

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT PURSUANT  
TO SECTION 13 OR 15(D) OF THE  
SECURITIES EXCHANGE ACT OF 1934

Date of report (Date of earliest event reported): December 22, 2014

**XCEL BRANDS, INC.**  
(Exact Name of Registrant as Specified in Its Charter)

**Delaware**  
(State or Other Jurisdiction of Incorporation)

**000-31553**

(Commission File Number)

**76-0307819**

(IRS Employer Identification No.)

475 10th Avenue, 4th Floor, New York, NY  
(Address of Principal Executive Offices)

10018  
(Zip Code)

(347) 727-2474  
(Registrant's Telephone Number, Including Area Code)

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

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

**Item 1.01 Entry into a Material Definitive Agreement.**

**Item 2.01 Completion of Acquisition or Disposition of Assets**

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

On December 22, 2014 (the “Closing Date”), XCel Brands, Inc. (“XCel” or the “Company”) and H Licensing, LLC, (“H Licensing”) a wholly-owned subsidiary of XCel (together, the “Buyers”), entered into an asset purchase agreement dated December 22, 2014 (the “Purchase Agreement”), with The H Company IP, LLC (the “Seller”), a wholly-owned subsidiary of House of Halston LLC (“HOH”), and HOH, pursuant to which the Buyers acquired certain assets of the Sellers, including the “H by Halston” and “H Halston” trademarks and other intellectual property rights relating thereto. Benjamin Malka, a director of the Company, is a 24% equity holder of HOH, and Chief Executive Officer of HOH and of Seller.

Pursuant to the Purchase Agreement, on the Closing Date, the Buyers delivered (i) \$18,023,090 in cash and 1,000,000 shares of common stock of the Company (the “Seller’s Stock Consideration”) to the Seller and (ii) warrants to purchase 750,000 shares of common stock of the Company (the “Warrant Shares”) to the Seller’s Designee (the “Seller’s Designee”). The warrants are exercisable for a period of five years for the closing date at an exercise price of \$12.00 per share.

Pursuant to voting agreements entered into on the Closing Date (the “Voting Agreement”), each of the Seller and Seller’s Designee appointed Robert J. D’Loren, Chief Executive Officer, President and Chairman of the Board of XCel, as its irrevocable proxy and attorney-in-fact with respect to the shares of the common stock of XCel received by it in connection with the transaction and the Warrant Shares, respectively. As proxy holder, Mr. D’Loren, shall vote in favor of matters recommended or approved by the board of directors.

Pursuant to a lock-up agreement entered into on the Closing Date, the Seller agreed that during the twelve (12) months from the Closing Date, in the case of the Seller’s Stock Consideration, or during the twelve (12) months from the date any shares are issued to the Sellers pursuant to the Trademark License Agreement (defined below) (collectively, the “Lock-up Shares”), the Seller may not, subject to certain exceptions, offer, sell, pledge, hypothecate, grant an option for sale or otherwise dispose of, or transfer or grant any rights with respect to, any of the Lock-Up Shares. The Seller’s Designee entered into a similar lock-up agreement with respect to the Warrant Shares. The Company has agreed to file a registration statement covering the Lock-Up Shares and the Warrant Shares and use commercially reasonable efforts to cause the registration statement to become effective within sixty (60) days after the expiration of the initial twelve (12) month lock-up period and remain effective for specified time periods.

Pursuant to a Trademark License Agreement (the “Trademark License Agreement”) entered into on the Closing Date by and between H Licensing and the Seller, H Licensing granted to the Seller a non-assignable exclusive sublicense to use the H Halston Trademark in association with the manufacture, distribution, promotion, advertising and sale of products bearing the H Halston trademark and any related services thereto in all channels of distribution, excluding direct-response television and its related e-commerce and digital distribution. The initial term of the Trademark License Agreement expires on December 31, 2019 unless sooner terminated or renewed. After the initial term, the Seller shall be entitled to renew the Trademark License Agreement on three occasions, each for five (5) year terms, as long as the Seller is in compliance with all terms and conditions of the agreement. The Seller may terminate the agreement prior to the expiration of the initial term without penalties, fees or payment of future royalties upon 90 days notice prior to the second anniversary of the closing. The Seller shall pay royalties to H Licensing during the term, with a minimum guaranteed royalty of \$600,000 per year during the initial term for 2016 through 2024 and \$1,200,000 for any year thereafter. In the event the Seller exercises the early transaction right, H Licensing shall pay to the Seller a participation fee for each of the three following years in an amount not to exceed \$4,000,000 (\$5,000,000 if H Licensing distributes, or otherwise enters into any agreements for the distribution of, products bearing the H Halston trademark in China). The participation fee, if any, may be paid in cash or shares of the Company’s common stock based on the greater of \$8.00 and the value weighted average price of the common stock for the five business days preceding payment.

On December 22, 2014, H Licensing entered into a new secured term loan facility with BHBM pursuant to which Bank Hapoalim B.M. (“BHBM”) made a term loan in the aggregate principal amount of \$10,000,000 (the “Term Loan”). H Licensing used the net proceeds of the Term Loan to pay a portion of the cash purchase price paid for the acquisition of the Acquired Assets pursuant to the Purchase Agreement among Buyers and the Seller. The Term Loan is secured by (i) all of the assets of H Licensing, (ii) a guarantee by XCel, secured by a pledge of XCel’s membership interest in H Licensing, (iii) a guarantee from IM Brands LLC, a wholly-owned subsidiary of XCel (“IM Brands”), secured by a pledge of all of the assets of IM Brands, and (iv) a guarantee from JR Licensing LLC, a wholly-owned subsidiary of Xcel (“JR Licensing”), secured by a pledge of all of the assets of JR Licensing.

The Term Loan bears interest at an annual rate, as elected by H Licensing, of (i) the rate of interest determined by BHBM to be the offered rate on a page or service that displays an average ICE Benchmark Administration Ltd. rate for deposits in U.S. dollars (for delivery on the first working day of any interest period of 1, 2 or 3 months, as elected by H Licensing, (or such other period as BHBM may agree) with a term equivalent to such interest period, determined as of approximately 11:00 a.m. (London time) two (2) working days prior to the first working day of such interest period plus 3.50% or (ii) the rate of interest announce by BHBM, from time to time, as its prime rate plus .50%. Interest on the Term Loan accruing at a rate based on LIBOR is payable on the last business day of the applicable interest period and interest on the Term Loan accruing at a rate based on the prime rate is payable quarterly in arrears on the first day of each calendar quarter.

Scheduled principal payments of the Term Loan are as follows:

Date of Payment	Amount of Principal Payment
January 1, 2015, April 1, 2015 and October 1, 2015	\$0
January 1, 2016, April 1, 2016, July 1, 2016 and October 1, 2016	\$375,000
January 1, 2017, April 1, 2017, July 1, 2017 and October 1, 2017	\$625,000
January 1, 2018, April 1, 2018, July 1, 2018 and October 1, 2018	\$750,000
January 1, 2019, April 1, 2019, July 1, 2019 and October 1, 2019	\$750,000

For any fiscal year commencing with the fiscal year ending on December 31, 2015, H Licensing is required to prepay the outstanding amount of the Term Loan from excess cash flow for the prior fiscal year in an amount equal to twenty percent (20%) of such excess cash flow. Excess cash flow is defined as, for any fiscal period, cash provided by operating activities for such period less (a) capital expenditures not made through the incurrence of indebtedness less (b) all cash interest and principal (including the Term Loan) paid or payable during such period less (c) all taxes paid or payable during such period less (d) payments made during such period by H Licensing to XCel equal to the estimated tax liability of XCel resulting from any taxable income (net of losses, including for prior years to the extent permitted to be deducted) of H Licensing. H Licensing also executed a guarantee of the Company's outstanding term loans with BHBM.

The Term Loan contains customary covenants, including reporting requirements, trademark preservation and the following financial covenants:

- the fixed charge ratio of the Company and its subsidiaries on a consolidated basis shall not be less than 1.20 to 1.00 at the end of each fiscal quarter for the twelve fiscal month period ending on such fiscal quarter;
- EBITDA of the Company and its subsidiaries on a consolidated basis shall not be less than \$5,500,000 for the fiscal year ending December 31, 2014, not less than \$7,500,000 for the fiscal year ending December 31, 2015, not less than \$15,500,000 for the fiscal year ending on December 31, 2016 and not less than \$17,000,000 for fiscal year ending December 31, 2017 and each fiscal year end thereafter;
- H Licensing cannot have a loss for the fiscal year ending December 31, 2015 in excess of \$500,000 and EBITDA (excluding allocated corporate overhead) of H Licensing shall not be less than \$4,500,000 for the fiscal year ending December 31, 2016 and not less than \$5,000,000 for the fiscal year ending December 31, 2017 and each fiscal year end thereafter;
- Net worth of the Company and its subsidiaries on a consolidated basis shall not be less than \$40 million at the end of any fiscal quarter;
- Liquid assets of the Company and its subsidiaries on a consolidated basis shall not be less than \$4,500,000 at any time; and
- H Licensing shall have license royalty income of at least \$6,000,000 each fiscal year commencing for the fiscal year ending December 31, 2016.

In conjunction with the Term Loan, the Company and IM Brands amended the IM Brands term loan. The amendment includes, among other things, amendments to the financial covenants which now require the following:

- EBITDA of the Company and its subsidiaries on a consolidated basis shall not be less than \$5,500,000 for the fiscal year ending December 31, 2014, not less than \$7,500,000 for the fiscal year ending December 31, 2015, not less than \$15,500,000 for the fiscal year ending on December 31, 2016 and not less than \$17,000,000 for fiscal year ending December 31, 2017 and each fiscal year end thereafter;
- Capital Expenditures of the Company and its subsidiaries on a consolidated basis in any fiscal year shall not exceed \$1,300,000 of which not more than \$500,000 shall be capital expenditures for the retail division for the fiscal year ending on December 31, 2015, and \$500,000 for the fiscal year ending on December 31, 2016 and each fiscal year end thereafter;
- the fixed charge ratio of the Company and its subsidiaries on a consolidated basis shall not be less than 1.20 to 1.00 at the end of each fiscal quarter for the twelve fiscal month period ending on such fiscal quarter;
- Net worth of the Company and its subsidiaries on a consolidated basis shall not be less than \$40 million at any time;
- Liquid assets of the Company and its subsidiaries on a consolidated basis shall not be less than \$4,500,000 at any time; and
- If for any fiscal year commencing with the fiscal year ending on December 31, 2014, there shall be excess cash flow for such fiscal year, the Borrower shall pay to Bank an amount equal to the applicable recapture percentage of such excess cash flow, to be applied by Bank to the principal amount of the Term Loan in the reverse order of maturity.

In conjunction with the Term Loan, the Company and JR Licensing amended the JR Licensing term loan. The amendment includes, among other things, amendments to the financial covenants which now require the following:

- EBITDA of the Company and its subsidiaries on a consolidated basis shall not be less than \$5,500,000 for the fiscal year ending December 31, 2014, not less than \$7,500,000 for the fiscal year ending December 31, 2015, not less than \$15,500,000 for the fiscal year ending on December 31, 2016 and not less than \$17,000,000 for fiscal year ending December 31, 2017 and each fiscal year end thereafter.

- Capital Expenditures of the Company and its subsidiaries on a consolidated basis in any fiscal year shall not exceed \$1,300,000 of which not more than \$500,000 shall be Capital Expenditures for the retail division for the fiscal year ending on December 31, 2015, and \$500,000 for the fiscal year ending on December 31, 2016 and each fiscal year end thereafter.
- the fixed charge ratio of the Company and its subsidiaries on a consolidated basis shall not be less than 1.20 to 1.00 at the end of each fiscal quarter for the twelve fiscal month period ending on such fiscal quarter.
- Net worth of the Company and its subsidiaries on a consolidated basis shall not be less than \$40 million at any time;
- Liquid assets of the Company and its subsidiaries on a consolidated basis shall not be less than \$4,500,000 at any time; and
- If for any fiscal year commencing with the fiscal year ending on December 31, 2014, there shall be excess cash flow for such fiscal year, the Borrower shall pay to Bank an amount equal to the applicable recapture percentage of such excess cash flow, to be applied by Bank to the principal amount of the Term Loan in the reverse order of maturity.

On December 22, 2014, the Company entered into subscription agreements with six accredited investors. Pursuant to the terms of the subscription agreements, the Company issued an aggregate of 1,086,667 shares of its common stock for an aggregate purchase price of \$9,780,000 in a private offering.

On December 22, 2014, the Company entered into an agreement with Young America Capital LLC (the "Agent"), pursuant to which the Company agreed to pay the Agent a cash of 7% of the gross proceeds from the Offering, except with respect to \$3,000,000 of common stock in the Offering. The Company paid to the Agent a fee of \$474,600 in connection with the Offering. Todd Slater, a director of the Company, is a registered representative and independent contractor to the Agent and received \$439,005 of the consideration paid to the Agent.

### **Item 3.02 Unregistered Sales of Equity Securities.**

Pursuant to the Purchase Agreement, the Company issued 1,000,000 shares of Common Stock and warrants to purchase 750,000 shares of Common Stock.

On December 22, 2014, the Company issued six accredited investors an aggregate of 1,086,667 shares of the common stock of the Company at a purchase price of \$9.00 per share or gross proceeds of \$9,780,000 in a private offering.

None of the issuances referenced above were registered under the Securities Act. Neither the offerings nor the grants of stock was a "public offering" as defined in Section 4(a)(2) of the Securities Act due to the insubstantial number of persons involved, size of the offerings, manner of the offerings and number of securities offered. The Company did not undertake an offering in which it sold a high number of securities to a high number of investors. In addition, the Seller had the necessary investment intent as required by Section 4(a)(2) because it agreed to and received share certificates bearing a legend stating that such securities are restricted pursuant to Rule 144 of the Securities Act. This restriction ensures that these securities would not be immediately redistributed into the market and therefore not be part of a "public offering." Based on an analysis of the above factors, the Company has met the requirements to qualify for exemption under Section 4(a)(2) of the Securities Act for this transaction.

**Item 8.01 License Agreement with QVC, Inc.**

Effective as of the Closing Date, H Licensing entered into a license agreement with QVC in order to market, promote, distribute and sell consumer products under the H by Halston trademark and brand name. Pursuant to the license agreement, H Licensing designs and QVC markets, promotes, distributes and sells various products under the H by Halston brand name in exchange for a royalty based on net retail sales of the products. The initial license period expires on December 31, 2019. After the initial term, the license agreement automatically renews for additional three-year terms in perpetuity unless either party notifies the other of its intention not to renew at least sixty (60) days prior to the end of the then-current term.

**Item 9.01 Financial Statements and Exhibits**

(d) **Exhibits**

- 2.1 Asset Purchase Agreement by and among XCel Brands, Inc., H. Licensing, LLC and H Company IP LLC and House of Halston, LLC entered into on December 22, 2014.
- 4.1 Warrant issued to Hilco Trading LLC dated December 22, 2014.
- 10.1 Line Letter Agreement dated as of December 22, 2014 by and among XCel Brands, Inc., H Licensing LLC and Bank Hapoalim B.M.
- 10.2 Guaranty of H Licensing, LLC in favor of Bank Hapoalim B.M.
- 10.3 Promissory Note executed dated as of December 22, 2014 in the principal amount of \$10,000,000 made by H Licensing, LLC to the order of Bank Hapoalim B.M., as supplemented by Loan Rider.
- 10.4 Amendment No. 1 to Promissory Note, Line Letter Agreement and Security Agreements dated as of December 22, 2014 by and among JR Licensing, LLC, XCel Brands, Inc. and Bank Hapoalim B.M.
- 10.5 Amendment No. 2 to Promissory Note, Line Letter Agreement and Security Agreements dated as of December 22, 2014 by and among IM Brands, LLC, XCel Brands, Inc. and Bank Hapoalim B.M.
- 10.6 Guaranty of IM Brands, LLC in favor of Bank Hapoalim B.M.
- 10.7 Guaranty of JR Licensing LLC in favor of Bank Hapoalim B.M.
- 10.8 Guaranty of XCel Brands, Inc. in favor of Bank Hapoalim B.M.
- 10.9 Voting Agreement dated as of December 22, 2014 by and between XCel Brands, Inc. and H Company IP, LLC
- 10.10 Voting Agreement dated as of December 22, 2014 by and between XCel Brands, Inc. and Hilco Trading, LLC.
- 10.11 Letter Agreement dated as of December 22, 2014 by and between XCel Brands, Inc. and Young America Capital, LLC.
- 10.12 Security Agreement dated as of December 22, 2014 by and between H Licensing, LLC. and Bank Hapoalim B.M.
- 10.13 Intellectual Property Security Agreement dated as of December 22, 2014 by and between H Licensing, LLC. and Bank Hapoalim B.M.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this Current Report on Form 8-K to be signed on its behalf by the undersigned thereunto duly authorized.

XCEL BRANDS, INC.  
(Registrant)

By: /s/ James F. Haran  
Name: James F. Haran  
Title: Chief Financial Officer

Date: December 24, 2014



**ASSET PURCHASE AGREEMENT**

**BY AND AMONG**

**XCEL BRANDS, INC.**

**H LICENSING, LLC**

**AND**

**THE H COMPANY IP, LLC**

**HOUSE OF HALSTON, LLC**

**DATED AS OF DECEMBER 22, 2014**

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Allocation Schedule

Annex A

Exhibits:

Form of Lock-Up Agreement

Exhibits A-1 and A-2

Form of Voting Agreement

Exhibits B-1 and B-2

Form of Master License Agreement

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Form of Cooperation Agreement

Exhibit D

H (stylized) Logo

Exhibit E

Seller Brands

Exhibit F

Form of the Warrants

Exhibit G

## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "Agreement") is entered into as of December 22, 2014, by and among XCel Brands, Inc., a Delaware corporation ("XCel"), H Licensing, LLC, a Delaware limited liability company and wholly owned subsidiary of XCel, ("Sub" and together with XCel, the "Buyers"), and The H Company IP, LLC, a Delaware limited liability company (the "Seller"), a wholly owned subsidiary of House of Halston, LLC, a Delaware limited liability company ("Parent"). The Seller and Buyers are referred to herein each individually as a "Party," and collectively as the "Parties."

### RECITALS

WHEREAS, the Sellers own the Acquired Assets (as defined below);

WHEREAS, the Seller desires to sell, and Buyers desire to purchase from the Seller, the Acquired Assets, including certain Intellectual Property Rights and certain other assets, on the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, contemporaneously with the purchase by the Buyers of the Acquired Assets, the Seller desires to license certain of the Acquired Assets from Buyers under a Master License Agreement (as defined herein).

NOW, THEREFORE, in consideration of the representations, warranties, covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby agree as follows:

### ARTICLE I DEFINITIONS AND USAGE

1.1 Definitions. For purposes of this Agreement, the following terms and variations thereof have the meanings specified or referred to in this Section 1.1:

"Acquired Assets" means all of the Seller's right, title, and current and (if any) future interest in and to all of the following assets of the Seller (a) the H by H Archives and (b) all Intellectual Property Rights in the H by H Brands. Notwithstanding the foregoing, the Acquired Assets shall not include any Liabilities, any Excluded Intellectual Property Rights or any Excluded Assets.

"Affiliate" of any Person means any Person which, directly or indirectly controls or is controlled by that Person, or is under common control with that Person. For the purposes of this definition, "control" (including, with correlative meaning, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities or by contract or otherwise.

"Agreement" is defined in the preamble.

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“Allocation Schedule” means the schedule in the form attached hereto as Annex A.

“Alternate Proposal” is defined in Section 6.5.

“Balance Sheet” is defined in Section 4.4(a).

“Books and Records” means all books and records of the Seller and its Affiliates relating exclusively to and necessary for the operation of each Seller’s and their respective Affiliates’ businesses as each is currently operated, including files, documents, correspondence, cost and pricing information, accounting records, licensee lists and records, brand and marketing research, maintenance and inspection reports, archives, sales and marketing materials.

“Business Day” means any day other than (a) Saturday or Sunday or (b) any other day on which banks in New York, New York are permitted or required to be closed.

“Buyers” is defined in the preamble.

“Buyer Disclosure Schedule” is defined in the first paragraph of Article V.

“Buyer Indemnified Parties” is defined in Section 11.2.

“Buyer Material Adverse Effect” means any change, effect, event, occurrence, state of facts or development that is, or would reasonably be expected to be, materially adverse to the assets, business, liabilities, prospects, results of operations or condition (financial or otherwise) of the Buyers taken as a whole or that prevents or materially impedes, or would reasonably be expected to prevent or materially impede, the consummation by any of the Buyers of the transactions contemplated by this Agreement; provided, however, that none of the following shall constitute, or shall be considered in determining whether there has occurred, a Buyer Material Adverse Effect: (a) changes that are solely the result of economic or political factors affecting the national, regional or world economy or the Buyers’ industry, acts of war or terrorism or other force majeure events, in each case except where such condition has a disproportionate effect on the Buyers; (b) changes that are solely the result of factors generally affecting the industries or markets in which any of the Buyers operate, in each case except where such condition has a disproportionate effect on the Buyers; (c) changes in Legal Requirements or the interpretation thereof; or (d) any action required to be taken pursuant to this Agreement.

“Buyer QVC Agreement” means the agreement to be entered into by and between Sub or any Affiliate of Xcel and QVC relating to the license of the H by Halston brand, as such agreement may be amended, modified, supplemented, restated, renewed, extended or replaced from time to time, for the exclusive sale of apparel, footwear, handbags, accessories and such other products other than cosmetics, perfumes, body products and such related products classified as products belonging to International Class 3.

“Cap” is defined in Section 11.4(b).



et seq.). “CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601,

“Claim” is defined in Section 12.13(a).

“Claim Notice” is defined in Section 11.7.

“Closing” is defined in Section 3.1.

“Closing Date” is defined in Section 3.1.

“COBRA” means Section 4980B of the Code, Sections 601 through 608, inclusive, of ERISA and any applicable similar state laws.

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

“Comprehensive Rules” is defined in Section 12.13(b).

“Contract” means, with respect to the Acquired Assets, any agreement, contract, license, sublicense, lease, sublease, indenture, mortgage, instrument, guaranty, loan or credit agreement, note, bond, customer order, purchase order, franchise, dealer and distributorship agreement, supply agreement, development agreement, joint venture agreement, promotion agreement, partnership agreement or other arrangement, understanding or commitment, whether written or oral and including any right or obligation under any of the foregoing.

“Cooperation Territories” is defined in Section 7.5(a).

“Core Representations” is defined in Section 11.1.

“Damages” is defined in Section 11.2.

“Decreased Cap” is defined in Section 11.4(b).

“Decree” means any final, non-appealable judgment, decree, ruling, injunction, assessment, attachment, undertaking, award, charge, writ, executive order, administrative order or any other order of any Government Authority.

“Direct Response Television Channel” shall mean any televised program which requests a consumer to respond to any promotion of any product or service by mail, telephone, internet or other electronic means, which program: (A) is live, contains an intermittent or continuous call to action and devotes at least twenty percent (20%) of its programming time to the promotion of products or services; or (B) is otherwise in the style or format of a televised retailing program.

“Effectiveness Period” is defined in Section 6.10.

“Employee Benefit Plan” means any “employee benefit plan” as defined in Section 3(3) of ERISA and any other material employee benefit or fringe benefit plan, program or arrangement of any kind (whether written or oral).

“Environmental and Safety Requirements” means all federal, state, local and foreign statutes, regulations, ordinances, codes and other provisions having the force and effect of law, all judicial and administrative orders and determinations, all contractual obligations and all common law concerning public health and safety, worker health and safety, and pollution or protection of the environment, including all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, release, threatened release, control or cleanup of, or exposure to, any hazardous materials, substances or wastes, chemical substances or mixtures, pesticides, pollutants, contaminants, toxic chemicals, petroleum products or byproducts, asbestos, polychlorinated biphenyls, noise or radiation, as previously, now or hereafter in effect.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means, with respect to any entity, any trades or business (whether or not incorporated) that are treated as a single employer with such entity under Sections 414(b), (c), (m) or (o) of the Code.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, together with the rules and regulations promulgated thereunder.

“Excluded Assets” is defined in Section 2.2.

“Excluded Intellectual Property Rights” means all current and future interest in and to all Intellectual Property Rights in the Excluded Assets, including all goodwill in connection therewith, now owned or hereafter acquired or developed by the Seller.

“Exclusivity Termination Fee” is defined in Section 10.3(b).

“Fairness Opinion” is defined in Section 6.2.

“GAAP” means generally accepted accounting principles for financial reporting in the United States.

“Government Authority” means any domestic or foreign national, state, multi-state or municipal or other local government, any subdivision, agency, commission or authority thereof, including any quasi-governmental or private body exercising any regulatory or taxing authority thereunder or any judicial authority (or any department, bureau or division thereof).

“Government Authorization” means any approval, consent, license, permit, waiver, or other authorization issued, granted, given or otherwise made available by or under the authority of any Government Authority or pursuant to any Legal Requirement.

“H by H Archives” means, all products, samples, garments, computer-aided designs, designs, drawings, paintings, illustrations, patterns, fabrics, artwork, advertising, press books and other books, prints, video and audio, photographs, and other images and media related to the H by H Brands solely to the extent owned by a Seller as of the Closing Date.

“H by H Brands” means the marks, logos, designs and trademarks for the H Halston brand and the H by Halston brands, which are listed on Schedule A-1 hereto (whether in typed form, stylized, or otherwise) (as registered or applied for registration in the United States or elsewhere in the world, including all registrations and applications set forth on Schedule A-1) and all Intellectual Property Rights associated therewith, but excluding all Intellectual Property Rights in and to the H by H Brands in International Class 3 Products.

“Indemnification Objection” is defined in Section 11.7.

“Indemnified Party” is defined in Section 11.3.

“Indemnifying Party” is defined in Section 11.6(a).

“Indebtedness” means (a) indebtedness of Seller for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of Seller evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of Seller upon which interest charges are paid, (d) all obligations of Seller in respect of capitalized leases that, individually, involve an aggregate future liability in excess of \$15,000 and obligations of Seller for the deferred purchase price of goods or services (other than trade payables or accruals incurred in the Ordinary Course of Business), (e) all obligations in respect of banker’s acceptances or letters of credit issued or created for the account of Seller, (f) all indebtedness or obligations of the types referred to in the preceding clauses (a) through (e) of any other Person secured by any Lien on any assets of Seller, even though Seller have not assumed or otherwise become liable for the payment thereof, (g) all guarantees by Seller of obligations of the type described in clauses (a) through (f) above of any other Person, and (h) payment obligations in respect of interest under any interest rate swap or other hedge agreement or arrangement entered into by Seller with respect to any Indebtedness described in clauses (a) through (g) above.

“Initial Period” is defined in Section 6.10.

“Insurance Policies” is defined in Section 4.14.

“Intellectual Property Rights” means all of the following in any jurisdiction throughout the world, whether used now or in the future: (i) patents, patent applications and patent disclosures; (ii) trademarks, service marks, proprietary designs and design processes, trade dress, trade names, product configuration, corporate names, logos, insignias and slogans and Internet domain names, Internet websites, social network site handles, metatags, URLs, Internet and phone applications and systems; (iii) copyrights and copyrightable works; (iv) registrations and applications for any of the foregoing; (v) trade secrets and confidential information (including inventions, ideas, formulae, compositions, know-how, manufacturing and production processes and techniques, manufacturing or raw material sources, research and development information, sketches and drawings (including preliminary and technical sketches and drawings), specifications, designs, plans, proposals, technical data, financial, business and marketing plans, and customer and supplier lists and related information); (vi) product designs, configurations, and material and color specifications and combinations; (vii) manufacturing molds, techniques, and processes; (viii) all other intellectual property; and (ix) any goodwill associated with each of the foregoing.

“Intent to Use Applications” is defined in Section 4.22.

“Interim Reports” is defined in Section 4.4(a).

“International Class 3 Products” means such products and goods classified as belonging to International Class 3 as established by the Committee of Experts of the Nice Union and set forth in the International Classification of Goods and Services for the Purposes of the Registration of Marks (10th ed. 2011), published by the World Intellectual Property Organization

“IRS” means the United States Internal Revenue Service.

“Knowledge” means, with respect to the Seller or the Seller Parties, the actual knowledge, after due inquiry, of Ben Malka, and with respect to the Buyers, the actual knowledge, after due inquiry, of Robert D’Loren, Seth Burroughs and James Haran. The terms “know” and “knows” and like terms will have correlative meanings.

“Lanham Act” is defined in Section 2.1.

“Leased Real Property” means all leasehold or subleasehold estates and other .rights to use or occupy any land, buildings, structures, improvements, fixtures, or other interest in real or immovable property.

“Legal Requirement” means any federal, state, local, municipal, foreign, international, multinational or other administrative order, constitution, law, ordinance, principle of common law, regulation, rule, statute or treaty.

“Liability” means any liability or obligation of whatever kind or nature (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated and whether due or to become due), including any liability for Taxes.

“Licensee” means a Person who has entered into and as of the Closing Date is a party to a License Agreement.

“License Agreement” means any Contract between a Party and any Person pursuant to which such Party has granted such Person the right to design, manufacture, sell or distribute goods under or using the H by H Brands.

“Liens” means any liens, pledges, claims, encumbrances, hypothecations, mortgages, charges, options, preemptive rights, rights of first refusal or similar rights, title retention agreements, easements, encroachments, leases, subleases, covenants, security interests and restrictions and encumbrances of any kind or nature whatsoever.

“Lock-Up Agreement” is defined in Section 6.9(a).

“Master License Agreement” means the agreement in the form attached hereto as Exhibit C to be entered into by and among the Parties or their respective successors thereto and the Buyers or their successors thereto.

“Material Contracts” is defined in Section 4.12(a).

“Multiemployer Plan” is defined in Section 3(37) of ERISA.

“Ordinary Course of Business” means the ordinary course of business consistent with past custom and practice.

“Organizational Documents” means with respect to any entity, the certificate of incorporation, bylaws, certificate of formation, operating agreement or other governing documents of such entity.

“Owned Real Property” means all parcels of real property in which the Seller Parties have an ownership, easement or other real property interest.

“Party” or “Parties” have the meaning set forth in the preamble.

“PDF” is defined in Section 12.11.

“Permitted Liens” means (i) Liens set forth on Schedule A-2 hereto, (ii) statutory Liens arising out of operation of law with respect to a Liability incurred in the ordinary course of business and which is not delinquent or is being actively contested in good faith, (iii) liens for Taxes not yet subject to penalties for nonpayment or which are being actively contested in good faith by appropriate Proceedings and for which adequate reserves have been maintained in accordance with GAAP, or (iv) mechanics’, materialmens’, carriers’, workmens’, warehousemens’, repairmens’, landlords’ or other like liens and security obligations with respect to Liabilities that are not yet due and payable or that are being contested in good faith.

“Person” means an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a Government Authority.

“Proceeding” means any action, claim, cause of action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private, whether at law or in equity) commenced, brought, conducted or heard by or before, or otherwise involving, and whether before any Government Authority or arbitrator.

“Purchase Price” is defined in Section 3.2.

“QVC” means QVC, Inc., a Delaware corporation, or any successor thereto.

“Registrable Securities” is defined in Section 6.10.

“Registration Statement” is defined in Section 6.10.

“Related Agreements” means, collectively, the agreements set forth on Schedule A-3 hereto.

“Related Mark” means (a) derivatives of “H HALSTON” and “H BY HALSTON” marks, (b) derivatives of “HALSTON HERITAGE” marks, (c) derivatives of the “HALSTON” mark, and (d) any mark, service mark, tradename, fictitious name, dba or trademark using the word “HALSTON”, or any other component of the such mark, service mark, tradename, dba or trademark, or mark (or portion thereof) confusingly similar to any of the Intellectual Property Rights described in any of (a), (b), (c) or (d) but excluding the Seller Brands and the H by H Brands.

“Representative” means, with respect to a particular Person, any director, officer, manager, employee, agent, consultant, advisor, accountant, financial advisor, legal counsel or other representative of that Person.

“SEC” means the Securities and Exchange Commission.

“SEC Reports” means all filings made by XCel with the SEC pursuant to the Exchange Act of 1934, as amended.

“Securities Act” means the Securities Act of 1933, as amended, together with the rules and regulations promulgated thereunder.

“Seller” is defined in the preamble.

“Seller Brands” means the marks, logos, designs and trademarks listed on Exhibit F hereto owned by the Seller.

“Seller’s Designee” means Hilco Trading, LLC.

“Seller Disclosure Schedule” is defined in the first paragraph of Article IV.

“Seller Indemnified Parties” is defined in Section 11.3.

“Seller Information” means any data and information relating to the Acquired Assets, including all of Seller’s Books and Records, customers, financial statements, conditions or operations of each Seller’s business, including with respect to the Acquired Assets, in each case which is confidential in nature and not generally known to the public.

“Seller Parties Intellectual Property Rights” is defined in Section 4.16(c).

“Seller Parties Material Adverse Effect” means any change, effect, event, occurrence, state of facts or development that is, or would reasonably be expected to be, materially adverse to the assets, business, liabilities, prospects, results of operations or condition (financial or otherwise) of the Seller Parties taken as a whole or that prevents or materially impedes, or would reasonably be expected to prevent or materially impede, the consummation by the Seller Parties of the transactions contemplated by this Agreement; provided, however, that none of the following shall constitute, or shall be considered in determining whether there has occurred, a Seller Party Material Adverse Effect: (a) changes that are solely the result of economic or political factors affecting the national, regional or world economy or the Seller Parties’ industry, acts of war or terrorism or other force majeure events, in each case except where such condition has a disproportionate effect on the Seller Parties; (b) changes that are solely the result of factors generally affecting the industries or markets in which the Seller Parties operate, in each case except where such condition has a disproportionate effect on the Seller Parties; (c) changes in Legal Requirements or the interpretation thereof; or (d) any action required to be taken pursuant to this Agreement.

“Seller’s Senior Creditor” means Pathlight Capital LLC, and its successors and assigns.

“Selling Securityholder Registration Statement” is defined in Section 6.10.

“Straddle Period” is defined in Section 7.2(b).

“Subsidiary” means, with respect to any Person, any other Person of which securities or other interests having the power to elect a majority of that corporation’s or other Person’s board of directors or similar governing body, or otherwise having the power to direct the business and policies of that other Person (other than securities or other interests having such power only upon the happening of a contingency that has not occurred), are held by such Person or one or more of its Subsidiaries.

“Survival Date” is defined in Section 11.1.

“Tax” means (i) any tax (including, without limitation, any income tax, franchise tax, margin tax, branch profits tax, capital gains tax, alternative or add-on minimum tax, estimated tax, value-added tax, sales tax, use tax, property tax, transfer tax, payroll tax, social security tax or withholding tax, escheat or abandoned property liability), and any related fine, penalty, interest or addition to tax with respect thereto, imposed, assessed or collected by or under the authority of any Government Authority or payable pursuant to any tax-sharing agreement relating to the sharing or payment of any such tax and (ii) any transferee, successor or other liability in respect of the taxes of another Person (whether by contract or otherwise).

“Tax Return” means any return (including any information return), report, statement, schedule, notice, form or other document or information filed with or submitted to, or required to be filed with or submitted to, any Government Authority in connection with the determination, assessment, collection or payment of any Tax.

“Termination Date” is defined in Section 10.1(b).

“Third Party” means a Person that is not a party to this Agreement.

“Third Party Claim” is defined in Section 11.6(b).

“Trading Day” means a day on which the New York Stock Exchange is open for trading.

“Trading Market” means the following markets or exchanges on which the XCel Shares are listed or quoted for trading on the date in question: the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, NYSE Amex Equities or the OTC Bulletin Board (or any successor to any of the foregoing).

“Transfer Taxes” is defined in Section 7.2(a).

“Voting Agreement” is defined in Section 7.9.

“Warrants” is defined in Section 3.3(iii).

“Warrant Shares” is defined in Section 4.21(b).

“XCel” is defined in the preamble.

“XCel Shares” means the shares of common stock of XCel.

“Year End Financials” is defined in Section 4.4(a).

## 1.2 Usage.

(a) Interpretation. In this Agreement, unless a clear contrary intention appears: (i) the singular number includes the plural number and vice versa; (ii) reference to any Person includes such Person’s successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually; (iii) reference to any gender includes each other gender; (iv) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof; (v) reference to any Legal Requirement means such Legal Requirement as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any Legal Requirement means that provision of such Legal Requirement from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision; (vi) “hereunder,” “hereof,” “hereto,” and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article, Section or other provision hereof; (vii) “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term; (viii) “or” is used in the inclusive sense of “and/or”; (ix) with respect to the determination of any period of time, “from” means “from and including” and “to” means “to but excluding”; and (x) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto.



(b) Legal Representation of the Parties. This Agreement was negotiated by the Parties with the benefit of legal representation, and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any party shall not apply to any construction or interpretation hereof.

## **ARTICLE II**

### **PURCHASE AND SALE OF ASSETS**

2.1 Purchase and Sale of Assets. On the terms and subject to the conditions of this Agreement, the Seller agrees to sell, assign, convey, transfer and deliver to the Buyers (as directed by the Buyers) as of the Closing Date, and each Buyer agrees to purchase and take assignment and delivery from the Seller as of the Closing Date, all of Seller's right, title and interest in and to the Acquired Assets, free and clear of all Liens and Liabilities; provided, however, that any trademark application based upon Section 1051(b) of the Lanham (Trademark) Act of 1946, as amended (the "Lanham Act"), shall not be assigned until the filing of an allegation of use or statement of use pursuant to the Cooperation Agreement.

2.2 No Other Assets Acquired. Pursuant to this Agreement, no Buyer is acquiring, and the Seller shall retain, any and all assets, rights and properties other than the Acquired Assets (collectively, the "Excluded Assets"). In addition, but not limited to, the items listed below shall be deemed "Excluded Assets":

- (i) Seller Brands;
- (ii) Intellectual Property Rights related to the Seller Brands;
- (iii) The H (stylized) logo as set forth on Exhibit E attached hereto;
- (iv) Intellectual Property Rights consisting of Related Marks of any of the foregoing;
- (v) Intellectual Property Rights related to any trademark which includes the word "HALSTON" or the words "HALSTON HERITAGE", including the H by H Brands, for products relating to International Class 3 Products;

(vi) Social media sites and handles related to any of the foregoing; and

(vii) [www.Halston.com](http://www.Halston.com).

2.3 **No Liabilities Acquired.** The Buyers are not agreeing to, and shall not, assume any Liability, margin guarantee contract, obligation, undertaking, expense or agreement of any Seller of any kind, character or description, whether absolute, contingent, known, unknown, accrued, liquidated, unliquidated, executory or otherwise, and whether arising prior to or following the Closing, and the execution and performance of this Agreement shall not render the Buyers liable for any such liability, obligation, undertaking, expense or agreement (all of such liabilities and obligations shall be referred to herein as the "**Excluded Liabilities**"). Excluded Liabilities include any Liability related to any Excluded Asset.

### **ARTICLE III** **PURCHASE PRICE; PAYMENT**

3.1 **The Closing.** The closing of the transactions contemplated by this Agreement (the "**Closing**") shall take place at the offices of Blank Rome, LLP (or such other location as shall be mutually agreed upon by the Seller and Buyers) commencing at 10:00 a.m. New York time on a date (the "**Closing Date**") that is the second Business Day after all conditions to the obligations of the Seller and Buyers to consummate the transactions contemplated hereby set forth in Article VIII and Article IX (other than conditions with respect to actions the Seller and/or Buyers will take at the Closing itself, but subject to the satisfaction or waiver of those conditions) have been satisfied or waived, or on such other date as shall be mutually agreed upon by the Seller and Buyers prior thereto. The effective time of the Closing shall be deemed to be 12:01 a.m. on the Closing Date.

3.2 **Purchase Price.** Subject to the terms and conditions of this Agreement, in reliance on the representations, warranties, covenants and agreements of the Seller contained herein, and in payment and consideration for the sale, conveyance, assignment, transfer and delivery of the Acquired Assets by the Seller to the Buyers, the Buyers shall (a) pay to the Seller at the Closing (i) an amount equal to Eighteen Million Twenty Three Thousand Ninety United States Dollars (\$18,023,090) in cash; and (ii) 1,000,000 XCel Shares and (b) deliver the Warrants to the Seller's Designee (collectively, the "**Purchase Price**"), each payable as hereinafter provided.

3.3 **Payment Of Purchase Price.** At Closing, the Buyers shall pay to Seller the Purchase Price as follows:

(i) Buyers shall pay to Seller Eighteen Million Twenty Three Thousand Ninety United States Dollars (\$18,023,090) in cash, by wire transfer of immediately available funds;

(ii) Buyers shall cause to be issued to Seller 1,000,000 XCel Shares-valued at the greater of (X) \$8.00 per share and (Y) the price at which XCel Shares are sold in an equity transaction on or prior to the Closing Date; and

(iii) XCel shall deliver to Seller the warrants in the form attached hereto as Exhibit G, to purchase Seven Hundred Fifty Thousand (750,000) shares of the common stock of XCel at an exercise price of \$12.00 per share (the "Warrants").

3.4 Allocation. The Seller and the Buyers agree to allocate the sum of the Purchase Price, including any adjustments thereto pursuant to this Agreement, among the Acquired Assets in accordance with the allocation schedule attached hereto as Annex A (the "Allocation Schedule"). Each of the Parties hereto agrees that: (i) none of the Parties shall take a position on any Tax Return (including IRS Form 8594, if applicable) that is in any way inconsistent with the Allocation Schedule without the written consent of the other Parties or unless specifically required by an applicable Government Authority; and (ii) they shall promptly notify each other regarding the existence of any Tax audit, controversy or litigation related to the Allocation Schedule. Notwithstanding the foregoing, nothing contained herein shall prevent the Buyers or the Seller from settling any proposed deficiency or adjustment assessed against it by any Government Authority based upon or arising out of the Allocation Schedule, and neither the Buyers nor the Seller shall be required to litigate before any court any such proposed deficiency or adjustment by any Government Authority challenging the Allocation Schedule.

#### **ARTICLE IV**

#### **REPRESENTATIONS AND WARRANTIES OF THE SELLER PARTIES**

The Seller together with the Parent (collectively the "Seller Parties") hereby jointly and severally represent and warrant to each of the Buyers that the statements contained in this Article IV are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date (as though made then and as though the Closing Date were substituted for the date of this Agreement throughout this Article IV except to the extent any representation or warranty expressly speaks only as of a different date), except as set forth in the disclosure schedule attached hereto (the "Seller Disclosure Schedule"), which Seller Disclosure Schedule sets forth the Seller Parties' disclosures identified by the Seller Parties. The disclosures in any section or subsection of the Seller Disclosure Schedule shall qualify the corresponding section or subsection in this Article IV and any other section or subsection in which such disclosure is required to be included to the extent the relevance of such disclosure is reasonably apparent.

4.1 Organization and Good Standing. Each Seller Party is an entity, duly formed, validly existing and in good standing under the laws of the state of its formation. The capitalization of each Seller Party has all requisite power and authority to own, lease and operate its assets and properties and to carry on its business as currently conducted. Each Seller Party is duly qualified and, to the extent applicable, is in good standing, in each jurisdiction in which the character or location of the property owned, leased or operated by such Seller Party or the nature of the business conducted by such Seller Party makes such qualification necessary, except where the failure to be so qualified would not, individually or in the aggregate, reasonably be expected to have a Seller Parties Material Adverse Effect. Except as listed in Schedule 4.1 of the Seller Disclosure Schedule hereto, no Seller Party has any Subsidiaries.

4.2 Enforceability; Authority. Each Seller Party has all requisite power and authority to execute and deliver this Agreement and each other Related Agreement to which such Seller Party is a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by each Seller Party of this Agreement and each Related Agreement to which it is a party, and the consummation by it of the transactions contemplated hereby and thereby, have been duly authorized and approved, and no other action on the part of any Seller Party is necessary to authorize the execution, delivery and performance of this Agreement or any Related Agreement to which such Seller Party is a party or the consummation of the transactions contemplated hereby or thereby. This Agreement has been duly executed and delivered by each Seller Party and constitutes, and, with respect to each other Related Agreement to which a Seller is a party, upon its execution and delivery by such Seller Party, will constitute, assuming the due execution of this Agreement and such other Related Agreement by the Buyers and/or the other parties thereto, a valid and binding obligation of such Seller Party enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, receivership and similar laws affecting the enforcement of creditors' rights generally, and general equitable principles.

4.3 Consents; Approvals. Except as set forth in Schedule 4.3 of the Seller Disclosure Schedule, the execution and delivery of this Agreement by the Seller Parties and the consummation of the transactions contemplated hereby do not and will not:

(a) violate or conflict with the provisions of the Organizational Documents of any Seller Party;

(b) violate any Legal Requirement or Decree to which any Seller Party is subject or by which any of its material properties or assets are bound;

(c) require any permit, consent or approval of, or the giving of any notice to, or filing with any Government Authority; or

(d) result in a violation or breach of, conflict with, constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation, payment or acceleration) under, or result in the creation of any Lien (other than a Permitted Lien) upon any of the Acquired Assets under any of the terms, conditions or provisions of any Contract or any other instrument or obligation to which any Seller Party is a party, or by which it or any of their respective properties or assets may be bound; excluding from the foregoing clauses (b), (c) and (d) permits, consents, approvals, notices and filings the absence of which, and violations, breaches, defaults and Liens the existence of which, have not had, and would not reasonably be expected, individually or in the aggregate, to have, a Seller Parties Material Adverse Effect.

#### 4.4 Financial Statements.

(a) The Seller Parties have delivered to the Buyers (i) certain audited financial statements as of December 31, 2011 and January 31, 2012 and 2013 (the "Year End Financials"), and (ii) an unaudited balance sheet of the Seller Parties' business as of September 30, 2014 (the "Balance Sheet") and the related unaudited statements of operations, members' equity and cash flows (the "Interim Reports"), and together with the Balance Sheet and the Year End Financials, the "Financial Statements") as at and for the one (1)-month period ended September 30, 2014. The Financial Statements are certified by the principals of each Seller Party as true and accurate. The Financial Statements are broken out by division and present fairly in all material respects the financial condition of the Seller Parties' business as of such date and the results of operations of the Seller Parties for such period, except that the Interim Reports may not contain all footnotes required by GAAP and are subject to normal year-end adjustments.

(b) Except as disclosed on Schedule 4.4(b) of the Seller Disclosure Schedule, there are no material liabilities or obligations related to the Acquired Assets (whether absolute, accrued, contingent or otherwise and whether due or to become due), except for those liabilities and obligations accrued or disclosed on the Balance Sheet and those liabilities and obligations accrued after the date thereof in the Ordinary Course of Business, none of which arise out of a breach of any Contract, tort, infringement, claim, lawsuit or breach of warranty.

4.5 Title to Assets. Except for properties and assets reflected on the Balance Sheet that have been sold or otherwise disposed of by the Seller in the Ordinary Course of Business, and as otherwise set forth on Schedule 4.5 of the Seller Disclosure Schedule, the Seller has good and marketable title to, or a valid leasehold interest in, all Acquired Assets, free and clear of all Liens and encumbrances.

4.6 Intentionally Omitted. .

4.7 Solvency; Insolvency Proceedings. (a) No insolvency proceedings of any kind, including, without limitation, bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, affecting the Seller Parties or the Acquired Assets are pending or, to the Seller Parties' Knowledge, threatened. No Seller Party has made an assignment for the benefit of creditors or taken any action with a view to, or that would constitute a valid basis for, the institution of any such insolvency proceedings. After giving effect to the transaction, the Seller Parties are not now insolvent and will not be rendered insolvent by any of the contemplated transactions. As used in this section, "insolvent" means that the sum of the debts and other probable liabilities of the Seller Parties exceed the present fair saleable value of the Seller Parties' assets and following the transactions contemplated by this Agreement each Seller Party shall be able to pay its debts as they become due.

(b) The Buyers reserve the right to waive the solvency provisions found in Section 4.7(a) and may determine, in their sole discretion, to proceed with the Closing of the transactions.

4.8 Taxes.

(a) All material Tax Returns required to be filed by or on behalf of each Seller Party with respect to the Acquired Assets have been timely filed and all Taxes shown as due thereon have been paid. No Seller Party is a beneficiary of any extension of time within which to file any Income Tax Return. Each Seller Party has withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other Third Party, and all Forms W-2 and 1099 required with respect thereto have been properly completed and timely filed, except where the failure to do so would not, individually or in the aggregate, reasonably be expected to have a Seller Material Adverse Effect. The Seller Parties have paid all sales Tax amounts owed or owing. There are no Liens (other than Permitted Liens) on any of the assets of any Seller that arose in connection with the failure (or alleged failure) to pay any Tax.

(b) There is no material dispute or claim concerning any Tax Liability of any Seller either (A) claimed or raised by any authority in writing or (B) as to which any of the officers or managers of any Seller has knowledge based upon personal contact with any agent of such authority.

(c) Schedule 4.8(c) of the Seller Disclosure Schedule lists all federal, state, local, and foreign Tax Returns filed by or on behalf of the Seller for taxable periods ended on or after December 31, 2011, indicates those Tax Returns that have been audited, and indicates those Tax Returns that currently are the subject of audit. No Seller has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency.

(d) No Seller, with respect to the Acquired Assets, has any Liability for the Taxes of any other Person as a transferee or successor, by Contract, or otherwise.

(e) The aggregate unpaid Taxes of each Seller Party with respect to the Acquired Assets (i) did not, as of December 31, 2013, exceed the reserve for Tax Liability (rather than any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the Balance Sheet (rather than in any notes thereto) and (ii) will not exceed that reserve as adjusted for operations and transactions through the Closing Date in accordance with the past custom and practice of the Seller Party in filing their Tax Returns.

(f) There is no material dispute or claim concerning any Tax Liability of any Seller Party either (i) claimed or raised by any authority in writing or (ii) as to which any of the officers or managers of Seller has Knowledge based upon personal contact with any agent of such authority.

(g) Neither Seller Party, with respect to the Acquired Assets, has any Liability for the Taxes of any other Person as a transferee or successor, by Contract, or otherwise.

#### 4.9 Litigation; Decrees.

(a) Except as set forth on Schedule 4.9 of the Seller Disclosure Schedule, there is no material Proceeding pending or, to the Seller Parties' Knowledge, threatened, against any Seller Party or relating to any of the Acquired Assets.

(b) There is no Decree to which any Seller Party or any of the Acquired Assets is subject.

4.10 Compliance With Laws; Permits.

(a) Each Seller Party is in full compliance with each Legal Requirement that is applicable to it or the ownership of the Acquired Assets. No Seller Party has received any written notice or other communication (whether oral or written) from any Government Authority or any other Person regarding any actual, alleged, possible or potential violation of, or failure to comply with, any material Legal Requirement applicable to a Seller Party.

(b) The Seller Parties possesses all Government Authorizations necessary for the ownership of their properties, except for such exceptions as, individually or in the aggregate, have not had and would not reasonably be expected to have a Seller Material Adverse Effect. Further, (i) to the Seller Parties' Knowledge, all such Government Authorizations are in full force and effect and (ii) no Seller Party has received any written notice of any event, inquiry, investigation or proceeding threatening the validity of such Government Authorizations.

4.11 Operations of the Seller. Except as set forth on Schedule 4.11 of the Seller Disclosure Schedule, since December 31, 2013, through the date of this Agreement, there has not been any change, event or condition of any character that has had or would reasonably be expected to have a Seller Material Adverse Effect. Without limiting the generality of the foregoing, except as set forth on Schedule 4.11 of the Seller Disclosure Schedule, since December 31, 2013, no Seller has:

(a) sold, leased, transferred, or assigned any of its material assets;

(b) entered into any Material Contract outside the Ordinary Course of Business;

(c) accelerated, terminated, made material modifications to, or cancelled any Material Contract in any material respect;

(d) transferred, assigned, or granted any license or sublicense of any rights under or with respect to any Seller Intellectual Property Right, other than in the Ordinary Course of Business;

(e) incurred any Indebtedness or incurred or become subject to any material liability, except current liabilities incurred in the Ordinary Course of Business and Liabilities under Contracts (other than liabilities for breach) entered into in the Ordinary Course of Business;

(f) suffered any extraordinary losses or waived any rights of material value, whether or not in the Ordinary Course of Business;

(g) experienced any material damage, destruction, or loss (whether or not covered by insurance) to its property; or

(h) committed to do any of the foregoing actions.

4.12 Material Contracts.

(a) Schedule 4.12(a) of the Seller Disclosure Schedule contains a complete and correct list identified by the Seller, as of the date of this Agreement, of the following Contracts to which any Seller is a party or by which any Seller is bound relating to the Acquired Assets (collectively, the "Material Contracts"), including:

- (i) any agreement (or group of related agreements) for the lease of personal property to or from a Person providing for lease payment in excess of \$15,000 per annum, which is not terminable by the Seller on less than ninety (90) days' notice;
- (ii) any License Agreement currently in effect;
- (iii) any License Agreement submitted to a Person for execution since January 1, 2013 but not yet executed and delivered to the Seller by such Person;
- (iv) any agreements relating to Intellectual Property Rights in and to the H by H Brands or any Related Mark;
- (v) any agreement imposing continuing confidentiality obligations on any Seller;
- (vi) all Contracts containing covenants that in any way purport to limit the freedom to engage in any line of business or to compete with any Person or in any geographical area; and
- (vii) any other agreement the performance of which involves consideration in excess of \$15,000.

(b) All Material Contracts are in full force and effect and in written form and true, correct and complete copies of all Material Contracts, including any amendments, waivers, supplements or other modifications thereto, have been made available to the Buyers. No Seller is in violation or breach of or in default under any Material Contract. No Proceeding or event or condition has occurred or exists or, to the Seller Parties' Knowledge, is alleged by any party to have occurred or exist which, with notice or lapse of time or both, would constitute a default by any of the parties thereto of their respective obligations under a Material Contract (or would give rise to any right of termination or cancellation). To the Seller Parties' Knowledge, no party to a Material Contract is in breach of a Material Contract, or has expressed in writing, orally, or through any other means of communication, plans to breach, terminate, re-negotiate, or fail to renew a Material Contract. The Closing of the transactions contemplated in this Agreement will not trigger any payments under a Material Contract outside of the Ordinary Course of Business, and will not cause the Seller to be in breach of any Material Contract.

(c) Schedule 4.12(c) contains a complete and correct list of all written agreements, Contracts or instruments to which an Affiliate of any Seller Party is a party and pursuant to which a Seller Party is a beneficiary of any goods, services or other benefits related to the Acquired Assets.



4.13 Absence of Employee Benefit Plans.

(a) No Seller Party maintains or contributes to any Employee Benefit Plan which is for the benefit of any current or former employee, director or other personnel of such Seller Party and/or any ERISA Affiliate of such Seller Party or with respect to which such Seller or any ERISA Affiliate of such Seller Party has or may have a direct or indirect Liability.

(b) No Seller Party nor any ERISA Affiliate thereof contributes to, ever has contributed to, or ever has been required to contribute to any Multiemployer Plan or employee pension plan subject to Title IV of ERISA or Code Section 412 or has any Liability, or indirect Liability, including any Liability on account of a “partial withdrawal” or complete withdrawal (as defined in ERISA Sections 4205 and 4203 respectively), under any Multiemployer Plan or under Title IV of ERISA. Neither Seller Party nor any ERISA Affiliates are bound by any Contract that would result in any direct or indirect Liability described in ERISA Section 4204.

4.14 Insurance. Schedule 4.14 of the Seller Disclosure Schedule sets forth an accurate and complete summary of each insurance policy providing for liability exposure (including policies providing property, casualty, liability and workers’ compensation coverage and bond and surety arrangements) to which any Seller Party is currently a party, a named insured or otherwise the beneficiary of coverage (“Insurance Policies”). All such Insurance Policies are in full force and effect. Since January 1, 2010, the Seller Parties have paid all premiums due thereunder and, except as set forth in Schedule 4.14 of the Seller Disclosure Schedule, no notice (whether oral or written) of cancellation of any such coverage or increase in premiums thereof has been received by any Seller Party.

4.15 Environmental Matters. Except as set forth on Schedule 4.15 of the Seller Disclosure Schedule, in the conduct of the Seller Parties’ business and with respect to the ownership and operation of the Acquired Assets: (i) the Seller Parties have complied and is in compliance in all material respects with all Environmental and Safety Requirements; (ii) all Government Authorizations required under Environmental and Safety Requirements to be obtained by the Seller Parties are valid and in full force and effect, the Seller Parties have complied and are in compliance in all material respects with the terms and conditions of such permits and licenses; (iii) no Seller Party is subject to any suit, investigation, inquiry or proceeding by or before any court or Government Authority under Environmental and Safety Requirements in connection with its current or former operations, properties or facilities; (iv) no Seller Party, nor any of their respective predecessors or Affiliates, has caused a release of hazardous substances, and, to the Seller Parties’ Knowledge, no condition of contamination by hazardous substances is present, at the Seller Parties’ Leased Real Properties, if any and no facts, events or conditions relating to current or former facilities, properties or operations of any Seller Party or of its predecessors or Affiliates will give rise to any investigatory, remedial, or corrective obligations or other liabilities under Environmental and Safety Requirements; (v) neither this Agreement nor the consummation of the transactions contemplated hereby will result in any obligations for site investigation or cleanup, or notification to or consent of any Government Authority or other Person pursuant to any of the so-called “transaction-triggered” or “responsible property transfer” Environmental and Safety Requirements; (vi) no Seller Party has received any written notice, report or other information regarding any violation of, or liability or obligation under any Environmental and Safety Requirement or that any existing Government Authorization that was obtained under any Environmental and Safety Requirement is to be revoked or suspended by any Government Authority or is not currently operating or required to be operating under, or subject to any outstanding compliance order, Decree or agreement, any consent decree, order or agreement, or corrective action decree, order or agreement issued or entered into under, or pertaining to matters regulated by, any Environmental and Safety Requirement; (vii) no Seller Party owns or operates any underground storage tanks and no such underground tanks are in violation of any Environmental and Safety Requirement; (viii) neither Seller Party, nor any of their respective predecessors or Affiliates, has treated, stored, disposed of, arranged for or permitted the disposal of, transported, handled, released, or exposed any Person to, any hazardous materials, or owned or operated any property or facility in a manner that has given or would give rise to any liabilities or investigative, corrective or remedial obligations pursuant to CERCLA or any other Environmental and Safety Requirement; and (ix) to the Seller Parties’ Knowledge, the Seller have provided to the Buyers access to all environmental audits and reports to the current and former operations and facilities of each Seller Party and their predecessors or Affiliates.

4.16 Intellectual Property.

(a) Schedule 4.16(a) of the Seller Disclosure Schedule attached hereto sets forth a complete and correct list of (i) all registered trademarks, service marks, copyrights and patents owned by any Seller Party; (ii) all pending applications for registration of any trademarks or service marks owned by any Seller Party; (iii) all trade names, common law trademarks and unregistered marks owned and used by any Seller Party; (iv) all internet domain names, social network site handles, and URLs used, registered or applied for by any Seller Party; and (v) to the Seller Parties' Knowledge, all Intellectual Property Rights related to the H by H Brands that are owned by any Person other than a Seller Party.

(b) Intentionally Omitted.

(c) Schedule 4.16(c) of the Seller Disclosure Schedule attached hereto sets forth a complete and correct list of: (i) all licenses or similar agreements or arrangements in which a Seller Party or its Affiliates are a licensor of Intellectual Property Rights that are related to or used in connection with the Acquired Assets, including any License Agreements or any similar arrangements or agreements, (ii) all licenses and similar agreements or arrangements in which a Seller Party or its Affiliates are a licensor of Intellectual Property Rights that are not otherwise listed under (i), and (iii) all other agreements or similar arrangements, in effect as of the date hereof, relating to the use of Intellectual Property Rights related to the H by H Brands as used by any Seller Party, including settlement agreements, consent-to-use or standstill agreements and standalone indemnification agreements.

(d) Except as set forth on Schedule 4.16(d) of the Seller Disclosure Schedule, (i) the Seller Parties own and possess all right, title and interest in and to, or have the enforceable right to use, the Intellectual Property Rights related to the H by H Brands, which are set forth in Schedule 4.16(a) of the Seller Disclosure Schedule, have a valid and enforceable right to use pursuant to the agreements set forth in Schedule 4.16(c) of the Seller Disclosure Schedule, or otherwise own and possess all right, title and interest in and to all other Intellectual Property Rights related to the H by H Brand free and clear of all Liens, other than Permitted Liens (collectively, the “Seller Parties Intellectual Property Rights”), and (ii) no Seller Party has licensed any of the Seller Parties Intellectual Property Rights to any Third Party.

(e) Except as set forth on Schedule 4.16(e), (i) no Seller Party has infringed, diluted, misappropriated or otherwise conflicted with any Intellectual Property Rights of any Person, including without limitation, rights under patents, trademarks, service marks, copyrights, publicity or personality rights, or otherwise; (ii) no Seller Party has Knowledge of any facts which indicate a likelihood of any of the foregoing; (iii) no Seller Party has received any written notices regarding any of the foregoing (including any demands that a Seller is required to license any Intellectual Property Rights, including Intellectual Property Rights related to the H by H Brands, from any Person or any requests for indemnification from customers) and (iv) no Seller Party has requested nor received any written opinions of counsel related to the foregoing.

(f) Except as set forth on Schedule 4.16(f) of the Seller Disclosure Schedule, (i) no loss or expiration of any of the Seller Parties Intellectual Property Rights is threatened, pending or reasonably foreseeable, except for those rights expiring at the end of their current registration terms without renewal by a Seller Party (and not as a result of any act or omission by a Seller Party, including a failure by a Seller Party to pay any required maintenance or renewal fees); (ii) all of the Seller Parties Intellectual Property Rights are valid and enforceable; (iii) no claim by any Third Party contesting the validity, enforceability, use or ownership of any of the Seller Parties Intellectual Property Rights has been made, is currently outstanding or to the Knowledge of any Seller Party is threatened; (iv) to the extent the Seller Parties Intellectual Property Right is protected by applications or registrations, each Seller Party will continue to maintain and protect such applications and registrations prior to the Closing so as not to adversely affect the validity or enforceability thereof; and (v) no Seller Party has disclosed or allowed to be disclosed any of its trade secrets or confidential information to any Third Party other than pursuant to a written confidentiality agreement and each Seller Party has entered into written confidentiality agreements with all of their employees and independent contractors acknowledging the confidentiality of the Seller Parties Intellectual Property Rights.

(g) Except as set forth on Schedule 4.16(g), to the Seller Parties’ Knowledge, no Person has infringed, diluted, misappropriated or otherwise conflicted with any of the Seller Parties Intellectual Property Rights and no Seller Party knows of any facts that indicate a likelihood of any of the same.

(h) Except as set forth on Schedule 4.16(h), all Intellectual Property Rights related to the H by H Brands and owned by the Seller were: (i) developed by employees of the Seller Parties working within the scope of their employment; (ii) developed by officers, directors, agents, consultants, contractors, subcontractors or others who have executed appropriate instruments of assignment in favor of the Seller Parties as assignee that have conveyed to the Seller Parties ownership of all of such Person’s rights in such Intellectual Property Rights relating to such developments; or (iii) acquired in connection with acquisitions in which the Seller Party obtained appropriate representations, warranties and indemnities from the transferring party relating to the title to such Intellectual Property Rights.

(i) Except as set forth in Schedule 4.16(i) of the Seller Disclosure Schedule, none of the Seller Parties Intellectual Property Rights is subject to any proceeding or outstanding decree, order, judgment, agreement or stipulation restricting in any manner the use, transfer or licensing thereof by any Seller Party, or which may affect the validity, use or enforceability of the Seller Parties Intellectual Property Rights.

(j) The Seller Parties have collected, used, imported, exported and protected all personally identifiable information, and other information relating to individuals protected by law, in accordance with the privacy policies of the Seller Party and in accordance with applicable law, including by entering into agreements, where applicable, governing the flow of such information across national borders.

(k) Each item of the Seller Parties Intellectual Property Rights is valid, enforceable and subsisting in the United States and the jurisdictions set forth on Schedule 4.16(k) of the Seller Disclosure Schedule. Prior to the Closing, the Seller Parties will deliver to the Buyers all files, documents, or instruments necessary to the preservation and maintenance of the Seller Intellectual Property Rights.

(l) No Seller Party owns, nor has pending, any patent applications or patents.

(m) No Seller Party has or owns any copyright in any images of Roy Halston Frowick or in original sketches of products developed or similar materials that primarily relate to the H by H Brands.

#### 4.17 Real Estate.

(a) Schedule 4.17(a) of the Disclosure Schedules sets forth all Owned Real Property. Seller Parties have good and marketable fee simple title to the Owned Real Property, free and clear of all Encumbrances.

(b) Schedule 4.17(b) of the Disclosure Schedules sets forth all Leased Real Property. Seller Parties are not in default under any lease agreements related to the Leased Real Property.

(c) Seller Parties have not received any written notice of existing, pending or threatened (i) condemnation proceedings affecting the real property, or (ii) zoning, building code or other moratorium proceedings, or similar matters which would reasonably be expected to materially and adversely affect the ability to operate the real property as currently operated. Neither the whole nor any material portion of any real property has been damaged or destroyed by fire or other casualty.

4.18 Labor Relations; Compliance. Seller Parties are not a party to or bound by any collective bargaining or other agreement with a labor organization representing any of the employees. Seller Parties are in compliance with all applicable Laws pertaining to employment and employment practices to the extent they relate to the employees.

4.19 Affiliate Transactions. Except as set forth on Schedule 4.19 of the Seller Disclosure Schedule, and with respect to the Acquired Assets (a) there are no Contracts between a Seller Party, on the one hand, and any member, interest or right holder or any family member or affiliate of any such member, interest or right holder, on the other hand; (b) there are no Contracts between a Seller Party, on the one hand, and any employee or director or any family member or affiliate of any such person, on the other hand, other than employment agreements entered into in the Ordinary Course of Business; and (c) there are no loans or other indebtedness owing by any employee of any Seller Party or any family member or affiliate of any such Person to a Seller Party.

