

(which for purposes of this definition shall have the meaning assigned to such term in the Existing Term Loan Agreement as in effect on the date hereof) or (B) not required to become Collateral pursuant to Schedule 5.15 of the Existing Term Loan Agreement as in effect on the date hereof, (iii) any disposition permitted by Section 6.7 of the Existing Term Loan Agreement as in effect on the date hereof or with respect to assets which are required to become Collateral pursuant to clause 6 of Schedule 5.15 of the Existing Term Loan Agreement as in effect on the date hereof (whether or not such assets constitute Collateral at the time of such disposition), (iv) any other disposition permitted by Section 6.7 of the Existing Term Loan Agreement as in effect on the date hereof other than pursuant to clauses (m), (p), (s) or (u) (with respect to any termination of a ground lease constituting Collateral or required to become Collateral pursuant to Section 5.15) thereof, and (v) sales, leases or licenses out of other assets for aggregate consideration of less than \$5,000,000 in the aggregate during any fiscal year of Holdings and its Subsidiaries.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form approved by the Administrative Agent.

“Augmenting Revolving Lender” has the meaning set forth in Section 2.22(a).

“Augmenting Term Lender” has the meaning set forth in Section 2.22(c).

“Availability” or “Excess Availability” means, at any time, the amount equal to (a) the Revolving Credit Line Cap minus (b) the total Revolving Credit Exposures outstanding at such time.

“Availability Period” means the period from and including the Closing Date to but excluding the earlier of the Maturity Date and the date of termination of the Revolving Commitments.

“Bank of America” means Bank of America, N.A.

“Board” means the Board of Governors of the Federal Reserve System of the United States of America.

“Borrowers” means the Parent Borrower, Purchasing and, if eligible to be a Borrower at the time in accordance with Section 2.20, each other Borrowing Subsidiary.

“Borrowing” means a Revolving Borrowing or a Term Loan Borrowing, as the context requires.

“Borrowing Base” means, at any time, an amount equal to:

- (a) 85% of Eligible Accounts of Borrowers; plus
- (b) 90% of the Eligible Credit Card Receivables of Borrowers; plus
- (c) 90% of the Net Recovery Percentage of Eligible Inventory multiplied by the value of the Eligible Inventory of Borrowers (with value at Cost); minus
- (d) the Term Loan Reserve; minus
- (e) other Reserves established by the Co-Collateral Agents in their Permitted Discretion.

The Borrowing Base shall be determined by reference to the Borrowing Base Certificate most recently delivered to the Administrative Agent pursuant to Section 5.01(g), subject to adjustments and changes made by the Co-Collateral Agents in their Permitted Discretion as provided herein. Notwithstanding anything contained herein to the contrary, as of any date of

determination, the portion of the Borrowing Base attributable to Eligible In-Transit Inventory shall not exceed 5% of the portion of the Borrowing Base attributable to Eligible Inventory. The Parent Borrower shall promptly upon (but in any event within 5 Business Days after) the consummation thereof give the Administrative Agent written notice of any disposition, together with such information as shall be required for the Administrative Agent to adjust the Borrowing Base to reflect such disposition, of (1) a Loan Party or (2) Collateral having a fair market value in excess of (A) \$50,000,000, if at the time of such disposition the Revolving Credit Exposure (not including any LC Exposure) shall not exceed \$50,000,000 and the LC Exposure shall not exceed \$300,000,000, and (B) \$30,000,000, at any other time. To the extent that such Reserve is in respect of amounts that may be payable to third parties the Co-Collateral Agents may, at their option, deduct such Reserve from the amount equal to the Revolving Maximum Credit, at any time that the Revolving Maximum Credit is less than the amount of the Borrowing Base. At any time that the amount of the Borrowing Base (calculated without regard to the Term Loan Reserve) is greater than the sum of the Revolving Maximum Credit and the initial principal amount of the Term Loans as of the Closing Date, the Term Loan Reserve shall be deducted from such aggregate amount, rather than the Borrowing Base. The foregoing shall not limit the ability of the Co-Collateral Agents to establish, change or eliminate any Reserves in their Permitted Discretion.

