

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM430088

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT
<b>NATURE OF CONVEYANCE:</b>	ASSIGNMENT OF THE ENTIRE INTEREST AND THE GOODWILL
<b>SEQUENCE:</b>	1

## CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
SWISS WATCH INTERNATIONAL, INC.		03/08/2017	Corporation: DELAWARE

## RECEIVING PARTY DATA

<b>Name:</b>	WILMINGTON TRUST
<b>Street Address:</b>	50 SOUTH SIXTH STREET
<b>Internal Address:</b>	SUITE 1290
<b>City:</b>	MINNEAPOLIS
<b>State/Country:</b>	MINNESOTA
<b>Postal Code:</b>	55402
<b>Entity Type:</b>	National Association: UNITED STATES
<b>Name:</b>	PNC BANK, NATIONAL ASSOCIATION, AS AGENT
<b>Street Address:</b>	TWO TOWER CENTER BOULEVARD
<b>City:</b>	EAST BRUNSWICK
<b>State/Country:</b>	NEW JERSEY
<b>Postal Code:</b>	08816
<b>Entity Type:</b>	Association: UNITED STATES

## PROPERTY NUMBERS Total: 38

Property Type	Number	Word Mark
<b>Serial Number:</b>	85276214	
<b>Serial Number:</b>	85169383	
<b>Serial Number:</b>	78874996	YOUR PERSONAL BARGAIN HUNTER
<b>Serial Number:</b>	85013091	VENETIAN GOLD
<b>Serial Number:</b>	85196766	THESAMPLESALE.COM
<b>Serial Number:</b>	77247860	THE WORLD RUNS ON LUCIEN PICCARD TIME
<b>Serial Number:</b>	78133572	THE WATCHERY
<b>Serial Number:</b>	85801783	THE GENERAL
<b>Serial Number:</b>	85112172	THE BARGAIN ALERT!
<b>Serial Number:</b>	78218161	SWISS WATCH INTERNATIONAL
<b>Serial Number:</b>	78364789	SWISS LEGEND

TRADEMARK

Property Type	Number	Word Mark
Serial Number:	78076842	SWI
Serial Number:	85196789	STRESS-FREE PAYMENT
Serial Number:	78919555	STRATOSPHERE
Serial Number:	76091529	SMARTBARGAINS.COM
Serial Number:	78921803	SMARTBARGAINS.COM
Serial Number:	76061930	SMARTBARGAINS
Serial Number:	85457460	SAPPHITEK
Serial Number:	85047926	REDLINE
Serial Number:	76613566	NEVER PAY RETAIL
Serial Number:	85200632	NEPTUNE
Serial Number:	78226763	MILITAIRE
Serial Number:	78400369	MAGICO
Serial Number:	76218569	LUCIEN PICCARD
Serial Number:	77888251	LUCIEN PICCARD
Serial Number:	77883656	LUCIEN PICCARD
Serial Number:	78812455	LP ITALY
Serial Number:	76218596	LP
Serial Number:	73362076	LEGENDS
Serial Number:	85458665	LEGEND
Serial Number:	85548832	L E G E N D
Serial Number:	72147395	DUFONTE
Serial Number:	77923306	CW
Serial Number:	77854201	CABOCHON
Serial Number:	85774414	BEN & SONS
Serial Number:	85777786	B BEN & SONS
Serial Number:	76218570	ARNEX
Serial Number:	85482731	A_LINE

**CORRESPONDENCE DATA**

Fax Number: 2123200248

*Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.*

Phone: 4109345500

Email: moshe@lapinlegal.com

Correspondent Name: Moshe D. Lapin

Address Line 1: 300 E. Lombard St.

Address Line 2: Suite 840

Address Line 4: Baltimore, MARYLAND 21202

**NAME OF SUBMITTER:** Moshe D. Lapin

<b>SIGNATURE:</b>	/MDL/
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<b>DATE SIGNED:</b>	06/06/2017
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**Total Attachments: 118**

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**INTERCREDITOR AGREEMENT**

This INTERCREDITOR AGREEMENT (this “Agreement”) is entered into as of November 8, 2012 by and among PNC BANK, NATIONAL ASSOCIATION, as administrative agent for itself and the Revolving Lenders (as defined herein) under the Revolving Credit Agreement (as defined herein) (in such capacity and together with any successor administrative agent, the “Revolving Agent”), WILMINGTON TRUST, NATIONAL ASSOCIATION, as administrative agent for the Term Loan Lenders (as defined herein) under the Term Loan Agreement (as defined herein) (in such capacity and together with any successor administrative agent, the “Term Loan Agent” and, together with the Revolving Agent, the “Agents”) and SWISS WATCH INTERNATIONAL, INC. (formerly known as Swordfish Merger Sub, Inc.), a Delaware corporation (the “Borrower”).

**Recitals**

A. The Borrower, the Revolving Agent and the Revolving Lenders are parties to that certain Revolving Credit and Security Agreement of even date herewith (as the same may be amended, restated, supplemented or otherwise modified from time to time in accordance with the terms hereof, including any agreement governing indebtedness incurred to refinance, replace, extend, renew, refund, repay, prepay, redeem, purchase, defease or retire, or issued in exchange or replacement for, the indebtedness and other obligations thereunder, the “Revolving Credit Agreement”), pursuant to which the Revolving Lenders have agreed to make loans and extend other financial accommodations to the Borrower.

B. The Borrower, the Term Loan Agent, the Term Loan Lenders and certain other parties are parties to that certain Term Loan Credit and Security Agreement of even date herewith (as the same may be amended, restated, supplemented or otherwise modified from time to time in accordance with the terms hereof, including any agreement governing indebtedness incurred to refinance, replace, extend, renew, refund, repay, prepay, redeem, purchase, defease or retire, or issued in exchange or replacement for, the indebtedness and other obligations thereunder, the “Term Loan Agreement”), pursuant to which the Term Loan Lenders have agreed to make loans and extend other financial accommodations to the Borrower.

C. The Borrower has granted to the Agents Liens (as defined herein) against and security interests in the Collateral (as defined herein) as security for payment and performance of the Revolving Obligations and the Term Loan Obligations, respectively (each as defined herein).

D. To induce the Revolving Agent and the Revolving Lenders to enter into the Revolving Credit Agreement, and to induce the Term Loan Agent and the Term Loan Lenders to enter into the Term Loan Agreement, the Revolving Agent, on the one hand, and the Term Loan Agent, on the other hand, have each required the other to enter into this Agreement so as to set forth the relative priority of their respective Liens against and security interests in the Collateral and certain other rights, priorities and limitations on the exercise of remedies as between the Revolving Agent and the Revolving Claimholders (as defined herein), on the one hand, and the Term Loan Agent and the Term Loan Claimholders (as defined herein), on the other hand.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained and other good and valuable consideration, the existence and sufficiency of which is expressly recognized by all of the parties hereto, the parties agree as follows.

1. DEFINITIONS.

Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in Appendix A hereto. In the absence of such definitions, any other capitalized terms used and not otherwise defined herein will have the meanings ascribed thereto by the Uniform Commercial Code to the extent the same are defined therein.

2. INTERCREDITOR AGREEMENTS.

2.1 Lien Priorities. Notwithstanding the date, manner or order of perfection of the security interests and Liens granted to the Revolving Agent and the Term Loan Agent, and notwithstanding any provisions of the Uniform Commercial Code or any applicable law or decision or the Revolving Loan Documents or the Term Loan Documents, or whether either the Revolving Agent or the Term Loan Agent holds possession of all or any part of the Collateral, the following, as between the Revolving Agent and the Revolving Claimholders, on the one hand, and the Term Loan Agent and the Term Loan Claimholders, on the other hand, shall be the relative priority of the security interests and Liens of the Revolving Agent, on the one hand, and the Term Loan Agent, on the other hand, in the Collateral:

(a) the Revolving Agent shall have a first and prior security interest in the Revolving Credit Priority Collateral, and the Term Loan Agent shall have a second and subordinate security interest in the Revolving Credit Priority Collateral; and

(b) the Term Loan Agent shall have a first and prior security interest in the Term Loan Priority Collateral, and the Revolving Agent shall have a second and subordinate security interest in the Term Loan Priority Collateral.

The priorities of the Liens provided in this Section 2.1 shall not be altered or otherwise affected by any amendment, modification, supplement, extension, renewal, restatement, replacement, refunding or refinancing of the Revolving Loan Documents and/or the Revolving Obligations or the Term Loan Documents and/or the Term Loan Obligations, nor by any action or inaction which the Revolving Agent and/or any Revolving Claimholder or the Term Loan Agent and/or any Term Loan Claimholder may take or fail to take in respect of the Collateral. The Revolving Agent, for itself and on behalf of each Revolving Claimholder, agrees that no Revolving Claimholder shall contest or support any other Person in contesting, in any proceeding (including, without limitation, any Insolvency Proceeding), the validity, extent, perfection, priority or enforceability of any security interest in the Term Loan Priority Collateral or the other Collateral (to the extent permitted under Section 2.2(b)) granted to the Term Loan Agent to secure the Term Loan Obligations. The Term Loan Agent, for itself and on behalf of each Term Loan Claimholder, agrees that no Term Loan Claimholder shall contest or support any other Person in contesting, in any proceeding (including, without limitation, any Insolvency Proceeding), the validity, extent, perfection, priority or enforceability of any security interest in the Revolving Credit Priority Collateral or in other Collateral (to the extent permitted under

Section 2.2(a)) granted to the Revolving Agent to secure the Revolving Obligations. Notwithstanding any failure by either the Revolving Agent, on the one hand, or the Term Loan Agent, on the other hand, to perfect its security interests in the Collateral or any avoidance, invalidation or subordination by any third party or court of competent jurisdiction of the security interests in the Collateral granted to the Revolving Agent or the Term Loan Agent, the priority and rights as between the Liens of the Revolving Agent, on the one hand, and the Liens of the Term Loan Agent, on the other hand, shall be as set forth herein.

## 2.2 New Liens.

(a) Limitation on Collateral for Revolving Claimholders. Subject to Section 3, until all Term Loan Obligations shall have been Paid in Full, (i) the Revolving Agent agrees that neither the Revolving Agent nor any other Revolving Claimholder shall acquire or hold any Lien on any assets of the Borrower (or any subsidiary thereof) that constitute Term Loan Priority Collateral to secure any Revolving Obligations which assets are not also subject to the Lien of the Term Loan Agent under the Term Loan Documents, and (ii) the Borrower agrees not to grant any Lien on any of its assets, or permit any of its subsidiaries to grant a Lien on any of its assets that constitute Term Loan Priority Collateral, in favor of the Revolving Agent or the other Revolving Claimholders unless it, or such subsidiary, has granted a similar Lien on such assets in favor of the Term Loan Agent under the Term Loan Documents. If any Revolving Claimholder shall nonetheless acquire any Lien on any assets that constitute Term Loan Priority Collateral of the Borrower or any of its subsidiaries to secure the Revolving Obligations, which assets are not also subject to a Lien in favor of the Term Loan Agent to secure the Term Loan Obligations, then such Revolving Claimholder shall, without the need for any further consent of any other Person and notwithstanding anything to the contrary in any Revolving Loan Document, also hold and be deemed to have held such Lien and security interest for the benefit of the Term Loan Agent as security for the Term Loan Obligations subject to the priorities set forth herein, with any amounts received in respect thereof subject to distribution and turnover hereunder to the extent otherwise required hereunder (subject to the priorities set forth herein).

(b) Limitation on Collateral for Term Loan Claimholders. Subject to Section 3, until the Revolving Obligations shall have been Paid In Full, (i) the Term Loan Agent agrees that neither the Term Loan Agent nor any other Term Loan Claimholder shall acquire or hold any Lien on any assets of the Borrower (or any subsidiary thereof) that constitute Revolving Credit Priority Collateral to secure any Term Loan Obligations which assets are not also subject to the Lien of the Revolving Agent under the Revolving Loan Documents, and (ii) the Borrower agrees not to grant any Lien on any of its assets, or permit any of its subsidiaries to grant a Lien on any of its assets, that constitute Revolving Credit Priority Collateral in favor of the Term Loan Agent or the other Term Loan Claimholders unless it, or such subsidiary, has granted a similar Lien on such assets in favor of the Revolving Agent under the Revolving Loan Documents. If any Term Loan Claimholder shall nonetheless acquire any Lien on any assets that constitute Revolving Credit Priority Collateral of the Borrower or any of its subsidiaries to secure the Term Loan Obligations, which assets are not also subject to a Lien in favor of the Revolving Agent to secure the Revolving Obligations, then such Term Loan Claimholder shall,



without the need for any further consent of any other Person and notwithstanding anything to the contrary in any Term Loan Document, also hold and be deemed to have held such Lien and security interest for the benefit of the Revolving Agent as security for the Revolving Obligations subject to the priorities set forth herein, with any amounts received in respect thereof subject to distribution and turnover hereunder to the extent otherwise required hereunder (subject to the priorities set forth herein).

### 2.3 Enforcement Actions.

(a) Upon the occurrence and during the continuance of an Event of Default under and as defined in the Revolving Loan Documents, the Revolving Agent may, at its option, take and continue any Enforcement Action with respect to the Revolving Obligations and, subject to the terms of this Agreement, the Revolving Credit Priority Collateral (but, except as provided in Section 2.3(f) and (g), at no time prior to the Payment In Full of the Term Loan Obligations may it take any such actions with respect to any of the Term Loan Priority Collateral). The Revolving Agent shall use commercially reasonable efforts to provide at least five (5) Business Days' prior written notice to the Term Loan Agent in the event that the Revolving Agent takes any Enforcement Action (other than in Exigent Circumstances or upon the Borrower's or any Obligor's becoming subject to an Insolvency Proceeding), but shall have no liability for failing to do so. Until the Revolving Obligations have been Paid In Full, the Term Loan Agent shall not (i) take, or support any other Person in taking, any Enforcement Action with respect to the Revolving Credit Priority Collateral except as provided in Section 2.3(f) and (g) or (ii) other than to enforce any rights of the Term Loan Agent expressly set forth herein, contest, protest or object, or support any other Person in contesting, protesting or objecting, to any Enforcement Action brought by or otherwise taken by the Revolving Agent with respect to the Revolving Obligations or the Revolving Credit Priority Collateral.

(b) The Revolving Agent's rights with respect to the Revolving Credit Priority Collateral shall include the right to release any or all of such Revolving Credit Priority Collateral from its security interest therein and the security interest of the Term Loan Agent therein (without any further action on the part of the Term Loan Agent) in connection with any sale, lease, exchange, transfer or other disposition of such Revolving Credit Priority Collateral:

(i) by the Revolving Agent during the continuance of an Enforcement Action;

(ii) permitted under the terms of both the Revolving Loan Documents and the Term Loan Documents; or

(iii) by the Borrower or any Obligor if the Revolving Agent releases any of its Liens on any part of such Collateral in connection with any other commercially reasonable sale, lease, exchange, transfer or other disposition;

provided in each case that all Net Cash Proceeds therefrom (net of any amounts allocated or carved out for professional fees or expenses, which amounts shall not be deemed to be received by the Revolving Agent or applied to the Revolving Obligations) are applied in accordance with Section 2.4. Without limiting the foregoing, if the Revolving Agent shall determine, in connection with any such sale or other disposition of any Revolving Credit Priority Collateral that the release of its security interest and the security interest of the Term Loan Agent in any such Revolving Credit Priority Collateral in connection with any such sale or other disposition is necessary or advisable, the Term Loan Agent shall execute and deliver such release documents and instruments and shall take such further actions as the Revolving Agent shall reasonably request. Solely in the event and to the extent that the Term Loan Agent fails to do so in accordance with the terms of this Agreement within five (5) Business Days after the Revolving Agent's request therefor, the Term Loan Agent hereby appoints the Revolving Agent and any officer or duly authorized Person of the Revolving Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power of attorney in the place and stead of the Term Loan Agent, and in the name of the Term Loan Agent or in the Revolving Agent's own name, from time to time, as determined in the Revolving Agent's reasonable discretion, for the purposes of carrying out the terms of this Section 2.3(b), to take any and all appropriate action and to execute and deliver any and all documents and instruments as may be necessary or desirable to accomplish the purposes of this Section 2.3(b), including, without limitation, any financing or termination statements, releases, endorsements, assignments or other documents or instruments of transfer (which appointment, being coupled with an interest, is irrevocable). The Term Loan Agent hereby ratifies all that said attorneys shall do or cause to be done under this Section 2.3(b). Upon the Payment In Full of the Revolving Obligations, any remaining Net Cash Proceeds of the Revolving Credit Priority Collateral shall be for the benefit of and be promptly paid over to the Term Loan Agent for application in accordance with the terms of the Term Loan Documents and, after Payment In Full of the Term Loan Obligations, any remaining Net Cash Proceeds of the Revolving Credit Priority Collateral shall revert to the Revolving Agent to the extent of any remaining Revolving Obligations, then to the Term Loan Agent to the extent of any remaining Term Loan Obligations and then to the Borrower.

(c) Upon the occurrence and during the continuance of an Event of Default under and as defined in the Term Loan Documents, the Term Loan Agent may, at its option, take and continue any Enforcement Action with respect to the Term Loan Obligations and the Term Loan Priority Collateral (but, except as provided in Section 2.3(f) and (g), at no time prior to the Payment In Full of the Revolving Obligations may it take any such actions with respect to any of the Revolving Credit Priority Collateral). The Term Loan Agent shall use commercially reasonable efforts to provide at least five (5) Business Days' prior written notice to the Revolving Agent in the event that the Term Loan Agent takes any Enforcement Action (other than in Exigent Circumstances or upon the Borrower's or any Obligor's becoming subject to an Insolvency Proceeding), but shall have no liability for failing to do so. Until the Term Loan Obligations have been Paid In Full, the Revolving Agent shall not (i) take, or support any other Person in taking, any Enforcement Action with respect to the Term Loan Priority Collateral, except as provided in Section 2.3(f) and (g) or (ii) other than to enforce any rights of the Revolving

Agent expressly set forth herein, contest, protest or object, or support any other Person in contesting, protesting or objecting, to any Enforcement Action brought by or otherwise taken by the Term Loan Agent with respect to the Term Loan Obligations or the Term Loan Priority Collateral.

(d) The Term Loan Agent's rights with respect to the Term Loan Priority Collateral shall include the right to release any or all of such Term Loan Priority Collateral from its security interest therein and any security interest of the Revolving Agent therein (without any further action on the part of the Revolving Agent) in connection with any sale, lease, exchange, transfer or other disposition of such Term Loan Priority Collateral:

(i) by the Term Loan Agent during the continuance of an Enforcement Action;

(ii) permitted under the terms of both the Revolving Loan Documents and the Term Loan Documents; or

(iii) by the Borrower or any Obligor if the Term Loan Agent releases any of its Liens on any part of such Collateral in connection with any other commercially reasonable sale, lease, exchange, transfer or other disposition:

provided that all Net Cash Proceeds therefrom (net of any amounts allocated or carved out for professional fees or expenses, which amounts shall not be deemed to be received by the Term Loan Agent or applied to the Term Loan Obligations) are applied in accordance with Section 2.4. Without limiting the foregoing, if the Term Loan Agent shall determine, in connection with any such sale or other disposition of any Term Loan Priority Collateral that the release of its security interest and any security interest of the Revolving Agent in any such Term Loan Priority Collateral in connection with any such sale or other disposition is necessary or advisable, the Revolving Agent shall execute and deliver such release documents and instruments and shall take such further actions as the Term Loan Agent shall reasonably request. Solely in the event and to the extent that the Revolving Agent fails to do so in accordance with the terms of this Agreement within five (5) Business Days after the Term Loan Agent's request therefor, the Revolving Agent hereby appoints the Term Loan Agent and any officer or duly authorized Person of the Term Loan Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power of attorney in the place and stead of the Revolving Agent, and in the name of the Revolving Agent or in the Term Loan Agent's own name, from time to time, as determined in the Term Loan Agent's reasonable discretion, for the purposes of carrying out the terms of this Section 2.3(d), to take any and all appropriate action and to execute and deliver any and all documents and instruments as may be necessary or desirable to accomplish the purposes of this Section 2.3(d), including, without limitation, any financing or termination statements, releases, endorsements, assignments or other documents or instruments of transfer (which appointment, being coupled with an interest, is irrevocable). The Revolving Agent hereby ratifies all that said attorneys shall do or cause to be done under this Section 2.3(d). Upon the Payment In Full of the Term Loan Obligations, any remaining Net Cash Proceeds of the Term Loan

Priority Collateral shall be for the benefit of and be promptly paid over to the Revolving Agent for application in accordance with the terms of the Revolving Loan Documents and, after Payment In Full of the Revolving Obligations, any remaining Net Cash Proceeds of the Term Loan Priority Collateral shall revert to the Term Loan Agent to the extent of any remaining Term Loan Obligations, then to the Revolving Agent to the extent of any remaining Revolving Obligations and then to the Borrower.

(e) In exercising rights and remedies with respect to its or their Priority Collateral, the applicable Priority Agent and its Priority Claimholders may enforce the provisions of their respective Loan Documents and exercise remedies thereunder, all in such order and in such manner as they may determine. Such exercise and enforcement shall include the rights of an agent appointed by the applicable Priority Agent and Priority Claimholders to sell or otherwise dispose of such Priority Collateral upon foreclosure, to incur expenses in connection with such sale or disposition, and to exercise all the rights and remedies of a secured creditor under the Uniform Commercial Code of any applicable jurisdiction and of a secured creditor under the Bankruptcy Code or the laws of any applicable jurisdiction.

(f) Except as specifically provided in Section 2.3(g), notwithstanding any rights or remedies available to the Term Loan Agent or any Term Loan Lender under any of the Term Loan Documents, the Revolving Agent or any Revolving Lender under any of the Revolving Loan Documents, or any Agent or other Claimholder under applicable law or otherwise, (x) prior to the Payment In Full of the Revolving Obligations, neither the Term Loan Agent nor any of the Term Loan Lenders shall, directly or indirectly, seek to foreclose, enforce or realize upon (judicially or non-judicially) their Liens on any Revolving Credit Priority Collateral or assert any interests therein (including, without limitation, by setoff or notification of account debtors) and (y) prior to the Payment In Full of the Term Loan Obligations, neither the Revolving Agent nor any of the Revolving Lenders shall, directly or indirectly, seek to foreclose, enforce or realize upon (judicially or non-judicially) any Liens on any Term Loan Priority Collateral or assert any interests therein (including, without limitation, by setoff or notification of account debtors); provided that, (A) in the case of the Term Loan Agent and the Term Loan Lenders, upon the occurrence of an Event of Default under and as defined in the Term Loan Documents and for so long as such Event of Default is continuing, subject at all times to the other provisions of this Section 2, commencing 150 days after the receipt by the Revolving Agent of the declaration of the Term Loan Agent of such Event of Default and written demand by the Term Loan Agent to the Borrower for the accelerated payment of all Term Loan Obligations (provided that such 150 day period shall be tolled for any period during which both the Revolving Agent and the Term Loan Agent are stayed by an order issued by any Insolvency Proceeding or by any other court of competent jurisdiction from exercising their respective default and enforcement rights and remedies against all or a material portion of the Collateral), the Term Loan Agent and the Term Loan Lenders may take action to enforce their Liens on the Revolving Credit Priority Collateral so long as the Revolving Agent or the Revolving Lenders are not then diligently pursuing in good faith the exercise of their Enforcement Actions against, or diligently attempting in good faith to vacate any stay of enforcement of their senior Liens on, all or a material portion of the Revolving Credit Priority Collateral (including, without limitation, commencement

of any action to foreclose their senior Liens on all or any material portion of the Revolving Credit Priority Collateral, notification of account debtors to make payments to the Revolving Agent, any action to take possession of all or any material portion of the Revolving Credit Priority Collateral, the commencement of any legal proceedings or actions against or with respect to all or any material portion of the Revolving Credit Priority Collateral or the commencement of any marketing and/or sale process for the sale of the Borrower or any of Obligor (including the engagement of investment bankers or brokers for such purpose)) and (B) in the case of the Revolving Agent and the Revolving Lenders, upon the occurrence of an Event of Default under and as defined in the Revolving Loan Documents and for so long as such Event of Default is continuing, subject at all times to the other provisions of this Section 2, commencing 150 days after the receipt by the Term Loan Agent of the declaration of the Revolving Agent of such Event of Default and written demand by the Revolving Agent to the Borrower for the accelerated payment of all Revolving Obligations (provided that such 150 day period shall be tolled for any period during which both the Revolving Agent and the Term Loan Agent are stayed by an order issued by any Insolvency Proceeding or by any other court of competent jurisdiction from exercising their respective default and enforcement rights and remedies against all or a material portion of the Collateral), the Revolving Agent and the Revolving Lenders may take action to enforce their Liens on the Term Loan Priority Collateral so long as the Term Loan Agent or the Term Loan Lenders are not then diligently pursuing in good faith the exercise of their Enforcement Actions against, or diligently attempting in good faith to vacate any stay of enforcement of their senior Liens on, all or a material portion of the Term Loan Priority Collateral (including, without limitation, commencement of any action to foreclose their senior Liens on all or any material portion of the Term Loan Priority Collateral, any action to take possession of all or any material portion of the Term Loan Priority Collateral, the commencement of any legal proceedings or actions against or with respect to all or any material portion of the Term Loan Priority Collateral or the commencement of any marketing and/or sale process for the sale of the Borrower or any Obligor (including the engagement of investment bankers or brokers for such purpose)). In the event that the Term Loan Agent or any Term Loan Lender has commenced any action to enforce its subordinated Lien on the Revolving Credit Priority Collateral to the extent permitted hereunder and is diligently pursuing such action, the Revolving Agent and the Revolving Lenders shall not take any action of a similar nature with respect to such Revolving Credit Priority Collateral. In the event that the Revolving Agent or any Revolving Lender has commenced any action to enforce its subordinated Lien on the Term Loan Priority Collateral to the extent permitted hereunder and is diligently pursuing such action, the Term Loan Agent and the Term Loan Lenders shall not take any action of a similar nature with respect to such Term Loan Priority Collateral.

(g) Notwithstanding the provisions of Sections 2.3(a) through 2.3(f), each of the Agents retains the right to:

(i) file a proof of claim or statement of interest with respect to the Revolving Obligations or the Term Loan Obligations, as applicable,

(ii) take any action in order to preserve or protect its Lien on its Priority Collateral not adverse to the other Agent's rights to exercise any Enforcement Action against its Priority Collateral,

(iii) file any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding, plan of reorganization, or other pleading made by any Person objecting in whole or in part to or otherwise seeking the disallowance, subordination, reclassification, or other adverse treatment of the claims or Liens of such Agent or any of its respective Claimholders,

(iv) in any Insolvency Proceeding, file any pleadings, objections, motions or agreements which assert rights or interests available to unsecured creditors of the Borrower or any Obligor in accordance with (and which are not inconsistent with) the terms of this Agreement,

(v) in any Insolvency Proceeding, vote on and, notwithstanding the reference to Section 510(a) of the Bankruptcy Code in Section 1129(b)(1) of the Bankruptcy Code, object to any plan of reorganization, plan of arrangement or proposal, except to the extent inconsistent with the provisions of this Agreement, and

(vi) bid for any Priority Collateral at any public or private sale thereof or cash bid for any other Collateral at any public or private sale thereof.

(h) Notwithstanding the foregoing, the Term Loan Agent acknowledges that prior to the date that the Term Loan Agent shall, through the exercise of remedies under the Term Loan Documents or otherwise, sell any of the Term Loan Priority Collateral to any unaffiliated third party (a "Third Party Purchaser"), the Revolving Agent or its representatives or invitees may, subject to the other provisions of this Section 2.3, enter upon any of the Premises and/or use any Equipment included in such Term Loan Priority Collateral at any time, and without any interference by the Term Loan Agent, to access, inspect, repossess, remove, manufacture, complete, prepare for sale, market or sell (either publicly or privately) any or all of the Revolving Credit Priority Collateral. The Revolving Agent shall not be required to pay any rent or fees to the Term Loan Agent or the Term Loan Lenders in connection with such access and use of the Term Loan Priority Collateral but shall be required to pay those amounts set forth in Section 2.3(k).