4.20 Brokers or Finders. No agent, broker, firm or other Person acting on behalf of a Seller Party or, to the Seller Parties' Knowledge, any of their Affiliates is, or will be, entitled to any investment banking, commission, broker's or finder's fees from any of the parties hereto, or from any Affiliate of any of the Parties hereto, in connection with any of the transactions contemplated by this Agreement.

4.21 Investment Representations and Warranties .

(a) Seller or its representatives are sophisticated investors familiar with the types of risks inherent in the acquisition of securities such as the XCel Shares and Warrants and that, by reason of its or its representatives knowledge and experience in financial and business matters in general, and investments of this type in particular, it or its representatives are capable of evaluating the merits and risks of an investment in the XCel Shares and Warrants.

(b) Seller understands that XCel has determined that the exemption from the registration provisions of the Securities Act for transactions not involving a public offering is applicable to the issue and sale of the XCel Shares and the Warrants (and, XCel Shares issuable upon exercise of the Warrants (the "Warrant Shares")), based, in part, upon the representations, warranties and agreements made by the Seller herein.

(c) Seller understands that (A) none of the XCel Shares, the Warrants nor the Warrant Shares have been registered under the Securities Act or the securities laws of any state, based upon an exemption from such registration requirements for non-public offerings pursuant to Regulation D under the Securities Act; (B) the XCel Shares, the Warrants and the Warrant Shares are and will be “restricted securities”, as said term is defined in Rule 144 of the rules and regulations promulgated under the Securities Act; (C) none of the XCel Shares, the Warrants nor the Warrant Shares may be sold or otherwise transferred unless they have been first registered under the Securities Act and all applicable state securities laws, or unless exemptions from such registration provisions are available with respect to said resale or transfer; (D) except as set forth in this Agreement, XCel is under no obligation to register the XCel Shares, the Warrants or the Warrant Shares under the Securities Act or any state securities laws, or to take any action to make any exemption from any such registration provisions available; (E) the certificates for the XCel Shares, the Warrants and the Warrant Shares will bear a legend to the effect that the transfer of the securities represented thereby is subject to the provisions hereof; (F) stop transfer instructions will be placed with the transfer agent for the Warrant Shares; and (G) Seller will not sell or otherwise transfer any of the XCel Shares, the Warrants or the Warrant Shares or any interest therein, unless and until: (i) said securities shall have first been registered under the Securities Act and all applicable state securities laws; or (ii) the Seller shall have first delivered to XCel a written opinion of counsel (which counsel and opinion (in form and substance) shall be satisfactory to XCel), to the effect that the proposed sale or transfer is exempt from the registration provisions of the Securities Act and all applicable state securities laws.

(d) Seller is an “accredited investor,” as such term is defined in Regulation D of the rules and regulations promulgated under the Securities Act.

(e) Seller is acquiring the XCel Shares and the Warrants for its own account and for the purpose of investment and not with a view to, or for resale in connection with, any distribution within the meaning of the Securities Act in violation of the Securities Act.

(f) Seller has been given access to and an opportunity to examine such documents, materials and information concerning XCel as Seller deems to be necessary or advisable in order to reach and informed decision as to an investment in the XCel Shares and the Warrants.

4.22 Disclaimer of Other Representations and Warranties. Except for the representations and warranties contained in this Article IV or expressly contained in any other Related Agreement, no Seller Party makes any other representation or warranty, express or implied. Seller Parties’ representations and warranties regarding the intent to use applications of the H by H Brands set forth on Schedule 4.22 hereto (the “Intent to Use Applications”) are subject to Section 1060(a) of the Lanham Act and Buyer’s fulfillment of its obligations under the Cooperation Agreement and Seller Parties shall have no liability for any failure to transfer or assign, when assignable, the Intent to Use Applications solely as a result of Buyers failure to fulfill its obligations pursuant to the Lanham Act.

## **ARTICLE V**

### **REPRESENTATIONS AND WARRANTIES OF THE BUYERS**

The Buyers hereby represent and warrant to the Seller Parties, that the statements contained in this Article V are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date, except in each case as set forth in the disclosure schedule attached hereto (the “Buyer Disclosure Schedule”). Notwithstanding the foregoing, the representations and warranties in Sections 5.1(a), Section 5.2 and, to the Knowledge of Buyers, Section 5.7, shall be true and correct as of the date of this Agreement and will be correct and complete as of the Closing Date. The disclosures in any section or subsection of the Buyer Disclosure Schedule shall qualify the corresponding section or subsection in this Article V and any other section or subsection in which such disclosure is required to be included to the extent the relevance of such disclosure is reasonably apparent.

5.1 Existence and Good Standing; Authorization.

(a) Each Buyer is an entity duly formed, validly existing and in good standing under the laws of the state of its formation. Each Buyer has all requisite power and authority to own, lease and operate its assets and properties and to carry on its business as currently conducted. Each Buyer is duly qualified and, to the extent applicable, is in good standing, in each jurisdiction in which the character or location of the property owned, leased or operated by each Buyer or the nature of the business conducted by each Buyer makes such qualification necessary, except where the failure to be so qualified would not, individually or in the aggregate, reasonably be expected to have a Buyer Material Adverse Effect.

(b) Each Buyer has all requisite power and authority to execute and deliver this Agreement and each other Related Agreement to which such Buyer is a party, to perform its obligations hereunder and thereunder and to consummate the sale and the other transactions contemplated hereby and thereby. The execution, delivery and performance by each Buyer of this Agreement and each other Related Agreement to which it is a party, and the consummation by it of the transactions contemplated hereby and thereby, have been duly authorized and approved, and no other action on the part of any Buyer is necessary to authorize the execution, delivery and performance by any Buyer of this Agreement or any other Related Agreement to which a Buyer is a party or the consummation thereby of the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by each Buyer and constitutes, and, with respect to each other Related Agreement, upon its execution and delivery by each Buyer party thereto, will constitute, assuming the due execution of this Agreement and such other Related Agreement by the Seller and/or the other parties thereto, a valid and binding obligation of that Buyer enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, receivership and similar laws affecting the enforcement of creditors' rights generally, and general equitable principles.

5.2 Consents and Approvals; No Violations. Except as set forth on Schedule 5.2 of the Buyer Disclosure Schedule, the execution and delivery of this Agreement by each Buyer, and the execution and delivery of each Related Agreement to which each Buyer is a party, and the consummation of the transactions contemplated hereby and thereby do not and will not:

(a) violate or conflict with any provisions of the Organizational Documents of any Buyer;

(b) violate any Legal Requirement or Decree to which any Buyer is subject or by which any of their respective material properties or assets are bound;

(c) require any permit, consent or approval of, or the giving of any notice to, or filing with any Government Authority on or prior to the Closing Date; and

(d) result in a material violation or breach of, conflict with, constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation, payment or acceleration) under, or result in the creation of any Lien upon any of the material properties or assets of any Buyer under any of the material terms, conditions or provisions of any Material Contract or any other instrument or obligation to which any Buyer is a party, or by which it or any of their respective material properties or assets may be bound; excluding from the foregoing clauses (b), (c) and (d) permits, consents, approvals, notices and filings the absence of which, and violations, breaches, defaults and Liens the existence of which, would not, individually or in the aggregate, reasonably be expected to prevent such Buyer from performing its obligations under this Agreement.

5.3 Undisclosed Liabilities. Other than as set forth on Schedule 5.3 of the Buyer Disclosure Schedule and as disclosed in the SEC Reports, no Buyer has any liability (whether known or unknown, whether absolute or contingent, whether liquidated or unliquidated and whether due or to become due), except for Liabilities arising between the date hereof and the Closing Date.

5.4 Compliance with Laws.

(a) Each of the Buyers is in full compliance with each Legal Requirement that is applicable to it or to the conduct or operation of its business or the ownership of its assets, except for such non-compliance, individually or in the aggregate, as would not reasonably be expected to have a Buyer Material Adverse Effect. None of the Buyers has received any written notice or other communication (whether oral or written) from any Government Authority or any other Person regarding any actual, alleged, possible or potential violation of, or failure to comply with, any material Legal Requirement.

(b) Each Buyer possesses all Government Authorizations necessary for the ownership of its properties and the conduct of its business as currently conducted, except for such exceptions as, individually or in the aggregate, have not had and would not reasonably be expected to have a Buyer Material Adverse Effect. Further, (i) to the Buyers' Knowledge, all such Government Authorizations are in full force and effect and (ii) no Buyer has received any written notice of any event, inquiry, investigation or proceeding threatening the validity of such Government Authorizations.

5.5 Litigation. Except as set forth on Schedule 5.5 of the Buyer Disclosure Schedule:

(a) There is no material Proceeding pending or, to the Buyers' Knowledge, threatened, against any of the Buyers.

(b) There is no Decree to which any of the Buyers is subject, and each of the Buyers is in compliance with each Decree to which it or its properties or assets are subject.



5.6 Buyer Environmental Matters. Each Buyer has complied and is in compliance in all material respects with all Environmental and Safety Requirements. All Government Authorizations required under Environmental and Safety Requirements to be obtained by each Buyer are valid and in full force and effect, each Buyer has complied and is in compliance in all material respects with the terms and conditions of such permits and licenses. None of the Buyers is subject to any suit, investigation, inquiry or proceeding by or before any court or Government Authority under Environmental and Safety Requirements in connection with its current or former operations, properties or facilities. No Buyer, nor any of its predecessors or Affiliates, has caused a release of hazardous substances, and, to the Buyers' Knowledge, no condition of contamination by hazardous substances is present, at any Buyer's Leased Real Properties, if any and no facts, events or conditions relating to current or former facilities, properties or operations of any Buyer or of its predecessors or Affiliates will give rise to any investigatory, remedial, or corrective obligations or other liabilities under Environmental and Safety Requirements. Neither this Agreement nor the consummation of the transactions contemplated hereby will result in any obligations for site investigation or cleanup, or notification to or consent of any Government Authority or other Person pursuant to any of the so-called "transaction-triggered" or "responsible property transfer" Environmental and Safety Requirements. To the Buyers' Knowledge, each Buyer has made available to the Seller copies of all material documents within its possession (including all Phase I and Phase II reports) concerning compliance with Environmental and Safety Requirements with respect to the current or former operations or facilities of each Buyer and its predecessors and Affiliates. None of the Buyers has received any written notice, report or other information regarding any violation of, or liability or obligation under any Environmental and Safety Requirement or that any existing Government Authorization that was obtained under any Environmental and Safety Requirement is to be revoked or suspended by any Government Authority or is not currently operating or required to be operating under, or subject to any outstanding compliance order, Decree or agreement, any consent decree, order or agreement, or corrective action decree, order or agreement issued or entered into under, or pertaining to matters regulated by, any Environmental and Safety Requirement. No Buyer owns or operates any underground storage tanks and no such underground tanks are in violation of any Environmental and Safety Requirement. No Buyer, nor any of its predecessors or Affiliates, has treated, stored, disposed of, arranged for or permitted the disposal of, transported, handled, released, or exposed any Person to, any hazardous materials, or owned or operated any Buyer's business or any property or facility relating to any Buyer's business in a manner that has given or would give rise to any liabilities or investigative, corrective or remedial obligations pursuant to CERCLA or any other Environmental and Safety Requirement.

5.7 Taxes. There are no Taxes due and payable by any Buyer which have not been timely paid. There are no accrued and unpaid Taxes of any Buyer which are due, whether or not assessed or disputed. There have been no examinations or audits of any Tax Returns of Buyers by any Government Authority. Each Buyer has duly and timely filed all Tax Returns required to have been filed by it and there are in effect no waivers of applicable statutes of limitations with respect to Taxes for any year.

5.8 Brokers' or Finders' Fees. No agent, broker, firm or other Person acting on behalf of any Buyer is, or will be, entitled to any investment banking, commission, broker's or finder's fees from any of the parties hereto for which the Seller would be responsible to pay, or from any Person controlling, controlled by or under common control with any of the parties hereto, in connection with any of the transactions contemplated by this Agreement.

5.9 XCel Shares. All of the XCel Shares issuable in accordance with this Agreement and the Related Agreements will be, when so issued, duly authorized, validly issued, fully paid and non-assessable and free and clear of any Liens (other than those created under federal and state securities laws, any Lock-Up Agreement, and the Voting Agreement) and not subject to preemptive or other similar rights of the stockholders of XCel.

5.10 Disclaimer of Other Representations and Warranties. Except for the representations and warranties contained in this Article V or expressly contained in any other Related Agreement, no Buyer makes any other representation or warranty, express or implied.

## **ARTICLE VI**

### **PRE-CLOSING COVENANTS**

6.1 Efforts to Closing. On the terms and subject to the conditions in this Agreement, and provided that none of the Buyers is in default hereunder, the Seller agrees to use commercially reasonable efforts to take, or cause to be taken, all actions as may reasonably be necessary to consummate the transactions contemplated hereby and to cause the conditions set forth in Article VIII to be satisfied, and the Buyers agree to use their commercially reasonable efforts to take, or cause to be taken, all actions as may reasonably be necessary to consummate the transactions contemplated hereby and to cause the conditions set forth in Article IX to be satisfied as soon as practicable after the date hereof but not later than December 31, 2014. Without limiting the generality of the foregoing, the Seller shall give or cause to be given any notices to Third Parties required to be given pursuant to any Contract to which they are a party as a result of this Agreement or any of the transactions contemplated hereby. The Seller shall use commercially reasonable efforts to obtain prior to the Closing, and deliver to the Buyers at or prior to the Closing, all consents, waivers and approvals required to be obtained under each Contract to which it is a party or by which it is bound in form and substance reasonably acceptable to the Buyers. The Buyers shall use commercially reasonable efforts to cooperate with the Seller in the Seller's efforts to obtain the aforementioned consents, including by providing such information as the other contracting parties may reasonably request.

6.2 Fairness Opinion. The Buyers shall have obtained such fairness or valuation opinion from a nationally recognized firm as Buyers deem appropriate in their sole discretion (the "Fairness Opinion").

6.3 Conduct of the Business. From the date of this Agreement until the Closing Date, each Seller shall conduct its business in the Ordinary Course of Business; make ordinary design, marketing, advertising, promotional and other budgeted expenditures; and use commercially reasonable efforts to preserve and maintain the ongoing operations, organization, assets and goodwill of its business and the Acquired Assets. Further, and without limiting the generality of the foregoing, during the period from the date hereof to the Closing Date, except as may be first approved by the Buyers in writing, or as is otherwise expressly permitted or required by this Agreement, the Seller shall not:

(a) Sell or dispose of any of the Acquired Assets;

(b) Create or suffer or permit the creation of any Lien including but not limited to any royalty advances or other advances from Third Parties (other than Permitted Liens) on any of the Acquired Assets or with respect thereto or otherwise impair the Acquired Assets;

(c) Take any action that would reasonably be likely to prevent the Seller from consummating the transactions contemplated in this Agreement;

(d) Fail to maintain the Seller Intellectual Property Rights, including all trademark, domain name, and other registrations;

(e) Knowingly violate any applicable material Legal Requirement;

(f) Take, or fail to take, any other action which would reasonably be expected to result in a material breach or inaccuracy in any of the representations or warranties of the Seller contained in this Agreement; or

(g) Agree or commit, whether in writing or otherwise, to take any of the actions specified in the foregoing clauses.

6.4 Access and Investigation. The Seller will permit the Buyers and their respective Representatives to have reasonable access, prior to the Closing Date, to the properties and to the Books and Records of the Seller during normal working hours and upon reasonable advance notice, for Buyers to familiarize themselves with the Seller's properties, their respective businesses and operating and financial conditions of the Seller. As promptly as practicable after the end of each month ended after the date of this Agreement and prior to the Closing Date, the Seller shall deliver to XCel unaudited financial statements of the Seller as at and for the year through the end of the most recently completed fiscal month. Prior to and following the Closing Date, the Seller shall give the Buyers full access to all of Seller's Books and Records related to Seller's business and Seller's use of the Seller Parties Intellectual Property Rights.

6.5 Exclusivity. Provided that none of the Buyers is in breach of this Agreement, Seller agrees that neither Seller nor any of its members or officers shall, and that they shall cause their Affiliates, employees, agents and Representatives (including any investment banker, attorney or accountant retained by them) not to (and shall not authorize any of them to) directly or indirectly: (a) solicit, initiate, knowingly encourage or knowingly facilitate any inquiries with respect to, or the making, submission or announcement of, any offer or proposal from any Person (other than the Buyers) concerning any proposal for a merger, sale of substantial assets (including the license of any assets), sale of shares of stock or securities of Seller, business combination involving Seller, or other takeover or business combination transaction involving Seller or any sale of the Acquired Assets other than in accordance with this Agreement (each an "Alternate Proposal"); (b) participate in any discussions or negotiations regarding, or furnish to any Person any nonpublic information with respect to, or otherwise cooperate in any respect with, any Alternate Proposal; (c) engage in discussions with any Person with respect to any Alternate Proposal (except to inform such Person that these restrictions exist); (d) approve, endorse or recommend any Alternate Proposal; or (e) enter into any letter of intent or similar document or any contract, agreement, arrangement, understanding or commitment contemplating any Alternate Proposal or transaction contemplated thereby or requiring opposition to or seeking to prevent or undermine the transactions contemplated by this Agreement. The Seller will immediately cease any and all existing activities, discussions or negotiations with any Third Parties conducted heretofore with respect to any Alternate Proposal. The obligations set forth in this Section 6.5 shall terminate upon the earlier of (i) the termination of this Agreement in accordance with Section 10.1 hereof or (ii) the Closing Date.

6.6 Notice of Developments. The Seller shall promptly advise the Buyers, and each Buyer, as the case may be, shall promptly advise the Seller, in writing of any (a) event, circumstance or development that results (or would reasonably be expected to result on the Closing Date) in a breach of any representation, warranty or covenant made by it in this Agreement and (b) any material failure of the Seller or the Buyers, as the case may be, to comply with or satisfy any condition or agreement to be complied with or satisfied by it hereunder; provided that no disclosure pursuant to this Section 6.6 shall be deemed to amend or supplement any provision of this Agreement or any disclosure schedule hereto, or to prevent or cure any misrepresentation, breach of warranty or breach of covenant.

6.7 Insurance. The Seller shall keep, or cause to be kept, all insurance policies, or suitable replacements therefor, to the extent relating to the Acquired Assets, in full force and effect through the close of business on the Closing Date.

6.8 Press Releases and Public Announcements. No Party shall issue any press release or make any public announcement relating to the existence or subject matter of this Agreement without the prior written approval of the other Party; provided, however, that any Party may make any public disclosure it believes in good faith is required by applicable law or any listing requirement (including, without limitation, the listing requirements of the Nasdaq Global Market and securities laws applicable to Buyers) or trading agreement concerning its publicly-traded securities (in which case the disclosing Party will use commercially reasonable efforts to advise the other Party a reasonable period of time prior to making the disclosure and to provide such other Party the opportunity to comment thereon). The Seller acknowledges and agrees that Buyers may be required to file a Current Report on Form 8-K disclosing the transactions contemplated by this Agreement and attaching as an exhibit thereto a copy of this Agreement.

6.9 Lock-Up Agreements.

The Seller and Seller Designee agree to execute an agreement (a "Lock-Up Agreement") in form and substance attached hereto as Exhibit A-1 and Exhibit A-2, respectively; provided, that, notwithstanding the foregoing, the terms of the Lock-Up Agreements shall in no event be more restrictive than those agreed to by the officers or directors of any of the Buyers.

6.10 Registration of XCel Shares. Upon expiration of the twelve (12) month period from the date that the XCel Shares are issued pursuant to Section 3.3 (such period referred to as the “Initial Period”), XCel agrees to file with the SEC a registration statement under the Securities Act (the “Registration Statement”), and make any filings with state securities agencies reasonably requested of it, to permit the resale from time to time of the Xcel Shares issued under this Agreement (including the Warrant Shares and any securities issued in exchange therefor or in respect thereof (the “Registrable Securities”). XCel shall use commercially reasonable efforts to cause such registration statement to become effective within sixty (60) days from the expiration of the Initial Period and use commercially reasonable efforts to cause the Registration Statement to remain effective until the earlier of such time as all of the Registrable Securities covered thereby have been disposed of or the three year anniversary of the effectiveness of the Registration Statement (the “Effectiveness Period”); provided that XCel may cease to maintain the effectiveness of the Registration Statement, if it is not at such time eligible to utilize Form S-3 and it determines that it is not commercially feasible to maintain, and does not maintain, the effectiveness of any Selling Securityholder Registration Statement; provided further that if XCel ceases to maintain the effectiveness of the Registration Statement, if XCel later becomes eligible to utilize Form S-3 or at any time thereafter it files a shelf registration statement with respect to shares of common stock owned by any officer of XCel, XCel shall promptly file with the SEC a Registration Statement to permit the resale of the Registrable Securities from time to time and maintain the effectiveness thereof for the Effectiveness Period. All expenses in connection with the preparation of such registration statement (other than the expenses of counsel for the holder of the applicable XCel Shares and selling discounts and commissions, brokerage fees relating to the sale of Registrable Securities by the holders thereof) shall be borne by XCel. XCel shall indemnify and hold harmless each holder of Registrable Securities sold in connection with any such registration from and against any and all Damages caused by (a) any untrue statement or alleged untrue statement of a material fact contained in any registration statement, prospectus, offering circular or other document relating to such Registrable Securities, or any omission or alleged omission to state a material fact required to be stated in order to make the statements therein not misleading, or (b) any violation (or alleged violation) by XCel of the Securities Act, the Exchange Act, or any Legal Requirement in connection with such registration statement. Each holder of Registrable Securities sold in connection with any such registration (on a several and not a joint basis) shall indemnify and hold XCel harmless from and against any and all Damages caused by any untrue statement or alleged untrue statement of a material fact contained in any information provided in writing by such holder of Registrable Securities specifically for inclusion in such registration statement or prospectus relating to such holder of Registrable Securities; provided that the only information for which a holder of Registrable Securities shall be liable is the information regarding its beneficial ownership of the Registrable Securities; provided further that such holder shall not be liable in any such case to the extent that such holder has furnished in writing to XCel prior to the date of such registration statement, or prospectus information which corrected or made not misleading the information previously furnished by such holder to XCel, and XCel failed to update such information. Notwithstanding anything to the foregoing, (i) XCel shall not be obligated to register any XCel Shares that may be sold pursuant to Rule 144 of the Securities Act, without limitation as to volume or manner of sale in the opinion of counsel to the holder of Registrable Securities and (ii) in the event that XCel has filed a registration statement relating to an underwritten public offering prior to the expiration of the Initial Period or the Seller is subject to an underwriter lock-up, (a) XCel shall not be obligated to file a registration statement until the 10<sup>th</sup> day following the expiration of the underwriter lock-up period and (b) XCel shall use commercially reasonable efforts to cause such registration statement to become effective as promptly as reasonably practicable thereafter or such later date as may be requested by the holders of such XCel Shares. The foregoing agreements set forth in this Section 6.10 shall be deemed for the benefit of any subsequent holder of Registrable Securities and any such holder shall be entitled to enforce this Section 6.10.

“Selling Securityholder Registration Statement” means a registration statement registering for sale shares of common stock of XCel by a holder of XCel’s common stock.

6.11 Host. The Seller will use its best efforts to assist Buyer to find a host for the H by H Brands to appear on direct-response television prior to the launch of the H by H Brands.

6.12 Further Action. Prior to the Closing, each of the Parties shall use commercially reasonable efforts to take, or cause to be taken, all appropriate action, do or cause to be done all things necessary, proper or advisable under applicable Legal Requirements, and execute and deliver such documents and other papers, as may be required to consummate the transactions contemplated herein.

**ARTICLE VII**  
**POST-CLOSING COVENANTS**

7.1 Cooperation. The Parties shall cooperate with each other, including, without limitation, pursuant to the Cooperation Agreement, and shall use their commercially reasonable efforts to cause their respective Representatives to cooperate with each other, to provide an orderly transition of the Acquired Assets from the Seller to Buyers and to minimize the disruption to the Seller operations resulting from the transactions contemplated hereby.

Moreover, the Parties and their permitted licensees, sublicensees, assignees, successors and assigns, will (i) ensure that they each maintain levels of quality of all permitted goods and/or services identified by any trademark or service mark either owns containing the word “HALSTON” or marks closely associated with such Halston marks comparable to or higher than the levels of quality associated with those goods and/or services identified by such marks prior to the Closing Date; (ii) refrain from producing or selling any products or providing any services that will cause material harm or prejudice to the goodwill or reputation of any trademark or service mark either owns containing the word “HALSTON” or marks closely associated with such marks; (iii) cooperate with one another in any actions to (a) enforce the trademark and/or service mark rights of one of the Parties in any trademark or service mark either owns containing the word “HALSTON” or marks closely associated with such marks against a Third Party that is infringing, diluting, or otherwise using one or more of such marks without authority from either Party, and to (b) defend the trademark and/or service mark rights of one of the Parties in any such trademark or service mark against any allegations of trademark or service mark infringement, dilution, and/or abandonment; and (iv) take reasonable steps to prevent consumer confusion between the respective uses of any trademark or service mark they own containing the word “HALSTON” or closely associated with such marks. The Seller Parties and the Buyers shall each permit the other Party from time to time to inspect the of quality of all permitted goods and/or services identified by any trademark or service mark either owns containing the word “HALSTON” or marks closely associated with such Halston marks for conformance with the foregoing provisions.

7.2 Taxes Related to Purchase of Assets; Tax Cooperation.

(a) The Buyers, on the one hand, and the Seller, on the other hand, shall each be responsible for one-half of any and all stamp, transfer, documentary, sales and use, registration and other similar taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the transactions contemplated hereby (collectively, the “Transfer Taxes”) regardless of the Person liable for such Transfer Taxes under applicable Legal Requirements. Except to the extent required to be filed by the Seller, the Buyers shall properly file on a timely basis all necessary Tax Returns and other documentation with respect to all Transfer Taxes, provided that the Buyers shall provide copies of all such Transfer Tax Returns to the Seller at least twenty (20) days prior to the due date thereof for Seller’ review and approval. The non-filing Party shall promptly reimburse the filing Party for 50% of the amount of such Transfer Tax within ten (10) Business Days of receipt by the non-filing Party of evidence of the timely filing and payment thereof. The provisions of this Section 7.2 and no other provision, shall govern the economic burden of Transfer Taxes. Each of Buyers and Seller shall (and shall cause their respective Affiliates to) timely sign and deliver such certificates or forms as may be necessary or appropriate to establish an exemption from (or otherwise reduce), or file Tax Returns or reports with respect to, Transfer Taxes.

(b) All Taxes and assessments on the Acquired Assets for any taxable period commencing on or prior to the Closing Date and ending after the Closing Date (a “Straddle Period”) shall be prorated between the Buyers and the Seller as of the close of business on the Closing Date based on the best information then available, with (a) the Seller liable for such Taxes attributable to any portion of a Straddle Period ending on or prior to the Closing Date and (b) the Buyers being liable for such Taxes attributable to any portion of a Straddle Period beginning after the Closing Date. Information available after the Closing Date that alters the amount of Taxes due with respect to the Straddle Period will be taken into account and any change in the amount of such Taxes shall be prorated between the Buyers the Seller as set forth in the next sentence. All pro-rations of Straddle Period Taxes on the Acquired Assets shall be allocated so that items relating to the portion of a Straddle Period ending on or prior to the Closing Date shall be allocated to the Seller based upon the number of days in the Straddle Period on or prior to the Closing Date and items related to the portion of a Straddle Period beginning after the Closing Date shall be allocated to the Buyers based upon the number of days in the Straddle Period after the Closing Date. The amount of all such prorations that must be paid in order to convey the Acquired Assets to the Buyers free and clear of all Liens other than Permitted Liens have been calculated and shall be paid on the Closing Date; all other prorations shall be calculated and paid as soon as practicable thereafter.

(c) The Seller and the Buyers shall (and shall cause their respective Affiliates to) cooperate fully with each other and make available or cause to be made available to each other for consultation, inspection and copying (at such other party's expense) in a timely fashion such personnel, Tax data, relevant Tax Returns or portions thereof and filings, files, books, records, documents, financial, technical and operating data, computer records and other information as may be reasonably requested, including, without limitation, (a) for the preparation by such other party of any Tax Returns or (b) in connection with any Tax audit or proceeding including one party (or an Affiliate thereof) to the extent such Tax audit or proceeding relates to or arises from the transactions contemplated by this Agreement.

7.3 Noncompetition.

(a) From and after the Closing, Seller shall not, and shall cause its licensees, distributors, successors and assigns and its and their respective Affiliates not to, directly or indirectly, on its own behalf, as an agent of, on behalf of or in conjunction with, or as a member, partner or shareholder of, or through management, operation, control (or participation in the ownership, management, operation or control of) any other firm, corporation or other entity or Person, manufacture, advertise, promote, develop, sell, or distribute products bearing the Seller Brands or any Related Mark: (i) in the better or missy departments in any distribution channel or similarly positioned departments for other categories of products, (ii) through any Direct Response Television Channel or (iii) to such U.S. retailers as set forth on Schedule 7.3(a)(iii) or to such non-U.S. mass retailers that are direct competitors of the retailers set forth on Schedule 7.3(a)(iii) in terms of quality of goods, price points and distribution.

(b) Notwithstanding anything to the contrary contained herein:

(i) Seller, its licensees and distributors, successors and assigns may manufacture, advertise, promote, develop, sell, or distribute products bearing the Seller Brands or any Related Mark in the luxury, contemporary or bridge departments or similarly positioned departments for other categories of products;

(ii) Seller and its respective Affiliates shall be permitted to enter into the Master License Agreement and perform the obligations and conduct the business as contemplated thereby; and

(iii) the provisions of Section 7.3(a)(i) shall (without any further action or consent of any person (including, without limitation, any party hereto)) immediately cease to be of any further force or effect, upon Seller's Senior Creditor's enforcement of its security interests in the Seller's assets (including the Seller Brands and Related Marks) (whether by foreclosure or otherwise (including through any orderly sale made at the direction or with the consent of Seller's Senior Creditor)). Each Buyer (for itself and each of its Affiliates, agents and partners) hereby agrees that no restrictions set forth in Section 7.3(a)(i) shall apply to Seller's Senior Creditor or any transferee (or subsequent transferee) of the Seller Brands and Related Marks in connection with any such enforcement of Seller's Senior Creditor's security interest in the Seller's assets, provided that the provisions of Section 7.3(a)(ii) and Section 7.3(a)(iii) shall be applicable to any Person that obtains the Seller Brands.



Notwithstanding anything to the contrary contained in this Section 7.3(b), in the event that the obligations owing to Seller's Senior Creditor are paid in full or Seller's Senior Creditor assigns the note related to such obligations to a Seller Party or their respective Affiliates, all of the provisions in this Section 7.3(b)(iii) shall be null and void.

(c) From and after the Closing, Buyers shall not, and shall cause their licensees, distributors, successors and assigns and their respective Affiliates not to, directly or indirectly, on its own behalf, as an agent of, on behalf of or in conjunction with, or as a member, partner or shareholder of, or through management, operation, control (or participation in the ownership, management, operation or control of) any other firm, corporation or other entity or Person:

(i) manufacture, advertise, promote, develop, sell or distribute products bearing the "H HALSTON" trademark or brand: (x) in the luxury, contemporary or bridge departments in any distribution channel or to such retailers as set forth on Schedule 7.3(c)(i) or (y) through any Direct Response Television Channel other than pursuant to the Buyer QVC Agreement;

(ii) manufacture, advertise, promote, develop, sell or distribute products bearing the "H by HALSTON" trademark or brand in the luxury, contemporary or bridge departments in any distribution channel or to such retailers as set forth on Schedule 7.3(c)(i); provided, however, that Buyers shall be have the right to permit solely QVC to manufacture, develop, sell or distribute products bearing the H by Halston trademark or brand pursuant to the Buyer QVC Agreement;

(iii) develop, advertise, promote, sell or distribute products bearing the (x) "H BY HALSTON" trademark or brand in the People's Republic of China through Direct Response Television until and after the second anniversary of the Closing and (y) "H HALSTON" trademark or brand in People's Republic of China unless Seller elects to terminate the Master License Agreement in accordance with Section 10.4 thereof;

(iv) create, devise, or develop any derivative of the H by H Brands or any related or derivative mark; and

(v) manufacture, develop, sell or distribute products bearing the H by H Brands to such retailers set forth on Schedule 7.3(c) (v).

Notwithstanding anything to the contrary contained in this Agreement, Buyer shall (i) be required to use commercially reasonable efforts to cause QVC, in its capacity as a licensee, to comply with the provisions of Section 7.3(c); and (ii) not permit QVC to sublicense QVC's rights with respect to the H by H Brands to any third party, other than to a QVC affiliate or in connection with the manufacturing or promotion (but not distribution) of products pursuant to the Buyer QVC Agreement.

(d) In the event the Buyer QVC Agreement is terminated or not renewed, Buyers shall not, and shall cause their licensees to not, directly or indirectly, on its own behalf, as an agent of, on behalf of or in conjunction with, or as a member, partner or shareholder of, any other firm, corporation or other entity or Person to manufacture, advertise, promote, develop, sell or distribute products bearing the "H by HALSTON" trademark in the luxury, contemporary or bridge departments in any distribution channel or to such retailers as set forth on Schedule 7.3(c)(i).

(e) Each of Seller and the Buyers are entitled (without limitation of any other remedy) to specific performance and/or injunctive relief with respect to any breach or threatened breach of the covenants in this Section 7.3. If any court of competent jurisdiction at any time deems the time periods for the foregoing covenants too lengthy or the scope of the covenants too broad, the restrictive time periods will be deemed to be the longest period permissible by law, and the scope will be deemed to comprise the broadest scope permissible by law under the circumstances. It is the intent of the parties to protect and preserve the Excluded Assets and the Acquired Assets and therefore the parties agree and direct that the time period and scope of the foregoing covenants will be the maximum permissible duration and size.

7.4 Conduct of Seller Business. From the Closing Date until the second anniversary thereof, the Seller shall, and shall cause their respective Affiliates to, maintain the current position of the “HALSTON HERITAGE” brand in the marketplace and in Seller’s Affiliate’s business in a manner consistent with past practice as of the two year period prior to the Closing Date.

7.5 Acquired Assets; Collateral and Training.

(a) The Seller agrees to execute on or before the Closing Date all necessary documents with respect to the assignment of the Acquired Assets owned by Seller to each Buyer (including, without limitation, registrations thereof, if any). Upon the written request of a Buyer its successors, legal representatives or assigns, Seller agrees that at any time from and after the Closing Date, Seller will use commercially reasonable efforts to communicate with the Buyers, their respective successors, legal representatives and assigns all information known to Buyers relating to the Acquired Assets in the United States and worldwide and that Seller will execute and deliver any papers, make rightful oaths, testify in any legal proceedings, and perform all other lawful acts reasonably deemed necessary or desirable by Buyers, their successors, legal representatives and assigns, to convey or perfect the Buyers’ rights to the Acquired Assets and to enforce or defend Buyers’ and their assigns’ rights in and to the Acquired Assets, provided, that the Parties shall enter into a Cooperation Agreement in the form attached hereto as Exhibit D with respect to any jurisdiction or territory which does not permit separate ownership of trademarks or registered intellectual property rights in related or similar marks (the “Cooperation Territories”).

(b) The Buyers shall reimburse the Seller for all reasonable and documented out-of-pocket expenses incurred in providing the cooperation set forth herein following the Closing Date, provided that the Seller shall maintain its existing registrations at its cost and expense in the Cooperation Territories until Buyers are able to obtain separate registrations in the Acquired Assets.

(c) The Seller agrees to make available to Buyers following the Closing Date any archived designs, marketing and advertising materials and images and other collateral related to the “HALSTON,” “HALSTON HERITAGE,” and “H BY HALSTON” brand, provided, that any use of any marketing and advertising materials, images or other collateral relating to the “HALSTON” or “HALSTON HERITAGE” brands and developed, created, devised, authored or owned by Seller may not be used without Seller’s prior written consent.

(d) The Seller agrees to provide, or to cause its Affiliates to provide, training to each Buyer’s designers regarding the “HALSTON” brand from the Closing Date until the second anniversary thereof. Such trainings shall be conducted a maximum of once every six (6) months. The cost and expense of travel related to such trainings shall be borne by the Buyers and the cost of the training shall be borne by the Seller.

(e) Following the Closing Date, the Seller and the Buyers shall devise a list of mutually agreeable marketing and advertising materials that are owned by Seller, as to which Buyers are permitted to use in the sale and promotion of products bearing the H by H Brands.

7.6 Right of Notice. The Seller shall provide thirty (30) days prior written notice to the Buyers of any transactions involving the sale of any of the Seller Brands, provided, however that there shall be no liability for failure of Seller to provide such notice in the event of any transaction or disposition resulting from the exercise of Seller’s Senior Creditor’s remedies (including, without limitation, enforcement of its security interests in the Seller’s assets (including the Seller Brands and Related Marks) (whether by foreclosure or otherwise (including through any orderly sale made at the direction or with the consent of Seller’s Senior Creditor))).

7.7 Additional Financial Statements. The Seller shall use commercially reasonable efforts to assist the Buyers in the preparation of any financial statements required by the SEC in connection with the transactions contemplated by this Agreement, if any, at the Seller’s cost and expense, including without limitation providing the Buyers with full access during normal business hours, and in a manner so as not to interfere with the normal business operations of the Seller and on reasonable advance notice, but in any event not less than five (5) Business Days, to all relevant books, records, work papers, information and employees and auditors of the Seller, solely to the extent necessary in connection with the preparation of any such financial statements.

7.8 Confidentiality. From and after the date hereof, until three (3) years from the date hereof, Seller and each Buyer shall, and shall cause each of its respective Affiliates to, treat as confidential and use commercially reasonable efforts to safeguard and not to use, except as expressly agreed in writing by the Buyers, any and all Seller Information included within the Acquired Assets, including the Seller Parties Intellectual Property Rights, in each case using the standard of care reasonably necessary to prevent the unauthorized use, dissemination or disclosure of such Seller Information. For purposes of this Section 7.8, from and after the date hereof, confidential information included within the Acquired Assets shall be deemed to be “Seller Information” notwithstanding the fact that such information was available to or in the possession of any Seller or any of their Affiliates prior to the Closing. From the date of this Agreement to the Closing, each Buyer shall, and shall cause each of its Affiliates to, treat as confidential and use commercially reasonable efforts to safeguard and not to use, except as expressly agreed in writing by the Seller, any and all Seller Information, in each case using the standard of care reasonably necessary to prevent the unauthorized use, dissemination or disclosure of such Seller Information. Notwithstanding the generality of the foregoing, nothing in this Section 7.8 shall prohibit any Party from making public disclosures required by applicable Legal Requirements, according to Section 12.1.

7.9 Agreement to Vote. Each of the Seller and the Seller Designee agrees to enter into a voting agreement at the Closing, in substantially the form attached hereto as Exhibit B-1 and Exhibit B-2 (the "Voting Agreement"). The Seller, Seller Designee and XCel agree to comply with the terms of the Voting Agreement.

7.10 Access to Records . At all times after the Closing, each Party will permit the other Parties and their Affiliates reasonable access on not less than five (5) business days prior written notice, during normal business hours, at the sole cost and expense of the requesting party and in a manner that will not unreasonably interfere with the normal operations of the providing party, to and the right to make copies of the Books and Records and such other books and records of such Party relating to the Seller and/or the Acquired Assets existing prior to Closing and in such providing party's possession or control; provided, however, that the requesting party shall only use such information (a) to protect or enforce its rights or perform its obligations under this Agreement and any agreements entered into among the parties in connection herewith or (b) in connection with tax or other regulatory filings, litigation or financial reporting. In addition, the providing party will make available to the requesting party or its Affiliate, upon reasonable request and to the extent still employed by the providing party, personnel who are familiar with any such matter requested.

7.11 Recording of Intellectual Property Assignments. The Seller and Buyers shall cooperate to timely record and file the appropriate intellectual property assignments with the appropriate Government Authorities as promptly as practicable following the Closing.

7.12 Foreign Intellectual Property. The Seller agrees to use commercially reasonable efforts to take, or cause to be taken, all actions, as any of the Buyers may reasonably request or as may be otherwise necessary to assist with the registration and transfer of all foreign trademarks included in the Acquired Assets as set forth in the Cooperation Agreement.

7.13 Buyer QVC Agreement. The Seller acknowledges and agrees that the Sellers shall have no rights under the Buyer QVC Agreement and shall not interfere with the Buyers' business with the Buyer QVC Agreement unless requested by the Buyers. Notwithstanding the foregoing, the Buyers shall not modify, amend, supplement, restate or replace the Buyer QVC Agreement in any manner that would adversely affect Seller's rights under Section 7.3.

7.14 Further Assurances. From time to time following the Closing, each Party shall execute and deliver, or cause to be executed and delivered, such instruments and documents as a party may reasonably request or as may be otherwise necessary to more effectively consummate the transactions contemplated hereby. Following the Closing, the Seller Parties agree to forward to the Buyers any correspondence or other communications addressed to any Seller Party received by them that relates to the H HALSTON mark under the Master License Agreement.

**ARTICLE VIII**  
**CONDITIONS PRECEDENT TO BUYERS' OBLIGATION TO CLOSE**

The Buyers' obligation to purchase the Acquired Assets and the Buyers' obligations to take the other actions required to be taken by the Buyers are the Closing is subject to the satisfaction at or prior to the Closing, of each of the following conditions (any of which may be waived by the Buyers, in whole or in part):

8.1 Truth of Representations and Warranties. The representations and warranties of the Seller Parties contained in this Agreement that are qualified as to materiality shall be true and correct, and those not so qualified shall be true and correct in all material respects, as of the date of this Agreement and on and as of the Closing Date, except to the extent that any such representation or warranty expressly relates to an earlier date, in which case such representation and warranty qualified as to materiality shall be true and correct, and such representation and warranty not so qualified shall be true and correct in all material respects, as of such earlier date.

8.2 Fairness Opinion. The Buyers shall have obtained an appropriate Fairness Opinion from a nationally recognized firm.

8.3 Performance of Agreements. Each of the covenants and agreements of the Seller to be performed or complied with by it at or prior to the Closing Date pursuant to the terms hereof, shall have been performed or complied with in all material respects.

8.4 Certificate. The Seller Parties shall have delivered (and caused to be delivered) to the Buyers a certificate, dated the Closing Date and executed by or on behalf of the Seller Parties, certifying as to the satisfaction of the conditions set forth in Sections 8.1 and 8.3 of this Agreement.

8.5 No Injunction. No court or other Government Authority shall have issued a Decree, which shall then be in effect, restraining or prohibiting the completion of the transactions contemplated hereby.

8.6 Governmental and Other Approvals. All of the Government Authorizations and third-party consents and approvals set forth on Schedule 8.6 shall have been received and shall be in full force and effect.

8.7 Lien Release. The Buyers shall have received copies of releases of all Liens (other than Permitted Liens) against any asset, property or right of the Acquired Assets.

8.8 Assignments. The Seller shall have received written assignments, in forms reasonably satisfactory to the Buyers, of all Seller Intellectual Property Rights.

8.9 Completion of Due Diligence. Buyers shall have completed, to their reasonable satisfaction, a due diligence investigation of the Seller.

8.10 No Seller Parties Material Adverse Effect. From the date hereof to the Closing Date, there shall not have occurred any event, circumstance or effect that has had or would reasonably be expected to have a Seller Parties Material Adverse Effect.

8.11 Financing. The Buyers shall have completed a debt, equity or other financing of at least Twenty-Six Million Dollars (\$26,000,000) on terms and conditions satisfactory to the Buyers in their sole discretion.

8.12 Buyer QVC Agreement. The Buyers shall have entered into the Buyer QVC Agreement upon such terms and conditions acceptable to the Buyers in their sole discretion.

8.13 No Decree or Proceeding. No Decree or Proceeding shall be pending against the Seller Parties which would be reasonably expected to (i) prevent consummation of any of the transactions contemplated by this Agreement or (ii) cause any of the transactions contemplated by this Agreement to be rescinded following consummation thereof.

8.14 Closing Deliverables. In addition to any other documents to be delivered or actions to be taken under other provisions of this Agreement, at the Closing, the Seller shall deliver to the Buyers:

(a) One or more executed bills of sale in form and substance reasonably satisfactory to the Buyers transferring to the Buyers all tangible assets included in the Acquired Assets;

(b) In respect of the Acquired Assets, such documents as Buyers may reasonably require to effect the transfer to the Buyers of the Seller's interests therein free and clear of all Liens, other than Liens arising as a result of any action taken by any Buyer or any of its Affiliates;

(c) Counterparts of all Related Agreements executed by Seller, as applicable;

(d) Certified copies of the resolutions of the Seller Parties authorizing the execution, delivery, and performance of this Agreement by the Seller and the consummation of the transactions provided for herein;

(e) An executed assignment and assumption of the Seller Intellectual Property Rights, in form and substance reasonably acceptable to the Buyers;

(f) A receipt for the cash Purchase Price received by Seller and an acknowledgement of the issuance of the XCel Shares in Seller's name when received by Seller;

(g) A non-foreign affidavit dated as of the Closing Date, sworn under penalty of perjury and in the form required under treasury regulations issued pursuant to Code §1445 stating that no Seller is a foreign person as defined in Code §1445; and

(h) Certificates of the Secretaries of State (or other applicable office) in each jurisdiction in which the Seller Parties are organized, dated as of the Closing Date (or as close thereto as reasonably practicable), certifying as to the good standing (to the extent such concept is recognized in such jurisdiction) and non-delinquent status of such entities.

**ARTICLE IX**  
**CONDITIONS PRECEDENT TO THE SELLER'S OBLIGATION TO CLOSE**

All obligations of the Seller under this Agreement are subject to the fulfillment of each of the following conditions, any or all of which may be waived in whole or in part by the Seller, in their sole discretion:

9.1 Truth of Representations and Warranties. The representations and warranties of the Buyers contained in this Agreement that are qualified as to materiality shall be true and correct, and those not so qualified shall be true and correct in all material respects, as of the date of this Agreement and on and as of the Closing Date, except to the extent that any such representation or warranty expressly relates to an earlier date, in which case such representation or warranty that is qualified as to materiality shall be true and correct, and such representation and warranty not so qualified shall be true and correct in all material respects, as of such earlier date.

9.2 Performance of Agreements. Each of the covenants and agreements of the Buyers to be performed or complied with by the Buyers at or prior to the Closing Date pursuant to the terms hereof, shall have been duly performed or complied with by each of the Buyers in all material respects.

9.3 Certificate. Buyers have delivered to the Seller a certificate, dated the Closing Date and executed by a duly authorized officer on behalf of the Buyers, certifying as to the satisfaction of the conditions set forth in Sections 9.1 and 9.2 of this Agreement.

9.4 No Injunction. No court or other Government Authority shall have issued a Decree, which shall then be in effect, restraining or prohibiting the completion of the transactions contemplated hereby.

9.5 Governmental and Other Approvals. All Government Authorizations and third-party consents and approvals set forth on Schedule 9.5 shall have been received and shall be in full force and effect.

9.6 Closing Deliverables. In addition to any other documents to be delivered or actions to be taken under other provisions of this Agreement, at Closing, the Buyers, as applicable, shall deliver to the Seller the following:

(a) The Purchase Price as provided in Sections 3.2 and 3.3;

(b) Counterparts of all Related Agreements, executed by the Buyers, as applicable; and

(c) A certified copy of the resolutions of the Buyers authorizing the execution, delivery and performance of this Agreement and the consummation of the transactions provided for herein.

**ARTICLE X**  
**TERMINATION**

10.1 Right to Terminate. This Agreement and the transactions contemplated hereby may be terminated at any time prior to the Closing:

(a) by the mutual written consent of the Buyers and the Seller;

(b) by the Buyers or the Seller if the Closing shall not have occurred by December 31, 2014 (the "Termination Date");

(c) by the Buyers or the Seller if a court of competent jurisdiction or other Government Authority shall have issued a non-appealable final order, Decree or ruling or taken any other action, in each case having the effect of permanently restraining, enjoining or otherwise prohibiting the transactions contemplated hereby, except if the party relying on such order, Decree or ruling or other action has not complied with its obligations under this Agreement;

(d) by the Seller, if there has been a breach of any representation, warranty, covenant or agreement on the part of the Buyers set forth in this Agreement that causes the conditions set forth in Article IX to become incapable of fulfillment by the Termination Date, unless waived by the Seller; or

(e) by the Buyers, if there has been a breach of any representation, warranty, covenant or agreement on the part of the Seller Parties set forth in this Agreement that causes the conditions set forth in Article VIII to become incapable of fulfillment by the Termination Date, unless waived by the Buyers;

provided, however, that the Party exercising its right to so terminate this Agreement pursuant to Section 10.1(b), 10.1(d) or 10.1(e) shall not have a right to terminate if, at the time of such termination, there exists a breach of any of its representations, warranties, covenants or agreements contained in this Agreement that results in the closing conditions set forth in Article VIII or IX, as applicable, not being satisfied.



10.2 Post-Termination License Agreement with Seller or its Affiliates. If (a) the Buyers terminate this Agreement pursuant to Section 10.1(e) (solely as a result of a breach by a Seller Party) and the Buyers otherwise stand ready, willing and able to consummate the transactions contemplated hereby (and shall have satisfied all of their conditions to Closing), and (b) Seller or any Affiliate of a Seller Party enters into a definitive written license or similar agreement with QVC, then Seller shall pay XCel a commission on such license or other agreement equal to fifteen percent (15%) of all royalties received by such Seller or its assignees during the first two terms or ten years, whichever is longer, of any such license or other agreement, including any renewals thereunder, provided, however, that this Section 10.2 shall only apply to such definitive written licenses or other agreements with QVC entered into within one (1) year of the date of this Agreement.

10.3 Effect of Termination.

(a) Except as otherwise set forth in this Section 10.3, in the event of a termination of this Agreement by either Seller or Buyers as provided in Section 10.1, this Agreement shall forthwith become void; provided, however, that such termination shall not relieve any Party of any liability for Damages actually incurred or suffered by the other Parties as a result of any breach of this Agreement.

(b) If this Agreement is terminated solely as a result of the Seller's breach of Section 6.5 prior to the Termination Date, then Seller shall pay to the Buyers, or a party designated by Buyers, (i) Five Hundred Thousand Dollars (\$500,000) (the "Exclusivity Termination Fee") not later than the day of such termination, and (ii) all of Buyers' reasonable fees and expenses related to the transaction contemplated herein (including reasonable legal fees and expenses of the Buyers) upon its receipt of an invoice for such fees and expenses from the Buyers. The Exclusivity Termination Fee shall be paid by wire transfer of immediately available funds to an account designated in writing to Seller by Buyers. The payment of such amounts shall be the sole and exclusive remedy for a breach by Seller of Section 6.5 (regardless of whether such breach is willful), and the Buyers shall have no further claim under this Agreement or under law or equity.

**ARTICLE XI**  
**INDEMNIFICATION; REMEDIES**

11.1 Survival. All representations and warranties made by the Seller Parties or the Buyers, herein, or in any certificate, schedule or exhibit delivered pursuant hereto, shall survive the Closing and continue in full force and effect until the 24-month anniversary of the Closing Date (the "Survival Date"), other than in the case of fraud and except as to any matters with respect to which a bona fide written claim shall have been made or action at law or in equity shall have been commenced before such date, in which event survival shall continue (but only with respect to, and to the extent of, such claim or action); provided, however, that the representations and warranties (i) in Section 4.8 shall survive and remain in full force and effect until 30 days after the expiration of the applicable statute of limitations for the assessment of Taxes (including all periods of extension, whether automatic or permissive) and (ii) in Sections 4.1 (Organization and Good Standing), 4.2 (Enforceability; Authority), 4.5 (Title to Assets), 4.20 (Brokers' or Finders' Fees), 5.1 (Existence and Good Standing; Authorization) and 5.8 (Brokers' or Finders' Fees) (the "Core Representations") shall survive and remain in full force and effect indefinitely. Each covenant and agreement of any of the Parties contained in this Agreement, which by its terms is required to be performed after the Closing Date, shall survive the Closing and remain in full force and effect until such covenant or agreement is performed.

11.2 Indemnification by Seller Parties. Subject to the limitations set forth in this Article XI, the Seller Parties shall indemnify, defend and hold harmless the Buyers and their managers, members, officers, directors, agents, attorneys and employees, (hereinafter "Buyer Indemnified Parties") from and against any and all actual losses, claims, liabilities, debts, damages, fines, penalties, costs (in each case including, without limitation, reasonable out-of-pocket expenses (including, without limitation, reasonable fees and expenses of counsel)) that they incur (collectively, "Damages") incurred as a result of:

(a) the breach of any representation or warranty of the Seller Parties contained in this Agreement or in any certificate or other instrument furnished to the Buyers by the Seller Parties pursuant to this Agreement;

(b) the material breach of, default under or nonfulfillment of any covenant, obligation or agreement of the Seller Parties under this Agreement or the agreements and instruments contemplated herein, which is not cured within thirty (30) days from a Seller Parties' receipt of notice thereof;

(c) the Excluded Assets;

(d) the Excluded Liabilities;

(e) the breach of, default under or non-fulfillment of the Seller Parties' obligations; or

(f) any and all actions, suits, or proceedings, incident to any of the foregoing.

11.3 Indemnification by Buyers. Subject to the limitations set forth in this Article XI, the Buyers will each indemnify, defend and hold harmless the Seller Parties and their respective stockholders, managers, officers, directors, agents, attorneys and employees (hereinafter "Seller Indemnified Parties") and, together with the Buyer Indemnified Parties, the "Indemnified Party") from and against any and all Damages incurred or sustained by the Seller Indemnified Parties as a result of:

(a) the breach of any representation or warranty of the Buyers contained under this Agreement or any certificate or other instrument furnished by the Buyers to the Seller pursuant to this Agreement;

(b) the material breach of, default under of nonfulfillment of any covenant, obligation or agreement by the Buyers under this Agreement or in the agreements and instruments contemplated herein, which is not cured within thirty (30) days of Buyers' receipt of notice thereof;

- (c) the Acquired Assets following the Closing;
- (d) the breach of, default under or non-fulfillment of any Buyer's obligations; and
- (e) any and all actions, suits, or proceedings incident to any of the foregoing.

11.4 Limitation on Liability.

(a) Neither the Seller Parties nor the Buyers shall have any Liability for Damages under, respectively, Section 11.2 or Section 11.3, and neither the Seller Indemnified Parties nor the Buyer Indemnified Parties shall have the right to seek indemnification under, respectively, Section 11.2 or Section 11.3 until the aggregate amount of the Damages incurred by such Indemnified Party exceeds \$50,000, and then, subject to the limitations on recovery and recourse set forth in this Article XI, only for such Damages which exceed, in the aggregate, \$110,000. Notwithstanding the foregoing, the limitations in this Section 11.4(a) shall not apply to any breach of a Core Representation, in the case of fraud, or in connection with any failure by the Buyers to make any payment of the Purchase Price when due.

(b) The aggregate liability of the Seller Parties on the one hand, and the Buyers on the other, for all Damages under Section 11.2 or Section 11.3, as applicable, shall not exceed (i) \$7,500,000 (the "Cap") in the case of claims for Damages made prior to the 24 month anniversary of the Closing Date, and (ii) \$3,750,000 (the "Decreased Cap") in the case of claims for Damages made on or following the 24-month anniversary of the Closing Date; provided, however, that neither the Cap nor the Decreased Cap shall apply to any breach of a Core Representation, any breach of a covenant by the Buyer or the Seller Parties, in the case of fraud, or in connection with any failure by the Buyers to make any payment of the Purchase Price when due.

(c) In determining the amount of Damages in respect of a claim under this Article XI, there shall be deducted an amount equal to the amount of any third-party insurance proceeds actually received by the Indemnified Party making such claim with respect to such Damages less the cost of any increase in insurance premiums over the projected period of such increase as a result of making a claim for such Damages, provided that there shall be no obligation to make a claim, and no offset against Damages shall be made, if a party reasonably believes that making a claim for such Damages is reasonably likely to result in a non-renewal of the insurance policy.

(d) Except for liability resulting from fraud, and notwithstanding anything contained herein to the contrary, neither Buyers nor Seller Parties shall be liable under this Agreement for any lost profits, punitive, or exemplary damages of any kind or nature, regardless of the form of action through which such damages are sought.

11.5 Other Indemnification Provisions.

(a) To the extent that any representations and warranties of the Seller Parties or the Buyers, as applicable, have been breached, thereby entitling the non-breaching party to indemnification pursuant to Section 11.2 or Section 11.3 hereof, it is expressly agreed and acknowledged by the parties that, solely for purposes of calculation of Damages in connection with any right to indemnification, the representations and warranties of the Seller Parties or Buyers, as applicable, that have been breached shall be deemed not qualified by any references therein to materiality generally, knowledge or to whether or not any breach or inaccuracy results in a Seller Parties Material Adverse Effect or Buyer Material Adverse Effect.

(b) An Indemnified Party's right to indemnification pursuant to this Article XI shall, except for equitable relief and specific performance of covenants that survive Closing, be the sole and exclusive remedy available to such Indemnified Party with respect to any matter arising under or in connection with this Agreement or the transactions contemplated hereby, other than for claims of fraud.

11.6 Procedure for Indemnification. The procedure to be followed in connection with any claim for indemnification by Buyer Indemnified Parties under Section 11.2 or Seller Indemnified Parties under Section 11.3 or any claims by one party against the other is set forth below:

(a) Notice. Whenever any Indemnified Party shall have received notice that a claim has been asserted or threatened against such Indemnified Party, which, if valid, would subject the indemnifying party (the "Indemnifying Party") to an indemnity obligation under this Agreement, the Indemnified Party shall promptly notify the Indemnifying Party of such claim; provided, however, that failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of its indemnification obligations hereunder, except to the extent the Indemnifying Party is actually prejudiced thereby. Any such notice must be made to the Indemnifying Party not later than the expiration of the applicable survival period specified in Section 11.1 above.

(b) Defense of a Third Party Claim. If any Third Party shall notify any party with respect to any matter (a "Third Party Claim") that may give rise to a claim for indemnification against any other party under this Article XI, the Indemnifying Party will have the right, but not the obligation, to assume the defense of the Third Party Claim so long as (i) the Indemnifying Party provides the Indemnified Party with evidence reasonably acceptable to the Indemnified Party that the Indemnifying Party will have the financial resources to defend against the Third Party Claim and fulfill its indemnification obligations hereunder, (ii) uses counsel reasonably satisfactory to the Indemnified Party, (iii) the Indemnifying Party acknowledges its obligation to indemnify the Indemnified Party hereafter in respect of such matters and (iv) the relief sought is monetary damages.

(c) After notice from the Indemnifying Party to the Indemnified Party of its election to assume the defense of the Third Party Claim, the Indemnifying Party shall not, as long as the Indemnifying Party diligently conducts such defense, be liable to the Indemnified Party for any legal or other expense subsequently incurred by the Indemnified Party in connection with the defense thereof, other than reasonable costs of investigation; provided, however, that if counsel defending such Third Party Claim shall advise the parties of a potential conflict of interest arising from the existence of one or more legal defenses available to the Indemnified Party which are different from or additional to those available to the Indemnifying Party or its Affiliates, then the Indemnified Party may retain separate counsel to defend it and in that event the reasonable fees and expenses of such separate counsel shall be paid by the Indemnifying Party if applicable under this Article XI. Subject to the proviso to the foregoing sentence, if the Indemnifying Party assumes such defense, the Indemnified Party shall have the right to participate in the defense thereof and to employ counsel, at its own expense, separate from the counsel employed by the Indemnifying Party. The Indemnifying Parties shall be liable for the reasonable fees and expenses of counsel employed by the Indemnified Party for any period during which the Indemnifying Party has not assumed the defense thereof if the Indemnifying Party is ultimately are found to be liable to indemnify the Indemnified Party. If the Indemnifying Party chooses to defend or prosecute any Third Party Claim, all of the parties hereto shall cooperate in the defense or prosecution thereof.

(d) If an Indemnifying Party assumes the defense of an action or proceeding, then, without the Indemnified Party's written consent, the Indemnifying Party shall not settle or compromise any Third Party Claim or consent to the entry of any judgment which does not include as an unconditional term thereof the delivery by the claimant or other plaintiff to the Indemnified Party of a written release from all liability in respect of such Third Party Claim or if such settlement shall include injunctive or other relief that affects or relates to the right or obligations of such Indemnified Party, other than the obligation to pay monetary damages where such damages have been satisfied in full by the Indemnifying Party or their respective Affiliates.

11.7 Non-Third Party Claims. Within thirty (30) Business Days after a Party obtains knowledge that it has sustained any Damages not involving a Third Party Claim or action which such Party reasonably believes may give rise to a claim for indemnification from another party hereunder, such Indemnified Party shall deliver notice of such claim to the Indemnifying Party, together with a brief description of the facts and data which support the claim for indemnification (a "Claim Notice"); provided, however, that failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of its indemnification obligations hereunder, except to the extent that the Indemnifying Party is actually prejudiced thereby. Any Claim Notice must be made to the Indemnifying Party not later than the expiration of the applicable survival period specified in Section 11.1 above. If the Indemnifying Party does not deliver notice to the Indemnified Party within thirty (30) Business Days following its receipt of a Claim Notice that the Indemnifying Party disputes its liability to the Indemnified Party under this Article XI (an "Indemnification Objection") the Indemnifying Party will be deemed to have rejected such claim, in which event the other party will be free to pursue such remedies as may be available to them.

11.8 Indemnification Payments. In the event any Indemnified Party is finally determined to be entitled to indemnification pursuant to this Article XI, the Indemnifying Party shall pay such Damages to the Indemnified Party in immediately available funds and shall make such payment within two Business Days of its final determination by way of wire transfer to an account designated by the Indemnified Party.

11.9 Tax Treatment. All indemnity payments made under this Article XI shall be treated as adjustments to the Purchase Price for all tax purposes.

## **ARTICLE XII** **MISCELLANEOUS**

12.1 Public Disclosure or Communications. Except to the extent required by applicable Legal Requirements (including, without limitation, securities laws applicable to the Parties), none of the Buyers nor the Seller nor any of their respective Affiliates shall issue any press release or public announcement of any kind concerning the transactions contemplated by this Agreement without the prior written consent of the other parties; and, in the event that any such public announcement, release or disclosure is required by applicable Legal Requirements (including, without limitation, the rules of the stock market and/or securities laws), the disclosing party will provide the other Parties, to the extent practicable and permissible under the circumstances, reasonable opportunity to comment on any such announcement, release or disclosure prior to the making thereof. Each of the Parties hereto acknowledges that XCel may be required to file a Current Report on Form 8-K disclosing the transactions contemplated by this Agreement and attaching as an exhibit thereto a copy of this Agreement.

12.2 Notices. All notices, consents, waivers, and other communications under this Agreement must be in writing and will be deemed to have been duly given when (a) delivered by hand (with written confirmation of receipt), (b) sent by telecopier (with written confirmation of receipt); provided that a copy is mailed by registered mail, return receipt requested, or (c) one Business Day after its delivery, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and telecopier numbers set forth below (or to such other addresses and telecopier numbers as a Party may designate by notice to the other Parties):

*If to the Seller:*

The H Company IP, LLC  
1201 W. 5<sup>th</sup> Street, T-1100  
Los Angeles, California 90017  
Attention: Ben Malka, CEO

*With a copy to (which shall not constitute notice):*

The H Company IP, LLC  
1201 W. 5<sup>th</sup> Street, T-1100  
Los Angeles, California 90017  
Attention: Rey Kim, General Counsel

*With a copy to (which shall not constitute notice):*

Pathlight Capital LLC  
One Post Office Square, Suite 3765  
Boston, MA 02109  
Attention: Daniel Platt, Chief Executive Officer

*If to the Buyers:*

XCel Brands, Inc.  
475 Tenth Avenue, 4<sup>th</sup> Floor  
New York, NY 10018  
Attention: Robert D'Loren, CEO  
Facsimile:

*With a copy to (which shall not constitute notice):*

Blank Rome, LLP  
405 Lexington Avenue  
New York, NY 10174  
Attention: Robert Mittman  
Facsimile: 212-885-5001

12.3 Entire Agreement. This Agreement and the certificates, exhibits, schedules, documents, instruments and other agreements specifically referred to herein or therein or delivered pursuant hereto or thereto constitute the entire agreement among the Parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof

12.4 Assignability. This Agreement shall not be assigned by any Party, by operation of law or otherwise, without the written consent of the other Party; provided, however, that (a) the Buyers may, with the prior written consent of the Seller, which may not be unreasonably withheld, assign their rights and obligations under this Agreement to (i) an Affiliate of Buyers, (ii) a successor or assign upon the purchase of all or substantially all of the assets of either Buyer, (iii) the purchaser of a controlling interest in either or both of Buyer's securities or (iv) to any successor entity pursuant to any business combination, consolidation, reorganization or similar transaction with or involving Buyers; provided, however, that notwithstanding any such assignment, the Buyers shall remain obligated to perform all their obligations under this Agreement; and (b) the Seller may, with the prior written consent of the Buyers, which may not be unreasonably withheld, assign their rights and obligations under this Agreement to (i) a successor or assign upon the purchase of all or substantially all of the assets of the Seller or the Parent, (ii) the purchaser of a controlling interest in the Seller's or Parent's securities or (iii) to any successor entity pursuant to any business combination, consolidation, reorganization or similar transaction involving any Seller; provided, however, that notwithstanding any such assignment, the Seller shall remain obligated to perform all its obligations under this Agreement. Any successor or assign must assume this Agreement and abide by the terms of this Agreement, including the fulfillment of obligations pursuant to this Agreement. In the event of any merger, sale, sale of substantially all assets or any similar business combination is effected by any Party, such Party shall cause the successor, transferee or assign thereof to be bound by such Party's obligations hereunder. Any transfer by any Party (or any subsequent transfer by a transferee of any of them) of any of the H by H Brands, the Seller Brands or any Related Mark, as applicable, shall be made subject to the terms of this Agreement and the written acknowledgment of the transferee(s) shall be obtained and provided to either Party (or their transferee(s)), whichever is not the party making such transfer, who shall be made a third party beneficiary of such agreement.