“Borrowing Base Certificate” means a certificate, signed and certified as accurate and complete by a Financial Officer of the Parent Borrower, in respect of the Borrowing Base pursuant to Section 5.01(g), in the form previously agreed between the Administrative Agent and the Parent Borrower.

“Borrowing Request” means a request by a Borrower for a Revolving Borrowing or a Term Borrowing, in each case in accordance with Section 2.03.

“Borrowing Subsidiary” means Purchasing and any other Subsidiary with respect to which a Subsidiary Borrower Election shall have been executed and delivered as provided in Section 2.20 and with respect to which a Subsidiary Borrower Termination has not been executed and delivered as provided in Section 2.20.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; provided that,

when used in connection with a Eurodollar Loan, the term “Business Day” shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

“Capital Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

“Cash Dominion Period” means the period beginning when (a) Excess Availability shall have been less than the greater of (i) 12.5% of the Revolving Credit Line Cap or (ii) \$175,000,000, in each case, for 2 consecutive Business Days, or (b) a Specified Event of Default shall exist or have occurred and be continuing; provided, that:

(i) to the extent that the Cash Dominion Period has occurred due to clause (a) of this definition, if Excess Availability shall be equal to or greater than the applicable amount for at least 30 consecutive calendar days, the Cash Dominion Period shall no longer be deemed to exist or be continuing until such time as Excess Availability may again be less than the applicable amount specified in clause (a) above for 2 consecutive Business Days, and

(ii) to the extent that the Cash Dominion Period has occurred due to clause (b) of this definition, at any time that such Specified Event of Default is cured or waived or otherwise no longer exists, the Cash Dominion Period shall no longer

be deemed to exist or be continuing until such time as there may be another Cash Dominion Period.

“Change in Control” means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person other than Holdings or a wholly owned Subsidiary of Holdings of any Equity Interest in the Parent Borrower; (b) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder as in effect on the Closing Date) other than any retirement or savings plan for employees of Holdings and its Subsidiaries, of Equity Interests representing more than 42.5% of either the aggregate ordinary voting power or the aggregate equity value represented by the issued and outstanding Equity Interests in Holdings; (c) occupation of a majority of the seats (other than vacant seats) on the board of directors of Holdings by Persons who were neither (i) nominated by the board of directors of Holdings, or a committee thereof, nor (ii) appointed by directors so nominated; or (d) the occurrence of any “change in control” (or similar event, however denominated), under and as defined in any indenture or other agreement or instrument evidencing, governing the rights of the holders of or otherwise relating to any Material Indebtedness. Notwithstanding the foregoing, the acquisition by a financial institution of Equity Interests in Holdings acquired by such financial institution pursuant to an underwriting arrangement in the ordinary course of its business shall not constitute a “Change in Control”.

“Change in Law” means (a) the adoption of any law, rule or regulation after the Closing Date, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the Closing Date or (c) compliance by any Lender or any Issuing Bank (or, for purposes of Section 2.14(b), by any lending office of such Lender or by such Lender’s or such Issuing Bank’s holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the Closing Date; provided, however, that, notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International

Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“Charges” has the meaning assigned to such term in Section 9.13.

“Class”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans, Term Loans, Swingline Loans or Protective Advances.

“Closing Date” means June 20, 2014.

“Co-Collateral Agents” means Wells Fargo and Bank of America.

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

“Collateral” means any and all “Collateral”, as defined in the Collateral Agreement.

“Collateral Access Agreement” means any landlord waiver or other agreement, in form and substance reasonably satisfactory to the Administrative Agent, between the Administrative Agent and any third party (including any bailee, consignee, customs broker or other similar Person) in possession of any Collateral or any landlord of any Loan Party for any real property where any Collateral is located.

“Collateral Agreement” means the Guarantee and Collateral Agreement among the Guarantee Parties, the

Additional Grantors and the Administrative Agent, substantially in the form of Exhibit C.

