Kentucky dated January 24, 2014 (collectively, as amended, restated, supplemented or otherwise modified from time to time, the “**Bond Documents**”); (2) that certain Payment in Lieu of Taxes Agreement executed as of 2014 by the Commonwealth of Kentucky, VVI Fulfillment Center, Inc., a Minnesota corporation, the City of Bowling Green, Kentucky, and the Board of Education of Warren County, Kentucky (as amended, restated, supplemented or otherwise modified from time to time, the “**PILOT Agreement**”); and (3) that certain Agreement of Lease dated as of December 1, 2014 between the Commonwealth of Kentucky, as lessor thereunder, and VVI Fulfillment Center, Inc., a Minnesota corporation, as lessee thereunder (as amended, restated, supplemented or otherwise modified from time to time, the “**Bond Lease**”).
- (h) **Fulfillment Contracts**. Borrower and Guarantor agree that any current and future third-party fulfillment contract (which may be a lease) that uses the Property to provide fulfillment services (e.g. that certain Master Services Agreement dated October 11, 2018 by and between AMRG Group, Inc. and iMedia Brands, Inc., as assigned to VVI Fulfillment Center, Inc. pursuant to that certain Notice and Consent to Assignment letter dated July 29, 2021) shall be entered into by one of the entities comprising Borrower, and such contract shall be pledged to Lender as additional collateral for the Loan. Borrower and Guarantor shall take any and all steps necessary and execute (or cause to be executed) any documents necessary for Lender to obtain and perfect its security interest in such contract, including but not limited to a collateral assignment document acceptable to GreenLake requiring, among other things, that payments be remitted directly to Lender upon an Event of Default.
- (i) **Equipment and Personal Property**. Borrower and Guarantor agree that any equipment and personal property obtained by Borrower, Guarantor, or an Affiliate of Borrower or Guarantor related to the ownership or operation of the Property shall be owned directly by one of the entities comprising Borrower and such equipment and/or personal property shall be pledged to Lender as collateral for the Loan. Borrower and Guarantor shall take any and all steps necessary and execute (or cause to be executed) any documents necessary for Lender to obtain and perfect its security interest in such equipment and/or personal property.

- (j) **Insurance Holdback.** As of the Loan Date, \$62,000.00 shall be placed in the “**Insurance Holdback**” to be used in accordance with this Section 1.22(j). Upon an Event of Default under this Note, Lender may use the funds contained in the Insurance Holdback in its discretion for payment of insurance premiums related to the Property or other collateral securing the Loan or the payment of principal or interest or other sums due under this Note or to cure any Event of Default. Upon repayment of the sums owed under this Note in full, Lender shall release the Insurance Holdback to Borrower or apply the Insurance Holdback to any amount due hereunder. The Insurance Holdback shall not be deducted from the loan balance for the purposes of calculation of interest at the Interest Rate or the Default Rate. The Insurance Impound need not be maintained by Lender in a separate account and shall not earn any interest. The Insurance Holdback may be commingled with Lender's other funds and Borrower further acknowledges and agrees that no trust relationship of any kind whatsoever shall exist between Borrower and Lender as to any such amounts or funds deposited and/or paid.
- (k) **Company Records.** Lender shall have, upon reasonable prior notice, access to electronic and hard copies of all books and records of any Borrower or Guarantor. Borrower and Guarantor shall provide Lender with: (1) unaudited interim financial statements for Borrower on a monthly basis, not later than 30 days after the end of each calendar month, including without limitation an income statement, balance sheet and cash flow statement; (2) annual audited financial statements of Guarantor due one hundred twenty (120) days after fiscal year end; and (3) tax returns from Borrower and Guarantor within ten (10) days after such returns have been filed.
- (l) **Confidentiality.** Borrower and Guarantor acknowledge and agree this Note and the other Loan Documents (including the terms thereof), other than matters of public record (e.g., the Mortgage), will be treated by Borrower and Guarantor, as well as the affiliates, agents, employees, attorneys, accountants, and other professionals of Borrower and Guarantor, as confidential, and will not be disclosed to anyone without the prior written consent of Lender unless such disclosure is required by Applicable Law or any reporting requirement of Borrower and/or Guarantor.

1.23. Additional Items None

1.24. Borrower Address for Notices EP Properties, LLC
 VVI Fulfillment Center, Inc.
 c/o iMedia Brands, Inc.
 6740 Shady Oak Road
 Eden Prairie, Minnesota 55344
 Attn: Chief Financial Officer
 P: 952-943-6000
 E: mwageman@imediabrands.com

With Copies to:

Faegre Drinker Biddle & Reath LLP
 2200 Wells Fargo Center
 90 South Seventh Street
 Minneapolis, Minnesota 55402
 Attn: Nicole Leimer
 P: 612-766-7000
 E: nicole.leimer@faegredrinker.com

1.25. Lender Address for Notices GreenLake Real Estate Finance LLC
 1416 El Centro Street, Suite 200
 South Pasadena, California 91030
 Attention: Kathy Kim
 P: (626) 529-1091
 E: notice@greenlakefund.com

With Copies to:

Sandberg Phoenix & von Gontard
 120 S Central Ave., Suite 1600
 Clayton, Missouri 63105
 Attn: David F. Neiers, Esq.
 P: (314) 425-4950
 E: dneiers@sandbergphoenix.com

**1.26. Other
Definitions**

- (a) “**Affiliate**” means with respect to any party: (i) any entity in which such party has an ownership or other financial interest, (ii) any entity controlled by the party, or (iii) any Person who has a substantial interest, direct or indirect, in such party, including any officer or director of such party. For the purpose of this definition, “substantial interest” shall mean the direct or indirect legal or beneficial ownership of more than 10% of any class of equity or similar interest.
- (b) “**Applicable Law**” or “**Law**” means all provisions of (a) constitutions, treaties, statutes, laws (including the common law), rules, regulations, decrees, ordinances, codes, proclamations, declarations or orders of any federal, state or local governmental authority; (b) any consents or approvals of any federal, state or local governmental authority; and (c) any orders, decisions, advisory or interpretative opinions, injunctions, judgments, awards, decrees of, or agreements with, any federal, state or local governmental authority.
- (c) “**Bankruptcy Event**” means any one or more of the following with respect to any Loan Party:
1. the commencement, filing or continuation of a voluntary case or proceeding under one or more of the insolvency laws by any Borrower seeking to take advantage of any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, debt adjustment, winding up or composition or adjustment of debts;
 2. the acknowledgment in writing by any Loan Party (other than to Lender in connection with a workout) that it is unable to pay its debts generally as they mature;
 3. the making of a general assignment for the benefit of creditors by any Borrower;
 4. the commencement, filing or continuation of an involuntary case or proceeding under one or more insolvency laws against any Borrower;
 5. the appointment of a receiver (other than a receiver appointed at the direction or request of Lender under the terms of the Loan Documents), liquidator, custodian, sequestrator, trustee or other similar officer who exercises control over any substantial part of the assets of any Loan Party; or
 6. any action by any Borrower for the purpose of effecting any of the foregoing, provided, however, that any proceeding or case under (4) or (5) above shall not be a Bankruptcy Event until the ninetieth (90th) day after filing (if not earlier dismissed) so long as such proceeding or case occurred without the consent, encouragement, active participation or the failure to object in a timely and appropriate manner by any Borrower (in which event such case or proceeding shall be a Bankruptcy Event immediately).
- (d) “**Borrower**” means the parties set forth in Section 1.2. If Borrower is comprised of more than one entity, then reference to “Borrower” shall mean a reference to each of the entities comprising Borrower individually and/or collectively, as the context may require, joint and several.

