

Proceeds Account pending such use and (y) the proceeds of the Subordinated Loan borrowed on the Closing Date shall be applied in the manner set forth in Section 6.07.

(k) *Accuracy of Information, Etc.* No statement or information contained in this Agreement, any other Transaction Document or any other document, certificate or statement furnished by or on behalf of the Borrower to the Lenders or the Controlling Party, or any of them, for use in connection with the transactions contemplated by this Agreement or the other Transaction Documents, contained as of the date such statement, information, document or certificate was so furnished, any untrue statement of a material fact or omitted to state a material fact necessary to make the statements contained herein or therein not misleading.

(l) *Activities.* The Borrower has not engaged in activities since its formation other than those incidental to its formation and other appropriate actions incidental to the Transaction Documents.

Section 4.02. *Representations and Warranties of the Lenders.* Each Lender hereby represents and warrants to each other and to the Borrower that (x) such Lender has the power and authority, and the legal right, to make, deliver and perform this Agreement and has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the extensions of credit to be made by it hereunder, (y) this Agreement has been duly executed and delivered on behalf of such Lender and (z) this Agreement constitutes a legal, valid and binding obligation of such Lender, enforceable against such Lender in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

ARTICLE 5 CONDITIONS PRECEDENT

Section 5.01. *Conditions to Closing Date.* The agreement of each Lender to make the Loans hereunder shall not become effective until the date on which each of the following conditions has been satisfied:

(a) *Agreements; Security Documents.* The Lenders and the Controlling Party shall have received (i) this Agreement, executed and delivered by each other party hereto and (ii) each of the other Loan Documents, the Put Option Agreement and the Administration Agreement, executed and delivered by each other party thereto.

(b) *Closing Certificate; Certified Certificate of Formation; Good Standing Certificates.* The Lenders and the Controlling Party shall have received (i) a certificate of the Borrower, dated the Closing Date, substantially in the form of Exhibit D, with appropriate insertions and attachments, including incumbency, the certificate of formation certified by the Secretary of State of the State of Delaware and the LLC

Agreement, and (ii) a long form good standing certificate for the Borrower from the Secretary of State of the State of Delaware.

(c) *Promissory Notes.* The Subordinated Lender shall have received Promissory Notes evidencing (i) the Subordinated Loans to be made by it hereunder and (ii) the Contingent Interest due to it hereunder.

(d) *Legal Opinions.* Each Lender and the Controlling Party shall have received the following executed legal opinions:

(i) the legal opinion of Davis Polk & Wardwell, special counsel to the Borrower as to certain matters of New York law;

(ii) the legal opinion of Morris, Nichols, Arsht & Tunnell LLP, counsel to the Borrower, as to certain matters of Delaware law; and

(iii) the legal opinion of Emmet, Marvin & Martin, LLP, counsel to The Bank of New York Mellon.

Each such legal opinion shall cover such matters incident to the transactions contemplated by this Agreement as each Lender or the Controlling Party may reasonably require.

(e) *Filings, Registrations and Recordings.* Each document (including any Uniform Commercial Code financing statement) required by the Security Documents or under law or reasonably requested by the Controlling Party to be filed, registered or recorded in order to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a perfected Lien on the Collateral described therein, prior and superior in right to any other Person, shall be in proper form for filing, registration or recordation.

(f) *Representations and Warranties.* Each of the representations and warranties made by the Borrower in the Loan Documents shall be true and correct on and as of the Closing Date as if made on and as of the Closing Date.

(g) *No Default.* No Default or Event of Default shall have occurred and be continuing on the Closing Date.

Section 5.02. *Conditions to Each Extension of Loans.* The agreement of each Lender to make each Loan requested to be made by it is subject to the satisfaction, prior to or concurrently with the making of such Loan, of the following conditions precedent:

(a) *Borrowing Request.* The applicable Lender shall have received a Borrowing Request.