12.5 Parties in Interest . This Agreement shall be binding upon and inure to the benefit of each Party, and, except as expressly set forth in this Agreement, nothing in this Agreement, is intended to confer upon any other Person any equitable or legal rights or remedies of any nature whatsoever hereunder.

12.6 Bulk Sales Law. The Buyers hereby waive compliance by the Seller with the provisions of any so-called bulk transfer laws of any jurisdiction in connection with the sale of the Acquired Assets.

12.7 Expenses. Except as otherwise specifically provided in this Agreement, including the Exclusivity Termination Fee as provided in Section 10.3(b), whether or not the transactions contemplated by this Agreement are consummated, each Party hereto shall bear its own costs, expenses and fees incurred in connection with this Agreement and the other transactions contemplated by this Agreement.

12.8 Waiver and Amendment. Any representation, warranty, covenant, term or condition of this Agreement which may legally be waived, may be waived, or the time of performance thereof extended, at any time by the Party hereto entitled to the benefit thereof and any term, condition or covenant hereof may be amended by the Parties hereto at any time (subject to any additional consents as may be expressly required herein). Any such waiver, extension or amendment shall be evidenced by an instrument in writing executed on behalf of the appropriate Party by a Person who has been authorized by such Party to execute waivers, extensions or amendments on its behalf. No waiver by any Party hereto, whether express or implied, of its rights under any provision of this Agreement shall constitute a waiver of such Party's rights under such provisions at any other time or a waiver of such Party's rights under any other provision of this Agreement. No failure by any Party hereto to take any action against any breach of this Agreement or default by another Party shall constitute a waiver of the former Party's right to enforce any provision of this Agreement or to take action against such breach or default or any subsequent breach or default by such other Party.

12.9 Severability. Any term or provision of this Agreement which is invalid or unenforceable will be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining rights of the Person intended to be benefited by such provision or any other provisions of this Agreement.



12.10 Remedies Cumulative. Except as otherwise provided herein, any and all remedies herein expressly conferred upon a Party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such Party, and the exercise by a Party of any one remedy will not preclude the exercise of any other remedy.

12.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original, and all of which taken together shall constitute one instrument. Any signature page delivered by a facsimile machine, or in portable document format (“PDF”) file format shall be binding to the same extent as an original signature page with regard to any agreement subject to the terms hereof or any amendment thereto.

12.12 Governing Law. The interpretation and construction of this Agreement, and all matters relating hereto, shall be governed by the laws of the State of New York, including Sections 5-1401 and 5-1402 of the New York General Obligations Law.

12.13 Dispute Resolution. The parties agree to submit to binding arbitration (as set forth below) any and all disputes, claims or controversies arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of the Agreement to arbitrate. It is expressly acknowledged and agreed that the Parties have chosen the mediation and arbitration process set forth herein in an effort to lower the cost and increase the efficiency of dispute resolution beyond that encountered in traditional litigation, and the JAMS mediator/arbitrator shall keep that objective in mind.

(a) Mediation. Before any dispute, controversy or claim arising out of or relating to this Agreement (independently or collectively, the “Claim”) may be submitted to arbitration (as set forth immediately below), the parties hereto shall first attempt to resolve any such Claim in a non-binding half-day mediation to be held in New York, New York before a mutually acceptable JAMS mediator. The mediation process shall proceed as follows: (a) the complaining Party shall submit its Claim in writing to the other Party; (b) the other Party shall respond in writing within three (3) Business Days; (c) the complaining Party shall reply in writing within three (3) Business Days; (d) the Parties shall negotiate in good faith using commercially reasonable efforts to settle the Claim without delay; (e) if the Claim is not settled within ten (10) Business Days of the complaining Party’s provision, by facsimile and/or email, of its written reply to the other Party, the Claim will promptly be submitted to mediation as set forth above; and (f) the mediation shall occur no later than twenty-five (25) Business Days after the complaining Party’s provision, by facsimile and/or email, of its written reply to the other Party.

(b) Arbitration. In the event that any Claim is not resolved through the mediation procedure outlined immediately above, the Parties agree that such Claim will be determined by arbitration as set forth in this section. Any arbitration pursuant to this section will be held exclusively in New York, New York before a single JAMS arbitrator, and will be exclusively and finally settled, adjudicated and determined in accordance with the JAMS Comprehensive Arbitration Rules and Procedures (“Comprehensive Rules”). At the commencement of any arbitration, the parties will in good faith discuss and determine whether such arbitration should be conducted pursuant to the Expedited Procedures of the Comprehensive Rules, i.e. Rules 16.1 and 16.2. The arbitrator shall not authorize more than: (1) five (5) depositions per Party; (2) the issuance of more than ten (10) interrogatories per Party; (3) the issuance of more than seven (7) document subpoenas per Party; or (4) the issuance of more than ten (10) requests for admission per party. Any such Claim shall be governed by the laws of the State of New York, including its statutes of limitations, but without regard to its choice or conflicts of laws rules. All fact and expert discovery will be completed within 120 days of the Preliminary Conference, and any hearing shall commence and be completed within 150 days of the Preliminary Conference. Judgment upon the written Award (as defined below) rendered by the arbitrator may be enforced, confirmed, rendered and entered in any court of competent jurisdiction having jurisdiction thereof. All proceedings in connection with any arbitration, and any submissions relating to the arbitration, except for the final written Award of the arbitrator, will be kept confidential and may not be discussed or disclosed publicly without the prior written consent of all Parties to the arbitration unless required by applicable law or the rules of any securities exchange on which any Party’s or its affiliate’s securities are traded. The arbitrator’s written award (the “Award”) will include specific findings of fact and conclusions of law with citations to applicable authority, and will be issued as soon as practicable following the conclusion of the record or hearing, and in no event more than sixty (60) days after the conclusion of the record or hearing.

(c) Fees and Expenses. Any fees or expenses incurred by a Party in connection with a mediation (as outlined above) shall be borne that Party, except that any fees, expenses and/or costs charged by the mediator shall be borne equally by the Parties. The arbitrator shall award to the prevailing Party in any arbitration (as outlined above) all reasonable fees, expenses and costs including, without limitation, attorneys’ fees and expert witness fees and/or consultant fees.

(d) Interim Relief. Except for such relief set forth in Section 10.3 with respect to Seller’ breach of Section 6.5 hereof and notwithstanding the foregoing sections outlining mediation and arbitration procedures, any Party may seek interim judicial relief pending mediation and/or arbitration, including injunctive or other equitable relief, to prevent irreparable harm or to preserve the status quo without waiving, and without prejudice to, the right or obligation to mediate and/or arbitrate. The Parties agree that any such request for equitable or injunctive relief may be pursued only in the state or federal courts located in New York, New York, and hereby submit to the jurisdiction of these courts for any such purpose.

***[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE FOLLOWS]***

IN WITNESS WHEREOF, the parties hereto have each executed and delivered this Asset Purchase Agreement as of the day and year first above written.

**XCEL BRANDS, INC.**

By: /s/ Robert D'Loren  
Name: Robert D' Loren  
Title: Chief Executive Officer

**H LICENSING, LLC**

By: /s/ Robert D'Loren  
Name: Robert D' Loren  
Title: Chief Executive Officer

**THE H COMPANY IP, LLC**

By: /s/ Benjamin Malka  
Name: Benjamin Malka  
Title: Chief Executive Officer

**HOUSE OF HALSTON, LLC**

By: /s/ Benjamin Malka  
Name: Benjamin Malka  
Title: Chief Executive Officer

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## EXECUTION COPY

NEITHER THIS SECURITY NOR THE SECURITIES FOR WHICH THIS SECURITY IS EXERCISABLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR TO SUCH EFFECT WHICH SHALL BE ACCEPTABLE TO THE COMPANY. THIS SECURITY AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY SUCH SECURITIES.

**COMMON STOCK PURCHASE WARRANT****XCEL BRANDS, INC.**

Warrant No.: XH-1  
Warrant Shares: 750,000

Initial Exercise Date: December 22, 2014

THIS COMMON STOCK PURCHASE WARRANT (the "Warrant") certifies that, for value received, Hilco Trading, LLC (the "Holder") is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after the date hereof (the "Initial Exercise Date") and on or prior to the close of business on December 22, 2019 (the "Termination Date") but not thereafter, to subscribe for and purchase from Xcel Brands, Inc., a Delaware corporation (the "Company"), up to Seven Hundred Fifty Thousand (750,000) shares (the "Warrant Shares") of Common Stock. The purchase price of one share of Common Stock under this Warrant shall be equal to the Exercise Price, as defined in Section 2(b). This Warrant has been issued pursuant to Section 3.3(iii) of the Asset Purchase Agreement by and among the Company, H Licensing, LLC, the Holder and House of Halston LLC (the "APA")

**Section 1. Definitions.** The term "Business Day" shall mean a day, other than a Saturday, Sunday or federal holiday, on which banks in New York City are generally open for normal business. The term "Trading Day" shall mean a day on which the Common Stock is traded on any of the following markets or exchanges: the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the American Stock Exchange, the New York Stock Exchange or the OTC Bulletin Board.

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Section 2.      Exercise.

a)      Exercise of Warrant. Exercise of the purchase rights represented by this Warrant may be made, in whole or in part, at any time or times on or after the Initial Exercise Date and on or before the Termination Date by delivery to the Company (or such other office or agency of the Company as it may designate by notice in writing to the registered Holder at the address of the Holder appearing on the books of the Company) of a duly executed facsimile copy of the Notice of Exercise Form annexed hereto; and, within three (3) Trading Days of the date said Notice of Exercise is delivered to the Company, the Company shall have received the original Warrant and, except as, provided for in section 2(c) below, payment of the aggregate Exercise Price of the Warrant Shares thereby purchased by wire transfer or cashier's check drawn on a United States bank. In the case of the purchase of less than all of the Warrant Shares represented by this Warrant, the Company shall, upon receipt of this Warrant, cause this Warrant to be cancelled and shall execute and deliver a new Warrant of like tenor for the remaining Warrant Shares.

b)      Exercise Price. The exercise price per share of the Common Stock under this Warrant shall be \$12.00, subject to adjustment hereunder (the "Exercise Price").

c)      Cashless Exercise. This Warrant may be exercised at any time by means of a "cashless exercise" in which the Holder shall be entitled to receive a certificate for the number of Warrant Shares equal to the quotient obtained by dividing [(A-B) (X)] by (A), (i) following the consummation of one or more underwritten public offerings of the Company's Common Stock resulting in gross proceeds (e.g., prior to giving effect to any underwriters' discount or fees) of at least \$25,000,000, individually or in the aggregate (the first such date, the "Applicable Offering Date") and (ii) if the Applicable Offering Date has not occurred, at any time on or after December 22, 2016, if (in the case of this clause (ii)) the average daily trading volume of the Common Stock for the thirty (30) day period immediately prior to the date of exercise is at least 25,000 shares. For purposes of the calculation in the preceding sentence:

(A) = the average VWAP for the Five Trading Days immediately preceding the date of such election;

(B) = the Exercise Price of this Warrant, as adjusted; and

(X) = the number of Warrant Shares issuable upon exercise of this Warrant in accordance with the terms of this Warrant by means of a cash exercise rather than a cashless exercise.

For purposes of this Warrant, "VWAP" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq global Select Market, the American Stock Exchange, the New York Stock Exchange or the OTC Bulletin Board (each a "Trading Market"), the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. New York City time to 4:02 p.m. New York City time); or (b) if the Common Stock is not then listed or quoted for trading on the OTC Bulletin Board and if prices for the Common Stock are then reported by the OTC Markets Group, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported; or (c) in all other cases, the fair market value of a share of Common Stock as determined good faith by the resolution of the Board of Directors of the Company.

d) Mechanics of Exercise.

i. Delivery of Certificates Upon Exercise. Certificates for shares purchased hereunder shall be transmitted within five (5) Trading Days from the delivery to the Company of the Notice of Exercise Form, surrender of this Warrant and payment of the aggregate Exercise Price as set forth above (the "Warrant Share Delivery Date"). This Warrant shall be deemed to have been exercised on the date the Exercise Price is received by the Company. The Warrant Shares shall be deemed to have been issued, and Holder or any other person so designated to be named therein shall be deemed to have become a holder of record of such shares for all purposes, as of the date the Warrant has been exercised by payment to the Company of the Exercise Price and all taxes required to be paid by the Holder, if any, pursuant to Section 2(d)(iv) prior to the issuance of such shares, have been paid.

ii. Delivery of New Warrants Upon Exercise. If this Warrant shall have been exercised in part, the Company shall, upon surrender of this Warrant certificate, at the time of delivery of the certificate or certificates representing Warrant Shares, deliver to Holder a new Warrant evidencing the rights of Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

iii. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which Holder would otherwise be entitled to purchase upon such exercise, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Exercise Price or round up to the next whole share.

iv. Charges, Taxes and Expenses. Issuance of certificates for Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such certificate, all of which taxes and expenses shall be paid by the Company, and such certificates shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; provided, however, that in the event certificates for Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached hereto duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto.

v. Closing of Books. The Company will not close its stockholder books or records in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

Section 3. Certain Adjustments.

a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding whether, directly or indirectly, including, without limitation, by merger, consolidation, recapitalization or otherwise: (i) pays a stock dividend or otherwise makes a distribution or distributions to all holders of Common Stock payable in shares of Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon exercise of this Warrant), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares or (iv) issues by reclassification of shares of the Common Stock any shares of capital stock of the Company, then in each case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event and the number of shares issuable upon exercise of this Warrant shall be proportionately adjusted such that the aggregate Exercise Price of this Warrant shall remain unchanged. Any adjustment made pursuant to this Section 3(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

b) Extraordinary Cash Dividend: If the Company, at any time while this Warrant is outstanding pays an Extraordinary Cash Dividend (defined below), then in each case, the Exercise Price shall be adjusted by reducing the Exercise Price in effect immediately prior to the payment of such Extraordinary Cash Dividend by the per share amount of such Extraordinary Cash Dividend. Any adjustment made pursuant to this Section 3(b) shall become effective immediately after the payment date of such Extraordinary Cash Dividend. "Extraordinary Dividend" means a non-recurring cash dividend or cash distribution, in either case, paid to holders of Common Stock generally, and does not include any cash dividend or cash distribution which the Board establishes as a regularly scheduled cash dividend or chase distribution.

c) Calculations. All calculations under this Section 3 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 3, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding treasury shares, if any) issued and outstanding.

d) Notice to Holder.

i. Adjustment to Exercise Price. Whenever the Exercise Price is adjusted pursuant to any provision of this Section 3, the Company shall promptly mail to the Holder a notice setting forth the Exercise Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Exercise by Holder. If (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company is a party, any sale or transfer of all or substantially all of the assets of the Company, of any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property, or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be mailed to the Holder at its last address as it shall appear upon the Warrant Register of the Company, at least 10 calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; provided that the failure to mail such notice or any defect therein or in the mailing thereof shall not affect the validity of the corporate action required to be specified in such notice. The Holder is entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice.



Section 4.      Transfer of Warrant.

a)      Transferability. Subject to compliance with any applicable securities laws and the conditions set forth in Section 4(d) hereof, this Warrant and all rights hereunder (including, without limitation, any registration rights) are transferable, in whole or in part, upon surrender of this Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Warrant substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. The Warrant, if properly assigned, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

b)      New Warrants. This Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a), as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be dated the Initial Exercise Date and shall be identical with this Warrant except as to the number of Warrant Shares issuable pursuant thereto.

c)      Warrant Register. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the “Warrant Register”), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

d)      Transfer Restrictions. If, at the time of the surrender of this Warrant in connection with any transfer of this Warrant, the transfer of this Warrant shall not be either (i) registered pursuant to an effective registration statement under the Securities Act and under applicable state securities or blue sky laws or (ii) eligible for resale without volume or manner-of-sale restrictions pursuant to Rule 144, the Company may require, as a condition of allowing such transfer, that the Holder or transferee of this Warrant, as the case may be, make representations set forth in Section 1 of the Subscription Agreement to the extent such representations and warranties relate to the undersigned and/or the purchase of Warrant Shares.

Section 5.      Holder Representations and Warranties. By its acceptance of this Warrant, the Holder hereby represents to, and covenants with, the Company as follows:

a)      The Holder or its representatives are sophisticated investors familiar with the type of risks inherent in the acquisition of securities such as the Warrant and the Warrant Shares and that, by reason of its or its representatives knowledge and experience in financial and business matters in general, and investments of this type in particular, it or its representatives are capable of evaluating the merits and risks of an investment in the Warrant and the Warrant Shares;

b) The Holder understands that the Company has determined that the exemption from the registration provisions of the Securities Act of 1933, as amended (the “Act”), for transactions not involving a public offering is applicable to the offer and sale of the Warrant (and, upon exercise of the Warrant, the Warrant Shares), based, in part, upon the representations, warranties and agreements made by the undersigned herein.

c) The Holder understands that: (A) neither the Warrants nor the Warrant Shares have been registered under the Act or the securities laws of any state, based upon an exemption from such registration requirements for non-public offerings pursuant to Regulation D under the Act; (B) the Warrant and the Warrant Shares are and will be “restricted securities”, as said term is defined in Rule 144 of the Rules and Regulations promulgated under the Act; (C) neither the Warrant nor the Warrant Shares may be sold or otherwise transferred unless they have been first registered under the Act and all applicable state securities laws, or unless exemptions from such registration provisions are available with respect to said resale or transfer; (D) except as set forth in the APA, the Company is under no obligation to register the Warrant or the Warrant Shares under the Act or any state securities laws, or to take any action to make any exemption from any such registration provisions available; (E) the certificates for the Warrant and the Warrant Shares will bear a legend to the effect that the transfer of the securities represented thereby is subject to the provisions hereof; and (F) stop transfer instructions will be placed with the transfer agent for the Warrant Shares.

d) The Holder will not sell or otherwise transfer any of the Shares or any interest therein, unless and until: (A) said Warrant and/or Warrant Shares shall have first been registered under the Act and all applicable state securities laws; or (B) the undersigned shall have first delivered to the Company a written opinion of counsel (which counsel and opinion (in form and substance) shall be satisfactory to the Company), to the effect that the proposed sale or transfer is exempt from the registration provisions of the Act and all applicable state securities laws.

e) The Holder is an “accredited investor,” as such term is defined in Regulation D of the Rules and Regulations promulgated under the Act.

f) The Holder is acquiring the Warrant and the Warrant Shares for its own account and for the purpose of investment and not with a view to, or for resale in connection with, any distribution within the meaning of the Act in violation of the Act.

g) The Holder has been given access to and an opportunity to examine such documents, materials and information concerning the Company as the Holder deems necessary or advisable in order to reach an informed decision as to an investment in the Warrants and Warrant Shares.

Section 6. Miscellaneous.

a) Registration Rights. The Holder shall be entitled to the benefit of the registration rights set forth in Section 6.10 of the APA with respect to the Warrant Shares to the extent such rights apply to the Warrant Shares.

b) No Rights as Stockholder Until Exercise. This Warrant does not entitle the Holder to any voting rights or other rights as a stockholder of the Company prior to the exercise hereof as set forth in Section 2(a).

c) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it (which, in the case of the Warrant, shall not include the posting of any bond), and upon surrender and cancellation of such Warrant or stock certificate, if mutilated, the Company will make and deliver a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock certificate.

d) Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then, such action may be taken or such right may be exercised on the next succeeding Business Day.

e) Authorized Shares. The Company covenants that, during the period the Warrant is outstanding, it will reserve from its authorized and unissued Common Stock the number of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of executing stock certificates to execute and issue the necessary certificates for the Warrant Shares upon the exercise of the purchase rights under this Warrant. The Company will take all such commercially reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the trading market upon which the Common Stock may be listed. The Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

Before taking any action which would result in an adjustment in the number of Warrant Shares for which this Warrant is exercisable or in the Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

f) Jurisdiction. All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be determined in accordance with the provisions of the Subscription Agreement.

g) Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, if not registered, will have restrictions upon resale imposed by state and federal securities laws.

h) Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice Holder's rights, powers or remedies, notwithstanding the fact that all rights hereunder terminate on the Termination Date. If the Company willfully and knowingly fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

i) Notices. Any notice, request or other document required or permitted to be given or delivered to the Holder by the Company shall be delivered in accordance with the notice provisions of the Subscription Agreement.

j) Limitation of Liability. No provision hereof, in the absence of any affirmative action by Holder to exercise this Warrant to purchase Warrant Shares, and no enumeration herein of the rights or privileges of Holder, shall give rise to any liability of Holder for the purchase price of any Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

k) Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors of the Company and the successors and permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of all Holders from time to time of this Warrant and shall be enforceable by the Holder or holder of Warrant Shares.

l) Amendment. This Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company and Holders holding Warrants at least equal to a majority of the Warrant Shares issuable upon exercise of all then outstanding Warrants.

m) Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Warrant.

n) Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

\*\*\*\*\*  
(Signature Pages Follow)

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of the date first above indicated.

**XCEL BRANDS, INC.**

By: /s/ James Haran  
Name: James Haran  
Title: Chief Financial Officer

**NOTICE OF EXERCISE<sup>1</sup>**

TO: XCEL BRANDS, INC.

(1) The undersigned hereby elects to purchase \_\_\_\_\_ Warrant Shares of the Company pursuant to the terms of the attached Warrant (only if exercised in full), and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

Payment shall take the form of lawful money of the United States.

(2) Please issue a certificate or certificates representing said Warrant Shares in the name of the undersigned or in such other name as is specified below:

\_\_\_\_\_

The Warrant Shares shall be delivered by physical delivery of a certificate to:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(3) Accredited Investor. The undersigned represents that the representations set forth in Section 5 of the Warrant (as such representations and warranties relate to the undersigned and/or its purchase of Warrant Shares) are true and correct as of the date of this Notice of Exercise.

[SIGNATURE OF HOLDER]

Name of Investing Entity: \_\_\_\_\_

Signature of Authorized Signatory of Investing Entity: \_\_\_\_\_

Name of Authorized Signatory: \_\_\_\_\_

Title of Authorized Signatory: \_\_\_\_\_

Date: \_\_\_\_\_

<sup>1</sup> To be adjusted appropriately to the extent that the holder elects cashless exercise.

**ASSIGNMENT FORM**

(To assign the foregoing warrant, execute this form and supply required information. Do not use this form to exercise the warrant.)

FOR VALUE RECEIVED, [\_\_\_\_] all of or [\_\_\_\_\_] shares of the foregoing Warrant and all rights evidenced thereby are hereby assigned to

\_\_\_\_\_ whose address is  
\_\_\_\_\_  
\_\_\_\_\_.

Dated: \_\_\_\_\_, \_\_\_\_\_

Holder's Signature: \_\_\_\_\_

Holder's Address: \_\_\_\_\_  
\_\_\_\_\_

Signature Guaranteed: \_\_\_\_\_

NOTE: The signature to this Assignment Form must correspond with the name as it appears on the face of the Warrant, without alteration or enlargement or any change whatsoever, and must be guaranteed by a bank or trust company. Officers of corporations and those acting in a fiduciary or other representative capacity should file proper evidence of authority to assign the foregoing Warrant.

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As of December 22, 2014

H Licensing, LLC  
475 Tenth Avenue  
New York, New York 10018

Ladies and Gentlemen:

We are pleased to advise that Bank Hapoalim B.M. (the "**Bank**") has agreed, subject to the conditions set forth below, to extend a term loan (the "**Term Loan**") to H Licensing, LLC, a Delaware limited liability company (the "**Borrower**"), in the maximum principal amount of TEN MILLION AND 00/100 DOLLARS (\$10,000,000.00) (the "**Term Loan**").

The Term Loan (1) shall be evidenced by a Promissory Note dated as of the date hereof executed by Borrower in favor of the Bank in the amount of \$10,000,000.00 (the Promissory Note, together with any riders referred to in paragraph 3 thereto, as each may be amended, restated, supplemented or otherwise modified from time to time, shall collectively be referred to as the "**Promissory Note**"), (2) shall mature on October 1, 2019, and (3) shall be repaid by Borrower in accordance with the terms and conditions of the Promissory Note.

1177 Avenue of the Americas, New York, New York 10036-2790  
[www.bhiusa.com](http://www.bhiusa.com)

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## 1. Conditions Precedent

The effectiveness of the Term Loan is subject to the satisfaction, in the Bank's sole discretion, of the following conditions: (a) the Bank's receipt of such documentation as it may request, including without limitation, the following, each in form and substance satisfactory to the Bank in all respects: (i) this Letter Agreement duly executed by the Borrower; (ii) the Promissory Note; (iii) (A) a Security Agreement executed by Borrower in favor of the Bank (as amended, restated, supplemented or otherwise modified from time to time, the "**Asset Security Agreement**") and (B) an Intellectual Property Security Agreement executed by Borrower in favor of the Bank (as amended, restated, supplemented or otherwise modified from time to time, the "**IP Security Agreement**"; the Security Agreement and the IP Security Agreement shall be collectively referred to herein as the "**Security Agreement**"; (iv) a guaranty to perform the obligations of Borrower to the Bank executed on behalf of Xcel Brands, Inc. ("**Parent**"), IM Brands, LLC ("**IM Brands**") and JR Licensing, LLC ("**JR Licensing**" together with Parent and IM Brands, each a "**Guarantor**" and collectively, "**Guarantors**"; (v) a Pledge Agreement executed by Parent with respect to all of the Stock of Borrower (as amended, restated, supplemented or otherwise modified from time to time, the "**Pledge Agreement**"; (vi) an amendment with respect to the loan documentation between IM Brands and the Bank (the "**IM Brands Amendment**"; (vii) an amendment with respect to the loan documentation between JR Licensing and the Bank (the "**JR Licensing Amendment**"), (viii) an opinion of the Borrower's and Guarantors' legal counsel, covering such issues as the Bank may reasonably request; (ix) a resolution by Borrower's Manager approving and authorizing the execution, delivery and performance of the Loan Documents (as defined below) and any transaction contemplated thereby as well as the incumbency and signatures of those authorized to sign and act with respect to the Loan Documents; (x) a resolution by IM Brands' Manager approving and authorizing the execution, delivery and performance of the IM Brands Amendment and any transaction contemplated thereby; (xi) a resolution by JR Licensing approving and authorizing the execution, delivery and performance of the JR Licensing Amendment and any transactions contemplated thereby; (xii) a letter of direction from Borrower to the Bank with respect to the disbursements of the proceeds of the Term Loan; and (xiii) any other documents as the Bank may reasonably require; (b) the Borrower's entering into such various collateral, security and/or control documents designed to create and perfect the Bank's security interest in certain assets of Borrower and any other documents or instruments related thereto as required by the Bank and its counsel; (c) certified copies of UCC, intellectual property, tax lien and judgment searches or other evidence satisfactory to Lender, listing all effective financing statements which name Borrower (under present name, any previous name or any trade or doing business name) as debtor and covering all jurisdictions requested by the Bank, together with copies of such other financing statements and recordings; (d) the Bank's receipt of a current appraisal of the Borrower's Trademarks (as such term is defined in the IP Security Agreement) conducted at the Borrower's expense in form and substance acceptable to the Bank and performed by a firm acceptable to the Bank; (e) the Bank shall have received fully executed letters satisfactory to Lender confirming that all liens and security interests upon any property of Seller purchased by Borrower pursuant to the Acquisition Agreement shall be released immediately upon consummation of the transactions contemplated by the Acquisition Agreement; (f) the Bank's receipt of a field examination with respect to the business and assets of Borrower performed by a field examiner acceptable to the Bank with results satisfactory to the Bank; (g) Borrower shall have furnished the Bank (i) a summary of all of the Borrower's existing insurance coverage and (ii) evidence acceptable to the Bank that the insurance policies required by Section 4(x) hereof have been obtained and are in full force and effect (and, if requested by the Bank, copies of such policies); (h) the Bank shall have received satisfactory evidence that Borrower and Guarantors have obtained all required consents and approvals of all Persons including all requisite governmental authorities, to the execution, delivery and performance of this Agreement and the other Loan Documents; (i) the Bank shall have completed its business and legal due diligence, including agreements relating to the Trademark Licenses with results satisfactory to the Bank; (j) payment to the Bank of the commitment fee in the amount of \$100,000, such payment to be made from the proceeds of the Term Loan; (k) the Liabilities shall not exceed fifty percent (50%) of the current fair market value of the Borrower's Trademarks, as such value is set forth in the most recent appraisal acceptable to the Bank of the Borrower's Trademarks, as prepared by an independent appraisal firm acceptable to the Bank; (l) the Bank shall be satisfied that, subject only the funding of the Term Loan and the use of proceeds thereof, all conditions precedent to the consummation of the Acquisition will have been satisfied or duly waived with the consent of the Bank and the Acquisition will have been consummated in accordance with the Acquisition Agreement; and (m) Borrower shall have received an equity contribution of at least \$6,000,000 from Parent from the net proceeds of a capital raise by Parent.

This Letter Agreement, the Promissory Note, the Security Agreement, each Guaranty, the Pledge Agreement, any Rate Contract between Borrower and Bank or an affiliate of Bank and any documents or instruments entered into in connection with any of the foregoing shall be referred to herein as the “**Loan Documents**”.

## 2. Representations and Warranties

In order to induce the Bank to enter into this Letter Agreement and to make available the Term Loan provided for herein, Borrower makes the following representations and warranties to the Bank, all of which shall survive the execution and delivery of the Loan Documents: **(a) Organization, Good Standing and Due Qualification.** Borrower is a limited liability company duly organized and existing under the laws of the State of Delaware and has the full power, authority and legal right to own its assets and conduct its business as it is now being conducted. **(b) Company Power and Authority.** Borrower has the requisite power and authority to execute, deliver and carry out the terms of the Loan Documents and has taken all necessary limited liability company action to authorize the execution, delivery and performance of the Loan Documents. Each of the Loan Documents constitutes its legal, valid and binding obligation enforceable in accordance with its terms, except to the extent that enforceability of any such Loan Document may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally or limiting the right of specific performance. The execution and delivery of, the performance of its obligations under, and compliance with the provisions of the Loan Documents by Borrower will not: (i) contravene any existing applicable law, statute, rule or regulation or any judgment decree or permit to which Borrower is subject, the contravention of which would have a material adverse effect on the Borrower's operations; (ii) conflict with, or result in any breach of any of the terms of, or constitute a default under, any material agreement or other instrument to which Borrower is a party or is subject or by which it or any of its property is bound; (iii) contravene or conflict with any provisions of the Borrower's Certificate of Formation and Limited Liability Company Agreement; or (iv) result in the creation or imposition of, or oblige Borrower to create, any lien or encumbrance on the Borrower's assets, rights or revenues, except as provided for in the Loan Documents. **(c) Litigation.** No litigation, arbitration or administrative proceeding is pending or, to the knowledge of Borrower and its respective officers, threatened against Borrower or any other Person affiliated with Borrower, which could have a material adverse effect on the Borrower's intellectual property or the business, assets or financial condition of Borrower or any other Person affiliated with Borrower, except as specifically set forth on Schedule I hereto. **(d) Disputes.** There is not in existence nor to the Borrower's knowledge is there likely to occur any dispute with any governmental or other authority or any other dispute of any kind which in any such case may materially adversely affect it or its business or assets. **(e) Undisclosed Obligations.** Except as set forth in on Schedule II hereto, there are no liabilities of any Person of any kind, whether accrued, contingent, absolute, determined, determinable or otherwise, which could reasonably be expected to result in a material adverse effect, and there is no existing condition, situation or set of circumstances which could reasonably be expected to result in such a liability, other than liabilities under the Loan Documents. **(f) Immunity.** To the knowledge of the Borrower, neither Borrower nor any of its assets is entitled to immunity on the grounds of sovereignty or otherwise from any legal action or proceeding (which shall include, without limitation, suit, attachment prior to judgment, execution or other enforcement). **(g) Consents, Approvals.** Every consent, authorization, license or approval of, or registration with or declaration to, governmental or public bodies or authorities or courts required by Borrower to authorize, or required by Borrower in connection with the execution, delivery, validity, enforceability or admissibility in evidence of the Loan Documents or the performance by Borrower of its obligations under the Loan Documents has been obtained or made and is in full force and effect and there has been no default in the observance of the conditions or restrictions (if any) imposed in, or in connection with, any of the same. **(h) Investment Company.** Borrower is not an "investment company" or a company controlled by an "investment company", within the meaning of the Investment Company Act of 1940, as amended. Borrower is not subject to regulation under any federal or state statute or regulations that limit its ability to incur any indebtedness. **(i) Margin Stock.** Borrower is not engaged principally in the business of extending credit for the purpose of purchasing or carrying any "Margin Stock" as defined in Regulation U, and no part of the proceeds of any Extension of Credit will be used in a manner that would result in the Extensions of Credit being deemed to be a "purpose credit" under Regulation U of the Federal Reserve Board, as the same may at any time be amended or modified and in effect. **(j) No Default.** Borrower is not, nor would it be with the giving of notice or lapse of time, in breach of or in default under any agreement relating to indebtedness to which it is a party or by which it may be bound or under any material agreement binding upon it which could reasonably be expected to have a material adverse effect on the Borrower's business assets or financial condition. **(k) Security Documents.** The Security Agreement is effective to create in favor of the Bank a legal, valid and enforceable security interest in the collateral as defined and qualified therein. **(l) Subsidiaries.** Set forth on Schedule III is a true and complete list of all of the Subsidiaries of the Borrower, together with, for each such Subsidiary, (i) the jurisdiction of organization of such Subsidiary, (ii) each Person holding ownership interests in such Subsidiary and (iii) the nature of the ownership interests held by each such Person and the percentage of ownership of such Subsidiary represented by such ownership interests. **(m) Financial Statements.** The internally prepared opening balance sheet of Borrower, the financial statements of Parent and its Subsidiaries on a consolidated and consolidating basis for the fiscal quarter ending September 30, 2014, and the most recent annual balance sheets of Parent and its Subsidiaries, together (in each case) with the related statements of income and the related notes and supplemental information delivered to the Bank, have been prepared in accordance with GAAP in effect as of such date consistently applied, except as otherwise indicated in the notes to such financial statements. All of such financial statements fairly present the financial position or the results of operations of Parent and its Subsidiaries at the dates or for the periods indicated, and reflect all known liabilities, contingent or otherwise, that GAAP requires, as of such dates, to be shown or reserved against. **(n) Intellectual Property.** Schedules A and B to the IP Security Agreement contain a true, correct and complete list of all of the Borrower's registered Copyrights, registered Trademarks and Revenue Licenses. **(o) License Agreements.** Borrower has provided to the Bank true, correct and complete copies of each Revenue License, including all material amendments, schedules, exhibits and other attachments thereto, all conditions to the effectiveness of each Revenue License have been satisfied on or prior to the date hereof, and to the knowledge of Borrower no material defaults exist with respect to any of the Revenue Licenses except as disclosed to the Bank on Schedule IV hereto. **(p) Acquisition Agreements.** As of the date of this Agreement, Borrower has delivered to the Bank a complete and correct copy of the Acquisition Agreement (including all schedules, exhibits, amendments, supplements, modifications, assignments and all other documents delivered pursuant thereto or in connection therewith). Neither Borrower, any Guarantor nor to the best of Parent's and Borrower's knowledge, any other Person party thereto is in default in the performance or compliance with any provisions thereof. The Acquisition Agreement complies with, and the Acquisition has been consummated in accordance with, all applicable laws. The Acquisition Agreement is in full force and effect as of the date of this Agreement and has not been terminated, rescinded or withdrawn. All requisite approvals by governmental authorities having jurisdiction over Borrower, any Guarantor or, to the best of Parent's and Borrower's knowledge, any Seller with respect to the transactions contemplated by the Acquisition Agreement have been obtained, and no such approvals impose any conditions to the consummation of the transactions contemplated by the Acquisition Agreement or to the conduct by any Guarantor or by Borrower of its business thereafter. To the best of Borrower's knowledge, none of any Seller's representations or warranties in the Acquisition Agreement contain any untrue statement of a material fact or omit any fact necessary to make the statements therein not misleading. Each of the representations and warranties given by each of Parent and Borrower in the Acquisition Agreement is true and correct in all material respects.

**3. Financial Reporting Requirements**

(a) Borrower and Parent each hereby agrees that, so long as the Term Loan remains in effect and any amount is due and owing to Bank thereunder, it shall submit to the following reporting requirements:

(i) Annual Financial Statements. Furnish to Bank within one hundred and twenty (120) days after the close of each fiscal year of Parent, a copy of the audited financial statement of Parent and its Subsidiaries on a consolidated basis as at the end of such fiscal year and statements of income and of cash flows for such fiscal year, prepared by CohnReznick LLP or other independent certified public accountants of nationally recognized standing reasonably acceptable to the Bank. In addition, no later than the delivery of such audited financial statements, the Borrower shall furnish to the Bank the corresponding consolidating balance sheets of Parent and each of its Subsidiaries as at the end of each fiscal year and statements of income and of cash flows for such fiscal year.

(ii) Quarterly Financial Statements. As soon as available and in any event within sixty (60) days after the end of each of the first three quarterly periods of each fiscal year of Parent, a copy of internally prepared financial statement of Parent and its Subsidiaries on a consolidated basis together with consolidating balance sheets of Parent and each of its Subsidiaries as of the end of such quarter, the related statements of income and of cash flows for such quarter and the portion of the fiscal year through the end of such quarter together without a summary of Parent Allocable Expenses consistent with such expenses reported in Parent's filings with the Securities and Exchange Commission, setting forth commencing with the fiscal quarter ending June 30, 2015 in each case in comparative form the figures as of the end of and for the corresponding period, in the previous year.

(iii) Covenant Compliance Certificate. Simultaneously with the delivery of each set of financial statements referred to in clause (a)(i) and (a)(ii) of this Section 3, provide a covenant compliance certificate of an authorized officer or Manager of Parent and Borrower substantially in the form of Exhibit A hereto and otherwise in form and substance satisfactory to the Bank in all respects.

(iv) Royalty Collections Reports. Borrower shall furnish to the Bank within sixty (60) days after the close of each calendar quarter a copy of its Quarterly Royalty Collections Report showing actual royalties billed and collected in the period covered thereby and setting forth the GMR for such period. For purposes of this Letter Agreement, the term “**Quarterly Royalty Collections Report**” shall mean a report substantially in the form of Exhibit B hereto and “**GMR**” shall mean guaranteed minimum royalties.

(b) Borrower further agrees that, so long as the Term Loan remains in effect and any amount is due and owing to Bank thereunder:

(i) Complete Statements. All financial statements required pursuant to paragraphs (a)(i) and (a)(ii) of this Section 3 shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein except with respect to interim financial statements the absence of footnotes and subject to year-end adjustments.

(ii) Fiscal Year. The fiscal year of Parent and Borrower shall conclude on December 31<sup>st</sup> of each year.

#### 4. Financial and Other Covenants

Borrower and Parent hereby agree that, so long as the Term Loan remains in effect and any amount is due and owing to Bank thereunder, Borrower and Parent shall submit to the following requirements:

(a) Minimum Net Worth. Net Worth of Parent and its Subsidiaries on a consolidated basis shall not be less than \$40,000,000 at the end of any fiscal quarter.

(b) Minimum Liquid Assets. Liquid Assets of Parent and its Subsidiaries on a consolidated basis shall be at least \$4,500,000 at all times.

(c) Fixed Charge Coverage Ratio. The Fixed Charge Ratio of Parent and its Subsidiaries on a consolidated basis at the end of each fiscal quarter for the twelve fiscal month period ending on such fiscal quarter shall not be less than 1.20 to 1.00.

(d) Capital Expenditures. Capital Expenditures of Parent and its Subsidiaries on a consolidated basis in any fiscal year shall not exceed \$1,300,000 of which not more than \$500,000 shall be Capital Expenditures for the retail division for the fiscal year ending on December 31, 2015 and \$500,000 for the fiscal year ending on December 31, 2016 and each fiscal year end thereafter, provided that Bank may, in its reasonable discretion, permit Capital Expenditures for the retail division based upon profitable operations of the retail division.

(e) Minimum EBITDA of Borrower. Borrower's loss, if any (prior to Parent Allocable Expenses) for the fiscal year ending December 31, 2015 cannot exceed \$500,000 and EBITDA of Borrower shall not be less than \$4,500,000 for the fiscal year ending December 31, 2016 and not less than \$5,000,000 for the fiscal year ending December 31, 2017 and each fiscal year end thereafter.

(f) Minimum EBITDA of Parent. EBITDA of Parent and its subsidiaries on a consolidated basis shall not be less than \$5,500,000 for the fiscal year ending December 31, 2014, not less than \$7,500,000 for the fiscal year ending December 31, 2015, not less than \$15,500,000 for the fiscal year ending on December 31, 2016 and not less than \$17,000,000 for fiscal year ending December 31, 2017 and each fiscal year end thereafter.

(g) Minimum License Royalty Income. Borrower shall have license royalty income of at least \$6,000,000 each fiscal year commencing for the fiscal year ending December 31, 2016.

(h) Financial Information. Borrower and Parent shall (i) provide the Bank with such financial and other information concerning Parent, Borrower, Guarantor and their affairs, as the Bank may from time to time reasonably request, (ii) promptly inform the Bank of any occurrence of which it becomes aware which might adversely affect its ability to perform its obligations under the Loan Documents and of any default under the Loan Documents forthwith upon becoming aware thereof, and (iii) promptly inform the Bank of any threatened litigation or administrative or arbitration proceedings before or of any court, tribunal, arbitrator or other relevant authority that may be Material to Borrower or affect a Material part of the Borrower's assets.

(i) Consents; Taxes. Borrower and Parent shall (i) obtain or cause to be obtained, maintain in full force and effect and comply in all material respects with the conditions and restrictions (if any) imposed in, or in connection with, every material consent, authorization, material license or approval of governmental or public bodies or authorities or courts and do, or cause to be done, all other acts and things, which may from time to time be necessary or desirable under applicable law for the continued due performance of all its obligations under the Loan Documents; (ii) comply in all material respects with all applicable laws, rules, regulations and orders of any governmental agency having jurisdiction over Borrower or Parent; (iii) pay to the appropriate governmental authorities when due, all Federal, state, local and other Taxes required to be paid or deposited by Borrower or Parent, except that Borrower or Parent may defer any such payment while Borrower or Parent is diligently contesting the respective Taxes in good faith by appropriate proceedings, but any such deferment shall not extend beyond the time when such unpaid Taxes would become a lien upon any of Borrower's or Parent's assets. Borrower will furnish the Bank promptly at the Bank's request with evidence satisfactory to the Bank establishing payment of such Taxes, assessments and contributions. In the Bank's discretion, the Bank shall have the right (but shall not be obligated) to pay any such Tax, assessment or contribution (including any interest or penalties thereon) for Borrower's or Parent's benefit in the event Borrower or Parent shall fail timely to do so and provided the non-payment of such Tax will result in a lien or security interest encumbering the assets which will be prior to the lien and security interest held by the Bank; any such payment shall be deemed an advance hereunder bearing interest at the Loan Rate (as such term is defined in the Promissory Note) and payable in the manner specified therein. Borrower shall, promptly on demand, reimburse the Bank for any such payment and any costs and expenses (including reasonable attorneys' fees) which the Bank may incur in connection therewith.

(j) Company Existence. Borrower will maintain its existence as a limited liability company and carry on its business in substantially the same manner and in substantially the same fields as such business is now carried on and maintained. Parent will maintain its existence as a corporation and carry on its business in substantially the same manner and in substantially the same fields as such business is now carried on and maintained.

(k) Encumbrances. Borrower shall not create, effect or permit to exist any Encumbrance over all or any part of its assets except for (i) liens for taxes not yet due or that are being contested in good faith by appropriate proceedings, provided that adequate reserves with respect thereto are maintained on the books of Borrower or Parent in conformity with GAAP; (ii) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like liens arising in the ordinary course of business; (iii) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation; (iv) deposits to secure the performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business; (v) easements, rights-of-way, restrictions and other similar encumbrances incurred in the ordinary course of business that do not materially interfere with the ordinary conduct of the business of Borrower or Parent; (vi) liens in existence on the date hereof listed on Schedule IV hereto, provided that no such lien is spread to cover any additional property after the date hereof and that the amount of indebtedness secured thereby is not increased; (vii) liens securing indebtedness of Borrower or Parent incurred to finance the acquisition of fixed or capital assets, provided that (x) such liens shall be created substantially simultaneously with the acquisition of such fixed or capital assets, (y) such liens do not at any time encumber any property other than the property financed by such indebtedness and (z) the amount of indebtedness secured thereby is not increased; (viii) liens created pursuant to the Security Agreement and the Pledge Agreement; (ix) any interest or title of a lessor under any lease entered into by Parent, Borrower or any other Subsidiary in the ordinary course of its business and covering only the assets so leased; and (x) the interests of non-exclusive licensees under license agreements entered into in the ordinary course of business. Parent shall not create, effect or permit to exist any Encumbrance over all or any part of any of its assets pledged as collateral security for the Liabilities.

(l) Indebtedness. Neither Borrower nor Parent shall incur, create, assume, become or be liable in any manner with respect to, or permit to exist, any indebtedness for borrowed money, reimbursement or payment obligations or any obligation evidenced by notes, bonds, debentures or similar instruments other than (a) pursuant to the Loan Documents; (b) indebtedness to Parent or any of its Subsidiaries; provided that any such indebtedness to Parent or any of its Subsidiaries shall be subordinated to the Liabilities on terms and conditions reasonably satisfactory to the Bank; (c) indebtedness (including, without limitation, capital lease obligations) secured by liens permitted by clause (vii) of Section 4(j) in an aggregate principal amount not to exceed \$750,000 at any one time outstanding; (d) indebtedness outstanding on the date hereof and listed on Schedule II hereto and any refinancings, refundings, renewals or extensions thereof (without any increase in the principal amount thereof and any shortening of the maturity of any principal amount thereof) except that Borrower and Parent may amend the indebtedness listed on Schedule II to (i) modify the manner, calculations or mechanics by which amounts thereunder are payable in capital stock of Parent and (ii) extend the maturity of all or any portion of the indebtedness evidenced thereby; (e) unsecured indebtedness not to exceed \$500,000 in the aggregate at any time outstanding; (f) indebtedness under Rate Contracts entered in the ordinary course of business in order to mitigate interest rate, currency or similar risks and not for speculative purposes with respect to the Term Loan; (g) guarantee obligations of Parent with respect to the obligations of any Subsidiary of Parent; and (h) guarantee obligations of Borrower with respect to the obligations of IM Brands and JR Licensing to the Bank.



(m) No Merger. Neither Borrower nor Parent shall merge or consolidate with any other Person, acquire all or substantially all of the assets or Stock of any Person except (a) any Subsidiary of Borrower may be merged or consolidated with or into Borrower provided Borrower shall be the continuing or surviving entity; (b) any Subsidiary of Borrower may dispose of any or all of its assets (upon voluntary liquidation or otherwise) to Borrower only; (c) any Subsidiary of Parent (other than Borrower, JR Licensing and IM Brands) may be merged or consolidated with or into Parent provided Parent shall be the continuing or surviving entity; (d) any Subsidiary of Parent (other than Borrower, JR Licensing and IM Brands) may dispose of any or all of its assets (upon voluntary liquidation or otherwise) to Parent; (e) as otherwise expressly permitted pursuant to the terms of the Promissory Note; and (f) Parent may acquire the assets or stock of any Person provided that such acquisition is not financed in whole or in part from any distributions, loans or other assets of Borrower, any Subsidiary of Borrower, JR Licensing or IM Brands.

(n) Dispositions. Borrower shall not sell, transfer, lend or otherwise dispose of or cease to exercise direct control over any part of its assets, undertakings or revenues which, in the commercially reasonable opinion of the Bank, is material, other than (a) dispositions of obsolete, worn out or damaged equipment not used in the Borrower's business; (b) as permitted pursuant to the terms of the IP Security Agreement; (c) the sale of inventory in the ordinary course of business; (d) dispositions permitted by clause (b) of Section 4(l); (e) the disposition of any or all of the assets of Borrower to any of its Subsidiaries; (f) the disposition of other assets having a fair market value not to exceed \$750,000 in the aggregate for any of the Borrower's fiscal years; (g) any settlement of or payment in respect of any property or casualty insurance claim or any condemnation proceeding relating to any property of Borrower, Parent or any of their respective Subsidiaries if such property is Collateral (as defined in the Security Agreement or the Pledge Agreement); and (h) non-exclusive licenses of intellectual property in the ordinary course of business.

(o) Affiliate Transactions. None of Borrower, Parent nor any of their respective subsidiaries shall enter into any transaction with any of its affiliates, unless such transaction is on terms not materially less favorable than if the transaction had been negotiated in good faith on an arm's length basis with a non-affiliate; provided, however, Parent may allocate to Borrower general administrative and other corporate expenses of Parent ("**Parent Allocable Expenses**") in accordance with Parent's expense allocation method that is an acceptable methodology with segment reporting.

(p) Distributions. Neither Parent nor Borrower shall declare or pay any dividends on or make any other distribution with respect to any equity interests, except that: (i) any Subsidiary of Borrower may make such payments to Borrower; (ii) Borrower may make such payments to Parent in order to permit Parent to make Capital Expenditures and pay overhead, employment cost and expenses and similar expenses to the extent incurred in connection with the operation of the business of Borrower and the Borrower's Subsidiaries; provided, however, that (x) such expenses shall not include interest expense of Parent, scheduled payments of principal on funded debt of Parent or capital expenditures of Parent that do not relate to the business of Borrower and Borrower's Subsidiaries and (y) to the extent Parent has any Subsidiary other than Borrower, any such expenses which do not relate exclusively to the business and operations of Borrower and the Borrower's Subsidiaries or any such other Subsidiary shall be allocated ratably among Borrower and each such other Subsidiary and Borrower shall only make such payments to Parent in an amount equal to its ratable share of such expenses and any such expenses which relate directly to the operations of such other Subsidiary shall be paid directly or indirectly by such other Subsidiary (such distributions, the "Expense Distributions"); (iii) Borrower may make such payments to Parent in an amount equal to the estimated federal, state and local tax liability of Parent resulting from any taxable income (net of all losses, including for prior years to the extent permitted to be deducted) of the Borrower, which such distribution may be made on a quarterly basis not more than five (5) business days prior to the date on which any quarterly estimated tax payment is payable by Parent; provided, however, that, upon determination of the actual tax liability of Parent with respect to the taxable income of Borrower for any tax year, the next quarterly estimated payment shall be increased or reduced by the difference between the estimated payments made during such tax year and such actual tax liability (such distributions, the "Tax Distributions"); (iv) Borrower may make such payments to Parent in amount equal to the franchise and other tax liability (other than for the tax liability covered by clause (iii) above) of Parent as respects the business of Borrower and Borrower's Subsidiaries; and (v) subject to compliance with Section 4(q), Borrower may make distributions from Excess Cash Flow on or after January 1, 2016, in an amount not to exceed fifty percent (50%) of Excess Cash Flow.

(q) Cash Flow Recapture. If for any fiscal year commencing with the fiscal year ending on December 31, 2015, there shall be Excess Cash Flow for such fiscal year, the Borrower shall pay to Bank an amount equal to twenty percent (20%) of such Excess Cash Flow (the "**Cash Flow Recapture Requirement**"), to be applied by Bank to the principal amount of the Term Loan in the reverse order of maturity. The Cash Flow Recapture Requirement for any such fiscal year shall be received by the Bank no later than the date of delivery of the financial statements for such fiscal year required pursuant to Section 3(a)(i).

(r) Bank Accounts. Within sixty (60) days of the date hereof Borrower shall have established its primary operating bank accounts at the Bank, and thereafter Parent and its Subsidiaries and Borrower shall, during the term hereof, maintain its primary deposit accounts and operating accounts at the Bank in accordance with the standard account documents of the Bank such that at least 80% of the aggregate amount of cash of such Persons are in deposit accounts at the Bank.

(s) Subsidiaries. Borrower shall not permit or suffer to exist the formation of additional Subsidiaries unless the Bank consents to such new Subsidiary in writing.

(t) Trademarks and License Agreements. Borrower shall provide (i) written notice to the Bank immediately upon any occurrence described in paragraph D(6) of the Promissory Note and (ii) within forty-five (45) days after the close of each calendar quarter a written report summarizing all material changes to and material Defaults under any Revenue License.

(u) Use of Proceeds. Borrower shall use the proceeds of the Term Loan (i) to finance in part the Acquisition, (ii) to pay transaction fees and expenses incurred in connection with the transactions contemplated by the Acquisition, this Letter Agreement and the other Loan Documents and (iii) and for general working capital purposes.

(v) Inspections and Appraisals. At all times during normal business hours upon reasonable advance notice to Borrower (provided that no notice shall be required if an Event of Default has occurred and is continuing), the Bank and/or any agent of the Bank shall have the right to (i) have access to, visit, inspect, review, evaluate and make physical verification and appraisals of Borrower's properties and the collateral securing the Term Loan, (ii) inspect, audit, photograph and copy and make extracts from Borrower's and Parent's Books and Records, including management letters prepared by independent accountants, and (iii) discuss with Borrower's and Parent's principal officers and independent accountants Borrower's and Parent's business, assets, liabilities, financial condition, results of operations and business prospects. The Bank's inspection rights under this clause (s) shall be at the sole cost and expense of the Bank and, except upon the occurrence and during the continuance of an Event of Default, be limited to no more than twice in any calendar year. Borrower and Parent each will deliver to the Bank any instrument necessary for the Bank to obtain records from any service bureau maintaining records for Borrower or Parent.

(w) Exchange Controls. To the extent that Borrower or Parent trades or purchased foreign currency, Borrower and Parent each shall obtain any Exchange Control Permit deemed by the Bank to be necessary or appropriate; and obtain the renewal of any such Exchange Control Permit at least thirty (30) days prior to its expiration.

(x) Insurance. Borrower and Parent shall each (i) keep its assets which are of an insurable character insured (to the extent and for the time periods consistent with or greater than normal industry standards) by financially sound and reputable insurers against loss or damage by fire, explosion, theft, terrorism or other hazards which are included under extended coverage in amounts not less than the replacement value of the property insured, and Borrower shall maintain with financially sound and reputable insurers, insurance against other hazards and risks and liability to Persons and property (including officers and directors liability coverage) to the extent and in the manner consistent or greater than normal industry standards, (ii) within thirty (30) days of the date hereof, provide to the Bank copies of its insurance policies evidencing to the reasonable satisfaction of the Bank that endorsements have been made to such policies adding the Bank as additional insured and/or lender's loss payee, as applicable, and (iii) within ten (10) business days of the date hereof, provide to the Bank certificates of insurance reasonably satisfactory to the Bank with respect to all existing insurance coverage, which certificates shall name the Bank as additional insured and/or lender's loss payee, as applicable (including, without limitation, naming the Bank as additional insured under any umbrella policy), and shall evidence the Borrower's compliance with this Section 4(w) with respect to all insurance coverage existing as of the date hereof. Borrower shall maintain at all times life insurance insuring the life of Judith Rikpa in an amount at least equal to \$10,000,000 issued by an insurer acceptable to the Bank and the proceeds of such policy shall have been assigned to the Bank.

(y) Acquisition Agreement Amendments. Neither Borrower nor Parent shall waive or otherwise modify any term of the Acquisition Agreement, except for those that do not materially affect the rights and privileges of any of Borrower or Parent and do not materially affect the interests of the Bank under the Loan Documents or in the Collateral.

(z) Retail Stores. Neither Borrower nor any Subsidiary of Borrower shall establish or acquire a Retail Store.

(aa) Trademark Assignments. No later than ten (10) business days following the issuance by the U.S. Patent & Trademark Office of a Notice of Acceptance of the evidence of use in connection with any pending application for any trademark still owned by Seller and covered by the Acquisition Agreement, Borrower shall use its best efforts, including, without limitation, commencing and pursuing litigation, to cause Seller to assign such trademark to Borrower.

5. **Miscellaneous**

Capitalized terms not defined in this Letter Agreement shall have the meaning ascribed thereto in the Promissory Note.

As used herein, the following terms shall have the following meanings: **“Acquisition”** means the acquisition of all or substantially all of the intellectual property assets of Seller pursuant to the terms of the Acquisition Agreement. **“Acquisition Agreement”** shall mean the Asset Purchase Agreement dated as of December 22, 2014 among Parent, Borrower and Seller. **“Books and Records”** shall mean all books, records, board minutes, contracts, licenses, insurance policies, environmental audits, business plans, files, computer files, computer discs and other data and software storage and media devices, accounting books and records, financial statements (actual and pro forma), filings with Governmental Authorities and any and all records and instruments relating to the collateral securing the Term Loan or otherwise necessary or helpful in the collection thereof or the realization thereupon. **“Capital Expenditures”** shall mean all payments or accruals (including obligations under capital leases) for any fixed assets or improvements or for replacements, substitutions or additions thereto, that have a useful life of more than one year and that are required to be capitalized under GAAP. **“Cash Flow From Operations”** shall mean as respects Borrower, cash flow from operations as determined in accordance with GAAP. **“EBITDA of Borrower”** shall mean, for any period for Borrower (without duplication), an amount equal to (a) Net Income (Loss) for Borrower for such period before Parent Allocable Expenses, minus, (b) to the extent included in calculating Net Income (Loss) for Borrower, the sum of, without duplication, (i) interest income (whether cash or non-cash) for such period, (ii) income tax credits for such period, (iii) gain from extraordinary or non-recurring items for such period (including, without limitation, non-cash items related to purchase accounting) and (iv) deferred compensation payments (regardless of when accrued), plus (c) the following to the extent deducted in calculating such Net Income (Loss), (i) interest charges for such period, (ii) the provision for all federal, state, local and foreign taxes payable for such period and the amount of permitted payments in Section 4(p)(iii) deducted in calculating Net Income (Loss), (iii) the amount of depreciation and amortization expense for such period, (iv) the transaction fees, costs and expenses incurred in connection with the negotiation and execution of this Letter Agreement and the other Loan Documents and any amendments hereto or thereto and in connection with the transactions contemplated by the Acquisition, (v) all other extraordinary or non-recurring non-cash charges (including, without limitation, non-cash items related to purchase accounting), (vi) deferred management salaries (accrued but not paid) and (vii) all non-cash compensation (including without limitation, stock or equity compensation) in such period. **“EBITDA of Parent”** shall mean, for any period for Parent and its Subsidiaries on a consolidated basis (without duplication), an amount equal to (a) Net Income (Loss) for Parent and its Subsidiaries on a consolidated basis for such period, minus, (b) to the extent included in calculating Net Income (Loss) for Parent and its Subsidiaries on a consolidated basis, the sum of, without duplication, (i) interest income (whether cash or non-cash) for such period, (ii) income tax credits for such period, (iii) gain from extraordinary or non-recurring items for such period (including, without limitation, non-cash items related to purchase accounting) and (iv) deferred compensation payments (regardless of when accrued), plus (c) the following to the extent deducted in calculating such Net Income (Loss), (i) interest charges for such period, (ii) the provision for all federal, state, local and foreign taxes payable for such period and the amount of permitted payments in Section 4(p)(iii) deducted in calculating Net Income (Loss), (iii) the amount of depreciation and amortization expense for such period, (iv) the transaction fees, costs and expenses incurred in connection with the negotiation and execution of this Letter Agreement and the other Loan Documents and any amendments hereto or thereto and the transactions contemplated by the Acquisition, (v) all other extraordinary or non-recurring non-cash charges (including, without limitation, non-cash items related to purchase accounting), (vi) deferred management salaries (accrued but not paid) and (vii) all non-cash compensation (including without limitation, stock or equity compensation) in such period. **“Encumbrance”** shall mean any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including without limitation, any conditional sale or other title retention agreement and any financing lease having substantially the same economic effect as any of the foregoing) or any options or rights of first refusal with respect to securities, or any shareholders or stockholders agreement or arrangement of any kind or nature whatsoever. **“Excess Cash Flow”** shall mean (without duplication), for any fiscal period, Cash Flow from Operations for such period less (a) Capital Expenditures not made through the incurrence of indebtedness less (b) all cash interest and principal (including indebtedness owed to the Bank) paid or payable during such period less (c) all Taxes paid or payable during such period less (d) all Tax Distributions made during such period. **“Exchange Control Permit”** shall mean any permit or license issued by a Governmental Authority outside the United States under which any Party is permitted (a) to incur and pay any of the Liabilities in the United States in any currency(ies) in which denominated or (b) to enter into, incur and/or perform any other obligation or Loan Document. **“Expense Distributions”** shall have the meaning given to such term in Section 4(o). **“Fixed Charge Coverage Ratio”** shall mean for any period, as respects any Person, the ratio of (a) EBITDA of such Person for such period plus Liquid Assets minus Capital Expenditures of such Person to (b) the Fixed Charges for such period. **“Fixed Charges”** shall mean for any period, as respects any Person, the sum of (a) the cash interest expense of such Person for such period, (b) the principal amount of total debt of such Person having a scheduled due date during such period, (c) all Tax Distributions and (d) all other cash distributions or dividends made by such Person. **“GAAP”** shall mean generally accepted accounting principles in the United States of America in effect from time to time consistently applied (except for accounting changes in response to FASB releases or other authoritative pronouncements). **“Letter Agreement”** shall mean this letter agreement, as may be amended, restated, supplemented or otherwise modified from time to time. **“Licenses”** shall have the meaning assigned to such term in the IP Security Agreement. **“Liquid Assets”** shall mean (a) assets (which are unencumbered except as permitted pursuant to the terms of the Loan Documents) in the form of cash and cash equivalents consisting of certificates of deposit and money market funds issued by a commercial bank having net assets of not less than \$500 million less (b) the amount of any Encumbrances thereon and any unsatisfied judgment, writ, order of attachment, levy or garnishment entered or issued against Borrower, Parent or any of its Subsidiaries. **“Master License Agreement”** shall mean the Master License Agreement between Borrower and Seller dated December 22, 2014. **“Net Income (Loss)”** shall mean with respect to Borrower and for any period, the aggregate net income (or loss) after taxes for such period, determined in accordance with GAAP but excluding for all purposes (a) net income of minority-owned Subsidiaries (except to the extent of net income distributed or representing a management fee or other similar fee), (b) the net income of any Subsidiary to the extent that the declaration of dividends or similar distributions of such income is not permitted by the organizational documents of such Subsidiary or by operation of law, (c) unrealized gains or losses due solely to fluctuations in currency values, (d) earnings (or losses) resulting from my revaluation or write-up or write-down of assets and (d) unrealized gains or losses under all interest rate or currency forwards, options, swaps, caps or collar agreements, foreign exchange agreements, commodity contracts or similar arrangements entered into by Borrower providing for protection against fluctuations in interest rates, currency exchange rates, commodity prices, or the exchange of nominal interest obligations, either generally or under specific contingencies. **“Net Worth”** shall mean, as at any date of determination an amount equal to (a) all of the assets of Parent and its Subsidiaries on a consolidated basis that, in accordance with GAAP, are properly classified as assets on such date, minus (b) all liabilities of Parent and its Subsidiaries on a consolidated basis that, in accordance with GAAP, are properly classified as liabilities on such date. **“Parent Allocable Expenses”** shall have the meaning given to such term in Section 4(n). **“Person”** shall mean any individual, partnership, corporation (including a business trust and a public benefit corporation), joint stock company, estate, association, firm, enterprise, trust, limited liability company, unincorporated association, joint venture and any other entity or Governmental Authority. **“QVC Agreement”** shall mean the License Agreement dated as of December 22, 2014 among QVC Inc., Borrower and Parent. **“Rate Contracts”** shall mean swap agreements and any other agreements or arrangements designed to provide protection against fluctuations in interest or currency exchange rates. **“Retail Stores”** shall mean retail store locations of Borrower or any Subsidiary of Borrower, but shall not include e-commerce retail locations. **“Revenue License”** shall mean each License pursuant to which Borrower is entitled to receive revenue from the licensee party thereto. **“Royalty Revenue Amount”** shall mean an amount equal to the gross royalty revenue of Borrower for the immediately preceding fiscal year. **“Seller”** means The H Company IP, LLC. **“Stock”** shall mean all certificated and uncertificated shares, options, warrants, membership interests, general or limited partnership interests, participation or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or equivalent entity whether voting or nonvoting, including common stock, preferred stock, or any other “equity security” (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended). **“Subsidiary”** shall mean, with respect to Parent and the Borrower, a corporation, exempted company, partnership, exempted limited partnership, joint venture, limited liability company or other business entity of which a majority of the shares of

securities or other interests having ordinary voting power for the election of directors or other governing body are at the time beneficially owned by Parent or the Borrower, as the case may be. “**Tax Distributions**” shall have the meaning given to such term in Section 4(o). “**Taxes**” shall mean any and all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including interest, additions to tax and penalties applicable thereto. “**Trademark Licenses**” shall have the meaning assigned to such term in the IP Security Agreement.

Until the maturity of the Term Loan and the payment in full of all obligations thereunder and all of Borrower's obligations under the Loan Documents, the Bank shall retain the security interests in the collateral granted under the Security Agreement and the Pledge Agreement and the ability to exercise any and all rights and remedies available to it pursuant to the Loan Documents and applicable law.

