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

FORM 1-U

Current Report Pursuant to Regulation A

**Date of Report: September 5, 2018**

(Date of earliest event reported)

**HIGHTIMES HOLDING CORP.**

(Exact name of issuer as specified in its charter)

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**Delaware**

(State or other jurisdiction of  
incorporation or organization)

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**81-4706993**

(I.R.S. Employer  
Identification No.)

**10990 Wilshire Blvd**

**Penthouse**

**Los Angeles, California 90024-3898**

(Full mailing address of principal executive offices)

**(844) 933-3287**

(Issuer's telephone number, including area code)

Title of each class of securities issued pursuant to Regulation A: Class A voting Common Stock, par value \$0.0001 per share

This Current Report on Form 1-U is issued in accordance with Rule 257(b)(4) of Regulation A, and is neither an offer to sell any securities, nor a solicitation of an offer to buy, nor shall there be any sale of any such securities in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or jurisdiction.

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## ITEM 9. OTHER EVENTS

### Completion of Minimum Offering.

On September 12, 2018, Prime Trust, the escrow agent for Hightimes Holding Corp. (“Hightimes” or the “Company”), reported that an aggregate of \$5,307,888.35 of gross proceeds has been received in escrow from the sale of 482,535 shares of the Company’s voting Class A common stock at \$11.00 per share (the “Shares”) in connection with the Company’s minimum \$5,000,000 and maximum \$50,000,000 initial public offering (the “Offering”). The terms of the Offering by the Company of a minimum of 454,545 Shares and a maximum of 4,545,454 Shares are described in the Company’s Form 1-A Regulation A+ Offering Circular, as qualified by the Securities and Exchange Commission (“SEC”) on July 26, 2018 (the “Offering Circular”) and as supplemented by the Company’s Current Report on Form 1-U dated August 13, 2018, the Current Report on Form 1-U dated September 11, 2018 and this Current Report on Form 1-U. The Offering Circular and the Current Reports on Form 1-U dated August 13, 2018 and September 11, 2018 are incorporated herein by reference.

### Payment Waiver Letters and Amendment of Use of Proceeds

As disclosed in the Company’s final Offering Circular, dated July 26, 2018, on Form 1-A, on May 15, 2018 and May 24, 2018, the holders of \$28.5 million principal amount of Purchase Notes issued to the former stockholders of Trans-High Corporation, the Company’s subsidiary, agreed to waive certain payment defaults under the Purchase Notes and defer until September 12, 2018 payment of the unpaid installments of principal and interest; provided that all deferred principal payments and accrued and unpaid interest at the rate of 12% per annum compounded monthly (the default interest rate) from August 29, 2017 to the date of payment would be paid out of the net proceeds of the Offering and in no event by no later than September 12, 2018. As at August 31, 2018, an aggregate of approximately \$9,734,000 in accrued and unpaid principal installments through August 28, 2018 and unpaid interest is due and owing under the Purchase Notes.

The “Use of Proceeds” section of the Company’s Offering Circular contemplated that approximately \$3,600,000 of the minimum \$5,000,000 of initial gross proceeds of the Offering (the “Minimum Offering”) would be used to repay a portion of accrued interest on the Purchase Notes.

In order to expand its business operations, the Company has recently incurred significant accounts payable and other obligations to vendors and required the proceeds of a \$1,200,000 bridge loan due on September 14, 2018 provided by ExWorks Capital Fund I, L.P. (“ExWorks”) to make a portion of such payments. As such, the Company requested payment waiver accommodations from the holders of the Purchase Notes in order to repay the ExWorks bridge loan and other accounts payable. Between September 7 and September 12, 2018, all of the holders of \$28,500,000 principal amount of the Purchase Notes:

- agreed to waive approximately \$9,734,000 in existing payment defaults or any right to receive accrued interest or other payments on their Purchase Notes out of the \$5.0 million of gross proceeds from the Minimum Offering,
- except for two holders of Purchase Notes representing \$1,407,349 of accrued and unpaid interest and principal installments as at August 31, 2018, all other holders of Purchase Notes agreed to convert 35% of the accrued and unpaid interest and principal installments of their Purchase Notes through August 28, 2018 into Company Class A Common Stock at \$11.00 per share;
- agreed that, with respect to all additional gross proceeds raised in the Offering in excess of \$5,000,000, a maximum of 35% of all such gross proceeds, as and when received, would be applied to reduce and repay the remaining 65% balance of all accrued and unpaid interest and all unpaid principal installments through August 28, 2018 of their Purchase Notes, with the remaining 65% of all such gross proceeds to be retained by the Company; provided, that all remaining accrued and unpaid interest and principal installments through August 28, 2018 would be paid in full by October 31, 2018. In regard thereto, the Chief Financial Officer of the Company will provide the holders of Notes with a weekly report of cash collections of gross proceeds from the Offering in excess of \$5,000,000, and shall arrange to make payments of the allocable 35% of such collections to the Noteholders on the 15<sup>th</sup> and 30<sup>th</sup> day of each month, commencing September 30, 2018;

- agreed that with respect to the remaining outstanding principal amount of Purchase Notes, they would continue to be discounted by 25% and the discounted amount converted into Class A Common Stock upon completion of the Offering; and
- approved the filing of this Form 1-U Current Report to amend the Use of Proceeds from the Minimum Offering.

A copy of the form of payment waiver letter is attached as Exhibit 6.1 to this Current Report on Form 1-U and is incorporated by reference herein.

Accordingly, the Company hereby amends the “Use of Proceeds” section of the Offering Circular, as it relates to the use of proceeds from the Minimum Offering of \$5,000,000, as follows:

(a)	retirement of bridge working capital loan from ExWorks, plus a funding fee of \$60,000	\$ 1,260,000;
(b)	payment of accounts payable and accrued operating expense	\$ 2,400,000; and
(c)	payment of Offering Expenses, including marketing costs and accrued professional fees	\$ 1,340,000.

As the “Minimum Offering” (as defined in the Offering Circular) was achieved, the initial closing of the Offering was consummated as of September 12, 2018 and the cleared escrowed proceeds from the Minimum Offering were distributed to the Company.

In connection with the consummation of the Minimum Offering, an aggregate of 227,272 of the Shares, representing 47.1% of the Company Shares sold to date, were purchased for \$2,500,003 by Dream Media Corporation, a Delaware corporation (“Dream Media”) owned by Oreva Capital Corp. (“Oreva”). Oreva is an affiliate of Adam E. Levin, the Chief Executive Officer and a director of the Company. Dream Media is currently a party to a loan and security agreement with ExWorks, dated November 21, 2017, that was entered into in connection with a unrelated financing transaction between such parties unrelated to the Company. Prior to August 31, 2018, a balance of approximately \$2,000,000 in principal interest and fees was owed by Dream Media to ExWorks under a \$10,200,000 original principal amount term note. Dream Media obtained the funds to enable it to purchase the 227,727 Company Shares by virtue of a \$2,500,000 loan increase provided by ExWorks to Dream Media on August 31, 2018 pursuant to an amendment to the November 21, 2017 loan and security agreement. The increased \$2,500,000 loan is secured by pledges to ExWorks of the 227,727 Shares and additional securities of an unrelated public company that was provided by the AEL Irrevocable Trust in which Mr. Levin and members of his family are beneficiaries. The \$2,500,000 additional ExWorks loan to Dream Media is due and payable on November 30, 2018.

In addition to such 227,727 Shares, the Adam Levin Living Trust currently owns 304,573 shares of Class A common stock of the Company and the AEL Irrevocable Trust, in which Edwin Hur, trustee, has sole voting and dispositive power, currently owns 2,703,212 shares of Class A common stock of the Company. Mr. Levin disclaims beneficial interest in all 2,703,212 Shares owned by the AEL Irrevocable Trust.

A copy of the November 21, 2017 loan and security agreement between Dream Media Corporation and ExWorks and the amendment to the loan and security agreement are filed as Exhibits 6.2 and 6.3, respectively, to this Current Report on Form 1-U and any summary of the terms of such documents are subject to, and qualified in their entirety by, the full text of such documents, which are incorporated herein by reference.

### *Strategic Investment Agreement*

On September 11, 2018, Hightimes entered into an agreement with Spectrum King, LLC, pursuant to which Hightimes has licensed to Spectrum the right to use the **Hightimes**<sup>TM</sup> name, logo and brand in connection with the marketing and distribution of all Spectrum products and granted Spectrum over a period of three years an aggregate of \$1,500,000 worth of advertising credits in the Hightimes print and internet magazines and at all festivals sponsored by Hightimes. In consideration, Hightimes received eleven units of Spectrum membership interests, representing 9.9099% of Spectrum's outstanding equity. Spectrum does business as "**SPECTRUM KING LED**," and specializes in designing, manufacturing and selling high-end LED grow lights for indoor and greenhouse applications targeting all variety of growing industries, such as cannabis, leafy greens, tomatoes, ornamental plants and other plants and vegetables.

A copy of the agreement between Hightimes and Spectrum King is annexed to this Form 1-U Current Report as Exhibit 6.4 and is incorporated by reference herein.

### *News Article.*

On September 5, 2018, a news article appeared on the website of Coindesk stating that the Company is now accepting Bitcoin in payment from investors for its shares of Class A Common Stock. The article was not published by the Company, but rather was a statement allegedly received from a third party who does public relations work for the Company and was quoted by a journalist from Coindesk. The statement was not accurate and the third party was never authorized by Hightimes to give such statement. To reiterate the disclosure contained in the Company's Form 1-U Current Report dated August 13, 2018, the Company is only accepting payment for subscription to its Shares in the form of cash, check, credit card or ACH transfers. Under no circumstances will the Company accept Bitcoin or other form of cryptocurrency in payment for its Shares. As disclosed on its Form 1-U Current Report, dated September 11, 2018, the Company has elected to extend the termination date of its Reg A+ Offering to as late as October 31, 2018.

**SIGNATURES**

Pursuant to the requirements of Regulation A, the issuer has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

**Hightimes Holding Corp.**  
a Delaware corporation

By: /s/ Adam E. Levin

Name: Adam E. Levin

Its: Chief Executive Officer

Date: September 13, 2018

**Exhibits to Form 1-U**

**Index to Exhibits**

**Exhibit No. Description**

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6.1	<a href="#"><u>Form of Payment Waiver Letter</u></a>
6.2	<a href="#"><u>Loan and Security Agreement, dated November 21, 2017, between ExWorks Capital Fund I, L.P. and Dream Media Corporation.</u></a>
6.3	<a href="#"><u>Amendment to Loan and Security Agreement between ExWorks Capital Fund I, L.P. and Dream Media Corporation.</u></a>
6.4	<a href="#"><u>Strategic Investment Agreement, dated September 11, 2018, between Hightimes Holding Corp. and Spectrum King, LLC</u></a>



Hightimes Holding Corp.  
10990 Wilshire Blvd.  
Penthouse  
Los Angeles, CA 90024

September 7, 2018

To; Holders of Hightimes Purchase Notes

Re: Payment Waiver Letter

Dear [ ]:

Reference is made to the Default Waiver letter executed by you on May 24, 2018 (the "Default Waiver"). Under the terms of the Default Waiver, you agreed to defer, until September 12, 2018, payments of the second and third installment of principal and accrued interest under your Note that was due February 28, 2018 and became due on May 28, 2018 and waived until September 12, 2018 the prior February 28, 2018 and May 28, 2018 payment defaults under your Note. In addition, the August 28, 2018 principal installment due under your Note was not paid. However, all accrued and unpaid quarterly principal installments that have been deferred and all accrued and unpaid interest on your Note for the period commencing November 1, 2017 through and including the date of payment and all accrued 12% penalty interest through the date of payment calculated in accordance with your Note, was to be paid in cash either out of the net proceeds of the maximum \$50.0 million Reg A+ Offering of Hightimes Holding Corp. ("Hightimes") that was qualified by the SEC on March 12, 2018 and requalified by the SEC on July 26, 2018 (the "Offering") or, if such net proceeds were insufficient to make such payments, out of available working capital as and when it become available. All capitalized terms not defined in this letter shall have the same meaning as they were defined in the Default Waiver.

As of August 31, 2018, Hightimes represents that it owes the undersigned a total of \$\_\_\_\_\_ in defaulted principal and accrued interest on your Note, of which \$\_\_\_\_\_ represents the principal installments that were due through August 28, 2018 and \$\_\_\_\_\_ is accrued and unpaid interest. Together with accrued interest payable through October 31, 2018 it is anticipated that the total amount owed to the undersigned as of such date will be approximately \$\_\_\_\_\_. Should such amounts be incorrect due to mathematical error, they will be corrected accordingly.

In order to expand the business of Hightimes, including paying vendors for the establishment of additional Cannabis Cup events and other festival events, management was required to (a) obtain a bridge loan due September 10, 2018 of \$1,260,000 from ExWorks Capital Fund I, L.P. ("ExWorks") and (b) make commitments to various vendors that are currently due and payable.

We are pleased to advise that Hightimes has received in escrow the sum of \$5,000,000, representing the gross proceeds of the Minimum Offering, and based on indications you have received, we believe that Hightimes will be able to raise a significant portion of the \$50.0 million maximum offering, if given the time to do so.

Hightimes is asking you to support our efforts to build a profitable business. Accordingly, by execution of this letter, you hereby:

- agree to waive any prior defaults under the Purchase Notes (but not any accrued default interest through the date hereof),
  - agree to waive rights under the Default Waiver or the Use of Proceeds section of the Offering Circular to receive accrued interest or defaulted principal installments on the Note payable to the undersigned out of the \$5.0 million of gross proceeds from the Minimum Offering,
-

- agree to convert \$ \_\_\_\_\_ of the accrued but unpaid interest and unpaid principal that is due, or 35% of the above amounts owed as of August 31, 2018, into shares of Class A voting Common Stock of Hightimes at a conversion price of \$11.00 per share;
- agree with Hightimes that, with respect to all additional gross proceeds raised in the Offering in excess of \$5,000,000, no less than 35% of all such gross proceeds, as and when received, would be applied to reduce and repay in full the remaining balance of all accrued and unpaid interest and all unpaid principal installments of your Purchase Note, with the remaining gross proceeds to be retained by the Company. In such connection, Hightimes agrees that the Chief Financial Officer of Hightimes will provide the undersigned and all other holders of Notes with a weekly report of cash collections of gross proceeds from the Offering in excess of \$5,000,000, and shall arrange to make payments of the allocable 35% of such collections to the undersigned on the 15<sup>th</sup> and 30<sup>th</sup> day of each month, commencing September 30, 2018. Notwithstanding the foregoing, Hightimes agrees that in all events the 0 remaining balance of all accrued and unpaid interest and all unpaid principal installments on your Purchase Note shall be paid in full by October 31, 2018;
- agree with Hightimes that all outstanding Purchase Notes, including, without limitation, the remaining balance of all accrued and unpaid interest and all unpaid principal installments on your Purchase Notes, shall accrue interest at the default rate of 12% until any accrued but unpaid interest that is in default and all unpaid principal installments on your Purchase Notes that are in default are paid in full in cash or converted into Class A Common Stock of Hightimes as provided therein;
- agree with Hightimes that with respect to the remaining outstanding principal amount of your Purchase Notes, as previously agreed, would continue to be discounted by 25% and the discounted amount converted into Class A Common Stock of Hightimes at \$11.00 per share upon completion of the Offering; provided, however, that should any principal installment due after this date not be converted prior to its payment date under the Purchase Notes, then such principal installment and any accrued but unpaid interest thereon shall not be so converted but shall be paid in cash; and
- approve the filing of an appropriate Form 1-U Current Report by Hightimes with the SEC to amend the “Use of Proceeds” Section of the Offering Circular, as it relates to the use of proceeds from the Minimum Offering of \$5,000,000, approximately as follows:

(a)	retirement of bridge working capital loan from ExWorks -	\$1,260,000;
(b)	payment of accounts payable and accrued operating expense -	\$2,400,000; and
(c)	payment of Offering Expenses, including marketing costs and accrued professional fees -	\$1,340,000.
- although not legally required under the terms of the Note or the Default Waiver, for those of you who are members of the board of directors of Hightimes, you hereby approve and ratify an extension of the termination date of the Offering from September 12, 2018 to October 31, 2018.

Hightimes agrees to comply with its obligations under this agreement and any breach hereof shall also constitute a breach under the Purchase Notes.

The foregoing agreement shall not otherwise amend the Default Letter or represent or constitute a deferral or waiver by the undersigned of any other default or event of default by Hightimes under the Purchase Notes and the undersigned hereby reserves any of his, her or its rights under the Purchase Notes.

We thank you for your continued support and assistance of Hightimes and trust that you will be amply rewarded for your accommodation.

*Signature page follows*

Very truly yours,

Hightimes Holding Corp.

By: \_\_\_\_\_  
Adam E. Levin, CEO

ACCEPTED AND AGREED:

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

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**LOAN AND SECURITY AGREEMENT**

**Dated as of November 21, 2017**

**between**

**EXWORKS CAPITAL FUND I, L.P.,**

**as Lender,**

**DREAM MEDIA CORPORATION**

**as Borrower,**

**and the other parties hereto as Loan Party Obligors**

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Perfection Certificate

Schedule I	Excluded Trademarks
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Exhibit A	Closing Checklist
Exhibit B	Form of Compliance Certificate

## Loan and Security Agreement

This Loan and Security Agreement (as it may be amended, restated or otherwise modified from time to time, this "*Agreement*") is entered into on November 21, 2017 among EXWORKS CAPITAL FUND I, L.P. ("*Lender*"), DREAM MEDIA CORPORATION, a Delaware corporation ("*Borrower*") and each of the parties signatory hereto as a Loan Party Obligor (as defined herein). The Schedules and Exhibits to this Agreement are an integral part of this Agreement and are incorporated herein by reference.

### 1. DEFINITIONS.

#### 1.1. Certain Defined Terms.

Unless otherwise defined herein, the following terms are used herein as defined in the UCC: Accounts, Account Debtor, Certificated Security, Chattel Paper, Commercial Tort Claims, Deposit Accounts, Documents, Electronic Chattel Paper, Equipment, Farm Products, Fixtures, General Intangibles, Goods, Health-Care-Insurance Receivables, Instruments, Inventory, Letter-of-Credit Rights, Proceeds, Securities Accounts, Supporting Obligations and Tangible Chattel Paper.

As used in this Agreement, the following terms have the following meanings:

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

"*Agreement*" has the meaning set forth in the preamble to this Agreement.

"*Applicable Interest Rate*" means a per annum rate equal to (a) during the period commencing on the Closing Date to but excluding the first anniversary of the Closing Date, 14.0%, (b) during the period commencing on the first anniversary of the Closing Date, to but excluding the second anniversary of the Closing Date, 18.0%, and (c) commencing on and at all times after the third anniversary of the Closing Date, 22.0%.

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

"*Blocked Account*" has the meaning set forth in Section 5.1.

"*Borrower*" has the meaning set forth in the preamble to this Agreement.

"*Business Day*" means a day other than a Saturday or Sunday or any other day on which Lender or banks in Illinois are authorized to close.

"*Capital Expenditures*" means all expenditures which, in accordance with GAAP, would be required to be capitalized and shown on the consolidated balance sheet of Borrower, but excluding expenditures made in connection with the acquisition, replacement, substitution or restoration of assets to the extent financed (a) from insurance proceeds (or other similar recoveries) paid on account of the loss of or damage to the assets being replaced or restored or (b) with cash awards of compensation arising from the taking by eminent domain or condemnation of the assets being replaced and excluding capitalized film costs incurred in the ordinary course of business.

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

**“Closing Date”** means November 21, 2017.

**“Closing Date Assignment Agreement”** means that certain Assignment and Assumption Agreement dated as of the Closing Date by and among Borrower and ExWorks, in its capacity as “Lender” under the Penthouse Loan Agreement, pursuant to which, *inter alia*, ExWorks assigned to Borrower, all of ExWorks rights and benefits under the under the Penthouse Loan Agreement and the other Loan Documents (as such term is defined in the Penthouse Loan Agreement), and Borrower assumed all obligations thereunder from and after the Closing Date.

**“Closing Date Debt Purchase”** means the purchase by Borrower of the Penthouse Debt and all other right, title and interest of ExWorks, in its capacity as “Lender” under the Penthouse Loan Agreement and the other Loan Documents (as such term is defined in the Penthouse Loan Agreement), on the Closing Date pursuant to the Closing Date Assignment Agreement.

**“Club License Agreement”** means that certain Master License Agreement dated as of March 29, 2017, by and among PGLI, Kirkendoll Management, LLC and Penthouse Clubs Worldwide, LLC, as in effect on the Second Amendment Date.

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

**“Collateral”** means all property and interests in property in or upon which a security interest, mortgage, pledge or other Lien is granted pursuant to this Agreement or the other Loan Documents, including all of the property of each Loan Party Obligor described in Section 5.1.

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

**“Compliance Certificate”** means a compliance certificate substantially in the form of Exhibit C hereto to be signed by the Chief Executive Officer of Borrower.

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

**“Control Agreement”** means a control agreement, in form and substance reasonably satisfactory to Lender, executed and delivered by a Loan Party Obligor, Lender, and the applicable securities intermediary (with respect to a Securities Account) or bank (with respect to a Deposit Account) or issuer (with respect to uncertificated securities) which grants Lender “control” (as defined in the UCC) over such Securities Account, Deposit Account or uncertificated securities, as the case may be, sufficient to perfect Lender’s Lien over such Securities Account, Deposit Account or uncertificated securities.

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

**“Default Rate”** has the meaning set forth in Section 3.1.

**“Disqualified Equity Interests”** means any equity interests that, by their terms (or by the terms of any security or other equity interest into which they are convertible or for which they are exchangeable) or upon the happening of any event or condition, (a) mature or are mandatorily redeemable, pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Obligations the termination of all of Lender’s commitments to extend any credit accommodation under the Loan Documents), (b) are redeemable at the option of the holder thereof (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Obligations the termination of all of Lender’s commitments to extend any credit accommodation under the Loan Documents), in whole or in part, (c) provide for scheduled mandatory payments of dividends in cash or (d) are or become convertible into or exchangeable for Indebtedness or any other equity interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is 181 days after the Scheduled Maturity Date at any time in effect.

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

**“Dollars”** or **“\$”** means United States Dollars.

**“Disregarded Domestic Subsidiary”** means a Subsidiary that (i) is treated as a disregarded entity for U.S. federal income tax purposes and (ii) holds no properties other than equity (and a de minimis amount of other assets related thereto) in one or more Foreign Subsidiaries.

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

**“ERISA Affiliate”** means any trade or business (whether or not incorporated) under common control with a Loan Party within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code and Section 302 of ERISA).

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

**“Event of Default”** has the meaning set forth in Section 11.1.

**“Excluded Property”** means each of the following: (i) any permit, lease, license, contract or other agreement (or any equipment owned by any Loan Party Obligor that is subject to a purchase money Lien or a Capitalized Lease that is permitted pursuant to this Agreement) to which any Loan Party Obligor is a party, which permit, lease, license, contract or other agreement (and in the case of any such equipment, the contract or other agreement in which the purchase money Lien is granted or the applicable Capitalized Lease) prohibits the creation by such Loan Party Obligor of a Lien thereon, but only, in each case, to the extent, and for so long as, such prohibition is not removed, terminated or rendered unenforceable or otherwise deemed ineffective by the UCC (including Sections 9-406, 9-407, 9-408 or 9-409 thereof) or any other applicable law and with respect to any such equipment, for so long as the Indebtedness secured by the applicable Lien or the applicable Capitalized Lease has not been repaid in full, (ii) any intent-to-use trademark or service mark application if granting such Lien or the exercise of Lender’s remedies under the Loan Documents would result in an assignment of such application to Lender that would be deemed to invalidate, void, cancel or abandon such application; provided, that the foregoing exclusion shall in no way be construed to include an amendment to allege use or statement of use; (iii) any voting stock (within the meaning of Treasury Regulations § 1.956-2(c)(2)) in excess of 65% of the outstanding voting stock of any Foreign Subsidiary or Disregarded Domestic Subsidiary which, pursuant to the terms of this Agreement, is not required to guaranty the Obligations; and (iv) the Excluded Trademarks, but only to the extent that and for so long as the Club License Agreement prohibits a Lien thereon, and only for so long as, such prohibition is not removed, terminated or otherwise rendered inoperative. For the avoidance of doubt, any and all proceeds, products, substitutions or replacements of any property described in clauses (i), (ii), (iii) and (iv) above shall not constitute Excluded Property (unless such proceeds, products, substitutions or replacements would itself constitute property described in clauses (i), (ii), (iii) or (iv) above).

**“Excluded Taxes”** means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof); (b) in the case of a Non-U.S. Recipient (as defined in Section 13(e)), U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Non-U.S. Recipient with respect to an applicable interest in a Loan or commitment pursuant to a law in effect on the date on which Non-U.S. Recipient becomes a party to this Agreement or acquires a participation, except in each case to the extent that, pursuant to Section 13 amounts with respect to such Taxes were payable either to such Non-U.S. Recipient assignor (or Lender granting such participation) immediately before such assignment or grant of participation; (c) United States federal withholding Taxes that would not have been imposed but for such Recipient’s failure to comply with Section 13(e) (except where the failure to comply with Section 13(e) was the result of a change in law, ruling, regulation, treaty, directive, or interpretation thereof by a Governmental Authority after the date the Recipient became a party to this Agreement or a Participant) and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

**“Excluded Trademarks”** means each of the trademarks listed on Schedule 1 attached hereto.

**“Extraordinary Receipts”** means any cash or cash equivalents received by or paid to or for the account of any Loan Party not in the ordinary course of business, including amounts received in respect of foreign, United States, state or local tax refunds, purchase price adjustments, indemnification payments and pension plan reversions.

**“ExWorks”** means ExWorks Capital Fund I, L.P.

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

**“Fee Letter”** means that certain letter agreement regarding fees dated as of the Closing Date between Lender and Borrower.

**“FIRREA”** means the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended.

**“Fiscal Year”** means the fiscal year of Borrower which ends on December 31 of each year.

**“Foreign Subsidiary”** means any Subsidiary that is not incorporated or organized under the laws of a State within the United States of America or the District of Columbia, and that is a *“controlled foreign corporation”* within the meaning of Section 957 of the Code with respect to which a Loan Party is a *“U.S. shareholder”* within the meaning of Section 951(b) of the Code. Unless the context indicates otherwise, references to a Foreign Subsidiary shall be deemed to refer to a Foreign Subsidiary of Borrower.

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

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

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

**“Guarantor”** has the meaning given thereto in Section 12.1.

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

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

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

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

**“Investment Affiliate”** means, with respect to any Person, any fund or investment vehicle that (a) is organized by such Person for the purpose of making equity or debt investments in one or more companies and (b) is controlled by, or under common control with, such Person. For purposes of this definition **“control”** means the power to direct or cause the direction of management and policies of a Person, whether by contract or otherwise.

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

**“IP Collateral Assignments”** means, collectively, (a) that certain Assignment of Security Interest in Trademarks and (b) that certain Assignment of Security Interest in Copyrights, each dated as of the Closing Date by ExWorks, as assignor and Borrower, as assignee.

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

**“Judgment Currency”** has the meaning set forth in Section 10.3(b).

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

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

**“Loan Account”** has the meaning set forth in Section 3.4.

**“Loan Documents”** means, collectively, this Agreement and all notes, guaranties, security agreements, mortgages, certificates, landlord’s agreements, Control Agreements, the Fee Letter, the Warrant, and all other agreements, documents and instruments now or hereafter executed or delivered by the Lender, the Borrower, any other Loan Party, or any Other Obligor in connection with, or to evidence the transactions contemplated by, this Agreement.

**“Loan Guaranty”** means Section 12.

**“Loan Party”** means, individually, Borrower, or any Subsidiary; and **“Loan Parties”** means, collectively, Borrower and all Subsidiaries.

**“Loan Party Obligor”** means, individually, Borrower or any other Obligor that is or hereafter becomes a Loan Party, in connection with a Penthouse Transaction or otherwise; and **“Loan Party Obligors”** means, collectively, Borrower and each other Loan Party Obligor.

**“Loans”** means the Term Loan and any portion thereof.

**“Lock Box”** has the meaning set forth in Section 6.1.

**“Material Adverse Effect”** means any event, act, omission, condition or circumstance which, which individually or in the aggregate, has or could reasonably be expected to have a material adverse effect on (a) the business, operations, properties, assets or condition, financial or otherwise, of any Loan Party or any Other Obligor, as applicable, (b) the ability of any Loan Party or any Other Obligor, as applicable, to perform any of its obligations under any of the Loan Documents or (c) the validity or enforceability of, or Lender’s rights and remedies under, any of the Loan Documents.

**“Material Contract”** means has the meaning set forth in Section 7.18.

**“Maturity Date”** means the Scheduled Maturity Date (or, if earlier, the Termination Date), or such earlier date as the Obligations may be accelerated in accordance with the terms of this Agreement (including pursuant to Section 11.2).

**“Maximum Lawful Rate”** has the meaning set forth in Section 3.5.

**“Maximum Liability”** has the meaning set forth in Section 12.9.

**“Multiemployer Plan”** means any employee benefit plan of the type described in Section 401(a)(3) of ERISA, to which a Loan Party or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

**“Non-Paying Guarantor”** has the meaning set forth in Section 12.10.

**“Non-U.S. Recipient”** has the meaning set forth in Section 13(e)(ii).

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

**“Obligor”** means any guarantor, endorser, acceptor, surety or other Person liable on, or with respect to, any of the Obligations or who is the owner of any property which is security for any of the Obligations.

**“Other Obligor”** means any Obligor other than any Loan Party Obligor.

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

**“Participant”** has the meaning set forth in Section 14.10.

**“Paying Guarantor”** has the meaning set forth in Section 12.10.

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

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

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

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

**“Penthouse Debt”** means any or all “Obligations” (as that term is defined under the Penthouse Loan Agreement) at any time outstanding.

**“Penthouse Loan Agreement”** means that certain Loan and Security Agreement, dated as of February 19, 2016, as amended by a Waiver, Joinder and First Amendment to Loan and Security Agreement, dated as of February 17, 2017, as further amended by a Consent and Second Amendment to Loan and Security Agreement dated as of March 29, 2017, and as further amended by a Waiver and Third Amendment to Loan and Security Agreement, dated May 19, 2017, in each case, by and between ExWorks, in its capacity as “Lender” thereunder, PGMI as “Borrower” thereunder, and the other parties signatory thereto as Loan Party Obligors.

**“Penthouse Transaction”** means the acquisition by Borrower of all or any portion of the equity interests or assets of PGMI, any Loan Party Obligor under the Penthouse Loan Agreement, or any of their Subsidiaries, whether through a consensual purchase and sale transaction, a bankruptcy or other insolvency proceeding, a foreclosure proceeding or any other means.

**“Penthouse Warrant”** means the Common Stock Purchase Warrant No. W-1, dated February 19, 2016, issued by PGMI to Lender in connection with the Penthouse Loan Agreement.

**“Permitted Discretion”** means a determination made by Lender in the exercise of reasonable (from the perspective of an asset-based secured lender) business judgment.

**“Permitted Indebtedness”** means: (a) the Obligations; (b) from and after the date of any Penthouse Transaction, capitalized leases and purchase-money Indebtedness secured by Permitted Liens in an aggregate amount not exceeding \$250,000 at any time outstanding; and (c) from and after the date of any Penthouse Transaction, Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business.

**“Permitted Liens”** means (a) purchase-money security interests in specific items of Equipment securing Permitted Indebtedness described under clause (b) of the definition of Permitted Indebtedness; (b) liens for taxes, fees, assessments, or other governmental charges or levies, either not delinquent or being contested in good faith by appropriate proceedings (which proceedings have the effect of preventing the enforcement of such lien) for which adequate reserves in accordance with GAAP are being maintained provided the same have no priority over any of Lender’s security interests; (c) liens of materialmen, mechanics, carriers, or other similar liens arising in the ordinary course of business and securing obligations which are not delinquent or are being contested in good faith by appropriate proceedings (which proceedings have the effect of preventing the enforcement of such lien) for which adequate reserves in accordance with GAAP are being maintained; (d) liens which constitute banker’s liens, rights of set-off, or similar rights as to deposit accounts or other funds maintained with a bank or other financial institution (but only to the extent such banker’s liens, rights of set-off or other rights are in respect of customary service charges relative to such deposit accounts and other funds, and not in respect of any loans or other extensions of credit by such bank or other financial institution to any Loan Party); (e) cash deposits or pledges to secure the payment of worker’s compensation, unemployment insurance, or other social security benefits or obligations, public or statutory obligations, surety or appeal bonds, bid or performance bonds, or other obligations of a like nature incurred in the ordinary course of business; and (f) from and after the consummation of a Penthouse Transaction resulting in the acquisition by Borrower of the Excluded Trademarks or any of them, Liens on the Excluded Trademarks to secure PGLI’s payment obligations under the Club License Agreement, as set forth in the Club Licensing Agreement and the other documents entered into in connection therewith.

