

Section 9.14 Confidentiality. Agent and each Lender agree not to disclose Confidential Information, to any Person without the prior consent of the Borrower; provided, however, that nothing herein contained shall limit any disclosure of the tax structure of the transactions contemplated hereby, or the disclosure of any information (a) to the extent required by Applicable Law, statute, rule, regulation or judicial process or in connection with the exercise of any right or remedy under any Loan Document, or as may be required in connection with the examination, audit or similar investigation of or by the Agent, any Lender or any of their respective 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 Agent or any Lender or any of their respective Affiliates so long as such Person is made aware of the confidential nature of such Confidential Information and instructed to keep such information confidential, (d) in connection with any litigation or dispute which relates to this Agreement or any other Loan Document to which the Agent or any Lender is a party or is otherwise subject, (e) to a subsidiary or Affiliate of Agent or any Lender, (f) to any Assignee Lender or Participant (or prospective Assignee Lender or Participant) of Agent or any Lender which agrees to be bound by this Section 9.14 and (g) to any lender or other funding source of the Agent or any Lender (each reference to Agent and/or a Lender in the foregoing clauses shall be deemed to include (i) the actual and prospective Assignee Lenders and Participants referred to in clause (f) above and the lenders and other funding sources referred to in clause (g) above, as applicable for purposes of this Section 9.14), and provided further, that in no event shall the Agent or any Lender be obligated or required to return any materials furnished by or on behalf of the Borrower or any other Loan Party. Any Person required to maintain the confidentiality of Confidential Information as provided in this Section 9.14 shall be considered to have complied with the obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Confidential Information as such Person would accord its own confidential information (but not less than a reasonable degree of care). The obligations of the Agent and each Lender under this Section 9.14 shall supersede and replace the obligations of the Agent and each Lender under any confidentiality letter or provision in respect of this financing or any other financing previously signed and delivered by the Agent and/or any Lender to the Borrower or any of its Affiliates or any Sponsor Affiliates.

Section 9.15 Marshaling. Neither the Agent nor any Lender shall be under any obligation to marshal any assets in payment of any or all of the Obligations.

Section 9.16 No Strict Construction. The parties hereto and to the other Loan Documents have participated jointly in the negotiation and drafting of this Agreement and each of the other Loan Documents. In the event an ambiguity or question of intent or interpretation arises, this Agreement and each of the other Loan Documents shall be construed as if drafted jointly by the parties hereto and thereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement or any other Loan Document.

Section 9.17 USA PATRIOT Act Notification. The Agent and each 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 the Agent or such Lender to identify such Persons in accordance with the USA PATRIOT Act.

Section 9.18 Tax Treatment. The parties hereto intend and agree that the Term Loan shall be treated as indebtedness for U.S. federal and state income tax purposes, and that the Term Loan has original issue discount (“OID”) for the purposes of the Code (and similar state law). Information as to the issue price, yield to maturity, amount of OID, and issue date may be obtained by contacting Mark Szafranowski, Chief Financial Officer of the Borrower. Furthermore, the parties agree and intend that for purposes of applying Sections 1271 through 1275 of the Code and the related Treasury Regulations and provisions of state and local income tax laws, the potential for contingent payments set forth herein as of the issue date shall be treated as “remote” or “incidental” contingencies with the meaning of Treasury Regulation Section 1.1275-2(h). Each of the parties hereto agrees not to take a position inconsistent with this Section 9.18 for federal, state, or local income tax purposes (including the filing of any information return, such as an IRS Form 1099), unless there is a determination within the meaning of Section 1313 of the Code to the contrary.

Section 9.19 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.

X. AGENT

Section 10.01 Appointment; Authorization. Each Lender hereby irrevocably appoints, designates and authorizes the Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document, the Agent shall not have any duty or responsibility except those expressly set forth herein, nor shall the Agent have or be deemed to have any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Agent.