No delay on the part of the Bank in exercising any of its options, powers or rights, or partial or single exercise thereof, shall constitute a waiver thereof. The options, powers and rights of the Bank specified in the Loan Documents are in addition to those otherwise created by law or under any other agreement between Borrower and the Bank. No amendment, modification or waiver of any provision of the Loan Documents, nor consent to any departure by Borrower therefrom shall be effective, unless the same shall be in writing and signed by the Bank. Any such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No consent to or demand on Borrower in any case shall, of itself, entitle it to any other or further notice or demand in similar or other circumstances. This Letter Agreement and the other Loan Documents embody the entire agreement and understanding between the Bank and Borrower with respect to the Term Loan and supersedes all prior agreements and understandings relating to the subject matter hereof. In the event of any conflict between this Letter Agreement and any other Loan Document, this Letter Agreement shall control and govern. Borrower agrees to pay all reasonable costs and expenses incurred or payable by the Bank in connection with the documentation, administration and interpretation of the Loan Documents, including reasonable attorneys' fees and disbursements. Borrower agrees to pay all costs and expenses incurred or payable by the Bank in connection with the enforcement or collection of the Loan Documents, including court costs and reasonable attorneys' fees and disbursements. This Letter Agreement shall be binding on Borrower and its successors and assigns, provided that Borrower shall not have the right to assign its rights hereunder or thereunder or any interest herein or therein without the Bank's prior written consent. This Letter Agreement shall be governed by, and for all purposes shall be construed in accordance with, the laws of the State of New York. For purposes of any action, suit or proceeding in connection with this Letter Agreement or any other credit document, Borrower and the Bank hereby irrevocably submit to the jurisdiction of the courts of the State of New York and of the United States District Court for the Southern District of New York and irrevocably agrees that any such action, suit or proceeding may be brought by any party in any such New York or federal court and that a service of process may be made upon any party by mailing a copy of the summons to it, by registered or certified mail, at its address set forth in the Note. Nothing herein shall affect the Bank's right to commence legal proceedings or otherwise proceed against Borrower in any other jurisdiction or to serve process in any other manner permitted by applicable law. IN ANY SUCH ACTION, SUIT OR PROCEEDING THE PARTIES HERETO MUTUALLY WAIVE TRIAL BY JURY.

Section headings used herein or in any other Loan Document are for convenience only and are not to affect the construction of or be taken into consideration in interpreting this Letter Agreement or any other Loan Document.

This Letter Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Letter Agreement by signing and delivering one or more counterparts. Any signature delivered by a party by facsimile or electronic transmission (including email transmission of a PDF image) shall be deemed an original signature page hereto.

[remainder of page intentionally left blank]



Please indicate your acknowledgment of, and agreement to, the foregoing by signing and returning the enclosed copy of this letter to the attention of the Bank.

Very truly yours,

BANK HAPOALIM B.M.

By: Authorized Signatory  
Name:  
Title:

By: Authorized Signatory  
Name:  
Title:

Acknowledged and Agreed to:

H LICENSING, LLC

By: XCEL BRANDS, INC.,  
Its Manager

By: /s/ James Haran  
Name: James Haran  
Title: CFO

XCEL BRANDS, INC.

By: /s/ Robert D'Loren  
Name: Robert D'Loren  
Title: CEO

SIGNATURE PAGE TO  
LETTER AGREEMENT

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**Schedule I**  
**to Letter Agreement between Bank Hapoalim B.M. and H Licensing, LLC**

**LITIGATION**

None

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**Schedule II**  
**to Letter Agreement between Bank Hapoalim B.M. and H Licensing, LLC**

**INDEBTEDNESS**

Borrower may incur unsecured indebtedness for trade payables in the ordinary course of business and payable on normal trade terms.

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**Schedule III**  
**to Letter Agreement between Bank Hapoalim B.M. and H Licensing, LLC**

**SUBSIDIARIES**

None

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**Schedule IV**  
**to Letter Agreement between Bank Hapoalim B.M. and H Licensing, LLC**

**ENCUMBRANCES**

None

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**Exhibit A**  
**to letter agreement between Bank Hapoalim B.M. and H Licensing, LLC**

**FORM OF COMPLIANCE CERTIFICATE**

This Compliance Certificate (this “**Certificate**”) is delivered pursuant to Section 3(a)(iii) of the Letter Agreement dated as of December 22, 2014 among Bank Hapoalim B.M., Xcel Brands, Inc. and H Licensing, LLC (as amended, restated, supplemented or otherwise modified from time to time, the “**Letter Agreement**”). All capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Letter Agreement and/or the Promissory Note.

I, the undersigned, an authorized officer or Manager of Xcel Brands, Inc. and H Licensing, LLC, do hereby certify pursuant to Section 3(a)(iii) of the Letter Agreement that:

1. As of the date hereof, no Event of Default or event which with the giving of notice or lapse of time, or both, would constitute an Event of Default has occurred and is continuing.
  2. Since \_\_\_\_\_ there has been no material adverse change in the business, condition (financial or otherwise) or operations of Xcel Brands, Inc. or H Licensing, LLC, and no event or condition has occurred that might have had a material adverse effect on the legality, validity or enforceability of any of the Loan Documents or the ability of Xcel Brands, Inc. or H Licensing, LLC to perform its obligations thereunder.
  3. Xcel Brands, Inc. and H Licensing, LLC are in compliance with the financial covenants set forth in Section 4 of the Letter Agreement. Attached to this Certificate as **Annex A** is a covenant compliance worksheet reflecting the computation of such financial covenants as of the date and for the period covered by the financial statements enclosed herewith. The information contained herein and in the attached financial information is true, correct and complete as of the last day of the period and for the period covered by the financial statements enclosed herewith.
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IN WITNESS WHEREOF I have affixed my signature as of \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

H LICENSING, LLC

By: Xcel Brands, Inc.,  
Manager

By: /s/ James Haran  
Name: James Haran  
Title: CFO

XCEL BRANDS, INC.

By: /s/ Robert D'Loren  
Name: Robert D'Loren  
Title: CEO

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**ANNEX A**

**to Compliance Certificate**

1. Net Worth as of \_\_\_\_\_, 201\_\_ is \$ \_\_\_\_\_.
  2. Liquid Assets as of \_\_\_\_\_, 201\_\_ are \$ \_\_\_\_\_.
  3. Fixed Charge Coverage Ratio as of \_\_\_\_\_, 201\_\_ is \_\_\_\_ to 1.00.
  4. Capital Expenditures for the fiscal year ending \_\_\_\_\_, 201\_\_ are \$ \_\_\_\_\_.
  5. EBITDA of Parent for the fiscal year ending \_\_\_\_\_, 201\_\_ is \$ \_\_\_\_\_.
  6. EBITDA of Borrower for the fiscal year ending \_\_\_\_\_, 201\_\_ is \$ \_\_\_\_\_.
  7. License Royalty Income as of \_\_\_\_\_, 201\_\_ is \$ \_\_\_\_\_.
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**Exhibit B**

**to letter agreement between Bank Hapoalim B.M. and H Licensing, LLC**

**FORM OF QUARTERLY ROYALTY COLLECTIONS REPORT**

**[See Attached]**

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**GUARANTY**

**Introductory Note.** This Guaranty may be used for one or more Guarantors or with respect to one or more Debtors. If there is only one Guarantor or only one Debtor, then any reference herein to “the Guarantors”, “any Guarantor”, “each Guarantor” or the like, or to “the Debtors”, “any Debtor”, “each Debtor” or the like, shall be understood to refer to the Guarantor or to the Debtor, respectively. All capitalized terms in this Guaranty are defined in Section 19.

**Preamble.** Each of the undersigned (each a “Guarantor” and collectively the “Guarantors”) expects to derive direct and/or indirect benefits from the Bank’s giving or continuing financial accommodations to any of the Debtors. The Bank is unwilling to give or continue financial accommodations to the Debtors without the guaranty of payment of each of the Guarantors as set forth in this Guaranty. It is a condition precedent to the Bank’s giving or continuing these financial accommodations to any of the Debtors that the Guarantors shall have executed and delivered this Guaranty to the Bank. In consideration of the premises and in consideration of financial accommodations given or to be given or continued to any of the Debtors by the Bank, and in order to induce the Bank to give or continue financial accommodations to any of the Debtors, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Guarantors, the Guarantors hereby jointly and severally represent and warrant to, and covenant and agree with, the Bank as follows:

1. **Guaranty.** The Guarantors hereby jointly and severally, irrevocably and unconditionally (a) guarantee to the Bank the full and punctual payment when due (whether at stated maturity, by acceleration or otherwise) by the Debtors of all Obligations, and (b) agree to pay to the Bank all Additional Liabilities immediately when due or on demand. This Guaranty is the unlimited or limited (as set forth on the signature page below), primary obligation of the Guarantors. The Bank may enforce this Guaranty against any Guarantor and/or any Credit Enhancement provided by any Guarantor without any prior or contemporaneous enforcement of any of the Obligations against any other Obligated Party or Credit Enhancement.

2. **Guaranty Absolute.** This Guaranty is a continuing, absolute and unconditional guaranty of payment and not of collection, and shall remain in full force and effect until payment in full of all amounts payable under this Guaranty, notwithstanding that at any time and from time to time (i) the Debtors may be free from any Obligations or (ii) the Obligations may exceed the amount of the Liabilities of the Guarantors hereunder, and regardless of how long before or after the date hereof any of the Obligations were or are incurred, and regardless of whether any financial accommodation resulting in an Obligation was or shall be given or continued by the Bank in contemplation of this Guaranty. Each Guarantor waives all Defenses and Claims with respect to this Guaranty and/or any Credit Enhancement provided by such Guarantor. All Obligations shall be conclusively presumed to have been created in reliance hereon.

Without limiting any other provisions hereof, none of the following (whether occurring prior to, simultaneously with or subsequent to the date hereof) shall give rise to a Defense or Claim with respect to this Guaranty and/or any Credit Enhancement provided by any Guarantor, and each Guarantor waives all such Defenses and Claims that might otherwise arise therefrom, and the joint and several liability of each Guarantor under this Guaranty shall be absolute and unconditional irrespective of:

(a) the death, incompetence or disability of any Obligated Party, or any law (including, to the fullest extent permitted by law, any statute of limitations), regulation, order, stay, injunction or prohibition now or hereafter in effect in any jurisdiction that would give rise to a Defense or Claim available to any Obligated Party, or any other fact or circumstance that may result in or constitute a Defense or Claim available to any Obligated Party;

(b) any lack of genuineness, validity, legality, regularity or enforceability of any of the Liabilities or of any Document (including but not limited to any determination that any Obligated Party (i) was not a duly organized and validly existing Entity or (ii) lacked the authorization or capacity to incur any of the Liabilities);

(c) any payment made by, or amount received or collected by the Bank from, any other Person in respect of any of the Liabilities or of any other Debt of any Debtor;

(d) any revocation, early termination, rejection, disaffirmance, cessation, impairment or suspension for any cause whatsoever of (i) any of the Liabilities or (ii) the validity, binding effect or enforceability of any of the Liabilities or of any Document, except that any Guarantor may deliver to the Bank a written notice of revocation signed by such Guarantor, which may revoke such Guarantor’s Liabilities (but not of any other Guarantor) under this Guaranty, provided that such notice shall not affect such Guarantor’s Liabilities with respect to any Nonrevocable Obligations, and such Guarantor waives all rights to revoke any Liabilities with respect to any Nonrevocable Obligations and shall remain fully liable with respect thereto;

(e) any loss or non-perfection of, or any inability to foreclose or otherwise realize on, any Credit Enhancement;

(f) if a Guarantor is a partnership or joint venture, the death, incompetence, retirement or withdrawal of one or more partners or joint venturers, or the accession of one or more new partners or joint venturers, or the dissolution (by operation of law or otherwise) of such Guarantor;

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(g) any Transfer or purported Transfer by any Guarantor of any of the Liabilities;

(h) any action or omission referred to in Section 4 or Section 5;

(i) any event or events, whether with or without the consent of, or notice to, any of the Guarantors (even if known to the Bank or any of its Agents and not known to any of the Guarantors), which result or results in any change, whether or not material, in (i) the business, assets, liability or financial condition of any of the Debtors, (ii) the identity of any of the Debtors (whether by consolidation, merger, reorganization, change in form or structure, change in membership, change in control, change in management, or otherwise), (iii) any relationship (whether business, financial, personal or otherwise) between any of the Debtors and any of the Guarantors or (iv) the degree of risk assumed by any of the Guarantors hereunder.

3. **Payment.** Any payment made under this Guaranty shall be paid to the Bank at its offices in New York City, or at such other place as the Bank may designate in writing, in immediately available funds in the Currency in which the applicable Liabilities are denominated.

4. **Waiver.** Without limiting any other provisions of this Guaranty, each Guarantor hereby waives (a) notice of acceptance of this Guaranty, (b) notice of any Obligation to which this Guaranty may apply, (c) notice or proof of reliance by the Bank upon this Guaranty, (d) promptness, (e) diligence, (f) presentment, (g) demand for payment, (h) notice of dishonor or nonpayment of, or with respect to, any of the Obligations, (i) notice of any legal action or proceeding or any demand or any other action against, or any other notice to, any Obligated Party, and (j) any requirement that the Bank exhaust any right or take any action against or with respect to any other Obligated Party or any Credit Enhancement.

5. **Permitted Bank Actions and Omissions.** As to each Guarantor, the Bank and its Agents may, without giving rise to any Defense or Claim, at any time upon or without any terms or conditions, in whole or in part, and without the consent of, or notice to, any Obligated Party:

(a) change the Currency, time, manner or place of payment or performance (whether before or after maturity) or extend, renew, change, alter, amend, modify or waive any of the terms of any of the Liabilities or any Document;

(b) increase or decrease any of the Liabilities, including but not limited to the amount of principal or the amount or rate of any interest, fees, charges or other amount payable;

(c) (i) sell, exchange, realize upon, foreclose, release or surrender, or fail so to do with respect to, or (ii) impair or fail to take any steps necessary to care for, preserve, protect, secure, insure or obtain, or (iii) impair or fail to take any steps necessary to perfect (including any failure to make any filing or recording, or the making or any improper filing or recording of) any security interest or other rights in; or (iv) otherwise deal or fail to deal with, any Credit Enhancement or Subrogation Rights in any manner and in any order; or (v) exercise or refrain from exercising any rights against any other Obligated Party or any other Person or otherwise act or refrain from acting;

(d) (i) discharge, release, settle with or compromise with any other Obligated Party or other Person and/or (ii) consent to or waive any breach of, any departure from, or any act, omission or default under, any Document; or (iii) fail to notify any of the Guarantors or any other Person (even if known to the Bank or any of its Agents and not known to any of the Guarantors) of any change, whether or not material, relating to any of the Debtors or of any other Person, including but not limited to any of the matters set forth in Section 2(i).

6. **Bank Statements.** Any statement, certificate, notice or the like submitted by the Bank to any of the Debtors and/or to any of the Guarantors, setting forth the amount or amounts of any or all of the Obligations and/or Liabilities, shall be prima face evidence thereof, and each Guarantor agrees to be bound thereby absent manifest error.

7. **Expenses; Currency; Interest.** Each of the obligations set forth in this Section shall be a separate obligation payable on demand, with respect to which the Guarantors shall be jointly and severally liable to the Bank as an alternative or additional cause of action or claim.

(a) The Guarantors shall indemnify and hold the Bank harmless against all Expenses.

(b) If the Bank does not receive payment of any of the Liabilities in any amount of Currency when due, the Guarantors shall pay the equivalent of such amount in the Currency (including but not limited to the lawful Currency of the United States) in which such Liabilities were originally due, *provided* that the Bank may, at its option, accept payment of an equivalent amount (computed at the Bank's selling rate for such Currency at the place where such amount is payable as at the time such payment is made) in any other Currency. The receipt by the Bank of any amount in respect of any of the Liabilities in a Currency other than that in which such amount was originally due, whether pursuant to a judgment or arbitration award or pursuant to the provisions of this Guaranty or any Agreement or otherwise, shall not discharge the Guarantors with respect to any of such Liabilities except to the extent that on the first day on which the Bank is open for business immediately following such receipt, the Bank shall be able, in accordance with normal banking practice, to purchase the Currency in which such amount was due with the Currency received. Notwithstanding any such judgment or arbitration award, the Guarantors shall in any event indemnify the Bank against all losses sustained and all costs incurred by it in making any such purchase of Currency.

(c) Any amount payable hereunder shall bear interest from the date due until payment is received or recovered by the Bank in the Currency in which such amount was due at the place at which it was payable, at the Applicable Interest Rate.

**8. Representations and Warranties.** Each Guarantor represents and warrants to the Bank that each of the following is true, accurate and complete as of the date of such Guarantor's execution of this Guaranty, and acknowledges that the Bank's giving or continuing of financial accommodations to any of the Debtors is made in reliance thereon.

(a) If such Guarantor is a natural person, he or she has the legal capacity to execute and deliver this Guaranty and is doing so in his or her capacity as an individual and not in any representative capacity on behalf of any other Person, notwithstanding any reference to any office, title or the like next to such Guarantor's signature on this Guaranty.

(b) If such Guarantor is an Entity, it is an Entity duly organized, legally existing and in good standing under the laws of the jurisdiction in which it has been organized.

(c) Such Guarantor has full right, power and authority to enter into, execute and deliver this Guaranty and to perform all matters required to be performed by such Guarantor hereunder; the execution and delivery of this Guaranty by or on behalf of such Guarantor to the Bank is fully and unconditionally authorized; such Guarantor has duly executed and delivered this Guaranty pursuant to lawful authority; and this Guaranty constitutes such Guarantor's legal, valid and binding obligation enforceable in accordance with its terms.

(d) Such Guarantor is duly licensed or qualified to do business in all states and jurisdictions where such licensing or qualification is necessary unless the failure to so obtain such license or qualification could not reasonably be expected to have a material adverse effect on such Guarantor's financial condition or the ability of such Guarantor to perform its obligations under this Guaranty.

(e) The execution and delivery by such Guarantor of this Guaranty is not, and the performance by such Guarantor of any such Guarantor's obligations hereunder will not be, in contravention of, or cause any breach or default pursuant to, any provision of law or any charter or by-law provision or any material covenant, indenture or Agreement of or affecting such Guarantor or any of such Guarantor's assets.

(f) No consent of any Person and no consent, license, permit approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty (including, without limitation, the payment to the Bank at the applicable place in the applicable Currency).

(g) No registration tax, stamp duty or similar tax or duty imposed by any governmental authority arises in connection with the execution, delivery and performance of this Guaranty by such Guarantor.

(h) No litigation, arbitration, investigation or proceeding of or before any court, arbitrator or administrative or governmental authority is currently pending or, to the knowledge of such Guarantor, threatened (i) with respect to this Guaranty or any of the transactions contemplated hereby, or (ii) against or affecting such Guarantor, or any of such Guarantor's assets, or (iii) which could affect the business operations, assets, liabilities or condition, financial or otherwise, of such Guarantor or such Guarantor's ability to enter into, execute or deliver this Guaranty or prejudice in a material manner such Guarantor's ability to fulfill such Guarantor's obligations pursuant to this Guaranty.

(i) The financial statements of such Guarantor which have been furnished to the Bank have been prepared in accordance with generally accepted accounting principles consistently applied, and fairly present the correct financial condition of such Guarantor as of their respective dates; and there has been no subsequent material adverse change in the business, operations, assets, liabilities or condition, financial or otherwise, of such Guarantor.

(j) There is no fact that such Guarantor has not disclosed to the Bank in writing that could materially and adversely affect such Guarantor's business, operations, assets, liabilities or condition, financial or otherwise, or such Guarantor's ability to perform under this Guaranty.

(k) Such Guarantor is not, and upon such Guarantor's execution and delivery of this Guaranty to the Bank such Guarantor will not be, Insolvent; in exchange for executing and delivering this Guaranty to the Bank, such Guarantor has received or will have received Reasonably Equivalent Value; such Guarantor's execution and delivery of this Guaranty does not constitute a Fraudulent Transfer; such Guarantor's execution and delivery of this Guaranty is not made with intent to hinder, delay or defraud any Creditor; and this Guaranty cannot be set aside, avoided or rendered unenforceable in whole or in part by virtue of any Fraudulent Transfer Law.

(l) Such Guarantor has not provided any Credit Support with respect to the Debt of any Person other than this Guaranty.

(m) Such Guarantor believes that (i) the Guarantors do not have any Defense or Claim with respect to this Guaranty, any Credit Enhancement or any of the Liabilities, and (ii) there do not exist any facts and circumstances that could result in or constitute any such Defense or Claim.

(n) Such Guarantor has independently investigated, without reliance on the Bank, and is fully familiar with, (i) the identity, status and financial condition of each Debtor, (ii) all relationships, if any (whether business, financial, personal or otherwise), between and/or among any and all of the Debtors and any and all of the Guarantors, and (iii) the degree of risk assumed by such Guarantor hereunder.

(o) Such Guarantor has not relied upon and has not been induced to execute and deliver this Guaranty or to purchase any interest in any of the Debtors or any other Person or to take or refrain from taking any other action as a result of any Agreement, representation, warranty, statement, recommendation or information made or purportedly made by or on behalf of the Bank or any of its Agents, whether express or implied, written or oral, direct or indirect, and whether prior to or simultaneously with the date hereof.

(p) Neither the Bank nor any of its Agents has represented or indicated that the Bank will not enforce any provision of any Document.

#### **9. Contribution; Subordination; Subrogation.**

(a) If and to the extent that any Guarantor (the "Paying Guarantor") makes payment in respect of this Guaranty, then in furtherance and not limitation of any rights that the Paying Guarantor may have in law or equity, each other Guarantor shall have an obligation, upon demand by the Paying Guarantor, to pay to the Paying Guarantor an amount equal to the quotient of (x) the amount so paid by the Paying Guarantor, divided by (y) the total number of Guarantors.

(b) All direct or indirect claims and rights (whether for moneys advanced, services performed or assets sold and delivered or on account of any Subrogation Rights, whether for an indeterminate amount, a sum certain or a contingent claim), now existing or hereafter arising which any Guarantor may have against any other Obligated Party shall be subject and subordinate to the prior payment in full to the Bank of all of the Liabilities. Each Guarantor hereby assigns and transfers to the Bank, effective upon demand by the Bank for payment by such Guarantor of any amount hereunder, all such claims and rights and any proceeds thereof, and agrees that the Bank may, in its discretion, make and present in any bankruptcy or other proceeding such proofs or claims with respect thereto as the Bank may deem expedient or proper and may vote such proofs or claims in any such proceeding. Each Guarantor shall deliver upon demand by the Bank such additional documents as the Bank may request to evidence such subordination, assignment and transfer, including without limitation duly executed assignments. At any time when all the Liabilities shall not have been paid in full, each Guarantor shall (i) as trustee for the Bank, enforce all claims and rights against any other Obligated Party or any Credit Enhancement and collect all sums due from any other Obligated Party or any Credit Enhancement or with respect to any of the Liabilities, (ii) hold any amounts received on account thereof in trust for the benefit of the Bank, and (iii) pay all such amounts immediately to the Bank to be applied to the Liabilities, together with interest on all such amounts from the date of such receipt until paid to the Bank at the Applicable Interest Rate, without reducing or affecting in any manner the liability of such Guarantor under the other provisions of this Guaranty.

(c) Until all of the Liabilities shall have been paid in full, each Guarantor shall have no Subrogation Rights, and waives any right to enforce any right or remedy which the Bank has or may hereafter have against any other Obligated Party or in or against any Credit Enhancement.

10. **Reinstatement.** If (a) claim is ever made on the Bank for repayment or recovery of any amount received in payment or on account of any of the Obligations, and (b) the Bank repays all or part of such amount by reason of (i) any judgment, decree, order or award of any court, administrative body, arbitration panel or the like or (ii) any settlement or compromise of any such claim effected by the Bank with any such claimant (including any Obligated Party), then any such judgment, decree, order, award, settlement or compromise shall be binding upon all of the Guarantors, notwithstanding the release or cancellation of any Document, and the Guarantors shall be and remain liable hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by the Bank.

11. **Agreements, Representations, Amendments and Waivers.** No Agreement or representation by the Bank, and no amendment or waiver of any provision of this Guaranty nor consent to any departure therefrom by any of the Guarantors shall be effective unless in writing and duly signed by at least two duly authorized officers of the Bank, and any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure on the part of the Bank to exercise, and no delay in exercising, any right under any Document or otherwise, shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. In the case of any Agreement (including but not limited to any Commitment) given or made by the Bank to any Person or Persons (which may or may not include one or more of the Guarantors), (a) such Agreement shall not inure to the benefit of any of the Guarantors to whom such Agreement was not given or made by the Bank (the "Other Guarantor" or "Other Guarantors"), (b) none of the Other Guarantors shall be deemed to be a third party beneficiary thereof, (c) the Bank shall have absolutely no responsibility or liability to any of the Other Guarantors with respect to any breach thereof or failure by the Bank to abide by, or comply with, any such Agreement, and (d) each of the Other Guarantors waives and gives up any rights that each such Other Guarantor may have, on account of any such Agreement or any such breach or failure, to assert any Defense or Claim against the Bank.

12. **Cumulative Rights; Reservation of Rights; Arms' Length Transaction.** The rights and remedies herein provided to the Bank are in addition to, and are not exclusive or in substitution for, any rights or remedies available to the Bank at law or in equity or under any other Agreement or other document which any Person (including but not limited to any Guarantor) may have executed or may hereafter execute in favor of or for the benefit of the Bank, all of which are cumulative and may be exercised by the Bank in whole or in part from time to time. The Bank shall be deemed to have reserved its rights against each Guarantor in connection with any settlement, compromise, discharge or release of any other Obligated Party or any Document. The joint and several liabilities of the Guarantors hereunder shall not be reduced or limited by reason of any similar or dissimilar guaranty or other Document executed in favor of the Bank by any Person, and this Guaranty shall be enforceable against each of the Guarantors jointly and severally without regard thereto. This Guaranty represents an arms' length transaction between the Guarantors and the Bank. Each Guarantor agrees and consents that this Guaranty shall not be, and waives any right to require that this Guaranty be, construed against the Bank on the ground that the Bank has prepared it.

13. **Covenants.** Subject to any other written Agreement between the Bank and any Person relating to the same subject matter, each Guarantor shall:

(a) furnish to the Bank copies of such Guarantor's financial statements and such other information relating to such Guarantor's business, operations, assets, liabilities and condition, financial or otherwise, promptly when, and in such form as, reasonably required or requested by the Bank.

(b) permit any of the Bank's Agents to visit such Guarantor's premises upon not less than two (2) Business Days' prior notice during normal business hours and to examine and make photographs, copies and extracts of such Guarantor's property and of its books and records;

(c) take or cause to be taken any and all action that may be necessary or appropriate (to the extent legally permissible) to cause or permit the Debtors to perform all of the Obligations, and shall not take or cause to be taken any action that may prevent or interfere with any Debtor's performance thereof; and

(d) not enter into any Agreement or purchase any interest in any of the Debtors or other Persons or take or refrain from taking any other action as a result of or in reliance upon any Agreement, representation, warranty, statement, recommendation or information made or purportedly made by or on behalf of the Bank or any of its Agents, whether express or implied, written or oral, direct or indirect, or prior to, simultaneously with or subsequent to the date hereof.

14. **Transfers; Successors and Assigns.**

(a) No Guarantor shall effect or attempt a Transfer of any of the Liabilities without the Bank's prior written consent. Notwithstanding the foregoing, this Guaranty shall be binding upon each Guarantor and upon each Guarantor's executors, administrators, successors, assigns and Transferees (each of which shall be a "Guarantor" hereunder).

(b) This Guaranty shall inure to the benefit of and be enforceable by the Bank and its successors, assigns and Transferees. Without limiting the foregoing, the Bank may make a Transfer of any and all of the Liabilities and Documents to any other Person without notice to or the consent of any of the Guarantors, and the Transferee shall thereupon become vested with all of the Bank's rights in respect thereof. The Bank is authorized to disclose to any prospective or actual Transferee any information that the Bank may have or acquire about any Obligated Party and any information about any other Person submitted to the Bank by or on behalf of any Obligated Party. Each Guarantor waives all defenses (except such defenses as may be asserted against a holder in due course of a negotiable instrument) which each Guarantor may have or acquire against any Transferee who receives a Transfer of this Guaranty, or any complete or partial interest in it, for value, in good faith and without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any Person.

15. **Intentionally Omitted.**

16. **Notices.** All notices and other communications provided for hereunder shall be in writing and, if to the Guarantors, mailed or faxed or delivered to the address set forth on the signature page below, and if to the Bank, mailed or delivered to 1177 Avenue of the Americas, New York, New York 10036, to the attention of the Department, or as to each party at such other address as shall be designated by such party in a written notice to the other party or parties, as the case may be. All such notices and other communications to the Guarantors shall be effective when deposited in the mail, sent by fax or delivered, addressed as aforesaid, and all such notices and other communications to the Bank shall be effective when actually received by the Department.

17. **Litigation.** This Guaranty shall be governed by, and construed in accordance with, the laws of the State of New York applicable to agreements made and to be performed in the State of New York without regard to conflict or choice of law rules. Any legal action or proceeding with respect to this Guaranty may be brought in any court of record of the State of New York, County of New York, or of the United States of America for the Southern District of New York. By execution and delivery of this Guaranty, the Guarantors hereby accept, consent and submit to, generally and unconditionally, the jurisdiction of the aforesaid courts over the Guarantors and their property. Each Guarantor agrees not to, and hereby irrevocably waives the right to, commence a legal action or proceeding against the Bank in any jurisdiction worldwide other than the aforesaid courts, unless the Bank specifically consents thereto in writing. In connection with any action or proceeding between any of the Guarantors and the Bank, each Guarantor agrees not to, and hereby irrevocably waives the right to, interpose (i) any objection, including, without limitation, any objection to the laying of venue or based on the grounds of forum non conveniens, which such Guarantor may now or hereafter have to the bringing of any such action or proceeding in such jurisdiction and/or (ii) any claim for consequential, special or punitive damages and/or (iii) any setoff, counterclaim or cross-claim. The Guarantors irrevocably consent to the service of process on each Guarantor in any such action or proceeding by the mailing of copies thereof by certified or registered mail, postage prepaid, to the Guarantors at the address set forth on the signature page below. Nothing herein shall affect the right of the Bank to serve process in any other manner permitted by law or to commence any legal action or proceeding or otherwise proceed against any of the Guarantors in any jurisdiction worldwide.

18. **Counterparts.** This Guaranty may be signed in any number of counterparts. Any counterpart signed by any Guarantor (a “Signing Guarantor”) shall constitute a full original Guaranty of such Guarantor for all purposes, regardless of whether any counterpart is signed by any other Guarantor. Any reference herein to the execution of this Guaranty shall include the execution of any counterpart. The obligations of any Signing Guarantor hereunder are not conditioned on any other Guarantor’s execution of this Guaranty.

19. **Definitions.** As used herein, the following terms have the meanings indicated:

**Agent:** any director, officer, employee, agent or representative.

**Additional Liabilities:** The liabilities under Sections 7 and 9.

**Agreement:** an agreement, commitment, covenant, instrument, note, representation, understanding or warranty (including but not limited to any Commitment, Credit Support or Document) given or made to or with any Person.

**Applicable Interest Rate:** the highest lawful rate then permitted by applicable law in the State of New York, or if no such rate exists, the highest lawful rate permitted under such other applicable law as the Bank may choose in its discretion.

**Bank:** Bank Hapoalim B.M.

**Bankruptcy Code:** the U.S. Bankruptcy Code as in effect and as amended from time to time and any successor thereto.

**Claim:** any right of setoff, claim, counterclaim or cross-claim of any Obligated Party against the Bank and/or any of its Agents.

**Commitment:** an Agreement, commitment or obligation of the Bank, whether or not in writing, whether express or implied, and whether or not by operation of law, given to any Person (including but not limited to any Obligated Party) to give or to continue any financial accommodations to any of the Debtors or to change, alter, amend, modify, renew, extend the time of payment of, increase or decrease any of the Obligations.

**Commodity Exchange Act:** the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

**Credit Enhancement:** any Credit Support with respect to any of the Obligations. Any reference herein to “any Credit Enhancement” shall be understood to include but not be limited to this Guaranty.

**Creditor:** any Person to whom any Guarantor owed or owes any Debt or otherwise was, became, is or becomes indebted, and any other creditor within the meaning under or as defined in each respective Fraudulent Transfer Law.

**Credit Support:** any collateral, security interest, mortgage, pledge, lien, security, margin, guaranty, insurance, letter of credit, indemnity, subordination, comfort letter, risk participation, repurchase agreement, put, option, banker’s lien, setoff, right of offset or netting agreement, or any Agreement pursuant to which a Person agrees to be contingently liable with respect to any Debt of any other Person or Persons, or any other credit support with respect to any Debt of any Person or Persons.

**Currency:** the lawful currency of any country or the eurocurrency.

**Debt:** an obligation of any sort for the payment of money in any Currency in any jurisdiction worldwide, and however evidenced, whether (a) principal or otherwise, (b) absolute or contingent, (c) secured or unsecured, (d) joint, several or independent, (e) now or hereafter existing, and (f) created directly or acquired by Transfer or otherwise.

**Debtor, Debtors:** as specified on the signature page below.

**Defense:** any fact or circumstance (a) that may affect, suspend, impair, discharge, release, cancel, modify, limit or be a defense (including but not limited to any suretyship defense) to any of the Liabilities of any Obligated Party or any Document or of any of the Bank’s rights or remedies with respect thereto, or (b) that may bar enforcement thereof by the Bank.

**Department:** the department of the Bank responsible for administering the Bank’s relationship with the Debtors with respect to the Obligations.

**Document:** an Agreement of any Obligated Party relating to any of the Obligations and/or Liabilities. Any reference herein to “any Document” shall be understood to include but not be limited to any Credit Enhancement.

**Effective Revocation Time:** the close of business on the day that the Department receives written notice of revocation signed by any of the Guarantors.

**Entity:** any Person other than a natural person.



**Excluded Swap Obligations:** with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the guaranty hereunder of such Guarantor of such Swap Obligation (or any guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the guaranty of such Guarantor becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guaranty hereunder or security interest is or becomes illegal.

**Expenses:** (a) except as set forth in clause (b), all reasonable documented costs and expenses (including but not limited to reasonable fees and disbursements of counsel) incurred by the Bank in connection with this Guaranty or any of the Liabilities including, but not limited to, (i) any amendment, modification, extension or waiver with respect to any of the Liabilities, and/or (ii) any deduction, withholding, registration tax, stamp tax or similar tax or duty applicable to any payment of any of the Liabilities. and (b) all documented costs and expenses (including but not limited to reasonable fees and disbursements of counsel) incurred by the Bank in connection with the enforcement of this Guaranty or any of the Liabilities including but not limited to those for (i) any action taken, whether or not by litigation, to collect, or to protect rights or interests with respect to, any of the Liabilities, or to preserve, protect, secure, insure, obtain or perfect any Credit Enhancement, (ii) compliance with any legal process or any order or directive of any governmental authority with respect to any Obligated Party, and (ii) any litigation, arbitration or administrative proceeding relating to any Obligated Party.

**Fraudulent Transfer:** a "fraudulent transfer", "fraudulent conveyance" or similar term within the meaning under or as defined in each respective Fraudulent Transfer Law.

**Fraudulent Transfer Law:** the Bankruptcy Code, the New York Debtor and Creditor Law, or the law of any jurisdiction (domestic or foreign) as in effect and as amended from time to time and all successors thereto relating to fraudulent transfers, fraudulent conveyances and/or similar matters.

**Guarantor, Guarantors:** as specified on the signature page below, and as further defined in Section 14(a).

**Guaranty:** this Guaranty.

**Insolvent** as to a Person: (a) insolvent or (b) engaged or about to be engaged in a business or a transaction for which any property remaining with the Person is an unreasonably small capital, or (c) intending to incur or believing that the Person will incur debts that would be beyond the Person's ability to pay as such debts mature, all within the meaning under or as defined in each Fraudulent Transfer Law.

**Liabilities:** (a) all Obligations and (b) all obligations (including those incurred hereunder) of all Obligated Parties incurred directly or indirectly in respect of any of the Obligations and/or in respect of any Document *provided* that the term Liabilities shall not include Excluded Swap Obligations.

**Nonprincipal Obligations:** all Obligations, whether interest, fees, expenses or otherwise, other than principal.

**Nonrevocable Obligation:** any Obligation (including any extension or rollover thereof and any Nonprincipal Obligations accruing thereon after the Effective Revocation Time) that (i) is, or (ii) relates to a contingent liability of the Bank or to a Commitment that in either case was, outstanding on or prior to the Effective Revocation Time.

**Obligated Party:** (a) each Debtor; (b) each Guarantor; (c) any other Person directly or contingently liable for any of the Obligations, including but not limited to any maker, co-maker, endorser, accommodation party, guarantor, surety or indemnitor with respect to any of the Obligations; (d) any Person providing or issuing any Credit Enhancement with respect to any of the Obligations; or (e) if any Obligated Party is a partnership or joint venture, any general partner or joint venturer therein. Without limiting the foregoing, any reference herein to "any Obligated Party" shall include but not be limited to all of the Debtors and all of the Guarantors, and as to each Guarantor any reference herein to "any other Obligated Party" shall include but not be limited to all of the Debtors and all of the Guarantors other than such Guarantor.

**Obligation:** any Debt of any Debtor and of any successor, assign or Transferee thereof (including any successor of a Debtor that is a partnership or joint venture), whether (a) due or to become due to, or held or to be held by, the Bank, and (b) for the Bank's own account or as agent for another or others *provided* that the term Obligation shall not include Excluded Swap Obligations..

**Person:** any natural person, firm, partnership, joint venture, company, corporation, limited liability company, unincorporated organization or association, trust, estate, governmental authority or any other entity. Without limiting the foregoing, any reference herein to "any Person" shall include but not be limited to any Obligated Party, and as to each Guarantor any reference herein to "any other Person" shall include but not be limited to any other Obligated Party.

**Reasonably Equivalent Value:** "reasonably equivalent value", "fair consideration" or similar term within the meaning under or as defined in each respective Fraudulent Transfer Law.

**Subrogation Rights:** all legal and equitable rights and claims arising from the existence or performance of this Guaranty that any of the Guarantors may now or hereafter have, including without limitation all rights of subrogation, indemnity, reimbursement, exoneration and/or contribution, and including without limitation any such right or claim against or with respect to any property (including without limitation any Credit Enhancement) of any Obligated Party.



Swap Obligation: with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

Transfer: any negotiation, assignment, participation, conveyance, grant of security interest, lease, delegation, or any other direct or indirect transfer of complete or partial, legal, beneficial, economic or other interest or obligation.

Transferee: any Person to whom a Transfer is made.

**SIGNATURE PAGE**

Each of the Guarantors makes this Guaranty in favor of the Bank, and each agrees to be bound jointly and severally by the terms and conditions of this Guaranty, both the general terms and conditions set forth above and the specific terms and conditions set forth below.

a) **Debtor(s) [print full name(s)]:**

IM Brands, LLC

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JR Licensing, LLC

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b) **Type of Guaranty:**

Unlimited

Limited as to the aggregate principal sum of \$, plus a prorated amount of the Nonprincipal Obligations.

c) **OPPORTUNITY TO CONSULT WITH COUNSEL.** Each Guarantor acknowledges having had the opportunity to consult with legal counsel prior to executing this Guaranty.

d) **JURY TRIAL WAIVER.** Both the Bank and the Guarantors waive and give up the right to a jury trial with respect to any dispute, action or proceeding relating to this Guaranty or any of the Obligations or Liabilities; any legal action or proceeding relating to this Guaranty or any of the Obligations or Liabilities shall take place without a jury.

Date: December 22, 2014

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**SIGNATURE(S) AND IDENTIFICATION:**

H LICENSING, LLC

By: XCEL BRANDS, INC., Its Manager

By: /s/ James Haran

Print Name: James Haran

Title: CFO

Guarantors' address and fax number for purposes of notice:

Address:

475 Tenth Avenue  
New York, New York 10018

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

SIGNATURE PAGE TO  
GUARANTY

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**PROMISSORY NOTE**

U.S.\$10,000,000

Dated: December 22, 2014,

New York, New York

**1. Obligation and Repayment:** For value received, Borrower absolutely and unconditionally promises to pay to the order of the Bank, at the Office, without defense, setoff or counterclaim, the principal amount of TEN MILLION United States Dollars (\$10,000,000.00), together with interest and any other sum(s) due and payable as specified below. The principal amount of this Note shall be due and payable in quarterly installments on the dates and in the respective amount shown below:

Date of Payment	Amount of Principal Payment
January 1, 2015, April 1, 2015 and October 1, 2015	\$ 0
January 1, 2016, April 1, 2016, July 1, 2016 and October 1, 2016	\$ 375,000
January 1, 2017, April 1, 2017, July 1, 2017 and October 1, 2017	\$ 625,000
January 1, 2018, April 1, 2018, July 1, 2018 and October 1, 2018	\$ 750,000
January 1, 2019, April 1, 2019, July 1, 2019 and October 1, 2019	\$ 750,000

**2. Interest:** Subject to paragraph A(2) of the Terms and Conditions, interest shall accrue on the principal amount of this Note outstanding from time to time at the following rate described in the Rider referred to in Paragraph 3 below (the "Loan Rate"). Interest shall be payable in accordance with the attached Rider.

**3. Riders:** In the event of any inconsistency between this Note and any Rider(s) to which this Note is subject, the provisions of such Rider(s) shall prevail. This Note is subject to the Rider to Promissory Note, dated as of the date hereof.

**4. Address and Identification of Borrower:**

Address: 475 Tenth Avenue

New York, New York

Telephone: 347-532-5894

Fax: 347-436-9178

Social Security or Taxpayer ID number: xx-xxxxxxx

**5. Agreement to All Terms and Conditions; Authorization to Complete Blanks:** This Note is subject to all of the Terms and Conditions set forth below. Each of the undersigned agrees to all of the provisions of this Note, including the Terms and Conditions and any Rider(s).

**6. No Representations or Agreements by the Bank:** Each of the undersigned acknowledges that the Bank has made no representation, covenant, commitment or agreement to Borrower except pursuant to any written document executed by the Bank.

**7. No Representation of Nonenforcement:** Each of the undersigned acknowledges that no representative or agent of the Bank has represented or indicated that the Bank will not enforce any provision of this Note, including the Terms and Conditions and any Rider(s), in the event of litigation or otherwise.

[Remainder of this page intentionally left blank;  
signature appears on the next page;  
Terms and Conditions appear following the signature page]

**8. Waiver of Jury Trial: Borrower waives, and understands that the Bank waives, the right to a jury trial with respect to any dispute arising hereunder or relating to any of the Liabilities; any judicial proceeding with respect to any such dispute shall take place without a jury.**

9. Execution of Promissory Note: Borrower understands that by signing this Note it is agreeing to all of the terms as contained in this Note and all other Terms and Conditions and Rider(s) attached hereto and made a part hereof.

H LICENSING, LLC

By: XCEL BRANDS, INC.  
Its: Manager

By: /s/ James Haran  
Name: James Haran  
Title: CFO

[Terms and Conditions appear commencing on the next page]

SIGNATURE PAGE TO  
PROMISSORY NOTE

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## TERMS AND CONDITIONS

Definitions are set forth in paragraph N.

**A. Calculation and Accrual of Interest:** **(1) Generally.** Interest shall be calculated on a daily basis on outstanding balances at the Applicable Rate, divided by 365, on a month consisting of actual days elapsed. During any time that the Applicable Rate would exceed the applicable maximum lawful rate of interest, the Applicable Rate shall automatically be reduced to such maximum rate. Any interest payment made in excess of such maximum rate shall be applied as, and deemed to be, in the Bank's sole discretion, a payment of any of the Liabilities, in such manner as determined by the Bank. **(2) Increased Rate.** Interest shall accrue at the Increased Rate upon and after (a) the occurrence of any Debtor Relief Action, (b) any demand of payment of this Note (if payable on demand) or (c) the occurrence of any Event of Default (if this Note is payable other than on demand). **(3) Accrual.** To the extent permitted by Law, interest shall accrue at the Applicable Rate on all unpaid Liabilities under this Note, including but not limited to any unpaid interest and any unpaid obligation owed pursuant to paragraph B (Indemnification).

**B. Indemnification:** To the extent permitted by Law: **(1) Taxes.** All payments under this Note shall be made free and clear of, and without deduction for, any Taxes. If Borrower shall be required to deduct any Taxes in respect of any sum payable under this Note, then (a) the sum payable shall be increased so that the Bank shall receive an amount equal to the sum the Bank would have received had no deductions been made, and (b) Borrower shall make such deductions and shall pay the amount deducted to the relevant Governmental Authority. Borrower shall pay to the Bank on demand, and shall indemnify and hold the Bank harmless from, any and all Taxes paid by the Bank and any and all liability (including penalties, interest and expenses) with respect thereto arising out of the Borrower's failure to comply with the provisions of this clause (1), whether or not such Taxes were correctly or legally asserted. Within 30 days after any Taxes are paid by Borrower, Borrower shall furnish evidence thereof to the Bank. The Bank shall provide Borrower two copies of appropriate tax forms properly completed and duly executed by the Bank claiming complete exemption from, or a reduced rate of, U.S. federal withholding tax on all payments by Borrower under this Agreement and the other Loan Documents. Such forms shall be delivered by the Bank on or before the first date it is entitled to receive any payment under this Note or any other Loan Document. In addition, the Bank shall deliver such forms promptly upon the obsolescence or invalidity of any form previously delivered by the Bank. The Bank shall promptly notify the Borrower at any time it determined that it is no longer in a position to provide any previously delivered certificate to the Borrower (or any other form of certification adopted by the U.S. taxing authorities for such purpose). **(2) Regulatory Costs.** In the event that in connection with the transaction(s) contemplated by this Note and/or the Bank's funding of such transaction(s), the Bank is required to incur any Regulatory Costs in order to comply with any Law issued after the date of this Note, then Borrower shall pay to the Bank on demand, and shall indemnify and hold the Bank harmless from, any and all such Regulatory Costs. **(3) Costs and Expenses.** Borrower shall pay the Bank, and shall indemnify and hold the Bank harmless from, any and all Costs and Expenses within ten (10) days after the Bank's invoice to Borrower with respect thereto. **(4) Prepayment Costs.** If Borrower makes any payment of Prepaid Principal (voluntarily or not), then Borrower shall pay to the Bank an amount equal to the Applicable Percentage multiplied by the amount of Prepaid Principal; provided that no such amount shall be on any amount paid to the Bank as a result of the Cash Flow Recapture (as such term is defined in the Letter Agreement). **(5) Bank Certificate.** The Bank's certificate as to any amounts owing under this paragraph shall be prima facie evidence of Borrower's obligation.

**C. Set Off:** Every Account of Borrower with the Bank shall be subject to a lien and during the existence of any Event of Default to being set off against the Liabilities. The Bank may at any time during the existence of any Event of Default at its option and without notice, except as may be required by law, charge and/or appropriate and apply all or any part of any such Account toward the payment of any of the Liabilities. The Bank agrees promptly to notify the Borrower after any such set off and application made by the Bank, provided that the failure to give such notice shall not affect the validity of such set off and application.

**D. Events of Default:** Each of the following shall be an Event of Default hereunder: **(1) Nonpayment.** The nonpayment when due of any principal amount of the Liabilities; (a) the non-payment within three (3) Business Days after the same shall become due of any interest or any other part of the Liabilities; (b) the prohibition by any Law of payment of any part of any of the Liabilities; **(2) Bankruptcy; Adverse Proceedings.** (a) The occurrence of any Debtor Relief Action; (b) the appointment of a receiver, trustee, committee, custodian, personal representative or similar official for any Party or for any Material part of any Party's property; (c) any action taken by any Party to authorize or consent to any action set forth in subparagraph D(2)(a) or (b); (d) the rendering against any Party of one or more judgments, orders, decrees and/or arbitration awards (whether for the payment of money or injunctive or other relief) which in the aggregate are Material to such Party, if they continue in effect for 30 days without being vacated, discharged, stayed, satisfied or performed and involve an aggregate liability of \$750,000 or more (excluding amounts covered by insurance to the extent the relevant third parties insurer has agreed in writing to cover such amount); (e) the issuance or filing of any warrant, process, order of attachment, garnishment or other lien or levy against any Material part of any Party's property which shall not have been vacated, discharged, stayed or bonded pending appeal within thirty (30) days; (f) the commencement of any proceeding under, or the use of any of the provisions of, any Law against any Material part of any Party's property which shall not have been vacated, discharged, stayed or bonded pending appeal within thirty (30) days, including but not limited to any Law (i) relating to the enforcement of judgments or (ii) providing for forfeiture to, or condemnation, appropriation, seizure or taking possession by, or on order of, any Governmental Authority; (g) the forfeiture to, or the condemnation, appropriation, seizure, or taking possession by, or on order of, any Governmental Authority, of any Material part of any Party's property; (h) any Party being charged with a crime by indictment, information or the like. **(3) Noncompliance.** (a) any Party fails to perform under Sections 4(e), (f), (t) and (u) of the Letter Agreement, Sections 5.4, 5.6 and 5.7 of the IP Security Agreement and Section 10.1 of the Security Agreement and such failure is not cured within thirty (30) days of the earlier to occur of (i) the date upon which Borrower or Guarantor becomes aware of such failure and (ii) the date upon which written notice thereof is given to Borrower by Bank; (b) other than those items separately covered by a clause contained in this Section (D), any "Event of Default" (as such term is defined in each Loan Document) by any Party with respect to any Loan Document; (c) the giving to the Bank by or on behalf of any Party at any time of any materially incorrect or incomplete representation, warranty, statement or information; (c) the failure of any Party to furnish to the Bank copies of its financial statements and such other information respecting such Party's business, properties, condition or operations, financial or otherwise, promptly when and in such form as reasonably required or requested by the Bank; (d) any Party's failure or refusal, upon reasonable notice from the Bank (unless an Event of Default has occurred and is continuing, in which case no notice is necessary), to permit the Bank's representative(s) to visit such Party's premises during normal business hours and to examine and make photographs, copies and extracts of such Party's property and of its books and records subject to the limitations set forth in the Letter Agreement; (e) any Party's concealing, removing or permitting to be concealed or removed, any part of its property with the intent to hinder or defraud any of its creditors; (f) any Party's making or suffering any Transfer of any of its property, which Transfer is deemed fraudulent under the law of any applicable jurisdiction; (g) any material provision of any Loan Document shall for any reason cease to be valid and binding on or enforceable against any Party thereto or any such Party shall so state in writing or bring an action to limit its obligations or liabilities thereunder; or any Loan Document that creates a security interest in the collateral purported to be covered thereby shall for any reason (other than pursuant to the terms thereof) cease to create a valid security interest in the collateral purported to be covered thereby or such security interest shall for any reason cease to be a perfected and first priority security interest subject only to Permitted Liens. **(4) Adverse Changes.** (a) The annual guaranteed minimum annual royalty payments payable to Borrower are at any time less than \$6,000,000 in any fiscal year commencing with the 2016 fiscal year; (b) the dissolution or liquidation of any Party; (c) any Party's failure to be and remain in good standing and qualified to do business in each jurisdiction Material to such Party; (d) any Party shall (i) default in making any payment of any principal of any indebtedness (excluding the Liabilities) on the scheduled or original due date with respect thereto; or (ii) default in making any payment of any interest on any such indebtedness beyond the period of grace, if any, provided in the instrument or agreement under which such indebtedness was created; or (iii) default in the observance or performance of any other agreement or condition relating to any such indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or beneficiary of such indebtedness (or a trustee or agent on behalf of such holder or beneficiary) to cause, with the giving of notice if required, such indebtedness to become due prior to its stated maturity; provided, that a default, event or condition described in clause (i), (ii) or (iii) of this clause (d) shall not at any time constitute an Event of Default unless, at such time, one or more defaults, events or conditions of the type described in clauses (i), (ii) and (iii) of this paragraph (d) shall have occurred and be continuing with respect to indebtedness the outstanding principal amount of which exceeds in the aggregate \$500,000; (e) Borrower becoming insolvent, as defined in the Uniform Commercial Code; (f) any Party's Material failure to pay any tax when due; (g) any loss, suspension, nonrenewal or invalidity of any Material permit, franchise or Trademark (as such term is defined in the Letter Agreement) or the like of Borrower; (h) the occurrence of any event which gives any Person (other than Bank) the right to assert a lien, levy or right of forfeiture against any Material part of any Party's property; (i) Borrower's failure to give the Bank notice, within 10 Business Days after Borrower had notice or knowledge, of the occurrence of any event which, with the giving of notice and/or lapse of time, would constitute an Event of Default; (j) the occurrence of any event with Elizabeth Arden that results in a Material adverse effect on the value of the intellectual property purchased pursuant to the Acquisition Agreement. **(5) Business Changes.** (a) any change in Control of Borrower; (b) any merger or consolidation involving any Party not permitted under the terms of a Loan Document; (c) any Party's sale or other Transfer of substantially all of its property; (d) any Material change in the nature or structure of any Party's business; (e) Robert W. D'Loren shall no longer be the Chairman of the Board of Directors of Borrower or Guarantor or have the duties of the Chairman of the Board of Directors of Borrower or Guarantor. **(6) Material License Termination or Default.** The termination of, any amendment or other modification to, or any default under the QVC Agreement or the Master License Agreement but only to the extent such event could reasonably be expected to have a Material adverse effect on Borrower's business or financial condition and Borrower has not replaced such license within sixty (60) days of such termination with a license which generates revenue at least equivalent to the QVC Agreement or the Master License Agreement as applicable, which was terminated. **(7) IM Brands Default.** The occurrence of a default or event of default under the IM Brands Loan Documents. **(8) JR Licensing Default.** The occurrence of a default or event of default under the JR Licensing Loan Documents.

**E. Remedies: (1) Acceleration at Bank's Option.** Upon any failure to pay this Note in full on demand (if payable on demand) or (if this Note is payable other than on demand) upon the occurrence of any Event of Default other than any Debtor Relief Action, then any and all Liabilities, not then due, shall, at the Bank's option, become immediately due and payable, without notice, which Borrower waives. **(2) Automatic Acceleration.** Upon the occurrence of any Debtor Relief Action, then, whether or not any of the Liabilities are payable upon demand and notwithstanding paragraph F, any and all Liabilities not then due, shall automatically become immediately due and payable, without notice or demand, which Borrower waives. **(3) Additional Remedies.** Bank shall have all rights and remedies available to it under any applicable Loan Document or Law after any applicable notice or cure period.

**F. Waiver of Protest, etc.:** Notice, presentment, protest, notice of dishonor and (except for such of the Liabilities as are payable on demand, but subject to subparagraph E(2)) demand for payment are hereby waived as to all of the Liabilities.

**G. Payment: (1) Manner.** Any payment by other than immediately available funds shall be subject to collection. Interest shall continue to accrue until the funds by which payment is made are available to the Bank. If and to the extent any payment of any of the Liabilities is not made when due, the Bank is authorized in its discretion to effect payment by charging any amount so due against any Account of Borrower with the Bank without prior notice, except as may be required by law, whether or not such charge creates an overdraft and of which event the Bank will provide notice following such charging of an Account. **(2) Application.** Any payment received by the Bank (including a deemed payment under paragraph A, a set-off under paragraph C or a charge against an Account under this paragraph G) shall be applied to pay any obligation of indemnification (including but not limited to under paragraph B) and to pay any other Liabilities (including interest thereon and the principal thereof) in such order as the Bank shall elect in its discretion. Borrower will continue to be liable for any deficiency. **(3) Prepayment.** Borrower shall be entitled to pay any outstanding principal amount or installment under this Note on any Business Day prior to the applicable Due Date without the prior consent of the Bank, provided that (a) any such payment shall be together with payment of all Liabilities then due and all interest accrued on the Prepaid Principal to the date of such payment, and (b) any such payment shall be on not less than 5 Business Days' notice to the Bank and shall be accompanied by any amount required pursuant to subparagraph B(4). Any such payment shall, unless otherwise consented to by the Bank, be applied pro rata to the last outstanding principal amount(s) to become due under this Note in inverse order of maturity. **(4) Non-Business Days.** If any payment of any of the Liabilities is due on any day that is not a Business Day, it shall be payable on the next Business Day. The additional day(s) shall be included in the computation of interest. **(5) Extension at Bank's Option.** The Bank shall have the option, which may be exercised one or more times by notice(s) to Borrower, to extend the date on which any amount is payable hereunder to one or more subsequent date(s) set forth in such notice(s). **(6) Late Payment.** Without limiting or waiving any rights or remedies of the Bank contained in the Note or under applicable law, and without implying that the Bank has any obligation to declare or to notify the Borrower of the occurrence of any Event of Default, if the Bank has neither declared nor notified the Borrower of the occurrence of an Event of Default, and if any amount of any required payment of principal, interest fees and/or Late Charge (as defined below) under the Note is not paid in full within (7) seven days after the same is due, then in addition to all interest, penalty interest or other fees due to the Bank pursuant to the Note, any rider to the Note or any agreement or document related to this credit facility, the Borrower shall pay the Bank a late fee equal to \$14.30 for each day thereafter. Any amount due under this paragraph shall be referred to herein as a "Late Charge". The Borrower shall pay any and all such Late Charges in addition to all payments of principal, interest and fees (if any) under the Note, provided, however, that during any time that any of the above Late Charges would cause the total interest payable under the Note to exceed the applicable maximum lawful rate of interest, then the sum of (a) all such Late Charges and (b) the amount of interest payable at the Applicable Rate shall automatically be reduced to an amount that shall not exceed the amount of interest payable at such maximum rate.



**H. Parties; Counterparts; No Transfer by Borrower:** If Borrower is more than one Person, all of them shall be jointly and severally liable under this Note. This Note and any Rider hereto may be executed in counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single instrument. Any signature delivered by a party by facsimile or electronic transmission (including email transmission of a PDF image) shall be deemed an original signature hereto. Without the Bank's written consent, Borrower shall have no right to make any Transfer of any of the Liabilities; any such purported Transfer shall be void. Subject to the foregoing, the provisions of this Note shall be binding on Borrower's successors and assigns.

**I. Bank Transfers: (1) Transferability.** Without limiting the Bank's rights hereunder, and subject to the prior written consent of Borrower not to be unreasonably withheld (which consent shall not be required after the occurrence and during the continuance of an Event of Default) the Bank may make a Transfer of all or any part of (a) the Liabilities, (b) any obligation of any other Party in connection with any of the Liabilities, (c) any Loan Document of any Party in connection with any of the Liabilities or any agreement related thereto, (d) any collateral, mortgage, lien or security interest, however denominated, securing any of the Liabilities, and/or (e) the Bank's rights and, if any, obligations with respect to any of the foregoing. **(2) Extent of Transfer.** In the event the Bank shall make any Transfer (and has obtained the consent of Borrower to the extent required hereunder) of any of the foregoing items ("Transferred Items"), then - to the extent provided by the Bank with respect to such Transfer - the Transferee shall have the rights, powers, privileges and remedies of the Bank. The Bank shall thereafter, to the extent of such Transfer, be forever relieved and fully discharged from all liability or responsibility, if any, that it may have to any Person with respect thereto, except for claims, if any, arising prior to or upon such Transfer. The Bank shall retain all its rights and powers with respect to any Transferred Items to the extent that it has not made a Transfer thereof. Without limiting the foregoing, to the extent of any such Transfer with respect to which Borrower has provided its consent or such consent is not required, paragraph B (Indemnification) shall apply to any Taxes, Regulatory Costs, and Costs and Expenses of, or incurred by, any Transferee, and paragraphs C (Set-Off) and G(1) (Payment-Manner) shall apply to any Account of Borrower with any Transferee and if the required Borrower consent is not so obtained, then such Transferee shall be entitled to reimbursement or compensation under the foregoing paragraphs only to the extent such amounts would have been payable to Bank if the Transfer had not occurred. **(3) Disclosures.** The Bank is authorized to disclose to any prospective or actual Transferee any information that the Bank may have or acquire about Borrower and any information about any other Person submitted to the Bank by or on behalf of Borrower provided that such prospective or actual Transferee agrees to maintain the confidentiality of such information consistent with the terms of the Loan Document. **(4) Negotiability Defenses Waived.** If this Note is not a negotiable instrument, Borrower waives all defenses (except such defenses as may be asserted against a holder in due course of a negotiable instrument) which Borrower may have or acquire against any Transferee who takes this Note, or any complete or partial interest in it, for value, in good faith and without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any Person.

**J. No Oral Changes; No Waiver by the Bank; Partial Unenforceability:** This Note may not be changed orally. Neither a waiver by the Bank of any of its options, powers or rights in one or more instances, nor any delay on the part of the Bank in exercising any of them, nor any partial or single exercise thereof, shall constitute a waiver thereof in any other instance. Any provision of this Note which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or nonauthorization, without invalidating the remaining provisions of this Note in that or any other jurisdiction and without affecting the validity, enforceability or legality of such provision in any other jurisdiction.

**K. Disputes and Litigation: (1) Governing Law.** This Note and the rights and obligations of the Bank and Borrower hereunder shall be governed by the internal laws of the State of New York without giving effect to conflict of laws principles. **(2) Jurisdiction, Venue, and Service of Process.** Borrower and the Bank each submit to the nonexclusive jurisdiction of the federal and state courts in the State of New York in New York County with respect to any dispute arising hereunder or relating to any of the Liabilities. Service of process may be made on Borrower or the Bank by personal delivery at, or by mail addressed to, any address to which the Bank is authorized to address notices to Borrower. **(3) Waiver of Defenses, Setoffs, Counterclaims and Certain Damages.** Borrower waives the right to assert to the extent permitted by applicable law any defense (other than the defense of payment), setoff or counterclaim in any proceeding relating in any way to this Note or any transaction contemplated hereby. The Bank shall not have any liability for negligence, except solely to the extent required by law and not disclaimable, and except for its own gross negligence or willful misconduct. In any event, the Bank shall not have any liability for any special, consequential or punitive damages. **(4) Sovereign Immunity.** Borrower irrevocably waives, with respect to itself and its property, any sovereign immunity that it may have or hereafter acquire, including but not limited to immunity from the jurisdiction of any court, from any legal process, from attachment prior to judgment, from attachment in aid of execution, from execution or otherwise.

**L. OFAC and Patriot Act:** Borrower shall: Comply with all Anti-Terrorism Laws; immediately to notify the Bank if it obtains knowledge that it or any of its Affiliates has become or been listed as a Restricted Party or has been charged with or has engaged in any violation of any Anti-Terrorism Law; not to receive any funds from a Restricted Party and, in any case, to exclude any funds derived from any Restricted Party or from any person or entity involved in the violation of any Anti-Terrorism Law from being used to pay debt service or any other amounts owing under the Note; not to transfer or permit the transfer of any legal or beneficial ownership interest of any kind in Borrower to a Restricted Party or any person or entity involved in the violation of any Anti-Terrorism Law; not to acquire, directly or indirectly, ownership interest of any kind in any Restricted Party or any person or entity involved in the violation of any Anti-Terrorism Law, not to form any partnership or joint venture or conduct any business with any Restricted Party or any person or entity involved in the violation of any Anti-Terrorism Law, and not to act, directly or indirectly, as the agent or representative of any Restricted Party or any person or entity involved in the violation of any Anti-Terrorism Law; and to indemnify the Bank for any costs incurred by any of them as a result of any violation of an Anti-Terrorism Law by Borrower.

**M. Notice:** Any notice in connection with any of the Liabilities shall be in writing and may be delivered personally or by cable, telex, telecopy or other electronic means of communication, or by certified mail, return receipt requested, addressed (a) to Borrower or Parent at 475 Tenth Avenue, 4<sup>th</sup> Floor, New York, New York 10018 or to such other address that the Bank has received written notice from Borrower or Parent as being Borrower's or Parent's address, and (b) to the Bank at Bank Hapoalim B.M., 1177 Avenue of the Americas, New York, New York 10036, Attention: Legal Department. Any such notice shall be addressed to such other address (es) as may be designated in writing hereafter. All such notices shall be deemed given when delivered personally or electronically or when mailed, except notice of change of address, which shall be deemed to have been given when received.