- (e) “**Business Day**” or “**business day**” means any day other than a Saturday, Sunday or other day on which banks located in the States of California or any state in which any portion of the Property is located are closed or are authorized to close.
- (f) “**Closing**” means the finalization and execution of the transaction contemplated by this Note and the Loan Documents on or around the Loan Date.
- (g) “**Closing Statement**” means that certain settlement statement prepared by the Escrow Holder and executed by Borrower in connection with the Closing.
- (h) “**Controlled Substance Activities**” means any activity, use, existence or occurrence, including without limitation, selling, distributing, possessing, consuming, cultivating, planting, harvesting, manufacturing or processing, whether for person or commercial purposes, in or, about or in connection with the Property or any portion thereof, related to (i) “marijuana” as defined under Applicable Law in the State in which the Property is located (ii) any controlled substance which would be a violation of federal law, even if permitted by state or local law or (iii) any controlled substance prohibited by Law in the state where the Property is located.
- (i) “**Default Rate**” is defined in Section 11.
- (j) “**Escrow Holder**” means the title company, escrow company or other third party that will be disbursing funds for the uses referenced in Section 1.11.
- (k) “**Event of Default**” is defined in Section 15.
- (l) “**Guarantor**” means the parties set forth in Section 1.9. If Guarantor is comprised of more than one entity, then any reference to “Guarantor” shall mean a reference to the entities comprising Guarantor unless otherwise specified both individually and/or collectively, as the context may require.
- (m) “**Hazardous Materials**” as used in this Note shall include, without limitation, petroleum and petroleum products (excluding a small quantity of gasoline used in maintenance equipment on the Property in compliance with all applicable Hazardous Materials Laws), flammable explosives, radioactive materials (excluding radioactive materials in smoke detectors), polychlorinated biphenyls, asbestos in any form that is or could become friable, paint with more than 0.5 percent lead by dry weight, hazardous waste, toxic or hazardous substances or other related materials whether in the form of a chemical, element, compound, solution, mixture or otherwise including, but not limited to, those materials defined as “hazardous substances,” “extremely hazardous substances,” “hazardous chemicals,” “hazardous materials,” “toxic substances,” “toxic chemicals,” “air pollutants,” “toxic pollutants,” “hazardous wastes,” “extremely hazardous waste”, or “restricted hazardous waste” by any Hazardous Materials Law.
- (n) “**Hazardous Materials Law**” means all laws, ordinances and regulations relating to Hazardous Materials (collectively, the “**Hazardous Materials Laws**”), including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq.; the Comprehensive Environment Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986, “CERCLA”), 42 U.S.C. Section 9601 et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651, the Emergency Planning and Community Right-to- Know Act of 1986, 42 U.S.C. Section 11001 et seq.; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 et seq.; the Safe Drinking Water Act, as amended, 42 U.S.C. Section 300f et seq.; and all comparable state and local laws, laws of other jurisdictions or orders and regulations. Hazardous Materials means all materials defined as Hazardous under applicable Hazardous Materials Laws.

- (o) “**Lender’s Advisor Affiliate**” means the Affiliate of Lender acting as Lender’s investment advisor, performing functions which include, but are not limited to, originating and/or servicing the Loan.
- (p) “**Lender’s Approval**” is defined in Section 30.
- (q) “**Loan Parties**” means Borrower and Guarantor collectively, and “**Loan Party**” means any Borrower or Guarantor.
- (r) “**Mortgage**” means, collectively, mortgages of even date hereof identified in Section 1.20(b)–(e) above encumbering the Property.
- (s) “**Person**” means any human person, any corporation, any limited liability company, any trust, any corporation or any other legal entity.
- (t) “**Prepayment Notice**” is defined in Section 8.2.
- (u) “**Tax Impound**” is defined in Section 10.

2. **Interest Rate.** The Loan shall bear interest on the full amount of the loan plus any other outstanding indebtedness of any kind whatsoever due, payable or owing under or in connection with the Loan (including without limitation, to the extent permitted by Applicable Law, any and all amounts of any kind whatsoever held back or retained or used to pay costs and expenses or used to pay fees due to Lender) from the Loan Date at the Interest Rate. The “**Interest Rate**” shall be the Fixed Rate Interest Rate or the Floating Rate Interest Rate, as determined by Lender in its sole discretion from time to time. The Interest Rate shall initially be based on the Fixed Rate and if the Lender elects to change the Interest Rate to the Floating Rate, it must provide no less than thirty (30) days prior written notice to Borrower of any such election. The “**Floating Rate**” shall be the Prime Rate (as quoted by the Wall Street Journal) plus 200 basis points as the Prime Rate shall change from time to time. The Interest Rate is in all cases, subject to Lender’s ability to charge interest at the Default Rate as provided herein. The Interest Rate shall initially be the Fixed Rate, and Lender shall provide Borrower notice of all elections to change the rate. Without limiting the generality of any terms or provisions of this Note or otherwise, Borrower hereby irrevocably authorizes and agrees that Lender may determine the Interest Rate used for this Note and/or the Loan from time to time as set forth, or provided, in this Section 2 and any other applicable section of this Note or any other Loan Documents.

3. **Payments.**

3.1. **Payment Schedule/Maturity Date.** This Note shall be payable in monthly installments of interest only at the Interest Rate, commencing with the first day of the month following the Loan Date and continuing on the first day of each and every month thereafter until the Maturity Date at which time the entire outstanding principal balance of this Note, together with accrued and unpaid interest thereon and any and all other sums or amounts of any kind whatsoever due, payable, owing or outstanding hereunder or under any other Loan Documents, shall be due and payable in full. To the extent permitted by Applicable Law, all installments of interest shall be paid in advance and shall be deemed earned by Lender when paid regardless of any pre-payment of this Note. To the extent permitted by Applicable Law, any sums not paid when due hereunder shall be compounded monthly and such unpaid balance shall bear interest at the Default Rate (as defined herein). Without limiting the generality of the foregoing or otherwise, Borrower hereby further agrees that Lender is, and shall be, under no obligation of any kind whatsoever to renew or extend the Maturity Date evidenced by, and/or set forth in, this Note and any potential future extension and/or renewal (or otherwise) of such Maturity Date evidenced by, and/or set forth in, this Note shall be at Lender's sole discretion and shall be expressly subject to, and contingent upon, Lender's credit policies, standards and procedures and its review and approval including, without limitation, appropriate loan committee review and approval.

3.2. ACH Payment. The payment shall be made by ACH or wire withdrawal from Borrower's account (such account designated from time to time under this Section 3.2 being herein referred to as the "**Account**"); it being understood that Lender is hereby instructed to automatically deduct all scheduled payments hereunder from the Account and, if Lender elects not to make such automatic deduction, it shall provide written notice to Borrower at least 10 Business Days prior to the date on which the next scheduled payment is due (and any failure to provide such written notice to Borrower hereunder upon Lender's election not to automatically deduct such scheduled payments shall mean that any failure by Borrower to make such scheduled payment shall not constitute an Event of Default hereunder until at least 10 Business Days after Borrower has received notice of Lender's election). Borrower is responsible for providing Lender with the bank account number, name and routing number for the Account. If Borrower desires to change or close the Account, Borrower shall give Lender thirty (30) days prior written notice of the change, along with the relevant information for a replacement Account and, at Lender's option, the payment provided for herein shall be made by ACH or wire withdrawal from such replacement Account. If Borrower does not provide the Account information in a timely manner or the Account does not have a sufficient balance to pay amounts when due, that shall be deemed a failure of Borrower to pay the payment when due and Borrower shall be (a) subject to a late fee pursuant to Section 11 of this Note, (b) charged Interest at the Default Rate, and (c) subject to the expiration of the applicable cure period, there shall be an Event of Default under Section 15 of this Note.

4. Conditions to Closing. Lender's obligation to fund shall be conditioned on the satisfaction of the following conditions:

4.1. Authorization. The Loan Parties that are not natural persons shall each have provided documents authorizing the execution of the applicable Loan Documents by the Person(s) who shall execute them;

4.2. Good Standing. The Loan Parties that are not natural persons each shall have provided proof that entity is validly formed and in good standing in the state in which such entities are formed;

4.3. Guarantor. Each Guarantor shall have executed a Payment and Performance Guaranty guarantying repayment of the amount due hereunder and other obligations of Borrower;

4.4. Cash Management Agreement. If required by Lender, Borrower shall have entered into a Lock Box Agreement satisfactory to Lender and taken such action as may be required to implement such arrangement as of the funding under this Note;

4.5. Title Insurance. Lender shall have received the irrevocable commitment of the title company to provide such lender's title insurance and endorsements as Lender shall request;

4.6. Funding of Shortfall. Borrower shall have funded any Shortfall under Section 1.11;

4.7. Lender Approval. Lender shall have approved in writing, in its sole and absolute discretion, its underwriting of the Loan Parties, the Property and all due diligence that Lender desires to complete with respect to the Property, Borrower and Guarantors and Lender shall have authorized closing in writing to Escrow Holder; and

4.8. Other Loan Documents. The Loan Parties shall have executed and had notarized the applicable Loan Documents and delivered them to Lender.

5. **Initial Funding.** The proceeds from this Loan shall be applied as follows:

5.1. First, for payment of the Origination Fee to Lender's Advisor Affiliate;

5.2. Second, the Brokers Fee to Broker to such referral source for arranging the Loan, if any;

5.3. Third, the Finder Fee to Finder, if any;

5.4. Fourth, if this Note is funded between the 1st day of the month and the 15th day of the month, the sum required pay Lender interest from the date of disbursement by Lender to escrow until the last day of the month, which interest, to the extent permitted by Applicable Law, shall be deemed earned when paid regardless of any pre-payment of this Note;

5.5. Fifth, if this Note is funded after the 15th day of the month, the sum required pay Lender interest from the date of disbursement by Lender to escrow until the last day of the month and interest for the entire following month, which interest, to the extent permitted by Applicable Law, shall be deemed earned when paid regardless of any pre-payment of this Note;

5.6. Sixth, to the payment of costs to cure any title issues related to any of the Property including without limitation, any monetary lien encumbering any of the Property, including without limitation delinquent taxes, mechanics' liens, income tax liens or judgment liens;

5.7. Seventh, for payment of all closing costs including but not limited to escrow, title insurance, background checks, appraisal and attorneys' fees and any other out-of-pocket costs incurred by Lender in connection with this Note;

5.8. Eighth, for the Use of Loan Proceeds as specified in Section 1.11 of the Summary of Loan.

6. **Application of Payments.** All interest on this Note shall accrue from the date of advance to escrow or disbursement to Borrower and be calculated on the basis of a thirty (30) day month and a three hundred sixty (360) day year and based on the then current principal balance of the Loan. Each installment hereunder shall be first applied to the payment of costs and expenses and late charges for which Borrower is liable hereunder, next to the payment of accrued interest and lastly to the reduction of principal. This Note shall continue to bear interest at the Interest Rate (or at the Default Rate if and so long as any default exists hereunder) until and including the date of collection.

7. **Representations and Warranties and Covenants.**

7.1. **Information Provided.** All information provided by or on behalf of Borrower and Guarantors is true, complete and accurate in all material respects and contains no omissions that would cause such information to be misleading. Borrower shall promptly provide Lender written notice of any change in information previously provided. All financial statements delivered to Lender are true and correct in all material respects, have been prepared in accordance with generally accepted accounting principles consistently applied unless otherwise noted therein, and fairly present the respective financial conditions of Borrower and Guarantor and the subjects thereof as of their respective dates. No materially adverse change has occurred in the financial conditions reflected in the financial statements, and no additional borrowings have been made by Borrower.

7.2. **No Conflict.** The execution, delivery, and performance by Borrower under this Note does not and will not contravene or conflict with (i) any, laws, order, rule, regulation, writ, injunction or decree now in effect of any government authority, or court having jurisdiction over Borrower or (ii) any contractual restriction binding on or affecting Borrower or Borrower's assets. To the best of its knowledge, Borrower is not in default with respect to any order, writ, injunction, decree or demand of any court or other governmental authority.

7.3. **Binding.** This Note creates legal, valid, and binding obligations of Borrower enforceable in accordance with its terms.

7.4. **No Action.** Except as disclosed in writing to Lender, there is no action, proceeding, or investigation pending or, to the knowledge of Borrower, threatened or affecting Borrower. There are no judgments or orders for the payment of money rendered against Borrower for an amount in excess of \$10,000.00 that have been undischarged for a period of ten (10) or more consecutive days and the enforcement of which is not stayed by reason of a pending appeal or otherwise. Borrower is not in default under any agreements which may adversely affect Borrower's ability to fulfill its obligations under this Note.

7.5. **Due Authorization.** Each entity comprising Borrower is duly formed and validly existing in good standing in the state of its formation. The execution of the Loan Documents is duly authorized, as applicable, by Borrower and Guarantor.

7.6. **OFAC.** Borrower is in compliance with the requirements of Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 23, 2001) (the "**Order**") and other similar requirements contained in the rules and regulations of the office of Foreign Assets Control, Department of the Treasury ("**OFAC**") and in any enabling legislation or other Executive Orders or regulations in respect thereof (the Order and such other rules, regulations, legislation, or orders are collectively called the "**Orders**." No Borrower (a) is listed on the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to the Order and/or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders (such lists are collectively referred to as the "**Lists**") or (b) is a Person who has been determined by competent authority to be subject to the prohibitions contained in the Orders; or (c) is owned or controlled by, or acts for or on behalf of, any Person on the Lists or any other Person who has been determined by competent authority to be subject to the prohibitions contained in the Orders.

7.7. **Proper Subdivision.** The Property is taxed separately without regard to any other real property and has been properly subdivided or entitled to exemption therefrom so that for all purposes the Property may be mortgaged, conveyed and otherwise dealt with as a separate legal lot or parcel.

7.8. **Compliance.** The construction, use and occupancy of the Property comply in full with all federal, state and local governmental requirements, restrictions of record title, and any Non-Residential Building Energy Use Disclosure Requirements. There are no Controlled Substance Activities that have or may have occurred at, in, on, or in connection with any of the Property or any portion thereof.

7.9. **Zoning.** The use of the Property by Borrower is permitted by the current zoning or is legally non-compliant. Neither the zoning nor any other right to construct or use the improvements is to any extent dependent upon or related to any real property other than the Property.

7.10. **Licenses and Approvals.** Borrower has all approvals, licenses, permits, certifications, filings or any other actions required for Borrower's occupancy and operation of the Property.

7.11. **Hazardous Materials.** There has been no: (1) violation of Hazardous Materials Laws at any of the Property; (2) lawsuit brought or threatened, settlement reached, or government order relating to Hazardous Materials in, on, under or from any of the Property or any violation of Hazardous Materials Laws; (3) use, generation, refining, manufacture, transportation, transfer, production, processing, storage, handling, or treatment of any Hazardous Materials, in on, under, from, or affecting any of the Property; or (4) administrative claim, legal enforcement action or other claim related to Hazardous Materials in, on, under or from any of the Property or any violation of Hazardous Materials Laws.

7.12. **Criminal Conviction.** Neither Borrower nor any Guarantor has been convicted of any crime.

7.13. Title. Borrower is the sole owner of the fee simple interest in the Property (it being understood that, to the extent Borrower is more than one Person, the foregoing means that one of the entities comprising Borrower is the sole owner of that portion of the Property owned by it). Notwithstanding the foregoing, as of the Loan Date, VVI Fulfillment Center, Inc., a Minnesota corporation, holds the leasehold interest in the Property identified in Section 1.19(c) above pursuant to the Bond Lease and Warren County, Kentucky holds fee simple interest in the Property identified in Section 1.19(c) above pursuant to the terms of the Bond Documents and Bond Lease; provided, however, VVI Fulfillment Center, Inc., a Minnesota corporation, shall own the fee simple interest in such Property upon the termination of the Bond Documents and Bond Lease. Borrower is not aware of any claims, liens and encumbrances relating to the Property other than those shown in the preliminary title report and the proforma title policy and other liens disclosed in writing to Lender as of the Loan Date. All personal property granted as security for this Note is vested solely in Borrower, free and clear of all claims, liens and encumbrances, and the security interest of Lender in the Personal Property (as such term is defined in the Mortgage) is a first lien thereon.

7.14. Other Financing. Borrower has not received, and will not receive any other financing related to any of the Property whether secured or unsecured.

7.15. Non-Foreign Entity. Section 1445 of the Internal Revenue Code of 1986, as amended, provides a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. To inform Lender that the withholding of tax will not be required in the event of the disposition of any of the Property pursuant to the Mortgage, Borrower hereby certifies, under penalty of perjury, that Borrower is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Internal Revenue Code and regulations promulgated thereunder).

7.16. Funds for Business Purposes. Borrower represents and warrants that the proceeds are being used for business and commercial purposes and not for agricultural, personal, family, or household purposes.

7.17. Judgments. There are no outstanding judgments against Borrower or, with respect to any Guarantor, in excess of \$50,000.00.

7.18. Litigation. Other than as set forth in **Exhibit A**, attached hereto and incorporated herein by reference, there is no pending litigation against Borrower or, with respect to any Guarantor, which impacts the Property or may result in a material adverse effect on Guarantor.

7.19. Insurance Claims. Other than as set forth in **Exhibit B**, attached hereto and incorporated herein by reference, there are no outstanding insurance claims for claims against any Borrower or, with respect to any Guarantor, in excess of \$250,000.00.

7.20. Service Contracts. Borrower has service agreements (oral or written) for all services necessary for the efficient and lawful operation of the facility operated by Borrower at the Property and has previously provided all such service contracts to Lender.