Section 10.02 Delegation of Duties. The Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects with reasonable care. Without limiting the generality of the powers of the Agent, as set forth above, the Agent is hereby authorized to act as collateral agent for each Lender pursuant to each of the Loan Documents. In such capacity, the Agent has the right to exercise all rights and remedies available under the Loan Documents, the UCC and other applicable law, as directed by the Required Lenders, which rights and remedies shall include, in the event of a foreclosure by the Agent on any portion of the Collateral, whether pursuant to a public or private sale, the right of the Agent, as agent for all Lenders, to be, or form an acquisition entity to be, the purchaser of any or all of such Collateral at any such sale. The Agent, as agent for all Lenders, shall be entitled at any such sale to offset any of the Obligations against the purchase price payable by the Agent (or such acquisition entity) at such sale or to otherwise consent to a reduction of the Obligations as consideration to the applicable Loan Party in connection with such sale. The Agent shall have the authority to take such other actions as it may deem necessary or desirable, and as may be approved by Required Lenders, to consummate a sale of the type described in the immediately preceding sentences. The Agent shall have the authority to accept non-cash consideration in connection with the sale or other disposition of the Collateral, whether the purchaser is the Agent, an entity formed by the Agent as described above or any other Person. Without limiting the generality of the powers of the Agent, as set forth above, in the context of any bankruptcy or other insolvency proceeding involving any Loan Party, the Agent is hereby authorized to, at the direction of Required Lenders: (i) file proofs of claim and other documents on behalf of the Lenders, (ii) object or consent to the use of cash collateral, (iii) object or consent to any proposed debtor-in-possession financing, whether provided by one or more of the Lenders or any other Person and whether secured by Liens with priority over the Liens securing the Obligations or otherwise, (iv) object or consent to any sale of Collateral, including sales for non-cash consideration in satisfaction of a portion of the Obligations, as may be agreed to by Required Lenders on behalf of all Lenders, (v) to be, or form an acquisition entity to be, the purchaser of any or all of such Collateral at any such sale under clause (iv) and to offset any of the Obligations against the purchase price payable by the Agent (or such acquisition entity) at such sale or to otherwise consent to a reduction of the Obligations as consideration to the applicable Loan Party in connection with such sale, and (vi) seek, object or consent to any Loan Party’s provision of adequate protection of the interests of the Agent and/or the Lenders in the Collateral.

Section 10.03 Limited Liability. None of the Agent or any of its directors, officers, attorneys, employees or agents shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except to the extent resulting solely from willful misconduct or gross negligence of such Person as determined by a final, non-appealable judgment of a court of competent jurisdiction), or (b) be responsible in any manner to any Lender for any recital, statement, representation or warranty made by any Loan Party or Affiliate of any Loan Party or any Sponsor Affiliate, or any officer thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by the Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document (or the creation, perfection or priority of any Lien or security interest therein), or for any failure of any Loan Party or any other party to any Loan Document to perform its obligations hereunder or thereunder. The Agent shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party or Affiliate of any Loan Party or any Sponsor Affiliate.

Section 10.04 Reliance. The Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex, electronic mail or telephone message, statement or other document believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to any Loan Party), independent accountants and other experts selected by the Agent. The Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document (a) unless it shall first receive such advice or concurrence of Required Lenders (or all Lenders, or such other Lenders, if expressly required hereunder) as it deems appropriate and, if it so requests, confirmation from Lenders of their obligation to indemnify the Agent against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action, (b) if such action would, in the opinion of Agent, be contrary to Applicable Law or the terms of this Agreement or any other Loan Document, (c) if such action would, in the opinion of Agent, expose Agent to liabilities, or (d) if Agent shall not first be indemnified to its satisfaction against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of Required Lenders (or all Lenders, or such other Lenders, if expressly required hereunder) and such request and any action taken or failure to act pursuant thereto shall be binding upon each Lender. Without limiting the foregoing, no Lender shall have any right of action whatsoever against Agent as a result of Agent's acting or refraining from acting hereunder or under any other Loan Document in accordance with the instructions of Required Lenders (or all Lenders, or such other Lenders, if expressly required hereunder).

Section 10.05 Notice of Default; Dissemination of Information. The Agent shall not be deemed to have knowledge or notice of the occurrence of any Event of Default or Default, unless the Agent shall have received written notice from a Lender or the Borrower referring to this Agreement, describing such Event of Default or Default and expressly stating that such notice is a “notice of default”. The Agent will endeavor to notify the Lenders of its receipt of any such notice; provided that the Agent shall not have any liability whatsoever for failing to deliver any such notice. The Agent shall take such action with respect to such Event of Default or Default as may be reasonably requested by Required Lenders in accordance with Section 7.02; provided, that unless and until the Agent has received any such request, the Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Event of Default or Default as it shall deem advisable in its sole discretion. Agent and Lenders acknowledge that Borrower, the Loan Parties and certain other Persons are required to provide certain financial statements and other financial information and reports to Agent and/or Lenders in accordance with the Loan Documents and agree that Agent shall not have any duty to provide the same to Lenders.