(b) *Availability.* (i) With respect to any request for a Senior Loan, the aggregate principal amount of such requested Senior Loan shall not exceed the Available Senior Loan Commitment and (ii) with respect to any request for a Subordinated Loan,

the aggregate principal amount of such requested Subordinated Loan shall not exceed the Available Subordinated Loan Commitment. For avoidance of doubt, the Borrower shall not be permitted to request the borrowing of a Senior Loan unless the Senior Loan Commitment Availability Date shall have occurred.

(c) *Representations and Warranties.* Each of the representations and warranties made by the Borrower in the Loan Documents shall be true and correct on and as of the date of the Borrowing Request as if made on and as of the date of such Borrowing Request (except to the extent any such representation and warranty by its terms is made only as of an earlier date, in which case such representation and warranty shall be true and correct as of such earlier date), except to the extent that the inaccuracy of the foregoing could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

(d) *No Default.* No Actionable Default shall have occurred and be continuing on the date the Borrowing Request has been made or after giving effect to the borrowings to be made on the date the Borrowing Request has been made. No other Default known to the Borrower shall have occurred and be continuing except any such Default as to which the Borrower shall have notified the Lenders pursuant to Section 6.06(a).

(e) *Put Option Agreement.* Subject to the exceptions below, the proceeds of such Loan will be used within one Business Day of the making of such Loan to purchase Purchased Assets. This condition is subject to the exceptions that (i) \$15,750,000 of the proceeds of the Subordinated Loan to be made on the Closing Date shall be deposited in the Expense Reimbursement Account and the balance of such proceeds shall be deposited in the Loan Proceeds Account for subsequent application to finance the purchase of Purchased Assets; (ii) a portion of any Loan may be retained in the Loan Proceeds Account so long as after giving effect thereto and to any purchase of Purchased Assets within one Business Day of deposit of such amount in the Loan Proceeds Account, the aggregate balance of cash and cash investments in the Collateral Account (including the Loan Proceeds Account and the Cash Collateral Account but excluding the Expense Reimbursement Account) shall not exceed \$100,000,000; and (iii) no Loan may exceed an amount equal to (x) the aggregate amount required to finance purchases of Purchased Assets within one Business Day of the date of such Loan plus (y) \$100,000,000 minus (z) the aggregate amount of cash and cash investments held in the Collateral Account (including the Cash Collateral Account and the Loan Proceeds Account but excluding the Expense Reimbursement Account). Any purchase of Purchased Assets contemplated by the foregoing shall be made pursuant to and in accordance with the Put Option Agreement without waiver or modification of any of the conditions to purchase set forth therein.

Each Borrowing Request shall be deemed to constitute a representation and warranty by the Borrower on and as of the date thereof as to the matters specified in paragraphs (b), (c), (d) and (e) of this Section.

ARTICLE 6
AFFIRMATIVE COVENANTS

The Borrower hereby agrees to:

Section 6.01. *Financial Statements.* Furnish to each Lender and the Controlling Party:

(a) as soon as available, but in any event within 120 days after the end of each fiscal year of the Borrower, a copy of the audited balance sheet of the Borrower as at the end of such year and the related audited statements of income and of cash flows for such year, reported on by an independent certified public accounting firm of nationally recognized standing; and

(b) as soon as available, but in any event within 60 days after the end of each of the first three fiscal quarters of the Borrower, a copy of the unaudited balance sheet of the Borrower as at the end of such quarter and the related unaudited statements of income for such quarter, in each case excluding footnotes.

Section 6.02. *Other Information.* Furnish to each Lender, the Controlling Party and the Investment Manager:

(a) promptly upon receipt thereof, duplicates or copies of all reports, notices, requests, demands, certificates, financial statements and other instruments and similar writings furnished to or received by the Borrower (i) under each Transaction Document and (ii) relating to any TALF Loan or any of the Collateral; *provided*, that the Subordinated Lender shall not be entitled to receive information concerning the identity of any borrower of any TALF Loan pursuant to this Section 6.02(a) (and the Borrower shall not provide to the Subordinated Lender any such information provided to it pursuant to this Section 6.02(a)); and

(b) promptly, such additional financial and other information as either Lender or the Controlling Party, as the case may be, may from time to time reasonably request (in the case of the Subordinated Lender, other than information concerning the identity of any borrower of any TALF Loan).