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

**“PGLI”** means Penthouse Global Licensing, Inc., a Delaware corporation.

**“PGMI”** means Penthouse Global Media, Inc., a Delaware corporation.

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

**“Pledged Equity”** means the equity interests listed on Sections 1(f) and 1(g) of the Perfection Certificate, together with any other equity interests, certificates, options, or rights or instruments of any nature whatsoever in respect of the equity interests of any Person that may be issued or granted to, or held by, any Loan Party Obligor while this Agreement is in effect, and including, to the extent attributable to, or otherwise related to, such pledged equity interests, all of such Loan Party Obligor’s (a) interests in the profits and losses of each Issuer, (b) rights and interests to receive distributions of each Issuer’s assets and properties and (c) rights and interests, if any, to participate in the management or each Issuer related to such pledged equity interests.

**“Prepayment Event”** means: (a) any sale (other than sales of inventory in the ordinary course of business), transfer or other disposition (including, without limitation, pursuant to a sale and leaseback transaction or any exclusive intellectual property licensing transaction) of any property or asset of any Loan Party Obligor (excluding non-exclusive licenses of intellectual property in the ordinary course of business); (b) any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of any of any Loan Party Obligor; (c) the issuance by any Loan Party to any Person (other than to another Loan Party) of any equity interests after the Closing Date, or the receipt by any Loan Party of any capital contribution from any Person (other than from another Loan Party) after the Closing Date; (d) the incurrence by any Loan Party of any Indebtedness not permitted by this Agreement; (e) the receipt by any Loan Party of any Extraordinary Receipts; (f) the receipt by any Loan Party, on or prior to the date on which Borrower and Lender have agreed to an amortization payment schedule for the Term Loan as contemplated by Section 2.5(b), of any payments under the Penthouse Loan Agreement or otherwise in respect of the Penthouse Debt (including, without limitation, payments of principal, interest or fees) or proceeds of any collateral securing the Penthouse Debt.

**“Protective Advances”** has the meaning set forth in Section 2.2.

**“Proxy and Transfer Agreement”** means the letter agreement, dated of even date herewith, between the Lender and Borrower regarding the Penthouse Warrant, pursuant to which, inter alia, Lender agreed (a) to seek approval of PGMI for the assignment and transfer of the Penthouse Warrant and Warrant Shares (as defined in the Penthouse Warrant) to Borrower, and (b) in the absence of such approval, the Lender shall exercise the Penthouse Warrant and grant an Affiliate of Borrower an irrevocable proxy to vote the Warrant Shares, in each case as more fully set forth in such Proxy and Transfer Agreement.

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

**“Register”** has the meaning set forth in Section 14.9(a).

**“Released Parties”** has the meaning set forth in Section 10.1.

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

**“Required Offering”** means, the consummation, on or prior to May 31, 2018 (or such later date as Lender may agree to in its Permitted Discretion), of a “Regulation A+” offering under Section 506 of the JOBS Act of 2016 that is approved or accepted by the SEC, or a registration statement on Form S-1 declared effective by the SEC under the Securities Act (or an alternative equity issuance acceptable to Lender) by Borrower, on terms acceptable to Lender.

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

“**Scheduled Maturity Date**” means November 21, 2020.

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

“**Sponsor**” means Oreva Capital Corp.

“**Stated Rate**” has the meaning set forth in Section 3.5.

“**Subsidiary**” means, with respect to any Person, any other Person, of which such first Person owns, directly or indirectly, through one or more intermediaries, more than 50% of the capital stock or other equity interest at the time of determination. Unless the context indicates otherwise, references to a Subsidiary shall be deemed to refer to a Subsidiary of Borrower.

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

“**Term Loan**” has the meaning set forth in Section 2.1(c).

“**Termination Date**” means the date on which all of the Obligations have been paid in full in cash and all of Lender’s lending commitments under this Agreement and under each of the other Loan Documents have been terminated.

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

“**Warrant**” shall mean the Warrant issued by Borrower to the Lender on the Closing Date.

## **1.2. Accounting Terms and Determinations.**

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

Notwithstanding anything to the contrary contained in the paragraph above or the definitions of Capital Expenditures or Capitalized Leases, in the event of a change in GAAP after the Closing Date requiring all leases to be capitalized, only those leases (assuming for purposes of this paragraph that they were in existence on the Closing Date) that would constitute Capitalized Leases on the Closing Date shall be considered Capitalized Leases (and all other such leases shall constitute operating leases) and all calculations and deliverables under this Agreement or the other Loan Documents shall be made in accordance therewith (other than the financial statements delivered pursuant to this Agreement; *provided* that all such financial statements delivered to Lender in accordance with the terms of this Agreement after the date of such change in GAAP shall contain a schedule showing the adjustments necessary to reconcile such financial statements with GAAP as in effect immediately prior to such change).

### 1.3. Other Definitional Provisions and References.

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

## 2. LOANS.

### 2.1 Amount of Loans.

(a) [Reserved].

(b) [Reserved].

(c) **Term Loan.** Subject to the terms and conditions contained in this Agreement, Lender will, on the Closing Date, make a term loan to Borrower in the initial principal amount of \$10,198,802.07 (the “*Term Loan*”). The Term Loan shall be advanced in a single borrowing on the Closing Date, and any principal amounts repaid in respect of the Term Loan may not be reborrowed. The Term Loan shall be made in and repayable in Dollars.

**2.2. Protective Advances.** Notwithstanding any contrary provision of this Agreement or any other Loan Document, at any time after the occurrence and during the continuance of an Event of Default, Lender is authorized by Borrower, from time to time, in Lender's sole discretion, to make such advances to, or for the benefit of, Borrower, as Lender in its sole discretion deems necessary or desirable (i) to preserve or protect the Collateral, or any portion thereof, or (ii) to enhance the likelihood of repayment of the Obligations (the advances described in this Section 2.2 shall be referred to as "**Protective Advances**"). Notwithstanding any contrary provision of this Agreement or any other Loan Document, Lender may disburse the proceeds of any Protective Advance to Borrower or to such other Person(s) as Lender determines in its sole discretion. All Protective Advances shall be payable immediately upon demand or, at Lender's election, shall be added to the outstanding principal balance of the Term Loan and shall bear interest at the rates then applicable to the Term Loan.

**2.3. [Reserved].**

**2.4. [Reserved].**

**2.5. Repayment.**

(a) **[Reserved].**

(b) **Term Loan.** Principal of the Term Loan shall be repaid in monthly installments in amounts to be agreed between Borrower and Lender, payable on the first day of each calendar month, commencing on the earlier of (i) June 1, 2018 or (ii) the first day of the month following the consummation of a Penthouse Transaction, with the entire unpaid balance due and payable on the Maturity Date.

(c) **Maturity Date Payments.** All remaining outstanding monetary Obligations (including, all accrued and unpaid fees described in Section 3.2) shall be payable in full on the Maturity Date.

**2.6. Prepayments / Voluntary Termination.**

(a) **Certain Mandatory Prepayment Events.** Borrower shall be required to prepay the outstanding principal balance of the Loans upon the occurrence of each and every Prepayment Event (such prepayment to be made on any date thereafter on which proceeds pertaining thereto are received by any Loan Party), in each case without any demand or notice from Lender or any other Person, all of which is hereby expressly waived by Borrower, in the amount of 100% of the proceeds (or, in the case of a Prepayment Event arising from a Required Offering, 33% of the proceeds of such Required Offering) (in each case, net of documented reasonable selling commissions, underwriting discounts, professional fees and other out-of-pocket costs and expenses incurred in connection with the collection of such proceeds, in each case payable to Persons that are not Affiliates of any Loan Party, and net of estimated taxes incurred as a result of such Prepayment Event) received by any Loan Party with respect to such Prepayment Event. Prepayments of the Loans made pursuant to this Section 2.6(a) shall be applied in the manner set forth in Section 6.2 (disregarding for such purpose any instruction as to application provided by the Borrower).

(b) [Reserved].

(c) **Voluntary Prepayment of the Term Loan.** Borrower may, on at least ten days prior written notice received by Lender, prepay all or any portion of the Term Loan, without premium or penalty of any kind.

## **2.7. Obligations Unconditional.**

(a) The payment and performance of all Obligations shall constitute the absolute and unconditional obligations of each Loan Party Obligor, and shall be independent of any defense or right of set-off, recoupment or counterclaim that any Loan Party Obligor or any other Person might otherwise have against Lender or any other Person. All payments required (other than by Lender) by this Agreement or the other Loan Documents shall be made in Dollars (unless payment in a different currency is expressly provided otherwise in the applicable Loan Document) and paid free of any deductions or withholdings for any taxes or other amounts and without abatement, diminution or set-off. If any Loan Party Obligor is required by applicable law to make such a deduction or withholding from a payment under this Agreement or under any other Loan Document, such Loan Party Obligor shall pay to Lender such additional amount as shall be necessary to ensure that, after the making of such deduction or withholding, Lender receives (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum which it would have received and so retained had no such deduction or withholding been made or required to be made. Each Loan Party Obligor shall (a) pay the full amount of any deduction or withholding that it is required to make by law, to the relevant authority within the payment period set by applicable law and (b) promptly after any such payment, deliver to Lender an original (or certified copy) official receipt issued by the relevant authority in respect of the amount withheld or deducted or, if the relevant authority does not issue such official receipts, such other evidence of payment of the amount withheld or deducted as is reasonably acceptable to Lender.

(b) If, at any time and from time to time after the Closing Date (or at any time before or after the Closing Date with respect to (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act or (y) Basel III or any similar accord promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any similar authority) and, in each case, all requests, rules, regulations, guidelines or directives thereunder or issued in connection therewith), (a) any change in any existing law, regulation, treaty or directive or in the interpretation or application thereof, (b) any new law, regulation, treaty or directive enacted or application thereof or (c) compliance by Lender with any request or directive (whether or not having the force of law) from any Governmental Authority, central bank or comparable agency (i) subjects Lender to any tax, levy, impost, deduction, assessment, charge or withholding of any kind whatsoever with respect to any Loan Document, or changes the basis of taxation of payments to Lender of any amount payable thereunder (except for net income taxes, or franchise taxes imposed in lieu of net income taxes, imposed generally by federal, state, local or other taxing authorities with respect to interest or fees payable hereunder or under any other Loan Document or changes in the rate of tax on the overall net income of Lender or its members) or (ii) imposes, modifies or deems applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by Lender or (iii) imposes on Lender any other condition or increased cost in connection with the transactions contemplated thereby or participations therein, and the result of any of the foregoing is to increase the cost to Lender of making or continuing any Loan or to reduce any amount receivable hereunder or under any other Loan Documents, then, in each such case, Borrower shall promptly pay to Lender, when notified to do so by Lender, any additional amounts necessary to compensate Lender, on an after-tax basis, for such additional cost or reduced amount as determined by Lender. Each such notice of additional amounts payable pursuant to this Section 2.7(b) submitted by Lender to Borrower shall, absent manifest error, be final, conclusive and binding for all purposes.

(c) This Section 2.7 shall remain operative even after the Termination Date and shall survive the payment in full of all of the Loans.

**2.8. Reversal of Payments.** To the extent that any payment or payments made to or received by Lender pursuant to this Agreement or any other Loan Document are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to any trustee, receiver or other Person under any state, federal or other bankruptcy or other such applicable law, then, to the extent thereof, such amounts (and all Liens, rights and remedies relating thereto) shall be revived as Obligations (secured by all such Liens) and continue in full force and effect under this Agreement and under the other Loan Documents as if such payment or payments had not been received by Lender. This Section 2.8 shall remain operative even after the Termination Date and shall survive the payment in full of all of the Obligations.

**2.9. Penthouse Transaction Costs and Expenses Adjustment .** To the extent that Borrower incurs actual, documented, out-of-pocket costs, including the payment of professional fees, in connection with the consummation of a Penthouse Transaction (evidence of which shall be provided to Lender upon request), Borrower may elect to reduce either (i) the monthly amortization installment amounts agreed to between Borrower and Lender as contemplated by Section 2.5(b) (with such reduction applied to such installments in direct order of maturity) or (ii) any mandatory prepayment required pursuant to Section 2.6(a) in connection with a Required Offering, in either case by the amount of such out-of-pocket costs, and such amounts shall instead be added to the final scheduled payment due on the Maturity Date (or, if earlier, such other date that the remaining principal amount of the Obligations becomes due pursuant to this Agreement).

### **3. INTEREST AND FEES; LOAN ACCOUNT.**

**3.1. Interest.** All Loans and other monetary Obligations shall bear interest at the Applicable Interest Rate then in effect; provided, that after the occurrence and during the continuation of an Event of Default, all Loans and other monetary Obligations shall bear interest at a rate per annum equal to two (2) percentage points in excess of the rate otherwise applicable thereto (the "Default Rate"). Accrued interest shall be payable (a) on the fifth day of each month in arrears, commencing on the earlier of June 1, 2018 or the first month following the consummation of a Penthouse Transaction, (b) upon any prepayment of Loans in accordance with Section 2.6(a) or (c), and (c) on the Maturity Date. After the occurrence and during the continuance of an Event of Default, all interest shall be payable in cash on demand. To the extent not paid in cash when due, accrued interest shall be added to the outstanding principal balance of the Term Loan on the date of such required payment.

**3.2. Fees.** Borrower shall pay Lender each of the fees and other obligations set forth in the Fee Letter on the dates provided therein, which fees are in addition to all fees and other sums payable by Borrower or any other Person to Lender under this Agreement or under any other Loan Document and, in each case, are not refundable once paid.

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

**3.4. Loan Account; Monthly Accountings .** Lender shall maintain a loan account for Borrower reflecting all outstanding Loans, along with interest accrued thereon and such other items reflected therein (the "*Loan Account*"), and shall provide Borrower with a monthly accounting reflecting the activity in the Loan Account. Each accounting shall be deemed correct, accurate and binding on Borrower and an account stated (except for reverses and reapplications of payments made and corrections of errors discovered by Lender), unless Borrower notifies Lender in writing to the contrary within thirty days after such account is rendered, describing the nature of any alleged errors or omissions. However, Lender's failure to maintain the Loan Account or to provide any such accounting shall not affect the legality or binding nature of any of the Obligations. Interest, fees and other monetary Obligations due and owing under this Agreement may, in Lender's sole discretion, be charged to the Loan Account and added to the outstanding principal balance of the Term Loan and will thereafter be deemed to be a portion of the Term Loan and will bear interest at the rate then applicable to the Term Loan.

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

#### 4. CONDITIONS PRECEDENT.

Lender's obligation to fund the Term Loan on the Closing Date is subject to the following conditions precedent (as well as any other conditions set forth in this Agreement or any other Loan Document), all of which must be satisfied in a manner acceptable to Lender (and as applicable, pursuant to documentation which in each case is in form and substance acceptable to Lender):

(a) Borrower shall have duly executed and/or delivered, or, as applicable, shall have caused such other applicable Persons to have duly executed and or delivered, to Lender such agreements, instruments, documents, proxies and certificates as Lender may require, including such other agreements, instruments, documents and certificates listed on the closing checklist attached hereto as Exhibit A (other than any such items identified as "Post-Closing Items");

(b) Borrower shall have paid or reimbursed Lender for all of Lender's costs, charges and expenses incurred through the Closing Date;

(c) the Closing Date Debt Purchase shall have been consummated pursuant to the terms of the Closing Date Assignment Agreement;

(d) Lender shall have executed and delivered to Borrower the IP Collateral Assignments;

(e) Lender shall have executed and delivered to Borrower the Proxy and Transfer Agreement;

(f) Borrower shall have issued to Lender the Warrant;

(g) each of the representations and warranties set forth in this Agreement and in the other Loan Documents shall be true and correct in all material respects as of the date such Loan is made (or, to the extent any representations or warranties are expressly made solely as of an earlier date, such representations and warranties shall be true and correct in all material respects as of such earlier date), both before and after giving effect thereto;

(h) no Default or Event of Default shall be in existence, both before and after giving effect thereto; and

(i) Lender shall have received such other information, documents, instruments and agreements as it reasonably requests in connection herewith.

## 5. COLLATERAL.

**5.1. Grant of Security Interest.** To secure the full payment and performance of all of the Obligations, each Loan Party Obligor hereby assigns to Lender and grants to Lender a continuing security interest in all property of each Loan Party Obligor, whether tangible or intangible, real or personal, now or hereafter owned, existing, acquired or arising and wherever now or hereafter located, including: (a) all Accounts (whether or not Eligible Accounts) and all Goods whose sale, lease or other disposition by any Loan Party Obligor has given rise to Accounts and have been returned to, or repossessed or stopped in transit by, any Loan Party Obligor; (b) all Chattel Paper (including Electronic Chattel Paper), Instruments, Documents, and General Intangibles (including all patents, patent applications, trademarks, trademark applications, trade names, trade secrets, goodwill, copyrights, copyright applications, registrations, licenses, software, franchises, customer lists, tax refund claims, claims against carriers and shippers, guaranty claims, contracts rights, payment intangibles, security interests, security deposits and rights to indemnification); (c) all Inventory; (d) all Goods, including Equipment, Farm Products, Health-Care-Insurance Receivables, vehicles, and Fixtures; (e) all Investment Property, including all rights, privileges, authority, and powers of each Loan Party Obligor as an owner or as a holder of Pledged Equity, including all economic rights, all control rights, authority and powers, and all status rights of each Loan Party Obligor as a member, equity holder or shareholder, as applicable, of each Issuer; (f) all Deposit Accounts, bank accounts, deposits and cash; (g) all Letter-of-Credit Rights; (h) all Commercial Tort Claims listed in Section 2 of the Perfection Certificate; (i) all Supporting Obligations; (j) any other property of any Loan Party Obligor now or hereafter in the possession, custody or control of Lender or any agent or any parent, Affiliate or Subsidiary of Lender or any Participant with Lender in the Loans, for any purpose (whether for safekeeping, deposit, collection, custody, pledge, transmission or otherwise) and (k) all additions and accessions to, substitutions for, and replacements, products and Proceeds of the foregoing property, including proceeds of all insurance policies insuring the foregoing property, and all of each Loan Party Obligor's books and records relating to any of the foregoing and to any Loan Party's business. Without limitation of the foregoing, on the Closing Date, Borrower hereby assigns to Lender and grants to Lender a continuing security interest in all property of Borrower, including all rights acquired by Borrower under the Closing Date Assignment Agreement and IP Collateral Assignments. Notwithstanding the foregoing, the grant of security set forth in this Section 5.1 shall not include any Excluded Property.

**5.2. Possessory Collateral.** Promptly, but in any event no later than five Business Days after any Loan Party Obligor's receipt of any portion of the Collateral evidenced by an agreement, Instrument or Document, including any Tangible Chattel Paper and any Investment Property consisting of certificated securities, such Loan Party Obligor shall deliver the original thereof to Lender together with an appropriate endorsement or other specific evidence of assignment thereof to Lender (in form and substance acceptable to Lender). If an endorsement or assignment of any such items shall not be made for any reason, Lender is hereby irrevocably authorized, as attorney and agent-in-fact (coupled with an interest) for each Loan Party Obligor, to endorse or assign the same on such Loan Party Obligor's behalf.

**5.3. Further Assurances.** Each Loan Party Obligor shall, at its own cost and expense, promptly and duly take, execute, acknowledge and deliver (or cause each other applicable Person to take, execute, acknowledge and deliver) all such further acts, documents, agreements and instruments as may from time to time be necessary or desirable or as Lender may from time to time require in order to (a) carry out the intent and purposes of the Loan Documents and the transactions contemplated thereby, (b) establish, create, preserve, protect and perfect a first priority lien (subject only to Permitted Liens) in favor of Lender in all real and personal property (wherever located) from time to time owned by the Loan Party Obligors and in all capital stock and other equity from time to time issued by the Loan Parties (including appraisals of real property in compliance with FIRREA), (c) cause each Subsidiary of Borrower to guaranty all of the Obligations, (d) cause Sponsor and/or its Investment Affiliates to pledge 100% of issued and outstanding the capital stock of Borrower as security for the Obligations, and (e) facilitate the collection of the Collateral, all pursuant to documentation that is in form and substance reasonably satisfactory to Lender. Without limiting the foregoing, each Loan Party Obligor shall, at its own cost and expense, promptly and duly take, execute, acknowledge and deliver (or cause each other applicable Person to take, execute, acknowledge and deliver) to Lender all promissory notes, security agreements, agreements with landlords, mortgagees and processors and other bailees, subordination and intercreditor agreements and other agreements, instruments and documents, in each case in form and substance acceptable to Lender, as Lender may request from time to time to perfect, protect and maintain Lender's security interests in the Collateral, including the required priority thereof, and to fully carry out the transactions contemplated by the Loan Documents.

**5.4. UCC Financing Statements.** Each Loan Party Obligor authorizes Lender to file, transmit or communicate, as applicable, from time to time, Uniform Commercial Code financing statements, along with amendments and modifications thereto, in all filing offices selected by Lender, listing such Loan Party Obligor as the debtor and Lender as the secured party, and describing the collateral covered thereby in such manner as Lender may elect, including using descriptions such as "all personal property of debtor" or "all assets of debtor", or words of similar effect, in each case without such Loan Party Obligor's signature. Each Loan Party Obligor also hereby ratifies its authorization for Lender to have filed, in any filing office, any financing statements filed prior to the date hereof.

## 6. CERTAIN PROVISIONS REGARDING ACCOUNTS, INVENTORY, COLLECTIONS AND APPLICATIONS OF PAYMENTS.

**6.1. Lock Boxes and Blocked Accounts.** Each Loan Party Obligor hereby represents and warrants that all Deposit Accounts and all other depository and other accounts maintained by each Loan Party Obligor as of the Closing Date are described in Section 3 of the Perfection Certificate, which description includes for each such account the name of the Loan Party Obligor maintaining the account, the name of the financial institution at which the account is maintained, the account number and the purpose of the account. After the Closing Date, no Loan Party Obligor shall open any new Deposit Account or any other depository or other account without the prior written consent of Lender and without updating Section 3 of the Perfection Certificate to reflect such Deposit Account or other account. No Deposit Account or other account of any Loan Party Obligor shall at any time constitute a Restricted Account other than accounts expressly indicated on Section 3 of the Perfection Certificate as being Restricted Accounts (and each Loan Party Obligor hereby represents and warrants that each such account shall at all times meet the requirements set forth in the definition of Restricted Account to qualify as a Restricted Account). Each Loan Party Obligor will, at its expense, establish (and revise from time to time as Lender may require) procedures acceptable to Lender, in Lender's sole discretion, for the collection of checks, wire transfers and all other proceeds of all of such Loan Party Obligor's Accounts and other Collateral ("**Collections**"), which shall include (a) directing all Account Debtors to send all Account proceeds (i) directly to a post office box designated by Lender either in the name of such Loan Party Obligor (but as to which Lender has exclusive access) or, at Lender's option following the occurrence of an Event of Default, in the name of Lender (a "**Lock Box**") or (ii) in the case of wire transfers, to a Blocked Account and (b) depositing all Collections received by such Loan Party Obligor into one or more bank accounts maintained in the name of such Loan Party Obligor (but as to which Lender has exclusive access) or, at Lender's option, in the name of Lender (each, a "**Blocked Account**"), under an arrangement acceptable to Lender with a depository bank acceptable to Lender, pursuant to which all funds deposited into each Blocked Account are to be transferred to Lender in such manner, and with such frequency, as Lender shall specify. Each Loan Party Obligor agrees to execute, and to cause its depository banks and other account holders to execute, such Control Agreements as Lender shall require from time to time in connection with the foregoing, all in form and substance acceptable to Lender; *provided*, that notwithstanding the foregoing, no Loan Party Obligor shall be obligated to deliver a Control Agreement to Lender or comply with the requirements set forth in clauses (a) and (b) of the preceding sentence (i) with respect to any Restricted Account or (ii) during the first 30 days after the Closing Date.

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

- (i) **FIRST**, to reimburse Lender for all out-of-pocket costs and expenses, and all indemnified losses, incurred by Lender which are reimbursable to Lender in accordance with this Agreement or any of the other Loan Documents;
- (ii) **SECOND**, to any accrued but unpaid interest on any Protective Advances;
- (iii) **THIRD**, to the outstanding principal of any Protective Advances;
- (iv) **FOURTH**, to any accrued but unpaid fees owing to Lender under this Agreement and/or any other Loan Documents;
- (v) **FIFTH**, to any unpaid accrued interest on the Obligations;
- (vi) **SIXTH**, to the outstanding principal of the Loans; and
- (vii) **SEVENTH**, to the payment of any other outstanding Obligations; and after payment in full in cash of all of the outstanding monetary Obligations, any further amounts paid to or received by Lender in respect of the Obligations (so long as no monetary Obligations are outstanding) shall be paid over to Borrower or such other Person(s) as may be legally entitled thereto.

Notwithstanding anything to the contrary set forth herein, any prepayment applied to the outstanding principal of the Term Loan shall be applied to the remaining installments thereof (including any bullet payment due at maturity) in the inverse order of maturity.

**6.3. Notification; Verification.** Lender or its designee may, from time to time, whether or not a Default or Event of Default has occurred, verify directly with the Account Debtors of the Loan Party Obligors (or by any manner and through any medium Lender considers advisable) the validity, amount and other matters relating to the Accounts and Chattel Paper of the Loan Party Obligors, by means of mail, telephone or otherwise, either in the name of the applicable Loan Party Obligor or Lender or such other name as Lender may choose. Lender or its designee may, from time to time, after the occurrence and during the continuance of an Event of Default: (a) notify Account Debtors of the Loan Party Obligors that Lender has a security interest in the Accounts of the Loan Party Obligors and direct such Account Debtors to make payment thereof directly to Lender; and (b) demand, collect or enforce payment of any Accounts and Chattel Paper (but without any duty to do so). Each Loan Party Obligor hereby authorizes Account Debtors to make payments directly to Lender and to rely on notice from Lender without further inquiry. Lender may on behalf of each Loan Party Obligor endorse all items of payment received by Lender that are payable to such Loan Party Obligor for the purposes described above.

#### **6.4. Power of Attorney.**

Without limiting any of Lender's other rights under this Agreement or any other Loan Document, each Loan Party Obligor hereby grants to Lender an irrevocable power of attorney, coupled with an interest, authorizing and permitting Lender (acting through any of its officers, employees, attorneys or agents), at Lender's option but without obligation, with or without notice to such Loan Party Obligor, and at each Loan Party Obligor's expense, to do any or all of the following, in such Loan Party Obligor's name or otherwise:

(a) at any time, whether or not an Event of Default has occurred or is continuing (except as otherwise provided herein), (i) execute on behalf of such Loan Party Obligor any documents that Lender may, in its sole discretion, deem advisable in order to perfect, protect and maintain Lender's security interests, and priority thereof, in the Collateral and to fully consummate all the transactions contemplated by this Agreement and the other Loan Documents (including such financing statements and continuation financing statements, and amendments or other modifications thereto, as Lender shall deem necessary or appropriate) and, upon the occurrence and during the continuance of an Event of Default, to notify Account Debtors of the Loan Party Obligors in the manner contemplated by Section 6.3, (ii) endorse such Loan Party Obligor's name on all checks and other forms of remittances received by Lender, (iii) pay any sums required on account of such Loan Party Obligor's taxes or to secure the release of any Liens therefor, (iv) pay any amounts necessary to obtain, or maintain in effect, any of the insurance described in Section 7.14, (v) receive and otherwise take control in any manner of any cash or non-cash items of payment or Proceeds of Collateral, (vi) receive, open and dispose of all mail addressed to such Loan Party Obligor at any post office box or lockbox maintained by Lender for such Loan Party Obligor or at any other business premises of Lender and (vii) endorse or assign to Lender on such Loan Party Obligor's behalf any portion of Collateral evidenced by an agreement, Instrument or Document if an endorsement or assignment of any such items is not made by such Loan Party Obligor pursuant to Section 5.2; and

(b) at any time, after the occurrence and during the continuance of an Event of Default, (i) execute on behalf of such Loan Party Obligor any document exercising, transferring or assigning any option to purchase, sell or otherwise dispose of or lease (as lessor or lessee) any real or personal property which is part of the Collateral or in which Lender has an interest, (ii) execute on behalf of such Loan Party Obligor any invoices relating to any Accounts, any draft against any Account Debtor, any proof of claim in bankruptcy, any notice of Lien or claim, and any assignment or satisfaction of mechanic's, materialman's or other Lien, (iii) execute on behalf of such Loan Party Obligor any notice to any Account Debtor, (iv) pay, contest or settle any Lien, charge, encumbrance, security interest and adverse claim in or to any of the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same, (v) grant extensions of time to pay, compromise claims relating to, and settle Accounts, Chattel Paper and General Intangibles for less than face value and execute all releases and other documents in connection therewith, (vi) settle and adjust, and give releases of, any insurance claim that relates to any of the Collateral and obtain payment therefor, (vii) instruct any third party having custody or control of any Collateral or books or records belonging to, or relating to, such Loan Party Obligor to give Lender the same rights of access and other rights with respect thereto as Lender has under this Agreement or any other Loan Document, (viii) change the address for delivery of such Loan Party Obligor's mail, (ix) vote any right or interest with respect to any Investment Property, (x) instruct any Account Debtor to make all payments due to any Loan Party Obligor directly to Lender, and (xi) use any Intellectual Property of such Loan Party Obligor (including any licenses of such Intellectual Property), including but not limited to any labels, patents, trademarks, trade names, URLs, domain names, industrial designs, copyrights, or advertising matter, in preparing for sale, advertising for sale, or selling Inventory or other Collateral and to collect any amounts due under Accounts, contracts or negotiable Collateral of such Loan Party Obligor.

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

**6.5. Disputes.** Each Loan Party Obligor shall promptly notify Lender of any dispute or claim relating to its Accounts to the extent the value associated with such dispute or claim exceeds \$25,000. Each Loan Party Obligor agrees that it will not, without Lender's prior written consent, compromise or settle any of its Accounts for less than the full amount thereof, grant any extension of time for payment of any of its Accounts, release (in whole or in part) any Account Debtor or other person liable for the payment of any of its Accounts or grant any credits, discounts, allowances, deductions, return authorizations or the like with respect to any of its Accounts; except (unless otherwise directed by Lender during the existence of a Default or an Event of Default) such Loan Party Obligor may take any of such actions in the ordinary course of its business consistent with past practices, provided that Borrower promptly reports the same to Lender.

**6.6. Invoices.** At Lender's request, each Loan Party Obligor will cause all invoices and statements that it sends to Account Debtors or other third parties to be marked, in a manner satisfactory to Lender, to reflect Lender's security interest therein and payment instructions.

**6.7. Inventory.**

(a) **Third Party Locations.** No Loan Party Obligor will, without Lender's prior written consent, at any time, store any Inventory with any warehouseman or other third party other than as set forth in Section 1(d) of the Perfection Certificate.

(b) **Sale on Return, etc.** No Loan Party Obligor will, without Lender's prior written consent, at any time, sell any Inventory on a sale-or-return, guaranteed sale, consignment, or other contingent basis.

(c) **Fair Labor Standards Act.** Each Loan Party Obligor represents, warrants and covenants that, at all times, all of the Inventory of each Loan Party Obligor has been, at all times will be, produced only in accordance with the Fair Labor Standards Act of 1938 and all rules, regulations and orders promulgated thereunder.