Section 10.06 Credit Decision. Each Lender acknowledges that the Agent has not made any representation or warranty to it, and that no act by the Agent hereafter taken, including any review of the affairs of the Borrower and the other Loan Parties, shall be deemed to constitute any representation or warranty by the Agent to any Lender. Each Lender represents to the Agent that it has, independently and without reliance upon the Agent and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of the Borrower and the other Loan Parties, and made its own decision to enter into this Agreement and to extend credit to the Borrower hereunder. Each Lender also represents that it will, independently and without reliance upon the Agent and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties. Except for notices, reports and other documents expressly herein required to be furnished to the Lenders by the Agent, the Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial or other condition or creditworthiness of any Loan Party which may come into the possession of the Agent.

Section 10.07 Indemnification. Whether or not the transactions contemplated hereby are consummated, each Lender shall indemnify (based on such Lender's Pro Rata Share) the Agent and its managers, directors, officers, employees, attorneys and agents against (to the extent not reimbursed by or on behalf of Borrower and without limiting the obligation of the Borrower to do so), and shall hold the Agent and such other Persons harmless from, any and all losses, claims, taxes (other than an Excluded Tax) damages and liabilities and related reasonable expenses (provided such "reasonable" qualifier shall not apply with respect to costs and expenses of Agent incurred during the existence of an Event of Default), including counsel fees and expenses, incurred by the Agent or any such other Person arising out of, in any way connected with, or as a result of: (a) the use of any of the proceeds of the Term Loan; (b) this Agreement or any other Loan Document, (c) the transactions contemplated by this Agreement or any other Loan Document, (d) the ownership and operation of any Loan Party's assets, including all Real Properties and improvements or any Contract or the performance by any Loan Party of its obligations under any Contract; (e) any finder's fee, brokerage commission or other such obligation payable or alleged to be payable in respect of the transactions contemplated by this Agreement or any other Loan Document which arises or is alleged to arise from any agreement, action or conduct of any Loan Party or any of its Affiliates or Sponsor Affiliates, and/or (f) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not the Agent, or any of its directors, officers, managers, employees, attorneys or agents are a party thereto; provided that such indemnity provided to any such Person shall not apply to any such losses, claims, damages, liabilities or related expenses to the extent arising solely from the willful misconduct or gross negligence of such Person as determined by a final, non-appealable judgment of a court of competent jurisdiction. All amounts due under this Section 10.07 shall be payable on written demand therefor. Without limitation of the foregoing, each Lender shall reimburse the Agent upon demand for its Pro Rata Share of any Agent Advances and of any costs or out-of-pocket expenses (including legal costs and expenses) incurred by the Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that the Agent is not reimbursed for such expenses by or on behalf of the Borrower. The undertaking in this Section 10.07 shall survive repayment of the Term Loan, cancellation of the Notes, any foreclosure under, or modification, release or discharge of, the Collateral Agreement or any or all of the Loan Documents, termination of this Agreement and the resignation or replacement of the Agent.

Section 10.08 Agent Individually. Comvest and its Affiliates and Related Funds may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with any Loan Party and any Affiliate of any Loan Party or any Sponsor Affiliate as though Comvest were not the Agent hereunder and without notice to or consent of any Lender. Each Lender acknowledges that, pursuant to such activities, Comvest or its Affiliates or its Related Funds may receive information regarding Loan Parties or their Affiliates (including information that may be subject to confidentiality obligations in favor of any such Loan Party or such Affiliate) or Sponsor Affiliates and acknowledge that the Agent shall be under no obligation to provide such information to them. With respect to their Term Loan (if any), Comvest and its Affiliates and Related Funds shall have the same rights and powers under this Agreement as any other Lender and may exercise the same as though Comvest were not the Agent, and the terms "Lender" and "Lenders" include Comvest and its Affiliates and Related Funds, to the extent applicable, in their individual capacities.