**N. Definitions:** The following definitions apply in this Note: **(1) Acceleration:** any acceleration of payment or requirement of prepayment of any Debt, or any Debts becoming due and payable prior to stated maturity. **(2) Account:** (a) the balance of any account of Borrower with any Person, and/or (b) any property in the possession or custody of, or in transit to, any Person, whether for safekeeping, collection, pledge or otherwise, as to which Borrower has any right, power or interest - in each case whether existing now or hereafter, in any jurisdiction worldwide, and whether or not denominated in the same currency as any of the Liabilities. **(3) Applicable Percentage:** (a) three percent (3.00%) in the case of a prepayment on or prior to December 22, 2016, (b) two percent (2.00%) in the case of a prepayment on or after December 22, 2016 but on or before December 22, 2017, (c) one percent (1.00%) in the case of a prepayment on or after December 22, 2017 but on or before December 22, 2018 and (d) zero percent (0.00%) on or after December 22, 2018. **(4) Applicable Rate:** whichever of the Loan Rate or Increased Rate is the applicable interest rate at any time. **(5) Anti-Terrorism Law:** any U.S. State or Federal law relating to terrorism, money laundering or any related seizure, forfeiture or confiscation of assets, including: (a) the Executive Order No. 13224 of September 23, 2001 - Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism; (b) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the USA PATRIOT Act), Public Law 107-56; and (c) the Money Laundering Control Act of 1986, Public Law 99-570 **(6) Bank:** Bank Hapoalim B.M. **(6) Borrower:** the Person(s) executing this Note at paragraph 10 or any one or more of them. "Borrower" may refer to one or more Persons. **(7) Business Day:** any day on which both (a) banks are regularly open for business in New York City and (b) the Office is open for ordinary business. In the Bank's discretion, the Office may be closed on any Saturday, Sunday, legal holiday or other day on which it is lawfully permitted to close. **(8) Control:** the power, alone or in conjunction with others, directly or indirectly, through voting securities, by contract or otherwise, to direct or cause the direction of a Person's management and policies. **(9) Costs and Expenses:** any and all reasonable costs and expenses (including but not limited to reasonable attorneys' fees and disbursements) incurred in connection with the Loan Documents and/or the Liabilities, including but not limited to those for (a) any action taken, whether or not by litigation, to collect, or to protect rights or interests with respect to, or to preserve any collateral securing, any of the Liabilities, (b) compliance with any legal process or any order or directive of any Governmental Authority with respect to any Party, (c) any litigation or administrative proceeding relating to any Party, and/or (d) any amendment, modification, extension or waiver with respect to any of the Liabilities. **(10) Debt:** any Party's obligation of any sort (in whole or in part) for the payment of money to any Person, whether (a) absolute or contingent, (b) secured or unsecured, (c) joint, several or independent, (d) now or hereafter existing, or (e) due or to become due. **(11) Debtor Relief Action:** the commencement by any Party or (unless dismissed or terminated within 60 days) against any Party of any proceeding under any law of any jurisdiction (domestic or foreign) relating to bankruptcy, reorganization, insolvency, arrangement, composition, receivership, liquidation, dissolution, moratorium or other relief of financially distressed debtors, or the appointment of a receiver, trustee, committee, custodian, personal representative or similar official for Borrower or for any Material part of Borrower's property, or the making by any Party of an assignment for the benefit of creditors. **(12) Default:** any breach, default or event of default under, or any failure to comply with, any provision of any Loan Document after giving effect to any applicable notice, grace or cure period. **(13) Event of Default:** any event set forth in paragraph D. **(14) Executive Order:** Executive Order No. 13224 of September 23, 2001 - Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism; **(15) Governmental Authority:** any domestic or foreign, national or local, (a) government, (b) governmental, quasi-governmental or regulatory agency or authority, (c) court or (d) central bank or other monetary authority. **(16) Guarantor:** collectively, Xcel Brands, Inc., a Delaware corporation, JR Licensing and IM Brands. **(16A) IM Brands:** IM Brands, LLC, a Delaware limited liability company. **(16B) IM Brands Guaranty:** the guaranty executed by the Borrower in favor of the Bank pursuant to which the Borrower guarantees to the Bank the IM Brands Liabilities. **(16C) IM Brands Liabilities:** any and all of the Debt of IM Brands to, or held or to be held by, the Bank, including, without limitation the IM Brands Loan Documents. **(16D) IM Brands Loan Documents:** collectively, all documents executed and delivered in connection with the loans made by the Bank to IM Brands. **(17) Increased Rate:** the Loan Rate plus 2% per year. **(18) IP Security Agreement:** the Intellectual Property Security Agreement, dated as of the date hereof and as may be amended, restated, supplemented or otherwise modified from time to time, between the Borrower and the Bank. **(18A) JR Licensing:** JR Licensing, LLC, a Delaware limited liability company. **(18B) JR Licensing Guaranty:** the guaranty executed by the Borrower in favor of the Bank pursuant to which the Borrower guarantees to the Bank the JR Licensing Liabilities. **(18C) JR Licensing Liabilities:** any and all of the Debt of JR Licensing to, or held or to be held by, the Bank, including, without limitation the JR Licensing Loan Documents. **(18D) JR Licensing Loan Documents:** collectively, all documents executed and delivered in connection with the loans made by the Bank to JR Licensing. **(19) Law:** any treaty, law, regulation, rule, judgment, order, decree, guideline, interpretation or request (whether or not having the force of law) issued by any Governmental Authority. **(20) Letter Agreement:** the letter agreement, dated as of the date hereof and as may be amended, restated, supplemented or otherwise modified from time to time, between the Borrower and the Bank. **(21) Liabilities:** (a) any and all of the Debt evidenced by this Note, and any and all other Debt of Borrower to, or held or to be held by, the Bank under the Loan Documents, (b) any and all obligations of any other Party with respect to any of such Debt, (c) any and all Debt under the IM Brands Guaranty and (d) any and all Debt under the JR Licensing Guaranty. **(22) License:** shall have the meaning assigned to such term in the IP Security Agreement. **(23) Loan Documents:** means, collectively, the Letter Agreement, this Note, the Security Agreement and all documents executed and delivered in connection with the foregoing. **(24) Loan Rate:** the interest rate determined under paragraph 2. **(25) Master License Agreement:** that certain Master License Agreement dated as of December 22, 2014 by and between Borrower and The H Company IP, LLC. **(25A) Material:** material to the business or financial condition of any Party on a consolidated or consolidating basis. **(26) Material Royalty Default:** An Event of Default pursuant to paragraph D(7) hereof. **(27) Office:** the Bank's office at 1177 Avenue of the Americas, New York, New York 10036, or such other place within the United States as the Bank may specify by notice. **(28) Party:** (a) Borrower; (b) any maker, co-maker or endorser of any Loan Document evidencing-, or any guarantor, surety, accommodation party or indemnitor with respect to-, or any Person that provides any collateral as security for, or any Person that issues a subordination, comfort letter, standby letter of credit, repurchase agreement, put agreement, option, other agreement or other credit support with respect to, any of the Liabilities; and (c) if any Party is a partnership or joint venture, any general partner or joint venturer in such Party. **(29) Payment Date:** any Business Day on which any part of the principal or any installment of this Note becomes due and payable under paragraph 1 (and not on account of an Acceleration). **(30) Person:** any person, partnership, joint venture, company, corporation, unincorporated organization or association, trust, estate, Governmental Authority, or any other entity. **(31) Prepaid Principal:** any amount of principal or any installment of this Note which Borrower pays prior to the applicable Payment Date for such amount. **(32) Intentionally Omitted.** **(33) Prime Rate:** the Bank's New York Branches' stated Prime Rate as reflected in its books and records as such Prime Rate may change from time to time. The Bank's determination of its Prime Rate shall be conclusive and final. The Prime Rate is a reference rate and not necessarily the lowest interest rate charged by the Bank. **(34) QVC Agreement:** that certain License Agreement dated as of December 22, 2014 by among QVC, Inc., a Delaware corporation, Borrower and Xcel Brands, Inc., a Delaware corporation, as amended, supplemented or otherwise modified from time to time. **(35) Regulatory Costs:** any and all costs and expenses of complying with any Law adopted or taking effect after the date hereof, including but not limited to with respect to (a) any reserves or special deposits maintained for or with, or pledges to, or assessments, insurance premiums or special charges paid to, any Governmental Authority, or (b) any capital, capital equivalency ledger account, ratio of assets to liabilities, risk-based capital assessment or any other capital substitute, risk-based or otherwise. **(36) Restricted Party:** (a) any individual or entity: listed in the Annex to the Executive Order or is otherwise subject to the provisions of the Executive Order; (b) listed on the "Specially Designated Nationals and Blocked Persons" list maintained by the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury, as updated or amended from time to time, or any similar list issued by OFAC; or (c) whose property has been blocked, or is subject to seizure, forfeiture or confiscation, by any order relating to terrorism or money laundering issued by the President, Attorney General, Secretary of State, Secretary of Defense, Secretary of the Treasury or any other U.S. State or Federal governmental official or entity. **(37) Taxes:** any and all present and future taxes, levies, imposts, deductions, charges and withholdings in any jurisdiction worldwide, and all liabilities with respect thereto, which are imposed by a Governmental Authority with respect to this Note or to any amount payable under this Note, excluding taxes determined on the basis of the net income of a Person or of any of its offices. **(38) Transfer:** any negotiation, assignment, participation, conveyance, grant of a security interest, lease, delegation, or any other direct or indirect transfer of a

complete or partial, legal, beneficial, economic or other interest or obligation. **(39) Transferee:** any Person to whom a Transfer is made. **(40) Transferred Items:** items defined in paragraph I. **(41) Variable Prime Rate:** any Applicable Rate which is determined based upon the Prime Rate. Any such rate shall change automatically when and as the Prime Rate changes,

**RIDER TO PROMISSORY NOTE  
LOAN(S) DENOMINATED IN U.S. OR OTHER CURRENCY  
LIBOR-BASED OR PRIME RATE**

This Rider is referred to in paragraph 3 of, and constitutes a part of the Promissory Note of Borrower to the Bank dated as of December 22, 2014 in the amount of up to \$10,000,000.00 (as amended, modified, supplemented and restated from time to time, the "Note").

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Specific Terms

Libor Margin: plus 3.50% per year; Prime Margin: plus 0.50% per year

(b) Interest Period: 1, 2 or 3 months

(c) Minimum Draw Amount: \$  None

(d) Minimum Multiple Amount: \$  None

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signature page appears on the next page;  
Riders continue after the signature page]

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Borrower agrees to the above Specific Terms and to all of the Terms and Conditions set forth below.

H LICENSING, LLC

By: XCEL BRANDS, INC.  
Its: Manager

By: /s/ James Haran  
\_\_\_\_\_  
Name: James Haran  
Title: CFO

[Riders continue on the following page]

SIGNATURE PAGE TO  
RIDER TO PROMISSORY NOTE

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## Terms and Conditions

Certain capitalized terms are defined in paragraph 4.

1. Advances. Borrower may receive a Loan in any principal amount upon Borrower's request to the Bank and the Bank's agreement thereto, subject to all of the following conditions:

(a) Agreement of the Bank and Borrower. Subject to subparagraphs 1(b), 1(c) and 2(b), the Bank and Borrower shall have agreed, not later than the Determination Time, with respect to the Loan's (i) principal amount, (ii) LIBOR-Based Rate and (iii) Interest Period; provided, however, that if the Bank determines that by such Determination Time, Borrower has failed or declined to agree on the LIBOR-Based Rate and/or Interest Period with respect to such Outstanding Principal Amount, then interest on such Outstanding Principal Amount shall accrue at the LIBOR-Based Rate without the agreement of Borrower, and the Interest Period shall be of the same duration as the Interest Period just ended with respect to such Outstanding Principal Amount or, if there was no such prior Interest Period, one month.

(b) Applicable limitations. (i) The applicable Payment Date shall not be later than the Due Date; (ii) the total of the Outstanding Principal Amounts of all Loans shall not exceed the principal amount set forth in the Note; (iii) the principal amount of any single Loan request shall be not less than any Minimum Draw Amount set forth under Specific Terms; and (iv) the principal amount of any single Loan request shall be an integral multiple of any Minimum Multiple Amount set forth under Specific Terms.

(c) Borrower's request and agreement. Borrower's request for a Loan and Borrower's agreement to the terms thereof shall be communicated to the Bank in any form that is acceptable in each instance to the Bank in its sole discretion, which may include telephone, telex, fax, email or a writing executed by Borrower. Borrower shall have provided the Bank with documentation, satisfactory in form and substance to the Bank in its sole discretion, confirming the authority of the person(s) agreeing to such terms on behalf of Borrower.

2. Payment of Principal and Interest. Subject to the other provisions of the Note:

(a) Obligation, Time and Manner of Payment. Subject to the other provisions of the Note and this Rider, the Outstanding Principal Amount shall be due and payable at the applicable Payment Date. Unless specified otherwise in the Note or in a Rider thereto, every payment to be made by or on behalf of the Borrower under the Note shall be made in U.S. Dollars, and the designation of U.S. Dollars as the currency of payment is of the essence. Every payment or delivery under the Note by or on behalf of Borrower of any money denominated in any Currency shall be made at the Office and/or to such account or accounts as the Bank may designate from time to time by notice to Borrower, in immediately available and freely transferable funds in the Currency in which the applicable obligation is denominated and in Currency that is unrestricted, unblocked and free of exchange controls, without set off, counterclaim, withholding or deduction of any kind whatsoever. Except as otherwise provided herein, any payment due under the Note on a day that is not a Business Day shall be payable on the next succeeding Business Day.

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(b) Loan Rate. Interest on any Outstanding Principal Amount shall accrue, at the option of the Borrower (with written notice of such option being given to the Bank), at either (i) the Prime-Based Rate; or (ii) the LIBOR-Based Rate; provided, however, that if the Bank determines (i) that by the Determination Time (A) by reason of circumstances affecting the London Interbank Market generally, adequate and fair means do not exist for ascertaining an applicable LIBOR rate or it is impractical for the Bank to fund or continue to fund the Outstanding Principal Amount during the applicable Interest Period, or (B) quotes for funds in the relevant Currency in sufficient amounts comparable to the relevant Outstanding Principal Amount and for the duration of the applicable Interest Period would not be available to the Bank in the London Interbank Market, or (C) quotes for funds in the relevant Currency in the London Interbank Market will not accurately reflect the cost to the Bank of making a Loan or of funding the relevant Outstanding Principal Amount during the applicable Interest Period, or (ii) that at any time the making or funding of loans, or charging of interest at rates, based on LIBOR shall be unlawful or unenforceable for any reason, then as long as such circumstance(s) shall continue, interest on the relevant Outstanding Principal Amount shall accrue at the Alternate Rate.

(c) Payment and Calculation of Interest. Interest shall be payable (i) at each Payment Date or (whenever the Applicable Rate is a Variable Prime-Based Rate) monthly, (ii) at the Due Date and (iii) at any time that any Outstanding Principal Amount or part thereof is paid. Interest shall be calculated as set forth in the Note.

(d) Currency of Payment. All loans and repayments of principal, interest or any other costs and charges shall be made in U.S. dollars.

3. Bank's Conclusive Determinations and Schedule. The Bank's determination with respect to any matter hereunder shall be conclusive, final and binding on Borrower, absent manifest error. The Bank shall from time to time record the date and amount of each Loan, the Applicable Rate, each date on which any part of principal, interest or any other amount shall be due and payable, and the amount and date of each payment of principal, interest or any other amount, on a schedule, which in the Bank's discretion may be computer-generated and/or may be taken from the Bank's general books and records, and which schedule is incorporated in, and is a part of, the Note and this Rider (the "Schedule"). The Schedule shall be conclusive, final and binding upon Borrower, absent manifest error, provided, however, that the failure of the Bank to record any of the foregoing shall not limit or otherwise affect the obligation of Borrower to pay all amounts owed to the Bank under the Note. Without limiting the foregoing, Borrower acknowledges that the Interest Period and the Applicable Rate with respect to any Outstanding Principal Amount are subject to the Bank's consent ordinarily negotiated between Borrower and the Bank by telephone, and Borrower agrees that in the event of any dispute as to any of the terms of any Loan, the determination of the Bank and its respective entry with respect thereto on its books and records and/or on the Schedule shall be conclusive, final and binding on Borrower, absent manifest error.

4. Definitions. Each capitalized term not defined herein shall have the meaning ascribed thereto in the Note. The following definitions apply in this Rider and in the Note, and shall prevail over any different definitions in the Note.

- (a) Alternate Rate: an annual Variable Prime-Based Rate equal to the Prime Rate plus the Prime Margin.
- (b) Applicable Rate: whichever of the Loan Rate or Increased Rate is the applicable interest rate at any time with respect to any Outstanding Principal Amount.
- (c) Currency: money denominated in the lawful currency of any country (including but not limited to the lawful currency of the United States) or any unit of account or single or unified currency of the European Community.
- (d) Determination Time: 12:00 noon (or any later time determined by the Bank in its sole discretion), New York City time, of a Working Day that is two Working Days prior to the date of the Loan.
- (e) Due Date: the date set forth in paragraph 1 of the Note or, if the Bank has extended such date pursuant to paragraph G(5) of the Note or by an agreement with Borrower, such extended date.
- (f) Interest Period: any term of 1, 2 or 3 months, or such other term as may be acceptable to the Bank in its discretion, as set forth above under Specific Terms or if not so set forth, as selected or agreed to by the Bank in its discretion. A term shall not be considered an "Interest Period" during any period that the Applicable Rate is a Variable Prime-Based Rate. Each Interest Period shall commence immediately at the end of the preceding Interest Period, if any. If there had been no immediately preceding Interest Period with respect to any Outstanding Principal Amount, the Interest Period shall commence on the first Business Day on which (i) such amount shall be outstanding and (ii) the Applicable Rate is not a Variable Prime-Based Rate. If any Interest Period would otherwise come to an end on a day that is not a Working Day, its termination shall be postponed to the next day that is a Working Day unless it would thereby terminate in the next calendar month. In such case, such Interest Period shall terminate on the immediately preceding Working Day.
- (g) LIBOR for each Interest Period: the rate per annum (carried out to the fifth decimal) equal to the rate determined by the Bank to be the offered rate on a page or service (whether provided by Bridge Telerate, Reuters, Bloomberg or any other service) that displays an average ICE Benchmark Administration Ltd.(or any other Person which takes over the administration of such rate) rate for deposits in U.S. dollars (for delivery on the first Working Day of such Interest Period) with a term equivalent to such Interest Period, determined as of approximately 11:00 a.m. (London time) two (2) Working Days prior to the first Working Day of such Interest Period. At the Borrower's request, the Bank will provide the Borrower with identifying information with respect to the page or service so used by the Bank. If the Bank determines that the rate referenced in the first sentence of this paragraph is not available, then "LIBOR" will mean, as applicable to any Interest Period, the rate determined (i) on the basis of the offered rates for deposits in U.S. dollars with a term equivalent to such Interest Period, which are offered by four major banks selected by the Bank in the London interbank market at approximately 11:00 a.m. London time, on the Working Day that is two (2) Working Days prior to the first Working Day of such Interest Period; or (ii) by applying such other recognized source of London Eurocurrency deposit rates as the Bank may determine from time to time. If the Bank determines in its sole discretion that LIBOR cannot be determined or does not represent its effective cost of maintaining a Loan, then interest shall accrue at the effective cost to the Bank to maintain the Loan (as determined by the Bank in its sole discretion).

- (h) LIBOR-Based Rate: an annual rate equal to LIBOR plus the Libor Margin, as determined by the Bank.
- (i) Libor Margin: as set forth under Specific Terms.
- (j) Loan: (i) any loan advanced by the Bank to Borrower under the Note, (ii) any rollover by the Bank of any such loan that is otherwise due and payable, or (iii) any conversion of the Applicable Rate for any Outstanding Principal Amount from a rate that is a Variable Prime-Based Rate to one that is not, or vice versa.
- (k) Loan Rate: the interest rate determined under subparagraph 1(a) and/or 2(b).
- (l) Note: the note of which this Rider is a part (including any and all riders and amendments to the Note).
- (m) Outstanding Principal Amount: the outstanding principal amount of each Loan.
- (n) Payment Date: the last Business Day of the applicable Interest Period or, if the applicable Loan Rate is a Variable Prime-Based Rate, the Due Date.
- (o) Prime-Based Rate: an annual rate equal to the Prime Rate plus the Prime Margin, as determined by the Bank.
- (p) Prime Margin: as set forth under Specific Terms.
- (q) Prime Rate: that rate of interest announce by the Bank, from time to time, as its Prime Rate. The Prime Rate is not necessarily the lowest rate of interest charged by the Bank to any particular class of customers.
- (r) Working Day: a Business Day on which banks are regularly open for business in London.

AMENDMENT NO. 1  
TO  
PROMISSORY NOTE, LINE LETTER AGREEMENT AND SECURITY AGREEMENTS

THIS AMENDMENT NO. 1 TO PROMISSORY NOTE, LINE LETTER AGREEMENT AND SECURITY AGREEMENTS (this "Amendment") is entered into as of December 22, 2014, by and among JR LICENSING, LLC, a Delaware limited liability company ("Borrower"), XCEL BRANDS, INC., a Delaware corporation ("Guarantor") and BANK HAPOALIM B.M. ("Bank").

BACKGROUND

Borrower, Guarantor and Bank are parties to a Line Letter Agreement dated as of April 1, 2014 (as amended, restated, supplemented or otherwise modified from time to time, the "Letter Agreement") pursuant to which Bank made a term loan to Borrower.

On April 1, 2014 Borrower executed a Promissory Note in the original principal amount of \$9,000,000 in favor of Bank (as amended, modified, supplemented and restated from time to time, the "Note") to evidence such term loan.

Guarantor has guaranteed the payment and performance of Borrower's obligations to Bank under the Note and the Letter Agreement pursuant to a Guaranty dated as of April 1, 2014 (as amended, modified, supplement and restated from time to time, the "Guaranty").

To secure Borrower's and Guarantor's obligations to Bank, Guarantor pledged to Bank the membership interests held by Guarantor in Borrower pursuant to a Membership Pledge Agreement dated as of April 1, 2014 (as amended, modified, supplemented and restated from time to time, the "Pledge Agreement").

Guarantor has requested that Bank provide financial accommodations to H Licensing, LLC, a Delaware limited liability company ("H Licensing"), a wholly owned subsidiary of Guarantor. In order to induce Bank to provide such financial accommodations, Guarantor and Borrower agree to guarantee H Licensing's obligations to Bank and agree to amend the Loan Documents on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the financial accommodations to be provided to H Licensing by Bank, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Definitions. All capitalized terms not otherwise defined herein shall have the meanings given to them in the Letter Agreement and the Note, as applicable.
  2. Amendment to Letter Agreement. The Letter Agreement is hereby amended as follows:
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(a) Section 3(a)(ii) is amended in its entirety to provide as follows:

“(ii) Quarterly Financial Statements. As soon as available and in any event within sixty (60) days after the end of each of the first three quarterly periods of each fiscal year of Parent, a copy of internally prepared financial statement of Parent and its Subsidiaries on a consolidated basis together with consolidating balance sheets of Parent and each of its Subsidiaries as of the end of such quarter and, the related statements of income and of cash flows for such quarter and the portion of the fiscal year through the end of such quarter together with a summary of Parent Allocable Expenses consistent with such expenses reported in Parent’s filings with the Securities and Exchange Commission, setting forth commencing with the fiscal quarter ending June 30, 2015 in each case in comparative form the figures as of the end of and for the corresponding period, in the previous year.”

(b) Sections 4(a), (b), (c) and (d) are amended in its entirety to provide as follows:

“(a) Minimum Net Worth. Net Worth of Parent and its Subsidiaries on a consolidated basis shall not be less than \$40,000,000 at the end of any fiscal quarter.

(b) Minimum Liquid Assets. Liquid Assets of Parent and its Subsidiaries on a consolidated basis shall be at least \$4,500,000 at all times.

(c) Fixed Charge Coverage Ratio. The Fixed Charge Ratio of Parent and its Subsidiaries on a consolidated basis at the end of each fiscal quarter for the twelve fiscal month period ending on such fiscal quarter shall not be less than 1.20 to 1.00.

(d) Capital Expenditures. Capital Expenditures of Parent and its Subsidiaries on a consolidated basis in any fiscal year shall not exceed \$1,300,000 of which not more than \$500,000 shall be Capital Expenditures for the retail division for the fiscal year ending on December 31, 2015 and \$500,000 for the fiscal year ending on December 31, 2016 and each fiscal year end thereafter, provided that Bank may, in its reasonable discretion, permit Capital Expenditures for the retail division based upon profitable operations of the retail division.”

(c) Section 4(e)(ii) is amended to provide as follows:

“(ii) Minimum EBITDA of Parent. EBITDA of Parent and its subsidiaries on a consolidated basis shall not be less than \$5,500,000 for the fiscal year ending December 31, 2014, not less than \$7,500,000 for the fiscal year ending December 31, 2015, not less than \$15,500,000 for the fiscal year ending on December 31, 2016 and not less than \$17,000,000 for fiscal year ending December 31, 2017 and each fiscal year end thereafter.”

(d) Section 4(h) is amended in its entirety to provide as follows:

“(h) Consents; Taxes. Borrower and Parent shall (i) obtain or cause to be obtained, maintain in full force and effect and comply in all material respects with the conditions and restrictions (if any) imposed in, or in connection with, every material consent, authorization, material license or approval of governmental or public bodies or authorities or courts and do, or cause to be done, all other acts and things, which may from time to time be necessary or desirable under applicable law for the continued due performance of all its obligations under the Loan Documents; (ii) comply in all material respects with all applicable laws, rules, regulations and orders of any governmental agency having jurisdiction over Borrower or Parent; (iii) pay to the appropriate governmental authorities when due, all Federal, state, local and other Taxes required to be paid or deposited by Borrower or Parent, except that Borrower or Parent may defer any such payment while Borrower or Parent is diligently contesting the respective Taxes in good faith by appropriate proceedings, but any such deferment shall not extend beyond the time when such unpaid Taxes would become a lien upon any of Borrower’s or Parent’s assets. Borrower will furnish the Bank promptly at the Bank’s request with evidence satisfactory to the Bank establishing payment of such Taxes, assessments and contributions. In the Bank’s discretion, the Bank shall have the right (but shall not be obligated) to pay any such Tax, assessment or contribution (including any interest or penalties thereon) for Borrower’s or Parent’s benefit in the event Borrower or Parent shall fail timely to do so and provided the non-payment of such Tax will result in a lien or security interest encumbering the assets which will be prior to the lien and security interest held by the Bank; any such payment shall be deemed an advance hereunder bearing interest at the Loan Rate (as such term is defined in the Promissory Note) and payable in the manner specified therein. Borrower shall, promptly on demand, reimburse the Bank for any such payment and any costs and expenses (including reasonable attorneys’ fees) which the Bank may incur in connection therewith.”

(e) 4(k) is amended in its entirety to provide as follows:

“(k) Indebtedness. Neither Borrower nor Guarantor shall incur, create, assume, become or be liable in any manner with respect to, or permit to exist, any indebtedness for borrowed money, reimbursement or payment obligations or any obligation evidenced by notes, bonds, debentures or similar instruments other than (a) pursuant to the Loan Documents; (b) indebtedness to Guarantor or any of its Subsidiaries; provided that any such indebtedness to Guarantor or any of its Subsidiaries shall be subordinated to the Liabilities on terms and conditions reasonably satisfactory to the Bank; (c) indebtedness (including, without limitation, capital lease obligations) secured by liens permitted by clause (vii) of Section 4(h) in an aggregate principal amount not to exceed \$750,000 at any one time outstanding; (d) indebtedness outstanding on the date hereof and listed on Schedule II hereto and any refinancings, refundings, renewals or extensions thereof (without any increase in the principal amount thereof and any shortening of the maturity of any principal amount thereof) except that Borrower and Guarantor may amend the indebtedness listed on Schedule II to (i) modify the manner, calculations or mechanics by which amounts thereunder are payable in capital stock of Guarantor and (ii) extend the maturity of all or any portion of the indebtedness evidenced thereby; (e) unsecured indebtedness not to exceed \$500,000 in the aggregate at any time outstanding; (f) indebtedness under Rate Contracts entered in the ordinary course of business in order to mitigate interest rate, currency or similar risks and not for speculative purposes with respect to the Term Loan; (g) guarantee obligations of Guarantor with respect to the obligations of any Subsidiary of Guarantor; (h) guarantee obligations of Borrower with respect to the obligations of IM Brands and H Licensing, LLC to the Bank.”

(f) Section 4(l) is amended in its entirety to provide as follows:

“(l) No Merger. Neither Borrower nor Parent shall merge or consolidate with any other Person, acquire all or substantially all of the assets or Stock of any Person except (a) any Subsidiary of Borrower may be merged or consolidated with or into Borrower provided Borrower shall be the continuing or surviving entity; (b) any Subsidiary of Borrower may dispose of any or all of its assets (upon voluntary liquidation or otherwise) to Borrower only; (c) any Subsidiary of Parent (other than Borrower, H Licensing and IM Brands) may be merged or consolidated with or into Parent provided Parent shall be the continuing or surviving entity; (d) any Subsidiary of Parent (other than Borrower, H Licensing and IM Brands) may dispose of any or all of its assets (upon voluntary liquidation or otherwise) to Parent; (e) as otherwise expressly permitted pursuant to the terms of the Promissory Note; and (f) Parent may acquire the assets or stock of any Person provided that such acquisition is not financed in whole or in part from any distributions, loans or other assets of Borrower, any Subsidiary of Borrower, H Licensing or IM Brands.”

(g) Section 4(p) is amended in its entirety to provide as follows:

“(p) Cash Flow Recapture. If for any fiscal year commencing with the fiscal year ending on December 31, 2014, there shall be Excess Cash Flow for such fiscal year, the Borrower shall pay to Bank an amount equal to fifty percent (50%) of such Excess Cash Flow (the “**Cash Flow Recapture Requirement**”), to be applied by Bank to the principal amount of the Term Loan in the reverse order of maturity. The Cash Flow Recapture Requirement for any such fiscal year shall be received by the Bank no later than the date of delivery of the financial statements for such fiscal year required pursuant to Section 3(a)(i).”

- (h) The defined term “**Excess Cash Flow**” in Section 5 is amended in its entirety to provide as follows:

“**Excess Cash Flow**” shall mean (without duplication), for any fiscal period, Cash Flow from Operations for such period less (a) Capital Expenditures not made through the incurrence of indebtedness less (b) all cash interest and principal (including indebtedness owed to the Bank) paid or payable during such period less (c) all Taxes paid or payable during such period less (d) all Tax Distributions made during such period.

- (i) The defined term “**Fixed Charges**” in Section 5 is amended in its entirety to provide as follows:

“**Fixed Charges**” shall mean for any period, as respects any Person, the sum of (a) the cash interest expense of such Person for such period, (b) the principal amount of total debt of such Person having a scheduled due date during such period, (c) all Tax Distributions and (d) all other cash distributions or dividends made by such Person.

3. Amendment to Note. The Note is hereby amended as follows:

- (a) The defined term “**Liabilities**” in Section N of the Terms and Conditions is amended in its entirety to provide as follows:

“**Liabilities**” (a) any and all of the Debt evidenced by this Note, and any and all other Debt of Borrower to, or held or to be held by, the Bank under the Loan Documents, (b) any and all obligations of any other Party with respect to any of such Debt and (c) any and all Debt under the H Licensing Guaranty.

- (b) The following defined terms are inserted in the appropriate alphabetical order in Terms and Conditions Section N

**H Licensing:** H Licensing, LLC, a Delaware limited liability company. **H Licensing Guaranty:** the guaranty executed by the Borrower in favor of the Bank pursuant to which the Borrower guarantees to the Bank the H Licensing Liabilities. **H Licensing Liabilities:** any and all of the Debt of H Licensing to, or held or to be held by, the Bank under the H Licensing Loan Documents. **H Licensing Loan Documents:** collectively, all documents executed and delivered in connection with the loans made by the Bank to H Licensing.

- (c) Section D is amended by inserting the following additional Event of Default:



“H Licensing Default. The occurrence of a default or event of default under the H Licensing Loan Documents.”

4. Amendment to Security Agreements. Borrower hereby confirms that the term “**Obligations**” as used in the Security Agreement, includes, without limitation, the obligations now existing or hereinafter arising under or in respect of the H Licensing Guaranty and reaffirms and pledges, hypothecates, assigns, transfers and sets over to Bank and grants Bank a continuing security interest in all the Collateral, now owned or at any time hereinafter acquired by Borrower or in which Borrower now or has or at any time in the future may acquire any right, title or interest.

5. Amendment to IP Security Agreement. Borrower hereby confirms that the term “**Secured Obligations**” as used in the IP Security Agreement, includes, without limitation, the obligations now existing or hereinafter arising under or in respect of the H Licensing Guaranty and reaffirms and pledges, hypothecates, assigns, transfers and sets over to Bank and grants Bank a continuing security interest in all the Collateral, now owned or at any time hereinafter acquired by Borrower or in which Borrower now or has or at any time in the future may acquire any right, title or interest.

6. Amendment to Pledge Agreement. Borrower hereby confirms that the term “**Secured Obligations**” as used in the Pledge Agreement, includes, without limitation, the obligations now existing or hereinafter arising under or in respect of the H Licensing Guaranty and reaffirms and pledges, hypothecates, assigns, transfers and sets over to Bank and grants Bank a continuing security interest in all the Collateral, now owned or at any time hereinafter acquired by Borrower or in which Borrower now or has or at any time in the future may acquire any right, title or interest.

7. Conditions of Effectiveness. This Amendment shall become effective upon a Lender’s receipt of this Amendment executed by Borrower and Guarantor in form and substance satisfactory to Bank.

8. Representations and Warranties. Each of Borrower and Guarantor hereby represents and warrants as follows:

(a) This Amendment and the Loan Documents, as amended hereby, constitute legal, valid and binding obligations of Borrower and Guarantor, to the extent a party thereto and are enforceable against Borrower and Guarantor in accordance with their respective terms, except to the extent that such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors’ rights generally or limiting the right of specific performance.

(b) Upon the effectiveness of this Amendment, each of Borrower and Guarantor hereby reaffirms all covenants, representations and warranties made in the Loan Documents to the extent the same are not amended hereby and agree that all such covenants, representations and warranties shall be deemed to have been remade as of the effective date of this Amendment.

- (c) No Event of Default has occurred and is continuing or would exist after giving effect to this Amendment.
- (d) Neither Borrower nor Guarantor has any defense, counterclaim or offset with respect to the Loan Documents.

9. Effect on the Loan Documents.

(a) Upon the effectiveness of this Amendment, each reference to a Loan Document shall mean and be a reference to such Loan Document as amended hereby.

(b) Except as specifically amended herein, the Loan Documents, shall remain in full force and effect, and are hereby ratified and confirmed.

(c) The execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of Lender, nor constitute a waiver of any provision of any Loan Document.

10. Governing Law. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns and shall be governed by and construed in accordance with the laws of the State of New York.

11. Headings. Section headings in this Amendment are included herein for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

12. Counterparts; Electronic Transmission. This Amendment may be executed by the parties hereto in one or more counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same agreement. Any signature delivered by a party by facsimile transmission shall be deemed to be an original signature hereto.

IN WITNESS WHEREOF, this Amendment has been duly executed as of the day and year first written above.

JR LICENSING, LLC

By: Xcel Brands, Inc., its Manager

By: /s/ James Haran

Name: James Haran

Title: CFO

XCEL BRANDS, INC.

By: /s/ Robert D'Loren

Name: Robert D'Loren

Title: CEO

BANK HAPOALIM B.M.

By: Authorized Signature

Name:

Title:

By: Authorized Signature

Name:

Title:

SIGNATURE PAGE TO  
AMENDMENT NO. 1

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AMENDMENT NO. 2  
TO  
PROMISSORY NOTE, LINE LETTER AGREEMENT AND SECURITY AGREEMENTS

THIS AMENDMENT NO. 2 TO PROMISSORY NOTE, LINE LETTER AGREEMENT AND SECURITY AGREEMENTS (this "Amendment") is entered into as of December 22, 2014, by and among IM BRANDS, LLC, a Delaware limited liability company ("Borrower"), XCEL BRANDS, INC., a Delaware corporation ("Guarantor") and BANK HAPOALIM B.M. ("Bank").

BACKGROUND

Borrower, Guarantor and Bank are parties to a Line Letter Agreement dated as of July 31, 2013 (as amended by that certain Amendment No. 1, dated as of April 1, 2014 and as may be further amended, restated, supplemented or otherwise modified from time to time, the "Letter Agreement") pursuant to which Bank made a term loan to Borrower.

On July 31, 2013 Borrower executed a Promissory Note in the original principal amount of \$13,000,000 in favor of Bank (as amended, modified, supplemented and restated from time to time, the "Note") to evidence such term loan.

Guarantor has guaranteed the payment and performance of Borrower's obligations to Bank under the Note and the Letter Agreement pursuant to a Guaranty dated as of July 31, 2013 (as amended, modified, supplement and restated from time to time, the "Guaranty").

To secure Borrower's and Guarantor's obligations to Bank, Guarantor pledged to Bank the membership interests held by Guarantor in Borrower pursuant to a Membership Pledge Agreement dated as of July 31, 2013 (as amended, modified, supplemented and restated from time to time, the "Pledge Agreement").

Guarantor has requested that Bank provide financial accommodations to H Licensing, LLC, a Delaware limited liability company ("H Licensing"), a wholly owned subsidiary of Guarantor. In order to induce Bank to provide such financial accommodations, Guarantor and Borrower agree to guarantee H Licensing's obligations to Bank and agree to amend the Loan Documents on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the financial accommodations to be provided to H Licensing by Bank, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Definitions. All capitalized terms not otherwise defined herein shall have the meanings given to them in the Letter Agreement and the Note, as applicable.
  2. Amendment to Letter Agreement. The Letter Agreement is hereby amended as follows:
    - (a) Section 3(a)(ii) is amended in its entirety to provide as follows:
-

- “(ii) Quarterly Financial Statements. As soon as available and in any event within sixty (60) days after the end of each of the first three quarterly periods of each fiscal year of Guarantor, a copy of internally prepared financial statement of Guarantor and its Subsidiaries on a consolidated basis together with consolidating balance sheets of Guarantor and each of its Subsidiaries as of the end of such quarter and, the related statements of income and of cash flows for such quarter and the portion of the fiscal year through the end of such quarter together with a summary of Guarantor Allocable Expenses consistent with such expenses reported in Guarantor’s filings with the Securities and Exchange Commission, setting forth commencing with the fiscal quarter ending June 30, 2015 in each case in comparative form the figures as of the end of and for the corresponding period, in the previous year.”
- (b) Sections 4(a), (b), (c) and (d) are amended in its entirety to provide as follows:
- “(a) Minimum Net Worth. Net Worth of Guarantor and its Subsidiaries on a consolidated basis shall not be less than \$40,000,000 at the end of any fiscal quarter.
- (b) Minimum Liquid Assets. Liquid Assets of Guarantor and its Subsidiaries on a consolidated basis shall be at least \$4,500,000 at all times.
- (c) Fixed Charge Coverage Ratio. The Fixed Charge Ratio of Guarantor and its Subsidiaries on a consolidated basis at the end of each fiscal quarter for the twelve fiscal month period ending on such fiscal quarter shall not be less than 1.20 to 1.00.
- (d) Capital Expenditures. Capital Expenditures of Guarantor and its Subsidiaries on a consolidated basis in any fiscal year shall not exceed \$1,300,000 of which not more than \$500,000 shall be Capital Expenditures for the retail division for the fiscal year ending on December 31, 2015 and \$500,000 for the fiscal year ending on December 31, 2016 and each fiscal year end thereafter, provided that Bank may, in its reasonable discretion, permit Capital Expenditures for the retail division based upon profitable operations of the retail division.
- (c) Section 4(e) (ii) is amended to provide as follows:
- “(ii) Minimum EBITDA of Guarantor. EBITDA of Guarantor and its subsidiaries on a consolidated basis shall not be less than \$5,500,000 for the fiscal year ending December 31, 2014, not less than \$7,500,000 for the fiscal year ending December 31, 2015, not less than \$15,500,000 for the fiscal year ending on December 31, 2016 and not less than \$17,000,000 for fiscal year ending December 31, 2017 and each fiscal year end thereafter.”

(d) Section 4(h) is amended in its entirety to provide as follows:

“(h) Consents; Taxes. Borrower and Guarantor shall (i) obtain or cause to be obtained, maintain in full force and effect and comply in all material respects with the conditions and restrictions (if any) imposed in, or in connection with, every material consent, authorization, material license or approval of governmental or public bodies or authorities or courts and do, or cause to be done, all other acts and things, which may from time to time be necessary or desirable under applicable law for the continued due performance of all its obligations under the Loan Documents; (ii) comply in all material respects with all applicable laws, rules, regulations and orders of any governmental agency having jurisdiction over Borrower or Guarantor; (iii) pay to the appropriate governmental authorities when due, all Federal, state, local and other Taxes required to be paid or deposited by Borrower or Guarantor, except that Borrower or Guarantor may defer any such payment while Borrower or Guarantor is diligently contesting the respective Taxes in good faith by appropriate proceedings, but any such deferment shall not extend beyond the time when such unpaid Taxes would become a lien upon any of Borrower’s or Guarantor’s assets. Borrower will furnish the Bank promptly at the Bank’s request with evidence satisfactory to the Bank establishing payment of such Taxes, assessments and contributions. In the Bank’s discretion, the Bank shall have the right (but shall not be obligated) to pay any such Tax, assessment or contribution (including any interest or penalties thereon) for Borrower’s or Guarantor’s benefit in the event Borrower or Guarantor shall fail timely to do so and provided the non-payment of such Tax will result in a lien or security interest encumbering the assets which will be prior to the lien and security interest held by the Bank; any such payment shall be deemed an advance hereunder bearing interest at the Loan Rate (as such term is defined in the Promissory Note) and payable in the manner specified therein. Borrower shall, promptly on demand, reimburse the Bank for any such payment and any costs and expenses (including reasonable attorneys’ fees) which the Bank may incur in connection therewith.”

(e) Section 4(i) is amended in its entirety to provide as follows:

“(i) Indebtedness. Neither Borrower nor Guarantor shall incur, create, assume, become or be liable in any manner with respect to, or permit to exist, any indebtedness for borrowed money, reimbursement or payment obligations or any obligation evidenced by notes, bonds, debentures or similar instruments other than (a) pursuant to the Loan Documents; (b) indebtedness to Guarantor or any of its Subsidiaries; provided that any such indebtedness to Guarantor or any of its Subsidiaries shall be subordinated to the Liabilities on terms and conditions reasonably satisfactory to the Bank; (c) indebtedness (including, without limitation, capital lease obligations) secured by liens permitted by clause (vii) of Section 4(h) in an aggregate principal amount not to exceed \$750,000 at any one time outstanding; (d) indebtedness outstanding on the date hereof and listed on Schedule II hereto and any refinancings, refundings, renewals or extensions thereof (without any increase in the principal amount thereof and any shortening of the maturity of any principal amount thereof) except that Borrower and Guarantor may amend the indebtedness listed on Schedule II to (i) modify the manner, calculations or mechanics by which amounts thereunder are payable in capital stock of Guarantor and (ii) extend the maturity of all or any portion of the indebtedness evidenced thereby; (e) guarantee obligations with respect to the obligations of Guarantor under the Agreement of Lease with Adler Holding III, LLC; (f) unsecured indebtedness not to exceed \$500,000 in the aggregate at any time outstanding; (g) indebtedness under Rate Contracts entered in the ordinary course of business in order to mitigate interest rate, currency or similar risks and not for speculative purposes with respect to the Term Loan; (h) guarantee obligations of Guarantor with respect to the obligations of any Subsidiary of Guarantor; (i) guarantee obligations of Borrower with respect to the obligations of H Licensing, LLC to the Bank.”

(f) Section 4(l) is amended in its entirety to provide as follows:

“(l) No Merger. Neither Borrower nor Guarantor shall merge or consolidate with any other Person, acquire all or substantially all of the assets or Stock of any Person except (a) any Subsidiary of Borrower may be merged or consolidated with or into Borrower provided Borrower shall be the continuing or surviving entity; (b) any Subsidiary of Borrower may dispose of any or all of its assets (upon voluntary liquidation or otherwise) to Borrower only; (c) any Subsidiary of Guarantor (other than Borrower, JR Licensing and H Licensing) may be merged or consolidated with or into Guarantor provided Guarantor shall be the continuing or surviving entity; (d) any Subsidiary of Guarantor (other than Borrower, JR Licensing and H Licensing) may dispose of any or all of its assets (upon voluntary liquidation or otherwise) to Guarantor; (e) as otherwise expressly permitted pursuant to the terms of the Promissory Note; and (f) Guarantor may acquire the assets or stock of any Person provided that such acquisition is not financed in whole or in part from any distributions, loans or other assets of Borrower, any Subsidiary of Borrower, JR Licensing or H Licensing.”

(g) Section 4(n) is amended in its entirety to provide as follows:

“(n) Cash Flow Recapture. If for any fiscal year commencing with the fiscal year ending on December 31, 2014, there shall be Excess Cash Flow for such fiscal year, the Borrower shall pay to Bank an amount equal to the Applicable Recapture Percentage of such Excess Cash Flow (the “**Cash Flow Recapture Requirement**”), to be applied by Bank to the principal amount of the Term Loan in the reverse order of maturity. The Cash Flow Recapture Requirement for any such fiscal year shall be received by the Bank no later than the date of delivery of the financial statements for such fiscal year required pursuant to Section 3(a)(i). As used herein, the term “**Applicable Recapture Percentage**” shall mean (i) until such time as payments received by Bank as respects the principal amount of the Term Loan and the principal amount of the term loan made to JR Licensing by the Bank equals \$1,000,000 in the aggregate (other than a result of scheduled amortization payments), fifth percent (50%) and (ii) at all times thereafter, twenty percent (20%).”

(h) The defined term “**Excess Cash Flow**” in Section 5 is amended in its entirety to provide as follows:

“**Excess Cash Flow**” shall mean (without duplication), for any fiscal period, Cash Flow from Operations for such period less (a) Capital Expenditures not made through the incurrence of indebtedness less (b) all cash interest and principal (including indebtedness owed to the Bank) paid or payable during such period less (c) all Taxes paid or payable during such period less (d) all Tax Distributions made during such period.”

(i) The defined term “**Fixed Charges**” in Section 5 is amended in its entirety to provide as follows:

“**Fixed Charges**” shall mean for any period, as respects any Person, the sum of (a) the cash interest expense of such Person for such period, (b) the principal amount of total debt of such Person having a scheduled due date during such period, (c) all Tax Distributions and (d) all other cash distributions or dividends made by such Person.”

3. Amendment to Note. The Note is hereby amended as follows:

(a) The defined term “**Liabilities**” in Section N of the Terms and Conditions is amended in its entirety to provide as follows:

“**Liabilities**” (a) any and all of the Debt evidenced by this Note, and any and all other Debt of Borrower to, or held or to be held by, the Bank under the Loan Documents, (b) any and all obligations of any other Party with respect to any of such Debt and (c) any and all Debt under the H Licensing Guaranty.

(b) The following defined terms are inserted in the appropriate alphabetical order in Terms and Conditions Section N



**H Licensing:** H Licensing, LLC, a Delaware limited liability company. **H Licensing Guaranty:** the guaranty executed by the Borrower in favor of the Bank pursuant to which the Borrower guarantees to the Bank the H Licensing Liabilities. **H Licensing Liabilities:** any and all of the Debt of H Licensing to, or held or to be held by, the Bank under the H Licensing Loan Documents. **H Licensing Loan Documents:** collectively, all documents executed and delivered in connection with the loans made by the Bank to H Licensing.

- (c) Section D is amended by inserting the following additional Event of Default.

“H Licensing Default. The occurrence of a default or event of default under the H Licensing Loan Documents.”

4. Amendment to Security Agreements. Borrower hereby confirms that the term “**Obligations**” as used in the Security Agreement, includes, without limitation, the obligations now existing or hereinafter arising under or in respect of the H Licensing Guaranty and reaffirms and pledges, hypothecates, assigns, transfers and sets over to Bank and grants Bank a continuing security interest in all the Collateral, now owned or at any time hereinafter acquired by Borrower or in which Borrower now or has or at any time in the future may acquire any right, title or interest.

5. Amendment to IP Security Agreement. Borrower hereby confirms that the term “**Secured Obligations**” as used in the IP Security Agreement, includes, without limitation, the obligations now existing or hereinafter arising under or in respect of the H Licensing Guaranty and reaffirms and pledges, hypothecates, assigns, transfers and sets over to Bank and grants Bank a continuing security interest in all the Collateral, now owned or at any time hereinafter acquired by Borrower or in which Borrower now or has or at any time in the future may acquire any right, title or interest.

6. Amendment to Pledge Agreement. Borrower hereby confirms that the term “**Secured Obligations**” as used in the Pledge Agreement, includes, without limitation, the obligations now existing or hereinafter arising under or in respect of the H Licensing Guaranty and reaffirms and pledges, hypothecates, assigns, transfers and sets over to Bank and grants Bank a continuing security interest in all the Collateral, now owned or at any time hereinafter acquired by Borrower or in which Borrower now or has or at any time in the future may acquire any right, title or interest.

7. Conditions of Effectiveness. This Amendment shall become effective upon a Lender’s receipt of this Amendment executed by Borrower and Guarantor in form and substance satisfactory to Bank.

8. Representations and Warranties. Each of Borrower and Guarantor hereby represents and warrants as follows:

(a) This Amendment and the Loan Documents, as amended hereby, constitute legal, valid and binding obligations of Borrower and Guarantor, to the extent a party thereto and are enforceable against Borrower and Guarantor in accordance with their respective terms, except to the extent that such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors’ rights generally or limiting the right of specific performance.

(b) Upon the effectiveness of this Amendment, each of Borrower and Guarantor hereby reaffirms all covenants, representations and warranties made in the Loan Documents to the extent the same are not amended hereby and agree that all such covenants, representations and warranties shall be deemed to have been remade as of the effective date of this Amendment.

(c) No Event of Default has occurred and is continuing or would exist after giving effect to this Amendment.

(d) Neither Borrower nor Guarantor has any defense, counterclaim or offset with respect to the Loan Documents.

9. Effect on the Loan Documents.

(a) Upon the effectiveness of this Amendment, each reference to a Loan Document shall mean and be a reference to such Loan Document as amended hereby.

(b) Except as specifically amended herein, the Loan Documents, shall remain in full force and effect, and are hereby ratified and confirmed.

(c) The execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of Lender, nor constitute a waiver of any provision of any Loan Document.

10. Governing Law. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns and shall be governed by and construed in accordance with the laws of the State of New York.

11. Headings. Section headings in this Amendment are included herein for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

12. Counterparts; Electronic Transmission. This Amendment may be executed by the parties hereto in one or more counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same agreement. Any signature delivered by a party by facsimile transmission shall be deemed to be an original signature hereto.

IN WITNESS WHEREOF, this Amendment has been duly executed as of the day and year first written above.

IM BRANDS, LLC

By: Xcel Brands, Inc., its Manager

By: /s/ James Haran

Name: James Haran

Title: CFO

XCEL BRANDS, INC.

By: /s/ Robert D'Loren

Name: Robert D'Loren

Title: CEO

BANK HAPOALIM B.M.

By: Authorized Signatory

Name:

Title:

By: Authorized Signatory

Name:

Title:

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**GUARANTY**

**Introductory Note.** This Guaranty may be used for one or more Guarantors or with respect to one or more Debtors. If there is only one Guarantor or only one Debtor, then any reference herein to “the Guarantors”, “any Guarantor”, “each Guarantor” or the like, or to “the Debtors”, “any Debtor”, “each Debtor” or the like, shall be understood to refer to the Guarantor or to the Debtor, respectively. All capitalized terms in this Guaranty are defined in Section 19.

**Preamble.** Each of the undersigned (each a “Guarantor” and collectively the “Guarantors”) expects to derive direct and/or indirect benefits from the Bank’s giving or continuing financial accommodations to any of the Debtors. The Bank is unwilling to give or continue financial accommodations to the Debtors without the guaranty of payment of each of the Guarantors as set forth in this Guaranty. It is a condition precedent to the Bank’s giving or continuing these financial accommodations to any of the Debtors that the Guarantors shall have executed and delivered this Guaranty to the Bank. In consideration of the premises and in consideration of financial accommodations given or to be given or continued to any of the Debtors by the Bank, and in order to induce the Bank to give or continue financial accommodations to any of the Debtors, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Guarantors, the Guarantors hereby jointly and severally represent and warrant to, and covenant and agree with, the Bank as follows:

1. **Guaranty.** The Guarantors hereby jointly and severally, irrevocably and unconditionally (a) guarantee to the Bank the full and punctual payment when due (whether at stated maturity, by acceleration or otherwise) by the Debtors of all Obligations, and (b) agree to pay to the Bank all Additional Liabilities immediately when due or on demand. This Guaranty is the unlimited or limited (as set forth on the signature page below), primary obligation of the Guarantors. The Bank may enforce this Guaranty against any Guarantor and/or any Credit Enhancement provided by any Guarantor without any prior or contemporaneous enforcement of any of the Obligations against any other Obligated Party or Credit Enhancement.

2. **Guaranty Absolute.** This Guaranty is a continuing, absolute and unconditional guaranty of payment and not of collection, and shall remain in full force and effect until payment in full of all amounts payable under this Guaranty, notwithstanding that at any time and from time to time (i) the Debtors may be free from any Obligations or (ii) the Obligations may exceed the amount of the Liabilities of the Guarantors hereunder, and regardless of how long before or after the date hereof any of the Obligations were or are incurred, and regardless of whether any financial accommodation resulting in an Obligation was or shall be given or continued by the Bank in contemplation of this Guaranty. Each Guarantor waives all Defenses and Claims with respect to this Guaranty and/or any Credit Enhancement provided by such Guarantor. All Obligations shall be conclusively presumed to have been created in reliance hereon.

Without limiting any other provisions hereof, none of the following (whether occurring prior to, simultaneously with or subsequent to the date hereof) shall give rise to a Defense or Claim with respect to this Guaranty and/or any Credit Enhancement provided by any Guarantor, and each Guarantor waives all such Defenses and Claims that might otherwise arise therefrom, and the joint and several liability of each Guarantor under this Guaranty shall be absolute and unconditional irrespective of:

(a) the death, incompetence or disability of any Obligated Party, or any law (including, to the fullest extent permitted by law, any statute of limitations), regulation, order, stay, injunction or prohibition now or hereafter in effect in any jurisdiction that would give rise to a Defense or Claim available to any Obligated Party, or any other fact or circumstance that may result in or constitute a Defense or Claim available to any Obligated Party;

(b) any lack of genuineness, validity, legality, regularity or enforceability of any of the Liabilities or of any Document (including but not limited to any determination that any Obligated Party (i) was not a duly organized and validly existing Entity or (ii) lacked the authorization or capacity to incur any of the Liabilities);

(c) any payment made by, or amount received or collected by the Bank from, any other Person in respect of any of the Liabilities or of any other Debt of any Debtor;

(d) any revocation, early termination, rejection, disaffirmance, cessation, impairment or suspension for any cause whatsoever of (i) any of the Liabilities or (ii) the validity, binding effect or enforceability of any of the Liabilities or of any Document, except that any Guarantor may deliver to the Bank a written notice of revocation signed by such Guarantor, which may revoke such Guarantor’s Liabilities (but not of any other Guarantor) under this Guaranty, provided that such notice shall not affect such Guarantor’s Liabilities with respect to any Nonrevocable Obligations, and such Guarantor waives all rights to revoke any Liabilities with respect to any Nonrevocable Obligations and shall remain fully liable with respect thereto;

(e) any loss or non-perfection of, or any inability to foreclose or otherwise realize on, any Credit Enhancement;

(f) if a Guarantor is a partnership or joint venture, the death, incompetence, retirement or withdrawal of one or more partners or joint venturers, or the accession of one or more new partners or joint venturers, or the dissolution (by operation of law or otherwise) of such Guarantor;

(g) any Transfer or purported Transfer by any Guarantor of any of the Liabilities;

(h) any action or omission referred to in Section 4 or Section 5;

(i) any event or events, whether with or without the consent of, or notice to, any of the Guarantors (even if known to the Bank or any of its Agents and not known to any of the Guarantors), which result or results in any change, whether or not material, in (i) the business, assets, liability or financial condition of any of the Debtors, (ii) the identity of any of the Debtors (whether by consolidation, merger, reorganization, change in form or structure, change in membership, change in control, change in management, or otherwise), (iii) any relationship (whether business, financial, personal or otherwise) between any of the Debtors and any of the Guarantors or (iv) the degree of risk assumed by any of the Guarantors hereunder.

3. **Payment.** Any payment made under this Guaranty shall be paid to the Bank at its offices in New York City, or at such other place as the Bank may designate in writing, in immediately available funds in the Currency in which the applicable Liabilities are denominated.

4. **Waiver.** Without limiting any other provisions of this Guaranty, each Guarantor hereby waives (a) notice of acceptance of this Guaranty, (b) notice of any Obligation to which this Guaranty may apply, (c) notice or proof of reliance by the Bank upon this Guaranty, (d) promptness, (e) diligence, (f) presentment, (g) demand for payment, (h) notice of dishonor or nonpayment of, or with respect to, any of the Obligations, (i) notice of any legal action or proceeding or any demand or any other action against, or any other notice to, any Obligated Party, and (j) any requirement that the Bank exhaust any right or take any action against or with respect to any other Obligated Party or any Credit Enhancement.

5. **Permitted Bank Actions and Omissions.** As to each Guarantor, the Bank and its Agents may, without giving rise to any Defense or Claim, at any time upon or without any terms or conditions, in whole or in part, and without the consent of, or notice to, any Obligated Party:

(a) change the Currency, time, manner or place of payment or performance (whether before or after maturity) or extend, renew, change, alter, amend, modify or waive any of the terms of any of the Liabilities or any Document;

(b) increase or decrease any of the Liabilities, including but not limited to the amount of principal or the amount or rate of any interest, fees, charges or other amount payable;

(c) (i) sell, exchange, realize upon, foreclose, release or surrender, or fail so to do with respect to, or (ii) impair or fail to take any steps necessary to care for, preserve, protect, secure, insure or obtain, or (iii) impair or fail to take any steps necessary to perfect (including any failure to make any filing or recording, or the making or any improper filing or recording of) any security interest or other rights in; or (iv) otherwise deal or fail to deal with, any Credit Enhancement or Subrogation Rights in any manner and in any order; or (iv) exercise or refrain from exercising any rights against any other Obligated Party or any other Person or otherwise act or refrain from acting;

(d) (i) discharge, release, settle with or compromise with any other Obligated Party or other Person and/or (ii) consent to or waive any breach of, any departure from, or any act, omission or default under, any Document; or (iii) fail to notify any of the Guarantors or any other Person (even if known to the Bank or any of its Agents and not known to any of the Guarantors) of any change, whether or not material, relating to any of the Debtors or of any other Person, including but not limited to any of the matters set forth in Section 2(i).

6. **Bank Statements.** Any statement, certificate, notice or the like submitted by the Bank to any of the Debtors and/or to any of the Guarantors, setting forth the amount or amounts of any or all of the Obligations and/or Liabilities, shall be prima face evidence thereof, and each Guarantor agrees to be bound thereby absent manifest error.

7. **Expenses; Currency; Interest.** Each of the obligations set forth in this Section shall be a separate obligation payable on demand, with respect to which the Guarantors shall be jointly and severally liable to the Bank as an alternative or additional cause of action or claim.

(a) The Guarantors shall indemnify and hold the Bank harmless against all Expenses.

(b) If the Bank does not receive payment of any of the Liabilities in any amount of Currency when due, the Guarantors shall pay the equivalent of such amount in the Currency (including but not limited to the lawful Currency of the United States) in which such Liabilities were originally due, *provided* that the Bank may, at its option, accept payment of an equivalent amount (computed at the Bank's selling rate for such Currency at the place where such amount is payable as at the time such payment is made) in any other Currency. The receipt by the Bank of any amount in respect of any of the Liabilities in a Currency other than that in which such amount was originally due, whether pursuant to a judgment or arbitration award or pursuant to the provisions of this Guaranty or any Agreement or otherwise, shall not discharge the Guarantors with respect to any of such Liabilities except to the extent that on the first day on which the Bank is open for business immediately following such receipt, the Bank shall be able, in accordance with normal banking practice, to purchase the Currency in which such amount was due with the Currency received. Notwithstanding any such judgment or arbitration award, the Guarantors shall in any event indemnify the Bank against all losses sustained and all costs incurred by it in making any such purchase of Currency.

(c) Any amount payable hereunder shall bear interest from the date due until payment is received or recovered by the Bank in the Currency in which such amount was due at the place at which it was payable, at the Applicable Interest Rate.

**8. Representations and Warranties.** Each Guarantor represents and warrants to the Bank that each of the following is true, accurate and complete as of the date of such Guarantor's execution of this Guaranty, and acknowledges that the Bank's giving or continuing of financial accommodations to any of the Debtors is made in reliance thereon.

(a) If such Guarantor is a natural person, he or she has the legal capacity to execute and deliver this Guaranty and is doing so in his or her capacity as an individual and not in any representative capacity on behalf of any other Person, notwithstanding any reference to any office, title or the like next to such Guarantor's signature on this Guaranty.

(b) If such Guarantor is an Entity, it is an Entity duly organized, legally existing and in good standing under the laws of the jurisdiction in which it has been organized.

(c) Such Guarantor has full right, power and authority to enter into, execute and deliver this Guaranty and to perform all matters required to be performed by such Guarantor hereunder; the execution and delivery of this Guaranty by or on behalf of such Guarantor to the Bank is fully and unconditionally authorized; such Guarantor has duly executed and delivered this Guaranty pursuant to lawful authority; and this Guaranty constitutes such Guarantor's legal, valid and binding obligation enforceable in accordance with its terms.

(d) Such Guarantor is duly licensed or qualified to do business in all states and jurisdictions where such licensing or qualification is necessary unless the failure to so obtain such license or qualification could not reasonably be expected to have a material adverse effect on such Guarantor's financial condition or the ability of such Guarantor to perform its obligations under this Guaranty.

(e) The execution and delivery by such Guarantor of this Guaranty is not, and the performance by such Guarantor of any such Guarantor's obligations hereunder will not be, in contravention of, or cause any breach or default pursuant to, any provision of law or any charter or by-law provision or any material covenant, indenture or Agreement of or affecting such Guarantor or any of such Guarantor's assets.

(f) No consent of any Person and no consent, license, permit approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty (including, without limitation, the payment to the Bank at the applicable place in the applicable Currency).

(g) No registration tax, stamp duty or similar tax or duty imposed by any governmental authority arises in connection with the execution, delivery and performance of this Guaranty by such Guarantor.

(h) No litigation, arbitration, investigation or proceeding of or before any court, arbitrator or administrative or governmental authority is currently pending or, to the knowledge of such Guarantor, threatened (i) with respect to this Guaranty or any of the transactions contemplated hereby, or (ii) against or affecting such Guarantor, or any of such Guarantor's assets, or (iii) which could affect the business operations, assets, liabilities or condition, financial or otherwise, of such Guarantor or such Guarantor's ability to enter into, execute or deliver this Guaranty or prejudice in a material manner such Guarantor's ability to fulfill such Guarantor's obligations pursuant to this Guaranty.

(i) The financial statements of such Guarantor which have been furnished to the Bank have been prepared in accordance with generally accepted accounting principles consistently applied, and fairly present the correct financial condition of such Guarantor as of their respective dates; and there has been no subsequent material adverse change in the business, operations, assets, liabilities or condition, financial or otherwise, of such Guarantor.

(j) There is no fact that such Guarantor has not disclosed to the Bank in writing that could materially and adversely affect such Guarantor's business, operations, assets, liabilities or condition, financial or otherwise, or such Guarantor's ability to perform under this Guaranty.

(k) Such Guarantor is not, and upon such Guarantor's execution and delivery of this Guaranty to the Bank such Guarantor will not be, Insolvent; in exchange for executing and delivering this Guaranty to the Bank, such Guarantor has received or will have received Reasonably Equivalent Value; such Guarantor's execution and delivery of this Guaranty does not constitute a Fraudulent Transfer; such Guarantor's execution and delivery of this Guaranty is not made with intent to hinder, delay or defraud any Creditor; and this Guaranty cannot be set aside, avoided or rendered unenforceable in whole or in part by virtue of any Fraudulent Transfer Law.

(l) Such Guarantor has not provided any Credit Support with respect to the Debt of any Person other than this Guaranty.

(m) Such Guarantor believes that (i) the Guarantors do not have any Defense or Claim with respect to this Guaranty, any Credit Enhancement or any of the Liabilities, and (ii) there do not exist any facts and circumstances that could result in or constitute any such Defense or Claim.

(n) Such Guarantor has independently investigated, without reliance on the Bank, and is fully familiar with, (i) the identity, status and financial condition of each Debtor, (ii) all relationships, if any (whether business, financial, personal or otherwise), between and/or among any and all of the Debtors and any and all of the Guarantors, and (iii) the degree of risk assumed by such Guarantor hereunder.

(o) Such Guarantor has not relied upon and has not been induced to execute and deliver this Guaranty or to purchase any interest in any of the Debtors or any other Person or to take or refrain from taking any other action as a result of any Agreement, representation, warranty, statement, recommendation or information made or purportedly made by or on behalf of the Bank or any of its Agents, whether express or implied, written or oral, direct or indirect, and whether prior to or simultaneously with the date hereof.

(p) Neither the Bank nor any of its Agents has represented or indicated that the Bank will not enforce any provision of any Document.

#### **9. Contribution; Subordination; Subrogation.**

(a) If and to the extent that any Guarantor (the "Paying Guarantor") makes payment in respect of this Guaranty, then in furtherance and not limitation of any rights that the Paying Guarantor may have in law or equity, each other Guarantor shall have an obligation, upon demand by the Paying Guarantor, to pay to the Paying Guarantor an amount equal to the quotient of (x) the amount so paid by the Paying Guarantor, divided by (y) the total number of Guarantors.

(b) All direct or indirect claims and rights (whether for moneys advanced, services performed or assets sold and delivered or on account of any Subrogation Rights, whether for an indeterminate amount, a sum certain or a contingent claim), now existing or hereafter arising which any Guarantor may have against any other Obligated Party shall be subject and subordinate to the prior payment in full to the Bank of all of the Liabilities. Each Guarantor hereby assigns and transfers to the Bank, effective upon demand by the Bank for payment by such Guarantor of any amount hereunder, all such claims and rights and any proceeds thereof, and agrees that the Bank may, in its discretion, make and present in any bankruptcy or other proceeding such proofs or claims with respect thereto as the Bank may deem expedient or proper and may vote such proofs or claims in any such proceeding. Each Guarantor shall deliver upon demand by the Bank such additional documents as the Bank may request to evidence such subordination, assignment and transfer, including without limitation duly executed assignments. At any time when all the Liabilities shall not have been paid in full, each Guarantor shall (i) as trustee for the Bank, enforce all claims and rights against any other Obligated Party or any Credit Enhancement and collect all sums due from any other Obligated Party or any Credit Enhancement or with respect to any of the Liabilities, (ii) hold any amounts received on account thereof in trust for the benefit of the Bank, and (iii) pay all such amounts immediately to the Bank to be applied to the Liabilities, together with interest on all such amounts from the date of such receipt until paid to the Bank at the Applicable Interest Rate, without reducing or affecting in any manner the liability of such Guarantor under the other provisions of this Guaranty.

(c) Until all of the Liabilities shall have been paid in full, each Guarantor shall have no Subrogation Rights, and waives any right to enforce any right or remedy which the Bank has or may hereafter have against any other Obligated Party or in or against any Credit Enhancement.