## **7. REPRESENTATIONS, WARRANTIES AND AFFIRMATIVE COVENANTS.**

To induce Lender to enter into this Agreement, each Loan Party Obligor makes the following representations, warranties and covenants to Lender as follows; *provided, however*, that notwithstanding anything to the contrary, express or implied, set forth in this Agreement it is expressly understood and agreed that (a) each such representation and warranty, (i) as made on the Closing Date, shall apply only to Borrower and shall continue to apply only to the Borrower until such time as any other Loan Party Obligor shall become party hereto, whether pursuant to the consummation of a Penthouse Transaction or otherwise, in which event this Agreement shall be deemed to have been automatically amended so that such representations, warranties and covenants set forth below shall apply to Borrower and each other Loan Party Obligor and shall be remade as of the date any such Loan Party Obligor becomes party hereto, (ii) shall not be affected by any knowledge of, or any investigation by, Lender and (b) each such covenant shall continuously apply with respect to all times commencing on the date hereof and continuing until the Termination Date:

**7.1. Existence and Authority.** Each Loan Party is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization (which jurisdiction is identified in Section 1(a) of the Perfection Certificate) and is qualified to do business in each jurisdiction in which the operation of its business requires that it be qualified (which each such jurisdiction is identified in Section 1(a) of the Perfection Certificate). Each Loan Party has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Loan Documents to which it is a party and to carry out the transactions contemplated thereby. The execution, delivery and performance by each Loan Party Obligor of this Agreement and all of the other Loan Documents to which such Loan Party Obligor is a party have been duly and validly authorized, do not violate such Loan Party Obligor's Governing Documents or any law or any agreement or instrument or any court order which is binding upon any Loan Party or its property, do not constitute grounds for acceleration of any Indebtedness or obligation under any agreement or instrument which is binding upon any Loan Party or its property, and do not require the consent of any Person. No Loan Party is required to obtain any government approval, consent, or authorization from, or to file any declaration or statement with, any Governmental Authority in connection with or as a condition to the execution, delivery or performance of any of the Loan Documents. This Agreement and each of the other Loan Documents have been duly executed and delivered by, and are enforceable against, each of the Loan Party Obligors who have signed them, in accordance with their respective terms. Section 1(f) of the Perfection Certificate sets forth the ownership of Borrower and its Subsidiaries.

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

**7.3. Title to Collateral; Third Party Locations; Permitted Liens.** Each Loan Party Obligor has, and at all times will continue to have, good and marketable title to all of the Collateral. The Collateral now is, and at all times will remain, free and clear of any and all Liens, except for Permitted Liens. Lender now has, and will at all times continue to have, a first-priority perfected and enforceable security interest in all of the Collateral, subject only to the Permitted Liens, and each Loan Party Obligor will at all times defend Lender and the Collateral against all claims of others. None of the Collateral which is Equipment is, or will at any time, be affixed to any real property in such a manner, or with such intent, as to become a fixture. Upon Lender's request after the Closing Date, Borrower shall use good faith efforts to obtain a landlord's waiver in form and substance satisfactory to Lender with respect to any real property lease or sublease for which any Loan Party Obligor is or will be a lessee or sublessee. Upon Lender's request after the Closing Date, Borrower shall use good faith efforts to obtain a warehouseman's waiver in form and substance satisfactory to Lender, with respect to any warehouse at which any Loan Party Obligor is or will at any time be a bailor of any Goods. Prior to causing or permitting any Collateral to at any time be located upon premises in which any third party (including any landlord, warehouseman, or otherwise) has an interest, Borrower shall notify Lender and the applicable Loan Party Obligor shall cause each such third party to execute and deliver to Lender, in form and substance acceptable to Lender, such waivers, collateral access agreements, and subordinations as Lender shall specify, so as to, among other things, ensure that Lender's rights in the Collateral are, and will at all times continue to be, superior to the rights of any such third party and that Lender has access to such Collateral. Each applicable Loan Party Obligor will keep at all times in full force and effect, and will comply at all times with all the terms of, any lease of real property where any of the Collateral now or in the future may be located.

**7.4. Accounts and Chattel Paper.** All Accounts, and all Chattel Paper owned by any Loan Party Obligor, are genuine and in all respects what they purport to be, arise out of a completed, bona fide and unconditional and non-contingent sale and delivery of goods or rendition of services by Borrower in the ordinary course of its business and in accordance with the terms and conditions of all purchase orders, contracts or other documents relating thereto, each Account Debtor thereunder had the capacity to contract at the time any contract or other document giving rise to such Accounts and Chattel Paper were executed, and the transactions giving rise to such Accounts and Chattel Paper comply with all applicable laws and governmental rules and regulations.

**7.5. Electronic Chattel Paper.** To the extent that any Loan Party Obligor obtains or maintains any Electronic Chattel Paper, such Loan Party Obligor shall at all times create, store and assign the record or records comprising the Electronic Chattel Paper in such a manner that (a) a single authoritative copy of the record or records exists which is unique, identifiable and except as otherwise provided below, unalterable, (b) the authoritative copy identifies Lender as the assignee of the record or records, (c) the authoritative copy is communicated to and maintained by Lender or its designated custodian, (d) copies or revisions that add or change an identified assignee of the authoritative copy can only be made with the participation of Lender, (e) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy and (f) any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision.

**7.6. Capitalization; Investment Property.**

(a) No Loan Party, directly or indirectly, owns, or shall at any time own, any capital stock or other equity interests of any other Person except as set forth in Sections 1(f) and 1(g) of the Perfection Certificate, which Sections list all Investment Property owned by each Loan Party Obligor.

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

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

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

(e) Each Loan Party Obligor shall, at the request of Lender, cause each Issuer to amend or otherwise modify its Governing Documents, books, records, and related agreements, documents and instruments, as applicable, to reflect the rights and interests of Lender hereunder, and to the extent required to enable and empower Lender to exercise and enforce its rights and remedies hereunder in respect of the Pledged Equity and other Investment Property.

(f) Each Loan Party Obligor will take any and all actions required or reasonably requested by Lender, from time to time, to (i) cause Lender to obtain exclusive control of any Investment Property in a manner acceptable to Lender and (ii) obtain from any Issuers and such other Persons as Lender shall specify, for the benefit of Lender, written confirmation of Lender's exclusive control over such Investment Property and take such other actions as Lender may request to perfect Lender's security interest in any Investment Property. For purposes of this Section 7.6, Lender shall have exclusive control of Investment Property if (A) pursuant to Section 5.2, such Investment Property consists of certificated securities and the applicable Loan Party Obligor delivers such certificated securities to Lender (with all appropriate endorsements), (B) such Investment Property consists of uncertificated securities and either (x) the applicable Loan Party Obligor delivers such uncertificated securities to Lender or (y) the Issuer thereof agrees, pursuant to documentation in form and substance satisfactory to Lender, that it will comply with instructions originated by Lender without further consent by the applicable Loan Party Obligor and (C) such Investment Property consists of security entitlements and either (x) Lender becomes the entitlement holder thereof or (y) the appropriate securities intermediary agrees, pursuant to documentation in form and substance satisfactory to Lender, that it will comply with entitlement orders originated by Lender without further consent by the applicable Loan Party Obligor. Each Loan Party Obligor that is a limited liability company or a partnership hereby represents and warrants that it has not, and at no time will, elect pursuant to the provisions of Section 8-103 of the UCC to provide that its equity interests are securities governed by Article 8 of the UCC.

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

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

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

(j) In the case of any Loan Party Obligor which is an Issuer, such Issuer agrees that the terms of Section 11.3(g)(iii) shall apply to such Loan Party Obligor with respect to all actions that may be required of it pursuant to such Section 11.3(g)(iii) regarding the Investment Property issued by it.

**7.7. Commercial Tort Claims.** As of the Closing Date, no Loan Party Obligor has any Commercial Tort Claims pending other than those listed in Section 2 of the Perfection Certificate. Each Loan Party Obligor shall promptly (but in any case no later than five Business Days thereafter) notify Lender in writing upon incurring or otherwise obtaining a Commercial Tort Claim after the Closing Date against any third party with a value in excess of \$10,000. Such notice shall constitute such Loan Party Obligor's authorization to amend such Section 2 to add such Commercial Tort Claim and shall automatically be deemed to amend such Section 2 to include such Commercial Tort Claim.

**7.8. Jurisdiction of Organization; Location of Collateral.** Sections 1(c) and 1(d) of the Perfection Certificate set forth (a) each place of business of each Loan Party Obligor (including its chief executive office), (b) all locations where all Inventory, Equipment, and other Collateral owned by each Loan Party Obligor is kept and (c) whether each such Collateral location and place of business (including each Loan Party Obligor's chief executive office) is owned by a Loan Party or leased (and if leased, specifies the complete name and notice address of each lessor). No Collateral is located outside the United States or in the possession of any lessor, bailee, warehouseman or consignee, except as expressly indicated in Sections 1(c), 1(d) and 3 (with respect to Deposit Accounts maintained outside the United States) of the Perfection Certificate. Each Loan Party Obligor will give Lender at least thirty days' prior written notice before changing its jurisdiction of organization, opening any additional place of business, changing its chief executive office or the location of its books and records, or moving any of the Collateral to a location other than one of the locations set forth in Sections 1(c) and 1(d) of the Perfection Certificate, and will execute and deliver all financing statements, landlord waivers, collateral access agreements, mortgages, and all other agreements, instruments and documents which Lender shall require in connection therewith prior to making such change, all in form and substance satisfactory to Lender. Without the prior written consent of Lender, no Loan Party Obligor will at any time change its jurisdiction of organization.

**7.9. Financial Statements and Reports; Solvency.**

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

(b) As of the date hereof (after giving effect to the Loans to be made on the date hereof, and the consummation of the transactions contemplated hereby), and as of each other day that any Loan is made (after giving effect thereto), (i) the fair saleable value of all of the assets and properties of the Loan Parties, taken as a whole, exceeds the aggregate liabilities and Indebtedness of the Loan Parties, taken as a whole, including contingent liabilities, (ii) the Loan Parties, taken as a whole, are solvent and able to pay their debts as they come due, (iii) the Loan Parties, take as a whole, have sufficient capital to carry on their business as now conducted and as proposed to be conducted, (iv) no Loan Party is contemplating either the liquidation of all or any substantial portion of its assets or property, or the filing of any petition under any state, federal, or other bankruptcy or insolvency law and (v) no Loan Party has knowledge of any Person contemplating the filing of any such petition against any Loan Party.

**7.10. Tax Returns and Payments; Pension Contributions.** Each Loan Party has timely filed all tax returns and reports required by applicable law, has timely paid all applicable Taxes, assessments, deposits and contributions owing by such Loan Party and will timely pay all such items in the future as they became due and payable. Each Loan Party may, however, defer payment of any contested taxes; *provided*, that such Loan Party (a) in good faith contests its obligation to pay such Taxes by appropriate proceedings promptly and diligently instituted and conducted, (b) notifies Lender in writing of the commencement of, and any material development in, the proceedings, (c) posts bonds or takes any other steps required to keep the contested taxes from becoming a Lien upon any of the Collateral and (d) maintains adequate reserves therefor in conformity with GAAP. No Loan Party is aware of any claims or adjustments proposed for any prior tax years that could result in additional taxes becoming due and payable by any Loan Party. Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other applicable laws. Each Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter or opinion letter from the Internal Revenue Service to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service. To the best knowledge of each Loan Party, nothing has occurred that would prevent or cause the loss of such tax-qualified status. There are no pending or, to the best knowledge of any Loan Party, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to result in liabilities individually or in the aggregate in excess of \$100,000 of any Loan Party. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in liabilities individually or in the aggregate of any Loan Party in excess of \$100,000. No ERISA Event has occurred, and no Loan Party is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan, in each case that could reasonably be expected to result in liabilities individually or in the aggregate in excess of \$100,000. Each Loan Party and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained, in each case except as could not reasonably be expected to result in liabilities individually or in the aggregate to the Loan Parties in excess of \$100,000. As of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 60% or higher and no Loan Party knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 60% as of the most recent valuation date. No Loan Party or any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid, except as could not reasonably be expected to result in liabilities individually or in the aggregate to the Loan Parties in excess of \$100,000. No Loan Party or any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA except as could not reasonably be expected to result in liabilities individually or in the aggregate to the Loan Parties in excess of \$100,000. No Pension Plan has been terminated by the plan administrator thereof or by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan, except as could not reasonably be expected to result in liabilities individually or in the aggregate to the Loan Parties in excess of \$100,000.

**7.11. Compliance with Laws; Intellectual Property; Licenses.**

(a) Each Loan Party has complied, and will continue at all times to comply, in all material respects with all provisions of all applicable laws and regulations, including those relating to the ownership of real or personal property, the conduct and licensing of each Loan Party's business, the payment and withholding of Taxes, ERISA and other employee matters, safety and environmental matters, and laws relating to child pornography, including, without limitation, 18 U.S.C. §§ 2251 through 2260.

(b) No Loan Party has received written notice of default or violation, or is in default or violation, with respect to any judgment, order, writ, injunction, decree, demand or assessment issued by any court or any federal, state, local, municipal or other Governmental Authority relating to any aspect of any Loan Party's business, affairs, properties or assets. No Loan Party has received written notice of or been charged with, or is, to the knowledge of any Loan Party, under investigation with respect to, any violation in any material respect of any provision of any applicable law.

(c) No Loan Party Obligor owns any registered Intellectual Property, except as set forth in Section 4 of the Perfection Certificate. Each Loan Party Obligor shall promptly (but in any event within thirty days thereafter) notify Lender in writing of any additional Intellectual Property rights acquired or arising after the Closing Date and shall submit to Lender a supplement to Section 4 of the Perfection Certificate to reflect such additional rights; *provided*, that such Loan Party Obligor's failure to do so shall not impair Lender's security interest therein. Each Loan Party Obligor shall execute a separate security agreement granting Lender a security interest in such Intellectual Property (whether owned on the Closing Date or thereafter), in form and substance acceptable to Lender and suitable for recording such security interest in such Intellectual Property with the United States Patent and Trademark Office, United States Copyright Office, or any Intellectual Property registrar in any other jurisdiction as applicable; *provided*, that such Loan Party Obligor's failure to do so shall not impair Lender's security interest therein. Each Loan Party owns or has, and will at all times continue to own or have, the valid right to use all material patents, trademarks, copyrights, software, computer programs, equipment designs, network designs, equipment configurations, technology and other Intellectual Property used, marketed and sold in such Loan Party's business, and each Loan Party is in compliance, and will continue at all times to comply, in all material respects with all licenses, user agreements and other such agreements regarding the use of Intellectual Property. No Loan Party has any knowledge that, or has received any notice claiming that, any of such Intellectual Property infringes upon or violates the rights of any other Person.

(d) Each Loan Party has and will continue at all times to have, all federal, state, local and other licenses and permits required to be maintained in connection with such Loan Party's business operations, and all such licenses and permits are valid and in full force and effect. Each Loan Party has, and will continue at all times to have, complied with the requirements of such licenses and permits in all material respects, and has received no written notice of any pending or threatened proceedings for the suspension, termination, revocation or limitation thereof. No Loan Party is aware of any facts or conditions that could reasonably be expected to cause or permit any of such licenses or permits to be voided, revoked or withdrawn.

**7.12. Litigation.** Section 1(e) of the Perfection Certificate discloses all claims, proceedings, litigation or investigations pending or (to the best of each Loan Party Obligor's knowledge) threatened against any Loan Party as of the Closing Date. There is no claim, suit, litigation, proceeding or investigation pending or (to the best of each Loan Party Obligor's knowledge) threatened by or against or affecting any Loan Party in any court or before any Governmental Authority (or any basis therefor known to any Loan Party Obligor) which may result, either separately or in the aggregate, in liability in excess of \$100,000 for the Loan Parties, in any Material Adverse Effect, or in any material impairment in the ability of any Loan Party to carry on its business in substantially the same manner as it is now being conducted.

**7.13. Use of Proceeds.** All proceeds of all Loans shall be used solely (a) to pay the purchase price required to consummate the Closing Date Debt Purchase pursuant to the Closing Date Assignment Agreement on the Closing Date, and (b) to pay the fees, costs, and expenses incurred in connection with this Agreement, the other Loan Documents, the Closing Date Debt Purchase and the transactions contemplated hereby and thereby. All proceeds of all Loans will be used solely for lawful business purposes.

**7.14. Insurance.**

(a) Each Loan Party will at all times carry property, liability and other insurance, with insurers reasonably acceptable to Lender, in such form and amounts, and with such deductibles and other provisions, as Lender shall require, and Borrower will provide Lender with evidence satisfactory to Lender that such insurance is, at all times, in full force and effect. A true and complete listing of such insurance as of the Closing Date, including issuers, coverages and deductibles, is set forth in Section 5 of the Perfection Certificate. Each property insurance policy shall name Lender as lender loss payee and shall contain a lender's loss payable endorsement in form acceptable to Lender, each liability insurance policy shall name Lender as an additional insured, and each business interruption insurance policy shall be collaterally assigned to Lender, all in form and substance satisfactory to Lender. All policies of insurance shall provide that they may not be cancelled or changed without at least thirty days' prior written notice to Lender, and shall otherwise be in form and substance satisfactory to Lender. Borrower shall advise Lender promptly of any policy cancellation, non-renewal, reduction, or material amendment with respect to any insurance policies maintained by any Loan Party or any receipt by any Loan Party of any notice from any insurance carrier regarding any intended or threatened cancellation, non-renewal, reduction or material amendment of any of such policies, and Borrower shall promptly deliver to Lender copies of all notices and related documentation received by any Loan Party in connection with the same.

(b) Borrower shall deliver to Lender no later than fifteen days prior to the expiration of any then current insurance policies, insurance certificates evidencing renewal of all such insurance policies required by this Section 7.14. Borrower shall deliver to Lender, upon Lender's request, certificates evidencing such insurance coverage in such form as Lender shall specify.

**(c) IF ANY LOAN PARTY AT ANY TIME OR TIMES HEREAFTER SHALL FAIL TO OBTAIN OR MAINTAIN ANY OF THE POLICIES OF INSURANCE REQUIRED ABOVE (AND PROVIDE EVIDENCE THEREOF TO LENDER) OR TO PAY ANY PREMIUM RELATING THERETO, THEN LENDER, WITHOUT WAIVING OR RELEASING ANY OBLIGATION OR DEFAULT BY BORROWER HEREUNDER, MAY (BUT SHALL BE UNDER NO OBLIGATION TO) OBTAIN AND MAINTAIN SUCH POLICIES OF INSURANCE AND PAY SUCH PREMIUMS AND TAKE SUCH OTHER ACTIONS WITH RESPECT THERETO AS LENDER DEEMS ADVISABLE UPON NOTICE TO BORROWER. SUCH INSURANCE, IF OBTAINED BY LENDER, MAY, BUT NEED NOT, PROTECT ANY LOAN PARTY'S INTERESTS OR PAY ANY CLAIM MADE BY OR AGAINST ANY LOAN PARTY WITH RESPECT TO THE COLLATERAL. SUCH INSURANCE MAY BE MORE EXPENSIVE THAN THE COST OF INSURANCE ANY LOAN PARTY MAY BE ABLE TO OBTAIN ON ITS OWN AND MAY BE CANCELLED ONLY UPON THE APPLICABLE LOAN PARTY PROVIDING EVIDENCE THAT IT HAS OBTAINED THE INSURANCE AS REQUIRED ABOVE. ALL SUMS DISBURSED BY LENDER IN CONNECTION WITH ANY SUCH ACTIONS, INCLUDING COURT COSTS, EXPENSES, OTHER CHARGES RELATING THERETO AND REASONABLE ATTORNEY COSTS, SHALL CONSTITUTE LOANS HEREUNDER, SHALL BE PAYABLE ON DEMAND BY BORROWER TO LENDER AND, UNTIL PAID, SHALL BEAR INTEREST AT THE HIGHEST RATE THEN APPLICABLE TO LOANS HEREUNDER. THIS PROVISION SHALL CONSTITUTE THE NOTICE TO THE APPLICABLE LOAN PARTY REQUIRED PURSUANT TO PARAGRAPH (3) OF SECTION 180/10 OF CHAPTER 815 OF THE ILLINOIS COMPILED STATUTES (2004).**

(d) Within 15 days following the Closing Date, Borrower shall deliver evidence to Lender that Borrower has obtained a policy of general liability insurance in an amount reasonably satisfactory to Lender and which shall otherwise be in compliance with this Section 7.14.

**7.15. Financial, Collateral and Other Reporting / Notices.** Each Loan Party has kept, and will at all times keep, adequate records and books of account with respect to its business activities and the Collateral in which proper entries are made in accordance with GAAP reflecting all its financial transactions. Each Loan Party Obligor will cause to be prepared and furnished to Lender, in each case in a form and in such detail as is reasonably acceptable to Lender the following items (the items to be provided under this Section 7.15 shall be delivered to Lender in writing):

(a) **Annual Financial Statements.** Not later than ninety days after the close of each Fiscal Year, unqualified, audited financial statements of each Loan Party as of the end of such Fiscal Year, including balance sheet, income statement, and statement of cash flow for such Fiscal Year, in each case on a consolidated and consolidating basis, certified by a firm of independent certified public accountants of recognized standing selected by Borrower but reasonably acceptable to Lender, together with a copy of any management letter issued in connection therewith. Concurrently with the delivery of such financial statements, Borrower shall deliver to Lender a Compliance Certificate, indicating whether (i) Borrower is in compliance with each of the covenants specified in Section 9, and setting forth a detailed calculation of such covenants and (ii) any Default or Event of Default is then in existence;

(b) **Interim Financial Statements.** Not later than thirty days after the end of each month hereafter, including the last month of each Fiscal Year, unaudited interim financial statements of each Loan Party as of the end of such month and of the portion of such Fiscal Year then elapsed, including balance sheet, income statement, statement of cash flow, and results of their respective operations during such month and the then-elapsed portion of the Fiscal Year, together with comparative figures for the same periods in the immediately preceding Fiscal Year and the corresponding figures from the budget for the Fiscal Year covered by such financial statements, in each case on a consolidated and consolidating basis, certified by the principal financial officer of Borrower as prepared in accordance with GAAP and fairly presenting the consolidated financial position and results of operations (including management discussion and analysis of such results) of each Loan Party for such month and period subject only to changes from ordinary course year-end audit adjustments and except that such statements need not contain footnotes. Concurrently with the delivery of such financial statements, Borrower shall deliver to Lender a Compliance Certificate, indicating whether (i) Borrower is in compliance with each of the covenants specified in Section 9, and setting forth a detailed calculation of such covenants, and (ii) any Default or Event of Default is then in existence;

(c) **Perfection Certificates.** Promptly following the occurrence of any Penthouse Transaction and thereafter annually, no later than January 31 of each year, an updated Perfection Certificate, true and correct in all material respects as of the date of delivery, accompanied by a certificate executed by an officer of Borrower and substantially in the form of the Perfection Certificate attached to the Credit Agreement (it being understood and agreed that no such update shall serve to cure any existing Event of Default, including any Event of Default resulting from any failure to provide any such disclosure to Lender on an earlier date or any breach of any earlier made representation and/or warranty).

(d) **Projections, Etc.** Not later than thirty days prior to the end of each Fiscal Year, monthly business projections for the following Fiscal Year for the Loan Parties on a consolidated and consolidating basis, which projections shall include for each such period, profit and loss projections, balance sheet projections, income statement projections and cash flow projections;

(e) **Shareholder Reports, Etc.** Promptly after the sending or filing thereof, as the case may be, copies of any proxy statements, financial statements or reports which each Loan Party has made available to its shareholders and copies of any regular, periodic and special reports or registration statements which any Loan Party files with the Securities and Exchange Commission or any Governmental Authority which may be substituted therefor, or any national securities exchange;

(f) **ERISA Reports.** Copies of any annual report to be filed pursuant to the requirements of ERISA in connection with each plan subject thereto promptly upon request by Lender and in addition, each Loan Party shall promptly notify Lender upon having knowledge of any ERISA Event; and

(g) **Tax Returns.** Each federal and state income tax return filed by any Loan Party or Other Obligor promptly (but in no event later than ten days following the filing of such return), together with such supporting documentation as is supplied to the applicable tax authority with such return and proof of payment of any amounts owing with respect to such return.

(h) **Notification of Certain Changes.** Promptly (and in no case later than the earlier of (i) three Business Days after such Loan Party Obligor obtaining actual knowledge of the occurrence of any of the following and (ii) such other date that such information is required to be delivered pursuant to this Agreement or any other Loan Document) notification to Lender in writing of (A) the occurrence of any Default or Event of Default, (B) the occurrence of any event that has had, or may have, a Material Adverse Effect, (C) any change in any Loan Party's officers or directors (except those nominated by Lender), (D) any investigation, action, suit, proceeding or claim (or any material development with respect to any existing investigation, action, suit, proceeding or claim) relating to any Loan Party, any officer or director of a Loan Party, the Collateral or which may result in an adverse impact upon any Loan Party's business, assets or financial condition, (E) any material loss or damage to the Collateral, (F) any event or the existence of any circumstance that has resulted in, or could reasonably be expected to result in, any material adverse change in the business or financial affairs of any Loan Party, any Default, or any Event of Default, or which would make any representation or warranty previously made by any Loan Party to Lender untrue in any material respect or constitute a material breach if such representation or warranty was then being made, (G) any actual or alleged breaches of any Material Contract or termination or threat to terminate any Material Contract or any material amendment to or modification of a Material Contract, or the execution of any new Material Contract by any Loan Party and (H) any change in any Loan Party's certified accountant. In the event of each such notice under this Section 7.15(h), Borrower shall give notice to Lender of the action or actions that each Loan Party has taken, is taking, or proposes to take with respect to the event or events giving rise to such notice obligation.

(i) **Penthouse Debt Reports.** Promptly upon receipt thereof, all reports, notices and other communications received by Borrower under or in connection with the Penthouse Loan Agreement or the Penthouse Debt.

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

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

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

**7.18. Material Contracts.** Except as expressly disclosed in Section 1(h) of the Perfection Certificate, no Loan Party is (a) a party to any contract which has had or could reasonably be expected to have a Material Adverse Effect or (b) in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in (x) any contract to which it is a party or by which any of its assets or properties is bound, which default, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect or result in liabilities in excess of \$50,000 or (y) any Material Contract. Except for the contracts and other agreements listed in Section 1(h) of the Perfection Certificate, no Loan Party is party, as of the Closing Date, to any (i) employment agreements covering the management of any Loan Party, (ii) collective bargaining agreements or other labor agreements covering any employees of any Loan Party, (iii) agreements for managerial, consulting or similar services to which any Loan Party is a party or by which it is bound, (iv) agreements regarding any Loan Party, its assets or operations or any investment therein to which any of its equity holders is a party, (v) patent licenses, trademark licenses, copyright licenses or other lease or license agreements to which any Loan Party is a party, either as lessor or lessee, or as licensor or licensee, (vi) distribution, marketing or supply agreements to which any Loan Party is a party, (vii) customer agreements to which any Loan Party is a party (in each case with respect to any contract of the type described in the preceding clauses (i), (iii), (iv), (v), (vi) and (vii) requiring payments of more than \$50,000 in the aggregate in any Fiscal Year), (viii) partnership agreements to which any Loan Party is a partner, limited liability company agreements to which any Loan Party is a member or manager, or joint venture agreements to which any Loan Party is a party, (ix) real estate leases, or (x) any other contract to which any Loan Party is a party, in each case with respect to this clause (x) the breach, nonperformance or cancellation of which, could reasonably be expected to have a Material Adverse Effect; (each such contract and agreement, described in the preceding clauses (i) to (x), a “**Material Contract**”).

**7.19. No Default.** No Default or Event of Default has occurred and is continuing.

**7.20. No Material Adverse Change.** Since the Closing Date, there has been no material adverse change in the financial condition, business, operations, or properties of any Loan Party or any Other Obligor.

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

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

**7.23. Borrower as Holding Company.** Borrower does not and shall not at any time (a) engage in any business activities other than (i) serving as a passive holding company for its Subsidiaries and (ii) holding the Penthouse Debt (and to the extent of any interest therein, the Penthouse Warrant) and engaging in activities related thereto, including, without limitation, exercising its rights and remedies (x) as “Lender” under the Penthouse Loan Agreement and the other Loan Documents (as that term is defined in the Penthouse Loan Agreement), (y) to the extent of any interest therein, as “Holder” under the Penthouse Warrant, and (z) under the Closing Date Assignment Agreement and IP Collateral Assignments, (b) have any material assets other than (i) cash and cash equivalents, (ii) the outstanding shares of equity interests issued by its direct Subsidiaries, and (iii) the Penthouse Debt and any proceeds of collateral securing the Penthouse Debt, or (c) have any material liabilities other than the Obligations.

**7.24. Access to Collateral, Books and Records.** At reasonable times, Lender and its representatives or agents shall have the right to inspect the Collateral and to examine and copy each Loan Party's books and records. Each Loan Party Obligor agrees to give Lender access to any or all of such Loan Party Obligor's, and each of its Subsidiaries', premises to enable Lender to conduct such inspections and examinations. Such inspections and examinations shall be at Borrower's expense and the charge therefor shall be \$1,250 per person per day (or such higher amount as shall represent Lender's then current standard charge), plus out-of-pocket expenses ; *provided* that Borrower shall only be required to reimburse Lender for up to two such inspections and examinations in any Fiscal Year plus any additional inspections and examinations that are conducted during the existence of an Event of Default. Lender may, at Borrower's expense, use each Loan Party's personnel, computer and other equipment, programs, printed output and computer readable media, supplies and premises for the collection, sale or other disposition of Collateral to the extent Lender, in its Permitted Discretion, deems appropriate. Each Loan Party Obligor hereby irrevocably authorizes all accountants and third parties to disclose and deliver to Lender, at Borrower's expense, all financial information, books and records, work papers, management reports and other information in their possession regarding the Loan Parties.

**7.25. Appraisals.** Each Loan Party Obligor will permit Lender and each of its representatives or agents to conduct appraisals and valuations of the Collateral at such times and intervals as Lender may designate in its Permitted Discretion (including any appraisals that may be required to comply with FIRREA). Such appraisals and valuations shall be at Borrower's expense; *provided*, that Borrower shall only be required to reimburse Lender for up to one appraisal and valuation in any Fiscal Year plus any additional appraisals and valuations that are conducted during the existence of an Event of Default.

**7.26. Required Offering.** On or prior to May 31, 2018, Borrower shall consummate a Required Offering.

**7.27. Additional Collateral.** On or prior to November 30, 2017, Borrower shall cause one or more of its Affiliates (other than any Loan Party) to pledge to Lender, as additional collateral security for the Obligations, property consisting of cash, cash equivalents or other publicly traded, liquid securities acceptable to Lender in its sole discretion, with an aggregate fair market value of no less than \$1,000,000, all pursuant to documentation in form and substance reasonably satisfactory to Lender.

**8. NEGATIVE COVENANTS.** No Loan Party Obligor shall, and no Loan Party Obligor shall permit any other Loan Party to, without Lender's prior written consent (it being understood that, on the Closing Date, Borrower is the only Loan Party and Loan Party Obligor and therefore the covenants set forth in this Section 8 apply only to Borrower and shall continue to apply only to the Borrower until such time as any other Loan Party Obligor shall become party hereto, whether pursuant to the consummation of a Penthouse Transaction or otherwise, in which event the covenants set forth in this Section 8 shall automatically apply to Borrower and each other Loan Party Obligor which is then or later becomes party hereto):

(a) (i) merge or consolidate with another Person, form any new Subsidiary or acquire any interest in any Person; *provided* that (x) any Subsidiary of Borrower that is a Loan Party Obligor may merge with another Loan Party Obligor so long as Borrower is the survivor of any merger involving Borrower and (y) Borrower may consummate or form one or more a wholly-owned domestic Subsidiaries of Borrower for the purpose of consummating a Penthouse Transaction; or (ii) form or acquire any interest in any new Subsidiary unless such Subsidiary becomes a party hereto as a Loan Party Obligor;

(b) acquire any assets with a value in excess of \$50,000 in any single transaction or series of related transactions, except (x) the Closing Date Debt Purchase and (y) in the ordinary course of business and as otherwise expressly permitted by this Agreement;

(c) enter into any material transaction outside the ordinary course of business that is not expressly permitted by this Agreement, other than a Penthouse Transaction;

(d) sell, transfer, return, or dispose of (i) the Penthouse Debt or (ii) any Collateral or other assets with an aggregate value in excess of \$100,000 in any fiscal year, except that each Loan Party may sell Inventory and may enter into non-exclusive licenses of intellectual property, in each case, in the ordinary course of its business;

(e) make any loans to, or investments in, any other Person in the form of money or other assets other than (i) the Penthouse Debt and any proceeds thereof and (ii) Borrower and each other Loan Party Obligor may make loans and investments in its wholly-owned domestic Subsidiaries that are Loan Party Obligors;

(f) incur any Indebtedness other than Permitted Indebtedness;

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

(h) guaranty or otherwise become liable with respect to the obligations of another party or entity (other than (i) the Obligations and (ii) any other obligations that such Loan Party Obligor would be permitted under this Agreement to incur as the primary obligor with respect thereto);

(i) pay or declare any dividends or other distributions on any Loan Party's stock or other equity interest (except for dividends payable solely in capital stock or other equity interests of such Loan Party and dividends and distributions (i) by a Loan Party that is not a Loan Party Obligor to any other Loan Party and (ii) by a Loan Party Obligor to another Loan Party Obligor);

(j) redeem, retire, purchase or otherwise acquire, directly or indirectly, any of Borrower's capital stock or other equity interests other than pursuant to the Warrant;

(k) make any change in any Loan Party's capital structure, except (i) to the extent expressly permitted pursuant to another clause of this Section 8 and (ii) the Borrower may issue equity interests (including pursuant to a Required Offering), and securities convertible into equity interests, in each case other than Disqualified Equity Interests (unless otherwise approved in advance in writing by Lender) and to the extent not otherwise prohibited hereunder, so long as such issuance does not result in an Event of Default under Section 11.1(l);

(l) dissolve or elect to dissolve;

(m) engage, directly or indirectly, in a business other than the business which is being conducted on the date hereof or the management and operation of business assets or equity interest of PGMI or any of its Subsidiaries acquired pursuant to a Penthouse Transaction, wind up its business operations or cease substantially all, or any material portion, of its normal business operations, or suffer any material disruption, interruption or discontinuance of a material portion of its normal business operations;

(n) pay any principal or other amount on any Indebtedness that is contractually subordinated to Lender in violation of the applicable subordination or intercreditor agreement;

(o) enter into any transaction with an Affiliate (other than another Loan Party Obligor), including, without limitation, the payment of management fees or other compensation, issuance of equity interests, or transfer of assets to any Affiliate, other than on arms-length terms disclosed to Lender in writing;

(p) change its jurisdiction of organization or enter into any transaction which has the effect of changing its jurisdiction of organization except as provided for in Section 7.8;

(q) agree, consent, permit or otherwise undertake to amend or otherwise modify any of the terms or provisions of any Loan Party's Governing Documents, except for such amendments or other modifications required by applicable law or that are not adverse to Lender, and then, only to the extent such amendments or other modifications are fully disclosed in writing to Lender no less than five Business Days prior to being effectuated;

(r) enter into or assume any agreement prohibiting the creation or assumption of any Lien to secure the Obligations upon its properties or assets, whether now owned or hereafter acquired; or

(s) create or otherwise cause or suffer to exist or become effective any encumbrance or restriction (other than any Loan Documents) of any kind on the ability of any such Person to pay or make any dividends or distributions to Borrower, to pay any of the Obligations, to make loans or advances or to transfer any of its property or assets to Borrower.

**9. FINANCIAL COVENANTS.** Following the consummation of a Penthouse Transaction, Borrower and Lender shall mutually agree to certain financial maintenance covenants which shall be set forth in an amendment to this Agreement at such time.

#### **10. RELEASE, LIMITATION OF LIABILITY AND INDEMNITY.**

**10.1. Release.** Borrower and each other Loan Party Obligor on behalf of itself and its successors, assigns, heirs and other legal representatives, hereby absolutely, unconditionally and irrevocably releases, remises and forever discharges Lender and any and all Participants and Affiliates, and their respective successors and assigns, and their respective directors, officers, employees, attorneys and agents and any other Person affiliated with or representing Lender (collectively, the "**Released Parties**") of and from any and all liability, including all actual or potential claims, demands or causes of action of any kind, nature or description whatsoever, whether arising in law or equity or under contract or tort or under any state or federal law or otherwise, which Borrower or any Loan Party or any of their successors, assigns or other legal representatives has had, now has or has made claim to have against any of the Released Parties for or by reason of any act, omission, matter, cause or thing whatsoever, including any liability arising from acts or omissions pertaining to the transactions contemplated by this Agreement and the other Loan Documents, whether based on errors of judgment or mistake of law or fact, from the beginning of time to and including the Closing Date, whether such claims, demands and causes of action are matured or known or unknown. Notwithstanding any provision in this Agreement to the contrary, this Section 10.1 shall remain operative even after the Termination Date and shall survive the payment in full of all of the Obligations. Such release is made on the date hereof and remade upon each request for a Loan by Borrower.

**10.2. Limitation of Liability.** In no circumstance will any of the Released Parties be liable for lost profits or other special, punitive, or consequential damages. Notwithstanding any provision in this Agreement to the contrary, this Section 10.2 shall remain operative even after the Termination Date and shall survive the payment in full of all of the Obligations.

**10.3 Indemnity.** Each Loan Party Obligor hereby agrees to indemnify the Released Parties and hold them harmless from and against any and all claims, debts, liabilities, demands, obligations, actions, causes of action, penalties, costs and expenses (including attorneys' fees), of every nature, character and description, which the Released Parties may sustain or incur based upon or arising out of any of the transactions contemplated by this Agreement, any other Loan Documents, any of the Obligations, the Penthouse Loan Agreement, the Penthouse Debt, or any other matter, cause or thing whatsoever, occurred, done, omitted or suffered to be done by Lender relating to any Loan Party, the Obligations or the Penthouse Debt (except any such amounts sustained or incurred solely as the result of the gross negligence or willful misconduct of such Released Parties, as finally determined by a court of competent jurisdiction). Notwithstanding any provision in this Agreement to the contrary, this Section 10.3 shall remain operative even after the Termination Date and shall survive the payment in full of all of the Obligations.

## **11. EVENTS OF DEFAULT AND REMEDIES.**

**11.1 Events of Default.** The occurrence of any of the following events shall constitute an "*Event of Default*":

(a) **Payment.** If any Loan Party Obligor or any Other Obligor fails to pay to Lender, when due, (i) any payment of principal or interest or fees (including fees set forth in the Fee Letter) or (ii) any other monetary Obligation required under this Agreement or any other Loan Document, and, solely with respect to this clause (ii), such failure continues for a period of 5 Business Days;

(b) **Breaches of Representations and Warranties.** If any warranty, representation, statement, report or certificate made or delivered to Lender by or on behalf of any Loan Party or any Other Obligor is untrue or misleading in any material respect;

(c) **Breaches of Covenants.** If any Loan Party or any Other Obligor breaches any covenant or obligation contained in this Agreement or any other Loan Document;

(d) **Judgment.** If one or more judgments aggregating in excess of \$100,000 is obtained against any Loan Party or any Other Obligor which remains unstayed for more than thirty days or is enforced;

(e) **Cross-Default.** If any default occurs and is continuing with respect to any Indebtedness (other than the Obligations) of any Loan Party or any Other Obligor if (i) such default shall consist of the failure to pay such Indebtedness when due, whether by acceleration or otherwise or (ii) the effect of such default is to permit the holder, with or without notice or lapse of time or both, to accelerate the maturity of any such Indebtedness or to cause such Indebtedness to become due prior to the stated maturity thereof (without regard to the existence of any subordination or intercreditor agreements);

(f) **Death or Dissolution.** The dissolution, death, termination of existence, insolvency or business failure or suspension or cessation of business as usual of any Loan Party or any Other Obligor (or of any general partner of any Loan Party or any Other Obligor if it is a partnership);

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

(h) **Involuntary Bankruptcy or Similar Proceedings.** The commencement of an involuntary case or other proceeding against any Loan Party or any Other Obligor seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar applicable law or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or if an order for relief is entered against any Loan Party or any Other Obligor under any bankruptcy, insolvency or other similar applicable law as now or hereafter in effect; *provided*, that if such commencement of proceedings is involuntary, such action shall not constitute an Event of Default unless such proceedings are not dismissed within sixty days after the commencement of such proceedings, though Lender shall have no obligation to make any extensions of credit to Borrower during such sixty day period or, if earlier, until such proceedings are dismissed;

(i) **Revocation or Termination of Guaranty or Security Documents.** The actual or attempted revocation or termination of, or limitation or denial of liability under, any guaranty of any of the Obligations, or any security document securing any of the Obligations, by any Loan Party or Other Obligor;

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

(k) **Criminal Indictment or Proceedings.** If there is any actual or threatened indictment of any Loan Party, any Loan Party's officers, any Other Obligor or any Other Obligor's officers under any criminal statute or commencement or threatened commencement of criminal or civil proceedings against any such Person;

(l) **Change of Control.** If (i) Sponsor and its Investment Affiliates cease to, directly or indirectly, own and control at least 51% of the outstanding equity interests of Borrower on a fully diluted basis, (ii) Sponsor and its Investment Affiliates cease, collectively, to possess the right to elect (through contract, ownership of voting securities or otherwise) at all times a majority of the board of directors (or similar governing body) of Borrower and to direct the management policies and decisions of Borrower, or (iii) Borrower ceases to, directly or indirectly, own and control 100% of each class of the outstanding equity interests of each other Loan Party;

(m) **Change of Management.** If Adam Levin ceases to be employed as, and actively perform the duties of, the chief executive officer of Borrower, unless a successor is appointed within sixty days after the termination of such individual's employment and such successor is reasonably satisfactory to Lender;

(n) **Material Adverse Effect.** The occurrence of a Material Adverse Effect;

(o) **Invalid Liens.** If any Lien purported to be created by any Loan Document shall cease to be a valid perfected first priority Lien (subject only to any priority accorded by law to Permitted Liens) on any material portion of the Collateral, or any Loan Party or any Other Obligor shall assert in writing that any Lien purported to be created by any Loan Document is not a valid perfected first-priority lien (subject only to any priority accorded by law to Permitted Liens) on the assets or properties purported to be covered thereby;

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

(q) **Loss of Collateral.** The loss, theft, damage or destruction of any of the Collateral in an amount in excess of \$100,000 in the aggregate (except to the extent covered by insurance pursuant to which the insurer has not denied coverage) for all such events during any Fiscal Year as determined by Lender in its sole discretion determined in good faith, or (except as permitted hereby) the sale, lease or furnishing under a contract of service of, any of the Collateral;

(r) **Plans.** (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any Loan Party or any Subsidiary under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of \$100,000, (ii) the existence of any Lien under Section 430(k) or Section 6321 of the Code or Section 303(k) or Section 4068 of ERISA on any assets of a Loan Party, or (iii) a Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of \$100,000; or

(s) **Penthouse Debt.** The Penthouse Debt or any guaranty thereof or collateral security therefore shall be or become unenforceable or any material portion thereof shall be forgiven, released, or terminated, whether pursuant to any bankruptcy or other insolvency proceeding, any other judicial proceeding or otherwise.

**11.2. Remedies with Respect to Lending Commitments/Acceleration, Etc.** Upon the occurrence and during the continuance of an Event of Default, Lender may, in Lender's sole discretion (a) terminate all or any portion of its commitment to lend to or extend credit to Borrower under this Agreement and/or any other Loan Document, without prior notice to any Loan Party and/or (b) demand payment in full of all or any portion of the Obligations (whether or not payable on demand prior to such Event of Default), and/or (c) take any and all other and further actions and avail itself of any and all rights and remedies available to Lender under this Agreement, any other Loan Document, under law or in equity. Notwithstanding the foregoing sentence, upon the occurrence of any Event of Default described in Section 11.1(g) or Section 11.1(h), without notice, demand or other action by Lender all of the Obligations shall immediately become due and payable whether or not payable on demand prior to such Event of Default.

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

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

(b) **Collections; Modifications of Terms.** Lender may, but shall be under no obligation to: (i) notify all appropriate parties that the Collateral, or any part thereof, has been assigned to, or is subject to a security interest in favor of, Lender; (ii) demand, sue for, collect and give receipts for and take all necessary or desirable steps to collect any Collateral or Proceeds in its or any Loan Party Obligor's name, and apply any such collections against the Obligations as Lender may elect; (iii) take control of any Collateral and any cash and non-cash Proceeds of any Collateral; (iv) enforce, compromise, extend, renew settle or discharge any rights or benefits of each Loan Party Obligor with respect to or in and to any Collateral, or deal with the Collateral as Lender may deem advisable; and (v) make any compromises, exchanges, substitutions or surrenders of Collateral Lender deems necessary or proper in its reasonable discretion, including extending the time of payment, permitting payment in installments, or otherwise modifying the terms or rights relating to any of the Collateral, all of which may be effected without notice to, consent of, or any other action of any Loan Party and without otherwise discharging or affecting the Obligations, the Collateral or the security interests granted to Lender under this Agreement or any other Loan Document.

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

(d) **Possession and Assembly of Collateral.** Lender may take possession of the Collateral and/or, without removal, render each Loan Party Obligor's Equipment unusable. Upon Lender's request, each Loan Party Obligor shall assemble the Collateral and make it available to Lender at one or more places designated by Lender.

(e) **Set-off.** Lender may and, without any notice to, consent of or any other action by any Loan Party (such notice, consent or other action being expressly waived), set-off or apply (i) any and all deposits (general or special, time or demand, provisional or final) at any time held by or for the account of Lender or any Affiliate of Lender and (ii) any Indebtedness at any time owing by Lender or any Affiliate of Lender or any Participant in the Loans to or for the credit or the account of any Loan Party Obligor to the repayment of the Obligations, irrespective of whether any demand for payment of the Obligations has been made.

(f) **Disposition of Collateral.**

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

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

(iii) **Warranties; Sales on Credit.** Lender may sell, lease, license or otherwise dispose of the Collateral without giving any warranties and may specifically disclaim any and all warranties, including but not limited to warranties of title, possession, merchantability and fitness. Each Loan Party Obligor hereby acknowledges and agrees that Lender's disclaimer of any and all warranties in connection with a sale, lease, license or other disposition of Collateral will not be considered to adversely affect the commercial reasonableness of any such disposition of the Collateral. If Lender sells, leases, licenses or otherwise disposes of any of the Collateral on credit, Borrower will be credited only with payments actually made in cash by the recipient of such Collateral and received by Lender and applied to the Obligations. If any Person fails to pay for Collateral acquired pursuant this Section 11.3(f) on credit, Lender may re-offer the Collateral for sale, lease, license or other disposition.

(iv) **License.** Lender is hereby granted a license or other right to use, without liability for royalties or any other charge, each Loan Party Obligor's Intellectual Property, including but not limited to, any labels, patents, trademarks, trade names, URLs, domain names, industrial designs, copyrights, and advertising matter, whether owned by any Loan Party Obligor or with respect to which any Loan Party Obligor has rights under license, sublicense, or other agreements, as it pertains to the Collateral, in preparing for sale, advertising for sale and selling any Collateral, and each Loan Party Obligor's rights under all licenses and all franchise agreements shall inure to the benefit of Lender.

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

(i) All rights of each Loan Party Obligor to exercise any of the voting and other consensual rights which it would otherwise be entitled to exercise in accordance with the terms hereof with respect to any Investment Property, and to receive any dividends, payments, and other distributions which it would otherwise be authorized to receive and retain in accordance with the terms hereof with respect to any Investment Property, shall immediately, at the election of Lender (without requiring any notice) cease, and all such rights shall thereupon become vested solely in Lender, and Lender (personally or through an agent) shall thereupon be solely authorized and empowered, without notice, to (A) transfer and register in its name, or in the name of its nominee, the whole or any part of the Investment Property, it being acknowledged by each Loan Party Obligor that any such transfer and registration may be effected by Lender through its irrevocable appointment as attorney-in-fact pursuant to Section 11.3(g)(ii) and Section 6.4, (B) exchange certificates or instruments representing or evidencing Investment Property for certificates or instruments of smaller or larger denominations, (C) exercise the voting and all other rights as a holder with respect to all or any portion of the Investment Property (including all economic rights, all control rights, authority and powers, and all status rights of each Loan Party Obligor as a member or as a shareholder (as applicable) of the Issuer), (D) collect and receive all dividends and other payments and distributions made thereon, (E) notify the parties obligated on any Investment Property to make payment to Lender of any amounts due or to become due thereunder, (F) endorse instruments in the name of each Loan Party Obligor to allow collection of any Investment Property, (G) enforce collection of any of the Investment Property by suit or otherwise, and surrender, release, or exchange all or any part thereof, or compromise or renew for any period (whether or not longer than the original period) any liabilities of any nature of any Person with respect thereto, (H) consummate any sales of Investment Property or exercise any other rights as set forth in Section 11.3(f), (I) otherwise act with respect to the Investment Property as though Lender was the outright owner thereof and (J) exercise any other rights or remedies Lender may have under the UCC, other applicable law or otherwise.

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

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

(iv) Upon exercise of the proxy set forth herein, all prior proxies given by any Loan Party Obligor with respect to any of the Pledged Equity or other Investment Property, other than to Lender, are hereby revoked, and no subsequent proxies, other than to Lender will be given with respect to any of the Pledged Equity or any of the other Investment Property unless Lender otherwise subsequently agrees in writing. Lender, as proxy, will be empowered and may exercise the irrevocable proxy to vote the Pledged Equity and the other Investment Property at any and all times during the existence of an Event of Default, including, at any meeting of shareholders or members, as the case may be, however called, and at any adjournment thereof, or in any action by written consent, and may waive any notice otherwise required in connection therewith. To the fullest extent permitted by applicable law, Lender shall have no agency, fiduciary or other implied duties to any Loan Party Obligor, any Issuer, any Loan Party or any other Person when acting in its capacity as such proxy or attorney-in-fact. Each Loan Party Obligor hereby waives and releases any claims that it may otherwise have against Lender with respect to any breach, or alleged breach, of any such agency, fiduciary or other duty.

(v) Any transfer to Lender or its nominee, or registration in the name of Lender or its nominee, of the whole or any part of the Investment Property shall be made solely for purposes of effectuating voting or other consensual rights with respect to the Investment Property in accordance with the terms of this Agreement and is not intended to effectuate any transfer of ownership of any of the Investment Property unless Lender expressly agrees to the contrary in writing. Notwithstanding the delivery by Lender of any instruction to any Issuer or any exercise by Lender of an irrevocable proxy or otherwise, Lender shall not be deemed the owner of, or assume any obligations or any liabilities whatsoever of the owner or holder of, any Investment Property unless and until Lender expressly accepts such obligations in a duly authorized and executed writing and agrees in writing to become bound by the applicable Governing Documents or otherwise becomes the owner thereof under applicable law (including through a sale as described in Section 11.3(f)). The execution and delivery of this Agreement shall not subject Lender to, or transfer or pass to Lender, or in any way affect or modify, the liability of any Loan Party Obligor under the Governing Documents of any Issuer or any related agreements, documents, or instruments or otherwise. In no event shall the execution and delivery of this Agreement by Lender, or the exercise by Lender of any rights hereunder or assigned hereby, constitute an assumption of any liability or obligation whatsoever of any Loan Party Obligor to, under, or in connection with any of the Governing Documents of any Issuer or any related agreements, documents, or instruments or otherwise.



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

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

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

## 12. LOAN GUARANTY.

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

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

### 12.3. No Discharge or Diminishment of Loan Guaranty.

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

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

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

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

**12.5. Rights of Subrogation.** No Guarantor will assert any right, claim or cause of action, including a claim of subrogation, contribution or indemnification that it has against Borrower or any Obligor, or any Collateral, until the Termination Date.

**12.6. Reinstatement; Stay of Acceleration.** If at any time any payment of any portion of the Obligations is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy or reorganization of Borrower or any other Person, or otherwise, each Guarantor's obligations under this Loan Guaranty with respect to that payment shall be reinstated at such time as though the payment had not been made and whether or not Lender is in possession of this Loan Guaranty. If acceleration of the time for payment of any of the Obligations is stayed upon the insolvency, bankruptcy or reorganization of Borrower, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the Obligations shall nonetheless be payable by the Guarantors forthwith on demand by Lender. This Section 12.6 shall remain operative even after the Termination Date and shall survive the payment in full of all of the Obligations.

**12.7. Information.** Each Guarantor assumes all responsibility for being and keeping itself informed of Borrower's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Obligations and the nature, scope and extent of the risks that each Guarantor assumes and incurs under this Loan Guaranty, and agrees that Lender shall not have any duty to advise any Guarantor of information known to it regarding those circumstances or risks.

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

**12.9. Maximum Liability.** The provisions of this Loan Guaranty are severable, and in any action or proceeding involving any state corporate law, or any state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Guarantor under this Loan Guaranty would otherwise be held or determined to be avoidable, invalid or unenforceable on account of the amount of such Guarantor's liability under this Loan Guaranty, then, notwithstanding any other provision of this Loan Guaranty to the contrary, the amount of such liability shall, without any further action by the Guarantors or Lender, be automatically limited and reduced to the highest amount that is valid and enforceable as determined in such action or proceeding (such highest amount determined hereunder being the relevant Guarantor's "**Maximum Liability**"). This Section 12.09 with respect to the Maximum Liability of each Guarantor is intended solely to preserve the rights of Lender to the maximum extent not subject to avoidance under applicable law, and no Guarantor or any other Person shall have any right or claim under this Section with respect to such Maximum Liability, except to the extent necessary so that the obligations of any Guarantor hereunder shall not be rendered voidable under applicable law. Each Guarantor agrees that the Obligations may at any time and from time to time exceed the Maximum Liability of each Guarantor without impairing this Loan Guaranty or affecting the rights and remedies of Lender hereunder; **provided**, that nothing in this sentence shall be construed to increase any Guarantor's obligations hereunder beyond its Maximum Liability.

**12.10. Contribution.** In the event any Guarantor shall make any payment or payments under this Loan Guaranty or shall suffer any loss as a result of any realization upon any collateral granted by it to secure its obligations under this Loan Guaranty (such Guarantor a "**Paying Guarantor**"), each other Guarantor (each a "**Non-Paying Guarantor**") shall contribute to such Paying Guarantor an amount equal to such Non-Paying Guarantor's "**Applicable Percentage**" of such payment or payments made, or losses suffered, by such Paying Guarantor. For purposes of this Section 12.10, each Non-Paying Guarantor's "**Applicable Percentage**" with respect to any such payment or loss by a Paying Guarantor shall be determined as of the date on which such payment or loss was made by reference to the ratio of (x) such Non-Paying Guarantor's Maximum Liability as of such date (without giving effect to any right to receive, or obligation to make, any contribution hereunder) or, if such Non-Paying Guarantor's Maximum Liability has not been determined, the aggregate amount of all monies received by such Non-Paying Guarantor from Borrower after the date hereof (whether by loan, capital infusion or by other means) to (y) the aggregate Maximum Liability of all Guarantors hereunder (including such Paying Guarantor) as of such date (without giving effect to any right to receive, or obligation to make, any contribution hereunder), or to the extent that a Maximum Liability has not been determined for any Guarantor, the aggregate amount of all monies received by such Guarantors from Borrower after the date hereof (whether by loan, capital infusion or by other means). Nothing in this provision shall affect any Guarantor's several liability for the entire amount of the Obligations (up to such Guarantor's Maximum Liability). Each of the Guarantors covenants and agrees that its right to receive any contribution under this Loan Guaranty from a Non-Paying Guarantor shall be subordinate and junior in right of payment to the payment in full in cash of all of the Obligations. This provision is for the benefit of Lender and the Guarantors and may be enforced by any one, or more, or all of them, in accordance with the terms hereof.

**12.11. Liability Cumulative.** The liability of each Guarantor under this Section 12 is in addition to and shall be cumulative with all liabilities of each Guarantor to Lender under this Agreement and the other Loan Documents to which such Guarantor is a party or in respect of any obligations or liabilities of the other Loan Parties, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

**13. PAYMENTS FREE OF TAXES; OBLIGATION TO WITHHOLD; PAYMENTS ON ACCOUNT OF TAXES.**

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

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

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

(d) Without limiting the provisions of subsections (a) through (c) above, each Loan Party Obligor shall, and does hereby, on a joint and several basis, indemnify Lender and each other Recipient (and their respective directors, officers, employees, affiliates and agents) and shall make payment in respect thereof within ten days after demand therefor, for the full amount of any Indemnified Taxes and Other Taxes (including Indemnified Taxes and Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid or incurred by Lender or any other Recipient on account of, or in connection with any Loan Document or a breach by a Loan Party Obligor thereof, and any penalties, interest and related expenses and losses arising therefrom or with respect thereto (including the fees, charges and disbursements of any counsel or other tax advisor for Lender or any other Recipient (or their respective directors, officers, employees, affiliates, and agents)), whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of any such payment or liability delivered to Borrower shall be conclusive absent manifest error. Notwithstanding any provision in this Agreement to the contrary, this Section 13 shall remain operative even after the Termination Date and shall survive the payment in full of all of the Obligations.

(e) Lender shall deliver to Borrower and each Participant shall deliver to Lender, at the time or times prescribed by applicable laws, such properly completed and executed documentation prescribed by applicable laws or by the taxing authorities of any jurisdiction and such other reasonably requested information as will permit Borrower or Lender, as the case may be, to determine (x) whether or not payments made hereunder or under any other Loan Document are subject to Taxes, (y) if applicable, the required rate of withholding or deduction and (z) such Lender's or Participant's entitlement to any available exemption from, or reduction of, applicable Taxes in respect of all payments to be made to such Recipient by the Loan Party Obligors pursuant to this Agreement or otherwise to establish such Recipient's status for withholding tax purposes in the applicable jurisdiction; **provided**, that each Recipient shall only be required to deliver such documentation as it may legally provide. Without limiting the generality of the foregoing, if a Borrower is resident for tax purposes in the United States:

(i) Lender (or Participant) that is a "**United States person**" within the meaning of Section 7701(a)(30) of the Code shall deliver to Borrower (or Lender granting a participation as applicable) an executed original of Internal Revenue Service Form W-9 or such other documentation or information prescribed by applicable law or reasonably requested by Borrower (or Lender granting a participation) as will enable Borrower (or Lender granting a participation) as the case may be, to determine whether or not Lender (or Participant) is subject to backup withholding or information reporting requirements under the Code;

(ii) Lender (or Participant) that is not a "**United States person**" within the meaning of Section 7701(a)(30) of the Code (a "**Non-U.S. Recipient**") shall deliver to Borrower (and Lender granting a participation in case the Non-U.S. Recipient is a Participant) on or prior to the date on which such Non-U.S. Person becomes a party to this Agreement or a Participant (and from time to time thereafter upon the reasonable request of Borrower or Lender but only if such Non-U.S. Recipient is legally entitled to do so), whichever of the following is applicable: (A) executed originals of Internal Revenue Service Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States is a party; (B) executed originals of Internal Revenue Service Form W-8ECI; (C) executed originals of Internal Revenue Service Form W-8IMY and all required supporting documentation; (D) each Non-U.S. Recipient claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, shall provide (x) a certificate to the effect that such Non-U.S. Recipient is not (1) a "**bank**" within the meaning of section 881(c)(3)(A) of the Code, (2) a "**10 percent shareholder**" of Borrower within the meaning of section 881(c)(3)(B) of the Code, or (3) a "**controlled foreign corporation**" described in section 881(c)(3)(C) of the Code and (y) executed originals of Internal Revenue Service Form W-8BEN; and/or (E) executed originals of any other form prescribed by applicable law (including FATCA) as a basis for claiming exemption from or a reduction in United States Federal withholding tax together with such supplementary documentation as may be prescribed by applicable law to permit Borrower or Lender to determine the withholding or deduction required to be made. Each Non-U.S. Recipient shall promptly notify Borrower (or any Lender granting a participation if the Non-U.S. Recipient is a Participant) of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

## 14. GENERAL PROVISIONS.

### 14.1. Notices.

All notices, requests, demands and other communications under or in respect of this Agreement or any transactions hereunder shall be in writing and shall be personally delivered or mailed (by prepaid registered or certified mail, return receipt requested), sent by prepaid recognized overnight courier service, or by email to the applicable party at its address or email address indicated below,

If to Lender:

EXWORKS CAPITAL FUND I, L.P.  
333 W. Wacker Drive, Suite 1620  
Chicago, IL 60606  
Attention: Luke LaHaie and Andy Hall  
Email: llahaie@exworkscapital.com and  
ahall@exworkscapital.com

with a copy to:

GOLDBERG KOHN LTD.  
55 East Monroe Street, Suite 3300  
Chicago, Illinois 60603  
Attention: Christopher M. Swartout, Esq.  
Email: christopher.swartout@goldbergekohn.com

If to Borrower or any other Loan Party:

DREAM MEDIA CORPORATION  
10990 Wilshire Boulevard  
Penthouse  
Los Angeles, CA 90024  
Attention: Adam E. Levin  
Email: Adam@orevacap.com

with a copy to:

CLR LAW LLP  
1800 Century Park East, 14<sup>th</sup> floor  
Los Angeles, California 90067  
Attention: Stephen A. Weiss, Esq.  
Email: sweiss@ckrlaw.com

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

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

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

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

**14.5. Amendment.** This Agreement may not be amended or modified except in a writing executed by Borrower, the Loan Party Obligors party hereto (to the extent such amendment is directly adverse to such Loan Party Obligor), and Lender.

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

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

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

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

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

(b) In connection with any negotiation, transfer or assignment as aforesaid, the transferor/assignor shall deliver to Lender then maintaining the Register an assignment and assumption agreement executed by the transferor/assignor and the transferee/assignee, setting forth the specifics of the subject transaction, including the amount and nature of Obligations and lending commitments being transferred or assigned (and being assumed, as applicable), and the proposed effective date of such transfer or assignment and the related assumption (if applicable).

(c) Subject to receipt of any required tax forms reasonably required by Lender, such Person shall record the subject transfer, assignment and assumption in the Register. Anything contained in this Agreement or other Loan Document to the contrary notwithstanding, no negotiation, transfer or assignment shall be effective until it is recorded in the Register pursuant to this Section 14.9(c). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error; and Borrower and each Lender shall treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement and the other Loan Documents. The Register shall be available for inspection by Borrower and each Lender at any reasonable time and from time to time upon reasonable prior notice.

**14.10. Participations.** Anything in this Agreement or any other Loan Document to the contrary notwithstanding, Lender may, at any time and from time to time, without in any manner affecting or impairing the validity of any Obligations, sell to one or more Persons participating interests in its Loans, commitments or other interests hereunder or under any other Loan Document (any such Person, a “*Participant*”). In the event of a sale by Lender of a participating interest to a Participant, (a) such Lender’s obligations hereunder and under the other Loan Documents shall remain unchanged for all purposes, (b) Borrower and Lender shall continue to deal solely and directly with each other in connection with Lender’s rights and obligations hereunder and under the other Loan Documents and (c) all amounts payable by Borrower shall be determined as if Lender had not sold such participation and shall be paid directly to Lender; *provided*, that a Participant shall be entitled to the benefits of Section 13 as if it were a Lender if Borrower is notified of the Participation and the Participant complies with Section 13. Borrower agrees that if amounts outstanding under this Agreement or any other Loan Document are due and payable (as a result of acceleration or otherwise), each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement and the other Loan Documents to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement; *provided*, that such right of set-off shall not be exercised without the prior written consent of Lender and shall be subject to the obligation of each Participant to share with Lender its share thereof. Borrower also agrees that each Participant shall be entitled to the benefits of Section 14.9 as if it were Lender. Notwithstanding the granting of any such participating interests, (i) Borrower shall look solely to Lender for all purposes of this Agreement, the Loan Documents and the transactions contemplated hereby, (ii) Borrower shall at all times have the right to rely upon any amendments, waivers or consents signed by Lender as being binding upon all of the Participants and (iii) all communications in respect of this Agreement and such transactions shall remain solely between Borrower and Lender (exclusive of Participants) hereunder. If Lender grants a participation hereunder, Lender shall maintain, as a non-fiduciary agent of Borrower, a register as to the participations granted and transferred under this Section containing the same information specified in Section 14.9 on the Register as if each Participant were a Lender to the extent required to cause the Loans to be in registered form for the purposes of Sections 163(F), 165(J), 871, 881, and 4701 of the Code.

**14.11. Headings; Construction.** Section and subsection headings are used in this Agreement only for convenience and do not affect the meanings of the provisions that they precede. The existence of any covenant or required delivery set forth herein that takes place after the Scheduled Maturity Date shall not be construed to imply any intent to extend the Scheduled Maturity Date set forth herein.

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

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

**14.14. GOVERNING LAW.** THIS AGREEMENT, ALONG WITH ALL OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED OTHERWISE IN SUCH OTHER LOAN DOCUMENT) SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF ILLINOIS APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED THEREIN WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES. FURTHER, THE LAW OF THE STATE OF ILLINOIS SHALL APPLY TO ALL DISPUTES OR CONTROVERSIES ARISING OUT OF OR CONNECTED TO OR WITH THIS AGREEMENT AND ALL SUCH OTHER LOAN DOCUMENTS WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES.

**14.15. CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL; CONSENT TO SERVICE OF PROCESS.** ANY LEGAL ACTION, SUIT OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT EXCLUSIVELY IN THE COURTS OF THE STATE OF ILLINOIS IN THE COUNTY OF COOK OR IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS OR IN ANY OTHER COURT (IN ANY JURISDICTION) SELECTED BY THE LENDER IN ITS SOLE DISCRETION, AND BORROWER AND EACH OTHER LOAN PARTY OBLIGOR HEREBY ACCEPTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFOREMENTIONED COURTS. BORROWER AND EACH OTHER LOAN PARTY OBLIGOR HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, OR BASED ON 28 U.S.C. § 1404, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING AND ADJUDICATION OF ANY SUCH ACTION, SUIT OR PROCEEDING IN ANY OF THE AFOREMENTIONED COURTS AND AMENDMENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY THE COURT. BORROWER AND EACH OTHER LOAN PARTY OBLIGOR HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM CONCERNING ANY RIGHTS UNDER THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR UNDER ANY AMENDMENT, WAIVER, AMENDMENT, INSTRUMENT, DOCUMENT OR OTHER AGREEMENT DELIVERED OR WHICH IN THE FUTURE MAY BE DELIVERED IN CONNECTION HERewith OR THEREWITH, OR ARISING FROM ANY FINANCING RELATIONSHIP EXISTING IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE OTHER TRANSACTION DOCUMENTS, AND AGREES THAT ANY SUCH ACTION, PROCEEDING OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. BORROWER AND EACH OTHER LOAN PARTY OBLIGOR HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON BORROWER OR ANY OTHER LOAN PARTY OBLIGOR AND CONSENTS THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY CERTIFIED MAIL (RETURN RECEIPT REQUESTED) DIRECTED TO BORROWER'S NOTICE ADDRESS (ON BEHALF OF BORROWER OR SUCH LOAN PARTY OBLIGOR) SET FORTH IN SECTION 14.1 AND SERVICE SO MADE SHALL BE DEEMED TO BE COMPLETED FIVE DAYS AFTER THE SAME SHALL HAVE BEEN SO DEPOSITED IN THE MAIL, OR, AT THE LENDER'S OPTION, BY SERVICE UPON BORROWER OR ANY OTHER LOAN PARTY OBLIGOR IN ANY OTHER MANNER PROVIDED UNDER THE RULES OF ANY SUCH COURTS.

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

**14.17. Confidentiality.** Lender agrees to use commercially reasonable efforts not to disclose Confidential Information to any Person without the prior consent of Borrower; *provided*, that nothing herein contained shall limit any disclosure of the tax structure of the transactions contemplated hereby, or the disclosure of any information (a) to the extent required by applicable law, statute, rule, regulation or judicial process or in connection with the exercise of any right or remedy under any Loan Document, or as may be required in connection with the examination, audit or similar investigation of the Lender or any of its Affiliates, (b) to examiners, auditors, accountants or any regulatory authority, (c) to the officers, partners, managers, directors, employees, agents and advisors (including independent auditors, lawyers and counsel) of the Lender or any of its Affiliates, (d) in connection with any litigation or dispute which relates to this Agreement or any other Loan Document to which the Lender is a party or is otherwise subject, (e) to a subsidiary or Affiliate of the Lender, (f) to any assignee or participant (or prospective assignee or participant) which agrees to be bound by this Section 14.17 and (g) to any lender or other funding source of the Lender (each reference to Lender in the foregoing clauses shall be deemed to include (i) the actual and prospective assignees and participants referred to in clause (f) and the lenders and other funding sources referred to in clause (g), as applicable for purposes of this Section 14.17), and further *provided*, that in no event shall Lender be obligated or required to return any materials furnished by or on behalf of Borrower or any other Loan Party or Obligor. The obligations of the Lender under this Section 14.17 shall supersede and replace the obligations of Lender under any confidentiality letter or provision in respect of this financing or any other financing previously signed and delivered by Lender to Borrower or any of its Affiliates.

**[Signature page follows]**

IN WITNESS WHEREOF, Borrower, each other Loan Party Obligor party hereto, and Lender have signed this Agreement as of the date first set forth above.

**Borrower:**

**DREAM MEDIA CORPORATION,**  
a Delaware corporation

By: /s/ Adam E. Levin  
Name: Adam E. Levin  
Title: Chief Executive Officer

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Signature Page to Loan and Security Agreement

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**Lender:**

**EXWORKS CAPITAL FUND I, L.P.**

By: /s/ Andrew D. Hall

Name: Andrew D. Hall

Its: Chief Credit Officer

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Signature Page to Loan and Security Agreement

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**Perfection Certificate**

1. Loan Party Information:

(a) Jurisdictions of Formation; Foreign Business Qualifications:

<b>LOAN PARTY</b>	<b>JURISDICTION OF FORMATION</b>	<b>FOREIGN BUSINESS QUALIFICATIONS</b>
Dream Media Corporation	Delaware	California, New York*

\*To be qualified within 30 days following the Closing Date.

(b) Names:

<b>LOAN PARTY OBLIGOR LEGAL NAME</b>	<b>PRIOR LEGAL NAMES</b>	<b>EXISTING TRADE NAMES</b>	<b>PRIOR TRADE NAMES</b>
Dream Media Corporation	None.	None.	None.

(c) Collateral Locations:

<b>LOAN PARTY OBLIGOR</b>	<b>COLLATERAL DESCRIPTION</b>	<b>COLLATERAL LOCATION OR PLACE OF BUSINESS (INCLUDING CHIEF EXECUTIVE OFFICE)</b>	<b>OWNER/LESSOR (IF LEASED)</b>
Dream Media Corporation	Books and Records	10990 Wilshire Boulevard Penthouse Los Angeles, CA 90024	Here Publishing, Inc.

(d) Collateral in Possession of Lessor, Bailee, Consignee or Warehouseman:

<b>LOAN PARTY OBLIGOR</b>	<b>ADDRESS</b>	<b>LESSOR/BAILEE/CONSIGNEE/ WAREHOUSEMAN</b>
Dream Media Corporation	None.	None.

(e) Litigation: None.

(f) Capitalization of Loan Parties:

Loan Party	Equityholder	Equity Description	Percentage of Outstanding Equity Issued by Loan Party	Certificate (Indicate No.)
Dream Media Corporation	Oreva Capital Corp.	Class A voting Common Stock	100%	1
Dream Media Corporation	ExWorks Capital Fund I, L.P.	Warrant	15% (upon exercise)	W1

(g) Other Investment Property:

Loan Party	Investment Property Description
Dream Media Corporation	The Penthouse Debt

(h) Material Contracts:

The Penthouse Loan Agreement

2. Commercial Tort Claims:

None.

3. Deposit Accounts / Other accounts:

Loan Party Obligor	Name of Financial Institution	Account Number (* indicates account is approved for funding of loan proceeds)	Purpose of Account	Is the Account a "Restricted Account" (Yes or No?)
Dream Media Corporation	*	*	Operating Account	No

\*To be provided by Borrower promptly upon opening of account, within 15 days following the Closing Date.

4. Intellectual Property:

(a) Patents and Patent Licenses:

None.

(b) Trademarks and Trademark Licenses:

None.

(c) Copyrights and Copyright Licenses:

None.

5. Insurance:

None. Borrower to update within 30 days following Closing Date.

6. Permitted Indebtedness:

None.

7. Permitted Liens:

None.

SCHEDULE 1

EXCLUDED TRADEMARKS

Mark	Country	Registration No. (Application Ser. No.)
THE PENTHOUSE CLUB	Ukraine	158069
THE PENTHOUSE CLUB (w/ three key logo)	Macao	88956
		
	New Zealand	833185
	U.S.	2,810,417
PENTHOUSE KEY SUITES	U.S.	(86/876606)
THE PENTHOUSE KEY SUITES (w/ one key logo)	Not Registered	Not Registered
		
THE PENTHOUSE KEY SUITES (w/ three key logo)	Not Registered	Not Registered
		
Three Key Logo	Australia	367684
		
	Barbados	81/20326
	Brazil	816873348
	Canada	TMA748,728
	China	4281665
	EU	4018776

Mark	Country	Registration No. (Application Ser. No.)
	Germany	2011612
	Indonesia	IDM000076878
	Liechtenstein	8122
	New Zealand	717684
	Russia	128751
	Trinidad & Tobago	46293
	Turks & Caicos	14014
	Turks & Caicos	14015
	Ukraine	65800
	UAE	53386
	Vietnam	72640
PENTHOUSE KEY GIRL	Ukraine	158071
KEY GIRL (Stylized)  <b>KEYGIRL</b>	Not Registered	Not Registered
PENTHOUSE KEY CLUB	Not Registered	Not Registered
KEY CLUB	Not Registered	Not Registered
CALIGULA CLUB	Not Registered	Not Registered
PENTHOUSE CLUB	Japan	4384068
	Mexico	903392
	Mexico	921770
THE PENTHOUSE BEACH CLUB	Ukraine	158070

**Annex I**

**Lender's Bank**

Bank Name: CIBC  
Bank Address: 120 S. LaSalle  
Chicago, IL 60603  
ABA #: 071006486  
Account Name: ExWorks Capital Fund I, L.P.  
Account Address: 333 W. Wacker Drive  
Suite 1620  
Chicago, IL 60606  
Account #: 2394901  
Reference: Dream Media Corporation

(which bank may be changed from time to time by notice from Lender to Borrower)

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Annex I

**Exhibit A**

**CLOSING CHECKLIST**

**[Attached]**

Ex. A-1

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**Exhibit B**

**FORM OF COMPLIANCE CERTIFICATE**

**[letterhead of Borrower]**

To: EXWORKS CAPITAL FUND I, L.P.  
333 W. Wacker Drive, Suite 1620  
Chicago, IL 60606  
Attention: Luke LaHaie and Andy Hall

Re: Compliance Certificate dated \_\_\_\_\_

Ladies and Gentlemen:

Reference is made to that certain Loan and Security Agreement dated as of November 21, 2017 (as amended, restated or otherwise modified from time to time, the "*Loan Agreement*") by and among EXWORKS CAPITAL FUND I, L.P. ("*Lender*"), DREAM MEDIA CORPORATION, a Delaware corporation ("*Borrower*") and each of the Loan Party Obligors (as defined therein) party thereto. Capitalized terms used in this Compliance Certificate have the meanings set forth in the Loan Agreement unless specifically defined herein.

Pursuant to Section 7.15 of the Loan Agreement, the undersigned Chief Executive Officer of Borrower hereby certifies (solely in his capacity as an officer or Borrower and not in his individual capacity) that:

1. The financial statements of Borrower for the \_\_\_ -month period ending \_\_\_\_\_ attached hereto have been prepared in accordance with GAAP and fairly present the financial condition of Borrower for the periods and as of the dates specified therein.
2. As of the date hereof, there does not exist any Default or Event of Default.
3. [Borrower is in compliance with the applicable financial covenants contained in Section 9 of the Loan Agreement for the periods covered by this Compliance Certificate. Attached hereto are statements of all relevant facts and computations in reasonable detail sufficient to evidence Borrower's compliance with such financial covenants, which computations were made in accordance with GAAP.]

IN WITNESS WHEREOF, this Compliance Certificate is executed by the undersigned this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**DREAM MEDIA CORPORATION**

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

**First Amendment to  
Loan and Security Agreement**

ExWorks Capital Fund I, L.P., a Delaware limited partnership (“Lender”), Dream Media Corporation, a Delaware corporation (“Borrower”), and each of Loan Party Obligors (as defined in the Loan Agreement) listed on the signature page to this Amendment, enter into this First Amendment to Loan and Security Agreement (this “Amendment”) on August \_\_, 2018.

**Background**

A. Lender, Borrower, and Loan Party Obligors are parties to a Loan and Security Agreement dated as of November 21, 2017 (as amended, the “Loan Agreement”). Unless defined in this Amendment, capitalized terms have the meanings set forth in the Loan Agreement and unless otherwise indicated, references to “Section” are intended to refer to a Section of the Loan Agreement.

B. Borrower has requested certain amendments to the Loan Agreement.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

**Terms and Conditions**

1. Acknowledgments. Borrower acknowledges that:

(A) All of the Obligations are due and owing without setoff, defense or counterclaim, in law or in equity, of any kind or nature;

(B) The Obligations are secured by Lender’s valid, first priority, properly perfected security interests and Liens in the Collateral;

(C) Lender has duly performed all of its obligations under the Loan Documents; and

(D) Other than Borrower and Lender, the parties listed on the signature page to this Amendment are all of the Loan Party Obligors and there are no additional Loan Party Obligors who are required to execute this Amendment.

2. Amendments.

(A) The following definitions are used in this Amendment and added to Section 1.1 of the Loan Agreement in the appropriate alphabetical order:

“***AEL Trust***” means The AEL Irrevocable Trust, a trust organized under the laws of the State of California.

“***First Amendment***” means the *First Amendment to Loan and Security Agreement, dated on or about August \_\_, 2018.*

**“Funding Date”** means on or about the date of the First Amendment.

**“HT”** means HighTimes Holding Corp., a Delaware corporation.

**“HT Stock”** means the 227,273 shares of Class A voting common stock, \$0.0001 par value per share of HT to be purchased by Borrower for \$2,500,000 pursuant to the HT Stock Purchase.

**“HT Stock Purchase”** means the purchase by Borrower of the HT Stock from HT at a purchase price of \$11.00 per share of HT Stock, pursuant to HT’s “Regulation A+” initial public offering under Section 506 of the JOBS Act of 2016 as described in HT’s Form 1-A Regulation A Offering Circular that was qualified by the SEC on July 26, 2018 as supplemented by one or more SEC Form 1-U filed by HT.

**“Momentous Stock”** means \_\_\_\_\_ shares<sup>1</sup> of common stock of Momentous Entertainment Group, Inc., a Nevada corporation (“**Momentous**”) that were issued to the AEL Trust, effective as of August 7, 2017, upon the automatic conversion of 7,500 shares of Series C Preferred Stock of Momentous and which are being pledged to Lender pursuant to a Pledge and Security Agreement dated August \_\_, 2018 between Lender and the AEL Trust.

**“New Loan”** has the meaning set forth in Section 2.1(a).

**“New Loan Collateral”** means the HT Stock and the Momentous Stock.

(B) The following definitions in Section 1.1 of the Loan Agreement are hereby amended and will have the indicated meaning:

**“Collateral”** means all property and interests in property in or upon which a security interest, mortgage, pledge or other Lien is granted pursuant to this Agreement or the other Loan Documents, including all of the property of each Loan Party Obligor described in Section 5.1; provided, however, for the New Loan and any Obligations arising under the New Loan, Collateral also includes the New Loan Collateral.

**“Loans”** means, as applicable, the Term Loan, the New Loan, and any portion thereof.

**“Maturity Date”** means the earlier of (a) (i) for the New Loan and all Obligations arising under the New Loan, November 30, 2018 or (ii) for the Term Loan and all other Obligations, the Scheduled Maturity Date; (b) the Termination Date; or (c) such earlier date as the Obligations are accelerated in accordance with the terms of this Agreement (including pursuant to Section 11.2).

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<sup>1</sup> Need confirmation on the amount of common stock held by AEL Trust.

(C) Section 2.1(a) is hereby amended and restated as follows:

*(a) **New Loan.** Subject to the terms and conditions contained in this Agreement, Lender will, on the Funding Date, make a term loan to Borrower in the principal amount of \$2,500,000 (the “**New Loan**”). The New Loan will be advanced in a single borrowing on the Funding Date, and any principal amounts repaid in respect of the New Loan may not be reborrowed. The New Loan will be made in and repayable in Dollars.*

(D) Section 2.5(a) is amended and restated as follows:

*(a) **New Loan.** Principal of the New Loan and all Obligations arising under the New Loan (including all fees, expenses, and interest) will be due and payable on November 30, 2018.*

(E) The phrase “Term Loan” in Sections 2.2, 2.6(c), 3.1, 3.4, and 3.5 are deleted and replaced with the word “Loans”.

(F) The last sentence of Section 5.1 is amended and restated as follows:

*Notwithstanding the foregoing, the grant of security set forth in this Section 5.1 will not include (A) any Excluded Property and (B) solely with respect to the Term Loan and any Obligations arising under the Term Loan, the New Loan Collateral.*

(G) Section 7.6 (c) does not apply to the New Loan Collateral.

(H) Section 7.13 is amended and restated as follows:

*All proceeds of the New Loan must be used solely (i) to pay the purchase price required to consummate the HT Stock Purchase and (ii) to pay the fees, costs, and expenses incurred in connection with the First Amendment, the other Loan Documents, the HT Stock Purchase and the transactions contemplated hereby and thereby.*

3. Pledged Equity. Upon the completion of all conditions precedent set forth in Section 7 of this Amendment, the parties agree that Section (g) of the Perfection Certificate outstanding as of the date of this Amendment will be deemed to include the HT Stock.

4. Collateral Proceeds Allocation. Notwithstanding anything to the contrary in the Loan Agreement (including Section 6.2), the parties agree that the Proceeds of the Collateral will be applied to the Obligations as follows:

(A) Proceeds of the Collateral, other than Proceeds of the New Loan Collateral, will be applied (i) first, to pay the outstanding balance of the Term Loan and any unpaid Obligations arising under the Term Loan, and (ii) second, to pay the outstanding balance of the New Loan and any unpaid Obligations arising under or related to the New Loan, including, interest, expenses and fees called for by the Loan Documents (in any order Lender elects).

(B) Proceeds of the New Loan Collateral will only be applied to pay the outstanding balance of the New Loan and any unpaid Obligations arising under or related to the New Loan including, interest, expenses and fees called for by the Loan Documents (in any order Lender elects). Proceeds of the New Loan Collateral will not be used to pay the Term Loan or any unpaid Obligations arising under or related to the Term Loan. Subject to Section 2.8 of the Loan Agreement, once the New Loan and all Obligations arising under the New Loan are paid to Lender in full, Lender will not have a Lien on the New Loan Collateral.

(C) New Note. Simultaneous with execution of this Amendment, Borrower will execute and deliver to Lender a promissory note in the original principal amount of \$2,500,000 (the "New Loan Note"). The New Note is a Loan Document.

5. SEC Form 1-U. Within two (2) business days following the Funding Date, Borrower will cause HT to file a SEC Form 1-U with the SEC that meet the requirements of Section 7(G) of this Amendment and is otherwise substantially in the form provided to Lender prior to the Funding Date.

6. Condition and Transfer of HT Stock. Borrower represents and warrants that the HT Stock is not certificated and, unless Borrower complies with its obligations in the next sentence, will not be held by a broker or transfer agent. Borrower agrees that the HT Stock will not be transferred to a broker or transfer agent unless Lender receives an executed securities account control agreement (or equivalent documentation providing that the HT Stock will be held in trust for the benefit of Lender) in a form and substance acceptable to Lender in its sole discretion.

7. Conditions Precedent. This Amendment will be of no force or effect unless:

(A) Lender receives a duly executed counterpart of this Amendment by Borrower;

(B) Lender receives a pledge agreement for the New Loan Collateral in a form and substance acceptable to Lender in its sole discretion;

(C) Lender receives a pledge agreement and non-recourse guaranty from the AEL Trust for the New Loan, together with a trust certificate from the trustee of the trust, all in a form and substance acceptable to Lender in its sole discretion;

(D) Lender receives a certified officers' certificate or a certified board of directors' or shareholder's resolutions authorizing Borrower to enter into this Amendment and ancillary agreements thereto;

(E) Lender receives a direction letter, in form and substance acceptable to Lender signed by Borrowers regarding the return of the subscription price for the HT Stock is subscription payments must be returned under the terms of the Escrow Services Agreement between Escrow Agent, High Times Holding Corp. and NMS Capital Advisors, LLC dated June 25, 2018.

(F) Borrower executes and delivers to Lender the New Loan Note;

(G) Borrower delivers to Lender evidence that HT has filed a SEC Form I-U disclosing the affiliation between Adam Levin, HT and Borrower and the fact that a trust settled by Mr. Levin is a guarantor of the New Loan and has pledged the Momentous Stock to secure it guaranty.

(H) Borrower is in good standing under the laws of its state of incorporation; and

(I) Borrower pays all reasonable out-of-pocket expenses of the Lender, including reasonable fees and expenses billed to date of Lender's outside legal counsel incurred in connection with the preparation, negotiation, execution and delivery of this Amendment and the transactions contemplated hereby.

#### 8. General Terms.

(A) Except as amended hereby, Borrower and each Loan Party Obligor reaffirms and ratifies all of its obligations under the Loan Agreement and remakes, as of the date of this Amendment, all representations and warranties in the Loan Agreement. Borrower also represents and warrants that (i) no Event of Default has occurred and is continuing, (ii) Borrower is unaware of any facts or circumstances which, with the passage of time or the giving of notice, would be an Event of Default, (iii) the Perfection Certificate delivered to Lender prior to the date of this Amendment is true and accurate as of the date of this Amendment, and (iv) the Schedules attached to Loan Agreement and other Loan Documents are true and accurate as of the date of this Amendment.

(B) To the extent the grant of a security interest under the Loan Agreement does not subject the HT Stock to Lender's security interest arising thereunder, Borrower hereby grants Lender a continuing security interest in the HT Stock to secure the prompt payment and performance of the New Loan and all Obligations related thereto.

(C) This document contains the entire agreement of the parties in connection with the subject matter of this Amendment and cannot be changed or terminated orally.

(D) The individuals signing on behalf of each of the parties represents that all necessary company action to authorize them to enter into this Amendment has been taken, including, without limitation, any board of directors or shareholder approvals or resolutions necessary to authorize execution of this Amendment.

(E) This Amendment may be executed in counterparts, each of which when so executed and delivered will be deemed an original, and all of such counterparts together will constitute but one and the same agreement. Further, .pdf and other electronic copies of signatures will be treated as original signatures for all purposes.

(F) If there is an express conflict between the terms of this Amendment and the terms of the Loan Agreement, the terms of this Amendment will govern and control.

(G) This Amendment will be deemed to be part of, and governed by the terms of, the Loan Agreement.

(H) Borrower and each Loan Party Obligor hereby waives, discharges, and forever releases Lender, Lender's employees, officers, directors, attorneys, stockholders and successors and assigns, from and of any and all claims, causes of action, allegations or assertions that any Borrower has or may have had at any time up through and including the date of this Amendment, against any or all of the foregoing, regardless of whether any such claims, causes of action, allegations or assertions arose as a result of Lender's actions or omissions in connection with the Agreement, or any amendments, extensions or modifications thereto, or Lender's administration of debt evidenced by the Agreement or otherwise.

*[End of First Amendment to Loan and Security Agreement – Signature page follows]*

The undersigned have caused this First Amendment to Loan and Security Agreement to be duly executed and delivered as of the date first written above.

**LENDER:**

**EXWORKS CAPITAL FUND I, L.P.,**  
a Delaware limited partnership

By: /s/ Andrew D. Hall  
Name: Andrew D. Hall  
Title: Chief Credit Officer

**BORROWER:**

**DREAM MEDIA CORPORATION,**  
a Delaware corporation

By: /s/ Adam E. Levin  
Adam E. Levin,  
Chief Executive Officer

**LOAN PARTY OBLIGORS:**

\_\_\_\_\_,  
a \_\_\_\_\_ [company/corporation]

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

*[Signature page to First Amendment to Loan and Security Agreement]*

**TERM NOTE**

\$2,500,000

August 31, 2018

The undersigned ("**Borrower**"), for value received, promises to pay to the order of ExWorks Capital Fund I, L.P. ("**Lender**") at its principal office, the aggregate unpaid amount of the Term Loan made to Borrower by Lender pursuant to the Loan Agreement. Principal and interest are payable as provided in the Loan Agreement. This Term Note ("**Note**") is secured by the Collateral. Capitalized terms used but not otherwise defined in this Note have the meanings attributed to them in the Loan Agreement.

Borrower further promises to pay interest on the unpaid principal amount of the Second Term Loan from the date of Second Term Loan until the Second Term Loan is paid in full, payable at the rate(s) and at the time(s) set forth in the Loan and Security Agreement. Payments of both principal and interest are to be made in lawful money of the United States of America.

This Note evidences indebtedness incurred under, and is subject to the terms and provisions of, the Loan and Security Agreement, dated as of the date hereof (as amended, restated or otherwise modified from time to time, the "**Loan Agreement**"; terms not otherwise defined herein are used herein as defined in the Loan Agreement), among Borrower, Lender, and the other parties thereto from time to time, to which Loan Agreement reference is hereby made for a statement of the terms and provisions under which this Note may or must be paid prior to its due date or its due date accelerated.

This Note is made under and governed by the laws of the State of Illinois applicable to contracts made and to be performed entirely within such State.

To the fullest extent permitted by applicable law, Borrower hereby waives presentment for payment, demand, notice of non-payment, notice of protest and protest of this Note, diligence in collection or bringing suit.

THIS NOTE IS SUBJECT TO THE JURY TRIAL WAIVER IN THE AGREEMENT.

[Signature page to follow]

DREAM MEDIA CORPORATION,  
a Delaware corporation

By: /s/ Adam E. Levin

Name: Adam E. Levin

Title: Chief Executive Officer

Signature Page to Second Term Note

## PLEDGE AND SECURITY AGREEMENT

This Pledge and Security Agreement, dated as of August \_\_, 2018 (as amended, restated, supplemented or otherwise modified from time to time, this "Agreement"), is made by **Dream Media Corporation**, a Delaware Corporation ("Pledgor"), in favor of **ExWorks Capital Fund I, L.P.** a Delaware limited partnership ("Lender").

### BACKGROUND

A. Pledgor is party to a Loan and Security Agreement, dated November 21, 2017 (as the same has been and may be further amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement"), with Lender and related Loan Documents. Capitalized terms not defined in this Agreement have the meanings given in the Loan Agreement. References to Schedules or Exhibits are intended to refer to the schedules and exhibits to this Agreement which are hereby incorporated by reference and made a part of this Agreement.

B. Pledgor has requested certain amendments to the Loan Agreement in order to purchase 227,273 shares of Class A common stock of High Times Holding Corp., a Delaware corporation (the "Company") in an amount of \$2,500,000 from the Company **pursuant to "Regulation A+" offering under Section 506 of the JOBS Act of 2016**<sup>1</sup>.

E. Pledgor is executing this Agreement as an inducement to Lender to amend the Loan Agreement, and in consideration of the loans, advances and financial accommodations made by Lender to or for the benefit of Pledgor.

**NOW, THEREFORE**, for good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, Pledgor and Lender agree as follows:

1. **Pledge.** Pledgor hereby pledges and grants to Lender a security interest in, the following (the "Pledged Collateral"):

(a) All of the 227,273 shares of Class A common stock of the Company, par value \$0.0001 per share (the "Purchased Shares") and any additional equity securities of the Company hereafter acquired by Pledgor (all such now owned or hereafter acquired equity interests and other interests, collectively, the "Pledged Interests"), and the certificates, if any, representing those Pledge Interests, and all dividends, distributions, cash, securities, instruments, rights and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such Pledged Interests; and

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<sup>1</sup> NTD – NMS Capital Advisors is a Placement Agent, not an underwriter. Pledgor purchases the shares directly from the issuer – Hightimes.

(b) all other property hereafter delivered to Lender in substitution for, as proceeds of, or in addition to any of the foregoing, all certificates, instruments and documents representing or evidencing such property, and all cash, securities, interest, distributions, dividends, rights and other property at any time and from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all thereof.

2. **Limitations.** Notwithstanding anything to the contrary in this Agreement, provided no Event of Default occurs and is continuing and Pledgor is otherwise in compliance with its obligations under this Agreement and the other Loan Documents at that time, this Agreement will terminate and be of no further force or effect at the time all Liabilities are repaid in full. The foregoing limitation will not in any way limit Lender's rights under the Loan Documents.

3. **Security for Liabilities.** The Pledged Collateral secures the payment and performance of all Obligations arising under the New Loan and all other obligations and liabilities of Pledgor now or hereafter existing under this Agreement or the other Loan Documents with respect to the New Loan (the Obligations arising under the New Loan and all other liabilities and obligations of Pledgor now or hereafter existing under this Agreement, the Loan Agreement or the other Loan Documents with respect to the New Loan are referred to collectively as the "Liabilities").

4. **Delivery of Pledged Interests.** All certificates, instruments or documents, if any, representing or evidencing the Pledged Interests will be delivered to and held by or on behalf of Lender pursuant hereto and will be in suitable form for transfer by delivery, will be accompanied by duly executed instruments of transfer or assignment in blank, irrevocable proxies, all in form and substance satisfactory to Lender. In addition, Lender will have the right at any time to exchange certificates or instruments representing or evidencing Pledged Interests for certificates or instruments of smaller or larger denominations.

5. **Representations and Warranties.** Pledgor represents and warrants as follows:

(a) The Pledged Interests have been duly authorized and validly issued and are fully paid and non-assessable, as applicable.

(b) Pledgor is, or at the time of any future delivery, pledge, assignment or transfer will be, the legal and beneficial owner of the Pledged Collateral, free and clear of any lien, security interest, pledge, warrant, option, purchase agreement, shareholders' agreement, restriction, redemption agreement or other charge, encumbrance or restriction of any nature on the Pledged Collateral, except for the lien created by this Agreement or the Loan Agreement and other Permitted Liens, with full right to deliver, pledge, assign and transfer the Pledged Collateral to Lender as Pledged Collateral hereunder.

(c) The pledge of the Pledged Collateral pursuant to this Agreement creates a valid and perfected first priority security interest in the Pledged Collateral, securing the payment of the Liabilities.

(d) No authorization, approval, or other action by, and no notice to or filing with, any governmental authority or regulatory body is required either (i) for the pledge by Pledgor of the Pledged Collateral pursuant to this Agreement or for the execution, delivery or performance of this Agreement by Pledgor, or (ii) for the exercise by Lender of the voting or other rights provided for in this Agreement or the remedies in respect of the Pledged Collateral pursuant to this Agreement (except as may be required in connection with a disposition of such shares by laws affecting the offering and sale of securities generally).

(e) Pledgor has full power and authority to enter into this Agreement and has the right to vote, pledge and grant a security interest in the Pledged Collateral as provided by this Agreement.

(f) To the best of Pledgor's knowledge, none of the Pledged Interests have been issued in violation of any federal, state or other law, regulation or rule pertaining to the issuance of securities, or in violation of any rights, pre-emptive or otherwise, of any present or past equity holder of the Company.

(g) (i) the Pledged Collateral constitutes an ownership interest in the Company set forth on Schedule I on a fully diluted basis, (ii) the Company has not issued any non-voting equity interests or other interests except as described on Schedule I, (iii) there are no outstanding subscriptions, options, rights, warrants or other agreements or commitments pursuant to which the Company is or might be obligated to issue or transfer any additional equity or other ownership interests except as described on Schedule I, and (iv) all of the ownership interests in the Company are described on Schedule I;

6. **Further Assistance.** Pledgor agrees that at any time and from time to time, at its expense, Pledgor will promptly execute and deliver, or cause to be executed and delivered, all certificates, if any, representing the Pledged Interests, stock and/or other powers, proxies, assignments, instruments and documents; will take all steps necessary to properly register the transfer of the security interest hereunder on the books of the Company of any uncertificated securities included in the Pledged Interests; and will take all further action that may be reasonably necessary or desirable, or that Lender may reasonably request, in order to perfect and protect any security interest granted or purported to be granted hereby or to enable Lender to exercise and enforce its rights and remedies hereunder with respect to any Pledged Collateral and to carry out the provisions and purposes hereof.

## **7. Voting Rights; Dividends; Etc.**

(a) (i) So long as no Default or Event of Default has occurred and is continuing, Pledgor will be entitled to exercise any and all voting and other consensual rights pertaining to the Pledged Interests or any part thereof for any purpose not inconsistent with the terms of this Agreement or any other Loan Document; provided, however, that Pledgor will not exercise nor will it refrain from exercising any such right if such action could have a material adverse effect on the value of the Pledged Collateral.

