

“Excluded Subsidiary” means any Subsidiary of Parent (other than a Borrower) that is (a) a Foreign Subsidiary, (b) an Unrestricted Subsidiary, (c) a FSHCO, (d) not a Wholly-Owned Subsidiary of Parent or one or more of its Wholly-Owned Restricted Subsidiaries, (e) an Immaterial Subsidiary, unless otherwise designated by the Lead Borrower in a certificate of a Responsible Officer of the Lead Borrower delivered to the Agent, (f) established or created pursuant to Section 10.05(xi) and meeting the requirements of the proviso thereto; provided that such Subsidiary shall only be an Excluded Subsidiary for the period immediately prior to such acquisition, (g) prohibited by applicable law from guaranteeing the Loans, or which would require governmental (including regulatory) consent, approval, license or authorization to provide a guarantee in each case, unless, such consent, approval, license or authorization has been received, in each case so long as the Agent shall have received a certification from the Lead Borrower’s general counsel or a Responsible Officer of the Lead Borrower as to the existence of such prohibition or consent, approval, license or authorization requirement, (h) prohibited from guaranteeing the Obligations by any contractual obligation in existence (x) on the Closing Date or (y) at the time of the acquisition of such Subsidiary after the Closing Date (to the extent such prohibition was not entered into in contemplation of such acquisition), (i) a Subsidiary with respect to which a guarantee by it of the Obligations would result in material adverse tax consequences to Parent, the Lead Borrower or the Restricted Subsidiaries, as reasonably determined by the Lead Borrower in a certificate of a Responsible Officer of the Lead Borrower delivered to the Agent, (j) a not-for-profit Subsidiary, (k) a captive insurance company, (l) a special purpose entity or a bankruptcy remote entity, (m) any other Subsidiary with respect to which the Agent and the Lead Borrower reasonably agree the cost or other consequences (including any adverse tax consequences) of guaranteeing the Obligations shall be excessive in view of the benefits to be obtained by the Lenders therefrom and (n) any Subsidiary that is a direct or indirect Subsidiary of a CFC; provided that, notwithstanding the above, (x) if a Subsidiary executes the Security Agreement then it shall not constitute an “Excluded Subsidiary” (unless

released from its obligations under the Security Agreement in accordance with the terms hereof and thereof) and (y) if a Subsidiary serves as a guarantor under (I) the 7.875% Senior Notes, (II) the Convertible Senior Notes or (III) any other Indebtedness for borrowed money incurred by any Loan Party (other than any Foreign Subsidiary), in each case under this clause (III), with a principal amount in excess of the Threshold Amount, then it shall not constitute an “Excluded Subsidiary” (unless released from its obligations under the Security Agreement in accordance with the terms hereof and thereof).

“Excluded Taxes” means (i) any tax imposed on the net income or net profits of any Lender or any Participant (including any franchise taxes and branch profits taxes), in each case imposed by the jurisdiction (or by any political subdivision or taxing authority thereof) in which such Lender or such Participant is organized or the jurisdiction (or by any political subdivision or taxing authority thereof) in which such Lender’s or such Participant’s principal office is located or as a result of a present or former connection between such Lender or such Participant and the jurisdiction or taxing authority imposing the tax (other than any such connection arising solely from such Lender or such Participant having executed, delivered or performed its obligations or received payment under, or enforced its rights or remedies under this Agreement or any other Loan Document); (ii) taxes resulting from a Lender’s or a Participant’s failure to comply with the requirements of Section 5.01(b) or (c) of this Agreement, (iii) any United States federal withholding taxes that would be imposed on amounts payable to a Foreign Lender based upon the applicable withholding rate in effect at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office), other than (A) any amount that such Foreign Lender (or its assignor, if any) was previously entitled to receive pursuant to Section 5.01 of this Agreement, if any, with respect to such withholding tax at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office), and (B) additional United States federal withholding taxes that may be imposed after the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office), as a result of a change in law, rule, regulation, order or other decision with respect to any of the foregoing by any Governmental Authority, and (iv) any United States federal withholding taxes imposed under FATCA.