“Collateral and Guarantee Requirement” means the requirement that:

- (a) the Administrative Agent shall have received from each Loan Party either (i) a counterpart of the Collateral Agreement duly executed and delivered on behalf of such Loan Party or (ii) in the case of any Person that becomes a Loan Party after the Closing Date, a supplement to the Collateral Agreement, in substantially the form specified therein, duly executed and delivered on behalf of such Loan Party;
- (b) all documents and instruments, including Uniform Commercial Code financing statements, required by law or reasonably requested by the Administrative Agent to be filed, registered or recorded to create the Liens intended to be created by the Collateral Agreement and perfect such Liens to the extent required by, and with the priority required by, the Collateral Agreement, shall have been filed, registered or recorded or delivered to the Administrative Agent for filing, registration or recording;
- (c) the Administrative Agent shall have received a counterpart, duly executed and delivered by the applicable Loan Party and the applicable depositary bank or securities intermediary, as the case may be, of a Control Agreement with respect to each Deposit Account maintained by any Loan Party and each Securities Account maintained by any Loan Party, in each case in respect of which a Control Agreement is required by Section 5.16 or by the Collateral Agreement and the requirements of Section 5.16 and the Collateral Agreement relating to the concentration and application of collections on accounts shall have been satisfied; and
- (d) each Loan Party shall have obtained all consents and approvals required to be obtained by it in connection with the execution and delivery of each Security Document, the performance of its obligations thereunder and the granting by it of the Liens thereunder.

“Collateral Cooperation Agreement” means an agreement between the Administrative Agent and the trustee or the collateral agent (or equivalent agent or representative) for holders of any Permitted First-Lien Indebtedness or Permitted Second-Lien Indebtedness secured by any real property or Intellectual Property, in form and substance reasonably satisfactory to the Administrative Agent and otherwise consistent with the then existing market practice, which provides for, among other things, (a) access rights in favor of the Administrative Agent and the Loan Parties for the benefit of the Secured Parties upon the occurrence and during the continuance of an Event of Default to all locations where Collateral is located and (b) to the extent the representative of such Permitted First-Lien Indebtedness or Permitted Second-Lien Indebtedness, as applicable, has rights to do so, the non-exclusive, royalty free right of the Administrative Agent and the Secured Parties to use the Intellectual Property (as defined in the Collateral Agreement) of the Loan Parties for the purpose of enabling the Administrative Agent to exercise rights and remedies under the Loan Documents with respect to Collateral consisting of Inventory during the continuance of an Event of Default. The execution and delivery by the Administrative Agent of a Collateral Cooperation Agreement shall be conclusive evidence that such Collateral Cooperation Agreement is reasonably satisfactory to the Administrative Agent and otherwise consistent with then existing market practice. Notwithstanding anything to the contrary herein, it is understood and agreed that any joinder to the Existing Intercreditor Agreement executed and delivered by the trustee or the collateral agent (or equivalent agent or representative) for holders of any Permitted First-Lien Indebtedness or Permitted Second-Lien Indebtedness secured by any real property or Intellectual Property, shall be deemed to constitute a “Collateral Cooperation Agreement” that meets each of the requirements of this definition.

“Commitment” means, with respect to each Revolving Lender, the Revolving Commitment of such Revolving Lender or with respect to each Term Lender, the Term Commitment of such Term Lender, as the case may be.

“Commitment Letter” means the Commitment Letter, dated as of May 14, 2014, among the Lead Arrangers, certain of their Affiliates and the Parent Borrower.

“Commitment Parties” means the Lead Arrangers (each as identified on the cover page of this Agreement) and their Affiliates that are Lenders.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.).

“Concentration Account” has the meaning set forth in Section 5.16(c).

“Consenting Lender” has the meaning set forth in Section 2.23(b).

“Consolidated Adjusted EBITDA” means, for any period, Consolidated Net Income for such period (disregarding any non-cash charges or credits related to any Plan, any non-qualified supplemental pension plan maintained, sponsored or contributed to by Holdings or any ERISA Affiliate, or any Multiemployer Plan) plus: (a) without duplication and to the extent deducted in determining such Consolidated Net Income, the sum of: (i) consolidated interest expense for such period, plus (ii) consolidated financing costs associated with securitization programs for such period, plus (iii) consolidated income tax expense for such period, plus (iv) all amounts attributable to depreciation and amortization for such period, plus (v) any extraordinary, unusual or non-recurring charges for such period, plus (vi) any fees, expenses or charges related to any equity offering, permitted acquisition or other investment, Asset Sale or other disposition, or incurrence or refinancing of (or amendment or other modification to the documents evidencing any) Indebtedness (in each case, whether or not successful or consummated) permitted to be made or incurred hereunder, including fees, expenses or charges relating to the Restructuring Transactions, plus (vii) any premium, make-whole or penalty payments that are