Section 10.09 Successor Agent. The Agent may resign as the Agent at any time upon 30 days' prior notice to the Lenders (unless such notice is waived by Required Lenders). If the Agent resigns under this Agreement, Required Lenders shall, appoint from among the Lenders a successor "Agent" for the Lenders. If no successor "Agent" is appointed prior to the effective date of the resignation of the Agent, the Agent may appoint, after consulting with the Lenders, a successor "Agent". Upon the acceptance of its appointment as successor "Agent" hereunder, such successor "Agent" shall succeed to all the rights, powers and duties of the retiring Agent and the term "Agent" shall mean such successor "Agent", and the retiring Agent's appointment, powers and duties as the Agent shall be terminated. After any retiring Agent's resignation hereunder as the Agent, the provisions of this Article X and Section 9.02 shall continue to inure to its benefit as to any actions taken or omitted to be taken by it while it was the Agent under this Agreement. If no successor "Agent" has accepted appointment as the Agent by the date which is 30 days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of the Agent hereunder until such time, if any, as Required Lenders appoint a successor "Agent" as provided for above.

Section 10.10 Collateral and Guarantee Matters. The Lenders consent and irrevocably authorize the Agent, at its option and in its discretion, (a) to release any Lien granted to or held by the Agent under the Collateral Agreement and/or any other collateral document (i) when all outstanding monetary Obligations owing with respect to the Term Loan have been paid in full (it being understood and agreed to that Agent shall be under no obligation to account for any outstanding monetary Obligations owing to any Lender that have not been reported to Agent in writing by such Lender and Agent may assume that no such non-reported monetary Obligations owing to such Lender exist for purposes of this clause (i)); (ii) constituting property sold or to be sold or disposed of as part of or in connection with any sale or other disposition permitted under this Agreement (including by consent, waiver or amendment and it being agreed and understood that the Agent may conclusively rely without further inquiry on a certificate of an officer of the Borrower as to the sale or other disposition of property being made in compliance with this Agreement); or (iii) subject to Section 11.01, if approved, authorized or ratified in writing by Required Lenders; (b) notwithstanding Section 11.01(b)(1) to release any party from its guaranty under the Collateral Agreement (i) when all outstanding monetary Obligations owing with respect to the Term Loan have been paid in full (it being understood and agreed to that Agent shall be under no obligation to account for any outstanding monetary Obligations owing to any Lender that have not been reported to Agent in writing by such Lender and Agent may assume that no such non-reported monetary Obligations owing to such Lender exist for purposes of this clause (i)), or (ii) if such party was sold or is to be sold or disposed of as part of or in connection with any disposition permitted hereunder (including by consent, waiver or amendment and it being agreed and understood that the Agent may conclusively rely without further inquiry on a certificate of an officer of the Borrower as to the sale or other disposition being made in compliance with this Agreement); or (c) to subordinate its interest in any Collateral to any holder of a purchase money (or its equivalent) Lien on such Collateral which is permitted by hereunder (it being understood that the Agent may conclusively rely on a certificate from the Borrower in determining whether the Indebtedness secured by any such Lien is permitted hereunder). Upon request by the Agent at any time, the Lenders will confirm in writing the Agent's authority to release, or subordinate its interest in, particular types or items of Collateral pursuant to this Section 10.10.

Section 10.11 Agent Advances. The Agent may from time to time make such disbursements and advances (“Agent Advances”) which the Agent, in its sole discretion, deems necessary or desirable to preserve, protect, prepare for sale or lease or dispose of the Collateral or any portion thereof, to enhance the likelihood or maximize the amount of repayment by the Borrower of the Term Loan and other Obligations or to pay any other amount chargeable to the Borrower pursuant to the terms of this Agreement, including costs, fees and expenses. The Agent Advances shall be repayable on demand, shall be secured by the Collateral, shall bear interest at a rate per annum equal to the rate then applicable to the Term Loan and shall constitute Obligations hereunder. The Agent shall notify each Lender and the Borrower in writing of each such Agent Advance, which notice shall include a description of the purpose of such Agent Advance. Without limitation to its obligations pursuant to Section 10.07, each Lender agrees that it shall promptly (but not later than three (3) Business Days) make available to the Agent, upon the Agent’s demand, in U.S. dollars in immediately available funds, the amount equal to such Lender’s Pro Rata Share of each such Agent Advance and thereafter the portion of such Agent Advance so reimbursed by each Lender shall be added to the principal balance of the Term Loan owed by the Borrower to each such Lender. If such funds are not made available to the Agent by such Lender by the end of such three (3) Business Day period, the Agent shall be entitled to recover such funds on demand from such Lender, together with interest thereon for each day from the date such payment was due until the date such amount is paid to the Agent, at the Federal Funds Rate for three (3) Business Days and thereafter at the Reference Rate.