10. **Reinstatement.** If (a) claim is ever made on the Bank for repayment or recovery of any amount received in payment or on account of any of the Obligations, and (b) the Bank repays all or part of such amount by reason of (i) any judgment, decree, order or award of any court, administrative body, arbitration panel or the like or (ii) any settlement or compromise of any such claim effected by the Bank with any such claimant (including any Obligated Party), then any such judgment, decree, order, award, settlement or compromise shall be binding upon all of the Guarantors, notwithstanding the release or cancellation of any Document, and the Guarantors shall be and remain liable hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by the Bank.

11. **Agreements, Representations, Amendments and Waivers.** No Agreement or representation by the Bank, and no amendment or waiver of any provision of this Guaranty nor consent to any departure therefrom by any of the Guarantors shall be effective unless in writing and duly signed by at least two duly authorized officers of the Bank, and any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure on the part of the Bank to exercise, and no delay in exercising, any right under any Document or otherwise, shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. In the case of any Agreement (including but not limited to any Commitment) given or made by the Bank to any Person or Persons (which may or may not include one or more of the Guarantors), (a) such Agreement shall not inure to the benefit of any of the Guarantors to whom such Agreement was not given or made by the Bank (the "Other Guarantor" or "Other Guarantors"), (b) none of the Other Guarantors shall be deemed to be a third party beneficiary thereof, (c) the Bank shall have absolutely no responsibility or liability to any of the Other Guarantors with respect to any breach thereof or failure by the Bank to abide by, or comply with, any such Agreement, and (d) each of the Other Guarantors waives and gives up any rights that each such Other Guarantor may have, on account of any such Agreement or any such breach or failure, to assert any Defense or Claim against the Bank.

12. **Cumulative Rights; Reservation of Rights; Arms' Length Transaction.** The rights and remedies herein provided to the Bank are in addition to, and are not exclusive or in substitution for, any rights or remedies available to the Bank at law or in equity or under any other Agreement or other document which any Person (including but not limited to any Guarantor) may have executed or may hereafter execute in favor of or for the benefit of the Bank, all of which are cumulative and may be exercised by the Bank in whole or in part from time to time. The Bank shall be deemed to have reserved its rights against each Guarantor in connection with any settlement, compromise, discharge or release of any other Obligated Party or any Document. The joint and several liabilities of the Guarantors hereunder shall not be reduced or limited by reason of any similar or dissimilar guaranty or other Document executed in favor of the Bank by any Person, and this Guaranty shall be enforceable against each of the Guarantors jointly and severally without regard thereto. This Guaranty represents an arms' length transaction between the Guarantors and the Bank. Each Guarantor agrees and consents that this Guaranty shall not be, and waives any right to require that this Guaranty be, construed against the Bank on the ground that the Bank has prepared it.

13. **Covenants.** Subject to any other written Agreement between the Bank and any Person relating to the same subject matter, each Guarantor shall:

(a) furnish to the Bank copies of such Guarantor's financial statements and such other information relating to such Guarantor's business, operations, assets, liabilities and condition, financial or otherwise, promptly when, and in such form as, reasonably required or requested by the Bank;

(b) permit any of the Bank's Agents to visit such Guarantor's premises upon not less than two (2) Business Days' prior notice during normal business hours and to examine and make photographs, copies and extracts of such Guarantor's property and of its books and records;

(c) take or cause to be taken any and all action that may be necessary or appropriate (to the extent legally permissible) to cause or permit the Debtors to perform all of the Obligations, and shall not take or cause to be taken any action that may prevent or interfere with any Debtor's performance thereof; and

(d) not enter into any Agreement or purchase any interest in any of the Debtors or other Persons or take or refrain from taking any other action as a result of or in reliance upon any Agreement, representation, warranty, statement, recommendation or information made or purportedly made by or on behalf of the Bank or any of its Agents, whether express or implied, written or oral, direct or indirect, or prior to, simultaneously with or subsequent to the date hereof.

14. **Transfers; Successors and Assigns.**

(a) No Guarantor shall effect or attempt a Transfer of any of the Liabilities without the Bank's prior written consent. Notwithstanding the foregoing, this Guaranty shall be binding upon each Guarantor and upon each Guarantor's executors, administrators, successors, assigns and Transferees (each of which shall be a "Guarantor" hereunder).

(b) This Guaranty shall inure to the benefit of and be enforceable by the Bank and its successors, assigns and Transferees. Without limiting the foregoing, the Bank may make a Transfer of any and all of the Liabilities and Documents to any other Person without notice to or the consent of any of the Guarantors, and the Transferee shall thereupon become vested with all of the Bank's rights in respect thereof. The Bank is authorized to disclose to any prospective or actual Transferee any information that the Bank may have or acquire about any Obligated Party and any information about any other Person submitted to the Bank by or on behalf of any Obligated Party. Each Guarantor waives all defenses (except such defenses as may be asserted against a holder in due course of a negotiable instrument) which each Guarantor may have or acquire against any Transferee who receives a Transfer of this Guaranty, or any complete or partial interest in it, for value, in good faith and without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any Person.

15. **Intentionally Omitted.**

16. **Notices.** All notices and other communications provided for hereunder shall be in writing and, if to the Guarantors, mailed or faxed or delivered to the address set forth on the signature page below, and if to the Bank, mailed or delivered to 1177 Avenue of the Americas, New York, New York 10036, to the attention of the Department, or as to each party at such other address as shall be designated by such party in a written notice to the other party or parties, as the case may be. All such notices and other communications to the Guarantors shall be effective when deposited in the mail, sent by fax or delivered, addressed as aforesaid, and all such notices and other communications to the Bank shall be effective when actually received by the Department.

17. **Litigation.** This Guaranty shall be governed by, and construed in accordance with, the laws of the State of New York applicable to agreements made and to be performed in the State of New York without regard to conflict or choice of law rules. Any legal action or proceeding with respect to this Guaranty may be brought in any court of record of the State of New York, County of New York, or of the United States of America for the Southern District of New York. By execution and delivery of this Guaranty, the Guarantors hereby accept, consent and submit to, generally and unconditionally, the jurisdiction of the aforesaid courts over the Guarantors and their property. Each Guarantor agrees not to, and hereby irrevocably waives the right to, commence a legal action or proceeding against the Bank in any jurisdiction worldwide other than the aforesaid courts, unless the Bank specifically consents thereto in writing. In connection with any action or proceeding between any of the Guarantors and the Bank, each Guarantor agrees not to, and hereby irrevocably waives the right to, interpose (i) any objection, including, without limitation, any objection to the laying of venue or based on the grounds of forum non conveniens, which such Guarantor may now or hereafter have to the bringing of any such action or proceeding in such jurisdiction and/or (ii) any claim for consequential, special or punitive damages and/or (iii) any setoff, counterclaim or cross-claim. The Guarantors irrevocably consent to the service of process on each Guarantor in any such action or proceeding by the mailing of copies thereof by certified or registered mail, postage prepaid, to the Guarantors at the address set forth on the signature page below. Nothing herein shall affect the right of the Bank to serve process in any other manner permitted by law or to commence any legal action or proceeding or otherwise proceed against any of the Guarantors in any jurisdiction worldwide.



18. **Counterparts.** This Guaranty may be signed in any number of counterparts. Any counterpart signed by any Guarantor (a “Signing Guarantor”) shall constitute a full original Guaranty of such Guarantor for all purposes, regardless of whether any counterpart is signed by any other Guarantor. Any reference herein to the execution of this Guaranty shall include the execution of any counterpart. The obligations of any Signing Guarantor hereunder are not conditioned on any other Guarantor’s execution of this Guaranty.

19. **Definitions.** As used herein, the following terms have the meanings indicated:

**Agent:** any director, officer, employee, agent or representative.

**Additional Liabilities:** The liabilities under Sections 7 and 9.

**Agreement:** an agreement, commitment, covenant, instrument, note, representation, understanding or warranty (including but not limited to any Commitment, Credit Support or Document) given or made to or with any Person.

**Applicable Interest Rate:** the highest lawful rate then permitted by applicable law in the State of New York, or if no such rate exists, the highest lawful rate permitted under such other applicable law as the Bank may choose in its discretion.

**Bank:** Bank Hapoalim B.M.

**Bankruptcy Code:** the U.S. Bankruptcy Code as in effect and as amended from time to time and any successor thereto.

**Claim:** any right of setoff, claim, counterclaim or cross-claim of any Obligated Party against the Bank and/or any of its Agents.

**Commitment:** an Agreement, commitment or obligation of the Bank, whether or not in writing, whether express or implied, and whether or not by operation of law, given to any Person (including but not limited to any Obligated Party) to give or to continue any financial accommodations to any of the Debtors or to change, alter, amend, modify, renew, extend the time of payment of, increase or decrease any of the Obligations.

**Commodity Exchange Act:** the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

**Credit Enhancement:** any Credit Support with respect to any of the Obligations. Any reference herein to “any Credit Enhancement” shall be understood to include but not be limited to this Guaranty.

**Creditor:** any Person to whom any Guarantor owed or owes any Debt or otherwise was, became, is or becomes indebted, and any other creditor within the meaning under or as defined in each respective Fraudulent Transfer Law.

**Credit Support:** any collateral, security interest, mortgage, pledge, lien, security, margin, guaranty, insurance, letter of credit, indemnity, subordination, comfort letter, risk participation, repurchase agreement, put, option, banker’s lien, setoff, right of offset or netting agreement, or any Agreement pursuant to which a Person agrees to be contingently liable with respect to any Debt of any other Person or Persons, or any other credit support with respect to any Debt of any Person or Persons.

**Currency:** the lawful currency of any country or the eurocurrency.

**Debt:** an obligation of any sort for the payment of money in any Currency in any jurisdiction worldwide, and however evidenced, whether (a) principal or otherwise, (b) absolute or contingent, (c) secured or unsecured, (d) joint, several or independent, (e) now or hereafter existing, and (f) created directly or acquired by Transfer or otherwise.

**Debtor, Debtors:** as specified on the signature page below.

**Defense:** any fact or circumstance (a) that may affect, suspend, impair, discharge, release, cancel, modify, limit or be a defense (including but not limited to any suretyship defense) to any of the Liabilities of any Obligated Party or any Document or of any of the Bank’s rights or remedies with respect thereto, or (b) that may bar enforcement thereof by the Bank.

**Department:** the department of the Bank responsible for administering the Bank’s relationship with the Debtors with respect to the Obligations.

**Document:** an Agreement of any Obligated Party relating to any of the Obligations and/or Liabilities. Any reference herein to “any Document” shall be understood to include but not be limited to any Credit Enhancement.

**Effective Revocation Time:** the close of business on the day that the Department receives written notice of revocation signed by any of the Guarantors.

**Entity:** any Person other than a natural person.

**Excluded Swap Obligations:** with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the guaranty hereunder of such Guarantor of such Swap Obligation (or any guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the guaranty of such Guarantor becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guaranty hereunder or security interest is or becomes illegal.

**Expenses:** (a) except as set forth in clause (b), all reasonable documented costs and expenses (including but not limited to reasonable fees and disbursements of counsel) incurred by the Bank in connection with this Guaranty or any of the Liabilities including, but not limited to, (i) any amendment, modification, extension or waiver with respect to any of the Liabilities, and/or (ii) any deduction, withholding, registration tax, stamp tax or similar tax or duty applicable to any payment of any of the Liabilities. and (b) all documented costs and expenses (including but not limited to reasonable fees and disbursements of counsel) incurred by the Bank in connection with the enforcement of this Guaranty or any of the Liabilities including but not limited to those for (i) any action taken, whether or not by litigation, to collect, or to protect rights or interests with respect to, any of the Liabilities, or to preserve, protect, secure, insure, obtain or perfect any Credit Enhancement, (ii) compliance with any legal process or any order or directive of any governmental authority with respect to any Obligated Party, and (ii) any litigation, arbitration or administrative proceeding relating to any Obligated Party.

**Fraudulent Transfer:** a “fraudulent transfer”, “fraudulent conveyance” or similar term within the meaning under or as defined in each respective Fraudulent Transfer Law.

**Fraudulent Transfer Law:** the Bankruptcy Code, the New York Debtor and Creditor Law, or the law of any jurisdiction (domestic or foreign) as in effect and as amended from time to time and all successors thereto relating to fraudulent transfers, fraudulent conveyances and/or similar matters.

**Guarantor, Guarantors:** as specified on the signature page below, and as further defined in Section 14(a).

**Guaranty:** this Guaranty.

**Insolvent** as to a Person: (a) insolvent or (b) engaged or about to be engaged in a business or a transaction for which any property remaining with the Person is an unreasonably small capital, or (c) intending to incur or believing that the Person will incur debts that would be beyond the Person’s ability to pay as such debts mature, all within the meaning under or as defined in each Fraudulent Transfer Law.

**Liabilities:** (a) all Obligations and (b) all obligations (including those incurred hereunder) of all Obligated Parties incurred directly or indirectly in respect of any of the Obligations and/or in respect of any Document *provided* that the term Liabilities shall not include Excluded Swap Obligations.

**Nonprincipal Obligations:** all Obligations, whether interest, fees, expenses or otherwise, other than principal.

**Nonrevocable Obligation:** any Obligation (including any extension or rollover thereof and any Nonprincipal Obligations accruing thereon after the Effective Revocation Time) that (i) is, or (ii) relates to a contingent liability of the Bank or to a Commitment that in either case was, outstanding on or prior to the Effective Revocation Time.

**Obligated Party:** (a) each Debtor; (b) each Guarantor; (c) any other Person directly or contingently liable for any of the Obligations, including but not limited to any maker, co-maker, endorser, accommodation party, guarantor, surety or indemnitor with respect to any of the Obligations; (d) any Person providing or issuing any Credit Enhancement with respect to any of the Obligations; or (e) if any Obligated Party is a partnership or joint venture, any general partner or joint venturer therein. Without limiting the foregoing, any reference herein to “any Obligated Party” shall include but not be limited to all of the Debtors and all of the Guarantors, and as to each Guarantor any reference herein to “any other Obligated Party” shall include but not be limited to all of the Debtors and all of the Guarantors other than such Guarantor.

**Obligation:** any Debt of any Debtor and of any successor, assign or Transferee thereof (including any successor of a Debtor that is a partnership or joint venture), whether (a) due or to become due to, or held or to be held by, the Bank, and (b) for the Bank’s own account or as agent for another or others *provided* that the term Obligation shall not include Excluded Swap Obligations..

**Person:** any natural person, firm, partnership, joint venture, company, corporation, limited liability company, unincorporated organization or association, trust, estate, governmental authority or any other entity. Without limiting the foregoing, any reference herein to “any Person” shall include but not be limited to any Obligated Party, and as to each Guarantor any reference herein to “any other Person” shall include but not be limited to any other Obligated Party.

**Reasonably Equivalent Value:** “reasonably equivalent value”, “fair consideration” or similar term within the meaning under or as defined in each respective Fraudulent Transfer Law.

**Subrogation Rights:** all legal and equitable rights and claims arising from the existence or performance of this Guaranty that any of the Guarantors may now or hereafter have, including without limitation all rights of subrogation, indemnity, reimbursement, exoneration and/or contribution, and including without limitation any such right or claim against or with respect to any property (including without limitation any Credit Enhancement) of any Obligated Party.

**Swap Obligation:** with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

**Transfer:** any negotiation, assignment, participation, conveyance, grant of security interest, lease, delegation, or any other direct or indirect transfer of complete or partial, legal, beneficial, economic or other interest or obligation.

**Transferee:** any Person to whom a Transfer is made.

**SIGNATURE PAGE**

Each of the Guarantors makes this Guaranty in favor of the Bank, and each agrees to be bound jointly and severally by the terms and conditions of this Guaranty, both the general terms and conditions set forth above and the specific terms and conditions set forth below.

a) **Debtor(s) [print full name(s)]:**

H LICENSING, LLC

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b) **Type of Guaranty:**

Unlimited

Limited as to the aggregate principal sum of \$, plus a prorated amount of the Nonprincipal Obligations.

c) **OPPORTUNITY TO CONSULT WITH COUNSEL.** Each Guarantor acknowledges having had the opportunity to consult with legal counsel prior to executing this Guaranty.

d) **JURY TRIAL WAIVER.** Both the Bank and the Guarantors waive and give up the right to a jury trial with respect to any dispute, action or proceeding relating to this Guaranty or any of the Obligations or Liabilities; any legal action or proceeding relating to this Guaranty or any of the Obligations or Liabilities shall take place without a jury.

Date: December 22, 2014

SIGNATURE PAGE TO  
GUARANTY  
(IM BRANDS)

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**SIGNATURE(S) AND IDENTIFICATION:**

IM BRANDS, LLC

By: XCEL BRANDS, INC., its Manager

By: /s/ James Haran \_\_\_\_\_

Print Name: James Haran \_\_\_\_\_

Title: CFO \_\_\_\_\_

Guarantors' address and fax number for purposes of notice:

Address:  
475 Tenth Avenue  
New York, New York 10018

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

SIGNATURE PAGE TO  
GUARANTY  
(IM BRANDS)

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## GUARANTY

**Introductory Note.** This Guaranty may be used for one or more Guarantors or with respect to one or more Debtors. If there is only one Guarantor or only one Debtor, then any reference herein to “the Guarantors”, “any Guarantor”, “each Guarantor” or the like, or to “the Debtors”, “any Debtor”, “each Debtor” or the like, shall be understood to refer to the Guarantor or to the Debtor, respectively. All capitalized terms in this Guaranty are defined in Section 19.

**Preamble.** Each of the undersigned (each a “Guarantor” and collectively the “Guarantors”) expects to derive direct and/or indirect benefits from the Bank’s giving or continuing financial accommodations to any of the Debtors. The Bank is unwilling to give or continue financial accommodations to the Debtors without the guaranty of payment of each of the Guarantors as set forth in this Guaranty. It is a condition precedent to the Bank’s giving or continuing these financial accommodations to any of the Debtors that the Guarantors shall have executed and delivered this Guaranty to the Bank. In consideration of the premises and in consideration of financial accommodations given or to be given or continued to any of the Debtors by the Bank, and in order to induce the Bank to give or continue financial accommodations to any of the Debtors, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Guarantors, the Guarantors hereby jointly and severally represent and warrant to, and covenant and agree with, the Bank as follows:

1. **Guaranty.** The Guarantors hereby jointly and severally, irrevocably and unconditionally (a) guarantee to the Bank the full and punctual payment when due (whether at stated maturity, by acceleration or otherwise) by the Debtors of all Obligations, and (b) agree to pay to the Bank all Additional Liabilities immediately when due or on demand. This Guaranty is the unlimited or limited (as set forth on the signature page below), primary obligation of the Guarantors. The Bank may enforce this Guaranty against any Guarantor and/or any Credit Enhancement provided by any Guarantor without any prior or contemporaneous enforcement of any of the Obligations against any other Obligated Party or Credit Enhancement.

2. **Guaranty Absolute.** This Guaranty is a continuing, absolute and unconditional guaranty of payment and not of collection, and shall remain in full force and effect until payment in full of all amounts payable under this Guaranty, notwithstanding that at any time and from time to time (i) the Debtors may be free from any Obligations or (ii) the Obligations may exceed the amount of the Liabilities of the Guarantors hereunder, and regardless of how long before or after the date hereof any of the Obligations were or are incurred, and regardless of whether any financial accommodation resulting in an Obligation was or shall be given or continued by the Bank in contemplation of this Guaranty. Each Guarantor waives all Defenses and Claims with respect to this Guaranty and/or any Credit Enhancement provided by such Guarantor. All Obligations shall be conclusively presumed to have been created in reliance hereon.

Without limiting any other provisions hereof, none of the following (whether occurring prior to, simultaneously with or subsequent to the date hereof) shall give rise to a Defense or Claim with respect to this Guaranty and/or any Credit Enhancement provided by any Guarantor, and each Guarantor waives all such Defenses and Claims that might otherwise arise therefrom, and the joint and several liability of each Guarantor under this Guaranty shall be absolute and unconditional irrespective of:

(a) the death, incompetence or disability of any Obligated Party, or any law (including, to the fullest extent permitted by law, any statute of limitations), regulation, order, stay, injunction or prohibition now or hereafter in effect in any jurisdiction that would give rise to a Defense or Claim available to any Obligated Party, or any other fact or circumstance that may result in or constitute a Defense or Claim available to any Obligated Party;

(b) any lack of genuineness, validity, legality, regularity or enforceability of any of the Liabilities or of any Document (including but not limited to any determination that any Obligated Party (i) was not a duly organized and validly existing Entity or (ii) lacked the authorization or capacity to incur any of the Liabilities);

(c) any payment made by, or amount received or collected by the Bank from, any other Person in respect of any of the Liabilities or of any other Debt of any Debtor;

(d) any revocation, early termination, rejection, disaffirmance, cessation, impairment or suspension for any cause whatsoever of (i) any of the Liabilities or (ii) the validity, binding effect or enforceability of any of the Liabilities or of any Document, except that any Guarantor may deliver to the Bank a written notice of revocation signed by such Guarantor, which may revoke such Guarantor’s Liabilities (but not of any other Guarantor) under this Guaranty, provided that such notice shall not affect such Guarantor’s Liabilities with respect to any Nonrevocable Obligations, and such Guarantor waives all rights to revoke any Liabilities with respect to any Nonrevocable Obligations and shall remain fully liable with respect thereto;

(e) any loss or non-perfection of, or any inability to foreclose or otherwise realize on, any Credit Enhancement;

(f) if a Guarantor is a partnership or joint venture, the death, incompetence, retirement or withdrawal of one or more partners or joint venturers, or the accession of one or more new partners or joint venturers, or the dissolution (by operation of law or otherwise) of such Guarantor;

(g) any Transfer or purported Transfer by any Guarantor of any of the Liabilities;

(h) any action or omission referred to in Section 4 or Section 5;

(i) any event or events, whether with or without the consent of, or notice to, any of the Guarantors (even if known to the Bank or any of its Agents and not known to any of the Guarantors), which result or results in any change, whether or not material, in (i) the business, assets, liability or financial condition of any of the Debtors, (ii) the identity of any of the Debtors (whether by consolidation, merger, reorganization, change in form or structure, change in membership, change in control, change in management, or otherwise), (iii) any relationship (whether business, financial, personal or otherwise) between any of the Debtors and any of the Guarantors or (iv) the degree of risk assumed by any of the Guarantors hereunder.

3. **Payment.** Any payment made under this Guaranty shall be paid to the Bank at its offices in New York City, or at such other place as the Bank may designate in writing, in immediately available funds in the Currency in which the applicable Liabilities are denominated.

4. **Waiver.** Without limiting any other provisions of this Guaranty, each Guarantor hereby waives (a) notice of acceptance of this Guaranty, (b) notice of any Obligation to which this Guaranty may apply, (c) notice or proof of reliance by the Bank upon this Guaranty, (d) promptness, (e) diligence, (f) presentment, (g) demand for payment, (h) notice of dishonor or nonpayment of, or with respect to, any of the Obligations, (i) notice of any legal action or proceeding or any demand or any other action against, or any other notice to, any Obligated Party, and (j) any requirement that the Bank exhaust any right or take any action against or with respect to any other Obligated Party or any Credit Enhancement.

5. **Permitted Bank Actions and Omissions.** As to each Guarantor, the Bank and its Agents may, without giving rise to any Defense or Claim, at any time upon or without any terms or conditions, in whole or in part, and without the consent of, or notice to, any Obligated Party:

(a) change the Currency, time, manner or place of payment or performance (whether before or after maturity) or extend, renew, change, alter, amend, modify or waive any of the terms of any of the Liabilities or any Document;

(b) increase or decrease any of the Liabilities, including but not limited to the amount of principal or the amount or rate of any interest, fees, charges or other amount payable;

(c) (i) sell, exchange, realize upon, foreclose, release or surrender, or fail so to do with respect to, or (ii) impair or fail to take any steps necessary to care for, preserve, protect, secure, insure or obtain, or (iii) impair or fail to take any steps necessary to perfect (including any failure to make any filing or recording, or the making or any improper filing or recording of) any security interest or other rights in; or (iv) otherwise deal or fail to deal with, any Credit Enhancement or Subrogation Rights in any manner and in any order; or (iv) exercise or refrain from exercising any rights against any other Obligated Party or any other Person or otherwise act or refrain from acting;

(d) (i) discharge, release, settle with or compromise with any other Obligated Party or other Person and/or (ii) consent to or waive any breach of, any departure from, or any act, omission or default under, any Document; or (iii) fail to notify any of the Guarantors or any other Person (even if known to the Bank or any of its Agents and not known to any of the Guarantors) of any change, whether or not material, relating to any of the Debtors or of any other Person, including but not limited to any of the matters set forth in Section 2(i).

6. **Bank Statements.** Any statement, certificate, notice or the like submitted by the Bank to any of the Debtors and/or to any of the Guarantors, setting forth the amount or amounts of any or all of the Obligations and/or Liabilities, shall be prima face evidence thereof, and each Guarantor agrees to be bound thereby absent manifest error.

7. **Expenses; Currency; Interest.** Each of the obligations set forth in this Section shall be a separate obligation payable on demand, with respect to which the Guarantors shall be jointly and severally liable to the Bank as an alternative or additional cause of action or claim.

(a) The Guarantors shall indemnify and hold the Bank harmless against all Expenses.

(b) If the Bank does not receive payment of any of the Liabilities in any amount of Currency when due, the Guarantors shall pay the equivalent of such amount in the Currency (including but not limited to the lawful Currency of the United States) in which such Liabilities were originally due, *provided* that the Bank may, at its option, accept payment of an equivalent amount (computed at the Bank's selling rate for such Currency at the place where such amount is payable as at the time such payment is made) in any other Currency. The receipt by the Bank of any amount in respect of any of the Liabilities in a Currency other than that in which such amount was originally due, whether pursuant to a judgment or arbitration award or pursuant to the provisions of this Guaranty or any Agreement or otherwise, shall not discharge the Guarantors with respect to any of such Liabilities except to the extent that on the first day on which the Bank is open for business immediately following such receipt, the Bank shall be able, in accordance with normal banking practice, to purchase the Currency in which such amount was due with the Currency received. Notwithstanding any such judgment or arbitration award, the Guarantors shall in any event indemnify the Bank against all losses sustained and all costs incurred by it in making any such purchase of Currency.

(c) Any amount payable hereunder shall bear interest from the date due until payment is received or recovered by the Bank in the Currency in which such amount was due at the place at which it was payable, at the Applicable Interest Rate.

**8. Representations and Warranties.** Each Guarantor represents and warrants to the Bank that each of the following is true, accurate and complete as of the date of such Guarantor's execution of this Guaranty, and acknowledges that the Bank's giving or continuing of financial accommodations to any of the Debtors is made in reliance thereon.

(a) If such Guarantor is a natural person, he or she has the legal capacity to execute and deliver this Guaranty and is doing so in his or her capacity as an individual and not in any representative capacity on behalf of any other Person, notwithstanding any reference to any office, title or the like next to such Guarantor's signature on this Guaranty.

(b) If such Guarantor is an Entity, it is an Entity duly organized, legally existing and in good standing under the laws of the jurisdiction in which it has been organized.

(c) Such Guarantor has full right, power and authority to enter into, execute and deliver this Guaranty and to perform all matters required to be performed by such Guarantor hereunder; the execution and delivery of this Guaranty by or on behalf of such Guarantor to the Bank is fully and unconditionally authorized; such Guarantor has duly executed and delivered this Guaranty pursuant to lawful authority; and this Guaranty constitutes such Guarantor's legal, valid and binding obligation enforceable in accordance with its terms.

(d) Such Guarantor is duly licensed or qualified to do business in all states and jurisdictions where such licensing or qualification is necessary unless the failure to so obtain such license or qualification could not reasonably be expected to have a material adverse effect on such Guarantor's financial condition or the ability of such Guarantor to perform its obligations under this Guaranty.

(e) The execution and delivery by such Guarantor of this Guaranty is not, and the performance by such Guarantor of any such Guarantor's obligations hereunder will not be, in contravention of, or cause any breach or default pursuant to, any provision of law or any charter or by-law provision or any material covenant, indenture or Agreement of or affecting such Guarantor or any of such Guarantor's assets.

(f) No consent of any Person and no consent, license, permit approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty (including, without limitation, the payment to the Bank at the applicable place in the applicable Currency).

(g) No registration tax, stamp duty or similar tax or duty imposed by any governmental authority arises in connection with the execution, delivery and performance of this Guaranty by such Guarantor.

(h) No litigation, arbitration, investigation or proceeding of or before any court, arbitrator or administrative or governmental authority is currently pending or, to the knowledge of such Guarantor, threatened (i) with respect to this Guaranty or any of the transactions contemplated hereby, or (ii) against or affecting such Guarantor, or any of such Guarantor's assets, or (iii) which could affect the business operations, assets, liabilities or condition, financial or otherwise, of such Guarantor or such Guarantor's ability to enter into, execute or deliver this Guaranty or prejudice in a material manner such Guarantor's ability to fulfill such Guarantor's obligations pursuant to this Guaranty.

(i) The financial statements of such Guarantor which have been furnished to the Bank have been prepared in accordance with generally accepted accounting principles consistently applied, and fairly present the correct financial condition of such Guarantor as of their respective dates; and there has been no subsequent material adverse change in the business, operations, assets, liabilities or condition, financial or otherwise, of such Guarantor.

(j) There is no fact that such Guarantor has not disclosed to the Bank in writing that could materially and adversely affect such Guarantor's business, operations, assets, liabilities or condition, financial or otherwise, or such Guarantor's ability to perform under this Guaranty.

(k) Such Guarantor is not, and upon such Guarantor's execution and delivery of this Guaranty to the Bank such Guarantor will not be, Insolvent; in exchange for executing and delivering this Guaranty to the Bank, such Guarantor has received or will have received Reasonably Equivalent Value; such Guarantor's execution and delivery of this Guaranty does not constitute a Fraudulent Transfer; such Guarantor's execution and delivery of this Guaranty is not made with intent to hinder, delay or defraud any Creditor; and this Guaranty cannot be set aside, avoided or rendered unenforceable in whole or in part by virtue of any Fraudulent Transfer Law.

(l) Such Guarantor has not provided any Credit Support with respect to the Debt of any Person other than this Guaranty.

(m) Such Guarantor believes that (i) the Guarantors do not have any Defense or Claim with respect to this Guaranty, any Credit Enhancement or any of the Liabilities, and (ii) there do not exist any facts and circumstances that could result in or constitute any such Defense or Claim.

(n) Such Guarantor has independently investigated, without reliance on the Bank, and is fully familiar with, (i) the identity, status and financial condition of each Debtor, (ii) all relationships, if any (whether business, financial, personal or otherwise), between and/or among any and all of the Debtors and any and all of the Guarantors, and (iii) the degree of risk assumed by such Guarantor hereunder.

(o) Such Guarantor has not relied upon and has not been induced to execute and deliver this Guaranty or to purchase any interest in any of the Debtors or any other Person or to take or refrain from taking any other action as a result of any Agreement, representation, warranty, statement, recommendation or information made or purportedly made by or on behalf of the Bank or any of its Agents, whether express or implied, written or oral, direct or indirect, and whether prior to or simultaneously with the date hereof.

(p) Neither the Bank nor any of its Agents has represented or indicated that the Bank will not enforce any provision of any Document.

#### **9. Contribution; Subordination; Subrogation.**

(a) If and to the extent that any Guarantor (the "Paying Guarantor") makes payment in respect of this Guaranty, then in furtherance and not limitation of any rights that the Paying Guarantor may have in law or equity, each other Guarantor shall have an obligation, upon demand by the Paying Guarantor, to pay to the Paying Guarantor an amount equal to the quotient of (x) the amount so paid by the Paying Guarantor, divided by (y) the total number of Guarantors.

(b) All direct or indirect claims and rights (whether for moneys advanced, services performed or assets sold and delivered or on account of any Subrogation Rights, whether for an indeterminate amount, a sum certain or a contingent claim), now existing or hereafter arising which any Guarantor may have against any other Obligated Party shall be subject and subordinate to the prior payment in full to the Bank of all of the Liabilities. Each Guarantor hereby assigns and transfers to the Bank, effective upon demand by the Bank for payment by such Guarantor of any amount hereunder, all such claims and rights and any proceeds thereof, and agrees that the Bank may, in its discretion, make and present in any bankruptcy or other proceeding such proofs or claims with respect thereto as the Bank may deem expedient or proper and may vote such proofs or claims in any such proceeding. Each Guarantor shall deliver upon demand by the Bank such additional documents as the Bank may request to evidence such subordination, assignment and transfer, including without limitation duly executed assignments. At any time when all the Liabilities shall not have been paid in full, each Guarantor shall (i) as trustee for the Bank, enforce all claims and rights against any other Obligated Party or any Credit Enhancement and collect all sums due from any other Obligated Party or any Credit Enhancement or with respect to any of the Liabilities, (ii) hold any amounts received on account thereof in trust for the benefit of the Bank, and (iii) pay all such amounts immediately to the Bank to be applied to the Liabilities, together with interest on all such amounts from the date of such receipt until paid to the Bank at the Applicable Interest Rate, without reducing or affecting in any manner the liability of such Guarantor under the other provisions of this Guaranty.

(c) Until all of the Liabilities shall have been paid in full, each Guarantor shall have no Subrogation Rights, and waives any right to enforce any right or remedy which the Bank has or may hereafter have against any other Obligated Party or in or against any Credit Enhancement.

10. **Reinstatement.** If (a) claim is ever made on the Bank for repayment or recovery of any amount received in payment or on account of any of the Obligations, and (b) the Bank repays all or part of such amount by reason of (i) any judgment, decree, order or award of any court, administrative body, arbitration panel or the like or (ii) any settlement or compromise of any such claim effected by the Bank with any such claimant (including any Obligated Party), then any such judgment, decree, order, award, settlement or compromise shall be binding upon all of the Guarantors, notwithstanding the release or cancellation of any Document, and the Guarantors shall be and remain liable hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by the Bank.

11. **Agreements, Representations, Amendments and Waivers.** No Agreement or representation by the Bank, and no amendment or waiver of any provision of this Guaranty nor consent to any departure therefrom by any of the Guarantors shall be effective unless in writing and duly signed by at least two duly authorized officers of the Bank, and any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure on the part of the Bank to exercise, and no delay in exercising, any right under any Document or otherwise, shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. In the case of any Agreement (including but not limited to any Commitment) given or made by the Bank to any Person or Persons (which may or may not include one or more of the Guarantors), (a) such Agreement shall not inure to the benefit of any of the Guarantors to whom such Agreement was not given or made by the Bank (the "Other Guarantor" or "Other Guarantors"), (b) none of the Other Guarantors shall be deemed to be a third party beneficiary thereof, (c) the Bank shall have absolutely no responsibility or liability to any of the Other Guarantors with respect to any breach thereof or failure by the Bank to abide by, or comply with, any such Agreement, and (d) each of the Other Guarantors waives and gives up any rights that each such Other Guarantor may have, on account of any such Agreement or any such breach or failure, to assert any Defense or Claim against the Bank.

12. **Cumulative Rights; Reservation of Rights; Arms' Length Transaction.** The rights and remedies herein provided to the Bank are in addition to, and are not exclusive or in substitution for, any rights or remedies available to the Bank at law or in equity or under any other Agreement or other document which any Person (including but not limited to any Guarantor) may have executed or may hereafter execute in favor of or for the benefit of the Bank, all of which are cumulative and may be exercised by the Bank in whole or in part from time to time. The Bank shall be deemed to have reserved its rights against each Guarantor in connection with any settlement, compromise, discharge or release of any other Obligated Party or any Document. The joint and several liabilities of the Guarantors hereunder shall not be reduced or limited by reason of any similar or dissimilar guaranty or other Document executed in favor of the Bank by any Person, and this Guaranty shall be enforceable against each of the Guarantors jointly and severally without regard thereto. This Guaranty represents an arms' length transaction between the Guarantors and the Bank. Each Guarantor agrees and consents that this Guaranty shall not be, and waives any right to require that this Guaranty be, construed against the Bank on the ground that the Bank has prepared it.



13. **Covenants.** Subject to any other written Agreement between the Bank and any Person relating to the same subject matter, each Guarantor shall:

(a) furnish to the Bank copies of such Guarantor's financial statements and such other information relating to such Guarantor's business, operations, assets, liabilities and condition, financial or otherwise, promptly when, and in such form as, reasonably required or requested by the Bank;

(b) permit any of the Bank's Agents to visit such Guarantor's premises upon not less than two (2) Business Days' prior notice during normal business hours and to examine and make photographs, copies and extracts of such Guarantor's property and of its books and records;

(c) take or cause to be taken any and all action that may be necessary or appropriate (to the extent legally permissible) to cause or permit the Debtors to perform all of the Obligations, and shall not take or cause to be taken any action that may prevent or interfere with any Debtor's performance thereof; and

(d) not enter into any Agreement or purchase any interest in any of the Debtors or other Persons or take or refrain from taking any other action as a result of or in reliance upon any Agreement, representation, warranty, statement, recommendation or information made or purportedly made by or on behalf of the Bank or any of its Agents, whether express or implied, written or oral, direct or indirect, or prior to, simultaneously with or subsequent to the date hereof.

14. **Transfers; Successors and Assigns.**

(a) No Guarantor shall effect or attempt a Transfer of any of the Liabilities without the Bank's prior written consent. Notwithstanding the foregoing, this Guaranty shall be binding upon each Guarantor and upon each Guarantor's executors, administrators, successors, assigns and Transferees (each of which shall be a "Guarantor" hereunder).

(b) This Guaranty shall inure to the benefit of and be enforceable by the Bank and its successors, assigns and Transferees. Without limiting the foregoing, the Bank may make a Transfer of any and all of the Liabilities and Documents to any other Person without notice to or the consent of any of the Guarantors, and the Transferee shall thereupon become vested with all of the Bank's rights in respect thereof. The Bank is authorized to disclose to any prospective or actual Transferee any information that the Bank may have or acquire about any Obligated Party and any information about any other Person submitted to the Bank by or on behalf of any Obligated Party. Each Guarantor waives all defenses (except such defenses as may be asserted against a holder in due course of a negotiable instrument) which each Guarantor may have or acquire against any Transferee who receives a Transfer of this Guaranty, or any complete or partial interest in it, for value, in good faith and without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any Person.

15. **Intentionally Omitted.**

16. **Notices.** All notices and other communications provided for hereunder shall be in writing and, if to the Guarantors, mailed or faxed or delivered to the address set forth on the signature page below, and if to the Bank, mailed or delivered to 1177 Avenue of the Americas, New York, New York 10036, to the attention of the Department, or as to each party at such other address as shall be designated by such party in a written notice to the other party or parties, as the case may be. All such notices and other communications to the Guarantors shall be effective when deposited in the mail, sent by fax or delivered, addressed as aforesaid, and all such notices and other communications to the Bank shall be effective when actually received by the Department.

17. **Litigation.** This Guaranty shall be governed by, and construed in accordance with, the laws of the State of New York applicable to agreements made and to be performed in the State of New York without regard to conflict or choice of law rules. Any legal action or proceeding with respect to this Guaranty may be brought in any court of record of the State of New York, County of New York, or of the United States of America for the Southern District of New York. By execution and delivery of this Guaranty, the Guarantors hereby accept, consent and submit to, generally and unconditionally, the jurisdiction of the aforesaid courts over the Guarantors and their property. Each Guarantor agrees not to, and hereby irrevocably waives the right to, commence a legal action or proceeding against the Bank in any jurisdiction worldwide other than the aforesaid courts, unless the Bank specifically consents thereto in writing. In connection with any action or proceeding between any of the Guarantors and the Bank, each Guarantor agrees not to, and hereby irrevocably waives the right to, interpose (i) any objection, including, without limitation, any objection to the laying of venue or based on the grounds of forum non conveniens, which such Guarantor may now or hereafter have to the bringing of any such action or proceeding in such jurisdiction and/or (ii) any claim for consequential, special or punitive damages and/or (iii) any setoff, counterclaim or cross-claim. The Guarantors irrevocably consent to the service of process on each Guarantor in any such action or proceeding by the mailing of copies thereof by certified or registered mail, postage prepaid, to the Guarantors at the address set forth on the signature page below. Nothing herein shall affect the right of the Bank to serve process in any other manner permitted by law or to commence any legal action or proceeding or otherwise proceed against any of the Guarantors in any jurisdiction worldwide.

18. **Counterparts.** This Guaranty may be signed in any number of counterparts. Any counterpart signed by any Guarantor (a “Signing Guarantor”) shall constitute a full original Guaranty of such Guarantor for all purposes, regardless of whether any counterpart is signed by any other Guarantor. Any reference herein to the execution of this Guaranty shall include the execution of any counterpart. The obligations of any Signing Guarantor hereunder are not conditioned on any other Guarantor’s execution of this Guaranty.

19. **Definitions.** As used herein, the following terms have the meanings indicated:

**Agent:** any director, officer, employee, agent or representative.

**Additional Liabilities:** The liabilities under Sections 7 and 9.

**Agreement:** an agreement, commitment, covenant, instrument, note, representation, understanding or warranty (including but not limited to any Commitment, Credit Support or Document) given or made to or with any Person.

**Applicable Interest Rate:** the highest lawful rate then permitted by applicable law in the State of New York, or if no such rate exists, the highest lawful rate permitted under such other applicable law as the Bank may choose in its discretion.

**Bank:** Bank Hapoalim B.M.

**Bankruptcy Code:** the U.S. Bankruptcy Code as in effect and as amended from time to time and any successor thereto.

**Claim:** any right of setoff, claim, counterclaim or cross-claim of any Obligated Party against the Bank and/or any of its Agents.

**Commitment:** an Agreement, commitment or obligation of the Bank, whether or not in writing, whether express or implied, and whether or not by operation of law, given to any Person (including but not limited to any Obligated Party) to give or to continue any financial accommodations to any of the Debtors or to change, alter, amend, modify, renew, extend the time of payment of, increase or decrease any of the Obligations.

**Commodity Exchange Act:** the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

**Credit Enhancement:** any Credit Support with respect to any of the Obligations. Any reference herein to “any Credit Enhancement” shall be understood to include but not be limited to this Guaranty.

**Creditor:** any Person to whom any Guarantor owed or owes any Debt or otherwise was, became, is or becomes indebted, and any other creditor within the meaning under or as defined in each respective Fraudulent Transfer Law.

**Credit Support:** any collateral, security interest, mortgage, pledge, lien, security, margin, guaranty, insurance, letter of credit, indemnity, subordination, comfort letter, risk participation, repurchase agreement, put, option, banker’s lien, setoff, right of offset or netting agreement, or any Agreement pursuant to which a Person agrees to be contingently liable with respect to any Debt of any other Person or Persons, or any other credit support with respect to any Debt of any Person or Persons.

**Currency:** the lawful currency of any country or the eurocurrency.

**Debt:** an obligation of any sort for the payment of money in any Currency in any jurisdiction worldwide, and however evidenced, whether (a) principal or otherwise, (b) absolute or contingent, (c) secured or unsecured, (d) joint, several or independent, (e) now or hereafter existing, and (f) created directly or acquired by Transfer or otherwise.

**Debtor, Debtors:** as specified on the signature page below.

**Defense:** any fact or circumstance (a) that may affect, suspend, impair, discharge, release, cancel, modify, limit or be a defense (including but not limited to any suretyship defense) to any of the Liabilities of any Obligated Party or any Document or of any of the Bank’s rights or remedies with respect thereto, or (b) that may bar enforcement thereof by the Bank.

**Department:** the department of the Bank responsible for administering the Bank’s relationship with the Debtors with respect to the Obligations.

**Document:** an Agreement of any Obligated Party relating to any of the Obligations and/or Liabilities. Any reference herein to “any Document” shall be understood to include but not be limited to any Credit Enhancement.

**Effective Revocation Time:** the close of business on the day that the Department receives written notice of revocation signed by any of the Guarantors.

**Entity:** any Person other than a natural person.

**Excluded Swap Obligations:** with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the guaranty hereunder of such Guarantor of such Swap Obligation (or any guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the guaranty of such Guarantor becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guaranty hereunder or security interest is or becomes illegal.

**Expenses:** (a) except as set forth in clause (b), all reasonable documented costs and expenses (including but not limited to reasonable fees and disbursements of counsel) incurred by the Bank in connection with this Guaranty or any of the Liabilities including, but not limited to, (i) any amendment, modification, extension or waiver with respect to any of the Liabilities, and/or (ii) any deduction, withholding, registration tax, stamp tax or similar tax or duty applicable to any payment of any of the Liabilities. and (b) all documented costs and expenses (including but not limited to reasonable fees and disbursements of counsel) incurred by the Bank in connection with the enforcement of this Guaranty or any of the Liabilities including but not limited to those for (i) any action taken, whether or not by litigation, to collect, or to protect rights or interests with respect to, any of the Liabilities, or to preserve, protect, secure, insure, obtain or perfect any Credit Enhancement, (ii) compliance with any legal process or any order or directive of any governmental authority with respect to any Obligated Party, and (ii) any litigation, arbitration or administrative proceeding relating to any Obligated Party.

**Fraudulent Transfer:** a “fraudulent transfer”, “fraudulent conveyance” or similar term within the meaning under or as defined in each respective Fraudulent Transfer Law.

**Fraudulent Transfer Law:** the Bankruptcy Code, the New York Debtor and Creditor Law, or the law of any jurisdiction (domestic or foreign) as in effect and as amended from time to time and all successors thereto relating to fraudulent transfers, fraudulent conveyances and/or similar matters.

**Guarantor, Guarantors:** as specified on the signature page below, and as further defined in Section 14(a).

**Guaranty:** this Guaranty.

**Insolvent** as to a Person: (a) insolvent or (b) engaged or about to be engaged in a business or a transaction for which any property remaining with the Person is an unreasonably small capital, or (c) intending to incur or believing that the Person will incur debts that would be beyond the Person’s ability to pay as such debts mature, all within the meaning under or as defined in each Fraudulent Transfer Law.

**Liabilities:** (a) all Obligations and (b) all obligations (including those incurred hereunder) of all Obligated Parties incurred directly or indirectly in respect of any of the Obligations and/or in respect of any Document *provided* that the term Liabilities shall not include Excluded Swap Obligations.

**Nonprincipal Obligations:** all Obligations, whether interest, fees, expenses or otherwise, other than principal.

**Nonrevocable Obligation:** any Obligation (including any extension or rollover thereof and any Nonprincipal Obligations accruing thereon after the Effective Revocation Time) that (i) is, or (ii) relates to a contingent liability of the Bank or to a Commitment that in either case was, outstanding on or prior to the Effective Revocation Time.

**Obligated Party:** (a) each Debtor; (b) each Guarantor; (c) any other Person directly or contingently liable for any of the Obligations, including but not limited to any maker, co-maker, endorser, accommodation party, guarantor, surety or indemnitor with respect to any of the Obligations; (d) any Person providing or issuing any Credit Enhancement with respect to any of the Obligations; or (e) if any Obligated Party is a partnership or joint venture, any general partner or joint venturer therein. Without limiting the foregoing, any reference herein to “any Obligated Party” shall include but not be limited to all of the Debtors and all of the Guarantors, and as to each Guarantor any reference herein to “any other Obligated Party” shall include but not be limited to all of the Debtors and all of the Guarantors other than such Guarantor.

**Obligation:** any Debt of any Debtor and of any successor, assign or Transferee thereof (including any successor of a Debtor that is a partnership or joint venture), whether (a) due or to become due to, or held or to be held by, the Bank, and (b) for the Bank’s own account or as agent for another or others *provided* that the term Obligation shall not include Excluded Swap Obligations..

**Person:** any natural person, firm, partnership, joint venture, company, corporation, limited liability company, unincorporated organization or association, trust, estate, governmental authority or any other entity. Without limiting the foregoing, any reference herein to “any Person” shall include but not be limited to any Obligated Party, and as to each Guarantor any reference herein to “any other Person” shall include but not be limited to any other Obligated Party.

**Reasonably Equivalent Value:** “reasonably equivalent value”, “fair consideration” or similar term within the meaning under or as defined in each respective Fraudulent Transfer Law.

**Subrogation Rights:** all legal and equitable rights and claims arising from the existence or performance of this Guaranty that any of the Guarantors may now or hereafter have, including without limitation all rights of subrogation, indemnity, reimbursement, exoneration and/or contribution, and including without limitation any such right or claim against or with respect to any property (including without limitation any Credit Enhancement) of any Obligated Party.

**Swap Obligation:** with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

**Transfer:** any negotiation, assignment, participation, conveyance, grant of security interest, lease, delegation, or any other direct or indirect transfer of complete or partial, legal, beneficial, economic or other interest or obligation.

**Transferee:** any Person to whom a Transfer is made.

**SIGNATURE PAGE**

Each of the Guarantors makes this Guaranty in favor of the Bank, and each agrees to be bound jointly and severally by the terms and conditions of this Guaranty, both the general terms and conditions set forth above and the specific terms and conditions set forth below.

a) **Debtor(s) [print full name(s)]:**

H LICENSING, LLC

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b) **Type of Guaranty:**

Unlimited

Limited as to the aggregate principal sum of \$, plus a prorated amount of the Nonprincipal Obligations.

c) **OPPORTUNITY TO CONSULT WITH COUNSEL.** Each Guarantor acknowledges having had the opportunity to consult with legal counsel prior to executing this Guaranty.

d) **JURY TRIAL WAIVER.** Both the Bank and the Guarantors waive and give up the right to a jury trial with respect to any dispute, action or proceeding relating to this Guaranty or any of the Obligations or Liabilities; any legal action or proceeding relating to this Guaranty or any of the Obligations or Liabilities shall take place without a jury.

Date: December 22, 2014

SIGNATURE PAGE TO  
GUARANTY  
(JR LICENSING)

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**SIGNATURE(S) AND IDENTIFICATION:**

JR LICENSING, LLC

By: XCEL BRANDS, INC., its Manager

By: /s/ James Haran

Print Name: James Haran

Title: CFO

Guarantors' address and fax number for purposes of notice:

Address:

475 Tenth Avenue  
New York, New York 10018

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

SIGNATURE PAGE TO  
GUARANTY  
(JR LICENSING)

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**GUARANTY**

**Introductory Note.** This Guaranty may be used for one or more Guarantors or with respect to one or more Debtors. If there is only one Guarantor or only one Debtor, then any reference herein to “the Guarantors”, “any Guarantor”, “each Guarantor” or the like, or to “the Debtors”, “any Debtor”, “each Debtor” or the like, shall be understood to refer to the Guarantor or to the Debtor, respectively. All capitalized terms in this Guaranty are defined in Section 19.

**Preamble.** Each of the undersigned (each a “Guarantor” and collectively the “Guarantors”) expects to derive direct and/or indirect benefits from the Bank’s giving or continuing financial accommodations to any of the Debtors. The Bank is unwilling to give or continue financial accommodations to the Debtors without the guaranty of payment of each of the Guarantors as set forth in this Guaranty. It is a condition precedent to the Bank’s giving or continuing these financial accommodations to any of the Debtors that the Guarantors shall have executed and delivered this Guaranty to the Bank. In consideration of the premises and in consideration of financial accommodations given or to be given or continued to any of the Debtors by the Bank, and in order to induce the Bank to give or continue financial accommodations to any of the Debtors, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Guarantors, the Guarantors hereby jointly and severally represent and warrant to, and covenant and agree with, the Bank as follows:

1. **Guaranty.** The Guarantors hereby jointly and severally, irrevocably and unconditionally (a) guarantee to the Bank the full and punctual payment when due (whether at stated maturity, by acceleration or otherwise) by the Debtors of all Obligations, and (b) agree to pay to the Bank all Additional Liabilities immediately when due or on demand. This Guaranty is the unlimited or limited (as set forth on the signature page below), primary obligation of the Guarantors. The Bank may enforce this Guaranty against any Guarantor and/or any Credit Enhancement provided by any Guarantor without any prior or contemporaneous enforcement of any of the Obligations against any other Obligated Party or Credit Enhancement.

2. **Guaranty Absolute.** This Guaranty is a continuing, absolute and unconditional guaranty of payment and not of collection, and shall remain in full force and effect until payment in full of all amounts payable under this Guaranty, notwithstanding that at any time and from time to time (i) the Debtors may be free from any Obligations or (ii) the Obligations may exceed the amount of the Liabilities of the Guarantors hereunder, and regardless of how long before or after the date hereof any of the Obligations were or are incurred, and regardless of whether any financial accommodation resulting in an Obligation was or shall be given or continued by the Bank in contemplation of this Guaranty. Each Guarantor waives all Defenses and Claims with respect to this Guaranty and/or any Credit Enhancement provided by such Guarantor. All Obligations shall be conclusively presumed to have been created in reliance hereon.

Without limiting any other provisions hereof, none of the following (whether occurring prior to, simultaneously with or subsequent to the date hereof) shall give rise to a Defense or Claim with respect to this Guaranty and/or any Credit Enhancement provided by any Guarantor, and each Guarantor waives all such Defenses and Claims that might otherwise arise therefrom, and the joint and several liability of each Guarantor under this Guaranty shall be absolute and unconditional irrespective of:

(a) the death, incompetence or disability of any Obligated Party, or any law (including, to the fullest extent permitted by law, any statute of limitations), regulation, order, stay, injunction or prohibition now or hereafter in effect in any jurisdiction that would give rise to a Defense or Claim available to any Obligated Party, or any other fact or circumstance that may result in or constitute a Defense or Claim available to any Obligated Party;

(b) any lack of genuineness, validity, legality, regularity or enforceability of any of the Liabilities or of any Document (including but not limited to any determination that any Obligated Party (i) was not a duly organized and validly existing Entity or (ii) lacked the authorization or capacity to incur any of the Liabilities);

(c) any payment made by, or amount received or collected by the Bank from, any other Person in respect of any of the Liabilities or of any other Debt of any Debtor;

(d) any revocation, early termination, rejection, disaffirmance, cessation, impairment or suspension for any cause whatsoever of (i) any of the Liabilities or (ii) the validity, binding effect or enforceability of any of the Liabilities or of any Document, except that any Guarantor may deliver to the Bank a written notice of revocation signed by such Guarantor, which may revoke such Guarantor’s Liabilities (but not of any other Guarantor) under this Guaranty, provided that such notice shall not affect such Guarantor’s Liabilities with respect to any Nonrevocable Obligations, and such Guarantor waives all rights to revoke any Liabilities with respect to any Nonrevocable Obligations and shall remain fully liable with respect thereto;

(e) any loss or non-perfection of, or any inability to foreclose or otherwise realize on, any Credit Enhancement;

(f) if a Guarantor is a partnership or joint venture, the death, incompetence, retirement or withdrawal of one or more partners or joint venturers, or the accession of one or more new partners or joint venturers, or the dissolution (by operation of law or otherwise) of such Guarantor;

(g) any Transfer or purported Transfer by any Guarantor of any of the Liabilities;

(h) any action or omission referred to in Section 4 or Section 5;

(i) any event or events, whether with or without the consent of, or notice to, any of the Guarantors (even if known to the Bank or any of its Agents and not known to any of the Guarantors), which result or results in any change, whether or not material, in (i) the business, assets, liability or financial condition of any of the Debtors, (ii) the identity of any of the Debtors (whether by consolidation, merger, reorganization, change in form or structure, change in membership, change in control, change in management, or otherwise), (iii) any relationship (whether business, financial, personal or otherwise) between any of the Debtors and any of the Guarantors or (iv) the degree of risk assumed by any of the Guarantors hereunder.

3. **Payment.** Any payment made under this Guaranty shall be paid to the Bank at its offices in New York City, or at such other place as the Bank may designate in writing, in immediately available funds in the Currency in which the applicable Liabilities are denominated.

4. **Waiver.** Without limiting any other provisions of this Guaranty, each Guarantor hereby waives (a) notice of acceptance of this Guaranty, (b) notice of any Obligation to which this Guaranty may apply, (c) notice or proof of reliance by the Bank upon this Guaranty, (d) promptness, (e) diligence, (f) presentment, (g) demand for payment, (h) notice of dishonor or nonpayment of, or with respect to, any of the Obligations, (i) notice of any legal action or proceeding or any demand or any other action against, or any other notice to, any Obligated Party, and (j) any requirement that the Bank exhaust any right or take any action against or with respect to any other Obligated Party or any Credit Enhancement.

5. **Permitted Bank Actions and Omissions.** As to each Guarantor, the Bank and its Agents may, without giving rise to any Defense or Claim, at any time upon or without any terms or conditions, in whole or in part, and without the consent of, or notice to, any Obligated Party:

(a) change the Currency, time, manner or place of payment or performance (whether before or after maturity) or extend, renew, change, alter, amend, modify or waive any of the terms of any of the Liabilities or any Document;

(b) increase or decrease any of the Liabilities, including but not limited to the amount of principal or the amount or rate of any interest, fees, charges or other amount payable;

(c) (i) sell, exchange, realize upon, foreclose, release or surrender, or fail so to do with respect to, or (ii) impair or fail to take any steps necessary to care for, preserve, protect, secure, insure or obtain, or (iii) impair or fail to take any steps necessary to perfect (including any failure to make any filing or recording, or the making or any improper filing or recording of) any security interest or other rights in; or (iv) otherwise deal or fail to deal with, any Credit Enhancement or Subrogation Rights in any manner and in any order; or (v) exercise or refrain from exercising any rights against any other Obligated Party or any other Person or otherwise act or refrain from acting;

(d) (i) discharge, release, settle with or compromise with any other Obligated Party or other Person and/or (ii) consent to or waive any breach of, any departure from, or any act, omission or default under, any Document; or (iii) fail to notify any of the Guarantors or any other Person (even if known to the Bank or any of its Agents and not known to any of the Guarantors) of any change, whether or not material, relating to any of the Debtors or of any other Person, including but not limited to any of the matters set forth in Section 2(i).

6. **Bank Statements.** Any statement, certificate, notice or the like submitted by the Bank to any of the Debtors and/or to any of the Guarantors, setting forth the amount or amounts of any or all of the Obligations and/or Liabilities, shall be prima face evidence thereof, and each Guarantor agrees to be bound thereby absent manifest error.

7. **Expenses; Currency; Interest.** Each of the obligations set forth in this Section shall be a separate obligation payable on demand, with respect to which the Guarantors shall be jointly and severally liable to the Bank as an alternative or additional cause of action or claim.

(a) The Guarantors shall indemnify and hold the Bank harmless against all Expenses.

(b) If the Bank does not receive payment of any of the Liabilities in any amount of Currency when due, the Guarantors shall pay the equivalent of such amount in the Currency (including but not limited to the lawful Currency of the United States) in which such Liabilities were originally due, *provided* that the Bank may, at its option, accept payment of an equivalent amount (computed at the Bank's selling rate for such Currency at the place where such amount is payable as at the time such payment is made) in any other Currency. The receipt by the Bank of any amount in respect of any of the Liabilities in a Currency other than that in which such amount was originally due, whether pursuant to a judgment or arbitration award or pursuant to the provisions of this Guaranty or any Agreement or otherwise, shall not discharge the Guarantors with respect to any of such Liabilities except to the extent that on the first day on which the Bank is open for business immediately following such receipt, the Bank shall be able, in accordance with normal banking practice, to purchase the Currency in which such amount was due with the Currency received. Notwithstanding any such judgment or arbitration award, the Guarantors shall in any event indemnify the Bank against all losses sustained and all costs incurred by it in making any such purchase of Currency.

(c) Any amount payable hereunder shall bear interest from the date due until payment is received or recovered by the Bank in the Currency in which such amount was due at the place at which it was payable, at the Applicable Interest Rate.

8. **Representations and Warranties.** Each Guarantor represents and warrants to the Bank that each of the following is true, accurate and complete as of the date of such Guarantor's execution of this Guaranty, and acknowledges that the Bank's giving or continuing of financial accommodations to any of the Debtors is made in reliance thereon.

(a) If such Guarantor is a natural person, he or she has the legal capacity to execute and deliver this Guaranty and is doing so in his or her capacity as an individual and not in any representative capacity on behalf of any other Person, notwithstanding any reference to any office, title or the like next to such Guarantor's signature on this Guaranty.

(b) If such Guarantor is an Entity, it is an Entity duly organized, legally existing and in good standing under the laws of the jurisdiction in which it has been organized.

(c) Such Guarantor has full right, power and authority to enter into, execute and deliver this Guaranty and to perform all matters required to be performed by such Guarantor hereunder; the execution and delivery of this Guaranty by or on behalf of such Guarantor to the Bank is fully and unconditionally authorized; such Guarantor has duly executed and delivered this Guaranty pursuant to lawful authority; and this Guaranty constitutes such Guarantor's legal, valid and binding obligation enforceable in accordance with its terms.

(d) Such Guarantor is duly licensed or qualified to do business in all states and jurisdictions where such licensing or qualification is necessary unless the failure to so obtain such license or qualification could not reasonably be expected to have a material adverse effect on such Guarantor's financial condition or the ability of such Guarantor to perform its obligations under this Guaranty.

(e) The execution and delivery by such Guarantor of this Guaranty is not, and the performance by such Guarantor of any such Guarantor's obligations hereunder will not be, in contravention of, or cause any breach or default pursuant to, any provision of law or any charter or by-law provision or any material covenant, indenture or Agreement of or affecting such Guarantor or any of such Guarantor's assets.

(f) No consent of any Person and no consent, license, permit approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty (including, without limitation, the payment to the Bank at the applicable place in the applicable Currency).

(g) No registration tax, stamp duty or similar tax or duty imposed by any governmental authority arises in connection with the execution, delivery and performance of this Guaranty by such Guarantor.

(h) No litigation, arbitration, investigation or proceeding of or before any court, arbitrator or administrative or governmental authority is currently pending or, to the knowledge of such Guarantor, threatened (i) with respect to this Guaranty or any of the transactions contemplated hereby, or (ii) against or affecting such Guarantor, or any of such Guarantor's assets, or (iii) which could affect the business operations, assets, liabilities or condition, financial or otherwise, of such Guarantor or such Guarantor's ability to enter into, execute or deliver this Guaranty or prejudice in a material manner such Guarantor's ability to fulfill such Guarantor's obligations pursuant to this Guaranty.

(i) The financial statements of such Guarantor which have been furnished to the Bank have been prepared in accordance with generally accepted accounting principles consistently applied, and fairly present the correct financial condition of such Guarantor as of their respective dates; and there has been no subsequent material adverse change in the business, operations, assets, liabilities or condition, financial or otherwise, of such Guarantor.

(j) There is no fact that such Guarantor has not disclosed to the Bank in writing that could materially and adversely affect such Guarantor's business, operations, assets, liabilities or condition, financial or otherwise, or such Guarantor's ability to perform under this Guaranty.

(k) Such Guarantor is not, and upon such Guarantor's execution and delivery of this Guaranty to the Bank such Guarantor will not be, Insolvent; in exchange for executing and delivering this Guaranty to the Bank, such Guarantor has received or will have received Reasonably Equivalent Value; such Guarantor's execution and delivery of this Guaranty does not constitute a Fraudulent Transfer; such Guarantor's execution and delivery of this Guaranty is not made with intent to hinder, delay or defraud any Creditor; and this Guaranty cannot be set aside, avoided or rendered unenforceable in whole or in part by virtue of any Fraudulent Transfer Law.

(l) Such Guarantor has not provided any Credit Support with respect to the Debt of any Person other than this Guaranty.

(m) Such Guarantor believes that (i) the Guarantors do not have any Defense or Claim with respect to this Guaranty, any Credit Enhancement or any of the Liabilities, and (ii) there do not exist any facts and circumstances that could result in or constitute any such Defense or Claim.

(n) Such Guarantor has independently investigated, without reliance on the Bank, and is fully familiar with, (i) the identity, status and financial condition of each Debtor, (ii) all relationships, if any (whether business, financial, personal or otherwise), between and/or among any and all of the Debtors and any and all of the Guarantors, and (iii) the degree of risk assumed by such Guarantor hereunder.



(o) Such Guarantor has not relied upon and has not been induced to execute and deliver this Guaranty or to purchase any interest in any of the Debtors or any other Person or to take or refrain from taking any other action as a result of any Agreement, representation, warranty, statement, recommendation or information made or purportedly made by or on behalf of the Bank or any of its Agents, whether express or implied, written or oral, direct or indirect, and whether prior to or simultaneously with the date hereof.

(p) Neither the Bank nor any of its Agents has represented or indicated that the Bank will not enforce any provision of any Document.

9. **Contribution; Subordination; Subrogation.**

(a) If and to the extent that any Guarantor (the "Paying Guarantor") makes payment in respect of this Guaranty, then in furtherance and not limitation of any rights that the Paying Guarantor may have in law or equity, each other Guarantor shall have an obligation, upon demand by the Paying Guarantor, to pay to the Paying Guarantor an amount equal to the quotient of (x) the amount so paid by the Paying Guarantor, divided by (y) the total number of Guarantors.

(b) All direct or indirect claims and rights (whether for moneys advanced, services performed or assets sold and delivered or on account of any Subrogation Rights, whether for an indeterminate amount, a sum certain or a contingent claim), now existing or hereafter arising which any Guarantor may have against any other Obligated Party shall be subject and subordinate to the prior payment in full to the Bank of all of the Liabilities. Each Guarantor hereby assigns and transfers to the Bank, effective upon demand by the Bank for payment by such Guarantor of any amount hereunder, all such claims and rights and any proceeds thereof, and agrees that the Bank may, in its discretion, make and present in any bankruptcy or other proceeding such proofs or claims with respect thereto as the Bank may deem expedient or proper and may vote such proofs or claims in any such proceeding. Each Guarantor shall deliver upon demand by the Bank such additional documents as the Bank may request to evidence such subordination, assignment and transfer, including without limitation duly executed assignments. At any time when all the Liabilities shall not have been paid in full, each Guarantor shall (i) as trustee for the Bank, enforce all claims and rights against any other Obligated Party or any Credit Enhancement and collect all sums due from any other Obligated Party or any Credit Enhancement or with respect to any of the Liabilities, (ii) hold any amounts received on account thereof in trust for the benefit of the Bank, and (iii) pay all such amounts immediately to the Bank to be applied to the Liabilities, together with interest on all such amounts from the date of such receipt until paid to the Bank at the Applicable Interest Rate, without reducing or affecting in any manner the liability of such Guarantor under the other provisions of this Guaranty.