required to be made in connection with any prepayment of Indebtedness, plus (viii) any non-cash charges for such period; provided that in the event Holdings or any Subsidiary makes any cash payment in respect of any such non-cash charge, such cash payment shall be deducted from Consolidated Adjusted EBITDA in the period in which such payment is made, plus (ix) the amount of cash restructuring charges and curtailments and modifications to pension and post-retirement employee benefit plans incurred during such period; and minus: (b) without duplication and to the extent included in determining such Consolidated Net Income, the sum of: (i) any extraordinary, unusual or non-recurring gains for such period, plus (ii) non-cash gains for such period, plus (iii) any gains resulting from repurchases of loans under the Existing Term Loan Agreement pursuant to Section 10.6(i) thereof as in effect on the date hereof; all determined on a consolidated basis in accordance with GAAP.

“Consolidated Capital Expenditures” means, for any period, with respect to Holdings, the aggregate of all expenditures by Holdings and its consolidated Subsidiaries for the acquisition or leasing (pursuant to Capital Lease Obligations) of fixed or capital assets or additions to equipment (including replacements, capitalized repairs and improvements during such period) that are required to be capitalized under GAAP on a consolidated balance sheet of Holdings and its consolidated Subsidiaries; provided, that, Consolidated Capital Expenditures for Holdings and its consolidated Subsidiaries shall not include: (a) expenditures to the extent they are made with proceeds of the issuance of Equity Interests of Holdings, (b) expenditures with proceeds of insurance settlements, condemnation awards, eminent domain and other settlements in respect of lost (including through eminent domain), destroyed, damaged or condemned assets, equipment or other property, (c) interest capitalized during such period to the extent included in Consolidated Cash Interest Expense, (d) expenditures that are accounted for as capital expenditures of Holdings or any consolidated Subsidiary and that actually are (i) paid for by a third party (excluding Holdings or any consolidated Subsidiary thereof) and for which neither Holdings nor any Subsidiary has provided or is required to provide or incur, directly or indirectly, any consideration or obligation to such third party or any other Person (whether before, during or after such period) or (ii) contractually required to be, and are, reimbursed to the Loan Parties in cash by a third party (including landlords) during such period, (e) the book value of any asset owned by Holdings or any of its consolidated Subsidiaries prior to or during such period to the extent that such book value is included as a capital expenditure during such period as a result of Holdings or such consolidated Subsidiary reusing or beginning to reuse such asset during such period without a corresponding expenditure actually having been made in such period, (f) the purchase price of equipment purchased during such period to the extent the consideration

therefor consists of any combination of (i) used or surplus equipment traded in at the time of such purchase and (ii) the proceeds of a sale of used or surplus equipment made within ninety (90) days of the time of such purchase, in each case, in the ordinary course of business, and (g) expenditures to the extent constituting any portion of the purchase price of an acquisition of, or investment in, a business or line of business permitted under Section 6.04, which, in accordance with GAAP, are or should be capitalized under GAAP.

“Consolidated Cash Interest Expense” means, for any period, Consolidated Interest Expense during such period (excluding interest which is payable in kind, but including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing and net costs under Swap Agreements entered into to hedge interest rates to the extent such net costs are allocable to such period in accordance with GAAP (for purposes of clarification, excluding fees and expenses paid in connection with the establishment of this Agreement)), all determined on a consolidated basis in accordance with GAAP.

“Consolidated Current Assets” means, as at any date of determination, the total assets of a Person and its Subsidiaries on a consolidated basis that may properly be classified as current assets in conformity with GAAP, excluding cash and Permitted Investments.

“Consolidated Current Liabilities” means, as at any date of determination, the total liabilities of a Person and its Subsidiaries on a consolidated basis that may properly be classified as current liabilities in conformity with GAAP, excluding the current portion of long term debt.