Section 10.12 Revolving Facility; Subordinated Debt. Each Lender hereby irrevocably appoints, designates and authorizes the Agent to enter into the Intercreditor Agreement, Seller Debt Subordination Agreement, Sponsor Debt Subordination Agreement, Management Fee Subordination Agreement, and any other subordination or intercreditor agreement pertaining to the Revolving Loan Documents or any other Subordinated Debt, on its behalf and to take such action on its behalf under the provisions of any such agreement. Each Lender further agrees to be bound by the terms and conditions of the Intercreditor Agreement, Seller Debt Subordination Agreement, Sponsor Debt Subordination Agreement, Management Fee Subordination Agreement and any other subordination or intercreditor agreement pertaining to the Revolving Loan Documents or any other Subordinated Debt. Each Lender hereby authorizes the Agent to issue blockages notices in connection with the Revolving Loan Documents or any Subordinated Debt.

Section 10.13 Actions in Concert. Each Lender hereby agrees with each other Lender that no Lender shall take any action to protect or enforce its rights arising out of this Agreement, the Notes or any other Loan Document (including exercising any rights of setoff) without first obtaining the prior written consent of the Agent, it being the intent of the Lenders that any such action to protect or enforce rights under this Agreement, the Notes and the other Loan Documents shall be taken in concert and at the direction or with the consent of the Agent.

Section 10.14 Competitors. Notwithstanding anything contained in this Agreement or any other Loan Document to the contrary, Agent and the Lenders shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Competitors; provided, that each of Agent and each Lender shall be responsible for, and shall not be excused from any liability for, any assignment by Agent or such Lender of any of its rights or obligations hereunder to any Person which such assigning party has actual knowledge is either GameStop Corp. or Trans World Entertainment Corp. Without limiting the generality of the foregoing, neither the Agent nor any Lender shall (x) be obligated to ascertain, monitor or inquire as to whether any other Lender or Participant or prospective Lender or Participant is a Competitor or (y) have any liability with respect to or arising out of any assignment or participation of the Term Loan, or disclosure of confidential information, by any other Person to any Competitor.

XI. Waiver; Amendments.

Section 11.01 General Terms. No amendment, modification or waiver of, or consent with respect to, any provision of this Agreement or any of the other Loan Documents (other than the Agent Payments Letter) shall in any event be effective unless the same shall be in writing and signed by (i) the Borrower (with respect to Loan Documents to which the Borrower is a party), (ii) the Agent, and (iii) the Lenders having aggregate Pro Rata Shares of not less than the aggregate Pro Rata Shares expressly designated herein with respect thereto or, in the absence of such express designation herein, by Required Lenders (or by Agent at the direction of such Lenders or Required Lenders), and then any such amendment, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that:

(a) no such amendment, modification, waiver or consent shall, unless in writing and signed by all of the Lenders directly affected thereby, in addition to Agent and Required Lenders and the Borrower, do any of the following: (1) increase any of the Term Loan Commitments (provided, that only the Lenders participating in any such increase of the Term Loan Commitments shall be considered directly affected by such increase), (2) extend the date scheduled for payment (as opposed to any mandatory prepayment or the rescission of an election to accelerate) of any principal of or interest on the Term Loan or any fees or other amounts payable hereunder or under the other Loan Documents, or (3) reduce the principal amount of the Term Loan, the amount or rate of interest thereon (provided, that Required Lenders may rescind an imposition of default interest pursuant to Section 2.02), or any fees or other amounts payable hereunder or under the other Loan Documents; and

(b) no such amendment, modification, waiver or consent shall, unless in writing and signed by all of the Lenders in addition to Agent and the Borrower (with respect to Loan Documents to which the Borrower is a party), do any of the following: (1) release any Loan Party from its guaranty of the Obligations under the Loan Party Guaranty or all or substantially all of the Collateral granted under the Security Documents, except (i) as otherwise specifically provided in this Agreement or the other Loan Documents, (ii) to the extent such release from such guaranty is in connection with a sale or other disposition of the equity of such Loan Party (so long as a result thereof such Loan Party is no longer required to guaranty the Obligations) permitted under this Agreement (including by consent, waiver or amendment of this Agreement), or (iii) to the extent such release of Collateral is in connection with a sale or other disposition of such Collateral (so long as a result thereof such Collateral is no longer required to secure the Obligations) permitted under this Agreement (including by consent, waiver or amendment of this Agreement), (2) change the definition of Required Lenders, (3) change any provision of this Article XI, (4) amend the provisions of Section 2.05, or (5) reduce the aggregate Pro Rata Shares required to effect any amendment, modification, waiver or consent under the Loan Documents.

Notwithstanding the provisions of this Article XI to the contrary, any amendment, modification, waiver or consent to cure any ambiguity, omission, defect or inconsistency in any Loan Document shall only require the signature of Agent and Borrower.

Section 11.02 Agency Provisions. No amendment, modification, waiver or consent shall, unless in writing and signed by the Agent, as applicable, in addition to the Borrower and Required Lenders (or all the Lenders directly affected thereby or all of the Lenders, as the case may be in accordance with the provisions above), affect the rights, privileges, duties or obligations of Agent (including under the provisions of Article X) under this Agreement or any other Loan Document.

Section 11.03 Defaulting Lenders. Notwithstanding any provision to the contrary set forth in this Agreement, it is agreed and understood as follows with respect to Defaulting Lenders:

(a) Defaulting Lenders (and their respective Pro Rata Shares of the Term Loan) shall be excluded from the determination of Required Lenders, and shall not have voting rights with respect to any matters requiring the approval of Required Lenders; and

(b) no Defaulting Lender shall be considered a “Lender” for purposes of the proviso to the definition of the term “Required Lenders”.

Section 11.04 Replacement of Lenders. If any Lender (other than Agent) does not consent to any matter requiring its consent under Sections 11.01(a) or 11.01(b), when Required Lenders have otherwise consented to such matter or any Lender is a Defaulting Lender and the circumstances causing such status have not been cured or waived to the satisfaction of the Agent, then the Borrower or the Agent may within 90 days thereafter designate another Person acceptable to the Agent in its sole discretion (such other Person being called a “Replacement Lender”) to purchase the Term Loan of such Lender and such Lender’s rights hereunder, without recourse to or warranty by, or expense to, such Lender, for a purchase price equal to the outstanding principal amount of the Term Loan payable to such Lender plus any accrued but unpaid interest on such Term Loan and all accrued but unpaid fees owed to such Lender and any other amounts payable to such Lender under this Agreement, and to assume the obligations of such Lender hereunder, all in compliance with Section 8.02. Upon such purchase and assumption (pursuant to an Assignment and Acceptance), such Lender shall no longer be a party hereto or have any rights hereunder (other than rights with respect to indemnities and similar rights applicable to such Lender prior to the date of such purchase and assumption) and shall be relieved from all obligations to the Borrower hereunder, and the Replacement Lender shall succeed to the rights and obligations of such Lender hereunder.