“Existing Commitment” has the meaning set forth in Section 2.19(a).

“Existing Credit Agreement” means that certain Credit Agreement, dated as of February 5, 2013, among Parent, the Borrowers, Wells Fargo Bank, National Association, as administrative agent, and the other parties thereto.

“Existing Indebtedness” has the meaning set forth in Section 10.04(vii).

“Existing Letters of Credit” means those letters of credit issued under the Existing Credit Agreement described on Schedule 1.01C hereto.

“Existing Loans” has the meaning set forth in Section 2.19(a).

“Existing Note Debt” means the Indebtedness of Parent and certain of its Subsidiaries under the Existing Note Documents.

“Existing Note Documents” means (a) the Convertible Senior Notes Documents and (b) the 7.875% Senior Notes Indenture, the 7.875% Senior Notes and any other documents, agreements or instruments executed in connection therewith.

“Existing Noteholders” means the Persons from time to time owning the Existing Notes.

“Existing Notes” means (i) the Convertible Senior Notes, and (ii) the 7.875% Senior Notes.

“Existing Notes Indentures” means the 7.875% Senior Notes Indenture and the Convertible Senior Notes Indenture.

“Exposure Determination Date” means (a) each date on which a Letter of Credit is issued with a stated amount denominated in a Committed Foreign Currency, (b) the last Business Day of each calendar month and (c) if a Default or an Event of Default shall have occurred and be continuing, such additional dates as the Agent shall specify.

“Extended Commitments” has the meaning set forth in the definition of “Extension Permitted Amendment.”

“Extended Loans” has the meaning set forth in the definition of “Extension Permitted Amendment.”

“Extending Lender” has the meaning set forth in Section 2.19(a).

“Extension Agreement” means an Extension Agreement, in form and substance reasonably satisfactory to the Agent and the Lead Borrower, among Parent, the Lead Borrower, the Agent and one or more Extending Lenders, effecting an Extension Permitted Amendment and such other amendments hereto and to the other Loan Documents as are contemplated by Section 2.19.

“Extension Offer” has the meaning set forth in Section 2.19(a).

“Extension Permitted Amendment” means an amendment to this Agreement and the other Loan Documents, effected in connection with an Extension Offer pursuant to Section 2.19, providing for an extension of the Maturity Date applicable to the Extending Lenders’ Loans and/or Commitments (such Loans or Commitments being referred to as the “Extended Loans” or “Extended Commitments”, as applicable) and, in connection therewith, (a) an increase or decrease in the yield on such Extended Loans (including any increase or decrease in, or an introduction of, interest margins, benchmark rate floors, fixed interest rates or fees or premiums), (b) a modification of voluntary or mandatory prepayments or commitment terminations applicable thereto, (c) an increase in the fees payable to, or the inclusion of new fees to be payable to, the Extending Lenders in respect of such Extension Offer or their Extended Loans or Extended Commitments and/or (d) an addition of one or more covenants applicable to Parent and/or the Restricted Subsidiaries or any other provisions; provided that, in the case of this clause (d), to the extent such covenants or provisions are not consistent with those applicable under the Loan Documents prior thereto, such differences shall be reasonably satisfactory to the Agent (it being agreed, however, that (x) any Extension Agreement may include any financial maintenance covenant if such financial maintenance covenant applies only to periods after the latest Maturity Date in effect at the time of the effectiveness thereof or, following notice to the Agent, this Agreement is amended to include such financial maintenance covenant for the benefit

of all Lenders and (y) any Extension Agreement may include covenants and other provisions applicable only to periods after the latest Maturity Date in effect at the time of effectiveness thereof).

“Extraordinary Advances” means Protective Advances and Overadvances.

“Farm Products Registration” has the meaning set forth in Section 9.18(a).

“FATCA” means Sections 1471 through 1474 of the Code as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations thereunder or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code as of the date of this Agreement (or any such amended or successor version).

“FCCR Test Amount” has the meaning set forth in Section 10.11(a).

“FCPA” has the meaning set forth in Section 8.15(c).