Section 6.03. *Payment of Obligations.* Subject to the limitations set forth in the Waterfall, pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all its material obligations of whatever nature, except where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves in conformity with GAAP with respect thereto have been provided on the books of the Borrower.

Section 6.04. *Maintenance of Existence; Compliance.* (a) (i) Preserve, renew and keep in full force and effect its organizational existence and (ii) take all reasonable action to maintain all rights, privileges and franchises necessary or desirable in the normal

conduct of its business; (b) comply with all material Requirements of Law and (c) punctually perform and observe all of its obligations and agreements contained in the Transaction Documents to which it is a party (it being understood that such performance or observance may be undertaken by the Administrator or the Collateral Agent on the Borrower's behalf). The Borrower may contract with other Persons to assist it in performing its duties under the Transaction Documents and its other Contractual Obligations, and any performance of such duties by a Person identified to the Lenders and the Controlling Party shall be deemed to be action taken by the Borrower. Initially, the Borrower has contracted with the Administrator and the Collateral Agent to assist the Borrower in performing its duties under the Transaction Documents.

Section 6.05. *Inspection of Property; Books and Records; Discussions.* (a) Keep proper books of records and account in which full, true and correct entries in conformity with GAAP and all Requirements of Law shall be made of all dealings and transactions in relation to its business and activities and (b) permit any officers, employees, agents, representatives or third-party contractor designated by the Controlling Party, any Lender or the Investment Manager to visit, audit and inspect the Borrower's financial records, collateral and properties from time to time during normal business hours as requested and to make extracts from and copies of such financial records, and permit any Person designated by the Controlling Party or any Lender to discuss the affairs, finances and condition of the Borrower with the Managing Member, the Administrator and the Borrower's independent certified public accountants; *provided*, that the Borrower shall not be required to disclose (or to permit the disclosure of) any information to the extent setting forth the unredacted identities of the borrowers of TALF Loans pursuant to this Section 6.05.

Section 6.06. *Notices.* Promptly give notice to each Lender, the Controlling Party and the Investment Manager of:

- (a) the occurrence of any Default or Event of Default;
- (b) any (i) default or event of default under any material Contractual Obligation of the Borrower or (ii) material litigation, investigation or proceeding affecting the Borrower, including any litigation, investigation or proceeding (x) in which injunctive or similar relief is sought or (y) which relates to any Transaction Document; and
- (c) any development or event that has had or could reasonably be expected to have a Material Adverse Effect.

Each notice pursuant to this Section 6.06 shall be accompanied by a statement of a Responsible Officer of the Administrator setting forth details of the occurrence referred to therein and stating what action the Borrower proposes to take with respect thereto.

Section 6.07. *Deposits in Collateral Account; Proceeds.*

(a) Cause (i) \$15,750,000 of the proceeds of the Subordinated Loan borrowed on the Closing Date to be deposited in the Expense Reimbursement Account and (ii) (x) \$84,250,000 of the proceeds of the Subordinated Loan borrowed on the Closing Date and (y) all proceeds of other Loans that are not required to be applied on the date of borrowing to effect Purchases to be deposited in the Loan Proceeds Account.

(b) Cause all amounts due and to become due to the Borrower under or in connection with the Collateral or otherwise constituting Proceeds to be paid directly to the Collateral Agent for deposit into the Collateral Account.

Section 6.08. *Third Party Contracts.* Cause each party to any Transaction Document with the Borrower (other than ordinary course trading contracts or agreements) to covenant and agree in such contract that such party will not at any time prior to a year and a day after all of the Obligations have been paid in full (a) commence or institute against the Borrower or join with or facilitate any other Person in commencing or instituting against the Borrower, any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, receivership, insolvency or liquidation proceedings, or other similar proceedings under any United States Federal or state, or other jurisdiction, bankruptcy or similar law or statute now or hereafter in effect or (b) participate in any assignment for benefit of creditors, compositions, or arrangements with respect to the Borrower's debts.

Section 6.09. *Use of Proceeds of Loans.* Use the proceeds of each Loan solely in accordance with Section 4.01(j).