(i) In the event that the Term Loan Agent acquires control or possession of any of the Term Loan Priority Collateral or shall, through the exercise of remedies under the Term Loan Documents or otherwise, sell any of the Term Loan Priority Collateral to any Third Party Purchaser, the Term Loan Agent shall, to the extent permitted by law or any agreements with third party lessors of real property occupied by the Borrower, solely during the Disposition Period, permit the Revolving Agent and its agents or representatives (or, subject to Section 2.3(j), shall require as a condition of such sale to the Third Party Purchaser that the Third Party Purchaser agree to permit the Revolving Agent and its agents or representatives pursuant to an agreement in form and substance reasonably satisfactory to the Revolving Agent), at the Revolving Agent's option, (i) to

enter any of the Premises and/or use any Equipment of the Borrower or any Obligor (or Third Party Purchaser) constituting Term Loan Priority Collateral under such control or possession (or sold to a Third Party Purchaser) in order to access, inspect, repossess, remove, manufacture, complete, prepare for sale, market or sell (either publicly or privately), or to enforce the Revolving Agent's rights as a secured creditor in, the Revolving Credit Priority Collateral, including, without limitation, the examination and removal of Revolving Credit Priority Collateral and the examination and duplication of any Collateral under such control or possession (or sold to a Third Party Purchaser) consisting of books and records of the Borrower or any of its subsidiaries related to the Revolving Credit Priority Collateral; (ii) to use the Collateral for the purpose of manufacturing or processing raw materials or work-in-process into finished inventory; and (iii) to use any of the Collateral under such control or possession (or sold to a Third Party Purchaser) consisting of computers or other data processing Equipment related to the storage or processing of records, documents or files pertaining to the Revolving Credit Priority Collateral and to use any of the Collateral under such control or possession (or sold to a Third Party Purchaser) consisting of other Equipment to handle or dispose of any Revolving Credit Priority Collateral pursuant to the Revolving Agent's rights as a secured creditor in such Revolving Credit Priority Collateral, including any public or private sale thereof.

(j) The rights of the Revolving Agent as set forth in Section 2.3(i) shall remain in effect until the end of the Disposition Period. As used herein, the "Disposition Period" shall mean, with respect to any parcel of Real Property or piece of Equipment constituting Term Loan Priority Collateral, a period of time not to exceed 120 days from the earlier of (i) the date the Revolving Agent receives written notice from the Term Loan Agent that the Term Loan Agent has acquired control or possession of any such Term Loan Priority Collateral or has, through the exercise of remedies under the Term Loan Documents or otherwise, sold such Term Loan Priority Collateral to any Third Party Purchaser and (ii) the date the Revolving Agent first enters onto any Premises to enforce its security interests in the Revolving Credit Priority Collateral located on such Premises; provided that (w) if the Term Loan Agent has entered into an agreement for the sale of all or any portion of the Term Loan Priority Collateral in a *bona fide* arm's length transaction with a Third Party Purchaser and the Term Loan Agent provides the Revolving Agent with written notice thereof, together with a copy thereof, as duly authorized, executed and delivered by the parties thereto, the rights of the Revolving Agent with respect to such portion of the Term Loan Priority Collateral subject to such sale, as set forth in Section 2.3(i), shall only continue until the later of (I) the date that is 120 days after the closing date under such purchase agreement or (II) the date following such closing date that the proposed Third Party Purchaser shall require as a condition of such sale that possession of such Term Loan Priority Collateral be given by the Term Loan Agent to such Third Party Purchaser; (x) in no event shall the access rights of the Revolving Agent exceed the Disposition Period provided for above; and (y) notwithstanding the foregoing, the access rights of the Revolving Agent with respect to any Term Loan Priority Collateral are subject to the provisions set forth below. In connection with any such sale of any Real Property, the Term Loan Agent shall use reasonable efforts (provided that "reasonable efforts" shall not be deemed to require that the Term Loan Agent accept a purchase price that is reduced by more than a *de minimis*

amount) to cause such Third Party Purchaser not to require as a condition of the sale that possession of such Real Property be given by the Term Loan Agent to such Third Party Purchaser prior to the end of the Disposition Period provided for above; provided that if such period is not acceptable to such Third Party Purchaser, then such sale shall not be consummated until the date that is at least 120 days after the date that the Disposition Period first commenced (it being understood and agreed that the purpose of the foregoing is to provide that, in no event shall the Disposition Period and the Revolving Agent's access to the Term Loan Priority Collateral be less than 120 days). The time periods set forth herein shall be tolled during the pendency of any Insolvency Proceeding of the Borrower or any Obligor or other proceedings pursuant to which the Revolving Agent and/or the Term Loan Agent are effectively stayed from enforcing their respective rights against the Revolving Credit Priority Collateral. In no event shall the Term Loan Agent or any of the Term Loan Lenders take any action to interfere, limit or restrict the rights of the Revolving Agent or the exercise of such rights by the Revolving Agent to have access to or to use any of such Revolving Credit Priority Collateral pursuant to Section 2.3(i) prior to the expiration of such periods.

(k) During the actual occupation and use by the Revolving Agent, its agents or its representatives of (i) any Real Property or Equipment comprising Term Loan Priority Collateral during the Disposition Period permitted by Section 2.3(j), the Revolving Agent shall be obligated (A) to pay all utilities, taxes and all other maintenance and operating costs of such Premises during any such period of actual occupation and use by the Revolving Agent, but only to the extent such amounts are required to be paid and have not already been paid by the Borrower or any Obligor during the actual occupation and use of such Premises by the Revolving Agent, its agents or its representatives, (B) to pay the costs of maintaining insurance for such Premises and Equipment, substantially similar to the insurance maintained by the Borrower or any Obligor on such Premises, naming the Term Loan Agent as mortgagees, loss payees and additional insureds (as their interests may appear), but only to the extent such insurance (including the insurance of the Borrower or any Obligor) is not otherwise in effect during the actual occupation and use of such Premises and/or Equipment by the Revolving Agent, its agents or its representatives and (C) to repair at its expense any physical damage to such Premises or Equipment resulting from any act or omission of the Revolving Agent, its agents or its representatives pursuant to such access, occupancy or use of such Premises or Equipment, and to leave the Premises and Equipment in a condition substantially similar to the condition of such Premises and Equipment prior to the date of the commencement of the occupancy or use thereof by the Revolving Agent, its agents or its representatives or (ii) any leased Premises subject to a landlord waiver or other similar access agreement in favor of the Term Loan Agent, the Revolving Agent shall be obligated to pay the amounts required under such landlord waiver or other access agreement in the amount that the Term Loan Agent would otherwise be required to pay during such occupancy period by the Revolving Agent.

(l) The Revolving Agent agrees to pay, indemnify and hold harmless the Term Loan Agent, the Term Loan Lenders and any Third Party Purchaser from and against (i) any loss, liability, claim, damage or expense (including the reasonable fees and expenses of legal counsel) arising out of any claim asserted by any third party as a result



directly of any acts of gross negligence or willful misconduct by the Revolving Agent or any of its agents or representatives as determined by a final, non-appealable judgment of a court of competent jurisdiction during the period of its or their occupation or use of such Premises or Equipment as set forth in Section 2.3(i), (ii) any physical damage to Term Loan Priority Collateral caused by the Revolving Agent or its agents or representatives (other than diminution of value thereof as a result of the removal of the Revolving Credit Priority Collateral) while the Revolving Agent or its agents or representatives are using or occupying the Term Loan Priority Collateral and (iii) any loss, liability, claim, damage or expense (including the reasonable fees and expenses of legal counsel) resulting from any release of hazardous materials on any real property of the Borrower or any Obligor or arising in connection with the investigation, removal, clean-up and/or remediation of any hazardous material at such real property caused directly by the occupancy, use or control of such real property by the Revolving Agent or any of its agents or representatives; provided that, in each case, any claim with respect to any such loss, liability, claim, damage or expense shall be asserted within six months after the end of the Disposition Period; provided, further, that such six-month period shall be tolled for any claim resulting from or arising out of any latent or undiscovered loss, liability, claim, damage or expense. The Revolving Agent shall promptly repair, at the Revolving Agent's expense, any damage to any Term Loan Priority Collateral caused by the occupation and/or use thereof by the Revolving Agent or any agent or representative acting under the direction of the Revolving Agent (ordinary wear and tear and any diminution in value due to the removal of the Revolving Credit Priority Collateral excepted). In no event shall the Revolving Agent or the Revolving Lenders have any liability to the Term Loan Agent, the Term Loan Lenders or any Third Party Purchaser pursuant to this Section 2.3(l) or otherwise as a result of any condition on or with respect to the Term Loan Priority Collateral existing prior to the date of the exercise by the Revolving Agent of its rights under Section 2.3(i), and the Revolving Agent shall have no duty or liability to maintain the Term Loan Priority Collateral in a condition or manner better than that in which it was maintained prior to the access and/or use thereof by the Revolving Agent.

(m) The Revolving Agent and each Revolving Lender hereby acknowledge that, except to the extent that the Term Loan Agent or any Term Loan Lenders have taken Enforcement Actions with respect to the Revolving Credit Priority Collateral pursuant to Section 2.3(f), the Term Loan Agent and the Term Loan Lenders shall not be obligated to take any action to protect or to procure insurance with respect to any Collateral that may be located on or in the Real Property, it being understood that the Term Loan Agent and the Term Loan Lenders shall have no responsibility for loss or damage to the Revolving Credit Priority Collateral (other than as a result of the gross negligence or willful misconduct of the Term Loan Agent and/or the Term Loan Lenders or their agents, as determined by a final, non-appealable judgment of a court of competent jurisdiction) and that, as between the Claimholders, all risk of loss or damage to the Revolving Credit Priority Collateral shall remain with the Revolving Agent and the Revolving Lenders; provided that to the extent insurance obtained by the Term Loan Agent and/or the Term Loan Lenders provides coverage for risks relating to access to or use of Revolving Credit Priority Collateral, the Revolving Agent will be made an additional named insured

thereunder. Nothing in this Agreement shall affect or impair the Term Loan Agent's rights to abandon any Term Loan Priority Collateral.

(n) Without limiting any of the foregoing with respect to the Term Loan Priority Collateral, for a period of time (the "IP License Period") not to exceed 120 days from the earlier of (i) the date the Revolving Agent receives written notice from the Term Loan Agent that the Term Loan Agent has acquired control or possession of any Intellectual Property or has, through the exercise of remedies under the Term Loan Documents or otherwise, sold such Intellectual Property to any Third Party Purchaser and (ii) the date the Revolving Agent first enters onto any Premises to enforce its security interests in the Revolving Credit Priority Collateral located on such Premises (the "License Commencement Date"), the Term Loan Agent shall, to the extent permitted by law, permit the Revolving Agent and its agents or representatives at the Revolving Agent's option to use, on a nonexclusive, royalty-free basis, any of the Intellectual Property as is or may be necessary for the Revolving Agent to sell or otherwise liquidate the Revolving Credit Priority Collateral; provided that if the Term Loan Agent has entered into an agreement for the sale of all or any portion of the Intellectual Property in a *bona fide* arm's length transaction with a Third Party Purchaser and the Term Loan Agent provides the Revolving Agent with written notice thereof, together with a copy thereof, as duly authorized, executed and delivered by the parties thereto, the rights of the Revolving Agent set forth in this Section 2.3(n) shall only continue until the date that is 120 days after the License Commencement Date. Notwithstanding the foregoing, the Term Loan Agent shall use reasonable efforts (provided that "reasonable efforts" shall not be deemed to require that the Term Loan Agent accept a purchase price that is reduced by more than a *de minimis* amount) to cause such Third Party Purchaser not to require as a condition of the sale that exclusive usage of such Intellectual Property be given by the Term Loan Agent to such Third Party Purchaser prior to the end of the IP License Period provided for above. Nothing contained in this Section 2.3(n) shall be deemed an obligation or agreement by the Term Loan Agent to preserve, enforce or protect any Intellectual Property or any of the Term Loan Agent's or the Revolving Agent's rights with respect thereto.

(o) In furtherance of the Revolving Agent's rights under Section 2.3(n), the Term Loan Agent hereby grants to the Revolving Agent, during the IP License Period, a nonexclusive, irrevocable, royalty-free, worldwide license to use any and all of the Intellectual Property as is or may be necessary to sell or otherwise liquidate the Revolving Credit Priority Collateral. The Term Loan Agent (i) acknowledges and consents to the grant to the Revolving Agent by the Borrower and the Obligors on the date hereof of a continuing, limited, nonexclusive, royalty-free license for such use in the form of Exhibit A attached hereto (the "Closing Date License") and (ii) agrees that its Liens on the Term Loan Priority Collateral shall be subject to the Closing Date License. Furthermore, the Term Loan Agent agrees that, in connection with any foreclosure sale conducted by the Term Loan Agent in respect of any Intellectual Property, (x) any notice required to be given by the Term Loan Agent in connection with such foreclosure shall contain an acknowledgement that the Term Loan Agent's Lien is subject to the Closing Date License, (y) the Term Loan Agent shall deliver a copy of the Closing Date License to any purchaser at such foreclosure and provide written notice to such purchaser that the

Term Loan Agent's Lien and the purchaser's rights in such transferred Intellectual Property are subject to the Closing Date License and (z) the purchaser shall acknowledge in writing that it purchased such Intellectual Property subject to the Closing Date License.

#### 2.4 Distribution of Proceeds of Collateral.

(a) All Net Cash Proceeds resulting from the sale or other disposition of Collateral, in connection with or resulting from any Enforcement Action or distribution in a plan of reorganization or liquidation in any Insolvency Proceeding, shall be distributed as follows:

(i) if the Collateral is Revolving Credit Priority Collateral, the Net Cash Proceeds therefrom shall be distributed first to the Revolving Agent for application to the Revolving Obligations until Paid In Full, then to the Term Loan Agent for application to the Term Loan Obligations until Paid In Full, then to the Revolving Agent for application to any remaining Revolving Obligations and then to the Term Loan Agent for application to any remaining Term Loan Obligations;

(ii) if the Collateral is Term Loan Priority Collateral, the Net Cash Proceeds thereof shall be distributed to the Term Loan Agent for application to the Term Loan Obligations until Paid In Full, then to the Revolving Agent for application to the Revolving Obligations until Paid In Full, then to the Term Loan Agent for application to any remaining Term Loan Obligations and then to the Revolving Agent for application to any remaining Revolving Obligations; and

(iii) if the Collateral is Revolving Credit Priority Collateral and Term Loan Priority Collateral sold or otherwise disposed of in a single transaction or series of related transactions with respect to which the terms of such transaction do not contain an allocation of the purchase consideration between such types of Priority Collateral, then the Net Cash Proceeds thereof shall be distributed to the Agents in a manner mutually and reasonably determined by the Agents.

For purposes of this Section 2.4(a), (x) Net Cash Proceeds shall be calculated net of any amounts allocated or carved out for professional fees or expenses, which amounts shall not be deemed to be received by any Agent or applied to any obligations, (y) it is agreed that all Net Cash Proceeds resulting from an Enforcement Action by either Agent (for purposes of clarity including, without limitation, a sale or other disposition following the occurrence and during the continuance of an Event of Default under and as defined in the Revolving Credit Agreement or the Term Loan Agreement of any of the applicable Priority Collateral with respect thereto and the required release of Liens thereon by the non-Priority Agent under Sections 2.3(b)(i) or (iii) or Sections 2.3(d)(i) or (iii) of this Agreement, as applicable) when applied to (I) the Revolving Obligations shall be applied to permanently reduce the Revolving Obligations and, to the extent applied to the outstanding principal amount of the Revolving Obligations, the lending commitments of the Revolving Lenders under the Revolving Credit Agreement (it being understood that, if the revolving commitments have not then been terminated, that such payment shall be accompanied by an equivalent permanent reserve against Availability) and (II) when

applied to the Term Loan Obligations shall be applied to permanently reduce the Term Loan Obligations and (z) all applications of Net Cash Proceeds to any specified obligations shall be made in accordance with the Loan Documents governing such obligations.

(b) Until the Payment In Full of the Revolving Obligations, any Proceeds of Revolving Credit Priority Collateral which may be received by the Term Loan Agent shall be segregated and held in trust and promptly paid over to the Revolving Agent, for the benefit of the Revolving Agent and the Revolving Lenders, in the same form as received, with any necessary endorsements. If the Term Loan Agent fails to make any such endorsement or assignment, the Revolving Agent is authorized to make the same as agent for the Term Loan Agent (which authorization, being coupled with an interest, is irrevocable). For purposes of this Section 2.4(b), payments made by the Borrower or any Obligor to the Term Loan Agent or the Term Loan Lenders in respect of the Term Loan Obligations with proceeds of loans to the Borrower by the Revolving Lenders shall not be construed to constitute Proceeds of Revolving Credit Priority Collateral.

(c) Until the Payment In Full of the Term Loan Obligations, any Proceeds of Term Loan Priority Collateral which may be received by the Revolving Agent shall be segregated and held in trust and promptly paid over to the Term Loan Agent, for the benefit of the Term Loan Agent and the Term Loan Lenders, in the same form as received, with any necessary endorsements. If the Revolving Agent fails to make any such endorsement or assignment, the Term Loan Agent is authorized to make the same as agent for the Revolving Agent (which authorization, being coupled with an interest, is irrevocable). For purposes of this Section 2.4(c), payments made by the Borrower or any Obligor to the Revolving Agent or the Revolving Lenders in respect of the Revolving Obligations with proceeds of loans to the Borrower by the Term Loan Lenders shall not be construed to constitute Proceeds of Term Loan Priority Collateral.

(d) The provisions of this Section 2.4 are solely for the benefit of the Revolving Agent, on behalf of itself and the Revolving Lenders, on the one hand, and the Term Loan Agent, on behalf of itself and the Term Loan Lenders, on the other hand, and not for the benefit of any other Person.

2.5 Insurance. Unless and until the Revolving Obligations have been Paid In Full, the Revolving Agent will have the sole and exclusive right to adjust or settle any insurance policy or claim covering the Revolving Credit Priority Collateral in the event of any loss thereunder and to approve any award granted in any condemnation or similar proceeding affecting the Revolving Credit Priority Collateral. Unless the Term Loan Obligations have been Paid In Full, the Term Loan Agent will have the sole and exclusive right to adjust or settle any insurance policy or claim covering the Term Loan Priority Collateral in the event of any loss thereunder and to approve any award granted in any condemnation or similar proceeding affecting the Term Loan Priority Collateral. To the extent that an insured loss covers both Revolving Credit Priority Collateral and Term Loan Priority Collateral, then the Revolving Agent and the Term Loan Agent will work jointly and in good faith to collect, adjust and/or settle under the insurance policy, as applicable.

2.6 Certain Collateral Matters. The Revolving Agent acknowledges and agrees that to the extent that it (or its agent) retains physical possession or control of any of the Collateral (or any endorsement in respect thereof), it (or its agent) shall hold such Collateral (and endorsement) on behalf of the Term Loan Agent so that for purposes of perfecting any security interest or Lien in any Collateral it acts and holds such Collateral (and endorsement) on behalf of the Revolving Agent, the Revolving Lenders, the Term Loan Agent and the Term Loan Lenders. The Term Loan Agent acknowledges and agrees that to the extent that it (or its agent) retains physical possession or control of any of the Revolving Credit Priority Collateral (or any endorsement in respect thereof), it (or its agent) shall hold such Revolving Credit Priority Collateral (and endorsement) on behalf of the Revolving Agent so that for purposes of perfecting any security interest or Lien in any Revolving Credit Priority Collateral it acts and holds such Revolving Credit Priority Collateral (and endorsement) on behalf of the Term Loan Agent, the Term Loan Lenders, the Revolving Agent and the Revolving Lenders. Nothing in this Section 2.6 shall affect the relative priorities in and to the Revolving Credit Priority Collateral or the Term Loan Priority Collateral, all of which shall be governed by the other provisions of this Agreement.

2.7 Payments of Revolving Obligations and Term Loan Obligations. Nothing in this Agreement shall prohibit the receipt by the Revolving Agent or any other Revolving Claimholder of the required payments under the Revolving Loan Documents of interest, principal and other amounts owed in respect of the Revolving Obligations or by the Term Loan Agent or any other Term Loan Claimholder of the required payments under the Term Loan Documents of interest, principal and other amounts owed in respect of the Term Loan Obligations, in either case, so long as such receipt is not the direct or indirect result of the violation or breach by the Term Loan Agent or any other Term Loan Claimholder, on the one hand, or the Revolving Agent or any other Revolving Claimholder, on the other hand, of the terms of this Agreement.

2.8 Notices of Default. The Revolving Agent and the Term Loan Agent agree to endeavor to give to the other copies of any notice of the occurrence of an Event of Default under and as defined in the Revolving Loan Documents and the Term Loan Documents, respectively, simultaneously with the sending of such notice to the Borrower, but the failure to do so shall not affect the validity of such notice or create a cause of action against the party failing to give such notice or create any claim or right on behalf of any third party or affect the relative priorities of the Liens on the Collateral securing the Revolving Obligations or the Term Loan Obligations. The sending or receipt of such notice shall not obligate the recipient to cure such Event of Default.

2.9 Marshaling of Assets. Each Agent, on behalf of the Priority Claimholders for which they act as agent, hereby waives any and all rights to have the Priority Agent or any other Priority Claimholder marshal any portion of its Priority Collateral upon any foreclosure or other enforcement of any of the Liens held by or on behalf of the Priority Agent or any Priority Claimholder.

2.10 Certain Notices. In the event that the Revolving Agent and/or the Term Loan Agent shall be required by the Uniform Commercial Code or any other applicable law to give notice to the other of intended disposition of Collateral, such notice shall be given in accordance

with Section 7.7 hereof, and ten (10) days' notice shall be deemed to be commercially reasonable.

2.11 Books and Records. In the event that the Revolving Agent, Revolving Lenders, Term Loan Agent or Term Loan Lenders shall, in the exercise of their rights under their Loan Documents or otherwise, receive possession or control of any Books and Records of any Obligor which contain information identifying or pertaining to any Collateral in which the Revolving Agent, Revolving Lenders, the Term Loan Agent or the Term Loan Lenders (as the case may be) has been granted a Lien, such Person shall notify such other Person that they have received such Books and Records and shall, as promptly as practicable after demand therefor, make available to such other Person (at such other Person's expense) such Books and Records for inspection and duplication.

### 3. INSOLVENCY PROCEEDINGS.

#### 3.1 Financing and Adequate Protection Issues.

##### (a) Financing Issues.

(i) If the Borrower or any Obligor shall become subject to any Insolvency Proceeding, (A) the Term Loan Agent, on behalf of itself and the Term Loan Lenders, agrees that no such Person shall provide to the Borrower or any Obligor any financing under Section 364(d) of the Bankruptcy Code (a "DIP Financing") to the extent that the Term Loan Agent or any Term Loan Lender would, in connection with such DIP Financing, be granted a Lien on the pre-petition Revolving Credit Priority Collateral of the Borrower or any Obligor senior to or *pari passu* with the Lien of the Revolving Agent and (B) the Revolving Agent, on behalf of itself and the Revolving Lenders, agrees that no such Person shall provide to the Borrower a DIP Financing to the extent that the Revolving Agent or any Revolving Lender would, in connection with such DIP Financing, be granted a Lien on the pre-petition Term Loan Priority Collateral of the Borrower or any Obligor senior to or *pari passu* with the Lien of the Term Loan Agent.

(ii) If the Borrower or any Obligor shall become subject to any Insolvency Proceeding, and if the Revolving Agent or one or more of the Revolving Lenders desire to permit the usage of cash collateral which constitutes Revolving Credit Priority Collateral under the Bankruptcy Code or to provide a DIP Financing to the Borrower or any Obligor that is secured by a security interest in any or all of the Revolving Credit Priority Collateral, then the Term Loan Agent, on behalf of itself and the Term Loan Lenders, agrees that no objection will be raised by the Term Loan Agent or the Term Loan Lenders to any such cash collateral usage or such DIP Financing so long as (A) the Term Loan Agent retains a Lien on the Collateral (including Proceeds thereof arising after the commencement of such proceeding) with the same relative priority with respect to the Liens of the Revolving Agent as existed prior to the commencement of the Insolvency Proceeding, (B) the Term Loan Agent receives a replacement lien on

post-petition assets to the same extent granted to the Person providing such DIP Financing or usage of cash collateral, with the same relative priority with respect to the Liens of the Revolving Agent as existed prior to the commencement of the Insolvency Proceeding, (C) the aggregate principal amount of loans and letter of credit accommodations outstanding under such DIP Financing and/or usage of cash collateral, together with the aggregate principal amount of the pre-petition Revolving Obligations shall not exceed the Revolving Maximum Amount as in effect from time to time, (D) the interest rate, fees and advance rates of any such DIP Financing or usage of cash collateral are commercially reasonable under the circumstances, (E) any such cash collateral use or DIP Financing does not compel the Borrower or any Obligor to seek confirmation of a specific plan of reorganization for which all or substantially all of the material terms are set forth in the cash collateral order or related documentation or DIP Financing order or related documentation, (F) such cash collateral order or related documentation or DIP Financing order or related documentation does not require the liquidation of the Collateral prior to a default under such order or related documentation, and (G) any such DIP Financing and/or usage of cash collateral is otherwise subject to the terms of this Agreement.

(iii) If the Borrower or any Obligor shall become subject to any Insolvency Proceeding, and if the Term Loan Agent or one or more of the Term Loan Lenders desire to provide a DIP Financing to the Borrower or any Obligor that is secured by a security interest in any or all of the Term Loan Priority Collateral, then the Revolving Agent, on behalf of itself and the Revolving Lenders, agrees that no objection will be raised by the Revolving Agent or the Revolving Lenders to any such DIP Financing so long as (A) the Revolving Agent retains a Lien on the Collateral (including Proceeds thereof arising after the commencement of such proceeding) with the same relative priority with respect to the Liens of the Term Loan Agent as existed prior to the commencement of the Insolvency Proceeding, (B) the Revolving Agent receives a replacement lien on post-petition assets to the same extent granted to the Person providing such DIP Financing or usage of cash collateral, with the same relative priority with respect to the Liens of the Term Loan Agent as existed prior to the commencement of the Insolvency Proceeding, (C) the aggregate principal amount of loans and letter of credit accommodations outstanding under such DIP Financing and/or usage of cash collateral, together with the aggregate principal amount of the pre-petition Term Loan Obligations shall not exceed the Term Loan Maximum Amount as in effect from time to time, (D) the interest rate, fees and advance rates of any such DIP Financing or usage of cash collateral are commercially reasonable under the circumstances, (E) any such cash collateral use or DIP Financing does not compel the Borrower or any Obligor to seek confirmation of a specific plan of reorganization for which all or substantially all of the material terms are set forth in the cash collateral order or related documentation or DIP Financing order or related documentation, (F) such cash collateral order or related documentation or DIP Financing order or related documentation does not require the liquidation of the Collateral prior to a default under such order or related documentation, and (G) any such DIP Financing is otherwise subject to the terms of this Agreement.

(b) Adequate Protection.

(i) In any Insolvency Proceeding involving the Borrower or any Obligor, the Term Loan Agent agrees that neither the Term Loan Agent nor any Term Loan Claimholder shall contest (or support any other Person contesting) (A) any request by the Revolving Agent or other Revolving Claimholders for adequate protection not prohibited pursuant to this Agreement or (B) any objection by the Revolving Agent or other Revolving Claimholders to any motion, relief, action or proceeding brought by any Person other than the Term Loan Agent or any Term Loan Claimholder based on the Revolving Agent or Revolving Claimholders claiming a lack of adequate protection. In any Insolvency Proceeding involving the Borrower or any Obligor, the Revolving Agent agrees that neither the Revolving Agent nor any Revolving Claimholder shall contest (or support any other Person contesting) (A) any request by the Term Loan Agent or other Term Loan Claimholders for adequate protection not prohibited pursuant to this Agreement or (B) any objection by the Term Loan Agent or other Term Loan Claimholders to any motion, relief, action or proceeding brought by any Person other than the Revolving Agent or any Revolving Claimholder based on the Term Loan Agent or Term Loan Claimholders claiming a lack of adequate protection.

(ii) In any Insolvency Proceeding involving the Borrower or any Obligor:

(A) If any one or more Revolving Claimholders are granted adequate protection in the form of a replacement Lien (on existing or future assets of the Borrower or any Obligor) or, subject to Section 3.1(a) additional collateral, then the Revolving Agent agrees that the Term Loan Agent shall also be entitled to seek, without objection from Revolving Claimholders, adequate protection in the form of a replacement Lien (on such existing or future assets of the Borrower or any Obligor) or such additional collateral. If any one or more Term Loan Claimholders are granted adequate protection in the form of a replacement Lien (on existing or future assets of the Borrower or any Obligor) or, subject to Section 3.1(a) additional collateral, then the Term Loan Agent agrees that the Revolving Agent shall also be entitled to seek, without objection from Term Loan Claimholders, adequate protection in the form of a replacement Lien (on such existing or future assets of the Borrower or any Obligor) or such additional collateral.

(B) In the event that the Term Loan Agent or any Term Loan Claimholders are granted adequate protection of their interest in any Collateral in the form of a super-priority administrative expense claim, such super-priority administrative expense claim shall be deemed to be subject to the terms and priorities hereunder, meaning for example that the super-priority administrative expense claims for adequate protection of the interests of the Term Loan Agent in the Revolving Credit Priority



Collateral shall be junior and not senior to the Revolving Agent's claim in respect of the Revolving Credit Priority Collateral. In the event that the Revolving Agent or any Revolving Claimholders are granted adequate protection of any interest in any Collateral in the form of a super-priority administrative expense claim, such super-priority administrative expense claim shall be deemed to be subject to the terms and priorities hereunder, meaning for example that the super-priority administrative expense claims for adequate protection of the interests of the Revolving Agent in the Term Loan Priority Collateral shall be junior and not senior to the Term Loan Agent's claim in respect of the Term Loan Priority Collateral.