“Fee Letter” means that certain fee letter, dated as October 26, 2014, among the Lead Borrower, the Agent and Merrill Lynch, Pierce, Fenner & Smith Incorporated.

“Fees” means all amounts payable pursuant to or referred to in Section 2.05.

“Federal Funds Rate” means, for any period, a fluctuating interest rate per annum equal to, for each day during such period, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by Agent from three Federal funds brokers of recognized standing selected by it.

“Fixed Asset Availability Amount” means, as of any date of determination, an amount equal to the least of (a) the Fixed Asset Sub-Line Amount, (b) \$50,000,000, (c) 85% of the Net Orderly Liquidation Value of all Eligible Equipment, and (d) 30% of the Aggregate Commitments.

“Fixed Asset Sub-Line Amount” means \$19,550,000; provided that the Fixed Asset Sub-Line Amount shall be permanently reduced on the first day of each calendar quarter after the Closing Date by an amount equal to the amount of such Fixed Asset Sub-Line Amount divided by 28 (unless clause (B) of the final proviso of this definition shall then be applicable); provided, further, that within 60 days following the completion of an appraisal, in form and substance satisfactory to the Agent, calculating the Net Orderly Liquidation Value of Eligible Equipment, Borrower may by written notice to the Agent, so long as no Event of Default has occurred and is then continuing and the Fixed Charge Coverage Ratio for the 12 month period most recently ended prior to such notice for which the Agent has received Section 9.01 Financials have been delivered is at least 1.00 to 1.00 elect to cause the Fixed Asset Sub-Line Amount to be increased to an amount equal to 85% of the Net Orderly Liquidation Value of Eligible Equipment based on such appraisal (but in no event shall the Fixed Asset Sub-Line Amount exceed \$50,000,000 or 30% of the Aggregate Commitments); provided, in addition, that (A) such election shall not be made more than twice and (B) upon the Fixed Asset Sub-Line Amount being so increased pursuant to such election then such increased Fixed Asset Sub-Line Amount shall be reduced on the first day of each calendar quarter following such election by an amount equal to the maximum amount of such increased Fixed Asset Sub-Line Amount (as determined immediately after giving effect to such election) divided by 28.

“Fixed Charges” means, with respect to any fiscal period and with respect to Parent and its Restricted Subsidiaries determined on a consolidated basis in accordance with U.S. GAAP, the sum, without duplication, of (a) Interest Expense paid in cash during such period, net of interest income for such period, plus (b) the aggregate amount of scheduled principal payments or similar principal payments required to be paid on a regularly recurring basis made during such period in respect of Indebtedness for borrowed money of Parent and its Restricted Subsidiaries (other than any such payments made by Parent or any Restricted Subsidiary to Parent or a Restricted Subsidiary or payments made in connection with a refinancing

of such Indebtedness), plus (c) the aggregate amount of principal payments on Capitalized Lease Obligations made by Parent and its Restricted Subsidiaries during such period (other than payments made in connection with a refinancing of such Capitalized Lease Obligations), plus (d) the aggregate amount of all Dividends paid in cash by Parent during such period.

“Fixed Charge Coverage Ratio” means, with respect to any fiscal period and with respect to Parent and the Restricted Subsidiaries determined on a consolidated basis in accordance with U.S. GAAP, the ratio of (a) Consolidated EBITDA for such period minus the sum of (i) Capital Expenditures paid in cash (excluding such Capital Expenditures financed with the proceeds of any Indebtedness (other than Loans)) for such period and (ii) all federal, state, and foreign and local income taxes paid in cash during such period, to (b) Fixed Charges for such period.

“Fleet Assets” means ocean-going vessels and related equipment and machinery which are acquired, leased, improved or replaced after the Closing Date and any assets related thereto, but excluding, for the avoidance of doubt any renewal or extension of any agreement with respect to ocean-going vessels or related equipment or machinery existing on the Closing Date.

“Flood Insurance Laws” means, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto and (iv) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto.

“Foreign Lender” means any Lender or Participant that is not a U.S. Person.