7.21. Indemnity for Payment of Broker Fees. Borrower covenants and agrees at its sole cost and expense, to protect, defend, indemnify and hold Lender, its directors, officers, shareholders, employees, agents, successors, assigns and attorneys harmless from and against any and all losses, liabilities, obligations, claims, damages, penalties, causes of action, fines, costs and expenses, including without limitation, litigation costs (including, without limitation, reasonable attorneys' fees, expenses, sums paid in settlement of claims and any other such fees and expenses) related to or arising out of the payment of any broker fees related to or arising out of the transaction contemplated by this Note or other Loan Documents.

7.22. Rights With Respect to Junior Encumbrances. Any Person purporting to have or to take a junior mortgage or other lien upon the Property or any interest therein shall be subject to the rights of Lender to amend, modify, increase, vary, alter or supplement the Mortgage, this Note or any of the other Loan Documents and to extend the Maturity Date of the Indebtedness (as defined in the Mortgage) and to increase the amount of the Indebtedness and to waive or forebear the exercise of any of its rights and remedies hereunder or under any of the other Loan Documents and to release any collateral or security for the Indebtedness, in each and every case without obtaining the consent of the holder of such junior lien and without the lien or security interest of the Mortgage losing its priority over the rights of any such junior lien, subject to the terms of any intercreditor agreement between Lender and any Person.

8. Repayment & Prepayment.

8.1. Lockout Date. Before the Lockout Date, this Note may be prepaid in full (but not in part) upon payment of a prepayment premium equal to the amount of interest that would have accrued from the date of prepayment through the Lockout Date. Any prepayment that will occur within the 90-day period prior the Lockout Date or later shall require a 90 day Prepayment Notice as provided in Section 8.2.

8.2. Prepayment Notice. After the Lockout Date, this Note may be prepaid in full or in any installment greater than or equal to \$100,000 without any prepayment penalty or premium on 90 days' prior written notice from Borrower to Lender (the "**Prepayment Notice**"). If Borrower desires to prepay this Note prior to the date 90 days after the Lender's receipt of the Prepayment Notice, Borrower may do so upon payment of the interest that would have accrued from the date of prepayment through the date 90 days after the Prepayment Notice was received by Lender. If Borrower gives a Prepayment Notice and then fails to prepay the loan by the 90th day after Lender's receipt of the Prepayment Notice, then for any other prepayment, another Prepayment Notice shall be required and the provisions of this Section shall apply. If Borrower gives a Prepayment Notice and then later determines that it will not be able to prepay the loan within that 90-day period, it may rescind that notice and make a Prepayment Notice at a later date.

8.3. Intentionally omitted.

8.4. No Limitation of Remedies. Nothing in this Section 8 shall limit any Lender right or remedy arising as a result of any Event of Default.

8.5. Liquidated Damages. Borrower hereby acknowledges that the additional consideration charged for prepayment constitutes liquidated damages to compensate Lender for reinvestment costs, lost opportunity costs, and the loss by Lender of its bargained-for investment in the loan evidenced by this Note. Borrower agrees that such liquidated damages are not a penalty but are a reasonable estimate in good faith of the actual damages sustained by Lender as a result of such prepayment, which actual damages are impossible to ascertain with precision.

8.6. Payoff Demand. Lender shall provide a payoff demand upon Borrower's written request. At Lender's sole option, Lender may charge a fee of up to \$250.00 for each payoff request which sum may be added to the payoff or collected in advance at Lender's option. The \$250.00 fee shall be waived if (a) Buyer provides Lender with the escrow company contact information with an escrow number and (b) the escrow holder confirms that closing of the escrow or the payoff is scheduled for within 10 business days.

8.7. No Refund of Fees. The Origination Fee, Broker Fee, finder fee, extension fee, if any, and all other closing costs shall all be deemed earned when paid and not subject to refund, reimbursement or proration in connection with any prepayment.

9. Exit Fee. The Exit Fee, if any, shall be due and payable to Lender's Advisor Affiliate upon the Maturity Date, the acceleration of this Note or in connection with any prepayment under this Note. Following an Event of Default and acceleration of the Loan, at Lender's option, the Exit Fee may be added to the principal balance of this Note and shall accrue interest at the Default Rate. Any prepayment of principal under this Note shall first be applied to the payment of the Exit Fee. So long as there is no Event of Default, the Exit Fee shall not accrue interest.

10. Real Property Tax Impound.

10.1. Payment of Impound. Each month with the payment of the principal due under this Note, Borrower shall also deposit with Lender an impound (the "**Tax Impound**") the higher of (a) the amount specified for monthly Tax Impound amount in Section 1.10 of this Note or (b) a sum determined by Lender to be an estimate of the real property taxes (including any payments required under the PILOT Agreement) next coming due divided by the number of monthly payments that will occur until such date. Lender may revise this sum from time to time with written notice to Borrower during the term of this Note. The Tax Impound need not be maintained by Lender in a separate account and shall not earn any interest.

10.2. Borrower Pays Taxes. Borrower is responsible for the payment of the real property taxes for the Property and any payments required under the PILOT Agreement for the Property prior to delinquency. Borrower may request Lender in writing to fund sums from the Tax Impound to pay real property taxes (which request shall include copies of the applicable tax bill(s)) and any payments required under the PILOT Agreement or to reimburse Borrower for taxes and any payments required under the PILOT Agreement previously paid (which request shall include proof of payment). Lender shall fund any sums requested by Borrower within 30 days of such written request either directly to the taxing authority (or other applicable recipient) or to Borrower for payment to the taxing authority (or other applicable recipient). Borrower shall be responsible for late penalties or interest or other sums payable for late payment of real property taxes and any payments required under the PILOT Agreement resulting from Borrower's failure to timely request funds from Lender. Borrower shall be responsible for payment of any real property tax obligation and any payments required under the PILOT Agreement in excess of the amounts held in the Tax Impound. Any amount left over in the Tax Impound after payment of taxes and any payments required under the PILOT Agreement will be held by Lender for future tax periods. Once this Note has been repaid in full, Borrower shall receive a refund of any Tax Impound not credited to Borrower.

10.3. Insurance Impound. Each month with the payment of the principal due under this Note, Borrower shall also deposit with Lender an impound (the "**Insurance Impound**") equal to the amount specified as the monthly Insurance Impound in Section 1.10 of this Note. Lender may revise this sum from time to time with written notice to Borrower during the term of this Note to reflect a sum equal to the estimate of the insurance premium next coming due divided by the number of monthly payments that will occur until such date. The Insurance Impound need not be maintained by Lender in a separate account and shall not earn any interest.

10.4. Borrower Pays Insurance Premium. Borrower is responsible for the payment of all insurance premiums for the Property prior to delinquency. Provided there are sufficient funds in the Insurance Impound, Borrower may request Lender in writing to fund sums from the Insurance Impound to pay insurance premiums (which request shall include copies of the applicable invoice(s)) or to reimburse Borrower for insurance premiums previously paid (which request shall include proof of payment). Lender shall fund any sums requested by Borrower within 30 days of such written request either directly to the insurance company or to Borrower for payment to the insurance company. Borrower shall be responsible for late penalties or interest or other sums payable for late payment of insurance premiums resulting from Borrower's failure to timely request funds from Lender. Borrower shall be responsible for payment of any insurance premiums in excess of the amounts held in the Insurance Impound. Any amount left over in the Insurance Impound after payment of the insurance premiums will be held by Lender for future premium payments. Once this Note has been repaid in full, Borrower shall receive a refund of any Insurance Impound not credited to Borrower.