(ii) Pledgor will be entitled to receive and retain any and all dividends and interest paid in respect of the Pledged Collateral as permitted under the Loan Agreement; provided, however, that, except as expressly provided in the Loan Agreement, any and all:

(A) dividends and interest paid or payable other than in cash in respect of, and instruments and other property received, receivable or otherwise distributed in respect of, or in exchange for, any Pledged Collateral;

(B) dividends and other distributions paid or payable in cash in respect of any Pledged Collateral in connection with a partial or total liquidation or dissolution or in connection with a reduction of capital, capital surplus or paid-in-surplus; and

(C) cash paid, payable or otherwise distributed in respect of principal of, or in redemption of, or in exchange for, any Pledged Collateral, will be Pledged Collateral, and will be forthwith delivered to Lender to hold as Pledged Collateral and will, if received by Pledgor, be received in trust for the benefit of Lender, be segregated from the other property of Pledgor, and be forthwith delivered to Lender as Pledged Collateral in the same form as so received (with any necessary endorsement).

(iii) Pledgor will execute and deliver (or cause to be executed and delivered) to Lender all such proxies and other instruments as Lender may reasonably request for the purpose of enabling Lender to exercise the voting and other rights that it is entitled to exercise pursuant to paragraph (i) above and to receive the dividends or interest payments that it is authorized to receive pursuant to paragraph (ii) above.

(b) Upon the occurrence of and during the continuance of an Event of Default and delivery by Lender of written notice to Pledgor of Lender's intention to exercise any of its rights under this Agreement:

(i) All rights of Pledgor to exercise the voting and other consensual rights that it would otherwise be entitled to exercise pursuant to Section 7(a)(i) and to receive the dividends and interest payments that it would otherwise be authorized to receive and retain pursuant to Section 7(a)(ii) will cease, and all such rights will thereupon become vested in Lender, which will thereupon have the sole right to exercise such voting and other consensual rights and to receive and hold as Pledged Collateral such dividends and interest payments; and

(ii) All dividends and interest payments that are received by Pledgor contrary to the provisions of paragraph (i) of this Section 7(b) will be received in trust for the benefit of Lender, will be segregated from other funds of Pledgor and will be forthwith paid over to Lender as Pledged Collateral in the same form as so received (with any necessary endorsements).

8. **Transfers and Other Liens; Additional Interests**. Pledgor agrees that it will not (i) except as expressly provided in the Loan Agreement, sell, assign, transfer, convey, exchange, pledge or otherwise dispose of, or grant any option, warrant, right, contract or commitment with respect to, any of the Pledged Collateral without the prior written consent of Lender, or (ii) create or permit to exist any lien, security interest, pledge, proxy, purchase arrangement, restriction, redemption agreements, shareholders' agreement or other charge or encumbrance upon or with respect to any of the Pledged Collateral, except for the lien created by this Agreement and Permitted Liens.

9. **Application of Proceeds of Sale or Cash Held as Collateral**. The proceeds of sale of Pledged Collateral sold pursuant to this Agreement and/or the cash held as Pledged Collateral hereunder will be applied in accordance with the terms of the Loan Agreement.

10. **Lender Appointed Attorney-in-Fact**. Pledgor hereby appoints Lender as Pledgor's attorney-in-fact, with full authority in the place and stead of Pledgor and in the name of Pledgor or otherwise, from time to time in Lender's discretion, during the continuance of an Event of Default, to take any action and to execute any instrument which Lender may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, to receive, endorse and collect all instruments made payable to Pledgor representing any dividend, interest payment or other distribution in respect of the Pledged Collateral or any part thereof and to give full discharge for the same.

11. **Lender May Perform**. During the continuance of an Event of Default, if Pledgor fails to perform any agreement contained herein, Lender may itself perform, or cause performance of, such agreement, and the reasonable invoiced out-of-pocket expenses of Lender incurred in connection therewith will be secured by the Pledged Collateral and payable upon demand.

12. **Reasonable Care**. Lender will be deemed to have exercised reasonable care in the custody and preservation of the Pledged Collateral in its possession if the Pledged Collateral is accorded treatment substantially equal to that which Lender accords its own property, it being understood that Lender will have no responsibility for (i) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to any Pledged Collateral, whether or not Lender has or is deemed to have knowledge of such matters, or (ii) taking any necessary steps to preserve rights against any parties with respect to any Pledged Collateral; provided, however, that upon Pledgor's instruction, Lender will use reasonable efforts to take such action as Pledgor directs Lender to take with respect to calls, conversions, exchanges, maturities, tenders, rights against other parties or other similar matters relative to the Pledged Collateral, but failure of Lender to comply with any such request will not of itself be deemed a failure to exercise reasonable care, and no failure of Lender to preserve or protect any rights with respect to the Pledged Collateral against prior parties, or to do any act with respect to preservation of the Pledged Collateral not so requested by Pledgor, will be deemed a failure to exercise reasonable care in the custody or preservation of the Pledged Collateral.

13. **Subsequent Changes Affecting the Pledged Collateral.** Pledgor represents to Lender that Pledgor has made its own arrangements for keeping informed of changes or potential changes affecting the Pledged Collateral (including, without limitation, rights to convert, rights to subscribe, payment of dividends, reorganization or other exchanges, tender offers and voting rights), and Pledgor agrees that Lender will have no responsibility or liability for informing Pledgor of any such changes or potential changes or for taking any action or omitting to take any action with respect thereto.

14. **Events of Default; Remedies upon an Event of Default.**

(a) Upon the occurrence of and during the continuation of an Event of Default, Lender will have, in addition to all other rights given by law or by this Agreement, the Loan Agreement or otherwise, all of the rights and remedies with respect to the Pledged Collateral of a secured party under the UCC (or any other applicable jurisdiction) at that time. In addition, with respect to any Pledged Collateral that is or thereafter comes into the possession or custody of Lender, Lender may sell or cause the same to be sold at any broker's board or at public or private sale, in one or more sales or lots, at such price or prices as Lender may reasonably deem best, for cash or on credit or for future delivery, without assumption of any credit risk. Any sale of the Pledged Collateral conducted in conformity with reasonable commercial practices of banks, insurance companies, commercial finance companies, or other financial institutions disposing of property similar to the Pledged Collateral will be deemed to be commercially reasonable. Any requirements of notice will be deemed to be a reasonable authenticated notice of disposition if given at least ten (10) days before the time of the sale or disposition and such notice will (i) describe Pledgor and Lender, (ii) describe the Pledged Collateral that is the subject of the intended disposition, (iii) state the method of intended disposition, (iv) state that Pledgor is entitled to an accounting of the Liabilities and state the charge, if any, for an accounting, and (v) state the time and place of any public disposition or the time after which any private sale is to be made. Any other requirement of notice, demand or advertisement for sale is, to the extent permitted by law, waived. Lender may disclaim any warranties that might arise in connection with the sale or other disposition of the Pledged Collateral and Lender and Pledgor have no obligation to provide any warranties at such time. Lender may, in its own name or in the name of a designee or nominee, buy any of the Pledged Collateral at any public sale held in accordance with the foregoing provisions and, if permitted by applicable law, at any private sale. All reasonable invoiced out-of-pocket expenses (including, without limitation, court costs and reasonable attorneys' fees and expenses) of, or incident to, the enforcement of any of the provisions hereof will be recoverable from the proceeds of the sale or other disposition of the Pledged Collateral. In view of the fact that federal and state securities laws may impose certain restrictions on the method by which a sale of the Pledged Collateral may be effected after and during the continuance of an Event of Default, Pledgor agrees that upon the occurrence and continuance of any Event of Default, Lender may, from time to time, attempt to sell all or any part of the Pledged Collateral by means of a private placement, restricting the prospective purchasers to those who can make the representations and agreements required of purchasers of securities in private placements. In so doing, Lender may solicit offers to buy the Pledged Collateral, or any part of it, for cash, from a limited number of investors deemed by Lender in its judgment, to be responsible parties who might be interested in purchasing the Pledged Collateral, and if Lender solicits such offers from not less than three (3) such investors, then the acceptance by Lender of the highest offer obtained therefrom will be deemed to be a commercially reasonable method of disposition of the Pledged Collateral.

In addition, upon the occurrence of an Event of Default (and the expiration of any cure or grace period), upon Pledgor's receipt of written notice from Lender that it is invoking its rights under this Agreement, all rights of Pledgor to exercise the voting and other rights that it would otherwise be entitled to exercise and to receive cash dividends and interest payments, will cease, and all such rights will thereupon become vested in Lender as provided in Section 7.

15. **Authority of Lender.** Lender will have and be entitled to exercise all such powers hereunder as are specifically delegated to Lender by this Agreement, together with such powers as are incidental thereto. Lender may execute any of its duties hereunder by or through agents or employees. Neither Lender, nor any director, manager, officer, agent or employee of Lender, will be liable for any action taken or omitted to be taken by it or them hereunder or in connection herewith, except for its or their own gross negligence or willful misconduct. Pledgor hereby agrees to indemnify and hold harmless Lender and/or any such director, manager, officer, agent or employee from and against any and all liability incurred by any of them, hereunder or in connection herewith, unless such liability is due to its or their own gross negligence or willful misconduct. Pledgor's indemnification obligations provided for in this Section 15 are part of the Liabilities, are secured by the Pledged Collateral, and will survive the repayment of the Liabilities.

16. **Termination.** Subject to Section 2, this Agreement will terminate when all the Liabilities (other than contingent indemnification obligations) have been indefeasibly paid in full and performed and the Loan Agreement has been terminated, at which time Lender will promptly reassign and redeliver (or cause to be reassigned and redelivered) to Pledgor, or to such person or persons as Pledgor will designate, against receipt, such of the Pledged Collateral (if any) as has not been sold or otherwise applied by Lender pursuant to the terms hereof and still held by it hereunder, together with appropriate instruments of reassignment and release. Any such reassignment will be without recourse upon or warranty by Lender and at the expense of Pledgor.

17. **Expenses.** Pledgor agrees to reimburse Lender, on demand for any and all reasonable invoiced out-of-pocket expenses, including, without limitation, the reasonable fees and expenses of its counsel and of any experts and agents, which Lender may incur in connection with (i) the administration of this Agreement, (ii) the custody or preservation of, or the registration of the Pledged Collateral, (iii) the exercise or enforcement of any of the rights of Lender hereunder, or (iv) the failure by Pledgor to perform or observe any of the provisions hereof.

18. **Security Interest Absolute.** All rights of Lender and security interests hereunder, and all obligations of Pledgor hereunder, will be absolute and unconditional irrespective of:

- (i) any lack of validity or enforceability of the Loan Agreement or any other agreement or instrument relating thereto;
- (ii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Liabilities, or any other amendment or waiver of or any consent to any departure from the Loan Agreement;
- (iii) any exchange, surrender, release or non-perfection of any other collateral, or any release or amendment or waiver of or consent to departure from any guaranty, for all or any of the Liabilities; or
- (iv) any other circumstance which might otherwise constitute a defense available to, or a discharge of, Pledgor in respect of the Liabilities or of this Agreement.

19. **Amendments, Waivers and Consents.** No amendment or waiver of any provision of this Agreement nor consent to any departure by Pledgor herefrom, will in any event be effective unless in writing and signed by Lender and Pledgor, and then such amendment, waiver or consent will be effective only in the specific instance and for the specific purpose for which given.

20. **Notices.** Any notice required or desired to be served, given or delivered hereunder must be in writing (including facsimile or electronic transmission) in accordance with the terms of the Loan Agreement.

21. **Continuing Security Interest.** This Agreement will create a continuing security interest in the Pledged Collateral and will (i) remain in full force and effect until all Liabilities (other than contingent indemnification obligations) are indefeasibly paid in full and the termination of the Loan Agreement; (ii) be binding upon Pledgor, its successors and assigns; and (iii) inure to the benefit of Lender and its respective successors, transferees and permitted assigns.

22. **Waivers.** Pledgor waives presentment and demand for payment of any of the Liabilities, protest and notice of dishonor or default with respect to any of the Liabilities, and all other notices to which Pledgor might otherwise be entitled, except as otherwise expressly provided in this Agreement or in the Loan Agreement.

23. **Governing Law; Terms.** This Agreement will be governed by the laws of the State of Illinois, without giving effect to any conflict of law principles. Unless otherwise defined in this Agreement, terms defined in Articles 8 and 9 of the UCC are used herein as defined in the UCC. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but, if any provision of this Agreement is interpreted in such manner as to be ineffective or invalid under applicable law, such provisions will be ineffective or invalid only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

24. **Definitions and Interpretation.** The singular will include the plural and vice versa as the text will indicate. The word “will” is intended to have the same meaning as “shall” and means mandatory or obligatory and not permissive.

25. **Section Headings.** The section headings in this Agreement are for convenience of reference only, and will not affect in any way the interpretation of any of the provisions hereof.

26. **Loan Document.** In addition to and without limitation of any of the foregoing, this Agreement is a Loan Document.

27. **Counterparts; Facsimile or Electronic Signature.** This Agreement may be executed in one or more counterparts (which taken together, as applicable, will constitute one and the same instrument) and by facsimile or electronic transmission, which facsimile or electronic transmission will be considered original executed counterparts. Each party to this Agreement agrees that it will be bound by its own facsimile or electronic signature and that it accepts the facsimile or electronic signature of each other party.

28. **SUBMISSION TO JURISDICTION AND VENUE. ANY JUDICIAL PROCEEDING BY PLEDGOR OR LENDER INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER OR CLAIM IN ANY WAY ARISING OUT OF, RELATED TO OR CONNECTED WITH THIS AGREEMENT OR ANY PRESENT OR FUTURE AGREEMENT BETWEEN PLEDGOR AND LENDER, MAY BE BROUGHT ONLY IN A FEDERAL COURT LOCATED IN THE STATE OF ILLINOIS OR IN STATE COURTS IN COOK COUNTY, ILLINOIS; PROVIDED THAT THE FOREGOING WILL NOT APPLY TO THE EXTENT LENDER IS REQUIRED BY APPLICABLE LAW TO BRING AN ACTION IN ANOTHER JURISDICTION FOR PURPOSES OF FORECLOSING ITS INTEREST IN ANY COLLATERAL. BY EXECUTION AND DELIVERY OF THIS AGREEMENT, PLEDGOR AND LENDER ACCEPT FOR THEMSELVES AND IN CONNECTION WITH THEIR RESPECTIVE PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE REFERENCED COURTS, AND IRREVOCABLY AGREE TO BE BOUND BY ANY FINAL JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS AGREEMENT, OR ANY OTHER PRESENT AND FUTURE AGREEMENT BETWEEN PLEDGOR AND LENDER. PLEDGOR AND LENDER WAIVE ANY OBJECTION TO JURISDICTION AND VENUE OF ANY ACTION INSTITUTED HEREUNDER OR IN CONNECTION HERewith AND MAY NOT ASSERT ANY DEFENSE BASED ON LACK OF JURISDICTION OR VENUE OR BASED UPON FORUM NON CONVENIENS. AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT MAY BE FILED WITH ANY COURT AS WRITTEN EVIDENCE OF THE WAIVERS AND CONSENTS CONTAINED HEREIN.**

29. **WAIVER OF JURY TRIAL. PLEDGOR AND LENDER INTENTIONALLY, VOLUNTARILY AND IRREVOCABLY WAIVE THE RIGHT TO A TRIAL BY JURY IN ANY PROCEEDING HEREAFTER INSTITUTED BY OR AGAINST PLEDGOR OR LENDER IN RESPECT OF THIS AGREEMENT.**

*[End of Pledge and Security Agreement - Signature Pages Follow]*



LENDER:

**EXWORKS CAPITAL FUND I, L.P.,**  
a Delaware limited partnership

By: \_\_\_\_\_  
Name: Andrew D. Hall  
Title: Chief Credit Officer

Address for notice:

ExWorks Capital Fund I, L.P.  
333 W. Wacker Drive, Suite 1620  
Chicago, IL 60606  
Attn: Chief Credit Officer

*[Signature Page to Pledge Agreement]*

**Schedule I**

**Ownership Interest in the Company**

<u>Company</u>	<u>Shareholder/Member</u>	<u>% of ownership</u>	<u>No. of Shares.</u>
Hightimes Holding Corp.	Dream Media Corporation	1.0% <sup>2</sup>	227,273 <sup>3</sup>

<sup>2</sup> Based on 21,172,042 shares of Class A common stock of the Company outstanding. Does not include (a) additional shares being sold in the Company's regulation A+ public offering, (b) the automatic conversion of convertible notes held by former stockholders of Trans-High Corporation and others or (c) the exercise of warrants issued to the Lender.

<sup>3</sup> the shares are held electronically by VStock Transfer Company, the Transfer Agent for the Company. The Lender shall enter into a Deposit Account Control Agreement with the transfer agent..

**Exhibit 1**

**Acknowledgement of the Company**

Dated as of \_\_\_\_\_, 2018

Hightimes Holding Corp. (capitalized terms used herein having the meanings assigned in the Pledge Agreement) hereby (i) acknowledges that it has received an executed copy of the Pledge and Security Agreement, (ii) agrees to record in its records the pledge of the equity interests of Hightimes Holding Corp. as provided in the Pledge and Security Agreement, and (iii) waives any right to at any time hereafter be provided with a copy of the foregoing Pledge and Security Agreement in connection with any exercise by Lender (or its agent or nominee), in accordance with the terms of such Pledge Agreement, of voting or other consensual rights in respect of the Pledged Collateral or any registration of any of the Pledged Collateral in the name of Lender (or its agent or nominee).

**HIGH TIMES HOLDING CORP.,**  
a Delaware corporation

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

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## STRATEGIC INVESTMENT AGREEMENT

This Strategic Investment Agreement (this “**Agreement**”) is dated as of September 10, 2018 (the “**Effective Date**”) by and among **HIGHTIMES HOLDING CORP.**, a Delaware corporation (“**Hightimes**”), **TRANS-HIGH CORPORATION**, a New York corporation (“**THC**”), and **SPECTRUM KING, LLC**, a Delaware limited liability company (“**Spectrum**”). Hightimes, THC and Spectrum are each referred to herein as a “**Party**,” or together as the “**Parties**.”

### RECITALS

**WHEREAS**, Spectrum is in the business of designing, manufacturing and selling high-end LED grow lights for indoor and greenhouse applications targeting a variety of growing industries, such as cannabis, leafy greens, tomatoes, ornamental plants and other plants;

**WHEREAS**, THC is a wholly-owned subsidiary of Hightimes, and THC is the owner of the intellectual property related to the *High Times*<sup>TM</sup> name, logo and brand (collectively, the “**Hightimes Intellectual Property**”);

**WHEREAS**, pursuant to the terms of this Agreement, the Parties desire for Hightimes to (a) grant to Spectrum a limited license to the Hightimes Intellectual Property for the purpose of allowing Spectrum to advertise and market the “High Times Grow Box” and all other products sold and distributed by Spectrum during the “**Term**” (as hereinafter defined) of this Agreement (collectively, with the Hightimes Grow Box, the “**Spectrum Products**”), and (b) grant Spectrum \$500,000 worth of annual advertising credits for three consecutive years;

**WHEREAS**, in consideration for the issuance of the aforesaid license and advertising credits, Spectrum shall issue to Hightimes a number of Spectrum Economic Units and Membership Interests (as such terms are defined in the Second Amended and Restated Spectrum Operating Agreement, which is defined below), representing 9.9099% of Spectrum’s voting power and equity ownership on a fully-diluted basis; and

**WHEREAS**, each Party desires to set forth in this Agreement the principal terms and conditions pursuant to which Hightimes will provide certain advertising services to Spectrum.

**NOW, THEREFORE**, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, for themselves and their respective successors and assigns, hereby covenant and agree as provided below in this Agreement.

### Article I

#### ADVERTISING SERVICES; ADVERTISING CREDITS; TERM OF AGREEMENT AND SPECTRUM EQUITY INTERESTS

##### Section 1.01 Advertising Services and Issuance of Advertising Credits.

(a) Subject to the terms and conditions of this Agreement and in consideration of the issuance to Hightimes of eleven (11) Spectrum Economic Units, representing 9.9099% of Spectrum’s voting power and equity ownership (the “**Spectrum Equity Interests**”), during the Term of this Agreement, Hightimes hereby agrees to provide Spectrum with the Advertising Services described in Section 4.02 of this Agreement and up to \$1,500,000 of advertising credits (the “**Advertising Credits**”) to enable Spectrum to advertise and market the Spectrum Products (i) on all Hightimes publications, including the Hightimes print and website publications, and (ii) at all festivals conducted by Hightimes, including its “**Cannabis Cup**” events.

(b) Hightimes shall provide Spectrum with the Advertising Services described in Section 4.02 of this Agreement and up to \$500,000 of Advertising Credits during the “**Term**” of this Agreement (as defined below) during each of the three (3) consecutive twelve (12) month periods commencing September 1<sup>st</sup> and ending August 31<sup>st</sup> in each of 2019, 2020 and 2021 (each an “**Anniversary Period**”).

(c) Spectrum shall have the right but not the obligation to utilize Hightimes' Advertising Credits during the Term of this Agreement. Any unused Advertising Credits not expended at the end of each Anniversary Period may be carried over and used by Spectrum in the next succeeding Anniversary Period; provided however, that unless the Term of this Agreement shall be extended, as provided in Section 1.02 below, to the extent any Advertising Credits have not been used by the August 31, 2021 expiration of the Term, such Advertising Credits shall terminate and will no longer be available to Spectrum.

(d) Annexed hereto as **Exhibit A** and made a part hereof, is a schedule of the charges and fees imposed by Hightimes to advertisers (the "**Advertising Fee Schedule**"). Such Advertising Fee Schedule is subject to change during the Term of this Agreement at the sole discretion of Hightimes; provided however, that the fees charged against the Advertising Credits granted to Spectrum shall be no less favorable to Spectrum than the fees charged by Hightimes to other advertisers in its publication or on its website. Subject to the foregoing "favored nations" provision, during the Term of this Agreement, Hightimes reserves the right from time to time to change the retail prices set forth on **Exhibit A**; however, Spectrum shall be entitled to receive the same percentage discounts from any such adjusted prices.

#### **Section 1.02 Term of Agreement.**

(a) This Agreement shall commence on the Effective Date and shall end on August 31, 2021. The three consecutive Anniversary Periods ending August 31, 2021 are referred to herein as the "**Term**" of this Agreement.

(b) If requested by Spectrum, the Parties may elect to extend the Term of this Agreement beyond August 31, 2021, all upon such terms and conditions as the Parties may mutually agree upon.

**Section 1.03 Issuance of Spectrum Equity Interests.** Simultaneously with the execution and delivery of this Agreement, Spectrum shall issue to Hightimes the Spectrum Equity Interests, and shall amend and restate the Spectrum operating agreement, in substantially the form of **Exhibit B** annexed hereto (the "**Second Amended and Restated Spectrum Operating Agreement**").

**Section 1.04 Advertisements.** Spectrum shall provide Hightimes with reasonable advance notice (not less than 10 days) of its desire to use the Advertising Credits during the Term of this Agreement, as well as the form and content of such advertisements. The Parties hereto agree that the form and content of all advertisements by Spectrum on the Hightimes website, in Hightimes print publications and in connection with any festival events produced by Hightimes shall be reviewed and approved in advance by Hightimes prior to their publication.

### **Article II**

#### **LICENSE FOR SPECTRUM TO USE THE HIGHTIMES NAME AND LOGO FOR ADVERTISING**

##### **Section 2.01 License.**

(a) Until the expiration of the Term of this Agreement or until this Agreement is terminated under *Article VI* below, whichever comes first, Hightimes and THC hereby jointly and severally agree to grant to Spectrum a limited right and license to use the Hightimes Intellectual Property for the sole purpose of allowing Spectrum to advertise and market any or all of the Spectrum Products throughout the world (the "**Hightimes License**").

(b) No royalties or other payments shall be required to be paid during the Term of this Agreement to Hightimes under the limited license granted pursuant to this Agreement.

(c) Spectrum shall not, without the prior written consent of Hightimes, use the **High Times**<sup>TM</sup> trademark, trade name, logo, style or any other Hightimes Intellectual Property for any purpose other than to advertise and market Spectrum Products pursuant to the limited license granted hereby.

**Article III**  
**REPRESENTATIONS AND WARRANTIES OF THE PARTIES**

**Section 3.01 Organization and Authority.** Spectrum is a limited liability company duly organized, validly existing and in good standing under the laws of the state of Delaware. Hightimes is a corporation duly organized, validly existing and in good standing under the laws of the state of Delaware. THC is a New York corporation duly organized, validly existing and in good standing under the laws of the State of New York. Each Party has full corporate or limited liability company power and authority, as applicable, to enter into this Agreement and to carry out its respective obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery by the Parties of this Agreement and the performance by them of their respective obligations hereunder, and the consummation by each Party of the transactions contemplated hereby, have been duly authorized by all requisite corporate or limited liability company action, as applicable, on the part of each Party. This Agreement has been duly executed by and delivered to each Party, and (assuming due authorization, execution, and delivery by the Parties), this Agreement constitutes a legal, valid and binding obligation of the Parties enforceable against each of them in accordance with its terms.

**Section 3.02 Ownership of Intellectual Property.** Hightimes hereby represents and warrants that it is, directly or indirectly, the sole owner of, and holds all right, title and ownership interest in, and the use of, the *High Times*<sup>TM</sup> trademark, trade name, logo, style or any other Hightimes Intellectual Property being licensed to Spectrum hereunder. Neither Hightimes nor THC has previously granted and will not grant during the Term of this Agreement to any other person, firm or corporation, that is engaged in a business that is competitive with the business currently engaged in by Spectrum, any of the rights being licensed to Spectrum under this Agreement.

**Section 3.03 Spectrum Capitalization.**

(a) Immediately prior to the Effective Date, the entire authorized Membership Interests of Spectrum consisted of one hundred (100) Economic Units of Membership Interests, of which one hundred (100) Economic Units are currently issued and outstanding. The Majority Members (as defined in Section 7.01 below) own 70.0 Economic Units and Membership Interests, representing 70.0% of all Economic Units and Membership Interests and 70.0% of all voting power of Spectrum. At the Effective Date, pursuant to the Second Amended and Restated Spectrum Operating Agreement attached hereto as **Exhibit B**, Spectrum shall issue to Hightimes eleven (11.0) additional Economic Units of Membership Interests, representing 9.9099% of the Spectrum Fully-Diluted Membership Interests, as a result of which one hundred and eleven (111) Spectrum Economic Units shall be issued and outstanding at the Effective Date, representing 100% of the outstanding Spectrum Membership Interests on a fully-diluted basis. All of the issued and outstanding Spectrum Membership Interests have been duly authorized, are validly issued, fully paid, and non-assessable, and are held of record by the Spectrum members. Except for the Spectrum Economic Units to be issued to Hightimes, there are no outstanding or authorized options, warrants, purchase rights, subscription rights, conversion rights, exchange rights, or other Contracts or commitments that could require Spectrum to issue, sell, or otherwise cause to become outstanding additional Spectrum Membership Interests. There are no outstanding or authorized membership interest appreciation rights, phantom membership interests, profit participation, or similar rights with respect to the Spectrum Membership Interests or the capital stock of any of Spectrum Subsidiaries. There are no voting trusts, proxies, or other agreements or understandings with respect to the voting of Spectrum Membership Interests.

(b) [Intentionally Omitted]

(c) This Agreement and the transactions contemplated hereby, including the issuance of the Eleven (11) Economic Units to be issued by Spectrum to Hightimes under this Agreement, have been duly authorized by all necessary limited liability company action of the members of Spectrum in accordance with the existing Spectrum operating agreement, and by their execution of this Agreement, have been duly authorized by each of the Majority Members. The eleven (11) Economic Units to be issued by Spectrum to Hightimes under this Agreement, when issued, shall be fully paid and non-assessable and shall be issued free and clear of all liens, claims, encumbrances and rights of others.

**Article IV**  
**ADVERTISING SERVICES AND STANDARD OF PERFORMANCE**

**Section 4.01 General Standard of Service.** Except as otherwise agreed to in writing by the Parties or as described in this Agreement, the Parties agree that the nature, quality, and standard of care applicable to the delivery of the Advertising Services hereunder, and the skill levels of the employees providing such Advertising Services, shall be substantially the same as or consistent with those that Hightimes exercises or employs in providing similar services for itself and other third-parties.

**Section 4.02 Advertising Services.** Spectrum's advertising rights and Hightimes' Advertising Services to be provided under this Agreement shall include (a) advertisements in Hightimes' print and on-line magazines, including (i) covers and (ii) feature articles on Spectrum Products, (b) advertisements on Twitter, Facebook, or any of Hightimes' social media accounts, and (c) general email blasts promoting any Spectrum Product, including the Spectrum LED product marketed as the "**Hightimes™ Grow Box**," and (d) attendance at all or a majority, but not less than eight (8), of the Hightimes Cannabis Cup events as a featured presenter (collectively, the "**Advertising Services**")

**Section 4.03 Advertising Plans.** Hightimes and Spectrum each agrees to appoint one of their respective employees (each, an "**Advertising Manager**") who will have overall responsibility for managing and coordinating the delivery of Advertising Services and use of Advertising Credits, including making available the services of appropriately qualified employees and resources to enable the provision of the Advertising Services and use of Advertising Credits. The Advertising Managers will meet at least once quarterly to review compliance with this Agreement, the Advertising Plan (as defined below), and the needs of the Parties. The Parties agree to work together and to cooperate with each other in good faith in order to develop a quarterly advertising plan ("**Advertising Plan**") for each quarter of the calendar year during the Term. Among other things, the Advertising Plan will include the pricing guidelines and range of discounts for Ads. Failure to agree upon an Advertising Plan will not be a material breach of this Agreement.

**Section 4.04 Standard of Performance.**

(a) Each Party understands, acknowledges and represents to the other Parties that its business policy is and shall be to conduct advertising campaigns in a manner so as not to (i) send unsolicited email (i.e. spam) to recipients (unless required by law), (ii) promulgate advertising that is materially false or misleading, (iii) misuse or misappropriate another Party's intellectual property or other third party rights of any kind, (iv) send obscene messages or communications to any recipients, or (v) use e-mail or other forms of messaging to conduct illegal or immoral activities of any kind. Each Party hereto agrees not to take any actions inconsistent with this policy, and to make all of its employees and agents aware of such policy in order to ensure compliance therewith. A breach of this Section 4.04(a) shall be considered a material breach of this Agreement, giving rise to immediate termination of rights. Each Party further agrees that it will cooperate with the other Parties in all reasonable respects in its efforts to respect any user's privacy wishes and requests to be unsubscribed from receiving e-mail. Additionally, in connection with any and all tracking services (i.e. services that record any users' personal information or web searching history), the Parties hereto acknowledge and agree that the protection of consumer privacy is a priority of each Party to this Agreement. Each Party pledges its commitment to protecting the privacy of consumers, taking all commercially practicable steps to maintain such privacy, and adhering to fair information collection practices with respect to each of its performances under this Agreement. Accordingly, each Party represents and warrants to the other Parties that it will act in full compliance with all Federal Trade Commission guidelines and any other applicable laws, rules, and regulations then in existence with respect to the collection, use, or sharing of information gathered from customers.

(b) Any Party may, in its sole good faith discretion, refuse to assist in the publication of any advertising provided by another Party hereunder or any third-party if (i) such advertising does not comply with Hightimes' specific formatting, editorial, or publishing guidelines, (ii) a Party believes in good faith that the advertisement, or publication of an advertisement, violates any applicable law, rule, or regulation (including without limitation, any federal advertising regulations such as the Truth in Advertising regulations, Children's Online Privacy Protection Act, or the CAN-SPAM Act), or (iii) a Party believes in good faith that such advertising copy does not comply with reasonable moral standards promulgated by any Party or society in general.

(c) For purposes of this Section 4.04(c), a "**Force Majeure Event**" means an event beyond the control of a Party, which by its nature could not have been foreseen by such Party, or if it could have been foreseen, was unavoidable. This includes, without limitation, imposition of federal or state governmental regulations or decisions of a court which prohibit or ban all or any portion of the business activities of any Party, acts of God, storms, floods, riots, fires, sabotage, civil commotion or civil unrest, interference by civil or military authorities, and acts of war (declared or undeclared). Continued performance under this Agreement may be suspended immediately to the extent caused by a Force Majeure Event. The Party claiming suspension of this Agreement due to a Force Majeure Event will give prompt notice to the other Parties of the occurrence of the Force Majeure Event that gave rise to the suspension, describing its nature and anticipated duration in reasonable detail. The Parties shall cooperate with each other to find alternative means and methods for any suspended Advertising Service. No Party shall be under any liability for failure to fulfill any obligation under this Agreement, so long as and to the extent to which the fulfillment of such obligation is prevented, frustrated, hindered, or delayed as a consequence of circumstance of a Force Majeure Event.

## **Article V INDEMNIFICATION**

**5.01 Hightimes and THC Indemnity.** Hightimes and THC hereby jointly and severally agree to defend, indemnify and hold harmless Spectrum and each of its Affiliates (as defined in the Second Amended and Restated Spectrum Operating Agreement), including their respective managers, officers, directors, employees, agents and contractors (collectively, the "**Spectrum Indemnified Parties**") from any and all losses, damages, liabilities, costs, expenses (including reasonable attorney's fees), judgments or settlement amounts (collectively, "**Losses**") associated with, arising out of, or incurred in connection with any claim that the Hightimes License granted under this Agreement infringes any patent, copyright, trademark, trade secret, privacy right, right of publicity or other proprietary right of a third Person (a "**Hightimes Indemnified Claim**").

**5.02 Defense or Duty to Correct Hightimes Indemnified Claims.** If any of the Spectrum Indemnified Parties becomes or is likely to become a party to a Hightimes Indemnified Claim covered by Section 5.01, then and in such event, Hightimes shall:

(a) at its sole cost and expense, defend any such Hightimes Indemnified Claim and pay any settlement or royalty that may be required to settle such Hightimes Indemnified Claim; provided however, that the terms of any such settlement shall be subject to the prior written approval of Spectrum;

(b) permit the Spectrum Indemnified Parties to participate with legal counsel of their own choosing (at Spectrum's own expense) in the defense and/or settlement of any such Hightimes Indemnified Claim.

**5.03 Spectrum Indemnity.** Spectrum hereby agrees to defend, indemnify and hold harmless Hightimes, THC and its or their Affiliates (other than Spectrum), directors, officers, employees, agents and contractors (collectively, the “**Hightimes Indemnified Parties**”), from and against any and all Losses arising out of or in connection with any material breach by Spectrum of its representations, warranties, covenants or agreements contained herein (a “**Spectrum Indemnified Claim**”).” If any of the Hightimes Indemnified Parties becomes or is likely to become a party to a Spectrum Indemnified Claim covered by this Section 5.03, then and in such event, Spectrum shall:

(a) at its sole cost and expense, defend any such Spectrum Indemnified Claim and pay any settlement or royalty that may be required to settle such Spectrum Indemnified Claim; provided however, that the terms of any such settlement shall be subject to the prior written approval of Hightimes;

(b) permit the Hightimes Indemnified Parties to participate with legal counsel of their own choosing (and Hightimes’ own expense) in the defense and/or settlement of any such Spectrum Indemnified Claim.

#### **5.04 LIMITATION OF LIABILITY**

EXCEPT AS SPECIFICALLY PROVIDED HEREIN, IN NO EVENT SHALL ANY PARTY BE LIABLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO BREACH OR FAILURE TO PERFORM UNDER THIS AGREEMENT, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

### **Article VI TERMINATION**

#### **Section 6.01 Termination.**

(a) Spectrum may terminate the obligations under this Agreement at any time if Hightimes or THC shall have breached or failed to perform any of its material obligations under this Agreement relating to the Hightimes License, Advertising Services or Advertising Credits. Spectrum shall notify Hightimes in writing of such breach or failure, and such breach or failure shall have continued for a period of at least thirty (30) days after receipt by Hightimes of written notice of such failure from Spectrum.

(b) Hightimes may terminate the obligations under this Agreement at any time if Spectrum shall have breached or failed to perform any of its material obligations under this Agreement relating to its advertising content or the Spectrum Equity Interests. Hightimes shall notify Spectrum in writing of such breach or failure, and such breach failure shall have continued for a period of at least thirty (30) days after receipt by Spectrum of written notice of such failure from Hightimes.

(c) Any Party may at any time terminate this Agreement effective immediately upon written notice to the other Parties if the performance of such Party’s obligations under this Agreement would require such Party to violate any applicable laws, rules, or regulations, which violation could be material and adverse to such Party.

**Article VII**  
**MISCELLANEOUS**

**Section 7.01 Merger Agreement.** The Parties acknowledge that they are presently negotiating a merger agreement (the “**Spectrum Merger Agreement**”) among **S-King Holdings, Inc.**, a Delaware corporation (“**Holdings**”), (ii) Spectrum, (iii) **SKL Merger Sub, LLC**, a Delaware limited liability company and a newly-formed wholly-owned subsidiary of Holdings (“**Spectrum Merger Sub**”), (vi) **Rami Vardi** (“**Vardi**”) and **David Zemach** (“**Zemach**”) and together with Vardi, the “**Majority Members**”), and (v) **Sweiss Ventures, LLC**, a Delaware limited liability company (“**Ventures**”), pursuant to which it is contemplated that Spectrum Merger Sub will merge with and into Spectrum (the “**Merger**”), with Spectrum continuing as the surviving entity (the “**Spectrum Merger**”), and as a result of which, among other matters, all of the issued and outstanding Economic Units and Membership Interests of Spectrum, as of the effective time of the Merger shall no longer be outstanding and shall automatically be cancelled and shall cease to exist, in exchange for the right to receive 3,500,000 shares of the common stock of Holdings, all upon the terms and subject to the conditions set forth in the Spectrum Merger Agreement and in accordance with the applicable provisions of the Delaware Limited Liability Act. The Parties acknowledge that there is no assurance that the Spectrum Merger Agreement shall be executed or that the Spectrum Merger shall be consummated. However, notwithstanding anything to the contrary, express or implied, contained herein, the Parties hereto do hereby agree that this Agreement shall continue to remain in full force and effect in accordance with its terms, notwithstanding whether or not the Spectrum Merger Agreement shall be executed or the Spectrum Merger or other transactions contemplated by the Spectrum Merger Agreement shall be consummated.

**Section 7.02 Confidentiality.**

(a) No Party (each, a “**Receiving Party**”), along with its directors, officers, employees, agents, advisors, subcontractors, independent contractors, subsidiaries, and affiliates (collectively, its “**Representatives**”) shall, during the Term hereof and for a period of three years thereafter, without the other Party’s (each, a “**Disclosing Party**”) prior written approval in each instance not to be unreasonably withheld, disclose or otherwise make available to any other person or entity any information (whether acquired on the Effective Date or during the continuance of this Agreement) relating to the Disclosing Party’s business plans, products, advertising, innovations, fees, advertising, or product concepts, customers, technology, computer software, computer systems, marketing methods, sales margins, cost of goods, cost of materials, capital structure, operating results, or other business affairs, or any other proprietary or confidential information of the Disclosing Party (the “**Confidential Information**”). The foregoing shall not apply to Confidential Information that (i) is or becomes known to the general public (other than as a result of the disclosure, directly or indirectly, by the Receiving Party or its Representative), (ii) was or is made available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or any affiliate, provided however, that such source is not, and was not, to the Receiving Party’s actual knowledge, bound by a confidentiality agreement with the Disclosing Party or any affiliate of otherwise prohibited from transmitting such information by contract, legal, or fiduciary obligation to the Disclosing Party, any Affiliate, or any third Party, or (iii) is required to be disclosed by law, provided the Receiving Party gives the Disclosing Party notice and an opportunity to seek an appropriate protective order at its own expense. It is understood that the information required to be held in confidence as herein provided may be disclosed by the Receiving Party only to Representatives who need to know such Confidential Information for the purposes of fulfilling its obligations hereunder. Such Representatives, prior to any such disclosure, shall be informed of the confidential nature of such Confidential Information, and shall agree in writing to be bound by the terms hereof. The confidentiality provisions set for herein shall also apply separately to each subcontractor or independent contractor selected by either Party, and such Party shall be responsible for informing any such subcontractor of any confidential or proprietary information included in any work subcontracted for hereunder. Each Party shall have such person agree to be bound in writing by confidentiality terms no less stringent than those set forth herein.

(b) All Confidential Information furnished to the Receiving Party by the Disclosing Party or any third party at the request of the Disclosing Party shall be and remain the property of the Disclosing Party. All copies of such Confidential Information in written, graphic, or other tangible form shall be returned to the Disclosing Party at any time upon the advance written request of the Disclosing Party or upon the termination of this Agreement for any reason whatsoever, subject to the terms hereof.

**Section 7.03 Entire Agreement.** This Agreement (including the exhibits constituting a part of this Agreement) constitutes the entire agreement among the Parties with respect to the subject matter hereof and shall supersede all prior agreements, understandings, and negotiations, both written and oral, between the Parties with respect to the subject matter hereof. This Agreement is not intended to confer upon any Person other than the Parties hereto any rights or remedies hereunder.

**Section 7.04 Notices.** Any notice, instruction, direction, or demand under the terms of this Agreement required to be in writing shall be duly given upon delivery, if delivered by hand, facsimile transmission, or mail (with prepaid postage), to the following addresses:

(a) If to Hightimes or THC, to: Hightimes Holding Corp.  
10990 Wilshire Blvd  
Penthouse  
Los Angeles, CA 90024  
Attn: Adam E. Levin  
Tel: (844) 933-3287  
Email: adam@orevacapital.com

(b) If to Spectrum, to: Spectrum King, LLC  
7751 Alabama Avenue, Suite #1  
Canoga Park, CA 91304  
Attn: Rami Vardi, Manager and Member  
Tel: (818) 359-3114  
Email: rami@spectrumkingled.com

or to other such addresses or facsimile numbers as may be specified by like notice to the other Party. Any notice involving non-performance, termination, or renewal shall be sent by hand delivery, recognized overnight courier, or if within the United States, via certified mail, return receipt requested. All other notices may also be sent by facsimile, confirmed by first class mail. All notices shall be deemed to have been given when received, if hand delivered; when transmitted, if transmitted by facsimile or similar electronic transmission method; one working day after it is sent, if sent by recognized overnight courier; and three (3) days after it is postmarked, if mailed first class mail or certified mail return receipt requested, with prepaid postage.

**Section 7.05 Governing Law.** This Agreement shall be construed in accordance with and shall be governed by the laws of the State of California (without giving effect to the conflicts of laws provisions thereof).

**Section 7.06 Severability.** If any terms or other provisions of this Agreement or the exhibits hereto shall be determined by a court, administrative agency, arbitrator or other tribunal of competent jurisdiction to be invalid, illegal, or unenforceable, such invalidity, illegality or unenforceability shall not render the entire Agreement invalid. Rather, this Agreement shall be construed as if not containing the particular invalid, illegal, or unenforceable provision, and all other provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either Party. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent permitted under applicable law.

**Section 7.07 Third Party Beneficiaries.** None of the provisions of this Agreement shall be for the benefit of or enforceable by any third Party, including any creditor of any Person. No such third Party shall obtain any right under any provision of this Agreement or shall by reasons of any such provision make any claim in respect of any liability (or otherwise) against either Party hereto.

**Section 7.08 Amendment and Modification.** This Agreement may be amended, modified, or supplemented only by written agreement signed by all of the Parties hereto.

**Section 7.09 Counterparts.** This Agreement may be executed in separate counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same agreement.

**Section 7.10 Authority.** Each of the Parties represents to the other Parties that (a) it has the corporate, limited liability company, or other requisite power and authority to execute, deliver, and perform this Agreement, (b) the execution, delivery, and performance of this Agreement by it have been duly authorized by all necessary corporate, limited liability company or other actions, (c) it has duly and validly executed and delivered this Agreement, and (d) this Agreement is its legal, valid, and binding obligation, enforceable against it in accordance with its terms, subject to the applicable bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting creditors' rights generally and general equity principles.

**Section 7.11 Binding Effect; Assignment.** This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective legal representatives and successors, and nothing in this Agreement, express or implied, is intended to confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Agreement. Except as otherwise expressly provided in this Agreement, no Party may assign this Agreement or any rights or obligations hereunder, without the prior written consent of the other Parties, and any such assignment shall be void; provided however, that any Party may assign this Agreement to a successor entity in conjunction with such Party's reincorporation in another jurisdiction or into another business form. Upon the Closing of the Merger contemplated in the Spectrum Merger Agreement, an assignment will be recognized as consistent with this Agreement, and such assignment shall be deemed to have automatically occurred.

**Section 7.12 Failure or Indulgence is Not a Waiver; Remedies Cumulative.** No failure or delay on the part of any Party hereto in the exercise of any right hereunder shall impair such right or be construed to be a waiver of, or acquiesces in, any breach of any representation, warranty, or agreement herein, nor shall any single or partial exercise of any such right preclude other or further exercise thereof or of any other right. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

**Section 7.13 Records.** During the term of this Agreement, each Party shall keep such books, records and accounts as are reasonably necessary to verify the calculation of the amounts due and payable hereunder. Hightimes will keep detailed records regarding Advertising Services provided and Advertising Credits used. Each Party shall have the right to review such books, records, and accounts at any time during normal business hours upon reasonable written notice, and each Party agrees to conduct any such review in a manner so as not to unreasonably interfere with the other Party's normal business operations.

**Section 7.14 Interpretation.** The headings contained in this Agreement and in any table of contents to this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. When a reference is made in this Agreement to an *Article* or Section, such reference shall be to an *Article* or Section of this Agreement unless otherwise indicated, or unless context so requires.

**Section 7.15 Internal References.** Unless context indicates otherwise, references to *Articles*, Sections, and paragraphs shall refer to the corresponding *Articles*, Section, and paragraphs in this Agreement.

*[Remainder of page intentionally left blank; signature page follows]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized representatives.

For: **HIGHTIMES HOLDING CORP.**

By: \_\_\_\_\_  
Name: Adam E. Levin  
Title: Chief Executive Officer

Dated: September \_\_, 2018

For: **TRANS-HIGH CORPORATION**

By: \_\_\_\_\_  
Name: Adam E. Levin  
Title: Chief Executive Officer

Dated: September \_\_, 2018

For: **SPECTRUM KING, LLC**

By: \_\_\_\_\_  
Name: Rami Vardi  
Title: Chief Executive Officer

Dated: September \_\_, 2018

This Agreement is approved by the undersigned  
in our capacity as Majority Members of Spectrum  
King, LLC:

\_\_\_\_\_  
Rami Vardi

\_\_\_\_\_  
David Zemach

Signature Page to  
Strategic Investment Agreement by and among  
Hightimes Holding Corp.,  
Trans-High Corporation, and  
Spectrum King, LLC

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**EXHIBIT A**  
**Advertising Fee Schedule**

1. PREMIER SPONSOR AT 10 EVENTS PER ANNIVERSARY PERIOD
  - 1.1. FULL PRICE \$24,000 PER EVENT
  - 1.2. Spectrum King Price for 10 events is \$24,000 per event.  $10 \times \$24,000 = \$240,000$ .
  
2. Two FULL PAGE ADS IN EVERY ISSUE
  - 2.1. FULL PRICE \$6,000 PER ISSUE
  - 2.2  $12 \times \$6,000 = \$72,000$
  
3. DIGITAL ADVERTISING PACKAGE EVERY MONTH
  - 3.1. SOCIAL MEDIA PACKAGE EVERY MONTH
  - 3.2. EMAIL BLAST EVERY MONTH
  - 3.3. BANNER AD PACKAGE EVERY MONTH
  - 3.4. FULL PRICE \$14,500 PER MONTH
    - 3.4.1.  $12 \times \$14,500 = \$174,000$
  
4. Total Revised Marketing Charges by HT to SK
  - 4.1. 10 Events + 2 full pages a month + Digital Advertising
  - 4.2.  $\$240,000 + \$72,000 + \$174,000 = \$486,000$

Subject to the \$500,000 budget per Anniversary Period, Spectrum King shall have the right to elect to reduce the number of events it attends and increase full page ads or digital advertising, or vice-versa.

**EXHIBIT B**  
**Second Amended and Restated Spectrum Operating Agreement**

**AMENDED AND RESTATED**  
**OPERATING AGREEMENT**

for

**Spectrum King, LLC**

This Amended and Restated Operating Agreement (“Agreement”) is entered into effective as of October 6, 2017 (“Effective Date”), by and among the persons who are signatories to the Agreement as it may be amended from time to time amends and restates the Operating Agreement dated July 1, 2016.

The Agreement shall govern the relationship among the persons as Members of the Company and between the Company and the persons as Members, pursuant to the LLC Act, as defined in Section 1.1, below, and the Articles of Organization (the “Articles”), as either may be amended from time to time.

NOW, THEREFORE in consideration of their mutual promises, covenants, and agreements, the parties as signatories to the Agreement do hereby promise, covenant, and agree as follows.

**ARTICLE I**  
**DEFINITIONS**

1.1 **Defined Terms.** As used in this Agreement, including the preamble hereto, the following terms have the respective meanings set forth below:

“Adjusted Capital Account” means, with respect to any Member, such Member’s Capital Account as of the date of determination, after crediting to such Capital Account any amounts that the Member is obligated to restore (to the extent recognized under Treasury Regulations Section 1.704-1(b)(2)(ii)(c)) and debiting to such Economic Capital Account the items described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6). The foregoing definition Adjusted Capital Account and the relevant provisions of Article V are intended to comply with the provisions of Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted and applied consistently therewith.

“Affiliate” means with respect to a Person, any other Person that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the specified Person. As used in this Agreement, the term “Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise. Ownership of more than fifty percent (50%) of the beneficial interests of an entity shall be conclusive evidence that “control” exists. For purposes of this definition, “Affiliate” shall include, with respect to any natural Person, (a) the spouse, parents, siblings and children of such Person and (b) any Trust of which such Person is a beneficiary.

“Agreement” has the meaning set forth in the preamble of this Agreement.

“Bankruptcy” means the happening of any of the following: (a) the making of a general assignment for the benefit of creditors; (b) the filing of a voluntary petition in bankruptcy or the filing of a pleading in any court of record admitting in writing an inability to pay debts as they become due; (c) the entry of an order, judgment or decree by any court of competent jurisdiction adjudicating the Company or a Member to be bankrupt or insolvent; (d) the filing of a voluntary petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation; (e) the filing of an answer or other pleading admitting the material allegations of, or consenting to, or defaulting in answering, an involuntary bankruptcy petition filed against the Company or a Member in any bankruptcy proceeding; (f) the filing of a voluntary application or other pleading or any action otherwise seeking, consenting to or acquiescing in the appointment of a liquidating trustee, receiver or other liquidator of all or any substantial part of the Company’s or a Member’s properties; (g) the commencement against the Company or a Member of any proceeding seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation which has not been quashed or dismissed within one hundred eighty (180) days; or (h) the appointment without consent of the Company or such Member or acquiescence in the appointment of a liquidating trustee, receiver or other liquidator of all or any substantial part of the Company’s or a Member’s properties without such appointment being vacated or stayed within ninety (90) days and, if stayed, without such appointment being vacated within ninety (90) days after the expiration of any such stay.

“Business Day” means any day on which banks located in California are not required or authorized by law to remain closed.

“Capital Account” has the meaning set forth in Section 5.1.

“Capital Contributions” means, with respect to any Member, the amount of money or other property contributed to the Company with respect to the Membership Interest in the Company held or purchased by such Member, including additional Capital Contributions.

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

“Company” shall mean the limited liability company, Spectrum King, LLC, created pursuant to this Agreement.

“Company Opportunity” means an opportunity directly related to the manufacturer and sale of LED lights designed to be used in agricultural facilities.

“Dispute” has the meaning set forth in Section 10.9.

“Dissolution Event” has the meaning set forth in Section 8.1.

“Distributions” has the meaning set forth in Section 6.1.

“Economic Capital Account” means, with respect to any Member, such Member’s Capital Account as of the date of determination, after crediting to such Capital Account any amounts that the Member is deemed obligated to restore under Treasury Regulations Section 1.704-2.

“Economic Units” are the units in the Company which are used to calculate the Membership Interest and voting rights of each Member. The Company will initially have one class of Economic Units and is authorized to issue different classes of Economic Units that may be treated differently in the allocation of profits, losses, distributions and voting rights.

“Effective Date” has the meaning set forth in the preamble of this Agreement.

“Fair Market Value” means, with respect to any Member’s Membership Interest, the value of such Membership Interest as determined by mutual agreement of the Member and the party or parties purchasing the Interest. If no such amount is mutually agreed to within thirty (30) days of the applicable determination period, then the Fair Market Value of the relevant Membership Interest shall be the price at which a willing seller would sell and a willing buyer would buy, the Membership Interest, free and clear of all liens, security interests, or other encumbrances, in an arm’s length transaction for cash, without time constraints, without being under any compulsion to buy or sell, and without any minority interest discount, discount attributable to transfer restrictions, or control premium, as determined by an independent valuation conducted by a third party independent accounting firm or appraiser chosen by the parties.

“Fiscal Year” means the fiscal year of the Company, as determined by the Members. Unless and until otherwise determined by the Members in accordance with this Agreement, the Fiscal Year shall be the same as the calendar year.

“Founding Members” shall mean Rami Vardi and David Zemach.

“Liquidating Agent” means the Person appointed by the Members to oversee the winding up and liquidation of the Company in accordance with Article VIII.

“LLC Act” means the State of Delaware Limited Liability Company Act, as the same may be amended from time to time, and any successor statute thereto.

“Majority-In-Interest” shall mean the vote or consent of a majority of the Members in accordance with their Membership Interests.

“Managers” shall mean the Persons listed on the signature page of this Agreement or otherwise determined by the Members in accordance with Section 3.1(a).

“Member” means any Person who (a) is referred to as such on Schedule A to this Agreement as of the Effective Date, (b) has been admitted as a Member subsequent to the Effective Date by unanimous vote of the Members, or (c) has become a Substitute Member pursuant to the terms of this Agreement, in each case so long as such Person has not ceased to be a Member.

“Membership Interest” means, with respect to any Member as of any date, the economic interest of such Member as set forth on Schedule A attached hereto representing the ownership interest of such Member, including any and all benefits to which such Member may be entitled as provided in this Agreement, together with all obligations of such Member to comply with the terms and provisions of this Agreement. Initially, Members shall have Voting Rights equal to their Membership Interest.

“Net Distributable Proceeds” means, with respect to any relevant period, net cash proceeds realized by the Company from all its operations (including but not limited to (i) revenues of all kinds and (ii) principal payments received on any loan made by the Company, after allowances for taxes and all reasonable operating expenses, including but not limited to management fees.

“Permitted Transferee” means (a) a Member, or (b) an Affiliate of a Member.

“Person” means any individual, entity, corporation, company, partnership, limited liability company, limited liability partnership, association, joint-stock company, trust, unincorporated organization, or government entity, committee, department, authority, or any body, incorporated or unincorporated, whether having distinct legal personality or not.

“Right of First Refusal” has the meaning set forth in Section 7.4. “Substitute Member” has the meaning set forth in Section 7.4. “Term” has the meaning set forth in Section 2.5.

“Transfer” means any transfer, assignment, sale, conveyance, hypothecation, license, lease, partition, pledge, or grant of a security interest in all or any part of a Member’s Membership Interest in the Company, and includes any “involuntary transfer” such as a sale of any part of such Membership Interest in connection with any Bankruptcy or similar insolvency proceedings, the death of a Member, a divorce or other marital settlement involving any Member, or any other disposition or encumbrance of a Member’s Membership Interest.

“Treasury Regulations” means the Regulations of the Treasury Department of the United States issued pursuant to the Code, as such Regulations may be amended from time to time.

**1.2 Interpretation.** When a reference is made in this Agreement to an Article, Section or Schedule, such reference shall be to an Article or Section of, or a Schedule to, this Agreement unless otherwise indicated. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.” The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term.

**1.3 Discretion.** Whenever in this Agreement a Person is permitted or required to make a decision (a) in its “sole discretion” or “discretion” or under a grant of similar authority or latitude, such Person shall be entitled to consider only such interests and factors as it desires, including its own interests, or (b) in its “good faith” or under another expressed standard, such Person, shall act under such express standard and shall not be subject to any other or different standard imposed by any other agreement or by relevant provisions of law or in equity or otherwise.

**ARTICLE II**  
**ORGANIZATIONAL MATTERS**

2.1 **Formation.** The Company was formed on November 21, 2014 in accordance with the provisions of the LLC Act. The parties to this Agreement hereby enter into an Amended and Restated Operating Agreement pursuant to the Delaware Limited Liability Company Act (the "Act"), to set forth the terms and conditions of their joint undertaking as Members of the Company, and to carry out the purposes of the Company as further described herein, in accordance with the provisions of this Agreement and the laws of the State of Delaware.

2.2 **Name.** The name of the Company is Spectrum King, LLC. The Company's business shall be conducted under said name, until such time as Members shall designate otherwise and file amendments to the Articles in accordance with the Articles and the Act.

2.3 **Offices & Registered Agent.** The name of the registered agent of the Company is Registered Agents, Inc. The principal office of the Company shall be located at 7751 Alabama Avenue, Canoga Park, CA 91304. The Company may maintain such other registered agent, registered office, or principal place of business and designate any places of business as the Manager may from time to time determine.

2.4 **Character of Business; Purposes; Powers.** The Company may engage in any and all lawful activities as the Manager deems necessary or advisable.

2.5 **Term.** The term of the Company shall commence on the date of formation and shall continue until the Company is dissolved in accordance with Article VIII.

**ARTICLE III**  
**MANAGEMENT AND CONTROL OF THE COMPANY**

3.1 **Management Structure.** All business and affairs of the Company shall be managed under the direction of one or more Managers. A Manager need not be a Member of the Company.

(a) **Election of Managers.** The Managers shall be elected by the affirmative vote or written consent of a Majority-In-Interest of the Members. In the event that a Manager dies, resigns, or is removed from office in accordance with this Agreement, the Members shall promptly elect a successor Manager by a Majority-In-Interest. The initial Managers shall be Rami Vardi, David Zemach and Stephen Brent.

(b) **Removal of Managers.** Any Manager may be removed with or without cause by Members holding a Majority-In-Interest at a meeting called expressly for that purpose with notice to the Manager as required by the Act.

### 3.2 Powers of the Managers.

(a) Subject to the terms of Section 3.2(b), the Managers shall have complete and exclusive control of the management and conduct of the business of the Company and the authority to do all things necessary or appropriate to carry out the purpose of the Company without any further act, vote or approval of the Members.

(b) The consent of a Majority-In-Interest of the Members is required to do any of the following: (i) sell the Company, or substantially all of the assets of the Company, to a third party; (ii) file a petition in bankruptcy for the benefit of the Company, (iii) suspend or cease the business operations of the Company, (iv) close down or wind up the business of the Company, (v) make a general assignment for the benefit of creditors on behalf of the Company, or (vi) allow one or more Members to take advantage of a Company Opportunity.

**3.3 Duties of the Managers.** Each Manager shall devote to the affairs of the Company such time as may be reasonably necessary to carry out his obligations hereunder. Each Manager shall perform his duties as a Manager in good faith, in a manner he reasonably believes to be in the best interests of the Company, and with such care as an ordinarily prudent Person in a like position would use under similar circumstances. A Manager who so performs his duties shall not have any liability by reason of being or having been a Manager of the Company. To the extent that, at law or in equity, a Manager has duties and liabilities relating to the Company or to the Members, such Manager shall not be liable to the Company or any Member for his good faith reliance on the provisions of this Agreement. The provisions of this Agreement, to the extent that they expressly restrict the duties and liabilities of a Manager otherwise existing at law or in equity, are agreed by the Members to replace, to the extent permitted by law, such other duties and liabilities of such Manager.

**3.4 Liability for Certain Acts.** Each Manager shall exercise his powers and discharge his duties in good faith with a view to the interests of the Company and its Members with the degree of diligence, care and skill that ordinary prudent Persons would exercise under similar circumstances in like positions. A Manager who so performs the duties as Manager shall not have any liability by reason of being or having been a Manager of the Company.

**3.5 Managers and Members Have No Exclusive Duty to Company.** No Manager of the Company shall be required to manage the Company as his or her sole and exclusive function and he or she may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Agreement, to share or participate in such other investments or activities of a Manager or to the income or proceeds derived therefrom. The Manager shall not incur any liability to the Company or to any of the Members as a result of engaging in any other business or venture without the consent of the Managers.

**3.6 Indemnity of the Managers, Officers, Employees and Other Agents.** The Company shall indemnify the Managers and officers and make advances for expenses to the maximum extent permitted under the Act, except to the extent otherwise indemnifiable claims arise from fraudulent conduct or a knowing violation of law on the part of a Manager or officer. The Company shall obtain liability insurance, from insurers and in amounts deemed prudent by the Managers, in their discretion, to cover such indemnifiable claims, with the Managers and officers named as additional insureds. The Company shall indemnify its employees and other agents who are not managers or officers to the fullest extent permitted by law, provided that such indemnification in any given situation is first approved by the Managers. The right to indemnification under this Section shall be fully vested with respect to any matter occurring while this Section was in effect. No amendment of this Section shall have any retroactive effect except as to enhance such right for the benefit of the indemnitees.

**3.7 Resignation.** Any Manager of the Company may resign at any time by giving written notice to the Members. The resignation of any Manager shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal of a Member.

**3.8 Meetings of the Managers.** Meetings of the Managers may be called by any Manager. Notice of each such meeting shall be given to each Manager by telephone, electronic mail, or similar method (in each case, notice shall be given at least forty-eight (48) hours before the time of the meeting) or sent by first class mail (in which case notice shall be given at least five (5) days before the meeting). Any action required to be taken at a meeting of the Managers, or any action that may be taken at a meeting of the Managers, may be taken at a meeting held by means of telephone conference or other communications equipment by means of which all Persons participating in the meeting can hear each other. Notwithstanding anything to the contrary in this Section 3.8, the Managers may take, without a meeting, any action that may be taken by the Managers under this Agreement if such action is approved by the unanimous written consent of the Members or Managers.

### **3.9 Officers.**

(a) **Election of Officers.** Each officer shall hold office for the term for which he or she is elected until his successor has been elected. Any individual may hold any number of offices. An officer need not be a Member. No officer of the Company shall have any rights or powers beyond the rights and powers granted to such officers in this Agreement.

(i) **President and Chief Executive Officer.** At all times during the Term, a Member who is a natural Person shall serve as President and Chief Executive Officer ("President") of the Company. The President shall be responsible for, and shall have the authority to make decisions for all matters related to the day-to-day operations of the Company. Rami Vardi shall be the initial President and Chief Executive Officer.

(ii) **Other Officers.** In addition to the President, the Managers may appoint such other officers as it may deem advisable from time to time. Each such officer shall hold office for such period, have such authority, and perform such duties as the Managers may from time to time determine, subject to the terms of this Agreement. Stephen Brent shall be the initial Chief Operating Officer.

(b) **Removal.** Any officer of the Company may be removed, with or without cause, at any time by the Managers of the Company upon whom such power of removal may be conferred by the Managers.

(c) **Resignations.** Any officer may resign at any time by giving written notice of his or her resignation to the Managers. Any such resignation shall take effect at the time specified therein, or, if the time is not specified, upon receipt of notice thereof by the Managers; and, unless otherwise specified in such notice, the acceptance of such resignation shall not be necessary to make it effective.

(d) **Vacancies.** A vacancy in any office because of death, resignation, removal, disqualification or other cause may be filled for the unexpired portion of the term thereof by the Managers.

(e) **Determination of Salaries of Officers.** The salaries of all officers and agents of Company shall be fixed by a resolution of the Managers at a meeting of the Managers.

#### **ARTICLE IV** **THE MEMBERS AND CAPITAL CONTRIBUTIONS**

**4.1 Members and Interests.** Each Member shall have the ownership rights reflected in the Membership Interests as recorded in Schedule A in effect from time to time. Immediately upon the occurrence of any of the following events, Schedule A shall be deemed amended, and shall be physically amended by the Managers, to reflect the interest and any capital contribution of any new Member, additional Member, or Substitute Member:

(a) a Membership Interest is Transferred to a new Member pursuant to this Agreement, or

(b) an additional Member is admitted to the Company pursuant to this Agreement, or

(c) a Substitute Member obtains a Membership Interest in the Company pursuant to this Agreement, or

(d) a Member Transfers all or part of his, her or its Membership Interest to another Member pursuant to the terms of this Agreement.