“Foreign Pension Plan” means any plan, fund (including, without limitation, any superannuation fund) or other similar program established or maintained outside the United States by Parent or any one or more of its Restricted Subsidiaries primarily for the benefit of employees of Parent or such Restricted Subsidiaries residing outside the United States, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code.

“Foreign Subsidiary” means any Subsidiary that is not a U.S. Subsidiary.

“Fresh Express” has the meaning set forth in Section 9.13.

“Fresh International” has the meaning set forth in Section 9.13.

“Fronting Exposure” means a Defaulting Lender’s Pro Rata Share of Letter of Credit Exposure or Swingline Loans, as applicable, except to the extent allocated to other Lenders under Section 2.11.

“Fronting Fee” has the meaning set forth in Section 2.05(c).

“FSA” has the meaning set forth in Section 8.15(e).

“FSHCO” means any U.S. Subsidiary substantially all of the assets of which consist of Equity Interests in one or more (a) CFCs or (b) Subsidiaries described in this definition.

“Georgia Lease” has the meaning set forth in Section 9.13.

“Georgia Property” has the meaning set forth in Section 9.13.

“Governmental Authority” means the government of any nation or any political subdivision thereof, whether at the national, state, territorial, provincial, municipal or any other level, and any agency, authority, instrumentality, regulatory body,

taxing, regulatory or administrative powers or functions of, or pertaining to, government (including any supra-national bodies such as the European Union or the European Central Bank).

“Guarantor” means (a) Parent, and (b) each other Person that becomes a guarantor after the Closing Date.

“Hazardous Materials” means (a) substances that are defined or listed in, or otherwise classified pursuant to, any applicable laws or regulations relating to the protection of the Environment as “hazardous substances,” “hazardous materials,” “hazardous wastes,” “toxic substances,” or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, reproductive toxicity, or “EP toxicity,” (b) oil, petroleum, or petroleum derived substances, natural gas, natural gas liquids, synthetic gas, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources, (c) any flammable substances or explosives or any radioactive materials, and (d) asbestos in any form or electrical equipment that contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million.

“Hedge Agreement” means a “swap agreement” as that term is defined in Section 101(53B)(A) of the Bankruptcy Code.

“Hedge Obligations” means any and all obligations or liabilities, whether absolute or contingent, due or to become due, now existing or hereafter arising, of a Loan Party or any of its Subsidiaries arising under, owing pursuant to, or existing in respect of Hedge Agreements entered into with one or more of the Hedge Providers.

“Hedge Provider” means any Lender or any of its Affiliates; provided, that no such Person (other than the Agent or its Affiliates) shall constitute a Hedge Provider unless and until Agent receives a Bank Product Provider Agreement from such Person and with respect to the applicable Hedge Agreement within 10 days after the execution and delivery of such Hedge Agreement with a Loan Party or any of its Subsidiaries (except with respect to Hedge Agreements that exist on the Closing Date in which case such Person (other than the Agent or its Affiliates) shall constitute a Hedge Provider at such time as the Agent shall receive a Bank Product Provider Agreement from such Person); provided, further, that if, at any time, a Lender ceases to be a Lender under this Agreement, then, from and after the date on which it ceases to be a Lender thereunder, neither it nor any of its Affiliates shall constitute Hedge Providers and the obligations with respect to Hedge Agreements entered into with such former Lender or any of its Affiliates shall no longer constitute Hedge Obligations.

“Immaterial Subsidiary” means any Subsidiary of Parent that, as of the date of the most recent Section 9.01 Financials that have been delivered to the Agent, does not have (a) assets (determined on a consolidated basis for such Subsidiary and its Subsidiaries) in excess of 5.0% of Consolidated Total Assets or (b) revenues (determined on a consolidated basis for such Subsidiary and its Subsidiaries) for the period of four consecutive fiscal quarters ending on such date in excess of 5.0% of the consolidated revenues of Parent and the Restricted Subsidiaries for such period; provided that if as of such date or for such period of four consecutive fiscal quarters ending on such date, the assets or revenues (determined as set forth above) of all Subsidiaries that under clauses (a) and (b) above would constitute Immaterial Subsidiaries shall have exceeded 7.5% of Consolidated Total Assets on such date or 7.5% of the consolidated revenues of Parent and the Restricted Subsidiaries for such period, then one or more of such Subsidiaries shall for all purposes of this Agreement be deemed not to be Immaterial Subsidiaries in descending order based on the amounts

of their assets or revenues (determined as set forth above), as the case may be, until such excess shall have been eliminated.