(c) Until all of the Liabilities shall have been paid in full, each Guarantor shall have no Subrogation Rights, and waives any right to enforce any right or remedy which the Bank has or may hereafter have against any other Obligated Party or in or against any Credit Enhancement.

10. **Reinstatement.** If (a) claim is ever made on the Bank for repayment or recovery of any amount received in payment or on account of any of the Obligations, and (b) the Bank repays all or part of such amount by reason of (i) any judgment, decree, order or award of any court, administrative body, arbitration panel or the like or (ii) any settlement or compromise of any such claim effected by the Bank with any such claimant (including any Obligated Party), then any such judgment, decree, order, award, settlement or compromise shall be binding upon all of the Guarantors, notwithstanding the release or cancellation of any Document, and the Guarantors shall be and remain liable hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by the Bank.

11. **Agreements, Representations, Amendments and Waivers.** No Agreement or representation by the Bank, and no amendment or waiver of any provision of this Guaranty nor consent to any departure therefrom by any of the Guarantors shall be effective unless in writing and duly signed by at least two duly authorized officers of the Bank, and any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure on the part of the Bank to exercise, and no delay in exercising, any right under any Document or otherwise, shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. In the case of any Agreement (including but not limited to any Commitment) given or made by the Bank to any Person or Persons (which may or may not include one or more of the Guarantors), (a) such Agreement shall not inure to the benefit of any of the Guarantors to whom such Agreement was not given or made by the Bank (the "Other Guarantor" or "Other Guarantors"), (b) none of the Other Guarantors shall be deemed to be a third party beneficiary thereof, (c) the Bank shall have absolutely no responsibility or liability to any of the Other Guarantors with respect to any breach thereof or failure by the Bank to abide by, or comply with, any such Agreement, and (d) each of the Other Guarantors waives and gives up any rights that each such Other Guarantor may have, on account of any such Agreement or any such breach or failure, to assert any Defense or Claim against the Bank.

12. **Cumulative Rights; Reservation of Rights; Arms' Length Transaction.** The rights and remedies herein provided to the Bank are in addition to, and are not exclusive or in substitution for, any rights or remedies available to the Bank at law or in equity or under any other Agreement or other document which any Person (including but not limited to any Guarantor) may have executed or may hereafter execute in favor of or for the benefit of the Bank, all of which are cumulative and may be exercised by the Bank in whole or in part from time to time. The Bank shall be deemed to have reserved its rights against each Guarantor in connection with any settlement, compromise, discharge or release of any other Obligated Party or any Document. The joint and several liabilities of the Guarantors hereunder shall not be reduced or limited by reason of any similar or dissimilar guaranty or other Document executed in favor of the Bank by any Person, and this Guaranty shall be enforceable against each of the Guarantors jointly and severally without regard thereto. This Guaranty represents an arms' length transaction between the Guarantors and the Bank. Each Guarantor agrees and consents that this Guaranty shall not be, and waives any right to require that this Guaranty be, construed against the Bank on the ground that the Bank has prepared it.

13. **Covenants.** Subject to any other written Agreement between the Bank and any Person relating to the same subject matter, each Guarantor shall:

(a) furnish to the Bank copies of such Guarantor's financial statements and such other information relating to such Guarantor's business, operations, assets, liabilities and condition, financial or otherwise, promptly when, and in such form as, reasonably required or requested by the Bank. Without limiting the foregoing, it shall be deemed reasonable for the Bank to require or request that as soon as available but in any event (i) within one hundred twenty (120) days of the end of each fiscal year of such Guarantor, such Guarantor shall furnish a copy of such Guarantor's audited financial statements prepared on a consolidated basis as of the end of the fiscal year prepared by CohnReznick LLP or other independent certified public accountants of nationally recognized standing reasonably acceptable to the Bank, and in addition, no later than the delivery of such audited financial statements, such Guarantor shall furnish to the Bank the corresponding consolidating balance sheets of such Guarantor and each of its Subsidiaries as at the end of each fiscal year and statements of income and of cash flows for such fiscal year; (ii) within 60 days of the end of each of the first three fiscal quarters of a Guarantor that is an Entity, such Guarantor shall furnish a copy of its unaudited financial statements prepared on a consolidated and consolidating basis as of the end of the fiscal quarter, certified by its chief executive, operating or financial officer;

(b) permit any of the Bank's Agents to visit such Guarantor's premises upon not less than two (2) Business Days' prior notice during normal business hours and to examine and make photographs, copies and extracts of such Guarantor's property and of its books and records;

(c) take or cause to be taken any and all action that may be necessary or appropriate (to the extent legally permissible) to cause or permit the Debtors to perform all of the Obligations, and shall not take or cause to be taken any action that may prevent or interfere with any Debtor's performance thereof; and

(d) not enter into any Agreement or purchase any interest in any of the Debtors or other Persons or take or refrain from taking any other action as a result of or in reliance upon any Agreement, representation, warranty, statement, recommendation or information made or purportedly made by or on behalf of the Bank or any of its Agents, whether express or implied, written or oral, direct or indirect, or prior to, simultaneously with or subsequent to the date hereof.

14. **Transfers; Successors and Assigns.**

(a) No Guarantor shall effect or attempt a Transfer of any of the Liabilities without the Bank's prior written consent. Notwithstanding the foregoing, this Guaranty shall be binding upon each Guarantor and upon each Guarantor's executors, administrators, successors, assigns and Transferees (each of which shall be a "Guarantor" hereunder).

(b) This Guaranty shall inure to the benefit of and be enforceable by the Bank and its successors, assigns and Transferees. Without limiting the foregoing, the Bank may make a Transfer of any and all of the Liabilities and Documents to any other Person without notice to or the consent of any of the Guarantors, and the Transferee shall thereupon become vested with all of the Bank's rights in respect thereof. The Bank is authorized to disclose to any prospective or actual Transferee any information that the Bank may have or acquire about any Obligated Party and any information about any other Person submitted to the Bank by or on behalf of any Obligated Party. Each Guarantor waives all defenses (except such defenses as may be asserted against a holder in due course of a negotiable instrument) which each Guarantor may have or acquire against any Transferee who receives a Transfer of this Guaranty, or any complete or partial interest in it, for value, in good faith and without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any Person.

15. **Intentionally Omitted.**

16. **Notices.** All notices and other communications provided for hereunder shall be in writing and, if to the Guarantors, mailed or faxed or delivered to the address set forth on the signature page below, and if to the Bank, mailed or delivered to 1177 Avenue of the Americas, New York, New York 10036, to the attention of the Department, or as to each party at such other address as shall be designated by such party in a written notice to the other party or parties, as the case may be. All such notices and other communications to the Guarantors shall be effective when deposited in the mail, sent by fax or delivered, addressed as aforesaid, and all such notices and other communications to the Bank shall be effective when actually received by the Department.

17. **Litigation.** This Guaranty shall be governed by, and construed in accordance with, the laws of the State of New York applicable to agreements made and to be performed in the State of New York without regard to conflict or choice of law rules. Any legal action or proceeding with respect to this Guaranty may be brought in any court of record of the State of New York, County of New York, or of the United States of America for the Southern District of New York. By execution and delivery of this Guaranty, the Guarantors hereby accept, consent and submit to, generally and unconditionally, the jurisdiction of the aforesaid courts over the Guarantors and their property. Each Guarantor agrees not to, and hereby irrevocably waives the right to, commence a legal action or proceeding against the Bank in any jurisdiction worldwide other than the aforesaid courts, unless the Bank specifically consents thereto in writing. In connection with any action or proceeding between any of the Guarantors and the Bank, each Guarantor agrees not to, and hereby irrevocably waives the right to, interpose (i) any objection, including, without limitation, any objection to the laying of venue or based on the grounds of forum non conveniens, which such Guarantor may now or hereafter have to the bringing of any such action or proceeding in such jurisdiction and/or (ii) any claim for consequential, special or punitive damages and/or (iii) any setoff, counterclaim or cross-claim. The Guarantors irrevocably consent to the service of process on each Guarantor in any such action or proceeding by the mailing of copies thereof by certified or registered mail, postage prepaid, to the Guarantors at the address set forth on the signature page below. Nothing herein shall affect the right of the Bank to serve process in any other manner permitted by law or to commence any legal action or proceeding or otherwise proceed against any of the Guarantors in any jurisdiction worldwide.

18. **Counterparts.** This Guaranty may be signed in any number of counterparts. Any counterpart signed by any Guarantor (a "Signing Guarantor") shall constitute a full original Guaranty of such Guarantor for all purposes, regardless of whether any counterpart is signed by any other Guarantor. Any reference herein to the execution of this Guaranty shall include the execution of any counterpart. The obligations of any Signing Guarantor hereunder are not conditioned on any other Guarantor's execution of this Guaranty.

19. **Definitions.** As used herein, the following terms have the meanings indicated:

**Agent:** any director, officer, employee, agent or representative.

**Additional Liabilities:** The liabilities under Sections 7 and 9.

**Agreement:** an agreement, commitment, covenant, instrument, note, representation, understanding or warranty (including but not limited to any Commitment, Credit Support or Document) given or made to or with any Person.

**Applicable Interest Rate:** the highest lawful rate then permitted by applicable law in the State of New York, or if no such rate exists, the highest lawful rate permitted under such other applicable law as the Bank may choose in its discretion.

**Bank:** Bank Hapoalim B.M.

**Bankruptcy Code:** the U.S. Bankruptcy Code as in effect and as amended from time to time and any successor thereto.

**Claim:** any right of setoff, claim, counterclaim or cross-claim of any Obligated Party against the Bank and/or any of its Agents.

**Commitment:** an Agreement, commitment or obligation of the Bank, whether or not in writing, whether express or implied, and whether or not by operation of law, given to any Person (including but not limited to any Obligated Party) to give or to continue any financial accommodations to any of the Debtors or to change, alter, amend, modify, renew, extend the time of payment of, increase or decrease any of the Obligations.

**Commodity Exchange Act:** the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

**Credit Enhancement:** any Credit Support with respect to any of the Obligations. Any reference herein to "any Credit Enhancement" shall be understood to include but not be limited to this Guaranty.

**Creditor:** any Person to whom any Guarantor owed or owes any Debt or otherwise was, became, is or becomes indebted, and any other creditor within the meaning under or as defined in each respective Fraudulent Transfer Law.

**Credit Support:** any collateral, security interest, mortgage, pledge, lien, security, margin, guaranty, insurance, letter of credit, indemnity, subordination, comfort letter, risk participation, repurchase agreement, put, option, banker's lien, setoff, right of offset or netting agreement, or any Agreement pursuant to which a Person agrees to be contingently liable with respect to any Debt of any other Person or Persons, or any other credit support with respect to any Debt of any Person or Persons.

**Currency:** the lawful currency of any country or the eurocurrency.

**Debt:** an obligation of any sort for the payment of money in any Currency in any jurisdiction worldwide, and however evidenced, whether (a) principal or otherwise, (b) absolute or contingent, (c) secured or unsecured, (d) joint, several or independent, (e) now or hereafter existing, and (f) created directly or acquired by Transfer or otherwise.

**Debtor, Debtors:** as specified on the signature page below.

**Defense:** any fact or circumstance (a) that may affect, suspend, impair, discharge, release, cancel, modify, limit or be a defense (including but not limited to any suretyship defense) to any of the Liabilities of any Obligated Party or any Document or of any of the Bank's rights or remedies with respect thereto, or (b) that may bar enforcement thereof by the Bank.

**Department:** the department of the Bank responsible for administering the Bank's relationship with the Debtors with respect to the Obligations.

**Document:** an Agreement of any Obligated Party relating to any of the Obligations and/or Liabilities. Any reference herein to "any Document" shall be understood to include but not be limited to any Credit Enhancement.

**Effective Revocation Time:** the close of business on the day that the Department receives written notice of revocation signed by any of the Guarantors.

**Entity:** any Person other than a natural person.

**Excluded Swap Obligations:** with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the guaranty hereunder of such Guarantor of such Swap Obligation (or any guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the guaranty of such Guarantor becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guaranty hereunder or security interest is or becomes illegal.

**Expenses:** (a) except as set forth in clause (b), all reasonable documented costs and expenses (including but not limited to reasonable fees and disbursements of counsel) incurred by the Bank in connection with this Guaranty or any of the Liabilities including, but not limited to, (i) any amendment, modification, extension or waiver with respect to any of the Liabilities, and/or (ii) any deduction, withholding, registration tax, stamp tax or similar tax or duty applicable to any payment of any of the Liabilities, and (b) all documented costs and expenses (including but not limited to reasonable fees and disbursements of counsel) incurred by the Bank in connection with the enforcement of this Guaranty or any of the Liabilities including but not limited to those for (i) any action taken, whether or not by litigation, to collect, or to protect rights or interests with respect to, any of the Liabilities, or to preserve, protect, secure, insure, obtain or perfect any Credit Enhancement, (ii) compliance with any legal process or any order or directive of any governmental authority with respect to any Obligated Party, and (ii) any litigation, arbitration or administrative proceeding relating to any Obligated Party.

**Fraudulent Transfer:** a "fraudulent transfer", "fraudulent conveyance" or similar term within the meaning under or as defined in each respective Fraudulent Transfer Law.

**Fraudulent Transfer Law:** the Bankruptcy Code, the New York Debtor and Creditor Law, or the law of any jurisdiction (domestic or foreign) as in effect and as amended from time to time and all successors thereto relating to fraudulent transfers, fraudulent conveyances and/or similar matters.

**Guarantor, Guarantors:** as specified on the signature page below, and as further defined in Section 14(a).

**Guaranty:** this Guaranty.

**Insolvent** as to a Person: (a) insolvent or (b) engaged or about to be engaged in a business or a transaction for which any property remaining with the Person is an unreasonably small capital, or (c) intending to incur or believing that the Person will incur debts that would be beyond the Person's ability to pay as such debts mature, all within the meaning under or as defined in each Fraudulent Transfer Law.

**Liabilities:** (a) all Obligations and (b) all obligations (including those incurred hereunder) of all Obligated Parties incurred directly or indirectly in respect of any of the Obligations and/or in respect of any Document *provided* that the term Liabilities shall not include Excluded Swap Obligations.

**Nonprincipal Obligations:** all Obligations, whether interest, fees, expenses or otherwise, other than principal.

**Nonrevocable Obligation:** any Obligation (including any extension or rollover thereof and any Nonprincipal Obligations accruing thereon after the Effective Revocation Time) that (i) is, or (ii) relates to a contingent liability of the Bank or to a Commitment that in either case was, outstanding on or prior to the Effective Revocation Time.

**Obligated Party:** (a) each Debtor; (b) each Guarantor; (c) any other Person directly or contingently liable for any of the Obligations, including but not limited to any maker, co-maker, endorser, accommodation party, guarantor, surety or indemnitor with respect to any of the Obligations; (d) any Person providing or issuing any Credit Enhancement with respect to any of the Obligations; or (e) if any Obligated Party is a partnership or joint venture, any general partner or joint venturer therein. Without limiting the foregoing, any reference herein to "any Obligated Party" shall include but not be limited to all of the Debtors and all of the Guarantors, and as to each Guarantor any reference herein to "any other Obligated Party" shall include but not be limited to all of the Debtors and all of the Guarantors other than such Guarantor.

**Obligation:** any Debt of any Debtor and of any successor, assign or Transferee thereof (including any successor of a Debtor that is a partnership or joint venture), whether (a) due or to become due to, or held or to be held by, the Bank, and (b) for the Bank's own account or as agent for another or others *provided* that the term Obligation shall not include Excluded Swap Obligations..

Person: any natural person, firm, partnership, joint venture, company, corporation, limited liability company, unincorporated organization or association, trust, estate, governmental authority or any other entity. Without limiting the foregoing, any reference herein to “any Person” shall include but not be limited to any Obligated Party, and as to each Guarantor any reference herein to “any other Person” shall include but not be limited to any other Obligated Party.

Reasonably Equivalent Value: “reasonably equivalent value”, “fair consideration” or similar term within the meaning under or as defined in each respective Fraudulent Transfer Law.

Subrogation Rights: all legal and equitable rights and claims arising from the existence or performance of this Guaranty that any of the Guarantors may now or hereafter have, including without limitation all rights of subrogation, indemnity, reimbursement, exoneration and/or contribution, and including without limitation any such right or claim against or with respect to any property (including without limitation any Credit Enhancement) of any Obligated Party.

Swap Obligation: with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

Transfer: any negotiation, assignment, participation, conveyance, grant of security interest, lease, delegation, or any other direct or indirect transfer of complete or partial, legal, beneficial, economic or other interest or obligation.

Transferee: any Person to whom a Transfer is made.

**SIGNATURE PAGE**

Each of the Guarantors makes this Guaranty in favor of the Bank, and each agrees to be bound jointly and severally by the terms and conditions of this Guaranty, both the general terms and conditions set forth above and the specific terms and conditions set forth below.

a) **Debtor(s) [print full name(s)]:**

H Licensing, LLC

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b) **Type of Guaranty:**

Unlimited

Limited as to the aggregate principal sum of \$, plus a prorated amount of the Nonprincipal Obligations.

c) **OPPORTUNITY TO CONSULT WITH COUNSEL.** Each Guarantor acknowledges having had the opportunity to consult with legal counsel prior to executing this Guaranty.

d) **JURY TRIAL WAIVER.** Both the Bank and the Guarantors waive and give up the right to a jury trial with respect to any dispute, action or proceeding relating to this Guaranty or any of the Obligations or Liabilities; any legal action or proceeding relating to this Guaranty or any of the Obligations or Liabilities shall take place without a jury.

Date: December 22, 2014

SIGNATURE PAGE TO  
GUARANTY  
(XCEL BRANDS)

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**SIGNATURE(S) AND IDENTIFICATION:**

XCEL BRANDS, INC.

By: /s/ Robert D'Loren

Print Name: Robert D'Loren

Title: CEO

Guarantors' address and fax number for purposes of notice:

Address:

475 Tenth Avenue  
New York, New York 10018

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

SIGNATURE PAGE TO  
GUARANTY  
(XCEL BRANDS)

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**VOTING AGREEMENT**

THIS VOTING AGREEMENT (this "Agreement"), dated as of December 22, 2014, is made by and among XCel Brands, Inc., a Delaware corporation, and its successors and/or assigns (the "Company") and The H Company IP, LLC (the "Seller").

**WHEREAS**, the Company and H Licensing LLC (collectively the "Buyers") and the have entered into that certain Asset Purchase Agreement, dated as of December 22, 2014 (the "Purchase Agreement"), pursuant to which Buyers have acquired certain of the assets that relate to the Business (as defined in the Purchase Agreement) of the Seller and House of Halston, LLC;

**WHEREAS**, the Buyers and the Seller have entered into that certain Master License Agreement, dated as of December 22, 2014 (the "Master License Agreement"), pursuant to which Buyers shall grant an exclusive worldwide license of certain of Buyers' intellectual property rights to Seller;

**WHEREAS**, pursuant to the terms of the Purchase Agreement, the Seller will be issued and shall receive XCel Shares (as defined herein);

**WHEREAS**, pursuant to the terms of the Purchase Agreement, the Seller will be issued and shall receive warrants (the "Warrants") to purchase the Warrant Shares (as defined in the Purchase Agreement);

**WHEREAS**, pursuant to the terms of the Master License Agreement, the Seller may be issued XCel Shares; and

**WHEREAS**, on the terms and conditions set forth in the Purchase Agreement, the Master License Agreement and the Warrants, the Holder desires and agrees to be bound by the restrictions on transfer, and to vote all XCel Shares issued to them pursuant to the terms of the Purchase Agreement as set forth herein.

**NOW, THEREFORE**, in consideration of the promises contained herein and for other good and valuable consideration, the receipt, sufficiency and adequacy of which is hereby acknowledged, the parties hereto agree as follows (with all capitalized terms used and not otherwise defined herein having their respective meanings as set forth in the Purchase Agreement):

**1. Definitions.** All capitalized terms used but not defined herein shall have the meanings given to such terms in the Purchase Agreement. For the purposes of this Agreement, the following terms shall have the respective meanings set forth below or elsewhere in this Agreement as referred to below:

"Affiliate" shall mean (i) any other person or entity who directly, or indirectly through one or more intermediaries, is in control of, is controlled by, or is under common control with, such Holder or a member such Holder's Immediate Family or (ii) a member of such Holder's Immediate Family. For purposes of this definition, control of an entity means the power, directly or indirectly, to direct or cause the direction of the management and policies of such entity whether by contract, securities ownership or otherwise; and the terms "controlling" and "controlled" shall have the respective meanings correlative to the foregoing.

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“Common Stock” shall mean common stock, par value \$0.01 per share, of the Company.

“Holder” means the Seller for so long as it owns any XCel Shares, and its permitted successors, assigns and direct and indirect transferees who are Related Parties and who become beneficial owners of XCel Shares.

“Immediate Family” member means any relationship by blood, marriage or adoption, not more remote than first cousin) and any person (other than a tenant or employee) sharing the household of such person.

“Transfer” means to (i) sell, transfer, assign, or otherwise dispose of, or (ii) enter into any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of.

“Xcel Shares” shall mean any other shares of Common Stock or other capital stock of the Company issued to the Seller pursuant to the Purchase Agreement or the Master License Agreement, the Warrant Shares which may be issued upon exercise of the Warrant, together with any capital stock of the Company issued to the Seller in respect of the foregoing as a result of any stock split, stock dividend, recapitalization, reclassification, exchange or similar event or otherwise.

**2. Agreement to Vote Shares; Irrevocable Proxy.** The Holder hereby appoints Robert D’Loren, or in the event that Robert D’Loren is not the Chief Executive Officer of the Company, such person as the Board of Directors of the Company may appoint after the date of this Agreement (the “Proxy Holder”) its proxy and attorney-in-fact, with full power of substitution and resubstitution, to vote or act by written consent during the term of this Agreement with respect to the XCel Shares. Holder shall take such further action or execute such other instruments as may be necessary to effectuate the intent of this proxy and limited power of attorney. The proxy and limited power of attorney granted hereunder by Holder shall be irrevocable during the term of this Agreement, shall be deemed to be coupled with an interest sufficient in law to support an irrevocable proxy and shall revoke any and all prior proxies granted by Holder with respect to the matters contemplated hereunder. The power of attorney granted by Holder herein is a limited durable power of attorney and shall survive the bankruptcy, death or incapacity of the Holder. The proxy and limited power of attorney granted hereunder shall terminate upon the termination of this Agreement. All parties hereto acknowledge and agree that the Proxy Holder shall, and the Holder hereby irrevocably consents to, vote all XCel Shares owned by them in favor of matters recommended or approved by the Board of Directors of the Company, or, if such matters are neither recommended nor approved by the Board of Directors of the Company, then at the direction of the Board of Directors of the Company, in respect of all matters for which stockholder approval is sought or required.

**3. No Voting Trusts or Other Arrangements.** The Holder agrees that it will not, and will not permit any entity under its control to, grant any proxies with respect to the XCel Shares or subject any of the XCel Shares to any arrangement with respect to the voting of the XCel Shares other than pursuant to this Agreement.

**4. Transfer and Encumbrance.**

(a) The Holder represents and warrants that (i) Holder shall not grant any liens, claims, charges, security interests or other encumbrances on the XCel Shares, other than those that may be created by the Purchase Agreement, the Lock-Up Agreement, and this Agreement; (ii) Holder shall not grant any options, warrants or other rights, agreements, arrangements or commitments of any character relating to the pledge, disposition or voting of the XCel Shares; and (iii) Holder shall not enter into any voting trusts or voting agreements with respect to the XCel Shares, other than this Agreement, the Purchase Agreement and applicable trust agreements for estate planning purposes, including but not limited to charitable remainder trusts. The Holder represents and warrants as of the date of this Agreement (i) that Holder has full power and authority to enter into, execute and deliver this Agreement and to perform fully the Holder's obligations hereunder, and (ii) this Agreement constitutes the legal, valid and binding obligation of the Holder in accordance with its terms. The Holder covenants that the representations and warranties shall be true and correct as of the date of the issuance of each XCel Share, if such shares are ever issued. Notwithstanding the foregoing to the contrary, Holder may pledge the XCel Shares as collateral security to Pathlight Capital LLC (to secure Holder's obligations to Pathlight Capital LLC under certain senior financing arrangement of Pathlight Capital LLC and Holder); provided however, that any such Xcel Shares shall remain subject to the Lock-Up Agreement.

(b) In the event the Holder desires to Transfer any XCel Shares to one or more partners or members of such Holder, if applicable, or to an Affiliate of such Holder, or to a member of any such transferee's Immediate Family, if applicable, (in each case, a "Related Party"), such Holder may Transfer such XCel Shares only if, as precondition to such Transfer, the Related Party agrees in writing, reasonably satisfactory in form and substance to the Company and Proxy Holder, to be bound by this Agreement. Except to the extent prohibited under the Lock-Up Agreement and applicable law, a Holder may, at any time and from time to time, Transfer some or all of the XCel Shares held by such Holder to a person or entity who is not a Related Party, and the XCel Shares so Transferred shall be free and clear of any restrictions under this Agreement (including, without limitation, those restrictions contained in Section 2).

**5. No Obligation of Company.** Nothing in this Agreement constitutes an obligation of the Company to issue any XCel Shares and the Holder acknowledges and agrees that the determination of issuance of any XCel Shares shall be made in accordance with the Purchase Agreement, the Employment Agreement or other agreement with the Company.

**6. Specific Performance.** Each party hereto acknowledges that it will be difficult to measure in money the damage to the other party if a party hereto fails to comply with any of the obligations imposed by this Agreement in the event of any such failure, the other party will not have an adequate remedy at law or damages. Accordingly, each party hereto agrees that injunctive relief or other equitable remedy, in addition to remedies at law or damages, is the appropriate remedy for any such failure and will not oppose the granting of such relief on the basis that the other party has an adequate remedy at law. Each party hereto agrees that it will not seek, and agrees to waive any requirement for, the securing or posting of a bond in connection with any other party's seeking or obtaining such equitable relief.

**7. Entire Agreement.** The Purchase Agreement, Master License Agreement, the Related Agreements and this Agreement supersede all prior agreements, written or oral, among the parties hereto with respect to the subject matter hereof and contains the entire agreement among the parties with respect to the subject matter hereof. This Agreement may not be amended or supplemented, and no provisions hereof may be modified or waived, except by an instrument in writing signed by all the parties hereto. No waiver of any provisions hereof by any party shall be deemed a waiver of any other provision hereof by any such party, nor shall any such waiver be deemed a continuing waiver of any provision hereof by such party.

**8. Notices.** All notices and other communications pursuant to this Agreement shall be in writing, either hand delivered or sent by certified or registered mail with charges prepaid or by commercial courier guaranteeing next business day delivery, or sent by facsimile, and shall be addressed:

- (i) in the case of the Company, to the Company at its principal office set forth in the Purchase Agreement; and
- (ii) in the case of a Holder, to the address provided by such Holder to the Company.

Any notice or other communication pursuant to this Agreement shall be deemed to have been duly given or made and to have become effective (i) when delivered in hand to the party to which it was directed, (ii) if sent by facsimile or electronic mail and properly addressed in accordance with the foregoing provisions of this Section 8, when received by the addressee, provided a copy is sent via first-class mail, postage prepaid, (iii) if sent by commercial courier guaranteeing next business day delivery, on the business day following the date of delivery to such courier, or (iv) if sent by first-class mail, postage prepaid, and properly addressed in accordance with the foregoing provisions of this Section 8, (A) when received by the addressee, or (B) on the third business day following the day of dispatch thereof, whichever of (A) or (B) shall be the earlier.

**9. Miscellaneous.**

(a) In addition to other legends that are required, either by agreement or by federal or state securities laws, each certificate representing any of the Shares shall be marked by the Company with a legend substantially in the following form:

“THE SALE, TRANSFER, HYPOTHECATION, NEGOTIATION, PLEDGE, ASSIGNMENT, ENCUMBRANCE, GRANT OF ANY OPTION, WARRANT OR OTHER RIGHT TO PURCHASE, OR OTHER DISPOSITION (COLLECTIVELY, “TRANSFER”) OF THE SHARES EVIDENCED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS AND A GRANT OF PROXY PURSUANT TO THAT CERTAIN VOTING AGREEMENT BY AND BETWEEN XCEL BRANDS, INC. AND THE HOLDER NAMED THEREIN, DATED AS OF DECEMBER 22, 2014 (THE “VOTING AGREEMENT”), COPIES OF EACH OF WHICH MAY BE OBTAINED FROM THE SECRETARY OF XCEL BRANDS, INC. NO TRANSFER OF THE SHARES MAY BE MADE UNLESS SPECIFIC CONDITIONS OF THE VOTING AGREEMENT ARE SATISFIED.”

(b) **THIS AGREEMENT SHALL BE DEEMED TO BE MADE IN AND IN ALL RESPECTS SHALL BE INTERPRETED, CONSTRUED AND GOVERNED BY AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE WITHOUT REGARD TO THE CONFLICT OF LAW PRINCIPLES THEREOF.** The parties hereby irrevocably submit to the exclusive jurisdiction of the courts of the State of Delaware and the federal courts of the United States of America, in each case sitting in Delaware, solely in respect of the interpretation and enforcement of the provisions of this Agreement and in respect of the transactions contemplated hereby, and hereby waive, and agree not to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof or of any such document, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Agreement may not be enforced in or by such courts, and the parties hereto irrevocably agree that all claims with respect to such action or proceeding shall be heard and determined in such a Delaware State or federal court. The parties hereby consent to and grant any such court jurisdiction over the person of such parties and over the subject matter of such dispute and agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 8 or in such other manner as may be permitted by law shall be valid and sufficient service thereof.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, AND (iii) EACH PARTY MAKES THIS WAIVER VOLUNTARILY.

(d) If any provision of this Agreement or the application of such provision to any person or circumstances shall be held invalid or unenforceable by a court of competent jurisdiction, such provision or application shall be unenforceable only to the extent of such invalidity or unenforceability, and the remainder of the provision held invalid or unenforceable and the application of such provision to persons or circumstances, other than the party as to which it is held invalid, and the remainder of this Agreement, shall not be affected.

(e) This Agreement may be executed in one or more counterparts (including by facsimile), each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

(f) This Agreement shall terminate automatically upon the earlier of: (i) the Transfer of all XCel Shares held by the Holder to persons or entities who are not Related Parties of the Holder; (ii) the occurrence of a Change of Control; or (iii) a failure by the Company to pay any material amount due to Seller under the terms of the Master License Agreement after being given a reasonable opportunity to cure.

(g) Each party hereto shall execute and deliver such additional documents as may be necessary or desirable to effect the transactions contemplated by this Agreement.

(h) No party to this Agreement may assign any of its rights or obligations under this Agreement without the prior written consent of the other party hereto. Any assignment contrary to the provisions of this Section 9(h) shall be null and void.

(i) Notwithstanding anything in this Agreement to the contrary, if there shall at any time be more than one Holder, the representations, warranties and covenants of each such Holder set forth herein shall be joint and several.

**[SIGNATURE PAGE FOLLOWS]**

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

**XCEL BRANDS, INC.**

By: /s/ James Haran

Name: James Haran

Title: Chief Financial Officer

*Signature Page to Voting Agreement*

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**HOLDER:**

**THE H COMPANY IP, LLC**

By: /s/ Benjamin Malka

Name: Benjamin Malka

Title: Chief Executive Officer

*Signature Page to Voting Agreement*

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**VOTING AGREEMENT**

THIS VOTING AGREEMENT (this "Agreement"), dated as of December 22, 2014, is made by and among XCel Brands, Inc., a Delaware corporation, and its successors and/or assigns (the "Company") and Hilco Trading, LLC (the "Holder").

**WHEREAS**, the Company and H Licensing LLC (collectively the "Buyers") and they have entered into that certain Asset Purchase Agreement, dated as of December 22, 2014 (the "Purchase Agreement"), pursuant to which Buyers have acquired certain of the assets that relate to the Business (as defined in the Purchase Agreement) of the The H Company IP, LLC and House of Halston LLC;

**WHEREAS**, pursuant to the terms of the Purchase Agreement, Holder, as Seller's Designee (as defined in the Purchase Agreement) will be issued and shall receive warrants (the "Warrants") to purchase the Warrant Shares (as defined in the Purchase Agreement);

**WHEREAS**, on the terms and conditions set forth in the Purchase Agreement, the Holder desires and agrees to be bound by the restrictions on transfer, and to vote all XCel Shares issued to them pursuant to the terms of the Purchase Agreement as set forth herein.

**NOW, THEREFORE**, in consideration of the promises contained herein and for other good and valuable consideration, the receipt, sufficiency and adequacy of which is hereby acknowledged, the parties hereto agree as follows (with all capitalized terms used and not otherwise defined herein having their respective meanings as set forth in the Purchase Agreement):

**1. Definitions.** All capitalized terms used but not defined herein shall have the meanings given to such terms in the Purchase Agreement. For the purposes of this Agreement, the following terms shall have the respective meanings set forth below or elsewhere in this Agreement as referred to below:

"Affiliate" shall mean (i) any other person or entity who directly, or indirectly through one or more intermediaries, is in control of, is controlled by, or is under common control with, such Holder or a member such Holder's Immediate Family or (ii) a member of such Holder's Immediate Family. For purposes of this definition, control of an entity means the power, directly or indirectly, to direct or cause the direction of the management and policies of such entity whether by contract, securities ownership or otherwise; and the terms "controlling" and "controlled" shall have the respective meanings correlative to the foregoing.

"Common Stock" shall mean common stock, par value \$0.01 per share, of the Company.

"Holder" means the Holder for so long as it owns any XCel Shares, and its permitted successors, assigns and direct and indirect transferees who are Related Parties and who become beneficial owners of XCel Shares.

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“Immediate Family” member means any relationship by blood, marriage or adoption, not more remote than first cousin) and any person (other than a tenant or employee) sharing the household of such person.

“Transfer” means to (i) sell, transfer, assign, or otherwise dispose of, or (ii) enter into any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of.

“Xcel Shares” shall mean any Warrant Shares which may be issued upon exercise of the Warrant, together with any capital stock of the Company issued to the Holder in respect of the foregoing as a result of any stock split, stock dividend, recapitalization, reclassification, exchange or similar event or otherwise.

**2. Agreement to Vote Shares; Irrevocable Proxy.** The Holder hereby appoints Robert D’Loren, or in the event that Robert D’Loren is not the Chief Executive Officer of the Company, such person as the Board of Directors of the Company may appoint after the date of this Agreement (the “Proxy Holder”) its proxy and attorney-in-fact, with full power of substitution and resubstitution, to vote or act by written consent during the term of this Agreement with respect to the XCel Shares. Holder shall take such further action or execute such other instruments as may be necessary to effectuate the intent of this proxy and limited power of attorney. The proxy and limited power of attorney granted hereunder by Holder shall be irrevocable during the term of this Agreement, shall be deemed to be coupled with an interest sufficient in law to support an irrevocable proxy and shall revoke any and all prior proxies granted by Holder with respect to the matters contemplated hereunder. The power of attorney granted by Holder herein is a limited durable power of attorney and shall survive the bankruptcy, death or incapacity of the Holder. The proxy and limited power of attorney granted hereunder shall terminate upon the termination of this Agreement. All parties hereto acknowledge and agree that the Proxy Holder shall, and the Holder hereby irrevocably consents to, vote all XCel Shares owned by them in favor of matters recommended or approved by the Board of Directors of the Company, or, if such matters are neither recommended nor approved by the Board of Directors of the Company, then at the direction of the Board of Directors of the Company, in respect of all matters for which stockholder approval is sought or required.

**3. No Voting Trusts or Other Arrangements.** The Holder agrees that it will not, and will not permit any entity under its control to, grant any proxies with respect to the XCel Shares or subject any of the XCel Shares to any arrangement with respect to the voting of the XCel Shares other than pursuant to this Agreement.

**4. Transfer and Encumbrance.**

(a) The Holder represents and warrants that (i) Holder shall not grant any liens, claims, charges, security interests or other encumbrances on the XCel Shares, other than those that may be created by the Purchase Agreement, the Lock-Up Agreement, and this Agreement; (ii) Holder shall not grant any options, warrants or other rights, agreements, arrangements or commitments of any character relating to the pledge, disposition or voting of the XCel Shares; and (iii) Holder shall not enter into any voting trusts or voting agreements with respect to the XCel Shares, other than this Agreement, the Purchase Agreement and applicable trust agreements for estate planning purposes, including but not limited to charitable remainder trusts. The Holder represents and warrants as of the date of this Agreement (i) that Holder has full power and authority to enter into, execute and deliver this Agreement and to perform fully the Holder’s obligations hereunder, and (ii) this Agreement constitutes the legal, valid and binding obligation of the Holder in accordance with its terms. The Holder covenants that the representations and warranties shall be true and correct as of the date of the issuance of each XCel Share, if such shares are ever issued.

(b) In the event the Holder desires to Transfer any XCel Shares to one or more partners or members of such Holder, if applicable, or to an Affiliate of such Holder, or to a member of any such transferee's Immediate Family, if applicable, (in each case, a "Related Party"), such Holder may Transfer such XCel Shares only if, as precondition to such Transfer, the Related Party agrees in writing, reasonably satisfactory in form and substance to the Company and Proxy Holder, to be bound by this Agreement. Except to the extent prohibited under the Lock-Up Agreement and applicable law, a Holder may, at any time and from time to time, Transfer some or all of the XCel Shares held by such Holder to a person or entity who is not a Related Party, and the XCel Shares so Transferred shall be free and clear of any restrictions under this Agreement (including, without limitation, those restrictions contained in Section 2).

**5. No Obligation of Company.** Nothing in this Agreement constitutes an obligation of the Company to issue any XCel Shares and the Holder acknowledges and agrees that the determination of issuance of any XCel Shares shall be made in accordance with the Purchase Agreement, the Employment Agreement or other agreement with the Company.

**6. Specific Performance.** Each party hereto acknowledges that it will be difficult to measure in money the damage to the other party if a party hereto fails to comply with any of the obligations imposed by this Agreement in the event of any such failure, the other party will not have an adequate remedy at law or damages. Accordingly, each party hereto agrees that injunctive relief or other equitable remedy, in addition to remedies at law or damages, is the appropriate remedy for any such failure and will not oppose the granting of such relief on the basis that the other party has an adequate remedy at law. Each party hereto agrees that it will not seek, and agrees to waive any requirement for, the securing or posting of a bond in connection with any other party's seeking or obtaining such equitable relief.

**7. Entire Agreement.** The Purchase Agreement, Master License Agreement, the Related Agreements and this Agreement supersede all prior agreements, written or oral, among the parties hereto with respect to the subject matter hereof and contains the entire agreement among the parties with respect to the subject matter hereof. This Agreement may not be amended or supplemented, and no provisions hereof may be modified or waived, except by an instrument in writing signed by all the parties hereto. No waiver of any provisions hereof by any party shall be deemed a waiver of any other provision hereof by any such party, nor shall any such waiver be deemed a continuing waiver of any provision hereof by such party.

**8. Notices.** All notices and other communications pursuant to this Agreement shall be in writing, either hand delivered or sent by certified or registered mail with charges prepaid or by commercial courier guaranteeing next business day delivery, or sent by facsimile, and shall be addressed:

- (i) in the case of the Company, to the Company at its principal office set forth in the Purchase Agreement; and
- (ii) in the case of a Holder, to the address provided by such Holder to the Company.

Any notice or other communication pursuant to this Agreement shall be deemed to have been duly given or made and to have become effective (i) when delivered in hand to the party to which it was directed, (ii) if sent by facsimile or electronic mail and properly addressed in accordance with the foregoing provisions of this Section 8, when received by the addressee, provided a copy is sent via first-class mail, postage prepaid, (iii) if sent by commercial courier guaranteeing next business day delivery, on the business day following the date of delivery to such courier, or (iv) if sent by first-class mail, postage prepaid, and properly addressed in accordance with the foregoing provisions of this Section 8, (A) when received by the addressee, or (B) on the third business day following the day of dispatch thereof, whichever of (A) or (B) shall be the earlier.

**9. Miscellaneous.**

(a) In addition to other legends that are required, either by agreement or by federal or state securities laws, each certificate representing any of the Shares shall be marked by the Company with a legend substantially in the following form:

“THE SALE, TRANSFER, HYPOTHECATION, NEGOTIATION, PLEDGE, ASSIGNMENT, ENCUMBRANCE, GRANT OF ANY OPTION, WARRANT OR OTHER RIGHT TO PURCHASE, OR OTHER DISPOSITION (COLLECTIVELY, “TRANSFER”) OF THE SHARES EVIDENCED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS AND A GRANT OF PROXY PURSUANT TO THAT CERTAIN VOTING AGREEMENT BY AND BETWEEN XCEL BRANDS, INC. AND THE HOLDER NAMED THEREIN, DATED AS OF DECEMBER 22, 2014 (THE “VOTING AGREEMENT”), COPIES OF EACH OF WHICH MAY BE OBTAINED FROM THE SECRETARY OF XCEL BRANDS, INC. NO TRANSFER OF THE SHARES MAY BE MADE UNLESS SPECIFIC CONDITIONS OF THE VOTING AGREEMENT ARE SATISFIED.”

(b) **THIS AGREEMENT SHALL BE DEEMED TO BE MADE IN AND IN ALL RESPECTS SHALL BE INTERPRETED, CONSTRUED AND GOVERNED BY AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE WITHOUT REGARD TO THE CONFLICT OF LAW PRINCIPLES THEREOF.** The parties hereby irrevocably submit to the exclusive jurisdiction of the courts of the State of Delaware and the federal courts of the United States of America, in each case sitting in Delaware, solely in respect of the interpretation and enforcement of the provisions of this Agreement and in respect of the transactions contemplated hereby, and hereby waive, and agree not to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof or of any such document, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Agreement may not be enforced in or by such courts, and the parties hereto irrevocably agree that all claims with respect to such action or proceeding shall be heard and determined in such a Delaware State or federal court. The parties hereby consent to and grant any such court jurisdiction over the person of such parties and over the subject matter of such dispute and agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 8 or in such other manner as may be permitted by law shall be valid and sufficient service thereof.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, AND (iii) EACH PARTY MAKES THIS WAIVER VOLUNTARILY.

(d) If any provision of this Agreement or the application of such provision to any person or circumstances shall be held invalid or unenforceable by a court of competent jurisdiction, such provision or application shall be unenforceable only to the extent of such invalidity or unenforceability, and the remainder of the provision held invalid or unenforceable and the application of such provision to persons or circumstances, other than the party as to which it is held invalid, and the remainder of this Agreement, shall not be affected.

(e) This Agreement may be executed in one or more counterparts (including by facsimile), each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

(f) This Agreement shall terminate automatically upon the earlier of: (i) the Transfer of all XCel Shares held by the Holder to persons or entities who are not Related Parties of the Holder; (ii) the occurrence of a Change of Control (as defined in the Purchase Agreement); or (iii) a failure by the Company to pay any material amount due to Seller under the terms of the Master License Agreement after being given a reasonable opportunity to cure.

(g) Each party hereto shall execute and deliver such additional documents as may be necessary or desirable to effect the transactions contemplated by this Agreement.

(h) No party to this Agreement may assign any of its rights or obligations under this Agreement without the prior written consent of the other party hereto. Any assignment contrary to the provisions of this Section 9(h) shall be null and void.

(i) Notwithstanding anything in this Agreement to the contrary, if there shall at any time be more than one Holder, the representations, warranties and covenants of each such Holder set forth herein shall be joint and several.

[SIGNATURE PAGE FOLLOWS]

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

**XCEL BRANDS, INC.**

By: /s/ Robert D'Loren  
Name: Robert D'Loren  
Title: Chief Executive Officer

*Signature Page to Hilco Voting Agreement*

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**HOLDER:**

**HILCO TRADING, LLC**

By: /s/ Eric W. Kaup

Name: Eric W. Kaup

Title: EVP and General Counsel

*Signature Page to Hilco Voting Agreement*

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PERSONAL AND CONFIDENTIAL

PRIVATE PLACEMENT ENGAGEMENT LETTER

December 22, 2014

The Board of Directors  
Xcel Brands, Inc.  
475 10th Avenue, 4th Floor  
New York, NY 10018

Attention: Robert. W. D'Loren  
Chairman and Chief Executive

Ladies and Gentlemen:

This agreement ("Agreement") confirms the mutually agreed terms between Xcel Brands, Inc. (the "Company") and Young America Capital, LLC ("Agent") to act as sole placement agent to the Company for a proposed private placement to "qualified institutional buyers" as such term is defined in Rule 144A under the Securities Act of 1933 (the 1933 Act), as amended and a limited number of institutional "accredited investors, as such term is defined in Regulation D under the 1933 Act (the "Placement") of the Company's common stock (the "Securities").

**1. Placement Agent Services**

Under this Agreement, Agent will provide the following financial advisory and investment banking services as it may deem necessary and appropriate for the Placement:

- a. review the Company's business, including its operations and historical and projected financial condition;
- b. assist the Company in drafting, preparing and distributing a management presentation and other related documents (the "Offering Materials") that describe the Company, the Securities and the Placement terms;
- c. assist the Company in identifying and contacting prospective purchasers of the Securities;
- d. advise the Company regarding the strategy and tactics of negotiations with prospective purchasers of the Securities and, if requested by the Company, participate in such negotiations;
- e. advise the Company about the timing and structure of the Placement; and
- f. render other periodic financial advisory and investment banking services agreed to by Agent and the Company

It is expressly understood and acknowledged that Agent's engagement under this Agreement does not constitute any commitment, express or implied, on Agent's part or any of its affiliates to purchase or place the Securities or to provide any type of financing and that the Placement will be made by Agent on a "best efforts" basis. It is further understood that Agent's services hereunder shall be subject to, among other things, satisfactory completion of due diligence by Agent, market conditions, the absence of adverse changes to the Company's business or financial condition, approval of Agent's internal committee and any other conditions that Agent may deem appropriate for placements of such nature.

Young America Capital, LLC  
141 East Boston Post Road  
Mamaroneck, NY 10543(914) (914) 777-0100

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**2. Fees**

The Company agrees to pay Agent as compensation for its services under this Agreement the following fees:

a. **Retainer Fee.** No retainer fee.

b. **Placement Fee.** A placement fee payable at the closing of the Placement equal to cash in an amount equal to 7.0% of the gross proceeds of the Securities sold in the Placement; provided, however, that no Placement Fee shall be paid with respect to securities sold to [Hilco] and any of its affiliates of funds managed by any of them, or partners, members, officers and directors of the foregoing, in excess of \$3,000,000.

**3. Term**

This engagement term will continue until January 15, 2015, unless extended by the Company or sooner terminated by either party, at any time, with or without cause and without liability or continuing obligation to the other party. The terminating party agrees to provide the other party with at least 30 days' prior written notice of such termination. The provisions of Sections 1 and 2 shall terminate upon termination of this Agreement but the other provisions hereof will remain operative in accordance with their terms regardless of any consummation of Financing and any termination of this Agreement.

**4. Expense Reimbursement**

In addition to the fees described in Section 2 above, the Company agrees to pay Agent's reasonable out-of-pocket expenses incurred in connection with the Placement whether or not the Placement is completed. This includes, without limitations, expenses related to travel, external database and communications services, overtime expense and courier services.

**5. Disclosure**

The Company agrees that any information or advice rendered by Agent or its representatives under this Agreement remains solely for the Company's confidential use. The Company will not permit any third party, unless required by applicable law, regulation or legal process, to disclose, reproduce, disseminate, quote or refer to this information or advice without Agent's prior written consent.

**6. No Third Party Beneficiaries**

The Company acknowledges and agrees that Agent has been retained to act as non-exclusive placement agent to the Company, and not as an advisor to or agent of any other person, and that the Company's engagement of Agent is not intended to confer rights upon any person not a party to this Agreement (including shareholders, employees or creditors of the Company) as against Agent or its affiliates, or their respective directors, officers, employees or agents.

**7. Independent Contractor**

The Company and Agent acknowledge and agree that Agent is acting as an independent contractor under this Agreement. Agent is not acting as a fiduciary and therefore this Agreement does not present any fiduciary duties to either party.

**8. Information**

The Company acknowledges that Agent will be using information provided by others, including, without limitation, information provided by or on behalf of the Company, and that Agent does not assume responsibility for and may rely, without independent verification, on the accuracy and completeness of any such information.

Young America Capital, LLC  
141 East Boston Post Road  
Mamaroneck, NY 10543  
(914) 777-0100

The Company hereby warrants that the Offering Materials, and any other information relating to the Company or the Placement, will not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein, in the light of circumstances under which they were made, not misleading. The Company agrees to provide Agent with (i) prompt notice of any material development affecting the Company or the occurrence of any event or other change known to the Company that could result in the Offering Materials containing an untrue statement of a material fact or omitting to state any material fact necessary to make the statements contained therein, in the light of the circumstances under which they were made, not misleading, (ii) copies of any financial reports as soon as reasonably practicable and (iii) such other information concerning the business and financial condition of the Company as Agent may from time to time reasonably request. Agent will have the right to approve the Offering Materials and other written communications furnished by or on behalf of the Company in connection with the Placement. The Company will comply with Securities and Exchange Commission Regulation FD.

**9. Compliance with Law**

The Company has not taken, and will not take, any action, directly or indirectly, that may cause the Placement to fail to be entitled to exemption from registration under the U.S. federal securities laws, or applicable state securities or “blue sky” laws. The Company shall be responsible for any costs and expenses associated with filings, applications or registrations with any governmental or regulatory body, including, without limitation, those associated with any sales pursuant to Regulation D under the 1933 Act and “blue sky” laws.

**10. Closing Matters**

The Company will cause to be furnished to Agent and the purchasers of the Securities, on the closing date of the Placement, copies of such documents, letters, certificates as Agent or the purchasers may reasonably request in form and substance reasonably satisfactory to Agent and its counsel and the purchasers and their counsel.

**11. Confidentiality**

Agent agrees that, except as otherwise required by law, regulation or legal process, Agent shall keep confidential all material non-public information provided to it by the Company, and shall not disclose such information to any third party without the Company’s consent, other than to such of its employees and advisors as Agent determines have a need to know.

**12. Agent Affiliates**

At Agent’s discretion, any right set forth herein may be exercised, and any services to be provided by Agent may be provided, by an affiliate of Agent. The Company hereby agrees that Agent and/or any affiliate or employee of Agent will have the right, but not the obligation, to purchase Securities for its own account and that any such purchase will not constitute a conflict of interest for purposes of Agent’s engagement hereunder.

**13. Indemnification**

Because we will be acting on your behalf, you will indemnify us and related persons according to the indemnification and contribution provisions in Annex A, the terms of which are incorporated herein in their entirety. Your obligations in Annex A will remain operative regardless of any termination or completion of our services hereunder.

Young America Capital, LLC  
141 East Boston Post Road  
Mamaroneck, NY 10543  
(914) 777-0100

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**14. Amendments and Successors**

This Agreement may not be waived, amended, modified or assigned, in any way, in whole or in part, including by operation of law, without the prior written consent of the Company and Agent. The provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Company and Agent.

**16. Entire Agreement**

This Agreement, together with Annex A, contains the entire agreement and understanding of the parties hereto with respect to the subject matter hereto and supersedes all prior or contemporaneous agreements or understandings with respect to such subject matter.

**17. No Brokers**

The Company acknowledges and agrees that there are no brokers, agents, representatives or other parties that have an interest in compensation paid or payable to Agent hereunder.

**18. Termination & Expiration**

Upon termination or expiration, this Agreement shall have no further force or effect, except that the provisions concerning the Company's obligations to Agent, the Company's obligation to pay Agent fees and expenses as described in this Agreement and as described in the provided Annex A, the status of Agent as an independent contractor, the rights of Agent under paragraph 12 hereof, the limitation on to whom Agent shall owe any duties, governing law, choice of forum, successors and assigns, and waiver of the right to trial by jury shall survive any such termination or expiration of this Agreement.

**19. Governing Law and Jurisdiction**

The laws of the State of New York will govern this Agreement and all controversies arising from or related to performance under this Agreement. To the full extent lawful, the Company and Agent hereby consent irrevocably to personal jurisdiction, service and venue (a) in connection with any claim arising out of this Agreement in the courts of the State of New York and in the federal courts in the State of New York and (b) solely for the purpose of allowing any person to enforce its reimbursement, indemnification or contribution rights hereunder, in any court in which any action is brought in respect of which any such right is asserted. THE COMPANY AND AGENT EACH HEREBY AGREES TO WAIVE ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY CLAIM, COUNTERCLAIM OR ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ENGAGEMENT HEREUNDER.

**20. Miscellaneous**

Your Board of Directors and senior management may take into consideration our advice as well as on the advice of their legal, tax and other business advisors and other factors which they consider appropriate as a basis for any decision. Accordingly, as an independent contractor we will not assume the responsibilities of a fiduciary to you or your stockholders in connection with the performance of our services.

If any Agent fees or expenses payable to Agent pursuant to this Agreement are not fully paid when due, the Company agrees to pay all costs of collection or other enforcement of Agent's rights hereunder, including but not limited to attorneys' fees and expenses, whether collected or enforced by suit or otherwise.

We do not provide accounting, tax or legal advice, and you are authorized (subject to applicable law) to disclose any and all aspects of any potential transactions that are necessary to support any U.S. federal income tax benefits expected to be claimed with respect to such transactions, without us imposing any limitation of any kind.

Young America Capital, LLC  
141 East Boston Post Road  
Mamaroneck, NY 10543  
(914) 777-0100

PRIVATE PLACEMENT ENGAGEMENT LETTER

This Agreement will be binding upon and inure to the benefit of you, Agent, each Indemnified Person (as defined in Annex A) and our respective successors and assigns, and nothing herein is intended to confer upon any person, other than you, us, each Indemnified Person and our respective successors and assigns, any rights, remedies, obligations or liabilities.

Any waiver of any right or obligation hereunder must be in writing signed by the party against whom such waiver is sought to be enforced. Any amendment hereto must be in writing signed by you and us.

Neither party may assign this Agreement without the prior written consent of the other party. If any provision of this Agreement shall be determined to be invalid or unenforceable in any respect, such determination shall not affect such provision in any other respect or any other provision of this Agreement, which shall remain in full force and effect.

This Agreement may be executed in counterparts by each party's duly authorized representative, each of which shall be deemed an original but all of which shall constitute one and the same instrument. Either party's execution and delivery of this Agreement may be evidenced by either physical delivery or facsimile communication of such executed Agreement or executed counterpart to the other party.

*[Signature Page Follows]*

Young America Capital, LLC  
141 East Boston Post Road  
Mamaroneck, NY 10543  
(914) 777-0100

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PRIVATE PLACEMENT ENGAGEMENT LETTER

Please confirm that the foregoing is in accordance with your understanding and is accepted by you by executing and delivering to us this letter, which shall then become a binding agreement.

Very truly yours,

**Young America Capital, LLC**

/s/ Peter Formanek

By:

\_\_\_\_\_  
Peter Formanek, Managing Partner

ACCEPTED AND AGREED:

**XCEL BRANDS, INC.**

/s/ Robert W D'Loren

By:

\_\_\_\_\_  
Robert W. D'Loren  
Chairman and Chief Executive Officer

Young America Capital, LLC  
141 East Boston Post Road  
Mamaroneck, NY 10543  
(914) 777-0100

## Annex A

The Company will indemnify and hold harmless **Agent**, its affiliates, the directors, officers, employees and agents of **Agent** and affiliates, and each other person or entity, if any, controlling **Agent** or any of its affiliates within the meaning of Section 15 of the Securities Act of 1933 or Section 20 of the Securities Exchange Act of 1933 (each, an “Indemnified Person”), from and against any losses, claims, damages, liabilities or expenses (including actions, claims or proceedings in respect thereof (collectively, “Proceedings”) brought by or against any person, including stockholders of the Company, and the cost of any investigation and preparation therefore and defense thereof) (collectively, “Losses”) arising out of or in connection with (i) advice or services rendered or to be rendered by any Indemnified Person pursuant to the letter agreement to which this Annex A is appended, (ii) the transaction(s) contemplated by the letter agreement or (iii) any Indemnified Person’s actions or inactions in connection with any such advice, services or transaction(s); provided, however, that the Company will not be obligated to indemnify for any Losses of any Indemnified Person that are determined by a court of competent jurisdiction in a final judgment not subject to appeal to have resulted solely from the willful misconduct or gross negligence of such Indemnified Person. The Company also agrees that no Indemnified Person shall have any liability (whether direct or indirect, in contract or tort or otherwise) to the Company in connection with (i) advice or services rendered or to be rendered by any Indemnified Person pursuant to the letter agreement, (ii) the transaction(s) contemplated by the letter agreement or (iii) any Indemnified Person’s actions or inactions in connection with any such advice, services or transaction(s), except to the extent such liabilities are determined by a court of competent jurisdiction in a final judgment not subject to appeal to have resulted solely from the willful misconduct or gross negligence of such Indemnified Person. The Company agrees that in no event will any Indemnified Person be liable or obligated in any manner for any damages (including, but not limited to actual, consequential, exemplary or punitive damages or lost profits) in excess of fees actually received by Agent from the Company pursuant to the section of the letter agreement captioned “Section 2. Fees,” and the Company agrees not to seek or claim any such damages or profits in any circumstance.

The Company also agrees to reimburse each Indemnified Person, periodically upon request, for all expenses (including fees and expenses of one counsel to the Indemnified Persons) as they are incurred by such Indemnified Person in connection with investigating, preparing for or defending any Proceeding (or enforcing the letter agreement or any related engagement or commitment agreement), whether or not in connection with pending or threatened litigation in which any Indemnified Person is a party.

If for any reason the foregoing indemnification is unavailable to any Indemnified Person or insufficient to hold it harmless, then the Company shall contribute to the amount paid or payable by such Indemnified Person as a result of such Losses in such proportion as is appropriate to reflect the relative economic interests of the Company, its affiliates and its stockholders on the one hand and the Indemnified Person on the other in the matters contemplated by the letter agreement as well as the relative fault of the Company, its affiliates or its stockholders, on the one hand, and such Indemnified Person, on the other; provided, however, that in no event shall the Indemnified Persons as a whole be required to contribute an amount greater than the amount of all fees actually received by Agent from the Company pursuant to the section of this letter agreement captioned “Section 2. Fees.”

The Company will not, without Agent’s prior written consent, settle, compromise, consent to the entry of any judgment in or otherwise seek to terminate any action, claim, suit or proceeding in respect of which indemnification may be sought hereunder (whether or not any Indemnified Person is a party thereto) unless such settlement, compromise, consent or termination includes a release of each Indemnified Person from any liabilities arising out of such action, claim, suit, or proceeding. The Company will not permit any such settlement, compromise, consent or termination to include a statement as to, or an admission of, fault, culpability or a failure to act by or on behalf of an Indemnified Person, without such Indemnified Person’s prior written consent. No Indemnified Person seeking indemnification, reimbursement or contribute under this agreement will, without the Company’s prior written consent, settle, compromise, consent to the entry of any judgment in or otherwise seek to terminate any action, claim, suit or proceeding referred to herein.

The Company's reimbursement, indemnity and contribution obligations hereunder shall be in addition to any liability that it may otherwise have, and shall inure to the benefit of any successors, assigns, heirs and representatives of each Indemnified Person. Solely for the purpose of enforcing the letter agreement, the Company hereby consents to personal jurisdiction and venue in any court in which any Proceeding is brought. The provisions of this Annex A shall survive any termination of the letter agreement, the consummation of any transaction(s) contemplated thereby or the other completion of Agent's services with respect thereto.

If any Indemnified Person appears as a witness, is deposed or otherwise is involved in any action relating to or arising from the Placement or Agent's engagement hereunder or in a situation where such appearance, involvement or assistance results from Agent's engagement hereunder, the Company will reimburse such Indemnified Person for all expenses (including fees and expenses of counsel) incurred by it by reason of it or any of its personnel being involved in any such action.

The Company waives any right to a trial by jury with respect to any claim or action arising out of this Agreement or the actions of Agent, and consents to personal jurisdiction, service of process and venue in any court in which any claim covered by the provisions of this Annex A may be brought against an Indemnified Person.

If any term, provision, covenant or restriction herein is held by a court of competent jurisdiction to be invalid, void or unenforceable or against public policy, the remainder of the terms, provisions and restrictions contained herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

SECURITY AGREEMENT

SECURITY AGREEMENT, dated as of December 22, 2014 between H LICENSING, LLC, a Delaware limited liability company (the "Borrower") with its principal office located at 475 Tenth Avenue, New York, New York 10018, and Bank Hapoalim B.M., an Israeli banking corporation licensed to do business in the State of New York (the "Bank") with its New York office located at 1177 Avenue of the Americas, New York, NY 10036.

WHEREAS, the Borrower will enter into credit facilities with the Bank, evidenced by the various loan documents (each, as amended and in effect from time to time, a "Loan Document" and together, as amended and in effect from time to time, the "Loan Documents"), including an additional separate and distinct credit facility with the Bank dated as of this date (as evidenced by such documents dated as of this date as may be amended and in effect from time to time, the "Credit Agreements", which shall also be deemed to be "Loan Documents"), with the Bank pursuant to which the Bank, subject to the terms and conditions contained therein, is to make loans or otherwise to extend credit to the Borrower; and

WHEREAS, it is a condition precedent to the Bank's making credit available to the Borrower under the Credit Agreements and to make any loans or otherwise extend credit to the Borrower under the Loan Documents, that the Borrower execute and deliver to the Bank a security agreement in substantially the form hereof; and

WHEREAS, the Borrower wishes to grant security interests in favor of the Bank as herein provided;

NOW, THEREFORE, in consideration of the promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Definitions.** All capitalized terms used herein without definitions shall have the respective meanings provided therefor in the Loan Documents. The term "State", as used herein, means the State of New York. All terms defined in the Uniform Commercial Code of the State and used herein shall have the same definitions herein as specified therein. However, if a term is defined in Article 9 of the Uniform Commercial Code of the State differently than in another Article of the Uniform Commercial Code of the State, the term has the meaning specified in Article 9. The term "JR Licensing Guaranty" as used herein, means the guaranty of the obligations of JR Licensing, LLC to the Bank executed by Borrower in favor of the Bank. The term "IM Brands Guaranty" as used herein, means the guaranty of the obligations of IM Brands, LLC to the Bank executed by Borrower in favor of the Bank. The term "Obligations", as used herein, means all of the indebtedness, obligations and liabilities of the Borrower to the Bank, individually or collectively, whether direct or indirect, joint or several, absolute or contingent, due or to become due, now existing or hereafter arising under or in respect of the JR Licensing Guaranty, the IM Brands Guaranty, the Loan Documents, any promissory notes or other instruments or agreements executed and delivered pursuant thereto or in connection therewith, or this Agreement. The term "Loan Document(s)", as used herein, includes the Credit Agreements, promissory notes or other instruments, letter of credit applications and agreements, this Agreement, and any other agreement between the Borrower and the Bank, relating to a credit facility or facilities extended by the Bank to the Borrower. The term "Event of Default", as used herein, means the failure of the Borrower to pay or to perform any of the Obligations, or any of the other terms or conditions, as and when due to be paid or performed under the terms of any Loan Document, or a default as set forth in any Loan Document.

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2. **Grant of Security Interest.** The Borrower hereby grants to the Bank, to secure the payment and performance in full of all of the Obligations, a security interest in and so pledges and assigns to the Bank the following properties, assets and rights of the Borrower, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof (all of the same being hereinafter called the "Collateral"): all personal and fixture property of every kind and nature including without limitation all goods (including inventory, equipment and any accessions thereto), instruments (including promissory notes), documents, accounts (including health-care insurance receivables), chattel paper (whether tangible or electronic), deposit accounts, letter-of-credit rights (whether or not the letter of credit is evidenced by a writing), commercial tort claims, securities and all other investment property, supporting obligations, any other contract rights or rights to the payment of money, insurance claims and proceeds, tort claims and all general intangibles (including all payment intangibles). The Bank acknowledges that the attachment of its security interest in any commercial tort claim as original collateral is subject to the Borrower's compliance with Section 4.7.

3. **Authorization to File Financing Statements.** The Borrower hereby irrevocably authorizes the Bank at any time and from time to time to file in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (a) indicate the Collateral (i) as all assets of the Borrower or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the State or such jurisdiction, or (ii) as being of an equal or lesser scope or with greater detail, and (b) contain any other information required by part 5 of Article 9 of the Uniform Commercial code of the State for the sufficiency or filing office acceptance of any financing statement or amendment, including whether the Borrower is an organization, the type of organization and any organization identification number issued to the Borrower. The Borrower agrees to furnish any such information to the Bank promptly upon request. The Borrower also ratifies its authorization for the Bank to have filed in any Uniform Commercial Code jurisdiction any like initial financing statements or amendments thereto if filed prior to the date hereof.

4. **Other Actions.** Further to insure the attachment, perfection and first priority of, and the ability of the Bank to enforce, the Bank's security interest in the Collateral, the Borrower agrees, in each case at the Borrower's own expense, to take the following actions with respect to the following Collateral:

4.1 **Promissory Notes and Tangible Chattel Paper.** If the Borrower shall at any time hold or acquire any promissory notes or tangible chattel paper, the Borrower shall promptly notify the Bank thereof, and, upon the Bank's request and option, endorse, assign and deliver the same to the Bank, accompanied by such instruments of transfer or assignment duly executed in blank as the Bank may from time to time specify.