10.5. Tax Impound and Insurance Impound After Default. If there is any Event of Default under this Note, then Lender may use the Tax Impound and Insurance Impound in its discretion for payment of real property taxes, the payment of any payments required under the PILOT Agreement, or payment of principal or interest or other sums due under this Note or to cure any Event of Default. Upon repayment of the sums owed under this Note in full, Lender shall release the Tax Impound and Insurance Impound to Borrower or apply the Tax Impound and Insurance Impound to the amount due. The Tax Impound or other sums held by Lender for Borrower shall not be deducted from the loan balance for the purposes of calculation of interest at the Interest Rate or the Default Rate. Without limiting the generality of the foregoing or otherwise, the determination of the amount so payable and of the fractional part thereof to be deposited with Lender, so that the aggregate of such deposits shall be sufficient for this purpose, shall be made by Lender in its sole discretion. Such deposited amounts shall be held by Lender without interest and, except as otherwise provided herein, applied to the payment of the obligations in respect of which such amounts were deposited or, at Lender's sole option, to the payment of said obligations in such order or priority as Lender shall determine, on or before the respective dates on which the same or any of them would become delinquent. Such deposited amounts may also be commingled with Lender's other funds and Borrower further acknowledges and agrees that no trust relationship of any kind whatsoever shall exist between Borrower and Lender as to any such amounts or funds deposited and/or paid. If one month prior to the due date of any of the aforementioned obligations the amounts then on deposit therefor shall be insufficient for the payment of such obligation in full, Borrower within ten (10) days after demand shall deposit the amount of the deficiency with Lender. Nothing herein contained shall be deemed to affect any right or remedy of Lender under any provisions of this Note or of any statute or rule of law to pay any such amount and to add the amount so paid, together with interest at the Default Rate provided herein, to the indebtedness secured by the Mortgage or any other Loan Documents. Without limiting the generality of the foregoing or otherwise, upon the occurrence of any Event of Default under this Note, Lender, at its sole option, may apply any amounts or sums held by, or deposited with, Lender (or in Lender's possession or control) against any indebtedness of Borrower due or payable to Lender, or any obligations, indebtedness and liabilities secured, under this Note, the Mortgage, any other Loan Documents or otherwise, in such manner as Lender may determine in its sole discretion.

11. Late Charges; Default Rate. If any monthly installment of interest (or principal on the maturity date or acceleration) is not paid when due as scheduled or upon acceleration of this Note after an Event of Default, the amount due shall be increased by a late charge equal to ten percent (10%) of the amount so due but not paid. Said charge shall be assessed for each such monthly installment not paid when due and shall be due and payable with such payment without demand, and, to the extent permitted by Applicable Law, shall be fully secured by the Mortgage and other Loan Documents. The imposition or collection of a late charge from time to time shall not be in lieu of any other right or remedy of the Lender, and the failure to collect the same shall not constitute a waiver of the Lender's right to require such payment for past or future defaults. Additionally, without limiting Borrower's obligation to pay such sums, such sums (including the late charge), to the extent permitted by Applicable Law, shall be added to the principal balance of the Loan. Additionally, during the continuance of an Event of Default under this Note or any of the other Loan Documents, the interest rate on this Note, and on any judgment obtained for the collection of this Note, to the extent permitted by Applicable Law, shall be increased to a rate (the "**Default Rate**") equal to 25.0% per annum which shall be effective from the date of the Event of Default to the date of the cure. If the Event of Default continues for 30 days or longer, then, to the extent permitted by Applicable Law, the Default Rate shall be applied to this Note retroactively from the date of this Note. The late charge and the charging of interest at the Default Rate are for the purpose of defraying the expenses incurred in connection with handling and processing delinquent payments and to compensate Lender for the loss of the use of the delinquent payment and are payable in addition to any other right or remedy Lender may have. To the extent permitted by Applicable Law, unpaid late charges and interest payable at the Default Rate shall become part of the secured indebtedness and shall be added to any subsequent payments due under the Loan Documents.

12. Costs.

12.1. Costs of Collection. Borrower promises to pay, upon demand, all costs, expenses and attorneys' fees incurred by, or on behalf of, Lender in the exercise of any right or remedy (with or without litigation or arbitration), in any proceeding for the collection of any and all amounts due under this Note or the Loan, in any trustee's sale or foreclosure of the Mortgage or the realization upon any other security securing this Note, in protecting or sustaining the lien or priority of the Mortgage or said other security, or in any litigation, arbitration or other controversy arising from or connected with this Note, or any of the other Loan Documents. Said proceedings shall include, without limitation, any probate, bankruptcy, receivership, injunction, arbitration, mediation or other proceeding, or any appeal from or petition for review of any of the foregoing, in which the holder hereof appears to enforce the Loan Documents, collect this debt or protect its security for this Note. Borrower shall also pay all of Lender's costs and reasonable attorneys' fees incurred in connection with any demand, workout, settlement, compromise or other activity in which Lender engages to collect any portion of this debt not paid when due or as a result of any other default of Borrower. If a judgment is obtained thereon which includes an award of attorneys' fees, such attorneys' fees, costs and expenses shall be in such amount as the court shall deem reasonable, which judgment shall bear interest, to the extent permitted by Applicable Law, at the Default Rate from the date it is rendered to and including the date of payment to Lender.

12.2. Costs for other Transactions. To the extent permitted by Applicable Law, Lender shall have the option to add to the principal balance of this Note any unpaid costs owed to Lender relating to any transaction or prospective transaction between Lender and any Affiliate of any entity comprising Borrower or any Affiliate of any guarantor of this Note.

12.3. Attorneys' Fees. Borrower shall pay any and all attorneys' fees and costs of Lender (which attorneys may be employees of Lender) and the fees and costs of attorneys, consultants, accountants, and other experts retained by Lender in connection with any litigation, proceeding, or dispute whether arising hereunder or otherwise, in any way related to Lender's relationship with Borrower or any Guarantor, members of Borrower or any Guarantor, whether such litigation, proceeding, dispute, or cost shall arise during the term of the Loan or after repayment, satisfaction discharge, or otherwise of the obligations under the Loan and the Loan Documents. THIS SECTION 12.3 SHALL SURVIVE ANY REPAYMENT, SATISFACTION, DISCHARGE, OR OTHERWISE OF THE OBLIGATIONS UNDER THE LOAN AND THE LOAN DOCUMENTS.

13. Mortgage. This Note is secured by, among other things, the Mortgage, as defined herein.

14. Extension. Borrower shall have the options to extend the Maturity Date for a period of the Extension Term as indicated in Section 1.7, if any. The exercise of such options shall require written notice by Borrower at least 30 days prior to the then applicable Maturity Date and satisfaction of the following conditions as of the date of notice of extension and as of the Maturity Date:

14.1. Borrower shall have made all payments when due under this Note (and not within any cure periods). There shall have been no Event of Default under this Note and no event which, with the passage of time of the giving of notice would constitute an Event of Default under this Note;

14.2. There shall have been no material adverse change in the financial condition of Borrower or Guarantor, or the physical condition or value of the Property or the improvements thereon;

14.3. All property taxes, and premiums for property insurance, and general liability insurance for the Property that are due and payable (whether delinquent or not) shall have been paid;

14.4. All of the representations and warranties in any Loan Documents continue to be true accurate and complete in all respects;

14.5. Lender shall have obtained, at Borrower's sole cost and expense, (i) a title insurance endorsement insuring that the lien of the Mortgage remains a first position lien on the Property subject only to title exceptions approved by Lender;

14.6. Borrower shall have delivered to Lender's Advisor Affiliate the Extension Fee;

14.7. Borrower and Guarantor shall have executed and delivered to Lender a mortgage modification agreement, as well as any other documents, agreements and/or instruments of any kind whatsoever, required or requested by Lender in connection with any extension of the Maturity Date, which mortgage modification agreement and other documents, agreements and/or instruments shall be in form and substance satisfactory in all respects to Lender in its sole discretion; and

14.8. Borrower shall have paid (i) any and all recording fees of any kind whatsoever in connection with the recording of the mortgage modification agreement described in subsection 14.7 above, and (ii) all of Lender's out-of-pocket costs in connection with the extension, including any escrow or title fees and Lender's attorneys' fees.

15. **Defaults; Acceleration.** The occurrence of any of the following shall be deemed to be an event of default ("**Event of Default**") hereunder:

- 15.1. Borrower's failure to pay (including but not limited to, as a result of insufficient balance in any Lock Box Account or reserve) any payment of principal or interest due (plus any applicable late fee) within five (5) Business Days after due pursuant to the terms of this Note;
- 15.2. Any failure to comply with any covenant, condition or obligation under the terms of this Note;
- 15.3. Any representation or warranty under this Note or any other Loan Document was inaccurate or misleading when made or becomes inaccurate;
- 15.4. Any default under the terms of the Mortgage or other Loan Documents or any guaranty executed in connection with this Note;
- 15.5. Default in performance of any obligation in favor of Lender (whether or not related to this transaction) by any Affiliate of any entity comprising Borrower or any Affiliate of any Guarantor of this Note;
- 15.6. There is a material adverse change in the financial condition of Borrower or the physical condition of any of the Property or the improvements thereon;
- 15.7. The occurrence of any Bankruptcy Event;
- 15.8. Borrower sells any portion of any of the Property in violation of the restrictions on transfer contained in the Mortgage;
- 15.9. Borrower pays or disburses any amount to Guarantor that causes or will cause Borrower to fail to make the Monthly Payment required hereunder or otherwise be in default under any Loan Document;
- 15.10. The occurrence of any default under the Siena Loan or the Siena Loan Documents which has not been cured within any applicable grace period or express waiver in writing by Siena or the applicable lenders party to the Siena Loan Documents; provided, however, a forbearance agreement with Siena or the applicable lenders party to the Siena Loan Documents shall not be considered a waiver of any default under the Siena Loan or the Siena Loan Documents in accordance with this Section 15.10;
- 15.11. The occurrence of any default under the Bond Documents, Bond Lease, and/or the PILOT Agreement; and
- 15.12. Borrower pays a commission or other fee or compensation to an unlicensed loan broker by using any portion of the Loan Amount.