“Consolidated Excess Cash Flow” means, for any period, an amount (if positive) equal to: (a) the sum, without duplication, of the amounts for such period of (i) Consolidated Net Income, plus, (ii) to the extent reducing Consolidated Net Income, the sum, without duplication, of amounts for non-cash charges, including for depreciation and amortization (excluding any such non-cash charge to the extent that it represents an accrual or reserve for potential cash charge in any future period or amortization of a prepaid cash gain that was paid in a prior period), plus (iii) the Consolidated Working Capital Adjustment; minus: (b) non-cash gains increasing Consolidated Net Income for such period; minus: (c) the sum, without duplication and to the extent not included in the determination of Consolidated Net Income, of the amounts for such period paid from Internally Generated Cash of: (i) scheduled repayments and mandatory prepayments of Indebtedness for borrowed money (excluding repayments or prepayments of (A) Term Loans, (B) the loans under the Existing Term Loan Agreement and (C) any revolving credit facility, unless, in the case of this subclause (C) there is an equivalent permanent reduction in commitments thereunder) and scheduled repayments and mandatory prepayments of Capital Lease Obligations (excluding any interest expense portion thereof), plus (ii) Consolidated Capital Expenditures, plus (iii) payments in respect of long-term liabilities other than Indebtedness, plus (iv) investments and acquisitions permitted to be made under Section 6.04, plus (v) the aggregate amount of all other operating expenditures, plus (vi) the aggregate amount of fees, expenses and charges related to any equity offering, permitted acquisition or other investment, Asset Sale or other disposition, or incurrence or refinancing of (or amendment or other modification to the documents evidencing any) Indebtedness (in each case, whether or not successful or consummated) permitted to be made or incurred hereunder, including fees, expenses and charges relating to the Transactions, plus (viii) any Restricted Payments made pursuant to clauses (i), (j), (k) or (l) of Section 6.4 of the Existing Term Loan Agreement (as in effect on the date hereof), plus (ix) the aggregate amount of any premium, make-whole or penalty payments that are required to be made in connection with any prepayment of Indebtedness.

“Consolidated Interest Expense” means, for any period, the interest expense (including imputed interest expense in respect of Capital Lease Obligations) of Holdings and the Subsidiaries for such period, including any interest that is capitalized rather than expensed for such period.

“Consolidated Net Income” means, for any period, the net income or loss of Holdings and the Subsidiaries for such period determined on a consolidated basis in accordance with GAAP; provided that there shall be excluded (a) the

income (or loss) of any Person (other than Holdings) in which any other Person (other than Holdings or any Subsidiary or any director holding qualifying shares in compliance with applicable law) owns an Equity Interest, except to the extent of the amount of dividends or other distributions actually paid to Holdings or any of the Subsidiaries during such period, and (b) the income or loss of any Person accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with Holdings or any Subsidiary or the date that such Person's assets are acquired by Holdings or any Subsidiary.

"Consolidated Total Debt" means, as at any date of determination, (a) the aggregate stated balance sheet amount of all Indebtedness of Holdings and its Subsidiaries (or, if higher, the par value or stated face amount outstanding of all such Indebtedness (other than zero coupon Indebtedness) determined on a consolidated basis in accordance with GAAP, minus (b) the aggregate stated balance sheet amount of cash and cash equivalents (in each case, free and clear of all Liens, other than Permitted Liens and Liens permitted under Section 6.02(a) or 6.02(m)) in excess of the Operating Cash Threshold.

"Consolidated Working Capital" means, as at any date of determination, the excess of

Consolidated Current Assets of Holdings and its Subsidiaries over Consolidated Current Liabilities of Holdings and its Subsidiaries.

"Consolidated Working Capital Adjustment" means, for any period on a consolidated basis, the amount (which may be a negative number) by which Consolidated Working Capital as of the beginning of such period exceeds (or is less than) Consolidated Working Capital as of the end of such period. In calculating the Consolidated Working Capital Adjustment there shall be excluded the effect of reclassification during such period of current assets to long term assets and current liabilities to long term liabilities and the effect of any acquisition of all or substantially all of the assets of, all of the Equity Interests of, or a business line or unit or a division of any Person during such period; provided that there shall be included with respect to any such acquisition during such period an amount (which may be a negative number) by which the Consolidated Working Capital acquired in such acquisition as at the time of such acquisition exceeds (or is less than) Consolidated Working Capital at the end of such period.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Control Account" has the meaning set forth in Section 5.16(b).