“Increase Date” has the meaning set forth in Section 2.15(b).

“Increase Loan Lender” has the meaning set forth in Section 2.15(b).

“Incremental Commitment Agreement” has the meaning set forth in Section 2.15(d).

“Indebtedness” as to any Person means, without duplication (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes, or other similar instruments (other than, for the avoidance of doubt, performance bonds, surety bonds and similar instruments) and all reimbursement or other obligations in respect of letters of credit, bankers acceptances or letters of guaranty, (c) all obligations of such Person as a lessee under Capital Leases, (d) all obligations or liabilities of others secured by a Lien on any asset of such Person, irrespective of whether such obligation or liability is assumed, (e) all obligations of such Person to pay the deferred purchase price of assets (other than (i) trade or grower payables incurred in the ordinary course of business and repayable in accordance with customary trade practices, (ii) royalty payments payable in the ordinary course of business in respect of non-exclusive licenses, (iii) accrued expenses incurred in the ordinary course of business, (iv) deferred compensation payable to management, officers, employees, directors or consultants of Parent or any Restricted Subsidiary and any such obligations incurred under ERISA and (v) any purchase price adjustment or earn-out obligation, except, in the case of this clause (v), to the extent that the amount thereof is a liability on the balance sheet (excluding, for the avoidance of doubt, the footnotes thereto) of such Person in accordance with U.S. GAAP), (f) all monetary obligations of such Person owing under Hedge Agreements (which amount shall be calculated based on the amount that would be payable by such Person if the Hedge Agreement were terminated on the date of determination), (g) any Disqualified Equity Interests of such Person, and (h) any obligation of such Person guaranteeing or intended to guarantee (whether directly or indirectly guaranteed, endorsed, co-made, discounted, or sold with recourse) any obligation of any other Person that constitutes Indebtedness under any of clauses (a) through (g) above. For purposes of this definition, (i) the amount of any Indebtedness represented by a guaranty or other similar instrument shall be the lesser of the principal amount of the obligations guaranteed and still outstanding and the maximum amount for which the guaranteeing Person may be liable pursuant to the terms of the instrument embodying such Indebtedness, and (ii) the amount of any Indebtedness which is limited or is non-recourse to a Person or for which recourse is limited to an identified asset shall be valued at the lesser of (A) if applicable, the limited amount of such obligations, and (B) if applicable, the fair market value of such assets securing such obligation.

“Indemnified Liabilities” has the meaning set forth in Section 13.01(a).

“Indemnified Person” has the meaning set forth in Section 13.01(a).

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

“Initial Mortgaged Properties” has the meaning set forth in Section 9.13.

“Initial Public Offering” means the issuance by Parent or any Parent Company of its common Equity Interests in an underwritten primary public offering (other than a public offering pursuant to a registration statement on Form S-8) pursuant to an effective registration statement filed with the SEC in accordance with the Securities Act.

“Insolvency Proceeding” means any proceeding commenced by or against any Person under any provision of the Bankruptcy Code or under any other state or federal bankruptcy or insolvency law, assignments for the benefit of creditors, formal or informal moratoria, compositions, extensions generally with creditors, or proceedings seeking reorganization, arrangement, or other similar relief.

“Intellectual Property” has the meaning set forth in Section 8.19.

“Intercompany Subordination Agreement” means an intercompany subordination agreement, dated as of even date with this Agreement, executed and delivered by Parent, certain of its Subsidiaries, and the Agent, the form and substance of

which is reasonably satisfactory to the Agent.