ARTICLE 7

NEGATIVE COVENANTS

The Borrower hereby agrees not to, unless it shall have received the prior written consent of, or otherwise been directed to do so in writing by the Controlling Party and the Subordinated Lender:

Section 7.01. *Indebtedness.* Create, issue, incur, assume, become liable in respect of or suffer to exist any Indebtedness, except (a) Indebtedness pursuant to any Transaction Document and (b) any liabilities contemplated by this Agreement or any other Transaction Document.

Section 7.02. *Liens.* Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, or assign or otherwise convey or encumber any existing or future right to receive any income or payments, except for Liens created pursuant to the Security Documents and Permitted Liens.

Section 7.03. *Fundamental Changes.* Enter into any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or

dissolution), or Dispose of all or substantially all of its property or business; *provided* that the Borrower may be liquidated, wound up, dissolved or all or substantially all of its property or business Disposed of in accordance with an Approved Disposition Plan, so long as the proceeds of such Disposition, liquidation, wind-up or dissolution are distributed in accordance with the Waterfall.

Section 7.04. *Disposition of Property.* Dispose of any of its property, whether now owned or hereafter acquired, except in accordance with an Approved Disposition Plan.

Section 7.05. *Restricted Payments.* Declare or pay any dividend (whether in cash or in additional Capital Stock) on, or make any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of, any of its Capital Stock, whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of the Borrower except in accordance with the Waterfall.

Section 7.06. *Investments.* Make any Investment, except pursuant to the Put Option Agreement or the Security Agreement.

Section 7.07. *Limitations on Payments and Expenditures.* Make any payment to any Person (including pursuant to any Transaction Document) or make any expenditure (by long term or operating lease or otherwise) for any assets, in each case except (a) in accordance with the Waterfall, (b) out of the Expense Reimbursement Account, the Cash Collateral Account or the Loan Proceeds Account, in each case in accordance with Section 5 of the Security Agreement and (c) any Investments permitted under this Agreement.

Section 7.08. *Amendments to Transaction Documents.* Amend or modify any of the Transaction Documents to which it is a party or any other agreement or instrument pursuant to which any of the Collateral has been created unless directed to do so in writing by the Controlling Party; *provided* that unless any such amendment or modification is required by any Requirement of Law, without the prior written consent of the Subordinated Lender (which consent shall not be unreasonably withheld or delayed), none of the Transaction Documents shall be amended or modified in a manner that would have a material adverse effect on the Subordinated Lender (or, if the Subordinated Lender is the Controlling Party, on the Senior Lender).

Section 7.09. *Limitations on Activities.* Engage in any activity of any kind or enter into a transaction, indenture, mortgage, instrument, agreement, contract, lease or other undertaking which is not directly or indirectly related to the transactions contemplated by this Agreement and the other Transaction Documents.

Section 7.10. *ERISA*. Establish, maintain, sponsor or contribute to or assume any liability under, or become obligated to establish, maintain, sponsor or contribute to or assume any liability under, any Plans.

Section 7.11. *Accounts*. Open or maintain any deposit or securities account unless such deposit or securities account is included within the Collateral Account.

Section 7.12. *Formation of Subsidiaries*. Form any new Subsidiary or invest in or acquire any new Subsidiary.

ARTICLE 8 EVENTS OF DEFAULT

Section 8.01. *Events of Default*. The following events are “**Events of Default**” for purposes of this Agreement:

(a) the Borrower shall fail to pay any principal of, or interest on, any Loan or other amount due hereunder or under any other Loan Document when the same shall become due, in each case in accordance with the Waterfall; or

(b) any representation or warranty made or deemed made by the Borrower herein or in any other Loan Document or that is contained in any certificate, document or financial or other statement furnished by it at any time under or in connection with this Agreement or any other Loan Document shall prove to have been inaccurate on or as of the date made or deemed made, except to the extent that the inaccuracy of the foregoing could not, in the aggregate, reasonably be expected to have a Material Adverse Effect; or