(C) To the extent that the Term Loan Agent and the Term Loan Claimholders are not prohibited from seeking adequate protection under this Agreement, the Revolving Agent agrees that it will raise no objection to a request for adequate protection, or similar relief, by the Term Loan Claimholders in the form of payment of interest on the Term Loan Priority Obligations during the pendency of such Insolvency Proceeding so long as the rate of interest so requested by such Term Loan Claimholders does not exceed the default rate of interest applicable to the Term Loan Obligations immediately prior to the commencement of such Insolvency Proceeding (provided that any failure of the Term Loan Agent or any Term Loan Claimholder to obtain such adequate protection shall not impair or otherwise affect the agreements, undertakings and consents of the Term Loan Agent and the Term Loan Claimholders under this Section 3.1(b)). To the extent that the Revolving Agent and the Revolving Claimholders are not prohibited from seeking adequate protection under this Agreement, the Term Loan Agent agrees that it will raise no objection to a request for adequate protection, or similar relief, by the Revolving Claimholders in the form of payment of interest on the Revolving Priority Obligations during the pendency of such Insolvency Proceeding so long as the rate of interest so requested by such Revolving Claimholders does not exceed the default rate of interest applicable to the Revolving Obligations immediately prior to the commencement of such Insolvency Proceeding (provided that any failure of the Revolving Agent or any Revolving Claimholder to obtain such adequate protection shall not impair or otherwise affect the agreements, undertakings and consents of the Revolving Agent and the Revolving Claimholders under this Section 3.1(b)).

3.2 Effectiveness. This Agreement shall be effective both before and after the commencement of an Insolvency Proceeding. All references in this Agreement to the Borrower or any Obligor shall include the Borrower or such Obligor as a debtor-in-possession and any receiver or trustee or other party for the Borrower or such Obligor in any Insolvency Proceeding; provided that the Borrower or such Obligor, whether or not acting as a debtor-in-possession, may not enforce this Agreement in any such Insolvency Proceeding (provided that this will not be deemed to affect or limit the rights of the Revolving Agent, on the one hand, or the Term Loan Agent, on the other hand, hereunder).

### 3.3 Other Bankruptcy Matters.

(a) To the extent that the Term Loan Agent has or acquires rights under Section 362, Section 363 or Section 364 of the Bankruptcy Code (or any applicable law or court order having comparable effect) with respect to any of the Collateral, other than the Collateral constituting Term Loan Priority Collateral, the Term Loan Agent agrees not to assert any of such rights without the prior written consent of the Revolving Agent; provided that, if requested by the Revolving Agent, the Term Loan Agent shall seek to exercise such rights in the manner requested by the Revolving Agent, including any rights to payments in respect of such rights. The Term Loan Agent agrees not to initiate or prosecute or encourage any other Person to initiate or prosecute any claim, action, objection or proceeding (i) challenging the enforceability of the Revolving Obligations, or (ii) challenging the enforceability, validity, extent or priority, as and to the extent provided for in this Agreement, of any Lien on any assets or properties securing the Revolving Obligations.

(b) To the extent that the Revolving Agent has or acquires rights under Section 362, Section 363 or Section 364 of the Bankruptcy Code (or any applicable law or court order having comparable effect) with respect to any of the Collateral, other than the Collateral constituting Revolving Credit Priority Collateral, the Revolving Agent agrees not to assert any of such rights without the prior written consent of the Term Loan Agent; provided that, if requested by the Term Loan Agent, the Revolving Agent shall seek to exercise such rights in the manner requested by the Term Loan Agent, including any rights to payments in respect of such rights. The Revolving Agent agrees to not initiate or prosecute or encourage any other Person to initiate or prosecute any claim, action, objection or proceeding (i) challenging the enforceability of the Term Loan Obligations, or (ii) challenging the enforceability, validity, extent or priority, as and to the extent provided for in this Agreement, of any Lien on any assets or properties securing the Term Loan Obligations.

(c) Each Agent, on behalf of itself and the Claimholders for whom it acts as Agent, agrees that none of them shall (i) seek relief from the automatic stay or any other stay in any Insolvency Proceeding in respect of any Collateral which does not constitute its Priority Collateral, without the prior written consent of the Priority Agent with respect thereto; provided that, if the Priority Agent and Priority Claimholders have obtained such relief, then the non-Priority Agent and non-Priority Claimholders may also seek such relief, it being understood and agreed that such non-Priority Agent and non-Priority Claimholders may not take any actions which are otherwise prohibited under this Agreement, or (ii) oppose any request by the Priority Agent or any Priority Claimholder to seek relief from the automatic stay or any other stay in any Insolvency Proceeding in respect of the Priority Agent's respective Priority Collateral.

(d) If any Claimholder is required in any Insolvency Proceeding, or otherwise, to turn over or otherwise pay to the estate of the Borrower or any subsidiary of the Borrower any amount in respect of any Revolving Obligation or any Term Loan Obligation, as applicable (a "Recovery"), then such Claimholders shall be entitled to a reinstatement of their obligations with respect to all such recovered amounts. If this

Agreement shall have been terminated prior to such Recovery, this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties hereto from such date of reinstatement. Priority Collateral or Net Cash Proceeds thereof received by the non-Priority Agent or any other non-Priority Claimholder after a discharge of the obligations of the Priority Claimholders and prior to the reinstatement of such obligations shall be delivered to the Priority Agent upon such reinstatement in accordance with Sections 2.3(b) and 2.3(d).

(e) Each Agent, on behalf of itself and the Claimholders for whom it acts as Agent, agrees that it will not contest the payment of interest, costs, charges, fees, expenses or other payments or amounts to the Priority Agent or any Priority Claimholder under Section 506(b) of the Bankruptcy Code (or any applicable law or court order having comparable effect) with respect to its Priority Collateral to the extent provided for in the applicable Loan Documents and subject to the terms of this Agreement. In addition, to the extent the Revolving Obligations have been or will be fully satisfied, including interest, costs, charges, fees, expenses and other payments and amounts allowed under Section 506(b) of the Bankruptcy Code (or any applicable law or court order having comparable effect), the Revolving Agent agrees that it will not contest the payment or amount of interest, costs, charges, fees, expenses or other payments or amounts to the Term Loan Agent or any Term Loan Claimholder under Section 506(b) of the Bankruptcy Code (or any applicable law or court order having comparable effect) with respect to the Revolving Credit Priority Collateral to the extent provided for in the applicable Loan Documents and subject to the terms of this Agreement. In addition, to the extent the Term Loan Obligations have been or will be fully satisfied, including interest, costs, charges, fees, expenses and other payments and amounts allowed under Section 506(b) of the Bankruptcy Code (or any applicable law or court order having comparable effect), the Term Loan Agent agrees that it will not contest the payment or amount of interest, costs, charges, fees, expenses or other payments or amounts to the Revolving Agent or any Revolving Claimholder under Section 506(b) of the Bankruptcy Code (or any applicable law or court order having comparable effect) with respect to the Term Loan Priority Collateral to the extent provided for in the applicable Loan Documents and subject to the terms of this Agreement. Each Agent, on behalf of itself and the Claimholders for whom it acts as Agent, agrees that it will not assert or enforce any claim under Sections 506(c) or 552(b) of the Bankruptcy Code (or any applicable law or court order having comparable effect) senior to or on parity with the Lien of the Priority Agent for costs or expenses of preserving or disposing of the other Agent's Priority Collateral.

(f) Each Agent, on behalf of itself and the Claimholders for whom it acts as Agent, agrees that it will raise no objection and will not oppose a motion to sell or otherwise dispose of any Priority Collateral by the Priority Agent with respect thereto, free and clear of its Liens or other claims under Section 363 of the Bankruptcy Code or pursuant to any plan of reorganization or liquidation (or any applicable law or court order having comparable effect) if the requisite Priority Claimholders have consented to such sale or disposition of such assets; provided that, in the case of (A) the Revolving Credit Priority Collateral, (i) the Revolving Obligations shall be permanently reduced by an

amount equal to the Net Cash Proceeds of such sale or other disposition (net of any amounts allocated or carved out for professional fees or expenses, which amounts shall not be deemed to be received by the relevant Agent or applied to such obligations) which are used to pay the principal or face amount of such obligations and (ii) the Liens and other interests of the Term Loan Agent and the Term Loan Claimholders for whom it acts as Agent in such Revolving Credit Priority Collateral attach to the Proceeds thereof, which shall then be distributed in accordance with, and subject to, the terms and priorities of this Agreement and (B) the Term Loan Priority Collateral, (i) the Term Loan Obligations shall be permanently reduced by an amount equal to the Net Cash Proceeds of such sale or other disposition (net of any amounts allocated or carved out for professional fees or expenses, which amounts shall not be deemed to be received by the relevant Agent or applied to such obligations) which are used to pay the principal or face amount of such obligations and (ii) the Liens and other interests of the Revolving Agent and the Revolving Claimholders for whom it acts as Agent in such Term Loan Priority Collateral attach to the Proceeds thereof, which shall then be distributed in accordance with, and subject to, the terms and priorities of this Agreement. For purposes of this Section 3.3(f), each non-Priority Agent, for itself and each non-Priority Claimant, shall be deemed to have consented, for purposes of Section 363(f) of the Bankruptcy Code and other applicable law, to any sale made under the terms and conditions set forth above, free and clear of all Liens and other interests of such non-Priority Agent and non-Priority Claimants; provided that such consent and waiver shall not be deemed to be a waiver or other impairment with respect to the right of such non-Priority Agent and/or non-Priority Claimants, as applicable, to credit bid on its Priority Collateral pursuant to Section 363(k) of the Bankruptcy Code or other applicable law.

(g) If, in any Insolvency Proceeding of the Borrower or any Obligor, debt obligations of the reorganized debtor secured by Liens upon any Property of the reorganized debtor are distributed pursuant to a plan of reorganization or similar dispositive restructuring plan, then, to the extent the debt obligations distributed on account of the Revolving Obligations and on account of the Term Loan Obligations are secured by Liens upon the same Property, the provisions of this Agreement will survive the distribution of such debt obligations pursuant to such plan and will apply with like effect to the Liens securing such debt obligations.

(h) Each Agent, on behalf of itself and the Claimholders for which it acts as Agent, and the Borrower hereby acknowledges and agrees that:

(i) the grants of Liens pursuant to the Revolving Loan Documents and the Term Loan Documents constitute two separate and distinct grants of Liens; and

(ii) because of, among other things, their differing rights in the Collateral, the Revolving Obligations (and the claims related thereto) are fundamentally different from the Term Loan Obligations (and the claims related thereto) and must be separately classified in any plan of reorganization proposed or adopted in an Insolvency Proceeding.

To further effectuate the intent of the parties as provided in the immediately preceding sentence, if it is held that the claims of the Revolving Claimholders and the Term Loan Claimholders in respect of the Collateral constitute only one secured claim (rather than separate classes of senior and junior secured claims), then each of the parties hereto hereby acknowledges and agrees that, subject to Sections 2.1 and 2.4 hereof, all distributions shall be made as if there were separate classes of senior and junior secured claims against the Borrower or any Obligor in respect of the Priority Collateral (with the effect being that, to the extent that the aggregate value of the Priority Collateral is sufficient (for this purpose ignoring all claims held by the non-Priority Claimholders), the Priority Claimholders shall be entitled to receive, in addition to amounts distributed to them in respect of principal, pre-petition interest and other claims, all amounts owing in respect of post-petition interest (including any additional interest payable pursuant to the Priority Claimholders' Loan Documents, arising from or related to a default, which is disallowed as a claim in any Insolvency Proceeding) before any distribution is made in respect of the claims held by the non-Priority Claimholders, with the non-Priority Agent, on behalf of the non-Priority Claimholders, hereby acknowledging and agreeing to turn over to the Priority Agent, on behalf of the Priority Claimholders, amounts otherwise received or receivable by them to the extent necessary to effectuate the intent of this sentence, even if such turnover has the effect of reducing the claim or recovery of the non-Priority Claimholders).

#### 4. MODIFICATIONS OF LOAN DOCUMENTS.

4.1 Term Loan Documents. Without the prior written consent of the Revolving Agent, neither the Borrower, any Obligor, nor the Term Loan Agent shall, at any time, execute or deliver any amendment or other modification to any of the Term Loan Documents or refinance the Term Loan Obligations in a manner which would (a) be inconsistent with or in violation of this Agreement, (b) increase the interest rate margins applicable to the Term Loan Obligations by more than three percent (3.0%) per annum, excluding the imposition of the default rate of interest; provided that in the event the interest rate margins applicable to the Revolving Obligations are increased by more than three percent (3.0%) per annum, then the interest rate margins applicable to the Term Loan Obligations may be increased by an equivalent percentage in excess of such three percent (3.0%) increase (it being agreed and understood that in connection with any refinancing, replacement, extension, renewal, refunding, amendment, restatement or similar transaction with respect to the Term Loan Documents, any such increase may take the form of original issue discount, amendment or upfront fees), (c) other than in connection with an Enforcement Action (and the termination of the facility), accelerate the dates that principal of, or interest on, the Term Loan Obligations are due, (d) increase the principal amount of the Term Loan Obligations to more than the Term Loan Maximum Amount, (e) require any mandatory prepayment of the Term Loan Obligations to be made with the Proceeds of Revolving Credit Priority Collateral unless such Proceeds are permitted to be so applied under the Revolving Loan Documents, (f) increase the amount of any scheduled payment of principal due thereunder, (g) modify Section 2.21 of the Term Loan Agreement, or any component definition thereof, in a manner which increases the amount or frequency of any prepayment required thereunder, or (h) modify or add any covenant or Event of Default under the Term Loan Documents if the effect of such modification or addition would be to directly restrict the Borrower or any Obligor from making payments in respect of the Revolving Obligations.

4.2 Revolving Loan Documents. Without the prior written consent of the Term Loan Agent, neither the Borrower, any Obligor, nor the Revolving Agent shall, at any time, execute or deliver any amendment or other modification to any of the Revolving Loan Documents or refinance the Revolving Obligations in a manner which would (a) be inconsistent with or in violation of this Agreement, (b) increase the interest rate margins applicable to the Revolving Obligations by more than three percent (3.0%) per annum, excluding the imposition of the default rate of interest; provided that in the event the interest rate margins applicable to the Term Loan Obligations are increased by more than three percent (3.0%) per annum, then the interest rate margins applicable to the Revolving Obligations may be increased by an equivalent percentage in excess of such three percent (3.0%) increase (it being agreed and understood that in connection with any refinancing, replacement, extension, renewal, refunding, amendment, restatement or similar transaction with respect to the Revolving Loan Documents, any such increase may take the form of original issue discount, amendment or upfront fees), (c) other than in connection with an Enforcement Action (and the termination of the facility), accelerate the dates that principal of, or interest on, the Revolving Obligations are due, (d) increase the principal amount of the Revolving Obligations to more than the Revolving Maximum Amount, (e) require any mandatory prepayment of the Revolving Obligations to be made with the Proceeds of Term Loan Priority Collateral unless such Proceeds are permitted to be so applied under the Term Loan Documents, (f) increase the amount of any scheduled payment of principal due thereunder, (g) modify Section 2.21 of the Revolving Credit Agreement, or any component definition thereof, in a manner which increases the amount or frequency of any prepayment required thereunder, or (h) modify or add any covenant or Event of Default under the Revolving Loan Documents if the effect of such modification or addition would be to directly restrict the Borrower or any Obligor from making payments in respect of Term Loan Obligations.

5. RELIANCE; WAIVERS.

5.1 Reliance.

(a) The Revolving Credit Agreement, the other Revolving Loan Documents and all related documents and agreements are deemed to have been executed and delivered, and all loans and other extensions of credit thereunder are deemed to have been made or incurred, in reliance upon this Agreement. The Term Loan Agent expressly waives all notice of the acceptance of and reliance on this Agreement by the Revolving Agent and the Revolving Lenders.

(b) The Term Loan Agreement, the other Term Loan Documents and all related documents and agreements are deemed to have been executed and delivered, and all loans and other extensions of credit thereunder are deemed to have been made or incurred, in reliance upon this Agreement. The Revolving Agent expressly waives all notice of the acceptance of and reliance on this Agreement by the Term Loan Agent and the Term Loan Lenders.

5.2 No Warranties or Liability. The Term Loan Agent, on the one hand, and the Revolving Agent, on the other hand, acknowledge and agree that neither has made any representation or warranty with respect to the execution, validity, legality, completeness, collectability or enforceability of the Revolving Credit Agreement or any other Revolving Loan

Document or the Term Loan Agreement or any other Term Loan Document. Except as otherwise provided in this Agreement, the Revolving Agent, on the one hand, and the Term Loan Agent, on the other hand, will be entitled to manage and supervise their respective loans, extensions of credit and extensions of indebtedness to the Borrower, as the case may be, in accordance with law and their usual practices, modified from time to time as they deem appropriate.

5.3 No Waiver of Subordination or Other Provisions. No right of any party hereto to enforce subordination or any other right or benefit provided in this Agreement shall at any time, in any way, be prejudiced or impaired by any act or failure to act on the part of such party or any other party hereto or by any noncompliance by the Borrower with the terms and conditions of any of the Revolving Loan Documents or the Term Loan Documents.

## 6. OBLIGATIONS UNCONDITIONAL.

6.1 Revolving Obligations Unconditional. Subject to compliance with the terms of this Agreement, including, without limitation, Section 4, all rights and interests of the Revolving Agent under this Agreement, and all agreements and obligations of the Term Loan Agent and the Borrower, to the extent applicable, hereunder, shall remain in full force and effect irrespective of:

(a) any lack of validity or enforceability of the Revolving Credit Agreement or any other Revolving Loan Document;

(b) any change in the time, place or manner of payment of, or in any other term of, all or any portion of the Revolving Obligations, or any amendment, waiver or other modification, whether by course of conduct or otherwise, or any refinancing, replacement, refunding, extension, renewal or restatement of the Revolving Credit Agreement or any other Revolving Loan Document, in each case as permitted under this Agreement;

(c) any exchange, release or non-perfection of any security interest in any Collateral, or any release, amendment, waiver or other modification, whether by course of conduct or otherwise, or any refinancing, replacement, refunding, extension, renewal or restatement of all or any portion of the Revolving Obligations or any guarantee or guaranty thereof; or

(d) any other circumstances which otherwise might constitute a defense available to, or a discharge of, the Borrower or any Obligor in respect of the Revolving Obligations, or of any of the Term Loan Agent or the Borrower or any Obligor, to the extent applicable, in respect of this Agreement.

6.2 Term Loan Obligations Unconditional. Subject to compliance with the terms of this Agreement, including, without limitation, Section 4, all rights and interests of the Term Loan Agent under this Agreement, and all agreements and obligations of the Revolving Agent and the Borrower, to the extent applicable, hereunder, shall remain in full force and effect irrespective of:

(a) any lack of validity or enforceability of the Term Loan Agreement or any other Term Loan Document;

(b) any change in the time, place or manner of payment of, or in any other term of, all or any portion of the Term Loan Obligations, or any amendment, waiver or other modification, whether by course of conduct or otherwise, or any refinancing, replacement, refunding, extension, renewal or restatement of the Term Loan Agreement or any other Term Loan Document, in each case as permitted under this Agreement;

(c) any exchange, release or non-perfection of any security interest in any Collateral, or any release, amendment, waiver or other modification, whether by course of conduct or otherwise, or any refinancing, replacement, refunding, extension, renewal or restatement of all or any portion of the Term Loan Obligations or any guarantee or guaranty thereof; or

(d) any other circumstances which otherwise might constitute a defense available to, or a discharge of, the Borrower or any Obligor in respect of the Term Loan Obligations, or of any of the Revolving Agent or the Borrower or any Obligor, to the extent applicable, in respect of this Agreement.

## 7. TERM LOAN LENDERS PURCHASE OPTION.

7.1 At any time after the occurrence and during the continuance of any Trigger Event, the Term Loan Agent and the Term Loan Lenders shall have an option, exercised by delivery of notice by the Term Loan Agent to the Revolving Agent (a "Purchase Notice") given by a same day method (e.g. facsimile, electronic mail or personal delivery), to purchase all (but not less than all) of the Revolving Priority Obligations and assume that portion of the commitments of the Revolving Agent and the Revolving Lenders under the Revolving Loan Documents up to the Revolving Maximum Amount from the Revolving Agent and the Revolving Lenders. The Purchase Notice shall be irrevocable and shall specify a date for the closing of the purchase, which shall not be more than ten (10) Business Days after receipt by the Revolving Agent of the Purchase Notice.

7.2 The Revolving Agent shall deliver to the Term Loan Agent the written notice referred to in clause (a) of the definition of "Trigger Event" (such notice, the "Trigger Notice") (a) in the absence of an Exigent Circumstance, not less than three (3) Business Days prior to the taking of the earliest of the actions described in clause (a) of the definition of "Trigger Event" or (b) if Exigent Circumstances exist, as soon as practicable and in any event not more than one (1) Business Day after taking of such action. The Term Loan Agent may send to the Revolving Agent the Purchase Notice referred to in Section 7.1 at any time following the occurrence and during the continuance of a Trigger Event, in which event, following receipt by the Revolving Agent of the Purchase Notice, the Revolving Agent and the Revolving Lenders shall not accelerate the Revolving Obligations or commence any foreclosure or other action to sell or otherwise realize upon any Collateral (including, without limitation, by set off or otherwise), to the extent such action has not been taken, or continue any such foreclosure or other action, to the extent such action has already commenced; provided that the purchase and sale with respect to the Revolving Priority Obligations and assumption of the applicable commitments of the



Revolving Agent and the Revolving Lenders under the Revolving Loan Documents provided for in this Section 7 shall have closed within ten (10) Business Days after receipt by the Revolving Agent of the Purchase Notice, and the Revolving Agent shall have received payment in full of the Revolving Priority Obligations, and the Term Loan Lenders shall have assumed the applicable commitments of the Revolving Agent and the Revolving Lenders under the Revolving Loan Documents as provided for herein, within such ten (10) Business Day period.

7.3 On the date specified by the Term Loan Agent in the Purchase Notice (which shall not be more than ten (10) Business Days after the receipt by the Revolving Agent thereof), the Revolving Agent and the Revolving Lenders shall sell and assign to the Term Loan Agent and the Term Loan Lenders, and the Term Loan Agent and the Term Loan Lenders shall purchase from the Revolving Agent and the Revolving Lenders, all (but not less than all) of the Revolving Priority Obligations, and the Term Loan Agent and the Term Loan Lenders shall assume the applicable commitments of the Revolving Agent and the Revolving Lenders under the Revolving Loan Documents.

7.4 Upon the date of such purchase and sale, the Term Loan Agent and the Term Loan Lenders shall pay to the Revolving Agent and the Revolving Lenders as the purchase price therefor the amount necessary to achieve Payment In Full of the Revolving Obligations (exclusive of any early termination or prepayment fees).

Further, the Term Loan Agent and the Term Loan Lenders shall (w) agree to reimburse the Revolving Agent and the Revolving Lenders for any loss, cost, damage or expense (including reasonable attorneys' fees and legal expenses) in connection with any commissions, fees, costs or expenses related to any issued and outstanding letters of credit as described above and any checks or other payments provisionally credited to the Revolving Priority Obligations for which the Revolving Agent or any Revolving Lender has not yet received final payment, (x) agree to reimburse, within ten (10) Business Days of written demand therefor by the Revolving Agent, the Revolving Agent and the Revolving Lenders in respect of indemnification obligations of the Borrower or any Obligor under the Revolving Loan Documents as to matters or circumstances of which the Term Loan Agent and/or the Term Loan Lenders have been advised in writing by the Revolving Agent and/or the Revolving Lenders at the time of the purchase and sale which would reasonably be expected to result in any loss, cost, damage or expense (including reasonable attorneys' fees and legal expenses) to the Revolving Agent or any of the Revolving Lenders (or any affiliate thereof); provided that in no event will the Term Loan Agent or the Term Loan Lenders have any liability for such amounts in excess of the proceeds of the Revolving Credit Priority Collateral received by the Term Loan Agent; provided, further, that, in the event the Term Loan Agent or the Term Loan Lenders have made any reimbursement payments to the Revolving Lenders pursuant to this clause (x) and it is subsequently determined by a final, non-appealable judgment of a court of competent jurisdiction that the Revolving Agent and the Revolving Lenders were not entitled to indemnification pursuant to the Revolving Loan Documents for the matters in respect of which the Term Loan Agent or the Term Loan Lenders made such reimbursement payments, then, within ten (10) Business Days of written demand therefor by the Term Loan Agent, the Revolving Agent or the Revolving Lenders who received such reimbursement payment shall repay to the Term Loan Agent or the Term Loan Lenders the amount thereof that was received by each of them, (y) agree to pay to the Revolving Agent and the Revolving Lenders, to the extent still outstanding and to the extent the Term Loan Agent

and/or the Term Loan Lenders receive proceeds of Revolving Credit Priority Collateral or payments from the Borrower or any Obligor sufficient to pay such amounts, all of the other Revolving Obligations in respect of the Revolving Loan Documents, after the payment to the Term Loan Lenders of all the Term Loan Obligations in full and all the Revolving Obligations purchased by the Term Loan Lenders pursuant to this Section 7 in full, and (z) assume the applicable commitments of the Revolving Agent and the Revolving Lenders under and pursuant to the Revolving Loan Documents pursuant to assignment and assumption documents reasonably satisfactory to the Agents. Such purchase price and cash collateral shall be remitted by wire transfer in federal funds to such bank account of the Revolving Agent as the Revolving Agent may designate in writing to the Term Loan Agent for such purpose. Interest shall be calculated to but excluding the Business Day on which such purchase and sale shall occur if the amounts so paid by the Term Loan Agent and the Term Loan Lenders to the bank account designated by the Revolving Agent are received in such bank account prior to 1:00 p.m., New York City time, and interest shall be calculated to and including such Business Day if the amounts so paid by the Term Loan Agent and the Term Loan Lenders to the bank account designated by the Revolving Agent are received in such bank account later than 1:00 p.m., New York City time.

7.5 Such purchase shall be expressly made without representation or warranty of any kind by the Revolving Agent and the Revolving Lenders as to the Revolving Obligations or otherwise and without recourse to the Revolving Agent or any Revolving Lender, except that each Revolving Lender shall represent and warrant: (a) the amount of the Revolving Obligations being purchased from it, (b) that such Revolving Lender owns its portion of the Revolving Obligations free and clear of any Liens or encumbrances and (c) that such Revolving Lender has the right to assign such Revolving Obligations and the assignment is duly authorized by such Revolving Lender.

7.6 From and after the date of such purchase and sale, the claims of the Revolving Agent and the Revolving Lenders for contingent indemnification obligations of the Borrower or any Obligor, if any, that survive the termination of the Revolving Loan Documents and which are not payable to the Revolving Agent or the Revolving Lenders pursuant to clause (x) of Section 7.4 will continue to be secured by the Liens on the Collateral so long as, on the date of such purchase and sale, the Revolving Agent executes and delivers a subordination agreement subordinating all of its surviving claims and interests in the Liens and the Collateral to the claims and interests in the Liens and the Collateral of the Term Loan Agent and the Term Loan Lenders for both the Term Loan Obligations and the Revolving Obligations purchased by the Term Loan Lenders pursuant to this Section 7 and otherwise substantially in the form of this Agreement and acceptable to the Agents in their reasonable discretion (save and except for the fact that such subordination agreement shall not have a buyout right or the other provisions specified in this Section 7).

7.7 Upon the consummation of any purchase and sale provided for herein, the Revolving Agent and the Revolving Lenders shall be released from and discharged of their respective duties, responsibilities and obligations under or in connection with the Revolving Loan Documents and concurrently with the closing of such purchase and sale, the Revolving Agent shall be deemed to have resigned as "Agent" under the Revolving Loan Documents and the Term Loan Agent or any designee of the Term Loan Agent shall be deemed to have succeeded to the role of "Agent" under the Revolving Loan Documents; *provided*, that, after

such purchase and sale, the rights, benefits and protections under the Term Loan Documents shall apply to the Term Loan Agent (or its designee) acting in its capacity as the Revolving Agent, and the Term Loan Agent when acting as the Revolving Loan Agent, at its sole option, may rely on or invoke its rights, benefits and protections under either the Revolving Loan Documents or the Term Loan Documents.

## 8. MISCELLANEOUS.

8.1 Conflicts. In the event of direct conflict between the provisions of this Agreement and the provisions of any Revolving Loan Document or any Term Loan Document, it is the intention of the parties hereto that the provisions in such documents shall be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the provisions of this Agreement shall govern.