“Intercreditor Agreement” means that certain Intercreditor Agreement dated as of February 5, 2013 by and among Parent, the subsidiaries of Parent listed on the signature pages thereto and Wells Fargo Bank, National Association, as ABL Agent, and Wells Fargo Bank, National Association, as Noteholder Collateral Agent, as amended and supplemented by the Joinder to the Intercreditor Agreement dated as of the Closing Date (pursuant to which the Agent replaces Wells Fargo Bank, National Association as the ABL Agent thereunder as of the Closing Date).

“Interest Determination Date” means, with respect to any LIBO Rate Loan, the second Business Day prior to the commencement of any Interest Period relating to such LIBO Rate Loan.

“Interest Expense” means, for any period, the aggregate of the interest expense of Parent and its Restricted Subsidiaries for such period, determined on a consolidated basis in accordance with U.S. GAAP and which shall include, without limitation, any interest on the Permitted Parent Debt.

“Interest Period” means, with respect to each LIBO Rate Loan, a period commencing on the date of the making of such LIBO Rate Loan (or the continuation of a LIBO Rate Loan or the conversion of a Base Rate Loan to a LIBO Rate Loan) and ending on the earliest of (i) the date that is 1, 2, 3, 6, or, subject to the consent of all Lenders, 12 months thereafter, (ii) subject to the consent of all Lenders, a date specified by the Lead Borrower that is less than 1 month thereafter or (iii) the Maturity Date; provided, that (a) interest shall accrue at the applicable rate based upon the LIBO Rate from and including the first day of each Interest Period to, but excluding, the day on which any Interest Period expires, (b) any Interest Period that would end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day, and (c) except in the case of an Interest Period of less than 1 month, with respect to an Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period), the Interest Period shall end on the last Business Day of the calendar month that is 1, 2, 3 or 6 (or, if applicable, 12) months after the date on which the Interest Period began, as applicable.

“Interim Period” has the meaning set forth in Section 10.11(b).

“Inventory” means inventory (as that term is defined in the UCC).

“Inventory Reserves” means, as of any date of determination, (a) Landlord Reserves, and (b) those reserves that the Agent deems necessary or appropriate, in its Permitted Discretion, to establish and maintain (including reserves for slow moving Inventory and Inventory shrinkage) with respect to Eligible Inventory.

“Investment” has the meaning set forth in Section 10.05.

“Issuing Bank” means (a) the Agent, (b) any other Lender that, at the request of the Lead Borrower and with the consent of the Agent, agrees, in such Lender’s sole discretion, to become an Issuing Bank for the purpose of issuing Letters of Credit pursuant to Section 2.13 of this Agreement (it being understood that, as of the Closing Date, the Agent is the only Issuing Bank except with respect to the Existing Letters of Credit) and (c) with respect to the Existing Letters of Credit, Wells Fargo Bank, National Association.

“Joint Lead Arrangers” has the meaning set forth in the preamble to this Agreement.

“Joint Venture” means any Person other than an individual (i) in which Parent or any of its Restricted Subsidiaries holds or acquires an ownership interest (by way of ownership of Equity Interests or other evidence of ownership) of 80% or less and (ii) which is engaged in a business permitted by Section 10.09.

“Junior Representative” means, with respect to any series of Permitted Junior Debt, the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Permitted

Junior Debt is issued, incurred or otherwise obtained and each of their successors in such capacities.

“Landlord Reserve” means, as to each location (other than a location owned in fee by Parent or a Restricted Subsidiary) at which a Borrower has Inventory (with an aggregate book value in excess of \$100,000), Eligible Equipment or material books and records and as to which a Collateral Access Agreement has not been received by the Agent on or after the 90th day following the Closing Date, a reserve established by the Agent in its Permitted Discretion in an amount not to exceed 3 months’ rent under the lease relative to such location.

“Lender” has the meaning set forth in the preamble to this Agreement, shall include Issuing Bank and the Swingline Lender, and shall also include any other Person made a party to this Agreement pursuant to the provisions of Section 13.04(b) and “Lenders” means each of the Lenders or any one or more of them.