Borrower shall have the right to cure any nonmonetary Event of Default within ten (10) days after written notice from Lender of such nonmonetary Event of Default (the "**Cure Period**"). If such nonmonetary Event of Default is cured within the Cure Period, such Event of Default shall not be considered a continuing or current Event of Default.

16. **Remedies.** Upon the occurrence and during the continuance of an Event of Default, Lender may at its option, in addition to any other rights or remedies to which it may be entitled under the Loan Documents or at law or in equity:

16.1. Declare the total unpaid principal balance of the indebtedness evidenced hereby, together with all accrued but unpaid interest thereon and all other sums owing, immediately due and payable and, to the extent permitted by Applicable Law, all such amounts shall thereafter bear interest at the Default Rate. All such interest shall be paid at the time of and as a condition precedent to the curing of any default should Lender, in its sole discretion, allow such default to be cured.

16.2. Withhold any undisbursed funds or holdbacks and use them to cure the Event of Default, to offset or repay interest, principal, late fees or for any other sums due under this Note or the Loan Documents.

16.3. Withhold any holdbacks, Tax Impounds, Insurance Impounds, or any other reserves or sums held by Lender for the benefit of Borrower and use them to cure the Event of Default to offset or repay interest, principal, late fees or for any other sums due under this Note or the Loan Documents.

Furthermore, upon an Event of Default, for the purpose of preserving the Property and the operation and management of the facilities thereon, after giving such notice to Borrower and/or Guarantor as may be required by applicable law, Lender may appoint or seek appointment of a receiver for Borrower without further notice and without regard to the solvency of Borrower. All expenses incurred in connection with the appointment of such receiver, or in operating and managing the Property, shall be charged against the entity for which such receiver was appointed. TO THE EXTENT PERMITTED BY APPLICABLE LAW, BORROWER HEREBY IRREVOCABLY CONSENT TO AND WAIVE ANY RIGHT TO OBJECT TO OR OTHERWISE CONTEST THE APPOINTMENT OF A RECEIVER AS PROVIDED HEREIN.

17. Holidays. If any payment to be made by the Borrower shall otherwise become due on a day other than a Business Day, such payment shall be made on the latest preceding day which is a Business Day.

18. Usury. It is the specific intent of the Borrower and Lender that this Note bear a lawful rate of interest, and if any court of competent jurisdiction should determine that the rate herein provided for exceeds that which is statutorily permitted for the type of transaction evidenced hereby, the interest rate shall be reduced to the highest rate permitted by Applicable Law, with any excess interest theretofore collected being applied against principal or, if such principal has been fully repaid, returned to Borrower on demand. Neither this Note nor any of the other Loan Documents shall be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate greater than the maximum interest rate permitted to be charged under Applicable Law. It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply with all Applicable Laws governing the maximum rate or amount of interest payable on the Indebtedness evidenced by this Note and the other Loan Documents. If any Applicable Law limiting the amount of interest or other charges permitted to be collected from Borrower is interpreted so that any interest or other charge or amount provided for in any Loan Document, whether considered separately or together with other charges or amounts provided for in any other Loan Document, or otherwise charged, taken, reserved or received in connection with the Loan, or on acceleration of the maturity of the Loan or as a result of any prepayment by Borrower or otherwise, violates that Applicable Law, and Borrower is entitled to the benefit of that Applicable Law, that interest or charge is hereby reduced to the extent necessary to eliminate any such violation. Amounts, if any, previously paid to Lender in excess of the permitted amounts shall be applied by Lender to reduce the unpaid principal balance of the Loan without the payment of any prepayment penalty (or, if the Loan has been or would thereby be paid in full, shall be refunded to Borrower), and the provisions of this Note and any other Loan Documents immediately shall be deemed reformed and the amounts thereafter collectible under this Note and any other Loan Documents reduced, without the necessity of the execution of any new documents, so as to comply with any Applicable Law, but so as to permit the recovery of the fullest amount otherwise payable under the Loan Documents. For the purpose of determining whether any Applicable Law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all Indebtedness that constitutes interest, as well as all other charges made in connection with the Indebtedness that constitute interest, and any amount paid or agreed to be paid to Lender for the use, forbearance or detention of the Indebtedness, shall be deemed to be allocated and spread ratably over the stated term of the Loan.

19. **Renewals.** Borrower, any Guarantor of this Note and all others who may become liable for all or any part of this obligation, consent to any number of renewals or extensions of the time of payment hereof, to the release of all or any part of the security for the payment hereof and to the release of any party liable for repayment of the obligations hereunder. Any such renewals, extensions or releases may be made without notice to any of said parties and without affecting their liability.

20. **Multiple Parties.** If Borrower is comprised of more than one Person or entity, each of such Persons and entities shall be unconditionally and jointly and severally liable and obligated in any and all respects for the indebtedness evidenced hereby. A default on the part of any one Person comprising Borrower or any Guarantor of this Note shall be deemed a default on the part of each Borrower hereunder. All references to "Borrower" in the Loan Documents shall mean all entities comprising Borrower as well as each entity individually. Unless and to the extent otherwise limited by the express terms hereof, this Note is executed with recourse against the separate property of all Persons comprising Borrower who are executing this Note in their individual capacities (or as a general partner or in some other capacity causing such Person to be Personally liable). Without limiting the generality of the foregoing or otherwise, Borrower agrees that each Borrower shall be deemed to be a signatory party to this Note, the Mortgage and/or any of the other Loan Documents, effective as of the respective dates hereof or thereof, as the case may be, and that for all purposes and in all respects, each Borrower shall be jointly and severally obligated in all respects with each other Borrower as a "Borrower" or "Mortgagor" under or in connection with any of this Note, the Mortgage or any of the other Loan Documents. References to an individual Borrower contained in any of this Note, the Mortgage or any of the other Loan Documents shall be deemed to be (unless the context otherwise specifically requires) references to each Borrower, and each and every undertaking shall be their joint and several undertakings in all respects without limiting the generality of the foregoing all to secure the payment and performance of all indebtedness, obligations and liabilities hereunder or thereunder, as the case may be. Each Borrower acknowledges and agrees that, from time to time, this Note, the Mortgage or any of the other Loan Documents may be executed and delivered by one or more Borrower and that, upon such execution and delivery, any such Note, Mortgage or any of the other Loan Documents shall constitute the joint and several obligation of each Borrower. Each Borrower hereby appoints each and every other Borrower as its attorney-in-fact for the purpose of executing and delivering this Note, the Mortgage or any of the other Loan Documents on its behalf. A separate action or actions may be brought and prosecuted against either Borrower whether an action is brought against the other Borrower or whether the other Borrower is joined in any such action or actions. Each Borrower waives any right to require Lender to: (1) proceed against the other Borrower, Guarantor or any other Person liable for any of the indebtedness, obligations and/or liabilities of any kind whatsoever under or in connection with this Note, the Mortgage or any of the other Loan Documents; (2) proceed against or exhaust any security now or hereafter held in connection with any of the indebtedness, obligations and/or liabilities of any kind whatsoever under or in connection with this Note, the Mortgage or any of the other Loan Documents, including the Property; or (3) pursue any other right or remedy in Lender's power whatsoever.

21. **Waivers.** Except with respect to Borrower's right to cure defaults as provided in this Note, Borrower hereby waives presentment, demand for payment, notice of dishonor, protest, notice of nonpayment and any and all other notices and demands whatsoever. No covenant, condition, right or remedy in this Note may be waived or modified orally, by course of conduct or previous acceptance or otherwise unless such waiver or modification is specifically agreed to in writing executed by Lender. Without limiting the foregoing, no previous waiver and no failure or delay by Lender in acting with respect to the terms of this Note or any of the other Loan Documents shall constitute a waiver of any breach, default or failure of a condition under this Note, any of the other Loan Documents or any obligations contained therein or secured thereby. The undersigned further waives exhaustion of legal remedies and the right to plead any and all statutes of limitation as a defense to any demand on this Note, or to any agreement to pay the same, or to any demands secured by the Mortgage, or any other security for this Note.

22. **Integration.** This Note and the Loan Documents shall supersede any and all prior written or oral agreements related to the relationship between Borrower and Lender and shall constitute the sole agreement with respect to the Loan.

23. **Governing Law and Interpretation.** This Note shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of Minnesota (without giving effect to Minnesota's principles of conflicts of law). All sums referred to herein shall be calculated by reference to and payable in the lawful currency of the United States. This Note and all other Loan Documents and guaranties executed in connection with this Note have been reviewed and negotiated by Borrower, Lender and Guarantor at arms' length with the benefit of or opportunity to seek the assistance of legal counsel and shall not be construed against either party. The titles and captions in this Note are inserted for convenience only and in no way define, limit, extend or modify the scope or intent of this Note. Any reference to Lender in this Note shall include any successor to or assignee of Lender. Unless the context otherwise requires, singular nouns and pronouns, when used herein, shall be deemed to include the plural and vice versa, and impersonal pronouns shall be deemed to include the personal pronoun of the appropriate gender.

24. **Partial Invalidity.** If any section or provision of this Note is declared invalid or unenforceable by any court of competent jurisdiction, said determination shall not affect the validity or enforceability of the remaining terms hereof. No such determination in one jurisdiction shall affect any provision of this Note to the extent it is otherwise enforceable under the laws of any other applicable jurisdiction.

25. **Notices.** Any notice, demand or request required hereunder shall be given in writing and sent by Personal delivery, nationally recognized overnight delivery service, registered or certified mail, return receipt requested, or by facsimile or email transmission with a "hard" copy delivered within the next two (2) business days addressed as follows. Notices shall be deemed given upon receipt at the address set forth above. Notice of any change of address or of the Person to whom notices are to be sent shall be given in the manner set forth in this Section 25. Even if Borrower consists of multiple entities, the notices party or parties set forth in Section 1.24 shall be sufficient.

26. **BORROWER, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, VOLUNTARILY, INTELLIGENTLY AND INTENTIONALLY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (I) SUBMITS TO NON-EXCLUSIVE JURISDICTION OF ANY COURTS OF THE STATE OF MINNESOTA OR OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA OR ANY OTHER FEDERAL OR STATE COURT, AS LENDER MAY ELECT IN ITS SOLE DISCRETION, OVER ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE OR ANY OF THE OTHER LOAN DOCUMENTS (EACH, A "PROCEEDING"), (II) AGREES THAT ANY SUCH PROCEEDING MAY BE INSTITUTED OR BROUGHT IN ANY OF THE COURTS OF THE STATE OF MINNESOTA OR OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA, AS LENDER MAY ELECT IN ITS SOLE DISCRETION, (III) SUBMITS TO THE JURISDICTION OF SUCH COURTS, AND, (IV) TO THE FULLEST EXTENT PERMITTED BY LAW, AGREES THAT IT WILL NOT BRING ANY PROCEEDING IN ANY FORUM OTHER THAN HENNEPIN COUNTY, MINNESOTA (BUT NOTHING HEREIN SHALL AFFECT THE RIGHT OF LENDER TO BRING ANY PROCEEDING IN ANY OTHER FORUM). WITHOUT LIMITING THE GENERALITY OF THE FOREGOING OR OTHERWISE, BORROWER HEREBY KNOWINGLY, VOLUNTARILY, INTELLIGENTLY AND INTENTIONALLY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (I) WAIVES ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE OR ANY OF THE OTHER LOAN DOCUMENTS BROUGHT IN ANY SUCH COURT, (II) WAIVES ANY CLAIM THAT ANY SUCH PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE OR ANY OF THE OTHER LOAN DOCUMENTS HAS BEEN BROUGHT IN AN INCONVENIENT FORUM, AND (III) WAIVES THE RIGHT TO OBJECT, WITH RESPECT TO ANY SAID PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE OR ANY OF THE OTHER LOAN DOCUMENTS, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER BORROWER. NOTHING IN THIS NOTE OR ANY OF THE OTHER LOAN DOCUMENTS SHALL PRECLUDE LENDER FROM BRINGING A PROCEEDING IN ANY OTHER JURISDICTION NOR WILL THE BRINGING OF A PROCEEDING IN ANY ONE OR MORE JURISDICTIONS PRECLUDE THE BRINGING OF A PROCEEDING IN ANY OTHER JURISDICTION. TO THE EXTENT PERMITTED BY APPLICABLE LAW, BORROWER FURTHER CONSENTS AND AGREES TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY SUCH PROCEEDING BY REGISTERED OR CERTIFIED U.S. MAIL, POSTAGE PREPAID, TO THE BORROWER AT THE ADDRESS FOR NOTICES DESCRIBED HEREIN, AND CONSENTS AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE IN EVERY RESPECT VALID AND EFFECTIVE SERVICE (BUT NOTHING HEREIN SHALL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW).**

27. **Full Power and Authority.** Borrower has the full power and authority to execute and deliver this Note, and this Note constitutes the valid and binding obligation of Borrower, enforceable in accordance with its terms.

28. **Marketing Release.** Notwithstanding anything to the contrary contained herein or in any of the documents evidencing this Loan, Borrower acknowledges and agrees that Lender may disclose any information regarding this Loan to third parties in relation to its marketing.

29. **Time is of the Essence.** Time is of the essence in this Note.

30. **Lender's Approval.** "Lender's Approval" and words of similar import involving concepts of approval, consent or the acceptability of any document or condition shall mean the approval, consent or acceptance of Lender in its sole and absolute discretion.

31. **Successors and Assigns.** This Note shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns. Borrower shall not, without the prior written consent of Lender, assign any rights, duties or obligations hereunder.

32. **Loan Administration and Affiliates.** Borrower acknowledges and agrees that Lender shall be responsible for the administration of the Loan and shall have the power to enforce any and all remedies under the Note and/or Loan Documents on behalf of itself and any Affiliates of Lender. Borrower acknowledges and agrees that there may be certain amounts under the Note due to Affiliates of Lender pursuant to certain written agreements between Lender and Affiliates of Lender, including but not limited to all or a portion of the Origination Fee, the Exit Fee, the Extension Fee, default interest, and/or other fees, costs, and sums due under the Note.

33. **Loan Participation.** Lender's capital may be derived from various Affiliates of Lender, including but not limited to GreenLake Real Estate Fund LLC, GreenLake Real Estate Fund II, LP, and GreenLake Real Estate Fund III S.C.A. SICAV-RAIF, and, as a result thereof, Lender may sell participation interests in the Loan (and any security therefor) to such Affiliates of Lender pursuant to the terms of various agreements between Lender and Affiliates of Lender. Nothing in this Note or the Loan Documents shall limit Lender's (including its successors and assigns) right to sell or transfer the Loan or any interest in the Loan. The Loan or a partial interest in the Loan (together with this Note and the other Loan Documents) may be sold one or more times without prior written notice to Borrower.

34. **PREJUDGMENT REMEDY WAIVER; WAIVER OF JURY TRIAL.**

TO INDUCE LENDER TO ENTER INTO THE COMMERCIAL LOAN TRANSACTION EVIDENCED BY THIS NOTE, THE MORTGAGE AND THE OTHER LOAN DOCUMENTS, BORROWER ACKNOWLEDGES AND AGREES THAT THIS IS A COMMERCIAL TRANSACTION AND NOT A CONSUMER TRANSACTION, AND BORROWER KNOWINGLY, VOLUNTARILY, INTELLIGENTLY AND INTENTIONALLY WAIVES ANY RIGHT TO NOTICE AND A HEARING UNDER ANY FEDERAL OR STATE STATUTE OR STATUTES OR FOREIGN LAWS AFFECTING PREJUDGMENT REMEDIES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING OR OTHERWISE, BORROWER ACKNOWLEDGES AND AGREES THAT IN ANY ACTION UPON THIS TRANSACTION, LENDER MAY AVAIL ITSELF OF AND PURSUE ITS RIGHTS TO OBTAIN A PREJUDGMENT REMEDY IN ACCORDANCE WITH STATE OR FEDERAL LAW. BORROWER HAS BEEN ADVISED BY COUNSEL OF ITS RIGHTS WITH RESPECT TO PREJUDGMENT REMEDIES. BORROWER HEREBY KNOWINGLY, VOLUNTARILY, INTELLIGENTLY AND INTENTIONALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW ALL RIGHTS OF NOTICE, JUDICIAL HEARING OR PRIOR COURT ORDER IN CONNECTION WITH THE OBTAINING BY LENDER OF ANY PREJUDGMENT REMEDY WITH RESPECT TO THIS NOTE, THE MORTGAGE OR THE OTHER LOAN DOCUMENTS, OR PURSUANT TO ANY OTHER DOCUMENT EXECUTED BY BORROWER IN CONNECTION WITH THIS TRANSACTION, INCLUDING ANY AMENDMENTS OR EXTENSIONS HEREOF OR THEREOF. FURTHER, BORROWER WAIVES ANY REQUIREMENT OF LENDER TO POST A BOND OR ANY OTHER SECURITY, OR TO SHOW SOME EXIGENCY, IN CONNECTION WITH THE OBTAINING BY LENDER OF ANY SUCH PREJUDGMENT REMEDY. FURTHER, AND WITHOUT LIMITING THE GENERALITY OF THE FOREGOING OR OTHERWISE, IN THE EVENT LENDER SEEKS TO TAKE POSSESSION OF ANY OR ALL OF THE PROPERTY OR THE COLLATERAL BY COURT PROCESS OR OTHER METHOD AVAILABLE UNDER THE LAW, BORROWER IRREVOCABLY WAIVES ANY BOND AND ANY SURETY OR SECURITY RELATING THERETO REQUIRED BY ANY STATUTE, COURT RULE OR OTHERWISE AS AN INCIDENT TO SUCH POSSESSION, AND WAIVES ANY DEMAND FOR POSSESSION PRIOR TO THE COMMENCEMENT OF ANY SUIT OR ACTION TO RECOVER WITH RESPECT THERETO. SPECIFICALLY, BORROWER RECOGNIZES AND UNDERSTANDS THAT THE EXERCISE OF THE RIGHTS DESCRIBED ABOVE MAY RESULT IN THE ATTACHMENT OF OR LEVY AGAINST BORROWER 'S PROPERTY, AND SUCH WRIT FOR A PREJUDGMENT REMEDY WILL NOT HAVE THE PRIOR WRITTEN APPROVAL OR SCRUTINY OF A COURT OF LAW OR OTHER JUDICIAL OFFICER AND BORROWER WILL NOT HAVE THE RIGHT TO ANY NOTICE OR PRIOR HEARING WHERE BORROWER MIGHT CONTEST SUCH A PROCEDURE. THE INTENT OF BORROWER IS TO GRANT TO LENDER FOR GOOD AND VALUABLE CONSIDERATION, THE RIGHT TO OBTAIN SUCH A PREJUDGMENT REMEDY AND TO EXPRESS ITS BELIEF THAT ANY SUCH PREJUDGMENT REMEDY OBTAINED IS VALID AND CONSTITUTIONAL UNLESS A COURT OF COMPETENT JURISDICTION SHOULD DETERMINE OTHERWISE. FURTHER, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER HEREBY KNOWINGLY, VOLUNTARILY, INTELLIGENTLY AND INTENTIONALLY WAIVES DEMAND, PRESENTMENT FOR PAYMENT, PROTEST, NOTICE OF PROTEST, NOTICE OF DISHONOR, DILIGENCE IN COLLECTION, NOTICE OF NONPAYMENT OF THIS NOTE AND ANY AND ALL NOTICES OF A LIKE NATURE. FURTHER, TO THE EXTENT NOT OTHERWISE EXPRESSLY PROVIDED HEREIN, BORROWER EXPRESSLY WAIVES ALL DEFENSES BASED UPON SURETYSHIP OR IMPAIRMENT OF COLLATERAL.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH OF BORROWER AND LENDER (BY ITS ENTERING INTO THE LOAN DOCUMENTS AND ACCEPTANCE OF THIS NOTE AND THE MORTGAGE) MUTUALLY HEREBY KNOWINGLY, VOLUNTARILY, INTELLIGENTLY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE, THE MORTGAGE OR ANY OTHER LOAN DOCUMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY, INCLUDING, WITHOUT LIMITATION, ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS OR ACTIONS OF LENDER RELATING TO THE ADMINISTRATION OR ANY LOAN OR ENFORCEMENT OF THE LOAN DOCUMENTS, AND AGREE THAT NEITHER PARTY WILL SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. EXCEPT AS PROHIBITED BY LAW, BORROWER HEREBY WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER IN ANY LITIGATION ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. BORROWER CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT LENDER WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER.

BORROWER ACKNOWLEDGES THAT IT MAKES THESE WAIVERS KNOWINGLY, VOLUNTARILY, INTELLIGENTLY AND INTENTIONALLY AND ONLY AFTER CONSIDERATION OF THE RAMIFICATIONS OF THESE WAIVERS WITH ITS ATTORNEYS, AND FURTHER ACKNOWLEDGES THAT THESE WAIVERS CONSTITUTE A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN.

35. Exculpation. Borrower acknowledges, understands and agrees as follows:

35.1. The consent or approval by Lender to or of any act by Borrower requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

35.2. By accepting or approving anything required to be observed, performed or fulfilled, or to be given to Lender pursuant hereto or pursuant to the loan documents, Lender shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or representation to anyone with respect thereto by Lender.

35.3. Nothing contained herein shall be deemed or construed by the parties hereto or any third person to create a partnership or joint venture or any association between the parties other than the relationship of lender and borrower.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, this Note has been executed by each Borrower's duly authorized representative and Guarantor's duly authorized representative as of the date set forth above.

Acknowledged, agreed, and accepted by Borrower:

VVI FULFILLMENT CENTER, INC.,
a Minnesota corporation

By: /s/ Timothy Peterman
Name: Timothy Peterman
Title: CEO, Assistant Secretary

THIS DOCUMENT MUST BE NOTARIZED

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF MINNESOTA)
) §
COUNTY OF HENNEPIN)

On July 29, 2021, before me, a Notary Public, personally appeared Tim Peterman, the CEO of **VVI FULFILLMENT CENTER, INC.**, a Minnesota corporation, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he voluntarily executed the instrument in his authorized capacity for its stated purpose as the voluntary act of the CEO of **VVI FULFILLMENT CENTER, INC.**, a Minnesota corporation.

WITNESS my hand and official seal.

/s/ Kristin L. Stream
Notary Public

My Commission Expires: January 31, 2023

(Affix Seal Here)

Acknowledged, agreed, and accepted by Borrower:

EP PROPERTIES, LLC,
a Minnesota limited liability company

By: /s/ Timothy Peterman
Name: Timothy Peterman
Title: CEO, Assistant Secretary

THIS DOCUMENT MUST BE NOTARIZED

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF MINNESOTA)

) §

COUNTY OF HENNEPIN)

On July 29, 2021, before me, a Notary Public, personally appeared Tim Peterman, the CEO of **EP PROPERTIES, LLC**, a Minnesota limited liability company, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he voluntarily executed the instrument in his authorized capacity for its stated purpose as the voluntary act of the CEO of **EP PROPERTIES, LLC**, a Minnesota limited liability company.

WITNESS my hand and official seal.

/s/ Kristin L. Stream
Notary Public

My Commission Expires: January 31, 2023

(Affix Seal Here)

Acknowledged, agreed, and accepted by Guarantor with Guarantor only bound as to those terms which relate to Guarantor or Loan Parties:

IMEDIA BRANDS, INC.,
a Minnesota corporation

By: /s/ Timothy Peterman
Name: Timothy Peterman
Title: CEO, Assistant Secretary

THIS DOCUMENT MUST BE NOTARIZED

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF MINNESOTA)

) §

COUNTY OF HENNEPIN)

On July 29, 2021, before me, a Notary Public, personally appeared Tim Peterman, the CEO of **IMEDIA BRANDS, INC.**, a Minnesota corporation, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he voluntarily executed the instrument in his authorized capacity for its stated purpose as the voluntary act of the CEO of **IMEDIA BRANDS, INC.**, a Minnesota corporation.

WITNESS my hand and official seal.

/s/ Kristin L. Stream
Notary Public

My Commission Expires: January 31, 2023

(Affix Seal Here)