8.2 Continuing Nature of Provisions. This Agreement shall continue to be effective, and shall not be revocable by any party hereto, until all Revolving Obligations and all Term Loan Obligations shall have been paid in full in cash. This is a continuing agreement of subordination and other rights and benefits, and the Revolving Lenders and the Term Loan Lenders may continue, at any time and without notice to the other parties hereto, to extend credit and other financial accommodations, lend monies and provide indebtedness to, or for the benefit of, the Borrower and the Obligors in reliance on the terms hereof. This Agreement shall continue to be effective notwithstanding protections that may otherwise be available in favor of a party to this Agreement against another party to this Agreement pursuant to Section 363(m) and Section 364(e) of the Bankruptcy Code, or pursuant to an equitable mootness or similar doctrine.

8.3 Subrogation. Each Agent, on behalf of itself and the Claimholders for whom it acts as Agent, hereby waives any rights of subrogation it may acquire as a result of any payment by it or any of its constituent Claimholders hereunder until the holder of the obligations in which it has received such subrogation rights has been Paid In Full.

8.4 Amendments; Waivers. No amendment or modification of any of the provisions of this Agreement by the Revolving Agent, on the one hand, or the Term Loan Agent, on the other hand, shall be deemed to be made unless the same shall be in writing and signed by each of the Agents and, if such amendment or modification would adversely affect the Borrower, by the Borrower. No waiver of any of the provisions of this Agreement shall be deemed to be made unless the same shall be in writing and signed on behalf of the party making the same, and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the party making such waiver or the obligations of the other party to such party in any other respect or at any other time.

8.5 Information Concerning Financial Condition of the Borrower and the Obligors. The Revolving Agent, on the one hand, and the Term Loan Agent, on the other hand, hereby agree that the other has no duty to inform the other regarding (i) the financial condition of the Borrower and the Obligors or (ii) any other circumstances bearing upon the risk of nonpayment of the Revolving Obligations or the Term Loan Obligations. The Revolving Agent, on the one hand, and the Term Loan Agent, on the other hand, hereby agree that no party shall have any

duty to advise any other party of information known to it regarding such condition or any such circumstances. In the event the Revolving Agent, on the one hand, or the Term Loan Agent, on the other hand, in its respective discretion, undertakes at any time or from time to time to provide any such information to any other party to this Agreement, it shall be under no obligation (a) to provide any such information to such other party or any other party on any subsequent occasion, (b) to undertake any investigation not a part of its regular business routine, or (c) to disclose any information which, pursuant to accepted or reasonable commercial finance practices, such party wishes to maintain confidential. None of the Revolving Agent, the Revolving Claimholders or any of their respective directors, members, managers, officers, agents or employees, on the one hand, nor the Term Loan Agent, the Term Loan Claimholders or any of their respective directors, members, managers, officers, agents or employees, on the other hand, shall be responsible to the other or to any other Person for the Borrower's or any Obligor's solvency, financial condition or ability to repay the Revolving Obligations or the Term Loan Obligations or for statements of the Borrower, oral or written, or for the validity, sufficiency or enforceability of the Revolving Obligations, the Term Loan Obligations, the Revolving Loan Documents or the Term Loan Documents, or any Liens granted by the Borrower to the lenders in connection therewith. Each of the Revolving Agent and the Revolving Claimholders, on the one hand, and the Term Loan Agent and the Term Loan Claimholders, on the other hand, have entered into their respective financing agreements with the Borrower based upon their own independent investigation, and make no warranty or representation to the other nor do they rely upon any representation of the other with respect to matters identified or referred to in this Section 8.5.

8.6 Consent to Jurisdiction: Waivers. THE PARTIES HERETO CONSENT TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN THE COUNTY OF NEW YORK, STATE OF NEW YORK. THE PARTIES HERETO WAIVE TRIAL BY JURY, ANY OBJECTION TO ANY ACTION INSTITUTED HEREUNDER BASED ON FORUM NON CONVENIENS, AND ANY OBJECTION TO THE VENUE OF ANY ACTION INSTITUTED HEREUNDER.

8.7 Notices. Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, telecopied, or sent by overnight express courier service or United States mail and shall be deemed to have been given when delivered in person or by courier service or by United States mail (certified, with postage prepaid and properly addressed), or upon transmission of a telecopy or e-mail (if transmitted during normal business hours, otherwise such notice shall be deemed delivered at the opening of the next Business Day). For purposes of this Section 8.7, the addresses of the parties hereto (until notice of a change thereof is delivered as provided in this Section 8.7) shall be as set forth below each party's name on the signature pages hereof, or, as to each party, at such other address as may be designated by such party in a written notice to all of the other parties.

8.8 Further Assurances. The Revolving Agent and the Term Loan Agent shall take such further action and shall execute and deliver to the other such additional documents and instruments (in recordable form, if requested) as either the Revolving Agent, on the one hand, or the Term Loan Agent, on the other hand, may reasonably request to effectuate the terms of and the subordination and other rights and benefits contemplated by this Agreement.

8.9 Governing Law: Successors and Assigns. This Agreement shall be interpreted, and the rights and liabilities of the parties hereto determined, in accordance with the law of the State of New York. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. In the event of any refinancing, replacement, refunding, extension, renewal, restatement or similar transaction with respect to (i) the Revolving Credit Agreement or any other Revolving Loan Document and/or (ii) the Term Loan Agreement or any other Term Loan Document, this Agreement and each of its provisions shall automatically, and without further act or deed on behalf of any Person, apply to the agreement/or other document relating to any such refinancing, replacement, refunding, extension, renewal, restatement or similar transaction, as the case may be, and the holders of the indebtedness thereunder and, for the avoidance of doubt, in the event any such refinancing, replacement, refunding, extension, renewal, restatement or similar transaction occurs, the related Revolving Obligations or Term Loan Obligations, as the case may be, shall not be deemed to be Paid In Full for purposes of this Agreement. Any sale, participation, assignment or other transfer of the Revolving Obligations or the Term Loan Obligations shall be expressly made subject to the terms of this Agreement. In connection with any such sale, participation, assignment or other transfer, the applicable Agent shall disclose to such purchaser, participant, assignee or transferee the existence and terms and conditions of this Agreement.

8.10 Section Titles. The section titles contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto.

8.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which shall together constitute one and the same document. Delivery of an executed signature page by facsimile machine or "pdf" shall be as effective as delivery of a manually signed original signature page.

8.12 No Benefit to Third Parties. The terms and provisions of this Agreement shall be for the sole benefit of the Revolving Agent and the Revolving Claimholders, on the one hand, and the Term Loan Agent and the Term Loan Claimholders, on the other hand, and their respective successors and assigns (as permitted by Section 8.9 hereof), and no other Person shall have any right, benefit, priority or interest under or because of this Agreement.

8.13 Agreement Absolute.

(a) This Agreement shall be and remain absolute and unconditional under any and all circumstances, and no act or omission on the part of any party to this Agreement shall affect or impair the agreement of the other party hereunder. The Revolving Agent and the Revolving Claimholders, on the one hand, and the Term Loan Agent and the Term Loan Claimholders, on the other hand, shall be entitled to manage and supervise the obligations of the Borrower to them in accordance with applicable law and practices in effect from time to time without regard to the existence of a junior lienholder, and, subject to the limitations of this Agreement, neither the Revolving Agent or the Revolving Claimholders, on the one hand, or the Term Loan Agent or the Term Loan Claimholders, on the other hand, shall have any liability to the other for (i) any and all actions which such Persons, in good faith, take or omit to take in connection with their

credit arrangement with the Borrower, including, without limitation, with respect to the creation, perfection or continuation of Liens in any of their respective Priority Collateral, the occurrence of default, the foreclosure upon, sale, release or depreciation of, or a failure to realize upon, any Priority Collateral and the collection of any indebtedness or of any claim from any account debtor or guarantor (or any other party), and (ii) any election of the application of Section 1111(b)(2) of the Bankruptcy Code.

(b) If the Revolving Agent and/or the Revolving Claimholders should honor a request by the Borrower for a loan, advance or other financial accommodation under the Revolving Loan Documents, whether or not such Person has knowledge that honoring such request would result in an Event of Default under and as defined in, or an act, condition or event which, with notice or passage of time or both, would constitute such an Event of Default, the Term Loan Documents, in no event shall the Revolving Agent or any of the Revolving Claimholders have any liability to the Term Loan Agent or the Term Loan Claimholders (or any successors or assigns to or of any such Person) as a result of such breach, and without limiting the generality of the foregoing, the Term Loan Agent, on behalf of the Term Loan Claimholders, hereby agrees that neither the Revolving Agent nor any of the Revolving Claimholders shall have any liability for tortious interference with contractual relations or for inducement by any such Person of the Borrower to breach of contract or otherwise.

8.14 Agency for Perfection. Each of the Revolving Agent and the Revolving Lenders, on the one hand, and each of the Term Loan Agent and the Term Loan Lenders, on the other hand, appoints the other as agent and bailee for purposes of perfecting such Person's Liens on their respective Collateral in the possession or under the control of such other Agent or Lender and, in the case of the Collateral over which an Agent has control, as "representative" for the other Agent and the Lenders for whom such Agent is acting; provided that such agent or bailee for perfection shall have no duty or any liability to protect or preserve any rights for any such other Person pertaining to the Collateral in its possession or in its control other than for gross negligence or willful misconduct, as determined by a court of competent jurisdiction, in a final, non-appealable judgment. Following the Payment In Full of the Revolving Obligations, the Revolving Agent shall notify the Term Loan Agent thereof and, upon the request of the Term Loan Agent and at the joint and several expense of the Borrower and the Obligors, shall deliver (except as otherwise required by applicable law or court order) any Term Loan Priority Collateral in the Revolving Agent's possession to the Term Loan Agent (in each case, without representation, warranty or recourse) and shall deliver such notices of termination of its interests in the Collateral or termination of its status as "Controlling Party" (or comparable concept) as the Term Loan Agent or any Credit Party (as defined in the Revolving Loan Documents and the Term Loan Documents) may reasonably request in writing. Following the Payment In Full of the Term Loan Obligations, the Term Loan Agent shall notify the Revolving Agent thereof and, upon the request of the Revolving Agent and at the joint and several expense of the Borrower and the Obligors, shall deliver (except as otherwise required by applicable law or court order) any Revolving Credit Priority Collateral in the Term Loan Agent's possession to the Revolving Agent (in each case, without representation, warranty or recourse) and shall deliver such notices of termination of its interests in the Revolving Credit Priority Collateral or termination of its status as "Controlling Party" (or comparable concept) as the Revolving Agent or any Credit Party may reasonably request in writing.

8.15 Representations and Warranties. Each of the Agents hereby represents and warrants as follows to the other that:

(a) The execution, delivery and performance of this Agreement by such Agent is within its corporate or limited liability company powers and has been duly authorized by the proper corporate or limited liability company action on the part of such Agent. This Agreement has been duly executed by such Agent and does not contravene (i) in any material respect any law, rule, regulation, judgment, order or moratorium to which such Agent is subject or (ii) such Agent's constituent documents (including its operating or limited liability company agreement, where applicable).

(b) This Agreement constitutes the legal, valid and binding obligation of such Agent, enforceable against such Agent in accordance with its terms, except as such enforceability may be limited by any applicable bankruptcy, insolvency, moratorium or similar laws affecting creditors' rights generally or by general principles of equity.

8.16 Borrower's Acknowledgments and Agreements. The Borrower on its behalf and on behalf of the Obligors (a) acknowledges the provisions of this Agreement as they relate to the relative rights of the Revolving Agent, the Revolving Claimholders, the Term Loan Agent and the Term Loan Claimholders as between such creditors (collectively, the "Creditors"), (b) agrees that, except as expressly otherwise provided in this Agreement, the terms of this Agreement shall not give the Borrower any, nor modify any, substantive rights vis-à-vis any Creditor, or any obligations or liabilities owing to such Creditor, under any instrument, document, agreement or arrangement, (c) if any Creditor shall enforce its rights or remedies in violation of the terms of this Agreement, agrees that it shall not use such violation as a defense to any enforcement of remedies otherwise made in accordance with the terms of the Revolving Loan Documents or Term Loan Documents (as applicable) by any Creditor, or the enforcement by any such Creditor of any other instrument, document or agreement under which the Borrower is bound or assert such violation as a counterclaim or basis for set-off or recoupment against any such Creditor and agrees to abide thereby and to keep, observe and perform the several matters and things therein intended to be kept, observed and performed by it, and specifically agrees not to make any payments contrary to the terms of this Agreement; provided that no default or event of default shall arise under the Revolving Loan Documents or the Term Loan Documents as a result of the Borrower complying with the provisions of this Agreement and (d) acknowledges and agrees that a breach of any of the terms and conditions of this Section 8.16 by any Credit Party or Subsidiary thereof shall constitute an "Event of Default" under each of the Revolving Credit Agreement and the Term Loan Agreement.

8.17 Term Loan Agent. The Term Loan Agent has executed this Agreement as directed under and in accordance with the Term Loan Agreement and will perform this Agreement solely in its capacity as Term Loan Agent and not individually and strictly in accordance with the Term Loan Agreement. In performing under this Agreement, the Term Loan Agent shall have all such rights, protections and immunities granted it under the Term Loan Agreement. Subject to the terms of the Term Loan Agreement, the Term Loan Agent shall have no obligation to perform or exercise any discretionary act.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

REVOLVING AGENT:

PNC BANK, NATIONAL ASSOCIATION, as  
Revolving Agent

By: 

Name: **Steve Roberts**

Title: **Vice President**

Address for Notices:

PNC Bank, National Association  
c/o PNC Business Credit  
2 N. Lake Ave., Suite 440  
Pasadena, CA 91101  
Attention: Steve Roberts  
Telephone: (626) 432-6128  
Facsimile: (626) 432-4589

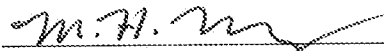
with a copy to (which shall not constitute notice):

Hahn & Hessen LLP  
488 Madison Avenue  
New York, NY 10022  
Attention: Steven J. Seif, Esq.  
Telephone: (212) 478-7370  
Facsimile: (212) 478-7400



**TERM LOAN AGENT:**

**WILMINGTON TRUST, NATIONAL  
ASSOCIATION**, as Term Loan Agent

By:   
Name: Meghan H. McCauley  
Title: Authorized Signatory

Address for Notices:

Wilmington Trust, National Association  
50 South Sixth Street, Suite 1290  
Minneapolis, MN 55402  
Attention: Meghan McCauley  
Telephone: (612) 217-5647  
Facsimile: (612) 217-5651

with a copy to (which shall not constitute notice):

GSO/ Blackstone Debt Funds Management LLC  
345 Park Avenue, 31<sup>st</sup> Floor  
New York, NY 10154  
Attention: Brad Marshall  
Telephone: (212) 503-2143  
Facsimile: (201) 244-3775

with an additional copy to (which shall not  
constitute notice):

King & Spalding  
100 N. Tryon Street  
Suite 3900  
Charlotte, North Carolina 28202  
Attention: W. Todd Holleman, Esq.  
Telephone: (704) 503-2567  
Facsimile: (704) 503-2622

BORROWER:

SWISS WATCH INTERNATIONAL, INC.

By: 

Name: Izac Ben-Shmuel

Title: Co-Chief Executive Officer

Address for Notices to Borrower:

Swiss Watch International, Inc.  
c/o Clearlake Capital Group  
233 Wilshire Blvd. Suite 800  
Santa Monica, CA 90401  
Attention: Arta Tabae  
Telephone: (310) 400-8866  
Facsimile: (310) 400-8801

and (but not or)

Swiss Watch International, Inc.  
101 South State Road 7, Suite 201  
Hollywood, Florida 33023  
Attention: Izac Ben-Shmuel  
Chief Executive Officer  
Sergio Rodicio  
Chief Financial Officer  
Telephone: (954) 985-3827  
Facsimile: (954) 962-9457

with a copy to (which shall not constitute notice):

Alston & Bird LLP  
333 South Hope Street, Sixteenth Floor  
Los Angeles, California 90071  
Attention: Matthew J. Wrynski  
Telephone: (213) 576-1192  
Facsimile: (213) 576-2892

Signature Page to Intercreditor Agreement

**TRADEMARK**  
**REEL: 006077 FRAME: 0397**

**Defined Terms**

“Affiliate” means, with respect to a specified Person, any other Person which directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with such Person, including, without limiting the generality of the foregoing, (a) any Person which beneficially owns or holds ten percent (10%) or more of any voting equity interests of such Person, (b) any Person of which such Person beneficially owns or holds ten percent (10%) or more of any voting equity interests and (c) any director or executive officer of such Person. For the purposes of this definition, the term “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting equity interests, by agreement or otherwise.

“Agents” has the meaning set forth in the preamble to this Agreement, and “Agent” refers to either of the Agents.

“Availability” means, at any time, the aggregate amount of the revolving loans and letter of credit accommodations available to the Borrower from Revolving Lenders (as calculated without giving effect to any termination of the Commitment Percentage (as defined in the Revolving Credit Agreement) as a result of any default by the Borrower under the Revolving Credit Agreement) based on the applicable percentages (as in effect on the date hereof) of Eligible Receivables and Eligible Inventory (as such terms are defined in the Revolving Credit Agreement as in effect on the date hereof) set forth in Section 2.1 of the Revolving Credit Agreement (as in effect on the date hereof), determined without regard to any revolving loans or letter of credit accommodations then outstanding or any reserves with respect thereto.

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

“Business Day” means any day other than Saturday or Sunday or a legal holiday on which commercial banks are authorized or required by law to be closed for business in New Brunswick, New Jersey or New York, New York.

“Capital Stock” means, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated) of such Person’s capital stock or partnership, limited liability company or other equity interests at any time outstanding, and any and all rights, warrants or options exchangeable for or convertible into such capital stock or other interests (but excluding any debt security that is exchangeable for or convertible into such capital stock).

“Claimholder” means a Revolving Claimholder and/or a Term Loan Claimholder, and “Claimholders” means the Revolving Claimholders and/or the Term Loan Claimholders, in each case, as the context requires.

“Collateral” means all Property and interests in Property now owned or hereafter acquired by any Credit Party in which a security interest, Lien or mortgage Lien is now or hereafter granted or purported to have been granted to the Revolving Agent or the Term Loan Agent pursuant to the Revolving Loan Documents and/or the Term Loan Documents, including any Property subject to Liens or claims granted in any Insolvency Proceeding as permitted under this Agreement.

“Credit Parties” shall mean the Borrower and the Guarantors as defined in the Revolving Credit Agreement as in effect on the date hereof, and “Credit Party” shall mean any of them as defined therein.

“DIP Financing” has the meaning set forth in Section 3.1(a)(i).

“Disposition Period” has the meaning set forth in Section 2.3(j).

“Enforcement Action” means, with respect to the Revolving Obligations or the Term Loan Obligations, (a) the taking of any action to enforce or realize upon any Lien on the Collateral, including the institution of any foreclosure proceedings or the noticing of any public or private sale or other disposition pursuant to Article 8 or Article 9 of the Uniform Commercial Code or other applicable law, (b) the exercise of any right or remedy provided to a secured creditor or otherwise on account of a Lien on the Collateral under the Revolving Loan Documents, the Term Loan Documents or applicable law, in a Proceeding or otherwise, including the election to retain any Collateral in satisfaction of a Lien, (c) the taking of any action or the exercise of any right or remedy in respect of the collection on, set off against, marshaling of, or foreclosure on the Collateral or the Proceeds of Collateral, (d) the sale, lease, license or other disposition of all or any portion of the Collateral, at a private or public sale, other disposition or any other means permissible under applicable law at any time that an Event of Default under and as defined in any of the Loan Documents shall have occurred and is continuing, (e) with respect to Term Loan Agent or Term Loan Lenders, the exercise of cash dominion or a cash sweep under any deposit account control agreement or securities account control agreement covering any Collateral; and (f) the exercise of any other right of liquidation against any Collateral (including the exercise of any right of recoupment or set-off or any rights against Collateral obtained pursuant to or by foreclosure of a judgment Lien obtained against the Borrower) whether under the Revolving Loan Documents, the Term Loan Documents or applicable law, in a Proceeding or otherwise.

“Exigent Circumstances” means (a) an exercise by another lender of enforcement rights or remedies with respect to particular Collateral or (b) an event or circumstance that materially and imminently threatens the ability of the Revolving Agent or the Term Loan Agent, as applicable, to realize upon all or a material part of the Revolving Credit Priority Collateral or the Term Loan Priority Collateral, as applicable, such as, without limitation, fraudulent removal, concealment, or abscondment thereof, destruction (other than to the extent covered by insurance) or material waste thereof.

“Hedge Liabilities” has the meaning set forth in the Revolving Credit Agreement as in effect on the date hereof.

“Hedging Agreement” means any interest rate exchange, collar, cap, swap, adjustable strike cap, adjustable strike corridor or similar agreement entered into among any Term Loan Lender or any Revolving Lender or any of their Affiliates and the Borrower or any of its subsidiaries in order to provide protection to, or minimize the impact upon, any such Borrower or such subsidiary thereof against fluctuations in interest rates, currency exchange rates or commodity prices in the ordinary course of their business and not for speculative purposes.

“Insolvency Proceeding” means any voluntary or involuntary insolvency, bankruptcy, receivership, custodianship, liquidation, dissolution, arrangement, reorganization, assignment for the benefit of creditors, appointment of a custodian, receiver, trustee or other officer with similar powers or any other proceeding for the liquidation, dissolution or other winding up of the Borrower.

“Intellectual Property” has the meaning set forth in clause (ii) of the definition of “Term Loan Priority Collateral”.

“IP License Period” has the meaning set forth in Section 2.3(n).

“Lender-Provided Interest Rate Hedge” has the meaning set forth in the Revolving Credit Agreement as in effect on the date hereof.

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

“Loan Documents” means the Revolving Loan Documents and/or the Term Loan Documents, as the context requires.

“Net Cash Proceeds” means the aggregate cash or cash equivalents proceeds received by the Borrower or any of its Subsidiaries in respect of any disposition, equity issuance, debt issuance, involuntary disposition, payment under any insurance policy or in connection with any taking or condemnation or any other event giving rise to proceeds, net of (a) direct costs incurred in connection therewith (including, without limitation, legal, accounting and investment banking fees, and sales commissions) and (b) taxes paid or payable as a result thereof; it being understood that “Net Cash Proceeds” shall include, without limitation, any cash or cash equivalents received upon the sale or other disposition of any non-cash consideration received by the Borrower or any of its Subsidiaries in any disposition, equity issuance, debt issuance, involuntary disposition, payment under any insurance policy or in connection with any taking or condemnation or any other event giving rise to proceeds.

“Obligors” shall mean, individually and collectively, Swiss Watch International, Inc. (formerly known as Swordfish Merger Sub, Inc.), the Guarantors and any other Person liable on or in respect of the Term Loan Obligations or the Revolving Obligations, and each of their successors and assigns, including, without limitation, a receiver, trustee or debtor-in-possession on behalf of such Person or on behalf of any such successor or assign.

“Paid In Full” and “Payment In Full” means:

(a) with respect to the Revolving Obligations, (i) termination of all further lending commitments of the Revolving Lenders under the Revolving Loan Documents, (ii) payment in full in cash of all of the Revolving Priority Obligations (other than contingent Obligations for which no claim has been made at such time, outstanding letters of credit and Hedge Liabilities under Lender-Provided Interest Rate Hedges), and (iii) termination or cash collateralization (in an amount and in the manner required by the Revolving Loan Documents) of Revolving Priority Obligations consisting of (A) outstanding letters of credit (but not, in any event, in an amount greater than 105% of the aggregate undrawn face amount of such letters of credit) and (B) Hedge Liabilities under Lender-Provided Interest Rate Hedges in an amount not to exceed the amount set forth with respect thereto in the definition of “Revolving Maximum Amount”; and

(b) with respect to the Term Loan Obligations, payment in full in cash of all of the Term Loan Priority Obligations (other than contingent Obligations for which no claim has been made at such time) and termination of all commitments to extend credit under the Term Loan Agreement.

“Person” has the meaning set forth in the Revolving Credit Agreement.

“Premises” means any and all real property or buildings (including, but not limited to, offices and manufacturing, warehouse and distribution facilities) that are included within the Collateral.

“Priority Agent” means, with respect to the Revolving Credit Priority Collateral, the Revolving Agent and, with respect to the Term Loan Priority Collateral, the Term Loan Agent.

“Priority Claimholders” means, with respect to the Revolving Credit Priority Collateral, the Revolving Claimholders and, with respect to the Term Loan Priority Collateral, the Term Loan Claimholders; provided that, upon the Payment In Full of the Revolving Obligations, but subject to Section 3.3(d), the Priority Claimholders with respect to all Collateral shall mean the Term Loan Claimholders, and upon the Payment In Full of the Term Loan Obligations, but subject to Section 3.3(d), the Priority Claimholders with respect to all Collateral shall mean the Revolving Agent.

“Priority Collateral” means, with respect to the Revolving Agent and the other Revolving Claimholders, the Revolving Credit Priority Collateral and, with respect to the Term Loan Agent and the other Term Loan Claimholders, the Term Loan Priority Collateral; provided that upon the Payment In Full of the Revolving Obligations, but subject to Section 3.3(d), the Priority Collateral shall mean with respect to the Term Loan Agent all Collateral, and upon the Payment In Full of the Term Loan Obligations, but subject to Section 3.3(d), the Priority Collateral with respect to the Revolving Agent shall mean all Collateral.

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

“Purchase Notice” has the meaning set forth in Section 7.1 of this Agreement.

“Real Property” has the meaning set forth in clause (i) of the definition of “Term Loan Priority Collateral”.

“Revolving Agent” has the meaning set forth in the preamble to this Agreement.

“Revolving Claimholders” means, at any relevant time, the holders of Revolving Obligations at such time, including, without limitation, the Revolving Agent, the Revolving Lenders, any issuer or risk participant in any letter of credit issued pursuant to the Revolving Loan Documents or any issuer or risk participant in any bank products or Hedge Agreements secured by the Collateral under the Revolving Loan Documents.

“Revolving Credit Agreement” has the meaning set forth in the recitals to this Agreement.

“Revolving Credit Priority Collateral” means the following Property of each Credit Party, whether now owned or hereafter acquired and wheresoever located:

(i) all Accounts, Receivables (as defined in the Revolving Credit Agreement as in effect on the date hereof, including all Accounts) and other rights to payments, including any Accounts, Receivables and other rights to payments arising from any use of any Term Loan Priority Collateral in the ordinary course of business or that is otherwise permitted hereunder (but excluding any other Proceeds of the Term Loan Priority Collateral, including any Accounts, Receivables or other rights to payments arising from any sale, lease or other disposition or any casualty or condemnation event in respect of the Term Loan Priority Collateral);

(ii) all Inventory (including rights in all returned or repossessed Inventory);

(iii) all Chattel Paper, Instruments and Documents, including any Chattel Paper, Instruments and Documents evidencing or substituted for Accounts, Receivables, other rights to payment or Inventory, and all rights thereunder (but excluding any Proceeds of the Term Loan Priority Collateral, including any Chattel Paper, Instruments or Documents arising from any sale, lease or other disposition or any casualty or condemnation event in respect of the Term Loan Priority Collateral);

(iv) all Letter of Credit Rights;

(v) any Hedging Agreements provided by Revolving Claimholders and all rights thereunder (but excluding any Hedging Agreements provided by any Term Loan Claimholders);

(vi) cash (but excluding any identifiable Proceeds of the Term Loan Priority Collateral);

(vii) all Deposit Accounts with any bank or other financial institution and all cash, cash equivalents, financial assets, negotiable instruments and other evidence of payment, and other funds on deposit therein or credited thereto (but excluding any amounts therein constituting identifiable Proceeds of the Term Loan Priority Collateral);

(viii) all Payment Intangibles arising from or relating to any of the foregoing (but excluding any Proceeds of the Term Loan Priority Collateral);

(ix) all tax refunds for the most recent year and all rights to business interruption insurance and the proceeds thereof;

(ix) to the extent evidencing or necessary to allow the Revolving Agent to foreclose or realize upon any of the items referred to in the preceding clauses (i) through (viii), all General Intangibles, Intellectual Property, Customer/Supplier Contracts, Documents and Instruments; provided that to the extent any of the foregoing also relates to Term Loan Priority Collateral, only that portion related to the items referred to in the preceding clauses (i) through (ix) as being included in the Revolving Credit Priority Collateral shall be included in the Revolving Credit Priority Collateral;

(x) to the extent arising from any of the items referred to in the preceding clauses (i) through (ix), all Commercial Tort Claims; provided that to the extent any of the foregoing also relates to Term Loan Priority Collateral only that portion related to the items referred to in the preceding clauses (i) through (ix) as being included in the Revolving Credit Priority Collateral shall be included in the Revolving Credit Priority Collateral;

(xii) all accessions to, substitutions for and replacements of the foregoing, together with all books and records, customer lists, credit files, accounting systems, computer files, programs, printouts and other computer materials and records related thereto and any General Intangibles solely to the extent evidencing or relating to any of the foregoing (but excluding any Intellectual Property and any of the foregoing relating solely to the Term Loan Priority Collateral); and

(xiv) to the extent not otherwise included, all Proceeds (including, without limitation, all insurance proceeds), Supporting Obligations and products of any and all of the foregoing and all collateral security, guarantees, indemnities and warranties given by any Person with respect to any of the foregoing.