(c) the Borrower shall default in the observance or performance of any other covenant, agreement or undertaking contained in this Agreement or any other Transaction Document; except, with respect to any default under a Transaction Document other than a Loan Document or the Put Option Agreement, to the extent that such default could not reasonably be expected to have a Material Adverse Effect; or

(d) (i) the Borrower shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets; or (ii) there shall be commenced against the Borrower any case, proceeding or other action of a nature referred to in clause (i) above that (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed or undischarged for a period of 90 days; or (iii) there shall be commenced against the Borrower any case, proceeding or other action seeking issuance of a warrant

of attachment, execution, distraint or similar process against all or any substantial part of its assets that results in the entry of an order for any such relief that shall not have been vacated, discharged, or stayed or bonded pending appeal within 90 days from the entry thereof; or (iv) the Borrower shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) the Borrower shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or (vi) the Borrower shall make a general assignment for the benefit of its creditors; or

(e) any of the Security Documents shall cease, for any reason, to be in full force and effect, or the Borrower shall so assert, or any Lien created by any of the Security Documents shall cease to be enforceable and of the same effect and priority purported to be created thereby,

Section 8.02. *Actionable Defaults.* (a) An “**Actionable Default**” is (i) any Event of Default under Section 8.01(d) and (ii) any other Event of Default as to which either Lender shall have given notice to the Borrower and to the other Lender that such Event of Default is an Actionable Default for purposes of this Agreement; *provided* that in the event such notice is given by the Subordinated Lender, such notice shall be effective only upon expiration of (x) in the case of an Event of Default under Section 8.01(a), 10 days, (y) in the case of an Event of Default under Section 8.01(b) or 8.01(c) that arises from a breach of or the Borrower’s failure to comply with Section 4.01(k), 6.02, 6.05(b), 6.06, 6.07, 7.02, 7.04 or 7.08, 20 days and (z) in the case of any other Event of Default, 30 days (or, in the case of this clause (z), if the Borrower is diligently pursuing a cure of such Event of Default which is capable of cure, such longer period as may be required to effect such cure but not more than 90 days), in each case if such Event of Default is continuing at the end of such period.

(b) Upon the occurrence of an Event of Default under Section 8.01(d), the Commitments shall automatically terminate and the Loans (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents shall automatically become and be due and payable. Upon the occurrence of any other Actionable Default, either Lender may, by notice to the Borrower and the other Lender, declare the Loans made by it (with accrued interest thereon) and all other amounts owing to it under this Agreement and the other Loan Documents to be due and payable forthwith, whereupon the same shall immediately become due and payable. Except as expressly provided above in this Section, presentment, demand, protest and all other notices of any kind are hereby expressly waived by the Borrower.

ARTICLE 9 MISCELLANEOUS

Section 9.01. *Amendments and Waivers.* Neither this Agreement nor any other Transaction Document, nor any provision hereof or thereof, may be waived, amended, modified or supplemented except pursuant to an agreement or agreements in writing

entered into by the Borrower and the Lenders, other than such provisions hereof or thereof which by its express terms may be waived, amended or modified by the Controlling Party without consent of the Subordinated Lender; *provided*, that upon not less than five Business Days advance notice to the Subordinated Lender, any Transaction Documents that is not a Loan Document or the Put Option Agreement may be waived, amended, modified or supplemented without the consent of the Subordinated Lender, unless such waiver, amendment, modification or supplement could have a material adverse effect on the Subordinated Lender.

Section 9.02. *Notices.* All notices, requests, consents and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy or other electronic mail transmission) and, unless otherwise expressly provided herein, must be delivered by messenger, overnight courier service, telecopy or electronic mail, and shall be deemed to have been duly given or made when delivered, or notice by electronic mail transmission, or, in the case of telecopy notice, when received, addressed as follows or to such other recipient or address as may be hereafter notified by the respective parties hereto:

Borrower: TALF LLC
c/o Federal Reserve Bank of New York, as Managing Member
33 Liberty Street
New York, NY 10045



with a copy to:

Federal Reserve Bank of New York
33 Liberty Street
New York, NY 10045-0001



and:

Federal Reserve Bank of New York
33 Liberty Street
New York, NY 10045-0001