Section 11.05 EFFECT OF AMENDMENT AND RESTATEMENT. UPON THE CLOSING DATE: (A) ALL TERMS AND CONDITIONS OF THE EXISTING AGREEMENT AND ANY OTHER LOAN DOCUMENTS EXECUTED AND DELIVERED PURSUANT THERETO, AS AMENDED BY THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BEING EXECUTED AND DELIVERED IN CONNECTION HERewith, SHALL BE AND REMAIN IN FULL FORCE AND EFFECT, AS SO AMENDED, AND SHALL CONSTITUTE AND CONTINUE TO BE THE LEGAL, VALID, BINDING AND ENFORCEABLE OBLIGATIONS OF EACH LOAN PARTY AND OF THE AGENT AND LENDERS; (B) THE TERMS AND CONDITIONS OF THE EXISTING AGREEMENT SHALL BE AMENDED AS SET FORTH HEREIN AND, AS SO AMENDED, THE EXISTING AGREEMENT SHALL BE RESTATED IN ITS ENTIRETY, BUT SHALL BE AMENDED ONLY WITH RESPECT TO THE RIGHTS, DUTIES AND OBLIGATIONS AMONG EACH LOAN PARTY, THE LENDERS AND THE AGENT ACCRUING FROM AND AFTER THE DATE HEREOF; (C) THIS AGREEMENT SHALL NOT IN ANY WAY RELEASE OR IMPAIR THE RIGHTS, DUTIES, OBLIGATIONS OR LIENS CREATED PURSUANT TO THE EXISTING AGREEMENT OR ANY OTHER LOAN DOCUMENTS, EXCEPT AS EXPRESSLY MODIFIED HEREBY OR BY ANY DOCUMENTS, INSTRUMENTS AND AGREEMENTS EXECUTED AND DELIVERED IN CONNECTION HERewith, AND ALL OF SUCH RIGHTS, DUTIES, OBLIGATIONS AND LIENS ARE ASSUMED, RATIFIED AND AFFIRMED BY EACH LOAN PARTY; (D) ALL INDEMNIFICATION OBLIGATIONS OF THE LOAN PARTIES UNDER THE EXISTING AGREEMENT AND ANY OTHER LOAN DOCUMENTS SHALL SURVIVE THE EXECUTION AND DELIVERY OF THIS AGREEMENT AND SHALL CONTINUE IN FULL FORCE AND EFFECT FOR THE BENEFIT OF AGENT, THE LENDERS AND ANY OTHER PERSON INDEMNIFIED UNDER THE EXISTING AGREEMENT OR ANY OTHER LOAN DOCUMENTS AT ANY TIME PRIOR TO THE DATE HEREOF; (E) THE AMENDMENT AND RESTATEMENT CONTAINED HEREIN SHALL NOT, IN ANY MANNER, BE CONSTRUED TO CONSTITUTE PAYMENT OF, OR IMPAIR, LIMIT, CANCEL OR EXTINGUISH, OR CONSTITUTE A NOVATION IN RESPECT OF, THE OBLIGATIONS AND OTHER OBLIGATIONS AND LIABILITIES OF ANY LOAN PARTY EVIDENCED BY OR ARISING UNDER THE EXISTING AGREEMENT AND THE OTHER LOAN DOCUMENTS AND THE LIENS AND SECURITY INTERESTS SECURING SUCH OBLIGATIONS AND OTHER OBLIGATIONS AND LIABILITIES GRANTED BY THE LOAN PARTIES IN THE EXISTING AGREEMENT AND THE OTHER LOAN DOCUMENTS, WHICH LIKEWISE SHALL NOT IN ANY MANNER BE IMPAIRED, LIMITED, TERMINATED, WAIVED OR RELEASED; (F) THE EXECUTION, DELIVERY AND EFFECTIVENESS OF THIS AGREEMENT SHALL NOT OPERATE AS A WAIVER OF ANY RIGHT, POWER OR REMEDY OF AGENT OR THE LENDERS UNDER THE EXISTING AGREEMENT, NOR CONSTITUTE A WAIVER OF ANY COVENANT, AGREEMENT OR OBLIGATION UNDER THE EXISTING AGREEMENT, IN EACH CASE AS IN EFFECT IMMEDIATELY PRIOR TO THE EFFECTIVENESS OF THIS AGREEMENT; AND (G) ANY AND ALL REFERENCES IN THE LOAN DOCUMENTS TO THE EXISTING AGREEMENT SHALL, WITHOUT FURTHER ACTION OF THE PARTIES, BE DEEMED A REFERENCE TO THE EXISTING AGREEMENT, AS AMENDED AND RESTATED BY THIS AGREEMENT, AND AS THIS AGREEMENT SHALL BE FURTHER AMENDED, AMENDED AND RESTATED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME HEREAFTER. SUBJECT TO THE FOREGOING, THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE ENTIRE AGREEMENT OF THE LOAN PARTIES, AGENT AND THE LENDERS WITH RESPECT TO THE SUBJECT MATTER HEREOF AND THEREOF, AND THERE ARE NO PROMISES, UNDERTAKINGS, REPRESENTATIONS OR WARRANTIES BY THE AGENT OR ANY LENDER RELATIVE TO THE SUBJECT MATTER HEREOF NOT EXPRESSLY SET FORTH OR REFERRED TO HEREIN OR IN THE OTHER LOAN DOCUMENTS.

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