“Lender Group” means each of the Lenders (including Issuing Bank and the Swingline Lender) and Agent, or any one or more of them.

“Letter of Credit” means a letter of credit (as that term is defined in the UCC) issued by Issuing Bank in Dollars, including any Existing Letter of Credit, or a bank guarantee, bank bond or comparable instrument issued by Issuing Bank in a Committed Foreign Currency.

“Letter of Credit Collateral Account” means a collateral account in the form of a deposit account established and maintained by the Agent for the benefit of the Secured Parties, in accordance with the provisions of Section 2.13.

“Letter of Credit Disbursement” means a payment made by Issuing Bank pursuant to a Letter of Credit in Dollars, which amount shall be deemed to include the Equivalent in Dollars of any such payment made in a Committed Foreign Currency.

“Letter of Credit Document” means, with respect to any Letter of Credit, (x) a letter of credit application or a letter of credit agreement, (y) an agreement equivalent to the foregoing in clause (x) with respect to a bank guarantee, bank bond or comparable instrument issued by Issuing Bank in a Committed Foreign Currency, or (z) any other document, agreement or instrument entered into (or to be entered into) by a Borrower in favor of an Issuing Bank and relating to such Letter of Credit.

“Letter of Credit Expiration Date” means the date which is five (5) Business Days prior to the Maturity Date.

“Letter of Credit Exposure” means, as of any date of determination with respect to any Lender, such Lender’s Pro Rata Share of the Letter of Credit Usage on such date.

“Letter of Credit Foreign Currency Sub-Limit” means the Equivalent of EUR17,000,000.

“Letter of Credit Fee” has the meaning set forth in Section 2.05(c).

“Letter of Credit Obligations” means the sum (without duplication) of (a) all amounts owing by the Borrowers for any drawings under Letters of Credit (including any bankers’ acceptances or other payment obligations arising therefrom) and (b) the stated amount of all outstanding Letters of Credit.

“Letter of Credit Sub-Limit” means \$70,000,000.

“Letter of Credit Usage” means, (a) as of any date of determination, the aggregate undrawn amount in Dollars of all outstanding Letters of Credit, which amount shall be deemed to include the Equivalent in Dollars of any Letter of Credit denominated in a Committed Foreign Currency, *plus* (b) the aggregate principal amount in Dollars of all Letter of Credit Disbursements that have not yet been reimbursed by Borrowers at such time, which amount shall be deemed to include the Equivalent in Dollars of any Letter of Credit Disbursements denominated in a Committed Foreign Currency.

“LIBO Rate” means for each Interest Period, the offered rate per annum (adjusted for statutory reserve requirements for eurocurrency liabilities) for deposits of Dollars that appears on Reuters Screen LIBOR01 Page as of 11:00 A.M. (London, England time) on the applicable Interest Determination Date; and if the LIBO Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement. If no such offered rate exists, such rate will be the rate of interest per annum, as determined by the Agent (which determination shall be conclusive in the absence of manifest error), at which deposits of Dollars in immediately available funds are offered at 11:00 A.M. (London, England time) on the applicable Interest Determination Date to first class banks in the London interbank Eurodollar market for such Interest Period for the applicable principal amount on such date of determination (and, if any such rate is below zero, the LIBO Rate shall be deemed to be zero).

“LIBO Rate Loan” means each portion of a Loan that bears interest at a rate determined by reference to the LIBO Rate.

“LIBO Rate Margin” has the meaning set forth in the definition of Applicable Margin.

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

“Line Cap” means equal to an amount that is the lesser of (a) the Aggregate Commitments and (b) the then applicable Borrowing Base.

“Liquidity Event” means the occurrence of a date when (a) Availability shall have been less than the greater of (i) 10% of the Line Cap and (ii) \$10,000,000, in either case for five consecutive Business Days, until such date as (b) (x) Availability shall have been at least equal to the greater of (i) 10% of the Line Cap and (ii) \$10,000,000 for 30 consecutive calendar days.