"Control Agreement" means, with respect to any Deposit Account or Securities Account maintained by any Loan Party, a control agreement in form and substance reasonably satisfactory to the Administrative Agent, duly executed and delivered by such Loan Party and the depository bank or the securities intermediary, as the case may be, with which such account is maintained. It is understood and agreed that (after the references therein to JPMorgan Chase Bank, N.A. as agent under the Existing ABL Credit Agreement are replaced with references to Wells Fargo Bank, National Association as Administrative Agent under this Agreement), the control agreements in effect on the date hereof under the Existing ABL Credit Agreement as received by Administrative Agent prior to the date hereof are in form and substance satisfactory to the Administrative Agent.

"Cost" means the cost of purchases of Inventory, as reported on the Loan Parties' financial stock ledger based upon the Loan Parties' accounting practices in effect on the Closing Date or accounting practices in effect thereafter and consented to by the Administrative Agent in its Permitted Discretion.

"Credit Rating" means, in the case of Moody's, the "Corporate Family Rating" (or its equivalent) assigned by

Moody's to Holdings and, in the case of S&P, the "Issuer Credit Rating" assigned by S&P to Holdings.

"Customary Mandatory Prepayment Terms" means, in respect of any Indebtedness, terms requiring any obligor in respect of such Indebtedness to Pay (or offer to Pay) such Indebtedness (a) in the event of a "change in control" (or similar event), (b) in the event of an "asset sale" (or similar event, including condemnation or casualty), provided that such mandatory Payment (or offer to Pay) (i) can be avoided pursuant to customary reinvestment rights (it being understood that the terms of such Indebtedness may include additional customary means of avoiding the applicable Payment) and (ii) shall not apply to the sale or disposition of Collateral except, in the case of Permitted Second-Lien Indebtedness, on the same terms as those in the Loan Documents (subject to the relevant Intercreditor Agreement), and (c) in the case of any Indebtedness that constitutes a term loan, on account of annual "excess cash flow" on terms approved by the Administrative Agent (such approval not to be unreasonably withheld). Holdings or the Parent Borrower may provide a certificate of a Financial Officer to the effect that the terms of any reinvestment rights or other means of avoiding the applicable Payment referred to in

clause (b)(i) above are customary, and such determination shall be conclusive unless the Administrative Agent shall have objected to such determination within five Business Days following its receipt of such certificate and the draft documentation governing such Indebtedness.

"Customs Broker Agreement" means an agreement, in form and substance reasonably satisfactory to the Administrative Agent, among a Loan Party, a customs broker, freight forwarder or carrier and the Administrative Agent, in which the customs broker, freight forwarder or carrier acknowledges that it has control over and holds the documents evidencing ownership of the subject Inventory for the benefit of the Administrative Agent, and agrees, upon notice from the Administrative Agent, to hold and dispose of the subject Inventory solely as directed by the Administrative Agent.

"Debtor Relief Law" means the Bankruptcy Code of the United States of America and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

"Declining Lender" has the meaning set forth in Section 2.23(b).

"Default" means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

"Defaulting Lender" means any Lender, as determined by the Administrative Agent, that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Parent Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, any Agent, any Issuing Bank, any Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit, Protective Advances or Swingline Loans) within two Business Days of the date when due, (b) has notified the Parent Borrower, the Administrative Agent or any Issuing Bank or Swingline Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Parent Borrower), or (d) has, or

has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender

under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender upon delivery of written notice of such determination to the Parent Borrower, each Issuing Bank, each Swingline Lender and each Lender.

“Deposit Account” means any “deposit account”, within the meaning of Article 9 of the UCC, of any Loan Party.

“Designated Secured Obligations Reserve” means, at any time, a reserve equal to the aggregate amount of the Designated Secured Other Obligations at such time. The Designated Secured Obligations Reserve at any time shall be determined by reference to the most recent Borrowing Base Certificate delivered to the Administrative Agent pursuant to Section 5.01(g), it being understood that the Borrowing Base Certificate will include a certification of the Designated Secured Other Obligations at each delivery.

“Designated Secured Other Obligations” means the Designated Secured Treasury Services Obligations and the Designated Secured Swap Obligations.