4.2 **Deposit Accounts.** For each deposit account that the Borrower at any time opens or maintains, the Borrower shall, at the Bank's request and option, pursuant to an agreement in form and substance satisfactory to the Bank, either (a) cause the depository bank to agree to comply at any time with instructions from the Bank to such depository bank directing the disposition of funds from time to time credited to such deposit account, without further consent of the Borrower, or (b) arrange for the Bank to become the customer of the depository bank with respect to the deposit account, with the Borrower being permitted, only with the consent of the Bank, to exercise rights to withdraw funds from such deposit account. The Bank agrees with the Borrower that the Bank shall not give any such instructions or withhold any withdrawal rights from the Borrower unless an Event of Default has occurred and is continuing or, after giving effect to any withdrawal not otherwise permitted by the Loan Documents, would occur. The provisions of this paragraph shall not apply to (i) deposit accounts for which the Bank is the Depository and (ii) deposit accounts specially and exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of the Borrower's salaried employees.

4.3 **Investment Property.** If the Borrower shall at any time hold or acquire any certificated securities, the Borrower shall forthwith endorse, assign and deliver the same to the Bank, accompanied by such instruments of transfer or assignment duly executed in blank as the Bank may from time to time specify. If any securities now or hereafter acquired by the Borrower are uncertificated and are issued to the Borrower or its nominee directly by the issuer thereof, the Borrower shall immediately notify the Bank thereof and, at the Bank's request and option, pursuant to an agreement in form and substance satisfactory to the Bank, either (a) cause the issuer to agree to comply with instructions from the Bank as to such securities, without further consent of the Borrower or such nominee, or (b) arrange for the Bank to become the registered owner of the securities. If any securities, whether certificated or uncertificated, or other investment property now or hereafter acquired by the Borrower are held by the Borrower or its nominee through a securities intermediary or commodity intermediary, the Borrower shall immediately notify the Bank thereof and, at the Bank's request and option, pursuant to an agreement in form and substance satisfactory to the Bank, either (i) cause such securities intermediary or (as the case may be) commodity intermediary to agree to comply with entitlement orders or other instructions from the Bank to such securities intermediary as to such securities or other investment property, or (as the case may be) commodity intermediary to agree to comply with entitlement orders or other instructions from the Bank to such securities intermediary as to such securities or other investment property, or (as the case may be) to apply any value distributed on account of any commodity contract as directed by the Bank to such commodity intermediary, in each case without further consent of the Borrower or such nominee, or (ii) in the case of financial assets or other investment property held, with the Borrower being permitted, only with the consent of the Bank, to exercise rights to withdraw or otherwise deal with such investment property. The Bank agrees with the Borrower that the Bank shall not give any such entitlement orders or instructions or directions to any such issuer, securities intermediary or commodity intermediary, and shall not withhold its consent to the exercise of any withdrawal or dealing rights by the Borrower, unless an Event of Default has occurred and is continuing, or, after giving effect to any such investment and withdrawal rights not otherwise permitted by the Loan Documents, would occur. The provisions of this paragraph shall not apply to any financial assets credited to a securities account for which the Bank is the securities intermediary.

4.4 **Collateral in the Possession of a Bailee.** If any Collateral having a value of \$100,000 is at any time in the possession of a bailee, the Borrower shall promptly notify the Bank thereof and, if requested by the Bank, shall promptly obtain an acknowledgment from the bailee, in form and substance satisfactory to the Bank, that the bailee holds such Collateral for the benefit of the Bank and shall act upon the instructions of the Bank, without the further consent of the Borrower. The Bank agrees with the Borrower that the Bank shall not give any such instructions unless an Event of Default has occurred and is continuing or would occur after taking into account any action by the Borrower with respect to the bailee.

4.5 **Electronic Chattel Paper and Transferable Records.** If the Borrower at any time holds or acquires an interest in any electronic chattel paper or any “transferable record,” as that term is defined in Section 201 of the federal Electronic Signatures in Global and National Commerce Act, or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction, the Borrower shall promptly notify the Bank thereof and, at the request of the Bank, shall take such action as the Bank may reasonably request to vest in the Bank control, under Section 9-105 of the Uniform Commercial Code, of such electronic chattel paper or control under Section 201 of the federal Electronic Signatures in Global and National Commerce Act or, as the case may be, Section 16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record. The Bank agrees with the Borrower that the Bank will arrange, pursuant to procedures satisfactory to the Bank and so long as such procedures will not result in the Bank’s loss of control, for the Borrower to make alterations to the electronic chattel paper or transferable record permitted under UCC Section 9-105 or, as the case may be, Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or Section 16 of the Uniform Electronic Transactions Act for a party in control to make without loss of control, unless an Event of Default has occurred and is continuing or would occur after taking into account any action by the Borrower with respect to such electronic chattel paper or transferable record.

4.6 **Letter-of-Credit Rights.** If the Borrower is at any time a beneficiary under a letter of credit now or hereafter issued in favor of the Borrower, the Borrower shall promptly notify the Bank thereof and, at the request and option of the Bank, the Borrower shall, pursuant to an agreement in form and substance satisfactory to the Bank, either (i) arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to the Bank of the proceeds of any drawing under the letter of credit, or (ii) arrange for the Bank to become the transferee beneficiary of the letter of credit, with the Bank agreeing, in each case, that the proceeds of the letter of credit are to be applied as provided in the Loan Documents.

4.7 **Commercial Tort Claims.** If the Borrower shall at any time hold or acquire a commercial tort claim, the Borrower shall immediately notify the Bank in a writing signed by the Borrower of the brief details thereof and grant to the Bank in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance satisfactory to the Bank.

4.8 **Other Actions as to any and all Collateral.** The Borrower further agrees to take any other action reasonably requested by the Bank to insure the attachment, perfection and first priority of, and the ability of the Bank to enforce, the Bank's security interest in any and all of the Collateral including, without limitation, (a) executing, delivering and, where appropriate, filing financing statements and amendments relating thereto under the Uniform Commercial Code, to the extent, if any, that the Borrower's signature thereon is required therefor, (b) causing the Bank's name to be noted as secured party on any certificate of title for a titled good if such notation is a condition to attachment, perfection or priority of, or ability of the Bank to enforce, the Bank's security interest in such Collateral, (c) complying with any provision of any statute, regulation or treaty of the United States as to any Collateral if compliance with such provision is a condition to attachment, perfection or priority of, or ability of the Bank to enforce, the Bank's security interest in such Collateral, (d) obtaining governmental and other third party consents and approvals, including without limitation any consent of any licensor, lessor or other person obligated on Collateral, (e) obtaining waivers from mortgagees and landlords in form and substance satisfactory to the Bank and (f) taking all actions required by any earlier versions of the Uniform Commercial Code or by other law, as applicable in any relevant Uniform Commercial Code jurisdiction, or by other law as applicable in any foreign jurisdiction.

5. **[Reserved].**

6. **Representations and Warranties Concerning Borrower's Legal Status.** The Borrower has previously delivered to the Bank a certificate signed by the Borrower entitled "Perfection Certificate" (the "Perfection Certificate"). The Borrower represents and warrants to the Bank as follows: (a) the Borrower's exact legal name is that indicated on the Perfection Certificate and on the signature page hereof, (b) the Borrower is an organization of the type and organized in the jurisdiction set forth in the Perfection Certificate, (c) the Perfection Certificate accurately sets forth the Borrower's organizational identification number or accurately states that the Borrower has none, (d) the Perfection Certificate accurately sets forth the Borrower's place of business or, if more than one, its chief executive office as well as the Borrower's mailing address if different and (e) all other information set forth on the Perfection Certificate pertaining to the Borrower is accurate and complete.

7. **Covenants Concerning Borrower's Legal Status.** The Borrower covenants with the Bank as follows: (a) without providing at least 30 days prior written notice to the Bank, the Borrower will not change its name, its place of business or, if more than one, chief executive office, or its mailing address or organizational identification number if it has one, (b) if the Borrower does not have an organizational identification number and later obtains one, the Borrower shall forthwith notify the Bank of such organizational identification number, and (c) the company will not change its type of organization, jurisdiction of organization or other legal structure.

8. **Representations and Warranties Concerning Collateral, Etc.** The Borrower further represents and warrants to the Bank as follows: (a) the Borrower is the owner of or has other rights in or power to transfer the Collateral, free from any adverse lien, security interest or other encumbrance, except for the security interest created by this Agreement, (b) none of the Collateral constitutes, or is the proceeds of, "farm products" as defined in Section 9-102(a)(34) of the Uniform Commercial Code of the State, (c) none of the account debtors or other persons obligated on any of the Collateral is a governmental authority subject to the Federal Assignment of Claims Act or like federal, state or local statute or rule in respect of such Collateral, (d) the Borrower holds no commercial tort claims, and (e) the Borrower has at all times operated its business in compliance with all applicable provisions of the federal Fair Labor Standards Act, as amended, and with all applicable provisions of federal, state and local statutes and ordinances dealing with the control, shipment, storage or disposal of hazardous materials or substances and (f) all other information set forth on the Perfection Certificate pertaining to the Collateral is accurate and complete.

9. **Covenants Concerning Collateral, Etc.** The Borrower further covenants with the Bank as follows: (a) the Collateral, to the extent not delivered to the Bank pursuant to Section 4, will be kept at those locations listed on the Perfection Certificate and the Borrower will not remove the Collateral from such locations without providing at least 30 days prior written notice to the Bank, (b) except for the security interest herein granted and liens permitted by a Credit Agreement, the Borrower shall be the owner of or have other rights in the Collateral free from any lien, security interest or other encumbrance, and the Borrower shall defend the same against all interests therein adverse to the Bank, (c) the Borrower shall not pledge, mortgage or create, or suffer to exist a security interest in the Collateral in favor of any person other than the Bank, (d) the Borrower will keep the Collateral in good order and repair and will not use the same in violation of law or any policy of insurance thereon, (e) the Borrower will permit the Bank, or its designee, to inspect the Collateral at any reasonable time, wherever located, (f) the Borrower will pay promptly when due all taxes, assessments, governmental charges and levies upon the Collateral or incurred in connection with the use or operation of such Collateral or incurred in connection with this Agreement, (g) the Borrower will continue to operate, its business in compliance with all applicable provisions of the federal Fair Labor Standards Act as amended, and with all applicable provisions of federal, state and local statutes and ordinances dealing with the control, shipment, storage or disposal of hazardous materials or substances, and (h) the Borrower will not sell or otherwise dispose, or offer to sell or otherwise dispose, of the Collateral or any interest therein except for the sale of inventory in the ordinary course of business. In the event of any inconsistency between the covenants made in the Intellectual Property Security Agreement, dated as of the date hereof, between the Borrower and the Bank (as amended, restated, supplemented or otherwise modified from time to time, the "IP Security Agreement"), with respect to the Borrower's Copyrights, Trademarks and Licenses (as such terms are defined in the IP Security Agreement), and those covenants made in this Security Agreement with respect to that portion of the Collateral consisting of such Copyrights, Trademarks and Licenses, the covenants set forth in the IP Security Agreement shall prevail with respect to such inconsistency.

10. **Insurance.**

10.1 **Maintenance of Insurance.** The Borrower will maintain, with financially sound and reputable insurers, insurance with respect to its properties and business against such casualties and contingencies as shall be in accordance with general practices of businesses engaged in similar activities in similar geographic areas. Such insurance shall be in such minimum amounts that the Borrower will not be deemed a co-insurer under applicable insurance laws, regulations and policies and otherwise shall be in such amounts, contain such terms to be in such forms and be for such periods as may be reasonably satisfactory to the Bank. In addition, all such insurance shall be payable to the Bank as lender's loss payee under a "standard" or "New York" lender's loss payee clause. Without limiting the foregoing, the Borrower will (i) keep all of its physical property insured with casualty or physical hazard insurance on an "all risks" basis, with electronic data processing coverage, with a full replacement cost endorsement and an "agreed amount" clause in an amount equal to 100% of the full replacement cost of such property, (ii) maintain all such workers' compensation or similar insurance as may be required by law and (iii) maintain, in amounts and with deductibles equal to those generally maintained by business engaged in similar activities in similar geographic areas, general public liability insurance against claims of bodily injury, death or property damage occurring, on, in or about the properties of the Borrower; business interruption insurance; and product liability insurance.

10.2 **Insurance Proceeds.** The proceeds of any casualty insurance in respect of any casualty loss of any of the Collateral shall, subject to the rights, if any, of other parties with a prior interest in the property covered thereby, (i) so long as no Default or Event of Default has occurred and is continuing and to the extent that the amount of such proceeds is less than \$25,000.00, be disbursed to the Borrower for direct application by the Borrower solely to the repair or replacement of the Borrower's property so damaged or destroyed and (ii) in all other circumstances, be held by the Bank as cash collateral, upon such terms and conditions as the Bank may reasonably prescribe, for direct application by the Borrower solely to the repair or replacement of the Borrower's property so damaged or destroyed, or upon the Borrower's prior written consent, the Bank may apply all or any part of such proceeds to the Obligations with the Commitment (if not then terminated) being reduced by the amount so applied to the Obligations.

10.3 **Notice of Cancellation, etc.** All policies of insurance shall provide for at least 30 days prior written cancellation notice to the Bank. In the event of failure by the Borrower to provide and maintain insurance as herein provided, the Bank may, at its option and upon prior written notice to the Borrower, provide such insurance and charge the amount thereof to the Borrower. The Borrower shall furnish the Bank with certificates of insurance and policies evidencing compliance with the foregoing insurance provision.

11. **Collateral Protection Expenses; Preservation of Collateral.**

11.1 **Expenses Incurred by Bank.** In its discretion and upon prior written notice to the Borrower, the Bank may discharge taxes and other encumbrances at any time levied or placed on any of the Collateral, make repairs thereto and pay any necessary filing fees or, if the debtor fails to do so, insurance premiums. The Borrower agrees to reimburse the Bank on demand for any and all expenditures so made. The Bank shall have no obligation to the Borrower to make any such expenditures, nor shall the making thereof relieve the Borrower of any default.

11.2 **Bank's Obligations and Duties.** Anything herein to the contrary notwithstanding, the Borrower shall remain liable under each contract or agreement comprised in the Collateral to be observed or performed by the Borrower thereunder. The Bank shall not have any obligation or liability under any such contract or agreement by reason of or arising out of this Agreement or the receipt by the Bank of any payment relating to any of the Collateral, nor shall the Bank be obligated in any manner to perform any of the obligations of the Borrower under or pursuant to any such contract or agreement, to make inquiry as to the nature or sufficiency of any payment received by the Bank in respect of the Collateral or as to the sufficiency of any performance by any party under any such contract or agreement, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to the Bank or to which the Bank may be entitled at any time or times. The Bank's sole duty with respect to the custody, safe keeping and physical preservation of the Collateral in its possession, under Section 9-207 of the Uniform Commercial Code of the State or otherwise, shall be to deal with such Collateral in the same manner as the Bank deals with similar property for its own account.

12. **Securities and Deposits.** The Bank may at any time following and during the continuance of an Event of Default, at its option, transfer to itself or any nominee any securities constituting Collateral, receive any income thereon and hold such income as additional Collateral or apply it to the Obligations. Whether or not any Obligations are due, the Bank may following and during the continuance of an Event of Default demand, sue for, collect, or make any settlement or compromise which it deems desirable with respect to the Collateral. Regardless of the adequacy of Collateral or any other security for the Obligations, any deposits or other sums at any time credited by or due from the Bank to the Borrower may at any time be applied to or set off against any of the Obligations.

13. **Notification to Account Debtors and Other Persons Obligated on Collateral.** If an Event of Default shall have occurred and be continuing, the Borrower shall, at the request of the Bank, notify account debtors and other persons obligated on any of the Collateral of the security interest of the Bank in any account, chattel paper, general intangible, instrument or other Collateral and that payment thereof is to be made directly to the Bank or to any financial institution designated by the Bank as the Bank's agent therefor, and the Bank may itself, if an Event of Default shall have occurred and be continuing, upon prior written notice to the Borrower, so notify account debtors and other persons obligated on Collateral. After the making of such a request or the giving of any such notification, the Borrower shall hold any proceeds of collection of accounts, chattel paper, general intangibles, instruments and other Collateral received by the Borrower as trustee for the Bank without commingling the same with other funds of the Borrower and shall turn the same over to the Bank in the identical form received, together with any necessary endorsements or assignments. The Bank shall apply the proceeds of collection of accounts, chattel paper, general intangibles, instruments and other Collateral received by the Bank to the Obligations, such proceeds to be immediately entered after final payment in cash or other immediately available funds of the items giving rise to them.

14. **Power of Attorney.**

14.1 **Appointment and Powers of Bank.** The Borrower hereby irrevocably constitutes and appoints the Bank and any officer or agent thereof, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of the Borrower or in the Bank's own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments that may be necessary or desirable to accomplish the purposes of this Agreement and, without limiting the generality of the foregoing, hereby gives said attorneys the power and right, on behalf of the Borrower, without notice to or assent by the Borrower, to do the following: upon the occurrence and during the continuance of an Event of Default, generally to sell, transfer, pledge make any agreement with respect to or otherwise deal with any of the Collateral in such manner as is consistent with the Uniform Commercial Code of the State and as fully and completely as though the Bank were the absolute owner thereof for all purposes, and to do at the Borrower's expense, at any time, or from time to time, all acts and things which the Bank deems necessary to protect, preserve or realize upon the Collateral and the Bank's security interest therein, in order to effect the intent of this Agreement, all as fully and effectively as the Borrower might do, including, without limitation, (i) the filing and prosecuting of registration and transfer applications with the appropriate federal or local agencies or authorities with respect to trademarks, copyrights and patentable inventions and processes, (ii) upon written notice to the Borrower, the exercise of voting rights with respect to voting securities, which rights may be exercised, if the Bank so elects, with a view to causing the liquidation in a commercially reasonable manner of assets of the issuer of any such securities and (iii) the execution, delivery and recording, in connection with any sale or other disposition of any Collateral, of the endorsements, assignments or other instruments of conveyance or transfer with respect to such Collateral.

14.2 **Ratification by Borrower.** To the extent permitted by law, the Borrower hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

14.3 **No Duty on Bank.** The power conferred on the Bank hereunder are solely to protect its interests in the Collateral and shall not impose any duty upon it to exercise any such powers. The Bank shall be accountable only for the amounts that it actually receives as a result of the exercise of such powers and neither it nor any of its officers, directors, employees or agents shall be responsible to the Borrower for any act or failure to act, except for the Bank's own gross negligence or willful misconduct.

15. **Remedies.** If an Event of Default shall have occurred and be continuing, the Bank may, without notice to or demand upon the Borrower, declare this Agreement to be in default, and the Bank shall thereafter have in any jurisdiction in which enforcement hereof is sought, in addition to all other rights and remedies, the rights and remedies of a secured party under the Uniform Commercial Code of the State or of any jurisdiction in which Collateral is located, including, without limitation, the right to take possession of the Collateral, and for that purpose the Bank may, so far as the Borrower can give authority therefor, enter upon any premises on which the Collateral may be situated and remove the same therefrom. The Bank may in its discretion require the Borrower to assemble all or any part of the Collateral at such location or locations within the jurisdiction(s) of the Borrower's principal office(s) or at such other locations as the Bank may reasonably designate. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, the Bank shall give to the Borrower at least ten (10) Business Days prior written notice of the time and place of any public sale of Collateral or of the time after which any private sale or any other intended disposition is to be made. The Borrower hereby acknowledges that ten (10) Business Days prior written notice of such sale or sales shall be reasonable notice. In addition, the Borrower waives any and all rights that it may have to a judicial hearing in advance of the enforcement of any of the Bank's rights hereunder, including without limitation, its right following an Event of Default to take immediate possession of the Collateral and to exercise its rights with respect thereto.

16. **[Reserved].**



17. **No Waiver by Bank, etc.** The Bank shall not be deemed to have waived any of its rights upon or under the Obligations or the Collateral unless such waiver shall be in writing and signed by the Bank. No delay or omission on the part of the Bank in exercising any right shall operate as a waiver of such right or any other right. A waiver on any one occasion shall not be construed as a bar to or waiver of any right on any future occasion. All rights and remedies of the Bank with respect to the Obligations or the Collateral, whether evidenced hereby or by any other instrument or papers, shall be cumulative and may be exercised singularly, alternatively, successively or concurrently at such time or at such times as the Bank deems expedient.

18. **Suretyship Waivers by Borrower.** The Borrower waives demand, notice, protest, notice of acceptance of this Agreement, notice of loans made, credit extended, Collateral received or delivered or other action taken in reliance hereon and all other demands and notices of any description. With respect to both the Obligations and the Collateral, the Borrower assents to any extension or postponement of the time of payment or any other indulgence, to any substitution, exchange or release of or failure to perfect any security interest in any Collateral, to the addition or release of any party or person primarily or secondarily liable, to the acceptance of partial payment thereon and the settlement, compromising or adjusting of any thereof, all in such manner and at such time or times as the Bank may deem advisable. The Bank shall have no duty as to the collection or protection of the Collateral or any income thereon, nor as to the preservation of rights against prior parties, nor as to the preservation of any rights pertaining thereto beyond the safe custody thereof as set forth in Section 11.2. The Borrower further waives any and all other suretyship defenses.

19. **Marshalling.** The Bank shall not be required to marshal any present or future collateral security (including but not limited to this Agreement and the Collateral) for, or other assurances of payment of, the Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order, and all of its rights hereunder and in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights, however existing or arising. To the extent that it lawfully may, the Borrower hereby agrees that it will not invoke any law relating to the marshalling of collateral which might cause delay in or impede the enforcement of the Bank's rights under this Agreement or under any other instrument creating or evidencing any of the Obligations or under which any of the Obligations is outstanding or by which any of the Obligations is secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, the Borrower hereby irrevocably waives the benefits of all such laws.

20. **Proceeds of Dispositions; Expenses.** The Borrower shall pay to the Bank on demand any and all expenses, including reasonable attorneys' fees and disbursements, incurred or paid by the Bank in protecting, preserving or enforcing the Bank's rights under or in respect of any of the Obligations or any of the Collateral. After deducing all of said expenses, the residue of any proceeds of collection or sale of the Obligations or Collateral shall, to the extent actually received in cash, be applied to the payment of the Obligations in such order or preference as the Bank may determine, proper allowance and provision being made for any Obligations not then due. Upon the final payment and satisfaction in full of all of the Obligations and after making any payments required by Sections 9-608(a)(1)(C) or 9-615(a)(3) of the Uniform Commercial Code of the State, any excess shall be returned to the Borrower, and the Borrower shall remain liable for any deficiency in the payment of the Obligations.

21. **Overdue Amounts.** Until paid, all amounts due and payable by the Borrower hereunder shall be a debt secured by the Collateral and shall bear, whether before or after judgment, interest at the rate of interest for overdue principal set forth in the Loan Documents.

22. **Governing Law; Consent to Jurisdiction.** THIS AGREEMENT IS INTENDED TO TAKE EFFECT AS A SEALED INSTRUMENT AND SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. The Borrower agrees that any suit for the enforcement of this Agreement may be brought in the courts of the State of New York sitting in New York County, or any federal court sitting therein, and consents to the non-exclusive jurisdiction of such courts and to service of process in any such suit being made upon the Borrower, by mail, at the address specified in the initial paragraph of this Agreement, or at any address specified for the Borrower in any Loan Document. The Borrower hereby waives any objection that it may now or hereafter have to the venue of any such suit or any such court or that such suit is brought in an inconvenient court.

23. **Waiver of Jury Trial.** THE BORROWER WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER OR THE PERFORMANCE OF ANY SUCH RIGHTS OR OBLIGATIONS. The Borrower (i) certifies that neither the Bank nor any representative, agent or attorney of the Bank has represented expressly or otherwise, that the Bank would not, in the event of litigation, seek to enforce the foregoing waiver and (ii) acknowledges that, in entering into the Credit Agreement and the other Loan Documents to which the Bank is a party, the Bank is relying upon, among other things, the waiver and certification contained in this Section 23.

24. **Miscellaneous.** The headings of each section of this Agreement are for convenience only and shall not define or limit the provisions thereof. This Agreement and all rights and obligations hereunder shall be binding upon the Borrower and its respective successors and assigns, and shall inure to the benefit of the Bank and its successors and assigns. If any term of this Agreement shall be held to be invalid, illegal or unenforceable, the validity of all other terms hereof shall in no way be affected thereby, and this Agreement shall be construed and not be enforceable as if such invalid, illegal or unenforceable terms had not been included herein. The Borrower acknowledges receipt of a copy of this Agreement.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, intending to be legally bound, the Borrower has caused this Agreement to be duly executed as of the date first above written.

H LICENSING, LLC

By: Xcel Brands, Inc., Its Manager

By: /s/ James Haran

Name: James Haran

Title: CFO

BANK HAPOALIM B.M.

By: Authorized Signatory

Name:

Title:

By: Authorized Signatory

Name:

Title:

SIGNATURE PAGE TO  
SECURITY AGREEMENT

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CERTIFICATE OF ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned, a Notary Public in and for the county aforesaid on this \_\_\_\_ day of December, 2014, personally appeared \_\_\_\_\_ to me known personally, and who, being by me duly sworn, deposes and says that (s)he is the \_\_\_\_\_ of Xcel Brands, Inc., the Manager of H Licensing, LLC, and that said instrument was signed on behalf of said entity and acknowledged said instrument to be the free act and deed of said limited liability company.

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Notary Public  
My commission expires:

NOTARY PAGE TO  
SECURITY AGREEMENT

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## INTELLECTUAL PROPERTY SECURITY AGREEMENT

THIS INTELLECTUAL PROPERTY SECURITY AGREEMENT is made as of December 22, 2014 (this "IP Security Agreement"), by **H LICENSING, LLC**, a Delaware limited liability company ("Grantor"), in favor of **BANK HAPOALIM B.M.** ("Bank").

## RECITALS

WHEREAS, the Grantor will enter into credit facilities with the Bank, evidenced by the various loan documents (each, as amended and in effect from time to time, a "Loan Document" and together, as amended and in effect from time to time, the "Loan Documents"), including an additional separate and distinct credit facility with the Bank dated as of this date (as may be amended and in effect from time to time, the "Credit Agreements", which Credit Agreements shall constitute Loan Documents) with the Bank pursuant to which the Bank, subject to the terms and conditions contained therein, is to make loans or otherwise to extend credit to the Grantor; and

WHEREAS, it is a condition precedent to the Bank's making credit available to the Grantor under the Credit Agreements and to make any loans or otherwise extend credit to the Grantor under the Loan Documents, that the Grantor execute and deliver to the Bank an intellectual property security agreement in substantially the form hereof; and

WHEREAS, the Grantor wishes to grant a security interest in favor of the Bank as herein provided.

## AGREEMENT

NOW, THEREFORE, in consideration of the promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Grantor hereby represents, warrants, covenants and agrees with Bank, as follows:

1. DEFINED TERMS. When used in this IP Security Agreement the following terms shall have the following meanings (such meanings being equally applicable to both the singular and plural forms of the terms defined):

1.1 "Collateral" shall have the meaning assigned to such term in Section 2 of this IP Security Agreement.

1.2 "Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

1.3 "Copyright License" means any written agreement in which Grantor now holds or hereafter acquires any right, title or interest, which agreement grants any right in or to any Copyright or Copyright registration (whether Grantor is the licensee or the licensor thereunder) including, without limitation, licenses pursuant to which Grantor has obtained the exclusive right to use a copyright owned by a third party, a sublicense to use a copyright, a distribution agreement regarding copyrighted works and the right to prepare for sale, sell or advertise for sale, all of the inventory now or hereafter owned by Grantor and now or hereafter covered by such license agreements.

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1.4 “Copyrights” means all of the following in which Grantor now holds or hereafter acquires any right, title or interest: (a) all copyrights, whether registered or unregistered, held or existing pursuant to the laws of the United States, any State thereof or any other country; (b) registrations, applications and recordings in the United States Copyright Office or in any similar office or agency of the United States, any State thereof or any other country; (c) any continuations, renewals or extensions of any copyright; (d) any registrations to be issued in any pending applications; (e) any prior versions of works covered by copyright and all works based upon, derived from or incorporating such works; (f) any original embodiments of a work that are necessary for the manufacture or production of a copyrighted work including, without limitation, molds, master tapes, master film reels, master CDs, master DVDs, master disks or other master magnetic or electronic media; (g) any income, royalties, damages, claims and payments now and hereafter due and/or payable with respect to copyrights, including, without limitation, damages, claims and recoveries for past, present or future infringement; (h) any rights to sue for past, present and future infringements of any copyright; and (i) any other rights corresponding to any of the foregoing rights throughout the world.

1.5 “Event of Default” means an event or circumstance defined as an “Event of Default” in any Loan Document, which entitles the Bank to accelerate the payment of the Secured Obligations.

1.6 “Excluded Swap Obligation” means, with respect to the Grantor, any Swap Obligation if, and to the extent that, all or a portion of the grant by such Grantor of a security interest to secure such Swap Obligation (or any guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Grantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the grant of such security interest becomes effective with respect to such Swap Obligation (or guaranty thereof). If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such security interest is or becomes illegal.

1.7 “IM Brands Guaranty” means the guaranty of the obligations of IM Brands, LLC to the Bank executed by Grantor in favor of the Bank.

1.8 “JR Licensing Guaranty” means the guaranty of the obligations of JR Licensing, LLC to the Bank executed by Grantor in favor of the Bank.

1.9 “Letter Agreement” means the line letter agreement, dated as of the date hereof and as may be amended, restated, supplemented or otherwise modified from time to time, between the Grantor and the Bank.

1.10 “License” means any Copyright License, Patent License, Trademark License or other license of trade secrets now held or hereafter acquired by Grantor.

1.11 “Lien” means any mortgage, lien, deed of trust, charge, pledge, security interest or other encumbrance.

1.12 “Litigation” means any suits, actions, proceedings (administrative, judicial or in arbitration, mediation or alternative dispute resolution), claims or counterclaims for infringement, misappropriation, or other violation of any of the Copyrights, Patents, Trademarks and/or Licenses.

1.13 “Patent License” means any written agreement in which Grantor now holds or hereafter acquires any right, title or interest, which agreement grants any right with respect to any Patent (whether Grantor is the licensee or the licensor thereunder) including, without limitation, licenses pursuant to which Grantor has obtained the exclusive right to use a patent owned by a third party, a sublicense to use a patent, a distribution agreement regarding one or more patented products or processes and the right to prepare for sale, sell or advertise for sale, all of the inventory now or hereafter owned by Grantor and now or hereafter covered by such license agreements.

1.14 “Patents” means all of the following in which Grantor now holds or hereafter acquires any right, title or interest: (a) all United States or foreign patents (including, without limitation, utility, design and plant patents), all registrations and recordings thereof and all applications for United States or foreign patents, including, without limitation, registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country; (b) all reissues, divisions, continuations, renewals, continuations in part or extensions of any patent; (c) all petty patents, divisionals and patents of addition; (d) all patents to issue in any such applications; (e) all means of manufacturing patented products, including, without limitation, trade secrets, formulas, customer lists, manufacturing processes, mask works, molds and prototypes, (f) any income, royalties, damages, claims and payments now and hereafter due and/or payable with respect to patents, including, without limitation, damages, claims and recoveries for past, present or future infringement; and (g) any rights to sue for past, present and future infringements of any patent.

1.15 “Secured Obligations” means all of the indebtedness, obligations and liabilities of the Grantor to the Bank, individually or collectively, whether direct or indirect, joint or several, absolute or contingent, due or to become due, now existing or hereafter arising under or in respect of the IM Brands Guaranty, the JR Licensing Guaranty, any of the Loan Documents, any promissory notes or other instruments or agreements executed and delivered pursuant thereto or in connection therewith, or pursuant to this IP Security Agreement, *provided* that Secured Obligations shall in no event include Excluded Swap Obligations.

1.16 “Swap Obligation” means, with respect to the Grantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act.

1.17 “Trademark License” means any written agreement in which Grantor now holds or hereafter acquires any right, title or interest, which agreement grants any license right in and to any Trademark (whether Grantor is the licensee or the licensor thereunder) including, without limitation, licenses pursuant to which Grantor has obtained the exclusive right to use a trademark owned by a third party, a sublicense to use a trademark, a distribution agreement relating to goods or services covered by one or more trademarks and the right to prepare for sale, sell or advertise for sale, all of the inventory now or hereafter owned by Grantor and now or hereafter covered by such license agreements.

1.18 “Trademarks” means any of the following in which Grantor now holds or hereafter acquires any right, title or interest: (a) any United States or foreign trademarks, trade names, corporate names, company names, business names, trade styles, trade dress, service marks, logos, other source or business identifiers, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all registrations and recordings thereof and any applications in connection therewith, including, without limitation, registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country (collectively, the “Marks”); (b) any reissues, extensions or renewals of any Marks, (c) the goodwill of the business symbolized by or associated with the Marks, (d) all domain names, (e) all means of manufacturing goods or offering services covered by the Marks, including, without limitation, trade secrets, formulas, recipes, customer lists, manufacturing processes, molds, designs, plans and prototypes, (f) any income, royalties, damages, claims and payments now and hereafter due and/or payable with respect to the Marks, including, without limitation, payments under all licenses entered into in connection with the Marks and damages, claims, payments and recoveries for past, present or future infringement and (g) any rights to sue for past, present and future infringements of the Marks.

1.19 “UCC” means the Uniform Commercial Code as the same may, from time to time, be in effect in the State of New York; provided, however, in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of Bank’s security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term “UCC” shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of definitions related to such provisions.

1.20 In addition, the following terms shall be defined terms having the meaning set forth for such terms in the UCC: “accounts,” “account debtor,” “deposit account,” “general intangibles,” and “proceeds”. Each of the foregoing defined terms shall include all of such items now owned or existing, or hereafter arising or acquired by Grantor.

1.21 All capitalized terms used herein and not otherwise defined herein shall have the respective meanings given to them in the Loan Documents.

2. GRANT OF SECURITY INTEREST. As collateral security for the prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of all the Secured Obligations and in order to induce Bank to enter into the Credit Agreements, Grantor hereby grants to Bank a security interest in all of Grantor’s right, title and interest, if any, in, to and under the following, whether now owned or existing or hereafter arising or acquired and wheresoever located (collectively, the “Collateral”):



2.1 All Copyrights, Patents and Trademarks including, without limitation, the Copyrights, Patents and Trademarks listed in Schedule A, all Licenses including, without limitation, the Licenses listed in Schedule B, and any presently pending Litigation including, without limitation, the Litigation listed in Schedule C;

2.2 All accounts, contract rights and general intangibles arising under or relating to each and every License (including, without limitation, (A) all moneys due and to become due under any License, (B) any damages arising out of or for breach or default in respect of any such License, (C) all other amounts from time to time paid or payable under or in connection with any such License, and (D) the right of Grantor to terminate any such License or to perform and to exercise all remedies thereunder); and

2.3 To the extent not otherwise included, all proceeds of each of the foregoing and all accessions to, substitutions and replacements for and rents, profits and products of each of the foregoing.

Notwithstanding the foregoing, the Collateral shall not include (i) any intent-to-use application for a Trademark to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use application under United States federal law and (ii) any contractual obligation entered into by Grantor that prohibits or requires the consent of any Person other than Grantor and its affiliates which has not been obtained as a condition to the creation by Grantor of a lien on any right, title or interest in such contractual obligation, but only to the extent, and for as long as, such prohibition is not terminated or rendered unenforceable or otherwise deemed ineffective by the UCC; provided, however, any proceeds, products, substitutions or replacements of such items shall constitute Collateral.

### 3. RIGHTS OF SECURED PARTY; COLLECTION OF ACCOUNTS.

3.1 Notwithstanding anything contained in this IP Security Agreement to the contrary, Grantor expressly agrees that it shall remain liable under each of its Licenses to observe and perform in all material respects all the conditions and obligations to be observed and performed by it thereunder and that it shall perform all of its duties and obligations thereunder, all in accordance with and pursuant to the terms and provisions of each such License. Bank shall not have any obligation or liability under any License by reason of or arising out of this IP Security Agreement or the granting to Bank of a Lien therein or the receipt by Bank of any payment relating to any License pursuant hereto, nor shall Bank be required or obligated in any manner to perform or fulfill any of the obligations of Grantor under or pursuant to any License, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any payment received by it or the sufficiency of any performance by any party under any License, or to present or file any claim, or to take any action to collect or enforce any performance or the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times. Grantor agrees that any rights granted under this IP Security Agreement to Bank with respect to all of the Collateral shall be worldwide and without any liability for royalties or other related charges from Bank to Grantor.

3.2 Bank authorizes Grantor to, at any time no Event of Default exists, collect its accounts related to the sale, license, settlement, judgment or other disposition of, or otherwise arising from, any of the Collateral, provided that such collection is performed in a commercially reasonable manner, and Bank may, upon the occurrence and during the continuation of any Event of Default and with prior written notice to Grantor, limit or terminate said authority at any time. Upon the occurrence and during the continuation of any Event of Default (beyond any applicable cure period), at the request of Bank, Grantor shall deliver all original and other documents evidencing and relating to such accounts, including, without limitation, all original orders, invoices and shipping receipts.

3.3 Bank may at any time, upon the occurrence and during the continuation of any Event of Default, without prior written notice to Grantor of its intention to do so, notify any account debtors of Grantor or any parties to the Licenses of Grantor that the accounts and the right, title and interest of Grantor in and under such Licenses have been assigned to Bank and that payments shall be made directly to Bank. Upon the request of Bank at any time after the occurrence and during the continuation of an Event of Default, Grantor shall so notify such account debtors and parties to such Licenses. Upon the occurrence and during the continuation of any Event of Default, Bank may, in its name or in the name of others, communicate with such account debtors and parties to such Licenses to verify with such parties, to Bank's reasonable satisfaction, the existence, amount and terms of any such accounts or Licenses.

4. REPRESENTATIONS AND WARRANTIES. Grantor hereby represents and warrants to Bank that:

4.1 Except for the Liens disclosed on Schedule 4.1 and the security interest granted to Bank under this IP Security Agreement, Grantor is the legal and equitable owner of all right, title and interest in and to each item of the Collateral in which it purports to grant a security interest hereunder, having good and marketable title thereto, free and clear of any and all Liens, and will continue to be the legal and equitable owner of all right, title and interest in and to each item of the Collateral, so long as the Copyrights, Patents, Trademarks and Licenses shall continue in force, except to the extent that dispositions are permitted pursuant to the Letter Agreement.

4.2 Except for this IP Security Agreement and for the Liens disclosed on Schedule 4.1, (i) no effective security agreement, financing statement, equivalent security or lien instrument or continuation statement covering all or any part of the Collateral exists, and (ii) Grantor has made no previous assignment, transfer or agreements in conflict herewith or constituting a present or future assignment, transfer or encumbrance on any of the Collateral.

4.3 This IP Security Agreement creates a legal and valid security interest on and in all of the Collateral in which Grantor now has rights. Upon the filing of appropriate financing statements and the filing of a copy of this IP Security Agreement with the United States Copyright Office and the United States Patent and Trademark Office, Bank will have a fully perfected security interest in all of the Collateral in which a security interest can be perfected by the filing of financing statements and the filing of a copy of this IP Security Agreement with the United States Copyright Office and the United States Patent and Trademark Office.

4.4 Except as set forth on Schedule 4.1, so long as any Secured Obligation remains outstanding, Grantor will not execute, and there will not be on file in any public office, any effective financing statement or other document or instrument covering the Collateral.

4.5 On the date hereof, Grantor's chief executive office, principal place of business and the place where Grantor maintains its records concerning the Collateral are located at the address set forth on the signature page hereof on the date hereof, and Grantor's name, type of organization, jurisdiction of organization, and organizational identification number set forth on the signature page hereof on the date hereof are all true and correct.

4.6 Grantor has the full right and power to grant the security interest in the Collateral made hereby.

4.7 All information furnished to Bank concerning the Collateral and proceeds thereof, for the purpose of inducing Bank to enter into the Credit Agreements and the transactions contemplated thereby, is or will be at the time the information is furnished, accurate and correct in all material respects.

4.8 To the best of Grantor's knowledge and belief following diligent inquiry, except as set forth on Schedule 4.8, no infringement, breach or unauthorized use presently is being made of any of the Collateral which has or may reasonably be expected to have, alone or in the aggregate, a material adverse effect on the value or enforceability of, or any rights of Grantor or Bank in, any Collateral. Grantor has advised Bank of the existence of all contractual restrictions on the use of the Collateral, including, without limitation, those set forth on Schedule 4.8 hereto.

4.9 Except as set forth on Schedule 4.8, to the best of Grantor's knowledge and belief following diligent inquiry, (i) there are no obligations to, covenants to or restrictions (other than those disclosed pursuant to Section 4.8) from third parties affecting Grantor's use, disclosure, enforcement, transfer or licensing of the Collateral (other than this IP Security Agreement); (ii) Grantor has taken all actions necessary to maintain and protect all Collateral and no loss of such Collateral is pending, reasonably foreseeable or threatened; (iii) there has been no claim made or threatened by or against Grantor asserting the invalidity, misuse or unenforceability of any item of Collateral or challenging Grantor's right to use or ownership of any item of Collateral, and there are no grounds for any such claim or challenge; (iv) there is not and has not been any actual or threatened infringement, misappropriation, breach or other violation of any Collateral, and there are no facts raising a likelihood of infringement, misappropriation, breach or other violation; (v) the consummation of the transactions contemplated by (A) this IP Security Agreement and (B) the Credit Agreements will not alter, impair or extinguish any rights of Grantor in the Collateral; (vi) Grantor has not infringed, misappropriated or otherwise violated, and Grantor does not infringe, misappropriate, or otherwise violate, any intellectual property or proprietary right of any other person or entity; and (vii) there has been no claim made or, to Grantor's knowledge, threatened against Grantor alleging infringement, misappropriation or other violation of intellectual property.

5. COVENANTS. Grantor covenants and agrees with Bank that from and after the date of this IP Security Agreement and until the Secured Obligations have been performed and paid in full:

5.1 **Disposition of Collateral.** Grantor shall not sell, lease, assign, transfer or otherwise dispose of any of the Collateral, or contract to do so, except as permitted by the Letter Agreement.

5.2 **Relocation of Business or Collateral.** Grantor shall not relocate its chief executive office, principal place of business or its records from such address(es) provided to Bank pursuant to Section 4.5 above without prior written notice to Bank.

5.3 **Limitation on Liens on Collateral.** Except as disclosed on Schedules 4.1 and 4.8, Grantor shall not, directly or indirectly, create, permit or suffer to exist, and shall defend the Collateral against and take such other action as is necessary to remove, any Lien on the Collateral.

5.4 **Maintenance of Records.** Grantor shall keep and maintain at its own cost and expense records of the Collateral that are complete in all material respects.

5.5 **Registration and Maintenance of Intellectual Property Rights.** Except as would not have a materially adverse effect on the value or enforceability of, or any rights of Grantor or Bank in, any Collateral, Grantor shall (i) use commercially reasonable efforts to prosecute any Patent, Trademark or Copyright pending as of the date hereof or thereafter, (ii) promptly make applications for, register or cause to be registered (to the extent not already registered and consistent with good faith business judgment) any Copyright, Copyright License, any Patent, Patent License, any Trademark or Trademark License, which is (a) set forth in Schedule A or Schedule B or (b) is individually or in the aggregate, material to the conduct of Grantor's business, with the United States Copyright Office or Patent and Trademark Office, as applicable, including, without limitation, in all such cases the filing and payment of maintenance, registration and/or renewal fees, the filing of applications for renewal, affidavits of use, affidavits of noncontestability, the filing and diligent prosecution of opposition, interference and cancellation proceedings, and promptly responding to all United States Copyright Office or Patent and Trademark Office requests and inquiries. Except as would not have a material adverse effect on the value or enforceability of, or any rights of Grantor or Bank in, any Collateral, Grantor also agrees to take commercially reasonable steps to preserve and maintain all rights in the Collateral. Any expenses incurred in connection with prosecution, registration and maintenance shall be borne by Grantor. Grantor further agrees to retain experienced patent, trademark and copyright attorneys for the filing and prosecution of all such applications and other proceedings when and if applicable. Except as would not have a material adverse effect on the value or enforceability of, or any rights of Grantor or Bank in, any Collateral, no Grantor shall, without Bank's prior written consent, abandon any rights in or fail to pay any maintenance or renewal fee for any Patent, Trademark or Copyright listed in Schedule A or breach, terminate, fail to renew or extend, or fail to perform any duties or obligations for any License listed in Schedule B. Grantor further agrees that it will not take any action, or permit any action to be taken by any person or entity to the extent that such person or entity is subject to its control, including licensees, or fail to take any action, which would affect the validity, priority, perfection or enforcement of the rights granted to Bank under this IP Security Agreement, and any such action if it shall take place shall be null and void and of no effect whatsoever. If Grantor fails to comply with any of the foregoing provisions of this Section 5.5, Bank shall have the right (but shall not be obligated) to do so on behalf of Grantor to the extent permitted by law, but at Grantor's expense, and Grantor hereby agrees to reimburse Bank in full for all reasonable documented expenses, including the reasonable fees and disbursements of counsel incurred by Bank in procuring, protecting, defending and maintaining the Collateral. In the event that Grantor shall fail to pay when due any fees required to be paid by it hereunder, or shall fail to comply with any other duty under this IP Security Agreement, Bank may, but shall not be required to, pay, satisfy, discharge or bond the same for the account of Grantor, and all monies so paid out shall be Secured Obligations of Grantor repayable on demand, together with interest at the rate in effect pursuant to the Credit Agreements at such time.

5.6 **Notification Regarding Changes in Intellectual Property.** Grantor shall, not less frequently than on a quarterly basis as provided below, advise Bank of any right, title or interest of Grantor obtained after the date hereof in or to any Copyright, Patent, Trademark or License not specified on Schedule A or Schedule B hereto, the provisions of Section 2 above shall automatically apply thereto, and Grantor hereby authorizes and appoints Bank as Grantor's attorney-in-fact solely to the extent necessary to modify or amend such Schedule, as necessary, to reflect any addition or deletion to such ownership rights, and pursuant to Schedule D, to make any additional filings. In addition to any requirements in this IP Security Agreement for notification, Grantor shall also provide Bank with quarterly reports within sixty (60) days of the end of each of the first three (3) calendar quarters and within ninety (90) days of the end of the fourth calendar quarter that identify the status of any new Copyrights, Patents, Trademarks and/or Licenses, any newly filed applications, the status of any pending applications, the status of Litigation and licensing, any threats of Litigation, the identification of any known or suspected infringers and the discovery of any prior art or any other information that may affect the validity or enforceability of the Collateral.

5.7 **Defense of Intellectual Property.** Grantor shall (i) protect, defend and maintain the validity and enforceability of all current and future Copyrights, Patents and Trademarks, (ii) use its commercially reasonable efforts to detect infringements of such Copyrights, Patents and Trademarks and promptly advise Bank in writing of infringements detected and (iii) not allow any Copyrights, Patents or Trademarks that are material to the conduct of Grantor's business or are related to the maintenance of the value of the brand name created by Grantor to be abandoned, forfeited or dedicated to the public.

5.8 **Further Assurances; Pledge of Instruments.** At any time and from time to time, upon the written request of Bank, and at the sole expense of Grantor, Grantor shall promptly and duly execute and deliver any and all such further instruments and documents and take such further action as Bank may reasonably deem necessary or desirable to obtain the full benefits of this IP Security Agreement, including, without limitation, facilitating the filing of UCC-1 Financing Statements in all applicable jurisdictions and this IP Security Agreement (and any amendment hereto) or any other document that Bank may reasonably deem necessary, including, without limitation, any filing described in Schedule D or any other collateral assignment, (and any amendments thereto) with the United States Copyright Office, Patent and Trademark Office and/or, to the extent commercially reasonable, the state or foreign equivalents of these offices, as applicable.

5.9 **Right of Inspection and Audit.** Subject to the limitations set forth in Section 4(s) of the Letter Agreement, upon reasonable notice to Grantor (unless an Event of Default has occurred and is continuing, in which case no notice is necessary), Bank shall at all times have full and free access during normal business hours (or during an Event of Default at any time) to all the books, records, correspondence, office, facilities and operations of Grantor, including, without limitation, Grantor's quality control processes, and Bank or any agents or representatives of Bank may examine the same, take extracts therefrom and make photocopies thereof, and Grantor agrees to render to Bank, at Grantor's cost and expense, such clerical and other assistance as may be reasonably requested with regard thereto, provided, however, that (unless an Event of Default has occurred and is continuing) (a) Grantor shall have the right to be present during Bank's examination and (b) such examination shall not unreasonably interfere with the conduct of Grantor's business.

5.10 **Continuous Perfection.** Grantor shall not change its name, identity, corporate structure, jurisdiction of organization or corporation identification number in any manner which might make any financing or continuation statement filed in connection herewith seriously misleading within the meaning of Section 9-506 of the UCC (or any other then applicable provision of the UCC) unless Grantor gives Bank thirty (30) days prior written notice thereof and takes all action necessary or reasonably requested by Bank to amend such financing statement or continuation statement so that it is not seriously misleading.

5.11 **Power of Attorney.** Grantor hereby irrevocably appoints Bank (and any of Bank's designated officers or employees) as Grantor's true and lawful attorney to in accordance with the terms hereof: (a) send requests for verification of accounts and Licenses or notify account debtors or licensees of Bank's security interest in the accounts and Licenses; (b) endorse Grantor's name on any checks or other forms of payment or security that may come into Bank's possession in connection with the Collateral; (c) sign Grantor's name on any invoice or bill of lading relating to any account, drafts against account debtors, schedules and assignments of accounts and Licenses, verifications of accounts and Licenses, and notices to account debtors and licensees, (d) make, settle and adjust all claims under and decisions with respect to Grantor's policies of insurance relating to the Collateral; (e) settle and adjust disputes and claims respecting the accounts and Licenses directly with account debtors and licensees, for amounts and upon terms which Bank determines to be reasonable; (f) modify, in its sole discretion, any intellectual property security agreement entered into between Grantor and Bank without first obtaining Grantor's approval of or signature to such modification by amending reference to any right, title or interest in any Copyright, Patent, Trademark or License, acquired by Grantor after the execution hereof or to delete any reference to any right, title or interest in any Copyright, Patent, Trademark or License, in which Grantor no longer has or claims any right, title or interest; (g) endorse Grantor's name on all applications, documents, papers and instruments necessary or desirable for Bank in the use of the Collateral, (h) take any other actions with respect to the Collateral as Bank deems in the best interest of Bank (consistent with any enforceable restrictions in Licenses to Grantor); (i) grant or issue any exclusive or non-exclusive license under the Collateral to anyone (consistent with any enforceable restrictions in Licenses to Grantor) or (j) assign, pledge, convey or transfer title in or dispose of the Collateral to anyone, including Bank or a third party to the extent permitted under the UCC, free and clear of any encumbrance upon title thereof (other than any encumbrance created by this IP Security Agreement and consistent with any enforceable restrictions in Licenses to Grantor). Grantor hereby irrevocably appoints Bank (and any of Bank's designated officers or employees) as Grantor's true and lawful attorney to and in accordance with the terms hereof: (x) file, in its sole discretion, one or more financing or continuation statements and amendments thereto, relative to any of the Collateral without the signature of Grantor where permitted by law; and (y) with respect to the Trademarks, file a copy of this IP Security Agreement with the U.S. Patent and Trademark Office. The appointment of Bank as Grantor's attorney in fact, and each and every one of Bank's rights and powers, being coupled with an interest, is irrevocable until all of the Secured Obligations have been fully repaid and performed and Bank's obligation to provide advances hereunder is terminated. Grantor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue of this IP Security Agreement. Notwithstanding the foregoing, Bank agrees not to exercise its rights under the foregoing powers (other than as respects clauses (x) and (y) above) unless an Event of Default has occurred and is continuing.

5.12 **Intent-to-Use Trademark Applications.** To the extent that any of the Trademarks consist of intent-to-use based trademark applications, if at any time Grantor commences using such Trademark in its business, Grantor shall take such actions as may be reasonably requested by Bank to convert, within the time provided by the United States Patent and Trademark Office, such intent-to-use trademark application to a use-based application.

6. RIGHTS AND REMEDIES UPON DEFAULT.

6.1 If any Event of Default shall occur and be continuing, Bank may exercise in addition to all other rights and remedies granted to it under this IP Security Agreement and under any other instrument or agreement securing, evidencing or relating to the Secured Obligations, all rights and remedies of a secured party under the UCC. Without limiting the generality of the foregoing, Grantor expressly agrees that in any such event, and during the existence and continuation of an Event of Default, Bank, without demand of performance or other demand, advertisement or notice of any kind (except the notice specified below of time and place of public or private sale) to or upon Grantor or any other Person (all and each of which demands, advertisements and notices are hereby expressly waived to the maximum extent permitted by the UCC and other applicable law), may forthwith maintain, collect, receive, appropriate and realize upon the Collateral, or any part thereof, and may forthwith sell, lease, license, assign, give an option or options to purchase or sell or otherwise dispose of and deliver said Collateral (or contract to do so), or any part thereof (consistent with any enforceable restrictions in Licenses to Grantor), in one or more parcels at public or private sale or sales, at any exchange or broker's board or at any of Bank's offices or elsewhere at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. Bank shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of said Collateral so sold, free of any right or equity of redemption, which equity of redemption Grantor hereby releases. During the period of any Event of Default, all use of the Trademarks by Grantor shall inure to the benefit of Bank. Bank shall apply the net proceeds of any such collection, recovery, receipt, appropriation, realization or sale as provided in Section 6.4 hereof, Grantor remaining liable for any deficiency remaining unpaid after such application, and to the extent required by the UCC, only after so paying over such net proceeds and after the payment by Bank of any other amount required by any provision of law, need Bank account for the surplus, if any, to Grantor. To the maximum extent permitted by applicable law, Grantor waives all claims, damages, and demands against Bank arising out of the repossession, retention or sale of the Collateral except such as arise out of the gross negligence or willful misconduct of Bank. Grantor agrees that Bank need not give more than ten (10) days' notice (which notification shall be deemed given when mailed or delivered on an overnight basis, postage prepaid, addressed to Grantor at its address set forth on the signature page hereof) of the time and place of any public sale or of the time after which a private sale may take place and that such notice is reasonable notification of such matters. Grantor shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all amounts to which Bank is entitled, Grantor also being liable for the reasonable fees of any attorneys employed by Bank to collect such deficiency.

6.2 Grantor also agrees, to pay all documented fees, costs and expenses of Bank, including, without limitation, reasonable attorneys' fees, reasonably incurred in connection with the enforcement of any of its rights and remedies hereunder.

6.3 Grantor hereby waives presentment, demand, protest or any notice (to the maximum extent permitted by applicable law) of any kind in connection with this IP Security Agreement or any Collateral.

6.4 The proceeds of any sale, disposition or other realization upon all or any part of the Collateral shall be distributed by Bank in the following order of priorities:

FIRST, to Bank in an amount sufficient to pay in full the reasonable costs of Bank in connection with such sale, disposition or other realization, including all fees, costs, expenses, liabilities and advances reasonably incurred or made by Bank in connection therewith, including, without limitation, reasonable attorneys' fees;

SECOND, to Bank in an amount equal to the then unpaid Secured Obligations; and

FINALLY, upon payment in full of the Secured Obligations, to Grantor or its representatives, in accordance with the UCC or as a court of competent jurisdiction may direct.

7. **BANK'S RIGHT TO SUE.** From and after the occurrence and during continuation of an Event of Default, Bank shall have a right, but shall in no way be obligated, to bring suit for past, present and future damages in its own name and for its own benefit to enforce the Copyrights, Patents, Trademarks and Licenses, and if Bank commence any such suit, Grantor shall, at the request of Bank, use commercially reasonable efforts to do any and all lawful acts and execute any and all proper documents required by Bank in aid of such enforcement.

8. **LIMITATION ON BANK'S DUTY IN RESPECT OF COLLATERAL.** Bank shall deal with the Collateral in the same manner as it deals with similar property for its own account. Bank shall be deemed to have acted reasonably in the custody, preservation and disposition of any of the Collateral if it takes such action as Grantor requests in writing, but failure of Bank to comply with any such request shall not in itself be deemed a failure to act reasonably and no failure of Bank to do any act not so requested shall be deemed a failure to act reasonably.



9. MISCELLANEOUS.

9.1 **No Waiver; Cumulative Remedies.**

9.1.1 Bank shall not by any act, delay, omission or otherwise be deemed to have waived any of its rights or remedies hereunder, nor shall any single or partial exercise of any right or remedy hereunder on any one occasion preclude the further exercise thereof or the exercise of any other right or remedy.

9.1.2 The rights and remedies hereunder provided are cumulative and may be exercised singly or concurrently and are not exclusive of any rights and remedies provided by law. Grantor acknowledges and agrees that this IP Security Agreement is not intended to limit or restrict in any way the rights and remedies of Bank but rather is intended to facilitate the exercise of such rights and remedies. Bank shall have, in addition to all other rights and remedies given it by the terms of the Security Agreement, all rights and remedies allowed by law and the rights and remedies of a secured party under the UCC. Recourse to security will not be required at any time.

9.1.3 None of the terms or provisions of this IP Security Agreement may be waived, altered, modified or amended except by an instrument in writing, duly executed by Grantor and Bank.

9.2 **Releases.**

9.2.1 This IP Security Agreement is made for collateral purposes only. Subject to Section 9.2.2 below, at such time as the Secured Obligations shall have been paid and performed in full and Grantor has no further obligations under or with respect to the Credit Agreements, the Collateral shall be automatically released from the Liens created hereby, and this IP Security Agreement and all obligations of Bank and Grantor hereunder shall automatically terminate, all without delivery of any instrument or performance of any act by any party, and all rights to the Collateral shall revert to Grantor. At the request and sole expense of Grantor following any such termination, Bank shall deliver to Grantor all termination statements, releases or other instruments as may be necessary or proper to re-vest in Grantor (without recourse to or warranty by Bank, except for encumbrances created by Bank, provided that no such recourse or warranty shall apply to any Collateral sold or otherwise disposed of by Bank pursuant to this IP Security Agreement) full title to the Collateral granted in this IP Security Agreement, subject to any acceptance or disposition of Collateral which may have been made by Bank pursuant to this IP Security Agreement.

9.2.2 This IP Security Agreement and the security interests granted herein shall remain in full force and effect and continue to be effective if at any time payment and performance of the Secured Obligations, or any part thereof, is, pursuant to applicable law, avoided, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Secured Obligations, whether as a “voidable preference,” “fraudulent conveyance” or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is avoided, rescinded, reduced, restored or returned, the Secured Obligations and the security interests granted herein shall be reinstated and the Secured Obligations shall be deemed reduced only by such amount paid and not so avoided, rescinded, reduced, restored or returned. The provisions of this Section 9.2.2 shall survive repayment of all of the Secured Obligations, and the termination of this IP Security Agreement in any manner.

9.3 **Successor and Assigns.** This IP Security Agreement and all obligations of Grantor hereunder shall be binding upon the successors and permitted assigns of Grantor, and shall, together with the rights and remedies of Bank hereunder, inure to the benefit of Bank, any future holder of any of the Secured Obligations and their respective successors and assigns. Bank may, without cost or expense to Grantor, assign all or any part of, or any interest (undivided or divided) in, Bank's rights and benefits under this IP Security Agreement including, without limitation, the right, title or interest in and to the Collateral. To the extent of any assignment by Bank, the assignee shall have the same rights and benefits against Grantor hereunder as it would have had if such assignee were Bank. Grantor may not assign this IP Security Agreement without the prior written consent of Bank, which consent may be granted or withheld at the sole discretion of Bank. No sales of participations, other sales, assignments, transfers or other dispositions of any agreement governing or instrument evidencing the Secured Obligations or any portion thereof or interest therein shall in any manner affect the lien granted to Bank hereunder.

9.4 **Notices.** All notifications and other communications permitted or required under this Agreement shall be in writing and shall be delivered in accordance with the terms of the Note.

9.5 **Counterparts.** This IP Security Agreement may be executed in any number of separate counterparts, each of which, when so executed, shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute but one and the same instrument.

9.6 **Severability.** If any provision of this IP Security Agreement is held to be unenforceable under applicable law for any reason, it shall be adjusted, if possible, rather than voided in order to achieve the intent of the parties to the extent possible. In any event, all other provisions of this IP Security Agreement shall be deemed valid and enforceable to the fullest extent possible under applicable law.

9.7 **Governing Law; Consent to Jurisdiction.** THIS IP SECURITY AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. The Grantor agrees that any suit for the enforcement of this IP Security Agreement may be brought in the courts of the State of New York sitting in New York County, or any federal court sitting therein, and consents to the non-exclusive jurisdiction of such courts and to service of process in any such suit being made upon the Grantor, by mail, at the address specified on the signature page of this IP Security Agreement, or at any address specified for the Grantor in any Loan Document. The Grantor hereby waives any objection that it may now or hereafter have to the venue of any such suit or any such court or that such suit is brought in an inconvenient court.

9.8 **Waiver of Jury Trial.** EACH PARTY HERETO WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS IP SECURITY AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER OR THE PERFORMANCE OF ANY SUCH RIGHTS OR OBLIGATIONS. Except as prohibited by law, the Grantor waives any right which it may have to claim or recover in any litigation referred to in the preceding sentence any special, exemplary, punitive or consequential damages or any damages other than, or in addition to, actual damages. The Grantor (i) certifies that neither the Bank nor any representative, agent or attorney of the Bank has represented expressly or otherwise, that the Bank would not, in the event of litigation, seek to enforce the foregoing waivers and (ii) acknowledges that, in entering into the Credit Agreement and the other Loan Documents to which the Bank is a party, the Bank is relying upon, among other things, the waivers and certifications contained in this Section 9.8.

9.9 **Advice of Counsel.** Grantor represents to Bank that Grantor's attorneys have reviewed this IP Security Agreement and that it has discussed this IP Security Agreement with its attorneys.

9.10 **Section and Heading Titles.** The section and heading titles are for convenience and reference only and shall not affect in any way the interpretation of any of the provisions of this IP Security Agreement.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, each of the parties hereto has caused this IP Security Agreement to be executed and delivered by its duly authorized officer on the date first set forth above.

**H LICENSING, LLC**

By: XCEL BRANDS, INC.  
Its Manager

By: /s/ James Haran

Name: James Haran

Title: CFO

ADDRESS OF GRANTOR:

Chief Executive Office

475 Tenth Avenue  
New York, New York 10018

Principal Accounting Office

475 Tenth Avenue  
New York, New York 10018

TYPE OF ORGANIZATION: Limited Liability Company

JURISDICTION OF ORGANIZATION: Delaware

ORGANIZATIONAL ID NUMBER: 5617462

SIGNATURE PAGE TO  
IP SECURITY AGREEMENT

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STATE OF NEW YORK )  
 ) SS.  
COUNTY OF NEW YORK )

On December \_\_, 2014, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity(ies), and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
SIGNATURE OF NOTARY

[SEAL]

NOTARY PAGE TO  
IP SECURITY AGREEMENT

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**ACCEPTED AND ACKNOWLEDGED BY:**

**BANK HAPOALIM B.M.**

By: Authorized Signatory

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Name:

Title:

By: Authorized Signatory

---

Name:

Title:

ADDRESS:

1177 Avenue of the Americas  
New York, New York 10036-2790  
Attention: Mitchell Barnett

SIGNATURE PAGE TO  
IP SECURITY AGREEMENT

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**Schedule A To Security Agreement**

**INTELLECTUAL PROPERTY**

**Trademarks**

**I. United States Trademarks**

See attached.

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## II. Foreign

See attached.

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**Schedule B To Security Agreement**

**LICENSES**

1. License Agreement dated as of December 22, 2014, by and among QVC, Inc., H Licensing, LLC and XCel Brands, Inc.
  2. Master License Agreement dated as of December 22, 2014, by and between H Licensing, LLC and The H Company IP, LLC.
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**Schedule C To Security Agreement**

**PENDING LITIGATION**

None.

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**Schedule D To Security Agreement**

**UCC FILING JURISDICTIONS**

Ø Delaware

**Other Filings**

**1. U.S. Copyright Office**

A. Upon the occurrence of an Event of Default that is continuing, Grantor agrees to execute and deliver to Bank an assignment of Copyright Licenses and Copyrights set forth in Schedules A and B hereto and hereby authorizes Bank to file the assignments with the U.S. Patent and Trademark Office (or the appropriate foreign copyright office).

B. Grantor hereby authorizes Bank to file a copy of this IP Security Agreement with the U.S. Copyright Office for each Copyright License and Copyright set forth in Schedules A and B hereto.

**2. U.S. Patent and Trademark Office**

A. **Patents.** Upon the occurrence of an Event of Default that is continuing, Grantor agrees to execute and deliver to Bank conditional for each Patent License and Patent set forth in Schedule A and B hereto and hereby authorizes Bank to file the conditional assignments with the U.S. Patent and Trademark Office (or the appropriate foreign patent office).

**B. Trademarks**

1. Upon the occurrence of an Event of Default that is continuing, Grantor agrees to execute and deliver to Bank an assignment of Trademark Licenses and Trademarks set forth in Schedules A and B hereto and hereby authorizes Bank to complete and record with the U.S. Patent and Trademark (or the appropriate foreign or state office).

2. Grantor hereby authorizes Bank to file a copy of this IP Security Agreement with the U.S. Patent and Trademark Office for each Trademark License and Trademark now or hereafter set forth in Schedules A and B hereto.

**3. Foreign Filings**

Grantor shall promptly and duly execute, deliver and/or file any and all documents and instruments with any foreign recording office with respect to the Collateral and take such further action as Bank may reasonably deem necessary or desirable to perfect its security interest in the Collateral in any foreign jurisdiction, including, without limitation, any foreign patent, trademark and/or copyright office.

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**Schedule 4.1 To Security Agreement**

**EXISTING LIENS**

None.

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**Schedule 4.8 To Security Agreement**

**RESTRICTIONS**

None.

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