“Revolving Lenders” means the “Lenders” from time to time under and as defined in the Revolving Credit Agreement.

“Revolving Loan Documents” means the Revolving Credit Agreement and each Other Document (as defined in the Revolving Credit Agreement), as each may be amended, restated, supplemented or otherwise modified from time to time in accordance with the terms hereof, including any agreements and documents governing indebtedness incurred to refinance, replace, extend, renew, refund, repay, prepay, redeem, purchase, defease or retire, or issued in exchange or replacement for, all or any of the Revolving Obligations.

“Revolving Maximum Amount” means, as of any date of determination, the result of (a)(i) \$27,500,000, plus (ii) interest, fees, and other charges paid to the Revolving Lenders solely “in kind” in the form of increases of the principal amount of the Loans (as defined in the Revolving Credit Agreement) (in lieu of, and not in duplication of, cash payments of such amounts), minus (b) the aggregate amount of all permanent reductions of the Maximum



Revolving Advance Amount (as defined in the Revolving Credit Agreement as in effect on the date hereof, as calculated without giving effect to any termination of the Commitment Percentage (as defined in the Revolving Credit Agreement) as a result of any default by the Borrower under the Revolving Credit Agreement), plus (c) the aggregate amount of Hedge Liabilities under Lender-Provided Interest Rate Hedges and other Revolving Obligations under clause (iii) of the definition of “Obligations” in the Revolving Loan Agreement in an aggregate maximum amount not to exceed \$7,000,000.

“Revolving Obligations” means all indebtedness, obligations and other liabilities (contingent or otherwise) payable directly or indirectly by the Borrower to the Revolving Agent, the Revolving Lenders or any Affiliate of a Revolving Lender under the Revolving Credit Agreement, the other Revolving Loan Documents or any bank product or Hedging Agreement entered into among the Revolving Agent, any of the Revolving Lenders or any of their Affiliates and the Borrower, and shall include, without limitation, all Obligations (as such term is defined in the Revolving Credit Agreement). “Revolving Obligations” shall include, without limitation, (x) all interest accrued or accruing (or which would, absent commencement of an Insolvency Proceeding, accrue) in accordance with the rate specified in the relevant Revolving Loan Documents and (y) all fees, costs and charges incurred in connection with the Revolving Loan Documents and provided for thereunder, in the case of each of clause (x) and clause (y) whether before or after commencement of an Insolvency Proceeding and irrespective of whether any claim for such interest, fees, costs or charges is allowed as a claim in such Insolvency Proceeding.

“Revolving Priority Obligations” means all Revolving Obligations exclusive only of (a) that portion, if any, of the principal amount of the revolving loans outstanding under the Revolving Loan Documents, the undrawn amount of all outstanding letters of credit issued thereunder and the outstanding amount of Hedge Liabilities under Lender-Provided Interest Rate Hedges which exceeds the Revolving Maximum Amount, (b) that portion, if any, of interest on account of the Revolving Obligations described in the foregoing clause (a), and (c) all fees, costs and expenses on account of the Revolving Obligations described in the foregoing clause (a), including any such amounts accruing or becoming due after the commencement of any Insolvency Proceeding and irrespective of whether any claim for such amounts is allowed as a claim in such Insolvency Proceeding.

“Term Loan Agent” has the meaning set forth in the preamble to this Agreement.

“Term Loan Agreement” has the meaning set forth in the recitals to this Agreement.

“Term Loan Claimholders” means, at any relevant time, the holders of Term Loan Obligations at such time, including, without limitation, the Term Loan Agent or the Term Loan Lenders.

“Term Loan Documents” means the Term Loan Agreement and each Other Document (as defined in the Term Loan Agreement), as each may be amended, restated, supplemented or otherwise modified from time to time in accordance with the terms hereof, including any agreements and documents governing indebtedness incurred to refinance, replace, extend, renew,

refund, repay, prepay, redeem, purchase, defease or retire, or issued in exchange or replacement for, all or any of the Term Loan Obligations.

“Term Loan Lenders” means the “Lenders” from time to time under and as defined in the Term Loan Agreement.

“Term Loan Maximum Amount” means, as of any date of determination, the result of (a) \$55,000,000 minus the aggregate amount of all principal payments of Term Loan Obligations actually made in cash, plus (b) all additional protective advances that constitute Term Loan Obligations made to provide liquidity to the Borrower, plus (c) all accretions to the principal amount of the Term Loan Obligations due to the capitalization of accrued interest thereon.

“Term Loan Obligations” means all indebtedness, obligations and other liabilities (contingent or otherwise) payable directly or indirectly by the Borrower to the Term Loan Agent, the Term Loan Lenders or any Affiliate of a Term Loan Lender under the Term Loan Agreement, the other Term Loan Documents or any Hedging Agreement entered into among the Term Loan Agent, any of the Term Loan Lenders or any of their Affiliates and the Borrower, and shall include, without limitation, all Obligations (as such term is defined in the Term Loan Agreement). “Term Loan Obligations” shall include, without limitation, (x) all interest accrued or accruing (or which would, absent commencement of an Insolvency Proceeding, accrue) in accordance with the rate specified in the relevant Term Loan Documents and (y) all fees, costs and charges incurred in connection with the Term Loan Documents and provided for thereunder, in the case of each of clause (x) and clause (y) whether before or after commencement of an Insolvency Proceeding and irrespective of whether any claim for such interest, fees, costs or charges is allowed as a claim in such Insolvency Proceeding.

“Term Loan Priority Collateral” means all Property of each Credit Party, whether now owned or hereafter acquired and wheresoever located, that does not constitute Revolving Credit Priority Collateral, including, without limitation, the following:

- (i) all of the real property owned in fee by each Credit Party, together with all buildings, Fixtures, improvements, leases, licenses, permits and approvals with respect thereto (the “Real Property”):
- (ii) all present and future intellectual property rights that do not constitute Revolving Credit Priority Collateral (the “Intellectual Property”):
- (iii) all Capital Stock of each Credit Party (as defined in the Revolving Loan Documents and the Term Loan Documents) (the “Pledged Equity Interests”);
- (iv) all present and future Fixtures and Equipment along with all Accessions thereto;
- (v) all Goods that do not constitute Revolving Credit Priority Collateral;
- (vi) all Documents and contracts that do not constitute Revolving Credit Priority Collateral;

(vii) all intercompany obligations, stock and membership interests, Securities, and Notes;

(viii) all General Intangibles to the extent not constituting Revolving Credit Priority Collateral;

(x) any Hedging Agreements provided by any Term Loan Claimholders and all rights thereunder;

(xi) all Accounts, Chattel Paper, Instruments, Documents, Letter-of-Credit Rights and Payment Intangibles and all rights thereunder to the extent not constituting Revolving Credit Priority Collateral;

(xii) cash to the extent not constituting Revolving Credit Priority Collateral;

(xiii) amounts in Deposit Accounts to the extent not constituting Revolving Credit Priority Collateral;

(xix) all accessions to, substitutions for and replacements of the foregoing, together with all books and records, customer lists, credit files, accounting systems, computer files, programs, printouts and other computer materials and records related thereto and any General Intangibles to the extent not constituting Revolving Credit Priority Collateral; and

(xx) to the extent not otherwise included, all Proceeds (including, without limitation, all insurance proceeds), Supporting Obligations and products of any and all of the foregoing and all collateral security and guarantees given by any Person with respect to any of the foregoing.

“Term Loan Priority Obligations” means all Term Loan Obligations exclusive only of (a) the portion, if any, of the principal amount of the loans outstanding under the Term Loan Documents which exceeds the Term Loan Maximum Amount, and (b) all interest, fees, costs and expenses on account of the Term Loan Obligations described in the foregoing clause (a), including any such amounts accruing or becoming due after the commencement of any Insolvency Proceeding and irrespective of whether any claim for such amounts is allowed as a claim in such Insolvency Proceeding.

“Third Party Purchaser” has the meaning set forth in Section 2.3(h) of this Agreement.

“Trigger Event” means the occurrence of any of the following:

(a) delivery by the Revolving Agent of a Trigger Notice in accordance with Section 7.2 of its intent to accelerate any Revolving Obligations or commence any Enforcement Action;

(b) the occurrence of any bankruptcy or insolvency default under Section 10.7 of the Term Loan Agreement or Section 10.7 of the Revolving Credit Agreement;

(c) any Event of Default under and as defined in the Term Loan Agreement resulting from a failure to pay any amount on the Term Loan Obligations when due shall have occurred and continued for ten (10) days;

(d) any Event of Default under and as defined in the Term Loan Agreement (other than any Event of Default resulting from a failure to pay any amount on the Term Loan Obligations when due) shall have occurred and shall continue unremedied for more than 60 days but less than 150 days after written notice thereof is given by the Term Loan Agent to the Revolving Agent;

(e) a sale or other disposition following the occurrence and during the continuance of an Event of Default under and as defined in the Revolving Credit Agreement of all or substantially all of the Revolving Credit Priority Collateral and the required release of Liens on substantially all of the Revolving Credit Priority Collateral by the Term Loan Agent under this Agreement;

(f) other than in connection with the refinancing of the Revolving Obligations, replacement of PNC Bank, National Association (or one or more of its controlled or common affiliates) as the "Agent" under the Revolving Credit Agreement or reduction of the Commitment Percentage (as defined in the Revolving Credit Agreement as in effect on the date hereof) of PNC Bank, National Association to below 15%;

(g) Revolving Lenders ceasing to make Advances (as defined in the Revolving Credit Agreement as in effect on the date hereof) during the continuance of an Event of Default under and as defined in the Revolving Credit Agreement;

(h) the outstanding Revolving Advances (as defined in the Revolving Credit Agreement) shall exceed (x) Availability for more than 30 consecutive days or (y) 110% of Availability or 100% of the Revolving Maximum Amount at any time; or

(i) expiration of the 150 day period provided for under Section 2.3(f).

"Trigger Notice" has the meaning set forth in Section 7.2 of this Agreement.

"Uniform Commercial Code" means the Uniform Commercial Code as adopted in the State of New York from time to time.

Form of Closing Date License

LICENSE TO USE INTELLECTUAL PROPERTY RIGHTS

This LICENSE TO USE INTELLECTUAL PROPERTY RIGHTS is entered into as of [\_\_\_\_], [\_\_\_\_] by the Borrower (as defined herein) set forth on the signature pages hereto.

For the purpose of enabling PNC BANK, NATIONAL ASSOCIATION, as administrative agent (in such capacity, the "Revolving Agent") under that certain Revolving Credit Agreement, dated of even date herewith (as the same may be amended, restated, supplemented, modified, refinanced, replaced or renewed from time to time, the "Revolving Credit Agreement"), among SWI HOLDCO, LLC, SWISS WATCH INTERNATIONAL, INC. (formerly known as Swordfish Merger Sub, Inc.) (the "Borrower"), the financial institutions from time to time parties thereto as lenders (the "Revolving Lenders") and the Revolving Agent, to enforce any Lien held by the Revolving Agent upon any of the Revolving Credit Priority Collateral (as such terms are defined in the Intercreditor Agreement, dated of even date herewith (as the same may be amended, supplemented or modified from time to time, the "Intercreditor Agreement"), by and among the Revolving Agent, Wilmington Trust, National Association, as administrative agent under the Term Loan Agreement (as defined therein), and the Borrower, and to the extent necessary, in the good faith opinion of the Revolving Agent, to sell or otherwise liquidate any of the Revolving Credit Priority Collateral (as defined in the Revolving Credit Agreement), at such time as the Revolving Agent shall be lawfully entitled to exercise such rights and remedies in accordance with the Intercreditor Agreement, the Borrower hereby grants to the Revolving Agent, for the benefit of the Revolving Lenders, and only to the extent set forth above, an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to the Borrower) to use, license or sublicense any intellectual property rights now owned or hereafter acquired by the Borrower, wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof. The Borrower hereby agrees and acknowledges that no further performance is required of the Revolving Agent under the terms of the license granted pursuant hereto and that this license shall not constitute an executory contract. Capitalized terms not otherwise defined herein shall have the meanings given thereto in the Intercreditor Agreement.

THIS LICENSE TO USE INTELLECTUAL PROPERTY RIGHTS SHALL BE GOVERNED BY THE LAW OF THE STATE OF NEW YORK.

[SIGNATURE PAGE FOLLOWS]

SWISS WATCH INTERNATIONAL, INC.

By: \_\_\_\_\_  
Name:  
Title:



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND  
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

NOVEMBER 15, 2012

PTAS

KING & SPALDING LLP  
100 N TRYON STREET  
SUITE 3900  
CHARLOTTE, NC 28202

**900238481**

### UNITED STATES PATENT AND TRADEMARK OFFICE NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT RECORDATION BRANCH OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE ASSIGNMENT RECORDATION BRANCH AT 571-272-3350. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, MAIL STOP: ASSIGNMENT RECORDATION BRANCH, P.O. BOX 1450, ALEXANDRIA, VA 22313.

RECORDATION DATE: 11/13/2012

REEL/FRAME: 4899/0160  
NUMBER OF PAGES: 7

BRIEF: SECURITY INTEREST

DOCKET NUMBER: 18876.009026 SWI-ILS

ASSIGNOR:  
ILS HOLDINGS, LLC

DOC DATE: 11/08/2012  
CITIZENSHIP: FLORIDA  
ENTITY: LIMITED LIABILITY COMPANY

ASSIGNEE:  
WILMINGTON TRUST  
  
50 SOUTH SIXTH STREET  
SUITE 1290  
MINNEAPOLIS, MINNESOTA 55402

CITIZENSHIP: UNITED STATES  
ENTITY: NATIONAL ASSOCIATION

SERIAL NUMBER: 75845964  
REGISTRATION NUMBER: 2401981  
MARK: WORLD OF WATCHES  
DRAWING TYPE: TYPESET WORD(S) /LETTER(S) /NUMBER(S)

FILING DATE: 11/10/1999  
REGISTRATION DATE: 11/07/2000

SERIAL NUMBER: 76061930  
REGISTRATION NUMBER: 2672735  
MARK: SMARTBARGAINS  
DRAWING TYPE: TYPESET WORD(S) /LETTER(S) /NUMBER(S)

FILING DATE: 06/02/2000  
REGISTRATION DATE: 01/07/2003

SERIAL NUMBER: 76069840 FILING DATE: 06/14/2000  
REGISTRATION NUMBER: 2482102 REGISTRATION DATE: 08/28/2001  
MARK: WORLDWATCHES.COM  
DRAWING TYPE: TYPESET WORD(S) /LETTER(S) /NUMBER(S)

SERIAL NUMBER: 76091529 FILING DATE: 07/18/2000  
REGISTRATION NUMBER: 2606658 REGISTRATION DATE: 08/13/2002  
MARK: SMARTBARGAINS.COM  
DRAWING TYPE: TYPESET WORD(S) /LETTER(S) /NUMBER(S)

SERIAL NUMBER: 76613566 FILING DATE: 09/30/2004  
REGISTRATION NUMBER: 3137323 REGISTRATION DATE: 08/29/2006  
MARK: NEVER PAY RETAIL  
DRAWING TYPE: STANDARD CHARACTER MARK

SERIAL NUMBER: 78133572 FILING DATE: 06/06/2002  
REGISTRATION NUMBER: 2789828 REGISTRATION DATE: 12/02/2003  
MARK: THE WATCHERY  
DRAWING TYPE: TYPESET WORD(S) /LETTER(S) /NUMBER(S)

SERIAL NUMBER: 78874996 FILING DATE: 05/03/2006  
REGISTRATION NUMBER: 3455584 REGISTRATION DATE: 06/24/2008  
MARK: YOUR PERSONAL BARGAIN HUNTER  
DRAWING TYPE: STANDARD CHARACTER MARK

SERIAL NUMBER: 78921803 FILING DATE: 07/03/2006  
REGISTRATION NUMBER: 3295716 REGISTRATION DATE: 09/18/2007  
MARK: SMARTBARGAINS.COM  
DRAWING TYPE: AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)  
/NUMBER(S)

SERIAL NUMBER: 85112172 FILING DATE: 08/20/2010  
REGISTRATION NUMBER: 4033735 REGISTRATION DATE: 10/04/2011  
MARK: THE BARGAIN ALERT!  
DRAWING TYPE: STANDARD CHARACTER MARK

ASSIGNMENT RECORDATION BRANCH  
PUBLIC RECORDS DIVISION



NOTICE  
OF  
GRANT OF SECURITY INTEREST  
IN  
TRADEMARKS

United States Patent and Trademark Office

Ladies and Gentlemen:

Please be advised that pursuant to the Term Loan Credit and Security Agreement, dated as of November 8, 2012 (as the same may be amended, modified, restated or supplemented from time to time, the "Credit Agreement"), by and among Swiss Watch International, Inc., (formerly known as Swordfish Merger Sub, Inc.), a Delaware corporation (the "Borrower"), certain subsidiaries of the Borrower from time to time party thereto, the financial institutions which are now or which hereafter become a party thereto (collectively, the "Lenders" and each individually a "Lender") and Wilmington Trust, National Association, as agent for the Lenders (in such capacity, the "Agent") for the Secured Parties referenced therein, the undersigned (the "Grantor") has granted a continuing security interest in and continuing lien upon, the trademarks and trademark applications shown on Schedule 1 attached hereto to the Agent for the ratable benefit of the Secured Parties.

The undersigned Grantor and the Agent, on behalf of the Secured Parties, hereby acknowledge and agree that the security interest in the trademarks and trademark applications set forth on Schedule 1 attached hereto (i) may only be terminated in accordance with the terms of the Credit Agreement and (ii) is not to be construed as an assignment of any trademark or trademark application.

Notwithstanding anything herein to the contrary, the liens and security interests referred to in this Notice of Grant of Security Interest in Trademarks and the exercise of any right or remedy by the Agent, PNC Bank, National Association, as agent ("Revolving Agent") under that certain Revolving Credit and Security Agreement by and among itself, the Borrower and certain subsidiaries of the Borrower from time to time party thereto, or related lenders thereunder, are subject to that certain Intercreditor Agreement, dated as of the date hereof (as amended, modified, restated or replaced from time to time supplemented) by and among Agent, Revolving Agent and the Borrower.

[Signature Page Follows]

Very truly yours,

**ILS HOLDINGS, LLC**

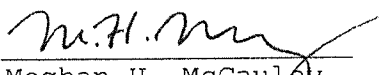
By: 

Name: Izai Ben Shmuel

Title: Co-Chief Executive Officer

[Signature Page to Notice of Grant of Security Interest in Trademarks]

WILMINGTON TRUST, NATIONAL  
ASSOCIATION

By:   
Name: Meghan H. McCauley  
Title: Authorized Signatory

[Notice of Grant of Security Interest in Trademarks]

**TRADEMARK**  
**REEL: 006077 FRAME: 0414**

**SCHEDULE 1**

TRADEMARK	OWNER	GOODS AND SERVICES	FILING DATE	SERIAL NO.	REG. DATE	REG. NO.
WORLDWATCHES.COM	ILS HOLDINGS, LLC 101 South State Road 7, Suite 201, Hollywood, FL 33023	IC 035. On-line retail store services featuring watches. FIRST USE: 19960701. FIRST USE IN COMMERCE: 19960701.	06/14/00	76069840	08/28/01	2482102
SMARTBARGAINS	ILS HOLDINGS, LLC 101 South State Road 7, Suite 201, Hollywood, FL 33023	IC 035. RETAIL STORE SERVICES, AVAILABLE THROUGH THE INTERNET, FEATURING OFF-PRICE, CLOSE-OUT, LIQUIDATION, AND MARKED-DOWN CLOTHING AND ACCESSORIES, JEWELRY, SPORTINGGOODS AND EQUIPMENT, HOME FURNISHINGS AND DECOR, ELECTRONIC GOODS, AND TOYS. FIRST USE: 20000602. FIRST USE IN COMMERCE: 20000602.	06/02/00	76061930	01/07/03	2672735
SMARTBARGAINS.COM	ILS HOLDINGS, LLC 101 South State Road 7, Suite 201, Hollywood, FL 33023	IC 035. ON-LINE RETAIL STORE SERVICES FEATURINGOFF-PRICE, CLOSE-OUT, LIQUIDATION, AND MARKED DOWN CLOTHING AND ACCESSORIES, JEWELRY, SPORTING GOODS AND EQUIPMENT, HOME FURNISHINGS AND DECOR, BATH LINENS ANDACCESSORIES, BED LINENS AND ACCESSORIES, CHINA, CRYSTAL, SILVER, KITCHEN AND DINING APPLIANCES AND ACCESSORIES, ELECTRONIC GOODS, AND TOYS. FIRST USE: 20000718. FIRST USE IN COMMERCE: 20000718.	07/18/00	76091529	08/13/02	2606658
SMARTBARGAINS.COM and Design	ILS HOLDINGS, LLC 101 South State Road 7, Suite 201, Hollywood, FL 33023	IC 035. Online retail store services and catalog, telephone and mail order services, featuring off-price, close-out, liquidation, and marked-down general merchandise, footwear, headwear, clothing and accessories, jewelry, watches, luggage, sporting goods and equipment, home furnishings and decor, home improvement goods, bath linens and accessories, bed linens and accessories, china, crystal, silver, kitchen and dining appliances and accessories, electronic goods, toys, cameras, audio equipment, housewares, computers, telephones, camcorders, art and wall decor, fragrances, cosmetics, sunglasses, attache cases, briefcases, leather goods, furniture, telescopes, binoculars, video games, cookware, beverage ware, dinnerware, and cutlery. FIRST USE: 20060906. FIRST USE IN COMMERCE: 20060906.	07/03/06	78921803	09/18/07	3295716
THE BARGAIN ALERT!	ILS HOLDINGS, LLC 101 South State Road 7, Suite 201, Hollywood, FL 33023	IC 035. Promoting the goods and services of others by providing notification about discounts on the goods and services of others via electronic communication networks. FIRST USE: 20011130. FIRST USE IN COMMERCE: 20011201.	08/20/10	85112172	10/04/11	4033735

TRADEMARK	OWNER	GOODS AND SERVICES	FILING DATE	SERIAL NO.	REG. DATE	REG. NO.
YOUR PERSONAL BARGAIN HUNTER	ILS HOLDINGS, LLC 101 South State Road 7, Suite 201, Hollywood, FL 33023	IC 035. Online retail store services and catalog, telephone and mail order services, featuring off-price, close-out, liquidation, and marked-down general merchandise, footwear, headwear, clothing and accessories, jewelry, watches, luggage, sporting goods and equipment, home furnishings and decor, home improvement goods, bath linens and accessories, bed linens and accessories, china, crystal, silver, kitchen and dining appliances and accessories, electronic goods, toys, cameras, audio equipment, housewares, computers, telephones, camcorders, art and wall decor, fragrances, cosmetics, sunglasses, attache cases, briefcases, leather goods, furniture, telescopes, binoculars, video games, cookware, beverageware, dinnerware, and cutlery. FIRST USE: 20060906. FIRST USE IN COMMERCE: 20060906.	05/03/06	78874996	06/24/08	3455584
NEVER PAY RETAIL	ILS HOLDINGS, LLC 101 South State Road 7, Suite 201, Hollywood, FL 33023	IC 035. Online retail store services, telemarketing and mail order catalog services, featuring off-price, close-out, liquidation, and marked-down general merchandise, footwear, headwear, clothing, jewelry, watches, luggage, sporting goods, home furnishings and decor, home improvement goods, bath linens, bed linens, china, crystal, silver, kitchen and dining appliances, electronic goods, toys, cameras, audio equipment, housewares, computers, telephones, camcorders, art and wall decor, fragrances, cosmetics, sunglasses, attach cases, briefcases, leather goods, furniture, telescopes, binoculars, video games, cookware, beverageware, dinnerware, and cutlery. FIRST USE: 20041101. FIRST USE IN COMMERCE: 20041101.	09/30/04	76613566	08/29/06	3137323
WORLD OF WATCHES	ILS HOLDINGS, LLC 101 South State Road 7, Suite 201, Hollywood, FL 33023	IC 035. US 100 101 102. G & S: Computerized on-line ordering services in the field of watches. FIRST USE: 19960701. FIRST USE IN COMMERCE: 19960701	11/10/99	75845964	11/07/00	2401981
THE WATCHERY	ILS HOLDINGS, LLC 101 South State Road 7, Suite 201, Hollywood, FL 33023	IC 035. US 100 101 102. G & S: RETAIL AND WHOLESALE STORE SERVICES FEATURING WATCHES, CLOCKS, AND JEWELRY. FIRST USE: 20020719. FIRST USE IN COMMERCE: 20020719	06/06/02	78133572	12/02/03	2789828

**TRADEMARK**  
**REEL: 006077 FRAME: 0417**



**UNITED STATES PATENT AND TRADEMARK OFFICE**

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND  
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

NOVEMBER 15, 2012

PTAS

KING & SPALDING LLP  
100 N TRYON STREET  
SUITE 3900  
CHARLOTTE, NC 28202

**900238507**

UNITED STATES PATENT AND TRADEMARK OFFICE  
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RECORDATION DATE: 11/13/2012

REEL/FRAME: 4899/0459  
NUMBER OF PAGES: 6

BRIEF: SECURITY INTEREST

DOCKET NUMBER: 18876.009026 SWI-ILS-FP

ASSIGNOR:  
ILS-FP LLC

DOC DATE: 11/08/2012  
CITIZENSHIP: FLORIDA  
ENTITY: LIMITED LIABILITY COMPANY

ASSIGNEE:  
WILMINGTON TRUST  
  
50 SOUTH SIXTH STREET  
SUITE 1290  
MINNEAPOLIS, MINNESOTA 55402

CITIZENSHIP: UNITED STATES  
ENTITY: NATIONAL ASSOCIATION

SERIAL NUMBER: 77558254  
REGISTRATION NUMBER: 3602080  
MARK: FRACTION PRICE  
DRAWING TYPE: AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S) / LETTER(S)  
/NUMBER(S)

FILING DATE: 08/28/2008  
REGISTRATION DATE: 04/07/2009

ASSIGNMENT RECORDATION BRANCH  
PUBLIC RECORDS DIVISION



NOTICE  
OF  
GRANT OF SECURITY INTEREST  
IN  
TRADEMARKS

United States Patent and Trademark Office

Ladies and Gentlemen:

Please be advised that pursuant to the Term Loan Credit and Security Agreement, dated as of November 8, 2012 (as the same may be amended, modified, restated or supplemented from time to time, the "Credit Agreement"), by and among Swiss Watch International, Inc., (formerly known as Swordfish Merger Sub, Inc.), a Delaware corporation (the "Borrower"), certain subsidiaries of the Borrower from time to time party thereto, the financial institutions which are now or which hereafter become a party thereto (collectively, the "Lenders" and each individually a "Lender") and Wilmington Trust, National Association, as agent for the Lenders (in such capacity, the "Agent") for the Secured Parties referenced therein, the undersigned (the "Grantor") has granted a continuing security interest in and continuing lien upon, the trademarks and trademark applications shown on Schedule 1 attached hereto to the Agent for the ratable benefit of the Secured Parties.

The undersigned Grantor and the Agent, on behalf of the Secured Parties, hereby acknowledge and agree that the security interest in the trademarks and trademark applications set forth on Schedule 1 attached hereto (i) may only be terminated in accordance with the terms of the Credit Agreement and (ii) is not to be construed as an assignment of any trademark or trademark application.

Notwithstanding anything herein to the contrary, the liens and security interests referred to in this Notice of Grant of Security Interest in Trademarks and the exercise of any right or remedy by the Agent, PNC Bank, National Association, as agent ("Revolving Agent") under that certain Revolving Credit and Security Agreement by and among itself, the Borrower and certain subsidiaries of the Borrower from time to time party thereto, or related lenders thereunder, are subject to that certain Intercreditor Agreement, dated as of the date hereof (as amended, modified, restated or replaced from time to time supplemented) by and among Agent, Revolving Agent and the Borrower.