“Liquidity Notice” means a written notice delivered by the Agent at any time during a Liquidity Period to any bank or other depository at which any Deposit Account (other than any Excluded Deposit Account) is maintained directing such bank or other depository (a) to remit all funds in such Deposit Account to a Dominion Account, or in the case of a Dominion Account, to the Agent on a daily basis, (b) to cease following directions or instructions given to such bank or other depository by any Loan Party regarding the disbursement of funds from such Deposit Account (other than any Excluded Deposit Account), and (c) to follow all directions and instructions given to such bank or other depository by the Agent in each case, pursuant to the terms of any Deposit Account Control Agreement in place.

“Liquidity Period” means any period throughout which (a) a Liquidity Event has occurred and is continuing or (b) a Specified Event of Default has occurred and is continuing.

“Loan” means any Loan (including any Swingline Loan and Extraordinary Advance) made (or to be made) hereunder.

“Loan Exposure” means, with respect to any Lender, as of any date of determination (a) prior to the termination of the Commitments, the amount of such Lender’s Commitment, and (b) after the termination of the Commitments, the aggregate outstanding principal amount of the Loans of such Lender.

“Loan Documents” means this Agreement, the Control Agreements, the Copyright Security Agreement, any Borrowing Base Certificate, the Disclosure Letter, the Fee Letter, the Security Agreement, the Intercompany Subordination Agreement, any Letter of Credit Documents, the Letters of Credit, the Mortgages, the Patent Security Agreement, the Trademark Security Agreement, any note or notes executed by Borrowers in connection with this Agreement and payable

to any member of the Lender Group, and any other instrument or agreement entered into, now or in the future, by a Loan Party and any member of the Lender Group in connection with this Agreement.

“Loan Party” means any Borrower or any Guarantor.

“Location” of any Person means such Person’s “location” as determined pursuant to Section 9-307 of the Uniform Commercial Code of the State of New York.

“Margin Stock” as defined in Regulation U of the Board of Governors as in effect from time to time.

“Material Adverse Effect” means (a) a material adverse effect on the business, operations, assets, liabilities or financial condition of Parent and its Restricted Subsidiaries, taken as a whole, (b) a material adverse effect on the ability of the Loan Parties, taken as a whole, to perform their payment and other material obligations under the Loan Documents or (c) a material adverse effect on the rights and remedies of the Agent or any Lender under the Loan Documents or their ability to realize upon the Collateral.

“Material Real Property” means each parcel of Real Property that is now or hereafter owned in fee by any Loan Party that (together with any other parcels constituting a single site or operating property) has a fair market value (as determined by the Lead Borrower in good faith) of at least \$2,000,000.

“Maturity Date” means the date that is five years after the Closing Date.

“Maximum Rate” has the meaning set forth in Section 13.24.

“Merger” has the meaning set forth in the recitals.

“Merger Agreement” has the meaning set forth in the recitals.

“Merger Agreement Representations” means those representations and warranties made by Parent and its Subsidiaries in the Merger Agreement as are material to the interests of the Lenders, but only to the extent that Merger Sub (or its Affiliates) has the right to terminate its obligations under the Merger Agreement, or to decline to consummate the Merger pursuant to the Merger Agreement, as a result of a breach of such representations and warranties in the Merger Agreement.

“Merger Documents” means the collective reference to the Merger Agreement and all other agreements and documents relating to the Merger, as same may be amended, modified and/or supplemented from time to time in accordance with the terms hereof and thereof.

“Merger Sub” has the meaning set forth in the recitals.

“Moody’s” means Moody’s Investors Service, Inc., and any successor to its rating agency business.

“Mortgage” means a mortgage, debenture, leasehold mortgage, deed of trust, deed of immovable hypothec, leasehold deed of trust, deed to secure debt, leasehold deed to secure debt or similar security instrument in form and substance reasonably satisfactory to the Agent, in favor of the Agent for the benefit of the Secured Parties, as the same may be amended, modified, restated and/or supplemented from time to time.

“Mortgage Policy” has the meaning set forth in Section 9.13.

“Mortgaged Property” means any Material Real Property of any Loan Party which will be encumbered (or required to be encumbered) by a Mortgage.