#### **4.2 Voting by Members; Consent to Action.**

(a) **Voting by Members.** Members shall be entitled to vote on any and all matters which provide for a vote of the Members in accordance with each Member's Membership Interest.

(b) **Majority Required.** Except as otherwise provided and delegated to the officers or Managers, a majority of the Members, based upon their Membership Interest, is required for any action.

(c) **Meetings - Written Consent.** Action of the Members or officers may be accomplished with or without a meeting. If a meeting is held, evidence of the action shall be by minutes or resolution reflecting the action of the meeting, signed by a majority of the Members, or the President and Secretary. Action without a meeting may be evidenced by a written consent signed by a Majority-In-Interest of the Members.

(d) **Meetings.** Meetings of the Members may be called by any Member owning 10% or more of the Company, or by any Manager or officer of the Company.

(e) **Majority Defined.** As used throughout this Agreement the term “majority” of the Members shall mean a majority of the Membership Interests in the Company as determined by the records of the Company on the date of the action.

**4.3 Members Are Not Agents .** Pursuant to Article III, the management of the Company is vested in the Managers and officers. The Members shall have no power to participate in the management of the Company except as expressly authorized by this Agreement or as expressly required by the LLC Act. No Member, acting solely in the capacity of a Member, is an agent of the Company nor does any Member, unless expressly and duly authorized in writing to do so by the Managers, have any power or authority to (a) bind or act on behalf of the Company in any way, (b) pledge its credit, (c) execute an instrument on its behalf, or (d) render it liable for any purpose. No Member shall owe any duty or obligation to the Company or the other Members solely by being a Member of the Company, except as expressly provided herein.

**4.4 Member Liability.** No Member shall be liable under a judgment, decree, or order of a court, or in any other manner, for the debts or any other obligations or liabilities of the Company. A Member shall be liable only to make its Capital Contributions and shall not be required to restore a deficit balance in its Capital Account or to lend any funds to the Company or, after its Capital Contributions have been made, to make any additional contributions, assessments, or payments to the Company except as required by the express terms of this Agreement.

**4.5 Transactions Between a Member and the Company.** Except as otherwise provided by applicable law, upon the consent of all Managers, any Member may, but shall not be obligated to, lend money to the Company, act as surety for the Company, and transact other business with the Company and has the same rights and obligations when transacting business with the Company as a Person or entity who is not a Member; provided that the terms of any such transaction shall be comparable to those negotiated by unrelated parties on an arm’s length basis (as determined by the Managers). A Member, any Affiliate thereof or an employee, stockholder, agent, director, manager, member, or officer of a Member or any Affiliate thereof, may also be a Manager, officer, employee, or agent of the Company. The existence of these relationships and acting in such capacities will not result in the Member being deemed to be participating in the control of the business of the Company or otherwise affect the limited liability of the Member.

**4.6 Confidentiality.** In connection with the terms hereof, each Member may obtain access to the Company's confidential information including, without limitation, information pertaining to the Company's current and future business plans, corporate opportunities, operations, acquisition, merger or sale strategies, production, product development, product names and marks, marketing, cost and pricing structure, margins, profitability, operation or production procedures or results, partners, partnership or other business arrangements or agreements with third parties, customers, customer sales volumes, customer contracts, books, records and documents, technical information, equipment, services and processes (collectively, "Confidential Information"). In addition, each Member may have access to and the opportunity to develop business relationships with the Company's customers, clients, vendors and partners with whom the Company has developed goodwill and to which each Member would not otherwise have access (collectively, "Company Relationships"). Each Member acknowledges that the Company's business is highly competitive and that the Confidential Information and opportunity to develop relationships with Company customers, clients, vendors or partners promised by the Company are valuable, special, and unique assets of the Company which the Company uses in its business to obtain a competitive advantage over the Company's competitors that do not know or use this information. Each Member further acknowledges that protection of the Confidential Information and Customer Relationships against unauthorized disclosure and use is of critical importance to the Company in maintaining its competitive position. Accordingly, each Member hereby agrees that each Member will not, at any time during or after ownership of a Member Interest, make any unauthorized disclosure of any Confidential Information or make any use thereof or of the Customer Relationships, except (a) for the benefit of, and on behalf of, the Company or (b) as required to be disclosed pursuant to legal process (e.g., a subpoena), provided that each Member notifies the Company immediately upon receiving or becoming aware of the legal process in question so that the Company may have the opportunity to seek a protective or other order to restrict or prevent such disclosure.

#### **4.7 Capital Contributions.**

(a) **Initial Capital Contributions.** As provided in the Articles or the Agreement, Members shall make the initial Capital Contributions in the form of money, property (including promissory notes) or services rendered or to be rendered or other obligation to contribute money or property or to render services.

(b) **Additional Contribution.** In the event that at any time funds in excess of (i) Capital Contributions made by the Members, (ii) available loan proceeds from lending institutions, (iii) loans from Members, and (iv) other receipts of the Company, are required to pay all or any part of the operating costs, obligations, liabilities or expenditures of the Company or to pay all or any part of the interest and principal due under any loan made to or for the benefit of the Company, then upon approval of the Managers, each Member may but shall not be required to contribute to the capital of the Company his proportionate share of such required additional funds. Each Member's share of such required additional funds shall be in accordance with and pro rata in proportion to such Member's percentage of Membership Interest in the Company.

**ARTICLE V**  
**CAPITAL ACCOUNTS AND CAPITAL CONTRIBUTIONS**

**5.1 Capital Accounts.** A separate capital account (each, a “Capital Account”) shall be maintained for each Member in accordance with the rules of Treasury Regulations Section 1.704- 1(b)(2)(iv), and this Section 5.1 shall be interpreted and applied in a manner consistent therewith. Whenever the Company would be permitted to adjust the Capital Accounts of the Members pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(f) to reflect revaluations of Company property the Company may so adjust the Capital Accounts of the Members, and the Company shall so adjust the Capital Accounts when so permitted in connection with (and as of) any withdrawal or removal of a Member. If the Capital Accounts of the Members are adjusted pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(f) to reflect revaluations of Company property, (a) the Capital Accounts of the Members shall be adjusted in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g) for allocations of depreciation, depletion, amortization and gain or loss, as computed for book purposes, with respect to such property, (b) the Members’ distributive shares of depreciation, depletion, amortization and gain or loss, as computed for tax purposes, with respect to such property shall be determined so as to take account of the variation between the adjusted tax basis and book value of such property in the same manner as under Code Section 704(c) and (c) the amount of upward and/or downward adjustments to the book value of the Company property shall be treated as income, gain, deduction and/or loss for purposes of applying the allocation provisions of this Article V. If Code Section 704(c) applies to Company property, the Capital Accounts of the Members shall be adjusted in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g) for allocations of depreciation, depletion, amortization and gain and loss, as computed for book purposes, with respect to such property.

**5.2 Capital Account Adjustments.**

(a) In furtherance and not in limitation of the provisions of Section 5.1, the following adjustments shall be made to the Capital Accounts of the Members if and to the extent required by the Treasury Regulations promulgated under Code Section 704(b):

(b) Any Member that is a disregarded entity for federal income tax purposes and is treated as the same taxpayer (or part of the same taxpayer) as any other Member shall be treated as a single Member. Such Members shall be treated as distinct and separate Members for all other purposes of this Agreement.

(c) Any fees, expenses or other costs of the Company that are paid by a Member and that are required to be treated as capital contributions to the Company for purposes of Code Section 704(b) and the Treasury Regulations thereunder shall be added to the balance of the Member’s Capital Account. Any fees, costs or other expenses of a Member that are paid by the Company and that are required to be treated as distributions for purposes of Code Section 704(b) and the Treasury Regulation thereunder shall be so treated and subtracted from such Member’s Capital Account, and the Company’s payment thereof shall not be treated as an item of deduction or loss. This Section 5.2(b), in conjunction with Section 5.3 is intended to prevent any payments by a Member or the Company from giving rise to a violation of Code Section 704(b) while at the same time preserving to the extent possible the parties’ intended economic arrangement and shall be applied consistently with such intent.

**5.3 Allocation of Income and Loss.** After application of Section 5.5, and subject to Section 5.4 and the other provisions of this Article V, any remaining items of income, gain, loss or deduction shall be allocated among the Members and to their Capital Accounts in such ratio or ratios as may be required to cause the balances of the Members' Economic Capital Accounts to be as nearly equal to their target balances as possible, consistent with the provisions of Section 5.7.

**5.4 Loss Limitation.** No allocation of net loss shall be made pursuant to Section 5.3 to the extent that it causes or increases a deficit balance in any Member's Adjusted Capital Account.

**5.5 Minimum Gain Chargebacks, Non-Recourse Deductions and Qualified Income** Prior to making the allocations required by Section 5.3, the Company shall make the following special allocations. Notwithstanding any other provisions of this Agreement, if there is a net decrease in Company Minimum Gain during a taxable year, the Members shall be allocated items of income and gain in accordance with Treasury Regulations Section 1.704-2(f). For purposes of this Agreement, the term "Company Minimum Gain" shall have the meaning set forth in Treasury Regulations Section 1.704-2(b)(2), and any Member's share of Company Minimum Gain shall be determined in accordance with Treasury Regulations Section 1.704-2(g)(1). This Section 5.5(a) is intended to comply with the minimum gain chargeback requirement of Treasury Regulations Section 1.704-2(f) and shall be interpreted and applied in a manner consistent therewith.

(a) Nonrecourse deductions shall be allocated to the Members, pro rata, in proportion to their Membership Interests. "Nonrecourse deductions" shall have the meaning set forth in Treasury Regulations Section 1.704-2(b)(1).

(b) Notwithstanding any other provisions of this Agreement, to the extent required by Treasury Regulations Section 1.704-2(i), any items of income, gain, loss or deduction of the Company that are attributable to a nonrecourse debt of the Company that constitutes "partner nonrecourse debt" as defined in Treasury Regulations Section 1.704-2(b)(4) (including chargebacks of partner nonrecourse debt minimum gain) shall be allocated in accordance with the provisions of Treasury Regulations Section 1.704-2(i). This Section 5.5(c) is intended to satisfy the requirements of Treasury Regulations Section 1.704-2(i) (including the partner nonrecourse debt minimum gain chargeback requirements) and shall be interpreted and applied in a manner consistent therewith.

(c) Any Member who unexpectedly receives an adjustment, allocation or distribution described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) that causes or increases a deficit balance in its Adjusted Capital Account shall be allocated items of income and gain in an amount and a manner sufficient to eliminate, to the extent required by Treasury Regulations Section 1.704-1(b)(2)(ii)(d), such deficit balance as quickly as possible.

**5.6 Elections.** Any decisions relating to allocations of items of income, gain, loss, deduction or credit or with respect to tax matters shall be made by the Managers.

**5.7 Code Section 704(b) Compliance.** The allocation provisions contained in this Article V are intended to comply with Code Section 704(b) and the Treasury Regulations promulgated thereunder, and shall be interpreted and applied in a manner consistent therewith. Items of income, gain, deduction and loss for federal income tax purposes shall be allocated in the same manner as the corresponding items are allocated for book purposes pursuant to this Article V except as otherwise required by Code Section 704(c) or Section 5.1.

## **ARTICLE VI DISTRIBUTIONS**

**6.1 General.** Distributions of assets with respect of a Membership Interest in Company shall be made only to the Members who, according to the books and records of Company, are the holders of record of the interests in respect of which such Distributions are made on the actual date of Distribution. Neither Company nor any Manager shall incur any liability for making Distributions in accordance with the provisions of the preceding sentence, whether or not Company or the Manager has knowledge or notice of any transfer or purported transfer of ownership of Interest in Company which has not been approved by unanimous vote of Members.

**6.2 Distribution of Available Cash .** Subject to the provisions of 6.3 and any limitations found elsewhere in the Agreement and under law, the Managers may, but are not required to, distribute any available funds among Members, annually or at more frequent intervals, in accordance with their respective Membership Interests set forth in Schedule A. Available funds, as referred to herein, shall mean the net cash of the Company available after appropriate provision for expenses and liabilities, as determined by the Managers.

**6.3 Tax Distribution.** In the event the Company has allocated to Members sufficient profits (net of previously allocated losses) such that Members in a given calendar year or quarter will likely be subject to federal and/or state income tax liabilities arising from such allocations, the Company shall distribute to the Members sufficient cash to defray the anticipated tax liability of each holder of Membership Interests, applying an assumed marginal tax rate of not less than 40% nor more than 45% as the Managers may elect.

**6.4 Limitation of Rights to Distribution.** No Member shall be entitled to any Distribution from Company until Company actually makes the Distribution. Unless otherwise required by the Act, no Member shall have the right to demand that any Distribution be paid in any form other than cash.

## **ARTICLE VII TRANSFER OF MEMBERSHIP INTERESTS**

**7.1 Transfer Restrictions.** No Member may Transfer all or any part of its Membership Interest unless such Transfer is made in accordance with the conditions set forth in this Article VII. If a Member Transfers or attempts to Transfer all or any part of its Membership Interest in violation of this Agreement, such Transfer shall be null and void and of no force or effect whatsoever, and the parties engaging or attempting to engage in such Transfer shall be liable to indemnify and hold harmless the Company and the other Members from all costs, liabilities, and damages that any of such indemnified Members may incur (including, without limitation, incremental tax liabilities, attorneys' fees, and expenses) as a result of such Transfer or attempted Transfer and efforts to enforce the indemnity granted hereby.

**7.2 Permitted Transfer.** Any permitted transfer of all or any portion of a Membership Interest in Company will take effect on the first day of the month following receipt by the Members of written notice of Transfer. Any transferee of a Membership Interest in Company shall be subject to the restrictions on Transfer imposed by the Agreement.

**7.3 General Conditions to Permitted Transfer.**

(a) **Requirements for Transfer.** No Transfer of an interest permitted by the terms of this Agreement shall be effective unless:

(i) the transferee shall have satisfied the provisions of Section 7.1

(ii) the transferee shall accept and adopt in writing, by an instrument in form and substance satisfactory to the Manager(s), all of the terms and provisions of this Agreement, as the same may be amended from time to time, and shall have expressly assumed all of the obligations of the transferring Member relating to the Transferred Interest.

(iii) the transferee shall pay all filing, publication and recording fees, all transfer and stamp taxes, if any, and all reasonable expenses, including, without limitation, reasonable counsel, accountant, and/or appraisal fees and expenses incurred by the Company in connection with such transaction;

(iv) the transferee shall execute such other documents or instruments as counsel to the Company may require (or as may be required by law) in order to effect the admission of such person as a Member;

(v) the transferee shall execute a statement that it is acquiring the Interest for his, her or its or its own account for investment and not with a view to the resale or Distribution thereof;

(vi) if required by the Manager(s), the Company receives an opinion of responsible counsel (who may be counsel for the Company), in form and substance satisfactory to the Manager(s), that such Transfer does not violate federal or state securities laws or any representation or warranty of such transferring Member given in connection with the Transfer of his, her or its Interest; and

(vii) if required by the Manager(s), counsel to the Company delivers to the Company an opinion that such Transfer (a) will not result in a termination of the Company under Section 708 of the Code; and (b) will not cause the Company to lose its status as a partnership for United States federal income tax purposes.

#### 7.4 Right of First Refusal.

(a) **Notice of Bona Fide Offer.** Any intent to Transfer Membership Interest must be made in writing and delivered in person or via certified mail to the non-transferring Member(s) ("Transfer Notice"). Each Transfer Notice shall contain all material terms of the proposed transfer, including, without limitation, a copy of the written offer received (if any), the name and address of the prospective transferee, the price and terms of payment, and the amount of membership interest proposed to be transferred.

(b) **Election Period.** The non-transferring Member(s) shall have ninety days (90) from the date of receipt of the written notice to purchase all or any of the Membership Interest at the same price and subject to the same material terms and conditions as described in the Transfer Notice.

(c) **Election of Right.** The non-transferring Member(s) shall notify the transferring Member of his decision in writing and deliver said writing in person or via certified mail.

(d) **Non-Election of Right.** In the event remaining Member(s) does not elect to acquire the interest specified in the selling Member's notice, the remaining Member(s) shall have the right to: (1) evaluate the proposed purchaser, including but not limited to the proposed purchaser's creditworthiness and financial stability, criminal background, and employment history; and, (2) meet the proposed purchaser in order to ensure that the proposed purchaser is an appropriate fit for the Company. Although the remaining Members shall not unreasonably withhold consent of a proposed purchaser, the remaining Member(s) shall have the right to decline approval of a proposed purchaser for good cause.

### **ARTICLE VIII DISSOLUTION AND TERMINATION OF THE COMPANY**

8.1 **Dissolution.** There will be a dissolution of the Company, and its affairs shall be wound up, upon the first to occur of any of the following events (each, a "Dissolution Event"):

(a) The unanimous election by the Managers to dissolve the Company as of the last Business Day of the Fiscal Year in which all Company assets have been sold or otherwise disposed;

(b) The unanimous election of the Managers to dissolve the Company upon the happening of any event that makes it unlawful, impossible or impracticable to carry on the Company's activities, as determined by the Managers; or

(c) Any other event which causes dissolution under the LLC Act.

8.2 **Bankruptcy, Dissolution or Withdrawal of a Member.** The Bankruptcy, dissolution, death or withdrawal of a Member shall not in and of itself dissolve or terminate the Company.

**8.3 Winding Up; Liquidation of Assets.** Upon the dissolution of the Company, the Liquidating Agent shall proceed, subject to the provisions of this Article VIII, to make a final allocation of all items of income, gain, loss, and expense in accordance with Article VI hereof, and the Company's liabilities and obligations to its creditors shall be paid or adequately provided for prior to any distributions to the Members. After payment or provision for the payment of all liabilities and obligations of the Company, the remaining assets, if any, shall be distributed among the Members in accordance with Section 6.1.

**8.4 Distributions in Cash or in Kind.** Upon the dissolution of the Company, the Liquidating Agent shall use commercially reasonable efforts to liquidate all of the Company's assets in an orderly manner and apply the proceeds of such liquidation as set forth in Section 8.3; provided that if in the good faith judgment of the Liquidating Agent a Company asset should not be liquidated, the Liquidating Agent shall allocate, on the basis of the value of any Company assets not sold or otherwise disposed of, any unrealized gain or loss based on such value to the Members' Capital Accounts as though the assets in question had been sold on the date of distribution and, after giving effect to any such adjustment, distribute said assets in accordance with Section 6.1, subject to the priorities set forth in Section 8.3; and provided, further, that the Liquidating Agent will in good faith attempt to liquidate sufficient Company assets to satisfy in cash (or make reasonable provision for) the debts and liabilities referred to in Section 8.3.

**8.5 Time for Liquidation.** A reasonable time period shall be allowed for the orderly winding-up and liquidation of the assets of the Company and the discharge of liabilities to creditors so as to enable the Liquidating Agent to seek to minimize potential losses upon such liquidation. The provisions of this Agreement shall remain in full force and effect during the period of winding up and until the filing of a certificate of cancellation of the Certificate of Formation with the Secretary of State of the State of Delaware.

**8.6 Termination.** Upon completion of the foregoing, the Liquidating Agent shall execute, acknowledge, and cause to be filed a certificate of cancellation of the Certificate of Formation with the Secretary of State of the State of Delaware.

## **ARTICLE IX**

### **ACCOUNTING, RECORDS AND REPORTING**

**9.1 Accounting Decisions.** Managers shall make all decisions as to accounting matters, except as otherwise specifically set forth herein. Managers may rely upon the advice of the independent accountants of the Company as to whether such decisions are in accordance with accounting methods followed for federal income tax purposes.

**9.2 Maintenance of Books and Records.** Managers shall cause the books and records of Company to be kept, and the financial position and the results of its operations recorded, in accordance with the accounting methods followed for federal income tax purposes. The books and records of Company shall reflect all Company transactions and shall be appropriate and adequate for Company's business. The fiscal year of Company for financial reporting and for federal income tax purposes shall be the calendar year.

9.3 **Access to Accounting Records**. Managers shall cause all books and records of Company to be maintained at any office of Company or at Company's principal place of business, and each Member or holder of an Economic Interest, and such Member's duly authorized representative, shall have access to them at such office of Company and the right to inspect and copy them at reasonable times.

9.4 **Delivery of Annual Tax Information**. Managers shall use their best efforts to deliver to each Member within ninety (90) days after the end of each fiscal year all information necessary for the preparation of such Member's federal and state income tax return. Company shall also use its best efforts to prepare within one hundred twenty (120) days after the end of each fiscal year a financial report of Company for such fiscal year, containing a balance sheet as of the last day of the year then ended, an income statement for the year then ended, a statement of cash flows, and a statement of reconciliation of the Capital Accounts of Members.

## **ARTICLE X**

### **MISCELLANEOUS PROVISIONS**

10.1 **Notices**. Any notice to be given or to be served upon Company or any party hereto in connection with the Agreement must be in writing and will be deemed to have been given and received at the earlier of (a) the time when personally delivered to the address specified by the party to receive the notice or (b) five (5) days after deposited in the United States Mail for First Class delivery. Such notices will be given to a Member at the address specified in Schedule A hereto, as it may be amended from time to time. A writing includes a facsimile transmission followed by deposit of the original communication in the US Mail for First Class Delivery.

10.2 **Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute a single agreement when each Member has signed and delivered one such counterpart to each other Member.

10.3 **Delivery of Documents by Fax or Email**. Delivery of an executed counterpart of this Agreement or of any other document in connection with this Agreement by fax or e-mail will be deemed as effective as delivery of an originally executed counterpart or document. Any Member delivering an executed counterpart of this Agreement or such other document by fax or e-mail will also deliver an originally executed counterpart, but the failure of any Member to deliver an originally executed counterpart of this Agreement or such other document will not affect the validity or effectiveness of this Agreement or such other document.

10.4 **Headings**. The headings of the Articles and Sections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part hereof.

10.5 **Successors and Assigns; No Third Party Beneficiaries**. This Agreement shall inure to the benefit of the Members and shall be binding upon the parties, and, subject to Article VII, their respective successors and permitted assigns. Nothing in this Agreement shall be construed to create a contractual relationship between Persons or entities other than the parties to this Agreement. This Agreement does not confer third party beneficiary rights and is not intended and shall not be construed to provide any rights to a third party beneficiary. Nothing in this Agreement shall create any rights enforceable by any Person not a party to this Agreement, except such Person that becomes the legal assignee, transferee, heir or successor of a Member in strict accordance with the provisions of this Agreement.

10.6 **Severability.** Every term and provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such term or provision will be enforced to the maximum extent permitted by law and, in any event, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

10.7 **Non-Waiver.** No provision of this Agreement shall be deemed to have been waived except if the giving of such waiver is contained in a written notice given to the party claiming such waiver, and no such waiver shall be deemed to be a waiver of any other or further obligation or liability of the party or parties in whose favor the waiver was given.

10.8 **Applicable Law; Jurisdiction.** This agreement and the rights and obligations of the parties hereto shall be interpreted and enforced in accordance with and governed by the laws of the State of California as applied to contracts made and to be performed entirely within the State of California, without regard to conflict of law principles.

10.9 **Mediation.** If a dispute arises between or among any of the Members (“Dispute”), and if such Dispute cannot be settled through direct discussions, then the parties to such Dispute shall attempt to settle the Dispute by non-binding mediation prior to recourse to any other method of dispute resolution or litigation. Unless such parties agree otherwise, the mediation shall be conducted by Judicate West and the costs shall be shared equally by such parties. If such parties are unable to select the mediator within thirty (30) days after notice of the demand for mediation, then one shall be appointed by Judicate West. Any party may submit such Dispute to mediation by providing written notice demanding mediation of the Dispute to the other parties to such Dispute in accordance with Paragraph 10.1. The parties to the Dispute shall share equally all costs of mediation and each such party shall be responsible for any legal fees and costs incurred by that party, respectively. Submission to and participation in mediation shall be a condition precedent to the right of any party to submit to binding arbitration as detailed in Section 10.10. In the event a party refuses to attend such mediation after a request has been made by another party, then the party that refuses to participate in mediation shall be denied the right to attorneys’ fees and bear the costs of arbitration.

**10.10 Binding Arbitration.**

(a) Any dispute that is not resolved by mediation shall be submitted to and resolved by binding arbitration in accordance with this Section 10.10 (“Private Dispute Resolution”). The arbitration procedure shall be initiated by a party by delivering written notice of intent to arbitrate to the other parties in accordance with Section 10.1. Within twenty (20) days after delivery of such notice, unless the parties mutually agree otherwise, the party seeking arbitration shall contact Judicate West in writing to initiate the commencement of their services to conduct the arbitration at one of their Los Angeles offices. If the parties are unable to select the arbitrator within forty (40) days from delivery of such notice, then an arbitrator qualified in arbitrating the subject matter and issues of the dispute shall be appointed by Judicate West, as applicable.

(b) BY SIGNING THIS AGREEMENT, EACH MEMBER EXPRESSLY WAIVES ANY RIGHT TO A TRIAL BY JUDGE OR JURY OF ANY CLAIM, DEMAND, OR CAUSE OF ACTION ARISING UNDER OR FROM THIS AGREEMENT, AGREES TO SUBMIT ANY AND ALL SUCH DISPUTES TO BINDING ARBITRATION, AND RELINQUISHES ANY RIGHTS TO HAVE THE DISPUTE LITIGATED IN COURT, INCLUDING THE RIGHT TO A TRIAL BY JURY OR JUDGE AND RIGHTS TO DISCOVERY AND APPEAL THAT WOULD BE AVAILABLE IN AN ACTION BEFORE A TRIAL COURT. BY SIGNING THIS AGREEMENT, EACH MEMBER AGREES TO HAVE ALL POST MEDIATION DISPUTES DECIDED PURSUANT TO THE RULES, GUIDELINES AND DECISIONS MADE IN AND PROMULGATED BY PRIVATE DISPUTE RESOLUTION. IF ANY MEMBER REFUSES TO SUBMIT TO ARBITRATION, SUCH MEMBER MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE OR OTHER APPLICABLE LAW. THE AGREEMENT OF THE MEMBERS TO THIS ARBITRATION PROVISION IS VOLUNTARY.

**10.11 Attorneys' Fees.** In any Dispute submitted to and decided by arbitration pursuant to this Agreement, the Arbitrator shall have discretion to determine the prevailing party, if any, and award the prevailing party(ies) recovery from the non-prevailing party(ies) of an amount for reasonable attorney fees, costs and expenses (including expert fees) expended or incurred in the arbitration. Any Member shall have the right to recover all reasonable attorney's fees and costs incurred to enforce any judgment and/or collect any monies due pursuant to this Agreement, in addition to any other relief or damages to which such Member may be entitled.

**10.12 Enforcement; Personal Jurisdiction.** Any award or decision rendered by arbitration shall be final and enforceable in any court of competent jurisdiction pursuant to the applicable provisions of the California Code of Civil Procedure, Federal Rules of Civil Procedure, or other applicable laws. With respect to such enforcement proceedings, or any other judicial proceedings related to the enforcement of the terms of this Agreement (subject always to Section 10.10), each of the Members shall (a) submit to the personal jurisdiction of the United States District Court for the Central District of California (and all appropriate appellate courts) and/or any court of the State of California of competent jurisdiction sitting in Los Angeles County, San Diego County, or Orange County (and all appropriate appellate courts), and (b) irrevocably waives any objection he, she, or it may now or hereafter have as to the venue of any proceeding brought in any such court or that any such court is an inconvenient forum.

**10.13 Inspection of Books and Records.** Upon reasonable written notice, any Member may inspect the books and records of the Company, including bank statements, at reasonable intervals, not to exceed once per calendar quarter. Any such inspection shall be at the principal executive office of the Company, shall take place during business hours, and shall be undertaken in a manner that limits, to the fullest possible extent, any disruption of the business of the Company. The inspecting Party shall not copy or remove records from said location where the inspection occurs.

10.14 **Future Cooperation.** Each of the Members agrees to take such actions and to execute, have acknowledged (if necessary), and deliver such documents as may be reasonable and necessary to effectuate the purposes and intents of this Agreement. Each of the Members hereby agrees to cooperate with the others to do all things and execute all documents which are necessary or desirable to carry out the true intent and purpose of this Agreement as contemplated hereby. Acts of reasonable cooperation shall be done by each Member without charge to the other Members or to the Company.

10.15 **Entire Agreement.** This Agreement constitutes the entire agreement among the Members with respect to the subject matter hereof and supersedes any prior agreement or understanding among them with respect to such subject matter.

10.16 **No Reliance.** Each of the parties to this Agreement acknowledges that: (a) this Agreement is the resolution of a fully matured set of facts and each such party distinctly declares and represents that that he, she, or it is executing this Agreement in reliance solely on his/her/its own judgment, belief, and knowledge of the facts surrounding the transactions described in this Agreement; (b) this Agreement is made without reliance upon any statement or representation of any other party to this Agreement (or of any representative, agent or attorney of any other party to this Agreement) other than the words, statements, promises and representations stated in this Agreement; (c) no promise, inducement or agreement, other than those expressly stated in this Agreement, has been made to any of the parties to this Agreement; and (iv) the recitals, terms and conditions contained in this Agreement are contractual and not mere recitals.

10.17 **Amendments.** This Agreement may not be amended except by the unanimous written agreement of the Members.

*Signature page follows*

IN WITNESS WHEREOF, the undersigned Members have duly executed this Amended and Restated Operating Agreement of Spectrum King, LLC as of the Effective Date.

\_\_\_\_\_  
**Rami Vardi** — Founding Member, Manager, President  
and Chief Executive Officer

\_\_\_\_\_  
**David Zemach** — Founding Member and Manager

\_\_\_\_\_  
**Stephen Brent** — Manager and Chief Operating  
Officer

**Golden Tiger Group LLC**

By \_\_\_\_\_  
G. Tyler Runnels, Manager

\_\_\_\_\_  
**Steven Antebi**

**2016 Antebi Children's Trust**

By \_\_\_\_\_  
Trustee

**2017 Antebi Children's Trust**

By \_\_\_\_\_  
Trustee

\_\_\_\_\_  
**Hardy Thomas**

**G. Tyler Runnels and Jasmine N. Runnels TTEES  
The Runnels Family Trust DTD 1-11-2000**

By \_\_\_\_\_  
G. Tyler Runnels, Trustee

**Pacific Capital Management LLC**

By \_\_\_\_\_  
Jonathan Glaser, Managing Member

**Bryan Ezralow TTEE of The Bryan Ezralow  
1994 Trust DTD 12-22-94**

By \_\_\_\_\_  
Bryan Ezralow, Trustee

**Hightimes Holding Corp.**

By \_\_\_\_\_  
Adam E. Levin, CEO

SCHEDULE A

<u>Member Name and Address</u>	<u>Economic Units</u>	<u>% Membership Interest and Voting Rights</u>
<b>Rami Vardi</b> 6171 Elba Place Woodland Hills, CA 91367	35.0	31.5315%
<b>David Zemach</b> 19528 Ventura Blvd. #117 Tarzana, CA 91356	35.0	31.5315%
<b>Sequoia CBD Management LLC</b> 9018 Balboa Blvd., #289 Northridge, CA 91325	7.0	6.3063%
<b>2016 Antebi Children's Trust</b>	6.60	5.9459%
<b>2017 Antebi Children's Trust</b>	6.60	5.9459%
<b>Golden Tiger Group LLC</b> 2049 Century Park East, Suite 320 Los Angeles, CA 90067	1.00	0.9009%
<b>Hardy Thomas</b>	1.3	1.1712%
<b>G. Tyler Runnels and Jasmine N. Runnels</b> <b>TTEES The Runnels Family Trust DTD 1-11-2000</b> 2049 Century Park East, Suite 320 Los Angeles, CA 90067	2.5	2.2523%
<b>Pacific Capital Management LLC</b> 11601 Wilshire Blvd., Suite 1925 Los Angeles, CA 90025	2.5	2.2523%
<b>Bryan Ezralow TTEE of The Bryan Ezralow 1994 Trust DTD 12-22-94</b> 23622 Calabasas Rd., Suite 200 Calabasas, CA 91302	2.5	2.2523%
<b>Hightimes Holding Corp.</b> 10990 Wilshire Blvd., Penthouse Los Angeles, CA 90024	11.0	9.9099%
<b>Total</b>	<u>111</u>	<u>100.0000%</u>