[Signature Page Follows]

Very truly yours,

ILS-FP, LLC

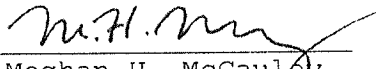
By: 

Name: Izab Ben-Samuel

Title: Co/Chief Executive Officer

[Signature Page to Notice of Grant of Security Interest in Trademarks]

WILMINGTON TRUST, NATIONAL  
ASSOCIATION

By:   
Name: Meghan H. McCauley  
Title: Authorized Signatory

[Notice of Grant of Security Interest in Trademarks]

**SCHEDULE 1**

TRADEMARK	OWNER	GOODS AND SERVICES	FILING DATE	SERIAL NO.	REG. DATE	REG. NO.
FRACTION PRICE and Design	ILS-FP LLC 101 South State Road, 7, Suite 201 Hollywood, FL 33023	IC 035 Online-retail store services featuring handbags, sunglasses.mens, watches, women's watches and jewelry First Use: 20080302. First Use IN COMMERCE; 20080302	08/28/08	77558254	04/07/09	3602080





**UNITED STATES PATENT AND TRADEMARK OFFICE**

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND  
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

NOVEMBER 15, 2012

PTAS

KING & SPALDING LLP  
100 N TRYON STREET  
SUITE 3900  
CHARLOTTE, NC 28202

**900238489**

UNITED STATES PATENT AND TRADEMARK OFFICE  
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RECORDATION DATE: 11/13/2012

REEL/FRAME: 4899/0275  
NUMBER OF PAGES: 7

BRIEF: SECURITY INTEREST

DOCKET NUMBER: 18876.009026 SWI-LP-ILS

ASSIGNOR:  
LP-ILS, LLC

DOC DATE: 11/08/2012  
CITIZENSHIP: FLORIDA  
ENTITY: LIMITED LIABILITY COMPANY

ASSIGNEE:  
WILMINGTON TRUST  
  
50 SOUTH SIXTH STREET  
SUITE 1290  
MINNEAPOLIS, MINNESOTA 55402

CITIZENSHIP: UNITED STATES  
ENTITY: NATIONAL ASSOCIATION

SERIAL NUMBER: 72147395  
REGISTRATION NUMBER: 746214  
MARK: DUFONTE  
DRAWING TYPE: TYPESET WORD(S) /LETTER(S) /NUMBER(S)

FILING DATE: 06/21/1962  
REGISTRATION DATE: 03/05/1963

SERIAL NUMBER: 74711139  
REGISTRATION NUMBER: 1981245  
MARK: LUCIEN PICCARD  
DRAWING TYPE: TYPESET WORD(S) /LETTER(S) /NUMBER(S)

FILING DATE: 08/04/1995  
REGISTRATION DATE: 06/18/1996

SERIAL NUMBER: 76218569 FILING DATE: 02/28/2001  
REGISTRATION NUMBER: 2510301 REGISTRATION DATE: 11/20/2001  
MARK: LUCIEN PICCARD  
DRAWING TYPE: TYPESET WORD(S) /LETTER(S) /NUMBER(S)

SERIAL NUMBER: 76218570 FILING DATE: 02/28/2001  
REGISTRATION NUMBER: 2510302 REGISTRATION DATE: 11/20/2001  
MARK: ARNEX  
DRAWING TYPE: AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)  
/NUMBER(S)

SERIAL NUMBER: 76218596 FILING DATE: 02/28/2001  
REGISTRATION NUMBER: 2510303 REGISTRATION DATE: 11/20/2001  
MARK: LP  
DRAWING TYPE: AN ILLUSTRATION DRAWING WITH WORD(S) /LETTER(S)/ NUMBER(S) IN  
STYLIZED FORM

SERIAL NUMBER: 77247860 FILING DATE: 08/06/2007  
REGISTRATION NUMBER: 3715804 REGISTRATION DATE: 11/24/2009  
MARK: THE WORLD RUNS ON LUCIEN PICCARD TIME  
DRAWING TYPE: STANDARD CHARACTER MARK

SERIAL NUMBER: 77249728 FILING DATE: 08/08/2007  
REGISTRATION NUMBER: 3705870 REGISTRATION DATE: 11/03/2009  
MARK: JEWELRY FOR THE CELEBRITY IN YOU  
DRAWING TYPE: STANDARD CHARACTER MARK

SERIAL NUMBER: 77249742 FILING DATE: 08/08/2007  
REGISTRATION NUMBER: 3702151 REGISTRATION DATE: 10/27/2009  
MARK: CELEBRITY STYLE  
DRAWING TYPE: STANDARD CHARACTER MARK

SERIAL NUMBER: 77249759 FILING DATE: 08/08/2007  
REGISTRATION NUMBER: 3632155 REGISTRATION DATE: 06/02/2009  
MARK: MADDY EMERSON  
DRAWING TYPE: STANDARD CHARACTER MARK

SERIAL NUMBER: 77883656 FILING DATE: 12/01/2009  
REGISTRATION NUMBER: 4006877 REGISTRATION DATE: 08/02/2011  
MARK: LUCIEN PICCARD  
DRAWING TYPE: STANDARD CHARACTER MARK

SERIAL NUMBER: 77888251 FILING DATE: 12/08/2009  
REGISTRATION NUMBER: 4003210 REGISTRATION DATE: 07/26/2011  
MARK: LUCIEN PICCARD  
DRAWING TYPE: STANDARD CHARACTER MARK

SERIAL NUMBER: 77923306 FILING DATE: 01/29/2010  
REGISTRATION NUMBER: 4000356 REGISTRATION DATE: 07/26/2011  
MARK: CW  
DRAWING TYPE: STANDARD CHARACTER MARK

SERIAL NUMBER: 78812455 FILING DATE: 02/10/2006  
REGISTRATION NUMBER: 3987811 REGISTRATION DATE: 07/05/2011  
MARK: LP ITALY  
DRAWING TYPE: STANDARD CHARACTER MARK

SERIAL NUMBER: 78919555  
REGISTRATION NUMBER: 3239457  
MARK: STRATOSPHERE  
DRAWING TYPE: STANDARD CHARACTER MARK

FILING DATE: 06/29/2006  
REGISTRATION DATE: 05/08/2007

SERIAL NUMBER: 85013091  
REGISTRATION NUMBER: 3936019  
MARK: VENETIAN GOLD  
DRAWING TYPE: STANDARD CHARACTER MARK

FILING DATE: 04/13/2010  
REGISTRATION DATE: 03/22/2011

SERIAL NUMBER: 85461600  
REGISTRATION NUMBER:  
MARK: ELENA MILLINNI  
DRAWING TYPE: STANDARD CHARACTER MARK

FILING DATE: 11/01/2011  
REGISTRATION DATE:

SERIAL NUMBER: 85461612  
REGISTRATION NUMBER:  
MARK: ANGELICA DEMARCO  
DRAWING TYPE: STANDARD CHARACTER MARK

FILING DATE: 11/01/2011  
REGISTRATION DATE:

ASSIGNMENT RECORDATION BRANCH  
PUBLIC RECORDS DIVISION



NOTICE  
OF  
GRANT OF SECURITY INTEREST  
IN  
TRADEMARKS

United States Patent and Trademark Office

Ladies and Gentlemen:

Please be advised that pursuant to the Term Loan Credit and Security Agreement, dated as of November 8, 2012 (as the same may be amended, modified, restated or supplemented from time to time, the "Credit Agreement"), by and among Swiss Watch International, Inc., (formerly known as Swordfish Merger Sub, Inc.), a Delaware corporation (the "Borrower"), certain subsidiaries of the Borrower from time to time party thereto, the financial institutions which are now or which hereafter become a party thereto (collectively, the "Lenders" and each individually a "Lender") and Wilmington Trust, National Association, as agent for the Lenders (in such capacity, the "Agent") for the Secured Parties referenced therein, the undersigned (the "Grantor") has granted a continuing security interest in and continuing lien upon, the trademarks and trademark applications shown on Schedule 1 attached hereto to the Agent for the ratable benefit of the Secured Parties.

The undersigned Grantor and the Agent, on behalf of the Secured Parties, hereby acknowledge and agree that the security interest in the trademarks and trademark applications set forth on Schedule 1 attached hereto (i) may only be terminated in accordance with the terms of the Credit Agreement and (ii) is not to be construed as an assignment of any trademark or trademark application.

Notwithstanding anything herein to the contrary, the liens and security interests referred to in this Notice of Grant of Security Interest in Trademarks and the exercise of any right or remedy by the Agent, PNC Bank, National Association, as agent ("Revolving Agent") under that certain Revolving Credit and Security Agreement by and among itself, the Borrower and certain subsidiaries of the Borrower from time to time party thereto, or related lenders thereunder, are subject to that certain Intercreditor Agreement, dated as of the date hereof (as amended, modified, restated or replaced from time to time supplemented) by and among Agent, Revolving Agent and the Borrower.

[Signature Page Follows]

Very truly yours,

LP-ILS, LLC

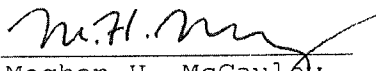
By: 

Name: Izak Ben-Shmuel

Title: Co-Chief Executive Officer

[Signature Page to Notice of Grant of Security Interest in Trademarks]

WILMINGTON TRUST, NATIONAL  
ASSOCIATION

By:   
Name: Meghan H. McCauley  
Title: Authorized Signatory

[Notice of Grant of Security Interest in Trademarks]

**SCHEDULE 1**

TRADEMARK	OWNER	GOODS AND SERVICES	FILING DATE	SERIAL NO.	REG. DATE	REG. NO.
ANGELICA DEMARCO	LP-ILS, LLC 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. US 100 101 102. G & S: jewelry and watches. FIRST USE: -. FIRST USE IN COMMERCE: -	11/01/11	85461612		
ELEENNA MILLINNI	LP-ILS, LLC 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. US 100 101 102. G & S: jewelry and watches. FIRST USE: -. FIRST USE IN COMMERCE: -	11/01/11	85461600		
ARNEX and Design	LP-ILS, LLC 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. US 100 101 102. G & S: watches and parts thereof. FIRST USE: 19630930. FIRST USE IN COMMERCE: 19630930	02/28/01	76218570	11/20/01	2510302
LP and Design	LP-ILS, LLC 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. US 100 101 102. G & S: watches and parts thereof. FIRST USE: 19771014. FIRST USE IN COMMERCE: 19771014	02/28/01	76218596	11/20/01	2510303
LP ITALY	LP-ILS, LLC 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. US 100 101 102. G & S: Clocks; Jewelry; Watch bands and straps; Watch parts; Watches. FIRST USE: 20060228. FIRST USE IN COMMERCE: 20060228	02/10/06	78812455	07/05/11	3987811
THE WORLD RUNS ON LUCIEN PICCARD TIME	LP-ILS, LLC 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. US 100 101 102. G & S: Watches, watch bands and watch parts. FIRST USE: 20090701. FIRST USE IN COMMERCE: 20090701	08/06/07	77247860	11/24/09	3715804
LUCIEN PICCARD	LP-ILS, LLC 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. US 100 101 102. G & S: WATCHES, WATCH MOVEMENTS AND PARTS THEREOF. FIRST USE: 19391231. FIRST USE IN COMMERCE: 19391231	02/28/01	76218569	11/20/01	2510301
LUCIEN PICCARD	LP-ILS, LLC 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. US 100 101 102. G & S: leather and imitation leather goods, namely handbags, attache bags and attache cases. FIRST USE: 19930213. FIRST USE IN COMMERCE: 19930213	08/04/95	74711139	06/18/96	1981245
VENETIAN GOLD	LP-ILS, LLC 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. US 100 101 102. G & S: Glass jewelry containing gold. FIRST USE: 20100530. FIRST USE IN COMMERCE: 20100530	04/13/10	85013091	03/22/11	3936019
LUCIEN PICCARD	LP-ILS, LLC 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. US 100 101 102. G & S: Clocks; Jewelry ring holders. FIRST USE: 20100531. FIRST USE IN COMMERCE: 20100531	12/08/09	77888251	07/26/11	4003210
LUCIEN PICCARD	LP-ILS, LLC 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 0125. G & S: Hosiery; Socks. FIRST USE: 20110131. FIRST USE IN COMMERCE: 20110131	12/01/09	77883656	08/02/11	4006877

CW	LP-ILS, LLC 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. US 100 101 102. G & S: jewelry and watches. FIRST USE: 20070228. FIRST USE IN COMMERCE: 20070228	01/29/10	77923306	07/26/11	4000356
STRATOSPHERE	LP-ILS, LLC 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. US 100 101 102. G & S: watches. FIRST USE: 20040630. FIRST USE IN COMMERCE: 20040630	06/29/06	78919555	05/08/07	3239457
MADDY EMERSON	LP-ILS, LLC 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. US 100 101 102. G & S: jewelry. FIRST USE: 20071001. FIRST USE IN COMMERCE: 20071001	08/08/07	77249759	06/02/09	3632155
CELEBRITY STYLE	LP-ILS, LLC 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. US 100 101 102. G & S: jewelry. FIRST USE: 20090701. FIRST USE IN COMMERCE: 20090701	08/08/07	77249742	10/27/09	3702151
JEWELRY FOR THE CELEBRITY IN YOU	LP-ILS, LLC 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. US 100 101 102. G & S: jewelry. FIRST USE: 20090701. FIRST USE IN COMMERCE: 20090701	08/08/07	77249728	11/03/09	3705870
DUFONTE	LP-ILS, LLC 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. US 100 101 102. G & S: watches and watch parts. FIRST USE: 19611219. FIRST USE IN COMMERCE: 19611219	06/21/62	72147395	03/05/63	746214

**Credit Party: LP-ILS, LLC**

File No.	Country	Mark	Class/es	Filing Date	Application No.	Reg. Date	Reg. No.	Status	Next Renewal
9548	Korea, Republic of	LUCIEN PICCARD (word mark)	14	29-Mar-2012	40-2012-0021093			Awaiting Exam	
	Canada	LUCIEN PICCARD (word mark)	N/A	14-Dec-1950	0209767	14-Dec-1950	UCA38604	Renewed - 14-Dec-2010	14-Dec-2025
	Panama	LUCIEN PICCARD (word mark)	18	13-Sept-2006	154339-01	13-Sept-2006	154339	Registered	09-Sept-2016
	Panama	LUCIEN PICCARD (word mark)	14	30-Jun-2006	152342-01	30-Jun-2006	152342	Registered	03-Jun-2016
	Europe (CTM)	LUCIEN PICCARD (word mark)	3,9,14,24,25	15-Nov-2005	004720033	n/a	n/a	Application withdrawn	n/a
	Europe (CTM)	LUCIEN PICCARD (word mark)	18	17-Feb-2006	004909131	n/a	n/a	Application refused	n/a
	Italy	LUCIEN PICCARD (word mark)	14,18	14-Mar-2005	RM2005C001308	22-Sept-2008	0001141305	Registered	14-Mar-2015
	UK	LUCIEN PICCARD (word mark)	14	n/a	001075816	n/a	n/a	Abandoned	n/a

Note: Some of the Lucien Piccard marks are still in the process of being assigned.





## UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND  
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

NOVEMBER 15, 2012

PTAS

KING & SPALDING LLP  
100 N TRYON STREET  
CHARLOTTE, NC 28202

**900238475**

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RECORDATION DATE: 11/13/2012

REEL/FRAME: 4899/0096  
NUMBER OF PAGES: 8

BRIEF: SECURITY INTEREST

DOCKET NUMBER: 18588.015040 SWI

ASSIGNOR:  
SWISS WATCH INTERNATIONAL, INC.

DOC DATE: 11/08/2012  
CITIZENSHIP: FLORIDA  
ENTITY: CORPORATION

ASSIGNEE:  
WILMINGTON TRUST  
  
50 SOUTH SIXTH STREET  
SUITE 1290  
MINNEAPOLIS, MINNESOTA 55402

CITIZENSHIP: UNITED STATES  
ENTITY: NATIONAL ASSOCIATION

SERIAL NUMBER: 77854201  
REGISTRATION NUMBER: 3819921  
MARK: CABOCHON  
DRAWING TYPE: STANDARD CHARACTER MARK

FILING DATE: 10/21/2009  
REGISTRATION DATE: 07/13/2010

SERIAL NUMBER: 77960978  
REGISTRATION NUMBER: 3853585  
MARK: IVORY TRUNK TIME SENSITIVE, MEMBER EXCLU  
DRAWING TYPE: AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)  
/NUMBER(S)

FILING DATE: 03/17/2010  
REGISTRATION DATE: 09/28/2010

SERIAL NUMBER: 78076842 FILING DATE: 08/01/2001  
REGISTRATION NUMBER: 2820405 REGISTRATION DATE: 03/02/2004  
MARK: SWI  
DRAWING TYPE: AN ILLUSTRATION DRAWING WITH WORD(S) /LETTER(S)/ NUMBER(S) IN  
STYLIZED FORM

SERIAL NUMBER: 78218161 FILING DATE: 02/24/2003  
REGISTRATION NUMBER: 2868146 REGISTRATION DATE: 07/27/2004  
MARK: SWISS WATCH INTERNATIONAL  
DRAWING TYPE: TYPESET WORD(S) /LETTER(S) /NUMBER(S)

SERIAL NUMBER: 78221178 FILING DATE: 03/04/2003  
REGISTRATION NUMBER: 2855293 REGISTRATION DATE: 06/15/2004  
MARK: FLY ZONE  
DRAWING TYPE: TYPESET WORD(S) /LETTER(S) /NUMBER(S)

SERIAL NUMBER: 78226720 FILING DATE: 03/18/2003  
REGISTRATION NUMBER: 3039892 REGISTRATION DATE: 01/10/2006  
MARK: TICINO  
DRAWING TYPE: TYPESET WORD(S) /LETTER(S) /NUMBER(S)

SERIAL NUMBER: 78226728 FILING DATE: 03/18/2003  
REGISTRATION NUMBER: 2877258 REGISTRATION DATE: 08/24/2004  
MARK: ASCONA  
DRAWING TYPE: TYPESET WORD(S) /LETTER(S) /NUMBER(S)

SERIAL NUMBER: 78226731 FILING DATE: 03/18/2003  
REGISTRATION NUMBER: 3039893 REGISTRATION DATE: 01/10/2006  
MARK: LOCARNO  
DRAWING TYPE: TYPESET WORD(S) /LETTER(S) /NUMBER(S)

SERIAL NUMBER: 78226735 FILING DATE: 03/18/2003  
REGISTRATION NUMBER: 2928250 REGISTRATION DATE: 02/22/2005  
MARK: NYON  
DRAWING TYPE: TYPESET WORD(S) /LETTER(S) /NUMBER(S)

SERIAL NUMBER: 78226739 FILING DATE: 03/18/2003  
REGISTRATION NUMBER: 2928251 REGISTRATION DATE: 02/22/2005  
MARK: MONTECO  
DRAWING TYPE: TYPESET WORD(S) /LETTER(S) /NUMBER(S)

SERIAL NUMBER: 78226763 FILING DATE: 03/18/2003  
REGISTRATION NUMBER: 2903905 REGISTRATION DATE: 11/16/2004  
MARK: MILITAIRE  
DRAWING TYPE: TYPESET WORD(S) /LETTER(S) /NUMBER(S)

SERIAL NUMBER: 78364789 FILING DATE: 02/09/2004  
REGISTRATION NUMBER: REGISTRATION DATE:  
MARK: SWISS LEGEND  
DRAWING TYPE: STANDARD CHARACTER MARK

SERIAL NUMBER: 78400369 FILING DATE: 04/12/2004  
REGISTRATION NUMBER: 3031527 REGISTRATION DATE: 12/20/2005  
MARK: MAGICO  
DRAWING TYPE: STANDARD CHARACTER MARK



SERIAL NUMBER: 85047926 FILING DATE: 05/26/2010  
REGISTRATION NUMBER: 3996227 REGISTRATION DATE: 07/19/2011  
MARK: REDLINE  
DRAWING TYPE: AN ILLUSTRATION DRAWING WITH WORD(S) /LETTER(S)/ NUMBER(S) IN  
STYLIZED FORM

SERIAL NUMBER: 85112173 FILING DATE: 08/20/2010  
REGISTRATION NUMBER: REGISTRATION DATE:  
MARK: ENTOURAGE  
DRAWING TYPE: STANDARD CHARACTER MARK

SERIAL NUMBER: 85169383 FILING DATE: 11/04/2010  
REGISTRATION NUMBER: 3918353 REGISTRATION DATE: 02/08/2011  
MARK:  
DRAWING TYPE: AN ILLUSTRATION DRAWING WITHOUT ANY WORDS(S)/ LETTER(S)  
/NUMBER(S)

SERIAL NUMBER: 85196766 FILING DATE: 12/13/2010  
REGISTRATION NUMBER: 3972146 REGISTRATION DATE: 05/31/2011  
MARK: THESAMPLESALE.COM  
DRAWING TYPE: STANDARD CHARACTER MARK

SERIAL NUMBER: 85196789 FILING DATE: 12/13/2010  
REGISTRATION NUMBER: 4088943 REGISTRATION DATE: 01/17/2012  
MARK: STRESS-FREE PAYMENT  
DRAWING TYPE: STANDARD CHARACTER MARK

SERIAL NUMBER: 85200632 FILING DATE: 12/17/2010  
REGISTRATION NUMBER: 3993849 REGISTRATION DATE: 07/12/2011  
MARK: NEPTUNE  
DRAWING TYPE: AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)  
/NUMBER(S)

SERIAL NUMBER: 85276214 FILING DATE: 03/24/2011  
REGISTRATION NUMBER: 3972172 REGISTRATION DATE: 05/31/2011  
MARK:  
DRAWING TYPE: AN ILLUSTRATION DRAWING WITHOUT ANY WORDS(S)/ LETTER(S)  
/NUMBER(S)

SERIAL NUMBER: 85286766 FILING DATE: 04/05/2011  
REGISTRATION NUMBER: REGISTRATION DATE:  
MARK: REDLINE  
DRAWING TYPE: AN ILLUSTRATION DRAWING WITH WORD(S) /LETTER(S)/ NUMBER(S) IN  
STYLIZED FORM

SERIAL NUMBER: 85288206 FILING DATE: 04/06/2011  
REGISTRATION NUMBER: REGISTRATION DATE:  
MARK: A LINE  
DRAWING TYPE: STANDARD CHARACTER MARK

SERIAL NUMBER: 85428655 FILING DATE: 09/21/2011  
REGISTRATION NUMBER: REGISTRATION DATE:  
MARK: J LINE  
DRAWING TYPE: STANDARD CHARACTER MARK

SERIAL NUMBER: 85457460 FILING DATE: 10/27/2011  
REGISTRATION NUMBER: 4146736 REGISTRATION DATE: 05/22/2012  
MARK: SAPPHITEK  
DRAWING TYPE: STANDARD CHARACTER MARK

SERIAL NUMBER: 85458665  
REGISTRATION NUMBER:  
MARK: LEGEND  
DRAWING TYPE: STANDARD CHARACTER MARK

FILING DATE: 10/28/2011  
REGISTRATION DATE:

SERIAL NUMBER: 85482731  
REGISTRATION NUMBER: 4146789  
MARK: A LINE  
DRAWING TYPE: STANDARD CHARACTER MARK

FILING DATE: 11/29/2011  
REGISTRATION DATE: 05/22/2012

SERIAL NUMBER: 85548832  
REGISTRATION NUMBER:  
MARK: L E G E N D  
DRAWING TYPE: AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S) / LETTER(S)  
/NUMBER(S)

FILING DATE: 02/21/2012  
REGISTRATION DATE:

ASSIGNMENT RECORDATION BRANCH  
PUBLIC RECORDS DIVISION

NOTICE  
OF  
GRANT OF SECURITY INTEREST  
IN  
TRADEMARKS

United States Patent and Trademark Office

Ladies and Gentlemen:

Please be advised that pursuant to the Term Loan Credit and Security Agreement, dated as of November 8, 2012 (as the same may be amended, modified, restated or supplemented from time to time, the "Credit Agreement"), by and among Swiss Watch International, Inc., (formerly known as Swordfish Merger Sub, Inc.), a Delaware corporation (the "Borrower"), certain subsidiaries of the Borrower from time to time party thereto, the financial institutions which are now or which hereafter become a party thereto (collectively, the "Lenders" and each individually a "Lender") and Wilmington Trust, National Association, as agent for the Lenders (in such capacity, the "Agent") for the Secured Parties referenced therein, the undersigned (the "Grantor") has granted a continuing security interest in and continuing lien upon, the trademarks and trademark applications shown on Schedule 1 attached hereto to the Agent for the ratable benefit of the Secured Parties.

The undersigned Grantor and the Agent, on behalf of the Secured Parties, hereby acknowledge and agree that the security interest in the trademarks and trademark applications set forth on Schedule 1 attached hereto (i) may only be terminated in accordance with the terms of the Credit Agreement and (ii) is not to be construed as an assignment of any trademark or trademark application.

Notwithstanding anything herein to the contrary, the liens and security interests referred to in this Notice of Grant of Security Interest in Trademarks and the exercise of any right or remedy by the Agent, PNC Bank, National Association, as agent ("Revolving Agent") under that certain Revolving Credit and Security Agreement by and among itself, the Borrower and certain subsidiaries of the Borrower from time to time party thereto, or related lenders thereunder, are subject to that certain Intercreditor Agreement, dated as of the date hereof (as amended, modified, restated or replaced from time to time supplemented) by and among Agent, Revolving Agent and the Borrower.

[Signature Page Follows]

Very truly yours,

SWISS WATCH INTERNATIONAL, INC.

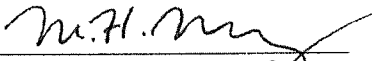
By: 

Name: Izack Ben Shmuel

Title: Co-Chief Executive Officer

[Signature Page to Notice of Grant of Security Interest in Trademarks]

WILMINGTON TRUST, NATIONAL  
ASSOCIATION

By:   
Name: Meghan H. McCauley  
Title: Authorized Signatory

[Notice of Grant of Security Interest in Trademarks]

**SCHEDULE 1**

TRADEMARK	OWNER	GOODS AND SERVICES	FILING DATE	SERIAL NO.	REG. DATE	REG. NO.
TICINO	Swiss Watch International, Inc. 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. US 002 027 028 050. G & S: Fashion jewelry and watches. FIRST USE: 20020801. FIRST USE IN COMMERCE: 20020801	03/18/03	78226720	01/10/06	3039892
SWI	Swiss Watch International, Inc. 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. WATCHES AND JEWELRY. FIRST USE: 19950301. FIRST USE IN COMMERCE: 19950301.	08/01/01	78076842	03/02/04	2820405
ASCONA	Swiss Watch International, Inc. 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. Fashion jewelry and watches. FIRST USE: 20020801. FIRST USE IN COMMERCE: 20020802.	03/18/03	78226728	08/24/04	2877258
NYON	Swiss Watch International, Inc. 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. Fashion jewelry and watches. First Use: 200330801. First Use in Commerce 20030801	03/18/03	78226735	02/22/05	2928250
MAGICO	Swiss Watch International, Inc. 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. US 002 027 028 050. G & S: Watches. FIRST USE: 20040201. FIRST USE IN COMMERCE: 20040301	04/12/04	78400369	12/20/05	3031527
LOCARNO	Swiss Watch International, Inc. 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. Fashion jewelry and watches. FIRST USE: 20020801. FIRST USE IN COMMERCE: 20020801.	03/18/03	78226731	01/10/06	3039893
MILITAIRE	Swiss Watch International, Inc. 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. US 002 027 028 050. G & S: Fashion jewelry and watches. FIRST USE: 20030801. FIRST USE IN COMMERCE: 20030801	03/18/03	78226763	11/16/04	2903905
MONTECO	Swiss Watch International, Inc. 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. US 002 027 028 050. G & S: Fashion jewelry and watches. FIRST USE: 20030801. FIRST USE IN COMMERCE: 20030801	03/18/03	78226739	02/22/05	2928251
SWISS LEGEND	Swiss Watch International, Inc. 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. WATCHES AND JEWELRY.	02/09/04	78364789		
SWISS WATCH INTERNATIONAL	Swiss Watch International, Inc. 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. WATCHES AND JEWELRY. FIRST USE:20030301	02/24/03	78218161	07/27/04	2868146

FLY ZONE	Swiss Watch International, Inc. 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. US 002 027 028 050. G & S: Watches and Jewelry. FIRST USE: 20030701. FIRST USE IN COMMERCE: 20030701	03/04/03	78221178	06/15/04	2855293
IVORY TRUNK TIME SENSITIVE, MEMBER EXCLUSIVE SAVINGS ON THE FINEST BRANDS	Swiss Watch International, Inc. 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 035 US 100 101 102 G & S : Computerized on-line retail store services in the field of watches, sunglasses, handbags, leather goods, home accessories, cosmetics, fragrances, and apparel. First use: 20100315	03/17/10	77960978	09/28/10	3853585
THESAMPLESALE.COM	Swiss Watch International, Inc. 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 035. US 100 101 102. G & S: On-line retail store services featuring watches, jewelry and general merchandise	12/13/10	85196766	05/31/11	3972146
STRESS-FREE PAYMENT	Swiss Watch International, Inc. 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 036. US 100 101 102. G & S: Financing of purchases	12/13/10	85196789	01/17/12	4088943
Design only	Swiss Watch International, Inc. 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. US 002 027 028 050. G & S: Chronometers; Watches and clocks; Women's watches; Wrist watches. FIRST USE: 20091217. FIRST USE IN COMMERCE: 20091217	11/04/10	85169383	02/08/11	3918353
NEPTUNE and Design	Swiss Watch International, Inc. 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. US 002 027 028 050. G & S: Chronometers; Watches and clocks; Women's watches; Wrist watches. FIRST USE: 20091217. FIRST USE IN COMMERCE: 20091217	12/17/10	85200632	07/12/11	3993849
RED LINE	Swiss Watch International, Inc. 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. US 002 027 028 050. G & S: Watches, namely, horological and chronometric instruments, namely, men's and women's wrist watches and chronometers	05/26/10	85047926	07/19/11	3996227
RED LINE	Swiss Watch International, Inc. 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 009. G & S: Sunglasses, namely, not in the area of cycling	05/26/10	85286766		
CABOCHON	Swiss Watch International, Inc. 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. US 002 027 028 050. G & S: Watches, namely, horological and chronometric instruments, namely, men's and women's wrist watches and chronometers, jewelry, namely, rings being jewelry, bracelets being jewelry, pins being jewelry, brooches of precious metals or imitation jewelry, anklets, necklaces, and watch chains. FIRST USE: 20071130. FIRST USE IN COMMERCE: 20071130	10/21/09	77854201	07/13/10	3819921
J LINE	Swiss Watch International, Inc. 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. US 002 027 028 050. G & S: Dress watches; Watches and clocks; Women's watches; Wrist watches. FIRST USE: --. FIRST USE IN COMMERCE: --	09/21/11	85428655		

SAPPHITEK	Swiss Watch International, Inc. 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. US 002 027 028 050. G & S: Watches crystals. FIRST USE: 20100715. FIRST USE IN COMMERCE: 20100715	10/27/11	85457460	05/22/12	4146736
A_LINE	Swiss Watch International, Inc. 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. US 002 027 028 050. G & S: Watches. FIRST USE: 11282011. FIRST USE IN COMMERCE: 11282011	11/29/11	85482731	05/22/12	4146789
ENTOURAGE	Swiss Watch International, Inc. 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 003. US 001 004 006 050 051 052. G & S: Perfume IC 014. US 002 027 028 050. G & S: Jewellery and watches IC 016. US 002 005 022 023 029 037 038 050. G & S: Writing implements IC 018. US 001 002 003 022 041. G & S: Leather bags and wallets	08/20/10	85112173		
LEGEND and Design	Swiss Watch International, Inc. 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. US 002 027 028 050. G & S: Watches. FIRST USE: . FIRST USE IN COMMERCE:	02/21/12	85548832		
LEGEND	Swiss Watch International, Inc. 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. US 002 027 028 050. G & S: Jewelry; Watches. FIRST USE: . FIRST USE IN COMMERCE:	10/28/11	85458665		
A LINE	Swiss Watch International, Inc. 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. G & S: Chronometers; Dress watches; Watches, clocks; Women's watches; Wrist watches. FIRST USE: . FIRST USE IN COMMERCE: ; IC 018. G & S: Handbags. FIRST USE: . FIRST USE IN COMMERCE:	04/06/11	85288206		
Design	Swiss Watch International, Inc. 101 South State Road 7, Suite 201, Hollywood, FL33023	IC 014. US 002 027 028 050. G & S: Chronometers; Watches and clocks; Women's watches; Wrist watches. FIRST USE: 20110208. FIRST USE IN COMMERCE: 20110208	03/24/11	85276214	05/31/11	3972172

**Trademarks: International**

**Credit Party: Swiss Watch International, Inc.**

File No.	Country	Mark	Class/es	Filing Date	Application No.	Reg. Date	Reg. No.	Status	Next Renewal
7084	Europe CTM*	SWI (word mark)	09,14,16,18	25-Jul-2003	003286069	24-Jan-2008	003286069	Registered	25-Jul-2013



File No.	Country	Mark	Class/es	Filing Date	Application No.	Reg. Date	Reg. No.	Status	Next Renewal
7085	Europe CTM*	SWI SWISS WATCH INTERNATIONAL (word mark)	09,14,16,18	25-Jul-2003	003283462	24-Jan-2008	003283462	Registered	25-Jul-2013
7086	Israel	SWI (word mark)	14	4-May-2003	164225	4-Jul-2004	164225	Registered	4-May-2013
7087	Israel	SWI SWISS WATCH INTERNATIONAL (word mark)	14	4-May-2003	164227	5-Apr-2006	164227	Registered	4-May-2013
7088	Israel	SWI (word mark)	18	9-Jul-2003	165591	3-Aug-2004	165591	Registered	9-Jul-2013
7090	Japan	SWI (word mark)	09,14,16,18	24-Jul-2003	2003-61932	11-Mar-2005	4845220	Registered	11-Mar-2015
7091	Japan	SWI SWISS WATCH INTERNATIONAL (word mark)	09,14,16,18	24-Jul-2003	2003-61933	11-Mar-2005	4845221	Registered	11-Mar-2015
7092	Switzerland	SWI (word mark)	09,14,16,18	9-Mar-2004	51530/2004	3-May-2004	521146	Registered	9-Mar-2014
7093	Switzerland	SWI SWISS WATCH INTERNATIONAL (word mark)	09,14,16,18	19-Mar-2004	51838/2004	18-Jun-2004	522804	Registered	19-Mar-2014
7752	Spain	SW logo - SPAIN - Class 14		15-Jan-1998	1.228.980		1.228.980	Renewed	15-Jan-2018
6145	Australia	SWISS LEGEND (word mark)	14	16-Sep-2009	1320878			Opposition	
8882	Brazil	SWISS LEGEND (Logo - in Black & White)	14	6-Sep-2012	16120004447			Awaiting Exam	
6127	China	SWISS LEGEND (stylized lettering)	14	6-Feb-2012	10461293			Awaiting Exam	
8964	Croatia	SWISS LEGEND (word mark)	09,14,18	23-Aug-2011	Z20111511A			Regn. Fees paid / Awaiting Certificate	
6136	Europe CTM*	SWISS LEGEND (word mark)	09,14,16,18	16-Sep-2009	008553158	10-May-2010	008553158	Registered	16-Sep-2019
9932	India	SWISS LEGEND (Logo - in Black & White)	14	7-Sep-2012	2391682			Awaiting Exam	
6125	Israel	SWISS LEGEND (word mark)	14	20-Aug-2009	222904			Opposition	
9547	Israel	SWISS LEGEND (Logo - in Black & White)	14	7-Mar-2012	244877			Awaiting Exam	

File No.	Country	Mark	Class/es	Filing Date	Application No.	Reg. Date	Reg. No.	Status	Next Renewal
6129	Japan	SWISS LEGEND (word mark)	14,18	24-Sep-2009	2009-072314	4-Nov-2011	5447781	Registered/Invalidation Action filed	4-Nov-2021
6130	Korea, Republic of	SWISS LEGEND (word mark)	14	29-Mar-2012	40-2012-0021090			Awaiting Exam	
9334	Korea, Republic of	SWISS LEGEND (color logo)	14	26-Aug-2011	40-2011-0046837			In Examination	
8720	Mexico	SWISS LEGEND (word mark)	14	7-Jun-2011	1,184,246	19-Oct-2011	1,245,771	Registered/Invalidation Action filed	7-Jun-2021
9458	Philippines	SWISS LEGEND (word mark)	14	23-Feb-2012	04-2012-002226			Opposition	
9918	Russian Federation	SWISS LEGEND (Logo - in Black & White)	14	7-Sep-2012	2012731439			Awaiting Exam	
8966	Turkey	SWISS LEGEND (word mark)	14	26-Aug-2011	2011/69962			Opposition	
9796	Canada	a_line (word mark)	N/a	5-Jun-2012	1580685			Awaiting Exam	
9611	Europe CTM	a_line (word mark)	09,14,18	28-May-2012	10918118			Application Published	
9354	Israel	a_line (word mark)	09,14	6-Dec-2011	242675			Awaiting Exam	
9356	Korea, Republic of	a_line (word mark)	14	29-Mar-2012	40-2012-0021092			Awaiting Exam	
9798	Mexico	a_line (word mark)	14	5-Jun-2012	1,280,369			Awaiting Exam	
9795	Canada	RED LINE (word mark)	N/a	5-Jun-2012	1580684			Awaiting Exam	
9610	Europe CTM	RED LINE (word mark)	09,14,18	28-May-2012	10918043			Application Published	
9353	Israel	RED LINE (word mark)	09,14	6-Dec-2011	242674			Awaiting Exam	
9355	Korea, Republic of	RED LINE (word mark)	14	29-Mar-2012	40-2012-0021091			Awaiting Exam	
9797	Mexico	RED LINE (word mark)	14	5-Jun-2012	1,280,370			Awaiting Exam	

## SECURED PARTY SALE AGREEMENT

This Secured Party Sale Agreement (this “Agreement”) is made as of March 8, 2017, between Wilmington Trust, National Association, with an address at 50 South Sixth Street, Suite 1290 Minneapolis, MN 55402, in its capacity as agent for secured creditors (in such capacity, “Seller”), and JomaShop, Inc., a corporation organized and operating under the laws of the State of New York and having a place of business located at 140 58<sup>th</sup> Street, Suite 3B, Brooklyn, New York 11220 (“Buyer”). Seller and Buyer are each a “Party” and, collectively, the “Parties”.

### PRELIMINARY STATEMENTS

A. Seller is party to (i) that certain Term Loan Credit and Security Agreement, dated as of November 8, 2012 (as amended, restated, supplemented or otherwise modified from time to time, the “Term Credit Agreement”), by and among Swiss Watch International, Inc., a Delaware corporation (the “Borrower”), SWI Group, Inc., a Delaware corporation (“Holdings”), Watch-Mart, LLC, a Florida limited liability company (“Watch-Mart”), LP-ILS, LLC, a Florida limited liability company (“LP-ILS”), ILS-FP, LLC, a Florida limited liability company (“ILS-FP”), ILS Holdings, LLC, a Florida limited liability company (“ILS Holdings”, together with Watch-Mart, LP-ILS, ILS-FP and the Borrower, collectively the “Credit Parties” and each, individually, a “Credit Party”), the financial institutions party thereto (collectively, the “Term Lenders” and each individually, a “Term Lender”) and Seller, as agent for the Term Lenders (in such capacity, the “Term Agent”), and (ii) that certain Intercreditor Agreement, dated as of November 8, 2012 (as amended by that certain Amendment No. 1 thereto, dated as of May 13, 2014, as amended by that certain Amendment No. 2 thereto, dated as of July 22, 2016, and as further amended, restated, supplemented or otherwise modified from time to time, the “Intercreditor Agreement”), by and among PNC Bank, National Association, as administrative agent for itself and the Revolving Lenders (as defined in the Intercreditor Agreement) under the Revolving Credit Agreement (as defined in Intercreditor Agreement) (in such capacity, the “Revolving Agent”), and Seller, as administrative agent for the Term Lenders.

B. Pursuant to the terms of the Term Credit Agreement, the Credit Parties granted to Seller liens on and security interests (the “Security Interest”) in certain of the Credit Parties’ personal property more particularly described on Schedule I hereto to secure their obligations under the Term Credit Agreement, and as otherwise set forth in the Term Credit Agreement. Seller’s Security Interest in such assets that can be perfected by the filing of a UCC-1 financing statement were perfected by Seller’s filing of UCC-1 financing statements on: (i) November 08, 2012 as file no. 20124320893 in the Delaware Department of State UCC Filing Section with the Borrower as the debtor, (ii) November 21, 2014 as file no. 20144719951 in the Delaware Department of State UCC Filing Section with Holdings as the debtor, (iii) November 08, 2012 as file no. 201207852722 in the Florida Secured Transaction Registry with the Watch-Mart as the debtor, (iv) November 08, 2012 as file no. 201207852730 in the Florida Secured Transaction Registry with LP-ILS as the debtor, (v) November 08, 2012 as file no. 201207852749 in the Florida Secured Transaction Registry with the ILS-FP as the debtor, and (vi) November 08, 2012 as file no. 201207852757 in the Florida Secured Transaction Registry with the ILS Holdings as the debtor.

C. Borrower has defaulted under the terms of the Term Credit Agreement and, prior to the consummation of the transactions contemplated by this Agreement, Borrower owed to Seller outstanding indebtedness arising under the Term Credit Agreement in an amount in excess of the Purchase Price.

D. Seller desires to foreclose upon and sell to Buyer (or its affiliates as to certain assets, as provided in the Sale Documents (as defined below)) at a private secured party sale certain assets of the Credit Parties that are subject to the liens created by the Term Credit Agreement pursuant to Section 9-610 *et seq.* of the Uniform Commercial Code in effect in the state of New York as of the date hereof (the “UCC”), on the terms and conditions set forth in this Agreement (the “Secured Party Sale”).

E. Buyer desires to buy such assets from Seller, pursuant to Section 9-610 *et seq.* of the UCC, on the terms and conditions of this Agreement.

## ARTICLE I

### DEFINITIONS

**Section 1.1** **Definitions.** The following terms shall have the following meanings:

(a) “Closing” shall mean, subject to the satisfaction or waiver of the conditions set forth in Article V of this Agreement, the consummation of the sale by Seller and the purchase by Buyer of the Transferred Assets pursuant to this Agreement on the Closing Date at a mutually agreeable location or by facsimile or electronic transmission of signed counterparts of this Agreement and the other Sale Documents.

(b) “Closing Date” shall mean 12:00 p.m. (prevailing Eastern Time) on the date hereof.

(c) “Excluded Assets” shall mean (i) the personal property specifically described in that certain UCC-1 financing statement no. 20134476983 filed on November 13, 2013 with the Delaware Secretary of State naming NEC Financial Services, LLC, as the secured party, and the Borrower, as the debtor (as the same has been amended through the date hereof) , (ii) any lease, license, contract, franchise, property right or agreement (or any Credit Party’s rights or interests thereunder) if and to the extent that the grant of the security interest shall, after giving effect to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) be prohibited under any applicable law or constitute or result in (A) the abandonment, invalidation or unenforceability of any right, title or interest of such Credit Party therein, or any legally effective option to purchase or similar right of a third party thereunder, under any lease, license, contract, franchise or agreement giving rise thereto, or (B) a breach or termination pursuant to the terms of, or a default under, or a violation of any legally enforceable provision requiring consent (which has not been obtained) of another party to any such lease, license, contract, franchise, property right or agreement, (iii) any intent-to-use trademark applications for which no statement of use has been filed; and (iv) the Revolving Priority Collateral (as defined in the Intercreditor Agreement).

(d) “Purchase Price” shall mean

(e) “Sale Documents” shall mean the other agreements, instruments, certificates and documents required to be delivered under this Agreement, including, without limitation, the Bill of Sale, the Domestic Trademark Assignment Agreement and the Foreign Trademark Assignment Agreement (each as defined below).

(f) “Seller’s Liens” shall mean all liens on and security interests in the Transferred Assets in favor of Seller.

(g) “Transferred Assets” shall mean all rights, title and interests of the Credit Parties in and to the assets described on Schedule I hereto, but only to the extent that such assets (i) are not Excluded Assets, (ii) constitute “Term Loan Priority Collateral” as defined in the Intercreditor Agreement, and (iii) are transferable pursuant to a secured party sale under Section 9-610 of the UCC.

**Section 1.2 Rules of Construction.** In this Agreement, unless the context otherwise requires: (a) Articles and Sections referred to by number shall mean the corresponding Articles and Sections of this Agreement; (b) the terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms shall refer to this Agreement, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the date of execution of this Agreement; (c) words of the masculine gender shall mean and include correlative words of the female and neuter genders, and words importing the singular number shall mean and include the plural number and vice versa; (d) references in this Agreement to particular sections of the UCC or any other legislation shall be deemed to refer to re-designations for codification purposes; and (e) any defined terms not defined herein shall be given the meaning ascribed to them in the Term Credit Agreement or the Intercreditor Agreement (as applicable, and to the extent that any such definitions conflict, the terms of the Term Credit Agreement shall prevail).

## ARTICLE II

### THE SECURED PARTY SALE

**Section 2.1 Secured Party Sale.** On the terms and subject to the conditions described in this Agreement, including, without limitation, the satisfaction (or waiver by the Party entitled to provide such waiver) of each of the conditions precedent set forth in Article V of this Agreement, at the Closing Seller shall foreclose upon and sell in a private secured party sale to Buyer (or its affiliates as to certain assets, as provided in the Sale Documents) pursuant to Section 9-610 *et seq.* of the UCC Borrower’s right, title and interest in the Transferred Assets, free and clear of all Seller’s Liens, and thereby, without Seller taking title to any of the Transferred Assets, cause the Transferred Assets to be transferred to Buyer, Buyer shall contemporaneously purchase the Transferred Assets from Seller.

**Section 2.2 No Assumption of Liabilities.** Seller acknowledges and agrees that except as expressly set forth herein, Buyer is not assuming any obligations or liabilities of the Credit Parties, in connection with or relating to the Transferred Assets or otherwise, unless

Buyer expressly assumes an identified obligation or liability under this Agreement or otherwise in writing. Buyer acknowledges and agrees that except as expressly set forth herein, Seller is not assuming any obligations or liabilities of the Credit Parties, in connection with or relating to the Transferred Assets or otherwise, unless Seller expressly assumes an identified obligation or liability under this Agreement or otherwise in writing.

**Section 2.3 Purchase Price; Method of Payment.** In consideration for Seller's transfer to Buyer of all of the Credit Parties' right, title and interest in the Transferred Assets free and clear of all Seller's Liens, Buyer shall pay to Seller the Purchase Price, which will be paid by wire transfer of immediately available funds according to the wire instructions set forth on Seller's signature page hereto.

**Section 2.4 Closing.** The Closing shall be held on the Closing Date.

**Section 2.5 Deliveries of Seller.** At the Closing, Seller shall convey, assign, deliver and transfer title to the Transferred Assets to Buyer, free and clear of all Seller's Liens, through the execution and delivery of (i) a bill of sale for such assets substantially in the form attached to this Agreement as Exhibit A (the "Bill of Sale"), (ii) an assignment of domestic trademarks substantially in the form attached to this Agreement as Exhibit B (the "Domestic Trademark Assignment Agreement") and (iv) an assignment of foreign trademarks substantially in the form attached to this Agreement as Exhibit C (the "Foreign Trademark Assignment Agreement").

**Section 2.6 Obligations of Buyer at Closing.** At the Closing, Buyer shall deliver to Seller the Purchase Price pursuant to Section 2.3 above.

**Section 2.7 Risk of Loss.** Buyer shall bear all risk of loss, damage or injury to the Transferred Assets of any kind or nature, from and after the Closing.

**Section 2.8 Effectiveness.** This Agreement shall be effective upon receipt by each Party hereto of a fully executed counterpart of this Agreement from the other Parties.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES OF SELLER

In order to induce Buyer to enter into this Agreement and consummate the Secured Party Sale, Seller hereby represents and warrants to Buyer that the statements contained in this Article III are true, correct and complete.

**Section 3.1 Organization and Standing.** Seller represents that it is an entity duly organized, validly existing and in good standing under the laws of the United States and is authorized to do business in each jurisdiction as may be necessary to give effect to the transaction contemplated in this Agreement.

**Section 3.2 Power and Authority.** Seller has all requisite corporate power and authority, and requisite power and authority under the Term Credit Agreement, to execute and deliver this Agreement and the Sale Documents to which it is a party, to perform its obligations under this Agreement and each such Sale Document, and to consummate the transactions

contemplated by this Agreement and each such Sale Document. The execution, delivery and performance by Seller of this Agreement and the Sale Documents to which it is a party and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action on the part of Seller. This Agreement and each Sale Document to which Seller is a party is, or upon its execution and delivery will be, a valid and binding obligation of Seller, enforceable against it in accordance with the terms thereof, except as the enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws now or hereafter in effect relating to creditors' rights generally and general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity).

**Section 3.3 No Conflict.** With respect to Seller, neither (i) the execution, delivery or performance of this Agreement or the other Sale Documents nor (ii) the Secured Party Sale contemplated hereby will conflict with or result in a violation of any agreement, contract, instrument, guaranty, power of attorney, commitment, promise, assurance, settlement agreement, order, obligation, undertaking or right, whether or not written, to which Seller is a party or by which Seller is or may be bound. No consent, approval authorization or order of, or registration or filing with, or notice to, any court or governmental agency or body having jurisdiction or regulatory authority over Seller (or any of its properties) is required for (i) Seller's execution and delivery of this Agreement (and each agreement executed and delivered by it in connection herewith) or (ii) the consummation by Seller of the transactions contemplated by this Agreement (and each agreement executed and delivered by it in connection herewith).

**Section 3.4 Recitals Accurate.** The statements contained in Paragraphs A through D of the Preliminary Statements are hereby incorporated by reference in this Article III and shall constitute representations and warranties of Seller as though fully set forth in this Article III.

**Section 3.5 Seller's Liens.** Seller has not transferred, sold or assigned any of the Seller's Liens. Seller has not recorded any security assignments with the United States Patent and Trademark Office or the Copyright Office as to any Transferred Assets.

**Section 3.6 No Other Representations and Warranties.** Except for the representations and warranties of Seller specifically enumerated in Article III of this Agreement, or which are specifically incorporated in Article III of this Agreement by reference, Seller makes no other representations or warranties. The Transferred Assets shall be conveyed, free and clear of all Seller's Liens, but otherwise are "As Is", "Where Is" and "With All Faults" as of the Closing. BUYER ACKNOWLEDGES AND AGREES THAT (A) THERE IS NO WARRANTY FROM SELLER RELATING TO TITLE, POSSESSION, QUIET ENJOYMENT OR THE LIKE IN THIS DISPOSITION; (B) THE SALE OF THE TRANSFERRED ASSETS HEREUNDER IS WITHOUT RECOURSE TO SELLER, AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF SELLER, AS TO ITEMS, CONDITION OR QUANTITY OF THE TRANSFERRED ASSETS OR ANY OTHER MATTERS WHATSOEVER; (C) SELLER MAKES NO REPRESENTATION AS TO THE VALUE, IF ANY, OF THE TRANSFERRED ASSETS BEING TRANSFERRED HEREBY; (D) SELLER MAKES NO REPRESENTATION OR WARRANTY CONCERNING THE POSSIBLE INFRINGEMENT OF ANY TRADEMARKS, TRADE NAME OR PATENT

ARISING OUT OF THE USE BY BUYER OF ANY OF THE TRANSFERRED ASSETS; (E) SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, THAT ALL OR ANY PORTION OF THE TRANSFERRED ASSETS ARE MERCHANTABLE (IN THE SENSE OF AN IMPLIED WARRANTY OF MERCHANTABILITY UNDER THE UCC) OR FIT FOR A PARTICULAR PURPOSE; (F) SELLER MAKES NO REPRESENTATION THAT THE TRANSFERRED ASSETS ARE BEING SOLD FREE AND CLEAR OF CLAIMS OR LIENS OTHER THAN THE SELLER'S LIENS; (G) SELLER MAKES NO REPRESENTATION AS TO BORROWER'S TITLE TO ANY OF THE TRANSFERRED ASSETS; AND (H) THE SOLE REPRESENTATIONS AND WARRANTIES OF SELLER REGARDING THE TRANSFERRED ASSETS ARE THOSE SPECIFICALLY PROVIDED IN, AND THOSE SPECIFICALLY INCORPORATED BY REFERENCE IN, ARTICLE III OF THIS AGREEMENT. Seller represents, and Buyer acknowledges, that Seller cannot transfer or convey title to property that Borrower does not own or that is not subject to the liens created pursuant to the Term Credit Agreement.

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES OF BUYER

In order to induce Seller to enter into this Agreement and consummate the Secured Party Sale, Buyer hereby represents and warrants to Seller that the statements contained in this Article IV are true, correct and complete as to Buyer.

**Section 4.1 Organization and Standing.** Buyer represents that it is an entity duly organized, validly existing and in good standing under the laws of New York and is authorized to do business in each jurisdiction as may be necessary to give effect to the transaction contemplated in this Agreement.

**Section 4.2 Power and Authority.** Buyer has all requisite corporate power and authority to execute and deliver this Agreement, and the Sale Documents to which it is a party, to perform its obligations under this Agreement and each such Sale Document, and to consummate the transactions contemplated by this Agreement and each such Sale Document. The execution, delivery and performance by Buyer of this Agreement and the Sale Documents to which it is a party and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action on the part of Buyer. This Agreement and each Sale Document to which Buyer is a party is, or upon its execution and delivery will be, a valid and binding obligation of Buyer, enforceable against it in accordance with the terms thereof, except as the enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws now or hereafter in effect relating to creditors' rights generally and general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity).

**Section 4.3 Brokerage and Finder's Fees.** Neither Buyer nor any of its subsidiaries, affiliates, shareholders, directors, officers or employees has incurred, or will incur, any brokerage, finder's or similar fee in connection with the Secured Party Sale. To Buyer's knowledge, no broker, agent or other intermediary engaged by Buyer has or intends to pursue a



claim against Seller or Borrower for a commission or other fee in connection with the Secured Party Sale.

## ARTICLE V

### CONDITIONS

**Section 5.1 Mutual Conditions.** The obligations of the Parties to consummate the Secured Party Sale shall be subject to fulfillment of the following conditions:

(a) **No Adverse Proceeding.** No temporary restraining order, preliminary or permanent injunction or other order or decree which prevents, delays or adversely affects the consummation of the Secured Party Sale shall have been issued and remain in effect, and no statute, rule or regulation shall have been enacted by any governmental authority which prevents, delays or adversely affects the consummation of the Secured Party Sale or any of the transactions contemplated hereby, including, without limitation, the “automatic stay” under 11 U.S.C. § 362 in any pending case under Title 11 of the United States Code by or against Borrower.

(b) **No Prohibition.** No order of any court or governmental or regulatory authority or body which restrains or prohibits the transactions contemplated hereby shall be in effect on the Closing Date and no suit or investigation by any government agency to enjoin the transactions contemplated hereby or seek damages or other relief as a result thereof shall be pending as of the Closing Date.

**Section 5.2 Conditions to Obligations of Seller.** The obligation of Seller to consummate the Secured Party Sale shall be subject to the fulfillment of the following conditions unless waived by Seller:

(a) **Payment of Purchase Price.** Receipt by Seller of the Purchase Price in immediately available funds.

(b) **Performance of Agreement.** Buyer shall have performed in all material respects each obligation and agreement and shall have complied in all material respects with each covenant to be performed and complied with by it hereunder at or prior to the Closing. Buyer shall have delivered a certificate to Seller attesting to such performance and compliance, and furthermore attesting that the representations and warranties of Buyer made herein remain true and correct as if made on the Closing Date.

**Section 5.3 Conditions to Obligations of Buyer.** The obligation of Buyer to consummate the Secured Party Sale shall be subject to the fulfillment of the following conditions unless waived by Buyer:

(a) **Performance of Agreement.** Seller shall have performed in all material respects each obligation and agreement and shall have complied in all material respects with each covenant to be performed and complied with by it hereunder at or prior to the Closing. The representations and warranties of Seller made herein shall have been true when made and at all times after the date when made, to and including the Closing Date,

with the same force and effect as if made on and as of each such time, including the Closing Date. Seller shall have delivered a certificate to Buyer attesting to such performance and compliance, and furthermore attesting that the representations and warranties of Seller made herein remain true and correct as if made on the Closing Date.

(b) **Status of Transferred Assets.** There shall have been no material damage or destruction of the Transferred Assets by fire or other casualty or event, including but not limited to that the domain names, customer/email lists of Borrower have not been damaged, terminated, expired, deleted, corrupted or misappropriated.

**Section 5.4 Simultaneous Occurrence of Sale and Purchase.** The execution and delivery of all documents, the making of all covenants, representations and warranties, and the taking of all actions required by this Agreement by any Party on or before the Closing Date shall be deemed to have occurred simultaneously on the Closing Date.

## ARTICLE VI

### **CLOSING AND POST-CLOSING MATTERS**

**Section 6.1 Termination of Liens.** Seller hereby authorizes Buyer, effective as of the Closing, to file, or cause to be filed, the UCC-3 release in form attached hereto as Exhibit D and file or deliver other documents on behalf of Seller evidencing the release of the Seller's Liens on the Transferred Assets and to take all other actions, and Seller agrees to execute and deliver, at Buyer's sole cost and expense, any such other documents and take such additional actions, whether before or after the Closing, reasonably requested by Buyer to release the Seller's Liens on the Transferred Assets and implement a proper chain of title in the assignment and ownership records.

**Section 6.2 Access to Records.** Buyer agrees that it shall preserve and keep, or cause to be preserved and kept, all original books and records included in the Transferred Assets in the possession of Buyer or its affiliates for not less than two (2) years from the Closing Date. During such period, representatives of Seller or its designee, and subject to Buyer's written consent, or unless required by law, upon reasonable notice and for any reasonable business purpose, be provided access during normal business hours to examine, inspect and copy such books and records with respect to the subject transaction. During such period, Buyer shall provide Seller or its designee with, or cause to be provided to Seller or its designee, such original books and records included in the Transferred Assets as Seller shall reasonably request in connection with any suit, action or proceeding to which Seller or its designee are parties or in connection with the requirements of any law applicable to Seller or its designee. Notwithstanding the foregoing, any information provided to Seller or its designee, shall be held in confidence, unless otherwise agreed-upon in writing by Buyer. It is expressly understood herein that Buyer may not have authority to release confidential information of or regarding third-parties.

## ARTICLE VII

### MISCELLANEOUS

**Section 7.1 Survival.** Seller and Buyer agree that the representations, warranties, covenants and agreements contained herein to be performed or complied with shall survive the Closing and shall not be affected by the transfer of the Transferred Assets or Buyer's payment of the Purchase Price, unless the covenant or agreement specifies a term, in which case such covenant or agreement shall survive until the expiration of such specified term.

**Section 7.2 Notices.** All notices and other communications under this Agreement to a Party shall be in writing and shall be deemed given when delivered personally, faxed (which is confirmed) to that Party at the facsimile number for that Party set forth below, mailed by certified mail (return receipt requested) to that Party at the address for that Party (or at such other address for such Party as such Party shall have specified in notice to the other Party), or delivered by Federal Express, UPS, or any similar express delivery service to that Party at that address:

(a) If to Seller:

Wilmington Trust, National Association  
50 South Sixth Street, Suite 1290  
Minneapolis, MN 55402  
Attention: Renee Kuhl  
Telephone: 612-217-5635  
Facsimile: 612-217-5651  
Email: RKuhl@wilmingtontrust.com

With a copy to:

Lindquist & Vennum LLP  
2000 IDS Center  
80 South 8th Street  
Minneapolis, Minnesota 55402  
Attention: Mark Dietzen, Esq.  
Telephone: (612) 371-2452  
Facsimile: (612) 371-3207  
Email: mdietzen@lindquist.com

and

King & Spalding LLP  
1180 Peachtree Street NE  
Atlanta, GA 30309-3521  
Attention: John Hyman  
Telephone: 404-572-4615 (direct)  
Facsimile: 404-572-5133 (fax)

Email: jhyman@kslaw.com

And

King & Spalding LLP  
1180 Peachtree Street NE  
Atlanta, GA 30309 -3521  
Attention: W. Austin Jowers  
Telephone. (404) 572-2776  
Facsimile; (404) 572-5131  
Email: ajowers@kslaw.com

(b) If to Buyer:

JomaShop, Inc.  
140 58<sup>th</sup> Street, Suite 3B  
Brooklyn, New York 11220

With a copy to:

Asher C. Gulko, Esq.  
GULKO SCHWED LLP  
44 Wall Street, Second Floor  
New York, New York 10005

**Section 7.3 Non-Waiver.** No failure by a Party to insist upon strict compliance with any term or provision of this Agreement, to exercise any option, to enforce any right, or to seek any remedy upon any default of another Party shall affect, or constitute a waiver of, that party's right to insist upon such strict compliance, exercise that option, enforce that right or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default. No custom or practice of the Parties at variance with any provision of this Agreement shall affect or constitute a waiver of, a Party's right to demand strict compliance with the provisions of this Agreement.

**Section 7.4 References; Headings.** Any reference to an article, section, exhibit or schedule shall be to an article or section of, or exhibit or schedule to, this Agreement unless otherwise expressly provided. The headings of the various articles and sections of this Agreement are not part of the context of this Agreement, are merely labels to assist in locating such articles and sections, and shall be ignored in construing this Agreement.

**Section 7.5 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by facsimile shall be effective as an original and shall constitute a representation that an executed original shall be delivered.

**Section 7.6 Entire Agreement.** This Agreement, including all exhibits, schedules, and other agreements, instruments and documents referred to in this Agreement between the Parties, constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter of this Agreement.

**Section 7.7 No Third-Party Beneficiaries.** Nothing contained in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give to any person, firm, corporation or legal entity, other than the Parties, any rights, remedies or other benefits under or by reason of this Agreement subject however to the provisions of Section 7.9 below.

**Section 7.8 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to principles of conflicts of law.

**Section 7.9 Successors; Assignment.** This Agreement is for the benefit of and binding upon the Parties, their respective successors and, where applicable, assigns. No Party may assign this Agreement or any of its rights, interest or obligations hereunder without the prior written approval of the other Parties, which approval shall not be unreasonably withheld or delayed.

**Section 7.10 Remedies.** All rights and remedies of each Party under this Agreement shall be cumulative and in addition to all other rights and remedies which may be available to that Party from time to time, whether under any other agreement, at law, or in equity.

**Section 7.11 Expenses.** Except as otherwise specifically provided in this Agreement, each Party shall bear its respective legal, accounting, and other costs and expenses associated with the Secured Party Sale (including without limitation the costs of any brokers and financial advisors) and the negotiation, execution and delivery of this Agreement.

**Section 7.12 Severability.** With respect to any provision of this Agreement finally determined by a court of competent jurisdiction to be unenforceable, such court shall have jurisdiction to reform such provision so that it is enforceable to the maximum extent permitted by applicable law, and the Parties shall abide by such court's determination. In the event that any provision of this Agreement cannot be reformed, such provision shall be deemed to be severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.

**Section 7.13 Further Assurances.** Each Party shall, in good faith, execute and deliver additional documents and take such additional actions, in either case which may be reasonably requested by the other Party, whether before or after the Closing, to effectuate the purposes of this Agreement, including but not limited to any documentation contemplated by Section 6.1 hereof.

**Section 7.14 Time of the Essence.** Time shall be of the essence in this Agreement, and if any Party shall fail to perform any of its undertakings within the time stipulated for such performance, the other Parties may elect, without prejudice to their other remedies, if any, to terminate this Agreement.

**Section 7.15 Construction.** The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

*[The remainder of this page is intentionally left blank; signature pages follow.]*

IN WITNESS WHEREOF, the Parties hereto have caused this Secured Party Sale Agreement to be duly executed as of the date first above written.

**BUYER:**

**JOMASHOP, INC.**

By: \_\_\_\_\_

Name: *MARVIN SPERNBERG*

Title: *PRESIDENT*

**SELLER:**

**WILMINGTON TRUST, NATIONAL ASSOCIATION** (in its capacity as agent for secured creditors)

By   
Name: Renee Kuhl  
Title: Its Duly Authorized Signatory

**Wire Instructions:**

**SECURED PARTY SALE AGREEMENT RELATING TO ASSETS OF SWISS  
WATCH INTERNATIONAL, INC. SIGNATURE PAGE**

**TRADEMARK  
REEL: 006077 FRAME: 0459**



**SCHEDULE I TO  
SECURED PARTY SALE AGREEMENT**

**Borrower's Assets Subject to Security Interest / Transferred Assets**

(i) all of the real property owned in fee by each Credit Party, together with all buildings, Fixtures<sup>1</sup>, improvements, leases, licenses, permits and approvals with respect thereto;

(ii) all present and future intellectual property rights that do not constitute Revolving Credit Priority Collateral;

(iii) any and all shares, interests, participations or other equivalents (however designated) of each Credit Party's capital stock or partnership, limited liability company or other equity interests at any time outstanding, and any and all rights, warrants or options exchangeable for or convertible into such capital stock or other interests (but excluding any debt security that is exchangeable for or convertible into such capital stock);

(iv) all present and future Fixtures and Equipment along with all Accessions thereto;

(v) all Goods that do not constitute Revolving Credit Priority Collateral<sup>2</sup>;

(vi) all Documents and contracts that do not constitute Revolving Credit Priority Collateral;

(vii) all intercompany obligations, stock and membership interests, Securities, and Notes;

(viii) all General Intangibles to the extent not constituting Revolving Credit Priority Collateral, including but not limited to: All General intangibles (as defined in the Uniform Commercial Code) including, without limitation, goodwill, trademarks, service marks, trade styles, trade names, patents, patent applications, leases, license agreement, franchise agreements, royalty agreements, permits, licenses,

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<sup>1</sup> Any capitalized terms used in this Schedule I and not otherwise defined in the Agreement shall have the meanings ascribed thereto by the Uniform Commercial Code to the extent the same are defined therein.

<sup>2</sup> "Revolving Priority Collateral" has the meaning ascribed to it in the Intercreditor Agreement.

blueprints, drawings, purchase orders, customer lists, route lists, infringements, claims, computer programs, computer discs, computer tapes, literature, reports, vendor lists, billing records, customer and supplier correspondence, catalogs, design rights, domain names and email addresses including any information stored on computers or other hard drives in the possession, custody and control of the Credit Parties and Seller (both present and former); all patents (issued, pending and any patent applications), trademarks, service marks, trade names and logos, copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, videos and white papers, graphics, artwork, whether published or unpublished; all trade secret rights, including all rights to unpatented inventions, know how, improvements, unregistered designs, drawings, prototypes, models, discoveries technology, research and development, operating manuals, license rights and agreements and confidential information; all mask work or similar rights available for protection of semiconductor chips, including any information stored on computers or other hard drives in the possession, custody and control of Credit Parties and Seller (both present and former);

(ix) any Hedging Agreements provided by the Term Agent or any Term Lender and all rights thereunder;

(x) all Accounts, Chattel Paper, Instruments, Documents, Letter-of-Credit Rights and Payment Intangibles and all rights thereunder to the extent not constituting Revolving Credit Priority Collateral;

(xi) cash to the extent not constituting Revolving Credit Priority Collateral;

(xii) amounts in Deposit Accounts to the extent not constituting Revolving Credit Priority Collateral;

(xiii) all accessions to, substitutions for and replacements of the foregoing, together with all books and records, customer lists, credit files, accounting systems, computer files, programs, printouts and other computer materials and records related thereto and any General Intangibles to the extent not constituting Revolving Credit Priority Collateral; and

(xiv) to the extent not otherwise included, all Proceeds (including, without limitation, all insurance proceeds), Supporting Obligations and products of any and all of the foregoing and all collateral security and guarantees given by any person with respect to any of the foregoing.

**SECURED PARTY SALE AGREEMENT RELATING TO ASSETS OF SWISS  
WATCH INTERNATIONAL, INC.  
SCHEDULE I**

**TRADEMARK  
REEL: 006077 FRAME: 0461**

**EXHIBIT A TO  
SECURED PARTY SALE AGREEMENT**

**Form of Bill of Sale**

[See attached]

BILL OF SALE BY SECURED PARTY IN  
DISPOSITION OF COLLATERAL

Pursuant to that certain Secured Party Sale Agreement dated of even date herewith and between the parties hereto (the "Sale Agreement"), Wilmington Trust, National Association, with an address at 50 South Sixth Street, Suite 1290 Minneapolis, MN 55402, in its capacity as agent for secured creditors (in such capacity, "Seller"), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby cause to be conveyed pursuant to Section 9-610 *et seq.* of the Uniform Commercial Code as enacted and in effect in the State of New York (the "UCC"), unto JomaShop, Inc., a corporation organized and operating under the laws of the State of New York ("Buyer"), all right, title and interest of Swiss Watch International, Inc., a Delaware corporation (the "Company"), in and to the Transferred Assets. Capitalized terms used but not defined herein shall have the meanings ascribed to those terms in the Sale Agreement.

The Company granted Seller, and pursuant to the Term Credit Agreement, liens and security interests on certain of the Company's assets as more specifically described therein (including the Transferred Assets). The Company has defaulted under the terms of the Term Credit Agreement and Seller has foreclosed on Seller's Liens and has the right to convey to Buyer the Company's interest in the Transferred Assets.

This Bill of Sale is given in connection with a private sale of the Transferred Assets held pursuant to Section 9-610 of the UCC.

Except for the representations and warranties of Seller specifically enumerated in Article III of the Sale Agreement, or which are specifically incorporated in Article III of the Sale Agreement by reference, Seller makes no other representations or warranties. The Transferred Assets are conveyed free and clear of all Seller's Liens, but otherwise are "As Is", "Where Is" and "With All Faults" as of the date hereof. BUYER ACKNOWLEDGES AND AGREES THAT (A) THERE IS NO WARRANTY FROM SELLER RELATING TO TITLE, POSSESSION, QUIET ENJOYMENT OR THE LIKE IN THIS DISPOSITION; (B) THE SALE OF THE TRANSFERRED ASSETS HEREUNDER IS WITHOUT RECOURSE TO SELLER, AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF SELLER, AS TO ITEMS, CONDITION OR QUANTITY OF THE TRANSFERRED ASSETS OR ANY OTHER MATTERS WHATSOEVER; (C) SELLER MAKES NO REPRESENTATION AS TO THE VALUE, IF ANY, OF THE TRANSFERRED ASSETS BEING TRANSFERRED HEREBY; (D) SELLER MAKES NO REPRESENTATION OR WARRANTY CONCERNING THE POSSIBLE INFRINGEMENT OF ANY TRADEMARKS, TRADE NAME OR PATENT ARISING OUT OF THE USE BY BUYER OF ANY OF THE TRANSFERRED ASSETS; (E) SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, THAT ALL OR ANY PORTION OF THE TRANSFERRED ASSETS ARE MERCHANTABLE (IN THE SENSE OF AN IMPLIED WARRANTY OF MERCHANTABILITY UNDER THE UCC) OR FIT FOR A PARTICULAR PURPOSE; (F) SELLER MAKES NO REPRESENTATION THAT THE TRANSFERRED ASSETS ARE BEING SOLD FREE AND CLEAR OF LIENS OTHER THAN THE SELLER'S LIENS; (G) SELLER MAKES NO REPRESENTATION AS TO THE COMPANY'S TITLE TO ANY OF THE TRANSFERRED ASSETS; AND (H) THE SOLE REPRESENTATIONS AND

WARRANTIES OF SELLER REGARDING THE TRANSFERRED ASSETS ARE THOSE SPECIFICALLY PROVIDED IN, AND THOSE SPECIFICALLY INCORPORATED BY REFERENCE IN, ARTICLE III OF THE SALE AGREEMENT. Seller represents, and Buyer acknowledges, that Seller cannot transfer or convey title to property that the Company does not own or that is not subject to the liens created pursuant to the Term Credit Agreement.

This Bill of Sale shall be binding upon and be enforceable against Seller and its successors and assigns and shall inure to the benefit of and be enforceable by Buyer and its successors and assigns.

Date: March 8, 2017

*[The remainder of this page is intentionally left blank; signature pages follow.]*

**BUYER:**

**JOMASHOP, INC.**

By: \_\_\_\_\_

Name:

Title:

**SELLER:**

**WILMINGTON TRUST, NATIONAL ASSOCIATION** (in its capacity as agent for secured creditors)

By: \_\_\_\_\_

Name: Renee Kuhl

Title: Its Duly Authorized Signatory

**EXHIBIT B TO  
SECURED PARTY SALE AGREEMENT**

**Form of Domestic Trademark Assignment Agreement**

[See attached]



**EXHIBIT C TO  
SECURED PARTY SALE AGREEMENT**

**Form of Foreign Trademark Assignment Agreement**

[See attached]

**EXHIBIT D TO  
SECURED PARTY SALE AGREEMENT**

**Form of UCC-3 Release**

[See attached]

**TRADEMARK ASSIGNMENT AGREEMENT**

(Domestic)

This Trademark Assignment Agreement (“Assignment”) is entered into as of March 8, 2017, by and between Wilmington Trust, National Association, with an address at 50 South Sixth Street, Suite 1290 Minneapolis, MN 55402, in its capacity as agent for secured creditors (in such capacity, “Assignor”), conducting a foreclosure by private secured party sale pursuant to Section 9-610 *et seq.* of the UCC (as defined below) of Swiss Watch International, Inc., a Delaware corporation (the “Borrower”), and JomaShop, Inc., a corporation organized and operating under the laws of the State of New York and having a place of business located at 140 58<sup>th</sup> Street, Suite 3B, Brooklyn, New York 11220 (the “Assignee”). Together, Assignor and Assignee may be referred to as the “Parties” or individually as a “Party”.

**RECITALS**

**WHEREAS**, Assignor and Borrower are parties to that certain Term Loan Credit and Security Agreement, dated as of November 8, 2012 (as amended and otherwise modified from time to time, the “Loan Agreement”);

**WHEREAS**, pursuant to the Loan Agreement, Borrower granted to Assignor liens on and security interests in certain of Borrower’s personal property more particularly described therein (the “Collateral”) to secure its obligations thereunder;

**WHEREAS**, the Collateral includes the trademarks, service marks, trade dress, trade names, logos and corporate names (in each case, whether registered or unregistered) and registrations and applications for registration thereof, including those trademark applications and registrations for the marks set forth on **Exhibit A** attached hereto (the “Marks”), together with the goodwill associated with the foregoing;

**WHEREAS**, Assignor’s security interest in the Collateral that can be perfected by the filing of a UCC-1 financing statement (including, without limitation, the Marks and the goodwill associated with the foregoing) was perfected by Assignor’s filing of a UCC-1 financing statement on November 08, 2012 as file no. 20124320893 in the Delaware Department of State UCC Filing Section;

**WHEREAS**, Borrower defaulted under the terms of the Loan Agreement;

**WHEREAS**, as a result of Borrower’s defaults under the terms of the Loan Agreement and pursuant to that certain Secured Party Sale Agreement (the “Sale Agreement”), dated as of the date hereof, between Assignor, Assignee and the other parties thereto, Assignor by private secured party sale contemporaneously foreclosed on, *inter alia*, the Collateral constituting the Marks and the goodwill associated therewith pursuant to Section 9-610 *et seq.* of the Uniform Commercial Code in effect in the state of New York as of the date thereof (the “UCC”) and transferred title thereto to Assignee (as Assignor’s designee); and

**WHEREAS**, the Parties desire to enter into this Assignment to further evidence this purchase and assignment of such Marks, together with the goodwill associated with the foregoing, and to record this transaction with the U.S. Patent and Trademark Office and other foreign trademark offices or similar agencies or authorities.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties have agreed as follows:

1. Upon the terms and subject to the conditions of the Sale Agreement, (a) Assignor does hereby sell, assign, transfer, convey, grant, and set over to Assignee, its successors, assigns, and legal representatives, pursuant to Section 9-610 *et seq.* of the UCC, Borrower's right, title and interest in and to the Marks, including, but not limited to, the applications for and registrations thereof, together with the goodwill associated with the foregoing, free and clear of all Seller's Liens (as defined in the Sale Agreement), (b) Assignor hereby authorizes and requests the U.S. Patent and Trademark Office, or any foreign equivalent thereof, to record Assignee as the owner of the Marks, and as assignee of the entire right, title and interest in, to and under the same, for the sole use and enjoyment of Assignee, its successors, assigns or other legal representatives, and (c) Assignor hereby agrees further that it will, at Assignee's expense, when requested, execute, deliver and acknowledge such further instruments of conveyance and do and perform all such other acts and things as Assignee may reasonably require to more effectively accomplish the assignment, transfer and recordation thereof of the said Marks.

2. This Assignment is subject to and includes by reference all terms and conditions of the Sale Agreement, including all of the representations, warranties, and covenants set forth in the Sale Agreement. Nothing contained in this Assignment shall be deemed to modify, limit, or amend any such rights or obligations of the Parties hereto under the Sale Agreement. In the event of any conflict or inconsistency between the terms and conditions of this Assignment and the Sale Agreement, the terms and conditions of the Sale Agreement shall govern.

3. The laws of the State of New York shall govern the interpretation, validity, performance and enforcement of this Assignment. If any provision of this Assignment should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Assignment shall not be affected thereby. This Assignment may be executed in counterparts, and each such counterpart shall be deemed an original and all such counterparts shall constitute one and the same instrument. This Assignment may be executed by facsimile or other electronic signature, and any such signature shall be of the same force and effect as an original signature.

4. Except for the representations and warranties of Assignor specifically enumerated in Article III of the Sale Agreement, or which are specifically incorporated in Article III of the Sale Agreement by reference, Assignor makes no other representations or warranties. The Transferred Assets are conveyed free and clear of all Seller's Liens (as defined in the Sale Agreement), but otherwise are "As Is", "Where Is" and "With All Faults" as of the date hereof. BUYER ACKNOWLEDGES AND AGREES THAT (A) THERE IS NO WARRANTY FROM ASSIGNOR RELATING TO TITLE, POSSESSION, QUIET ENJOYMENT OR THE LIKE IN THIS DISPOSITION; (B) THE SALE OF THE TRANSFERRED ASSETS HEREUNDER IS

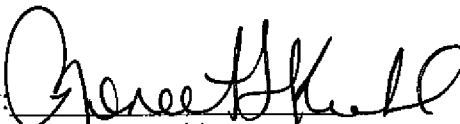
WITHOUT RECOURSE TO ASSIGNOR, AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ASSIGNOR, AS TO ITEMS, CONDITION OR QUANTITY OF THE TRANSFERRED ASSETS OR ANY OTHER MATTERS WHATSOEVER; (C) ASSIGNOR MAKES NO REPRESENTATION AS TO THE VALUE, IF ANY, OF THE TRANSFERRED ASSETS BEING TRANSFERRED HEREBY; (D) ASSIGNOR MAKES NO REPRESENTATION OR WARRANTY CONCERNING THE POSSIBLE INFRINGEMENT OF ANY TRADEMARKS, TRADE NAME OR PATENT ARISING OUT OF THE USE BY BUYER OF ANY OF THE TRANSFERRED ASSETS; (E) ASSIGNOR MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, THAT ALL OR ANY PORTION OF THE TRANSFERRED ASSETS ARE MERCHANTABLE (IN THE SENSE OF AN IMPLIED WARRANTY OF MERCHANTABILITY UNDER THE UCC) OR FIT FOR A PARTICULAR PURPOSE; (F) ASSIGNOR MAKES NO REPRESENTATION THAT THE TRANSFERRED ASSETS ARE BEING SOLD FREE AND CLEAR OF LIENS OTHER THAN THE SELLER'S LIENS (AS DEFINED IN THE SALE AGREEMENT); (G) ASSIGNOR MAKES NO REPRESENTATION AS TO THE BORROWER'S TITLE TO ANY OF THE TRANSFERRED ASSETS; AND (H) THE SOLE REPRESENTATIONS AND WARRANTIES OF ASSIGNOR REGARDING THE TRANSFERRED ASSETS ARE THOSE SPECIFICALLY PROVIDED IN, AND THOSE SPECIFICALLY INCORPORATED BY REFERENCE IN, ARTICLE III OF THE SALE AGREEMENT. Assignor represents, and Assignee acknowledges, that Seller cannot transfer or convey title to property that the Borrower does not own or that is not subject to the liens created pursuant to the Loan Agreement.

*[The remainder of this page is intentionally left blank; signature pages follow.]*

**IN WITNESS WHEREOF**, the Parties have executed this Assignment as of the date set forth above.

**ASSIGNOR:**

**WILMINGTON TRUST, NATIONAL ASSOCIATION** (in its capacity as agent for secured creditors)

By: 

Name: Renee Kuhl

Title: Its Duly Authorized Signatory

ASSIGNEE:

JOMASHOP, INC.

By: 

Name: MARVIN D. STERNBERG

Title: PRESIDENT

## EXHIBIT A

Swiss Watch International, Inc.  
(Delaware Corporation)

### U.S. Trademarks


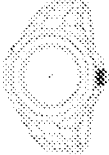
#### Trademark Registrations

<u>Mark/Name</u>	<u>App. No./Reg. No.</u>	<u>Application Date</u>	<u>Registration Date</u>
<u>A LINE</u>	RN: 4146789 SN: 85482731	November 29, 2011	May 22, 2012
<u>ARNEX and Design</u> 	RN: 2510302 SN: 76218570	February 28, 2001	November 20, 2001
<u>B BEN &amp; SONS and Design</u> 	RN: 4621711 SN: 85777786	November 13, 2012	October 14, 2014
<u>BEN &amp; SONS</u>	RN: 4621706 SN: 85774414	November 8, 2012	October 14, 2014
<u>CABOCHON</u>	RN: 3819921 SN: 77854201	October 21, 2009	July 13, 2010
<u>CW</u>	RN: 4000356 SN: 77923306	January 29, 2010	July 26, 2011
<u>DUFONTE</u>	RN: 746214 SN: 72147395	June 21, 1962	March 5, 1963
<u>IVORY TRUNK TIME SENSITIVE MEMBER EXCLUSIVE SAVINGS ON THE FINEST BRANDS and Design</u> 	RN: 3853585 SN: 77960978	March 17, 2010	September 28, 2010



Mark/Name	App. No./Reg. No.	Application Date	Registration Date
<u>LEGEND and Design</u> 	RN: 4951524 SN: 85548832	February 21, 2012	May 3, 2016
<u>LEGEND</u>	RN: 4913910 SN: 85458665	October 28, 2011	March 8, 2016
<u>LEGENDS</u>	RN: 1229612 SN: 73362076	April 29, 1982	March 8, 1983
<u>LP (Stylized)</u> 	RN: 2510303 SN: 76218596	February 28, 2001	November 20, 2001
<u>LP ITALY</u>	RN: 3987811 SN: 78812455	February 10, 2006	July 5, 2011
<u>LUCIEN PICCARD</u>	RN: 4006877 SN: 77883656	December 1, 2009	August 2, 2011
<u>LUCIEN PICCARD</u>	RN: 4003210 SN: 77888251	December 8, 2009	July 26, 2011
<u>LUCIEN PICCARD</u>	RN: 1981245 SN: 74711139	August 4, 1995	June 18, 1996
<u>LUCIEN PICCARD</u>	RN: 2510301 SN: 76218569	February 28, 2001	November 20, 2001
<u>MAGICO</u>	RN: 3031527 SN: 78400369	April 12, 2004	December 20, 2005
<u>MILITAIRE</u>	RN: 2903905 SN: 78226763	March 18, 2003	November 16, 2004
<u>NEPTUNE and Design</u>	RN: 3993849 SN: 85200632	December 17, 2010	July 12, 2011

Mark/Name	App. No./Reg. No.	Application Date	Registration Date
			
<u>NEVER PAY RETAIL</u>	RN: 3137323 SN: 76613566	September 30, 2004	August 29, 2006
<u>REDLINE (Stylized)</u> 	RN: 3996227 SN: 85047926	May 26, 2010	July 19, 2011
<u>SAPPHITEK</u>	RN: 4146736 SN: 85457460	October 27, 2011	May 22, 2012
<u>SMARTBARGAINS</u>	RN: 2672735 SN: 76061930	June 2, 2000	January 7, 2003
<u>SMARTBARGAINS.COM</u> <u>and Design</u> 	RN: 3295716 SN: 78921803	July 3, 2006	September 18, 2007
<u>SMARTBARGAINS.COM</u>	RN: 2606658 SN: 76091529	July 18, 2000	August 13, 2002
<u>STRATOSPHERE</u>	RN: 3239457 SN: 78919555	June 29, 2006	May 8, 2007
<u>STRESS-FREE</u> <u>PAYMENT</u>	RN: 4088943 SN: 85196789	December 13, 2010	January 17, 2012
<u>SWI (Stylized)</u> 	RN: 2820405 SN: 78076842	August 1, 2001	March 2, 2004
<u>SWISS LEGEND</u>	SN: 78364789	February 9, 2004	
<u>SWISS WATCH</u> <u>INTERNATIONAL</u>	RN: 2868146 SN: 78218161	February 24, 2003	July 27, 2004
<u>THE BARGAIN ALERT!</u>	RN: 4033735 SN: 85112172	August 20, 2010	October 4, 2011

<u>Mark/Name</u>	<u>App. No./Reg. No.</u>	<u>Application Date</u>	<u>Registration Date</u>
<u>THE GENERAL</u>	RN: 4685213 SN: 85801783	December 13, 2012	February 10, 2015
<u>THE WATCHERY</u>	RN: 2789828 SN: 78133572	June 6, 2002	December 2, 2003
<u>THE WORLD RUNS ON LUCIEN PICCARD TIME</u>	RN: 3715804 SN: 77247860	August 6, 2007	November 24, 2009
<u>THESAMPLESALE.COM</u>	RN: 3972146 SN: 85196766	December 13, 2010	May 31, 2011
<u>VENETIAN GOLD</u>	RN: 3936019 SN: 85013091	April 13, 2010	March 22, 2011
<u>YOUR PERSONAL BARGAIN HUNTER</u>	RN: 3455584 SN: 78874996	May 3, 2006	June 24, 2008
<u>Design Only</u> 	RN: 3918353 SN: 85169383	November 4, 2010	February 8, 2011
<u>Design Only</u> 	RN: 3972172 SN: 85276214	March 24, 2011	May 31, 2011