“Designated Secured Swap Obligations” means the Secured Swap Obligations in respect of which the Parent Borrower shall have provided a written notice to the Administrative Agent designating such Secured Swap Obligations as Designated Secured Swap Obligations.

“Designated Secured Treasury Services Obligations” means the Secured Treasury Services Obligations in respect of which the Parent Borrower shall have provided a written notice to the Administrative Agent designating such Secured Treasury Services Obligations as Designated Secured Treasury Services Obligations.

“Disclosed Matters” means the actions, suits and proceedings and the environmental matters disclosed in Schedule 3.06A.

“Disqualified Equity Interest” means any Equity Interest that by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable, either mandatorily or at the option of the holder thereof), or upon the happening of any event or condition:

(a) matures or is mandatorily Payable (other than solely for Equity Interests that do not constitute Disqualified Equity Interests and cash in lieu of fractional shares of such Equity Interests), whether pursuant to a sinking fund obligation or otherwise, prior to the Specified Date (measured as of the time that such Equity Interest is issued);

(b) is convertible or exchangeable at the option of the holder thereof for Indebtedness or Equity Interests (other than solely for Equity Interests that do not constitute Disqualified Equity Interests and cash in lieu of fractional shares of such Equity Interests), prior to the Specified Date (measured as of the time that such Equity Interest is issued); or

(c) is Payable or is required to be Paid (other than solely for Equity Interests that do not constitute Disqualified Equity Interests and cash in lieu of fractional shares of such Equity Interests) by Holdings or any of its Affiliates, in whole or in part, at the option of the holder thereof, prior to the Specified Date (measured as of the time that such Equity Interest is issued);

provided that clauses (a) and (c) hereto (other than the exclusions set forth therein) shall not apply to any requirement of mandatory Payment that is contingent upon an asset disposition (or similar event, including condemnation or casualty), the incurrence of Indebtedness or a “change of control” if such

mandatory Payment can be avoided through Payment of Loans or through investments by Holdings or any of its Subsidiaries in assets to be used in their businesses or if such mandatory Payment is contingent upon prior payment in full of the Obligations, and provided, further, that Equity Interests issued to any employee benefit plan, or by any such plan to any employees of Holdings or any of its Subsidiaries, shall not constitute Disqualified Equity Interests solely because they may be required to be Paid in order to satisfy applicable statutory or regulatory obligations.

“Disqualified Lenders” means:

(a) those Persons, identified by Parent Borrower in writing to the Administrative Agent and Term Agent prior to the Closing Date as direct competitors of Parent Borrower or any of its Subsidiaries that is an operating company (it being understood and agreed that any bona fide debt funds of any financial investors in such operating company shall not constitute a direct competitor thereof), or any of their respective Affiliates to the extent that such Affiliates are clearly identifiable as such on the basis of their name;

(b) those Persons identified by Parent Borrower in writing to the Administrative Agent and Term Agent from time to time after the Closing Date that become a direct competitor of Parent Borrower and its Subsidiaries after the Closing Date, and are approved by Administrative Agent and Term Agent and which Person is an operating company, provided, that such supplemental list shall not apply to retroactively make any party a “Disqualified Lender” and disqualify any parties that have previously acquired an assignment of or participation interest in the Commitments; and

(c) any other Person and its Affiliates, each of which are identified in writing to the Administrative Agent and Term Agent by Parent Borrower prior to the Closing Date, and any other Affiliates of such Person to the extent that such Affiliates are clearly identifiable as such on the basis of their name.

Notwithstanding the foregoing, each Loan Party and the Lenders acknowledge and agree that the neither the Administrative Agent, the Term Agent nor any other Agent will have any responsibility or obligation to determine whether any Lender or potential Lender is a Disqualified Lender and neither the Administrative Agent, the Term Agent nor any other Agent will have any liability with respect to any assignment made to a Disqualified Institution.

“dollars” or “\$” refers to lawful money of the United States of America.

“Eligible Accounts” means, as of any date of determination, the Accounts of the Loan Parties which in accordance with the terms hereof are not excluded as ineligible by virtue of one or more of the criteria set forth below. None of the following shall be Eligible Accounts: