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7 Bankruptcy Counsel for eStyle, Inc.,  
Debtor and Debtor in Possession

10 **UNITED STATES BANKRUPTCY COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION**

13 In re  
14 ESTYLE, INC., a Delaware corporation,  
dba babystyle, Cadeau, and Cadeau  
15 Designs,  
16  
17 Debtor.

19 Tax Id # 95-4712564

Case No. 2:08-bk-13518-SB

Chapter 11

**NOTICE OF SUBMISSION AND  
SUBMISSION OF SUPPLEMENTAL  
DECLARATION OF ROBERT S.  
KELLEHER IN SUPPORT OF:**

**(A) DEBTOR'S EMERGENCY MOTION  
FOR ORDER APPROVING USE OF CASH  
COLLATERAL AND GRANTING OF  
REPLACEMENT LIENS; AND**

**(B) DEBTOR'S EMERGENCY MOTION  
FOR ORDER AUTHORIZING DEBTOR TO  
MAINTAIN BANK ACCOUNTS AND CASH  
MANAGEMENT SYSTEM AND CONTINUE  
USE OF ITS EXISTING BUSINESS FORMS**

DATE: MARCH 21, 2008  
TIME: 10:00 a.m.  
PLACE: U.S. Bankruptcy Court  
Courtroom 1575  
255 East Temple Street  
Los Angeles, CA 90012

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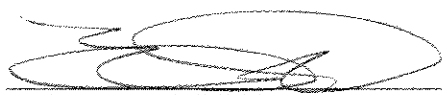
1 TO THE HONORABLE SAMUEL L. BUFFORD, UNITED STATES  
2 BANKRUPTCY JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, AND  
3 INTERESTED PARTIES

4 In further support of its Motions for (a) Debtor's Emergency Motion for  
5 Order Approving Use of Cash Collateral and Granting of Replacement Liens ("Cash  
6 Collateral Motion"); and (b) Debtor's Emergency Motion for Order Authorizing Debtor to  
7 Maintain Bank Accounts and Cash Management System and Continue Use of its Existing  
8 Business Forms (the "Cash Management Motion"), the Debtor hereby submits this  
9 supplemental declaration of Robert S. Kelleher. The purpose of this Supplemental  
10 Declaration is to provide the Court and interested parties with copies of the relevant loan  
11 documents (the "Loan Documents") in effect between the Debtor, on the one hand, and  
12 Wachovia Capital Finance Corporation ("Wachovia"), on the other hand. The Loan  
13 Documents contain a well-organized table of contents and exhibit tabs. As such, and in  
14 order for ease of the Court's reference, the Debtor has attached the entire set of  
15 documents hereto as Exhibit "A", and has left the existing original exhibit tabs (1-18) in  
16 place. Further, due to the voluminous nature of the Loan Documents, and because the  
17 Loan Documents only affect the Cash Collateral Motion and the Cash Management  
18 Motion, this declaration has been served on Wachovia's counsel (electronically), and on  
19 the Office of the United States Trustee.

20 DATED: March 20, 2008

Respectfully submitted,

21 **SulmeyerKupetz**  
22 A Professional Corporation

23  
24 By:   
25 DAVID S. KUPETZ  
26 MARK S. HOROUPIAN  
27 Attorneys for eStyle, Inc., Debtor and Debtor  
28 in Possession

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**DECLARATION OF ROBERT S. KELLEHER**

1. I am the Chief Executive Officer of eStyle, Inc. (the "Debtor" or "eStyle"). I have been CEO of the Debtor since March 2006. Prior to joining eStyle, I was Chief Operating Officer at Patagonia, Inc., a retailer of outdoor clothing, technical apparel and gear, and related products. I make this declaration from my own personal knowledge, and if called upon to do so, I could and would testify to the truth of the matters stated herein.

2. In my capacity as CEO of the Debtor, my duties and responsibilities also include overseeing the records for the Debtor as they pertain to the Debtor's relationship with Wachovia Capital Finance Corporation ("Wachovia"). I have personal knowledge of, the duties of the Debtor's employees and record keeping methods used by these employees who are responsible for maintaining the files and documents.

3. Attached hereto as Exhibit "A" is a true and correct copy of the Loan and Security Agreement and exhibits thereto between the Debtor and Wachovia, as said records are kept in the ordinary course of the Debtor's business.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED THIS 20th DAY OF MARCH, 2008, AT LOS ANGELES,  
CALIFORNIA.

*R. S. Kelleher*  
\_\_\_\_\_  
Robert S. Kelleher  
Chief Executive Officer

---

**EXHIBIT A**

LOAN AND SECURITY AGREEMENT

by and between

WACHOVIA CAPITAL FINANCE CORPORATION (WESTERN)  
as Lender

and

ESTYLE, INC.  
as Borrower

Dated: December 21, 2006

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Loan and Security Agreement	1
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Information Certificate	4
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Tab 1

LOAN AND SECURITY AGREEMENT

by and between

WACHOVIA CAPITAL FINANCE CORPORATION (WESTERN)

as Lender

and

ESTYLE, INC.

as Borrower

Dated: December 21, 2006

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## LOAN AND SECURITY AGREEMENT

This Loan and Security Agreement (as it may be amended, modified, supplemented or restated from time to time, this "Agreement"), dated December 21, 2006 is entered into by and between WACHOVIA CAPITAL FINANCE CORPORATION (WESTERN), a California corporation ("Lender"), and ESTYLE, INC., a Delaware corporation ("Borrower").

### WITNESSETH:

WHEREAS, Borrower has requested that Lender enter into financing arrangements with Borrower pursuant to which Lender may make loans and provide other financial accommodations to Borrower; and

WHEREAS, Lender is willing to make such loans and provide such financial accommodations on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual conditions and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

### SECTION 1. DEFINITIONS

For purposes of this Agreement, the following terms shall have the respective meanings given to them below:

1.1 "Accounts" shall mean all present and future rights of Borrower to payment of a monetary obligation, whether or not earned by performance, which is not evidenced by chattel paper or an instrument, (a) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (b) for services rendered or to be rendered, (c) for a secondary obligation incurred or to be incurred, or (d) arising out of the use of a credit, charge or debit card along with all information contained on or for use with such card.

1.2 "Adjusted Eurodollar Rate" shall mean, with respect to each Interest Period for any Eurodollar Rate Loan comprising part of the same borrowing (including conversions, extensions and renewals), the rate per annum determined by dividing (a) the London Interbank Offered Rate for such Interest Period by (b) a percentage equal to: (i) one (1) minus (ii) the Reserve Percentage. For purposes hereof, "Reserve Percentage" shall mean for any day, that percentage (expressed as a decimal) which is in effect from time to time under Regulation D of the Board of Governors of the Federal Reserve System (or any successor), as such regulation may be amended from time to time or any successor regulation, as the maximum reserve requirement (including, without limitation, any basic, supplemental, emergency, special, or marginal reserves) applicable with respect to Eurocurrency liabilities as that term is defined in Regulation D (or against any other category of liabilities that includes deposits by reference to which the interest rate of Eurodollar Rate Loans is determined), whether or not Lender has any Eurocurrency liabilities subject to such reserve requirement at that time. Eurodollar Rate Loans shall be deemed to constitute Eurocurrency liabilities and as such shall be deemed subject to reserve requirements without benefits of credits for proration, exceptions or offsets that may be available from time to

time to Lender. The Adjusted Eurodollar Rate shall be adjusted automatically on and as of the effective date of any change in the Reserve Percentage.

1.3 “Affiliate” shall mean, with respect to a specified Person, any other Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with such Person, and without limiting the generality of the foregoing, includes (a) any Person which beneficially owns or holds five percent (5%) or more of any class of Voting Stock of such Person or other equity interests in such Person, (b) any Person of which such Person beneficially owns or holds five percent (5%) or more of any class of Voting Stock or in which such Person beneficially owns or holds five percent (5%) or more of the equity interests and (c) any director or executive officer of such Person. For purposes of this definition, the term “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of Voting Stock, by agreement or otherwise.

1.4 “Appraised Inventory Value” shall mean, with respect to Eligible Inventory, the appraised value of such Eligible Inventory, expressed as a percentage of either the Value or the Retail Sales Price, as required by Lender, determined as of any date on a “going out of business sale” basis, net of all estimated liquidation expenses, shrinkage and markdowns, pursuant to an appraisal conducted, at Borrower’s expense, by an independent appraisal firm acceptable to Lender in its sole and absolute discretion or such value as otherwise determined by Lender in its commercially reasonable discretion.

1.5 “Bank Product Provider” shall mean Lender or any Affiliate of Lender that provides any Bank Products to Borrower.

1.6 “Bank Products” shall mean any one or more of the following types or services or facilities provided to Borrower by a Bank Product Provider: (a) credit cards or stored value cards or (b) cash management or related services, including (i) the automated clearinghouse transfer of funds for the account of Borrower pursuant to agreement or overdraft for any accounts of Borrower maintained at any Bank Product Provider that are subject to the control of Lender pursuant to any Deposit Account Control Agreement to which Lender or such Bank Product Provider is a party, as applicable, and (ii) controlled disbursement services and (c) Hedge Agreements.

1.7 “Blocked Accounts” shall have the meaning set forth in Section 6.3 hereof.

1.8 “Borrowing Base” shall mean, at any time, the amount equal to the sum of:

(a) ninety percent (90%) of Eligible Accounts; plus

(b) (i) if Lender has a written appraisal as to the Inventory that is no more than six (6) months old and that satisfies the requirements set forth in clause (d) of Section 7.3 hereof, the lesser of (A) seventy percent (70%) of the lesser of the Value or the Retail Sales Price of Eligible Inventory and (B) ninety percent (90%) of the Appraised Inventory Value of Eligible Inventory, and (ii) if Lender does not have such a written appraisal, fifty percent (50%) of the lesser of the Value or the Retail Sales Price of Eligible Inventory; minus

(c) any Reserves.

1.9 “Business Day” shall mean any day other than a Saturday, Sunday, or other day on which commercial banks are authorized or required to close under the laws of the State of California or the State of North Carolina, and a day on which the Reference Bank and Lender are open for the transaction of business, except that if a determination of a Business Day shall relate to any Eurodollar Rate Loans, the term Business Day shall also exclude any day on which banks are closed for dealings in dollar deposits in the London interbank market or other applicable Eurodollar Rate market.

1.10 “Capital Expenditures” shall mean, for any period, any expenditure of money under a Capital Lease or for the lease, purchase or other acquisition of any capital asset, for the lease of any other asset, whether payable currently or in the future, or for the purchase or construction of assets, or for improvements or additions thereto, which are capitalized on a Person’s balance sheet.

1.11 “Capital Leases” shall mean, as applied to any Person, any lease of (or any agreement conveying the right to use) any property (whether real, personal or mixed) by such Person as lessee which in accordance with GAAP, is required to be reflected as a liability on the balance sheet of such Person, excluding any Synthetic Leases.

1.12 “Capital Stock” shall mean, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated) of such Person’s capital stock, partnership, limited liability company or other equity interests at any time outstanding, and any and all rights, warrants or options exchangeable for or convertible into such capital stock or other interests (but excluding any debt security that is exchangeable for or convertible into such capital stock).

1.13 “Cash Equivalents” shall mean, at any time, (a) any evidence of Indebtedness with a maturity date of ninety (90) days or less issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof; provided, that, the full faith and credit of the United States of America is pledged in support thereof; (b) certificates of deposit or bankers’ acceptances with a maturity of ninety (90) days or less of any financial institution that is a member of the Federal Reserve System having combined capital and unimpaired surplus of not less than One Billion Dollars (\$1,000,000,000); (c) commercial paper (including variable rate demand notes) with a maturity of ninety (90) days or less issued by a corporation (except an Affiliate of Borrower) organized under the laws of any State of the United States of America or the District of Columbia and rated at least A-1 by Standard & Poor’s Ratings Service, a division of The McGraw-Hill Companies, Inc. or at least P-1 by Moody’s Investors Service, Inc.; (d) repurchase obligations with a term of not more than thirty (30) days for underlying securities of the types described in clause (a) above entered into with any financial institution having combined capital and unimpaired surplus of not less than One Billion Dollars (\$1,000,000,000); (e) repurchase agreements and reverse repurchase agreements relating to marketable direct obligations issued or unconditionally guaranteed by the United States of America or issued by any governmental agency thereof and backed by the full faith and credit of the United States of America, in each case maturing within ninety (90) days or less from the date of acquisition; provided, that, the terms of such agreements comply with the guidelines set forth

in the Federal Financial Agreements of Depository Institutions with Securities Dealers and Others, as adopted by the Comptroller of the Currency on October 31, 1985; and (f) investments in money market funds and mutual funds that are registered under the Investment Company Act of 1940, as amended, which invest substantially all of their assets in securities of the types described in clauses (a) through (e) above.

1.14 “Change of Control” shall mean (a) the transfer (in one transaction or a series of transactions) of all or substantially all of the assets of Borrower to any Person or group (as such term is used in Section 13(d)(3) of the Exchange Act); (b) the liquidation or dissolution of Borrower or the adoption of a plan by the stockholders of Borrower relating to the dissolution or liquidation of Borrower; (c) the acquisition by any Person or group (as such term is used in Section 13(d)(3) of the Exchange Act), except for one or more Permitted Holders, of beneficial ownership, directly or indirectly, of a majority of the voting power of the total outstanding Voting Stock of Borrower or the Board of Directors of Borrower; (d) during any period of two (2) consecutive years, individuals who at the beginning of such period constituted the Board of Directors of Borrower (together with any new directors who have been appointed by any Permitted Holder, or whose nomination for election by the stockholders of Borrower, as the case may be, was approved by a vote of at least sixty-six and two-thirds percent (66 2/3%) of the directors then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the Board of Directors of Borrower then still in office; or (e) the failure of the Permitted Holders to own one hundred percent (100%) of the voting power of the total outstanding Voting Stock of Borrower.

1.15 “Code” shall mean the Internal Revenue Code of 1986, as the same now exists or may from time to time hereafter be amended, modified, recodified or supplemented, together with all rules, regulations and interpretations thereunder or related thereto.

1.16 “Collateral” shall have the meaning set forth in Section 5 hereof.

1.17 “Collateral Access Agreement” shall mean an agreement in writing, in form and substance reasonably satisfactory to Lender, by a lessor of premises to Borrower, or any other person to whom any Collateral (including Inventory, Equipment, bills of lading or other documents of title) is consigned or who has custody, control or possession of any such Collateral or is otherwise the owner or operator of any premises on which any of such Collateral is located, pursuant to which such lessor, consignee or other person, inter alia, acknowledges the first priority security interest of Lender in such Collateral, agrees to waive any and all claims such lessor, consignee or other person may, at any time, have against such Collateral, whether for processing, storage or otherwise, and agrees to permit Lender access to, and the right to remain on, the premises of such lessor, consignee or other person so as to exercise Lender’s rights and remedies and otherwise deal with such Collateral and, in the case of any consignee or other person who at any time has custody, control or possession of any Collateral, acknowledges that it holds and will hold possession of the Collateral for the benefit of Lender and agrees to follow all instructions of Lender with respect thereto.

1.18 “Credit Card Issuer” shall mean any person who issues or whose members issue credit cards used by customers of the Borrower to purchase goods, including, without limitation,

MasterCard or VISA bank credit or debit cards or other bank credit or debit cards, and American Express, Discover, Diners Club, Carte Blanche, and other non-bank credit or debit cards.

1.19 “Default” shall mean an act, condition or event which with notice or passage of time or both would constitute an Event of Default.

1.20 “Deposit Account Control Agreement” shall mean an agreement in writing, in form and substance reasonably satisfactory to Lender, by and among Lender, Borrower and any bank at which any deposit account of Borrower is at any time maintained which provides that such bank will comply with instructions originated by Lender directing disposition of the funds in the deposit account without further consent by Borrower and such other terms and conditions as Lender may require, including as to any such agreement with respect to any Blocked Account, providing that all items received or deposited in the Blocked Accounts are the property of Lender, that the bank has no lien upon, or right to setoff against, the Blocked Accounts, the items received for deposit therein, or the funds from time to time on deposit therein and that the bank will wire, or otherwise transfer, in immediately available funds, to the Lender Payment Account all funds received or deposited into the Blocked Accounts, on a daily basis or, in the case of deposit accounts used exclusively to process checks or cash received at Borrower’s retail stores, no less frequently than weekly.

1.21 “EBITDA” shall mean, as to any Person, with respect to any period, an amount equal to: (a) the Net Income of such Person and its Subsidiaries for such period on a consolidated basis determined in accordance with GAAP, plus (b) depreciation, amortization and other non-cash charges (including, but not limited to, imputed interest and deferred compensation) of such Person for such period (to the extent deducted in the computation of Net Income), all in accordance with GAAP, plus (c) Interest Expense of such Person for such period (to the extent deducted in the computation of Net Income), plus (d) charges for Federal, State, local and foreign income taxes for such period (to the extent deducted in the computation of Net Income), plus (e) all extraordinary losses and unusual losses related to the restructuring of the business of such Person and costs associated with the financing transaction contemplated by this Agreement, plus (f) the net sum of cash received by Borrower during such period on account of equity contributions to Borrower, minus (g) all income (and plus all charges, up to the amount of such income) attributable to any Subsidiary of such Person.

1.22 “Eligible Accounts” shall mean Accounts consisting of Merchant Payment Receivables created by Borrower that in each case satisfy the criteria set forth below as determined by Lender. In general, Accounts shall be Eligible Accounts if:

(a) such Accounts arise from the actual and bona fide sale and delivery of goods by Borrower or rendition of services by Borrower in the ordinary course of its business which transactions are completed in accordance with the terms and provisions contained in any documents related thereto;

(b) such Accounts are not unpaid more than five (5) days after the date on which the Merchant Payment Receivable was created for them;

(c) such Accounts comply with the terms and conditions contained in Section 7.2(c) of this Agreement;

(d) such Accounts do not arise from sales on consignment, guaranteed sale, sale and return, sale on approval, or other terms under which payment by the account debtor may be conditional or contingent;

(e) the residence or chief executive office (as applicable) of the account debtor with respect to such Accounts is located in the United States of America or Canada (provided, that, at any time promptly upon Lender's request, Borrower shall execute and deliver, or cause to be executed and delivered, such other agreements, documents and instruments as may be required by Lender to perfect the security interests of Lender in those Accounts of an account debtor with its residence or chief executive office in Canada in accordance with the applicable laws of the Province of Canada in which such chief executive office or principal place of business is located and take or cause to be taken such other and further actions as Lender may request to enable Lender as secured party with respect thereto to collect such Accounts under the applicable Federal or Provincial laws of Canada);

(f) such Accounts do not consist of progress billings (such that the obligation of the account debtors with respect to such Accounts is conditioned upon Borrower's satisfactory completion of any further performance under the agreement giving rise thereto), bill and hold invoices or retainage invoices, except as to bill and hold invoices, if Lender shall have received an agreement in writing from the account debtor, in form and substance satisfactory to Lender, confirming the unconditional obligation of the account debtor to take the goods related thereto and pay such invoice;

(g) the account debtor with respect to such Accounts has not asserted a counterclaim, defense or dispute and is not owed or does not claim to be owed any amounts that may give rise to any right of setoff or recoupment against such Accounts (but the portion of the Accounts of such account debtor in excess of the amount at any time and from time to time owed by Borrower to such account debtor or claimed owed by such account debtor may be deemed Eligible Accounts);

(h) there are no facts, events or occurrences which would impair the validity, enforceability or collectability of such Accounts or reduce the amount payable or delay payment thereunder;

(i) such Accounts are subject to the first priority, valid and perfected security interest of Lender and any goods giving rise thereto are not, and were not at the time of the sale thereof, subject to any liens except those permitted in this Agreement that are subject to an intercreditor agreement in form and substance reasonably satisfactory to Lender between the holder of such security interest or lien and Lender;

(j) neither the account debtor nor any officer or employee of the account debtor with respect to such Accounts is an officer, employee, agent or other Affiliate of Borrower;

(k) the account debtors with respect to such Accounts are not any foreign government, the United States of America, any State, political subdivision, department, agency or instrumentality thereof, unless, if the account debtor is the United States of America, any State, political subdivision, department, agency or instrumentality thereof, upon Lender's request, the Federal Assignment of Claims Act of 1940, as amended or any similar State or local law, if applicable, has been complied with in a manner satisfactory to Lender;

(l) there are no proceedings or actions which are threatened or pending against the account debtors with respect to such Accounts which might result in any material adverse change in any such account debtor's financial condition (including, without limitation, any bankruptcy, dissolution, liquidation, reorganization or similar proceeding);

(m) the Merchant Payment Processor or Credit Card Issuer (as applicable) on such Accounts has agreed, in a manner reasonably satisfactory to Lender, to remit payment thereon directly to a Blocked Account;

(n) the account debtor is not located in a state requiring the filing of a Notice of Business Activities Report or similar report in order to permit Borrower to seek judicial enforcement in such State of payment of such Account, unless Borrower has qualified to do business in such state or has filed a Notice of Business Activities Report or equivalent report for the then current year or such failure to file and inability to seek judicial enforcement is capable of being remedied without any material delay or material cost;

(o) such Accounts are owed by account debtors whose total indebtedness to Borrower does not exceed the credit limit with respect to such account debtors as determined by Borrower from time to time, to the extent such credit limit as to any account debtor is established consistent with the current practices of Borrower as of the date hereof and such credit limit is acceptable to Lender (but the portion of the Accounts not in excess of such credit limit may be deemed Eligible Accounts); and

(p) such Accounts are owed by account debtors deemed creditworthy at all times by Lender in good faith.

The criteria for Eligible Accounts set forth above may only be changed and any new criteria for Eligible Accounts may only be established by Lender in good faith based on either: (i) an event, condition or other circumstance arising after the date hereof, or (ii) an event, condition or other circumstance existing on the date hereof to the extent Lender has no written notice thereof from Borrower prior to the date hereof, in either case under clause (i) or (ii) which adversely affects or could reasonably be expected to adversely affect the Accounts in the good faith determination of Lender. Any Accounts that are not Eligible Accounts shall nevertheless be part of the Collateral.

1.23 "Eligible Inventory" shall mean Inventory consisting of new and finished merchandise held for sale in the ordinary course of the business of Borrower which is located either at one of Borrower's retail stores or at its warehouse locations which are acceptable to Lender based on the criteria set forth below. In general, Eligible Inventory shall not include:

(a) raw materials;

- (b) work-in process;
- (c) components which are not part of finished goods;
- (d) spare parts for equipment;
- (e) bags, packaging and shipping materials;
- (f) supplies used or consumed in Borrower's business;

(g) Inventory that is not either at a retail store location or at premises owned and controlled by Borrower (or in transit between such locations), except any Inventory which would otherwise be deemed Eligible Inventory that is not located at a retail store location or at premises owned and operated by Borrower (or in transit between such locations) may nevertheless be considered Eligible Inventory:

(i) if located at or in transit to a location which is leased by Borrower with respect to which Lender has received a Collateral Access Agreement from the owner and lessor of such location, duly authorized, executed and delivered by such owner and lessor or if Lender shall not have received such Collateral Access Agreement (or Lender has received a Collateral Access Agreement which does not include all required provisions or is otherwise not in the form required by Lender), Lender may, at its option, nevertheless consider Inventory at or in transit to such location to be Eligible Inventory to the extent Lender has established Reserves in respect of amounts at any time payable by Borrower to the owner and lessor thereof as Lender may determine, or

(ii) if located at or in transit to a location owned and operated by a third person with respect to which Lender has received (A) a Collateral Access Agreement from such owner and operator with respect to such location, duly authorized, executed and delivered by such owner and operator or if Lender shall not have received such Collateral Access Agreement (or Lender has received a Collateral Access Agreement which does not include all required provisions or is otherwise not in the form required by Lender), Lender may, at its option, nevertheless consider Inventory at such location to be Eligible Inventory to the extent Lender has established Reserves in respect of amounts at any time payable by Borrower to the owner and operator thereof as Lender may determine, and (B) if required by Lender: (1) UCC-1 financing statements between the owner and operator, as consignee or bailee and Borrower, as consignor or bailor, in form and substance satisfactory to Lender, which are duly assigned to Lender and (2) a written notice to any lender to such owner and operator of Lender's first priority security interest in such Inventory;

(h) Inventory in transit, except (i) for Inventory that is in transit between Borrower's locations as provided in clause (g) above, or (ii) as Lender may otherwise agree;

(i) Inventory subject to a security interest or lien in favor of any person other than Lender except those permitted in this Agreement (but without limiting the right of Lender to establish any Reserves with respect to amounts secured by such security interest or lien in favor of any Person even if permitted herein);

- (j) bill and hold goods;
  - (k) unserviceable Inventory;
  - (l) Inventory which is not subject to the first priority, valid and perfected security interest of Lender;
  - (m) damaged and/or defective Inventory;
  - (n) Inventory held for return to vendors;
  - (o) Inventory held at a retail store for shipment to another retail store or to Borrower's warehouse (which may currently be classified as "return to vendor" in Borrower's books and records), to the extent the Value of such Inventory exceeds fifteen percent (15%) of the Value of all Inventory;
  - (p) Inventory returned by customers and not held for resale;
  - (q) Inventory consisting of samples;
  - (r) promotional or display Inventory
  - (s) Inventory held for rental;
  - (t) Inventory purchased or sold on consignment;
  - (u) slow moving Inventory as defined in the below definition of "Reserves";
- and
- (v) Inventory located outside the United States of America.

The criteria for Eligible Inventory set forth above may only be changed and any new criteria for Eligible Inventory may only be established by Lender in good faith based on either: (x) an event, condition or other circumstance arising after the date hereof, or (y) an event, condition or other circumstance existing on the date hereof to the extent Lender has no written notice thereof from Borrower prior to the date hereof, in either case under clause (x) or (y) which adversely affects or could reasonably be expected to adversely affect the Inventory in the good faith determination of Lender. Any Inventory which is not Eligible Inventory shall nevertheless be part of the Collateral.

1.24 "Environmental Laws" shall mean all foreign, Federal, State and local laws (including common law), legislation, rules, codes, licenses, permits (including any conditions imposed therein), authorizations, judicial or administrative decisions, injunctions or agreements between Borrower and any Governmental Authority, (a) relating to pollution and the protection, preservation or restoration of the environment (including air, water vapor, surface water, ground water, drinking water, drinking water supply, surface land, subsurface land, plant and animal life or any other natural resource), or to human health or safety, (b) relating to the exposure to, or the use, storage, recycling, treatment, generation, manufacture, processing, distribution,

transportation, handling, labeling, production, release or disposal, or threatened release, of Hazardous Materials, or (c) relating to all laws with regard to recordkeeping, notification, disclosure and reporting requirements respecting Hazardous Materials. The term "Environmental Laws" includes (i) the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Federal Superfund Amendments and Reauthorization Act, the Federal Water Pollution Control Act of 1972, the Federal Clean Water Act, the Federal Clean Air Act, the Federal Resource Conservation and Recovery Act of 1976 (including the Hazardous and Solid Waste Amendments thereto), the Federal Solid Waste Disposal and the Federal Toxic Substances Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, and the Federal Safe Drinking Water Act of 1974, (ii) applicable state counterparts to such laws, and (iii) any common law or equitable doctrine that may impose liability or obligations for injuries or damages due to, or threatened as a result of, the presence of or exposure to any Hazardous Materials.

1.25 "Equipment" shall mean all of Borrower's now owned and hereafter acquired equipment, wherever located, including machinery, data processing and computer equipment and computer hardware and software, whether owned or licensed, and including embedded software, vehicles, tools, furniture, fixtures, all attachments, accessions and property now or hereafter affixed thereto or used in connection therewith, and substitutions and replacements thereof, wherever located.

1.26 "ERISA" shall mean the United States Employee Retirement Income Security Act of 1974, together with all rules, regulations and interpretations thereunder or related thereto.

1.27 "ERISA Affiliate" shall mean any person required to be aggregated with Borrower or any of its Subsidiaries under Sections 414(b), 414(c), 414(m) or 414(o) of the Code.

1.28 "ERISA Event" shall mean (a) any "reportable event", as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Plan; (b) the adoption of any amendment to a Plan that would require the provision of security pursuant to Section 401(a)(29) of the Code or Section 307 of ERISA; (c) the existence with respect to any Plan of an "accumulated funding deficiency" (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (d) the filing pursuant to Section 412 of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (e) the occurrence of a "prohibited transaction" with respect to which Borrower or any of its Subsidiaries is a "disqualified person" (within the meaning of Section 4975 of the Code) or with respect to which Borrower or any of its Subsidiaries could otherwise be liable; (f) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or a cessation of operations which is treated as such a withdrawal or notification that a Multiemployer Plan is in reorganization; (g) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the Pension Benefit Guaranty Corporation to terminate a Plan; (h) an event or condition which might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan; (i) the imposition of any liability under Title IV of ERISA, other than the Pension Benefit Guaranty Corporation premiums due but not delinquent under Section 4007 of ERISA, upon Borrower or any ERISA Affiliate in excess of One Hundred Thousand Dollars (\$100,000); and

(j) any other event or condition with respect to a Plan including any Plan subject to Title IV of ERISA maintained, or contributed to, by any ERISA Affiliate that could reasonably be expected to result in liability of Borrower.

1.29 “Eurodollar Rate Loans” shall mean any Loans or portion thereof on which interest is payable based on the Adjusted Eurodollar Rate in accordance with the terms hereof.

1.30 “Event of Default” shall mean the occurrence or existence of any event or condition described in Section 10.1 hereof.

1.31 “Excess Availability” shall mean the amount, as determined by Lender, calculated at any time, equal to: (a) the lesser of: (i) the Borrowing Base and (ii) the Revolving Loan Limit (in each case under (i) and (ii) after giving effect to any Reserves other than any Reserves in respect of Letter of Credit Accommodations), minus (b) the sum of: (i) the amount of all then outstanding and unpaid Obligations plus (ii) the amount of all Reserves then established in respect of Letter of Credit Accommodations, plus, solely for the purposes of the condition precedent in Section 4.1(g) hereof, (iii) the aggregate amount of all then outstanding and unpaid trade payables and other obligations of Borrower which are more than sixty (60) days past due as of such time, plus (iv) the amount of checks issued by Borrower to pay trade payables and other obligations which are more than sixty (60) days past due as of such time, but not yet sent (but without duplication of clause (b)(iii) above) and the book overdraft of Borrower.

1.32 “Exchange Act” shall mean the Securities Exchange Act of 1934, together with all rules, regulations and interpretations thereunder or related thereto.

1.33 “Financing Agreements” shall mean, collectively, this Agreement and all notes, guarantees, security agreements, Deposit Account Control Agreements, Investment Property Control Agreements, Collateral Access Agreements, intercreditor agreements, and all other agreements, documents and instruments now or at any time hereafter executed and/or delivered by Borrower or any Obligor in connection with this Agreement; provided, that, in no event shall the term Financing Agreements be deemed to include any Hedge Agreement.

1.34 “Fixed Charge Coverage Ratio” shall mean, with respect to Borrower for any period, the ratio of (a) the sum of the Borrower’s EBITDA during such period plus any capital contributions made by Permitted Holders to Borrower during such period, to (b) the sum of Interest Expense during such period, principal payments made or becoming due on Indebtedness during such period, unfinanced Capital Expenditures made during such period plus taxes paid or payable in cash during such period.

1.35 “Funding Bank” shall have the meaning set forth in Section 3.6(a) hereof.

1.36 “GAAP” shall mean generally accepted accounting principles in the United States of America as in effect from time to time as set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and the statements and pronouncements of the Financial Accounting Standards Board which are applicable to the circumstances as of the date of determination consistently applied, except that, for purposes of Section 9.17 hereof, GAAP shall be determined on the basis of such principles in

effect on the date hereof and consistent with those used in the preparation of the most recent audited financial statements delivered to Lender prior to the date hereof.

1.37 “Governmental Authority” shall mean any nation or government, any state, province, or other political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, and any corporation or other entity owned or controlled, through stock or capital ownership or otherwise, by any of the foregoing.

1.38 “Hazardous Materials” shall mean any hazardous, toxic or dangerous substances, materials and wastes, including hydrocarbons (including naturally occurring or man-made petroleum and hydrocarbons), flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, biological substances, polychlorinated biphenyls, pesticides, herbicides and any other kind and/or type of pollutants or contaminants (including materials which include hazardous constituents), sewage, sludge, industrial slag, solvents and/or any other similar substances, materials, or wastes and including any other substances, materials or wastes that are or become regulated under any Environmental Law (including any that are or become classified as hazardous or toxic under any Environmental Law).

1.39 “Hedge Agreement” shall mean an agreement between Borrower and Lender or any Bank Product Provider that is a swap agreement as such term is defined in 11 U.S.C. Section 101, and including any rate swap agreement, basis swap, forward rate agreement, commodity swap, interest rate option, forward foreign exchange agreement, spot foreign exchange agreement, rate cap agreement rate, floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option, any other similar agreement (including any option to enter into any of the foregoing or a master agreement for any the foregoing together with all supplements thereto) for the purpose of protecting against or managing exposure to fluctuations in interest or exchange rates, currency valuations or commodity prices; sometimes being collectively referred to herein as “Hedge Agreements”.

1.40 “Indebtedness” shall mean, with respect to any Person, any liability, whether or not contingent, (a) in respect of borrowed money (whether or not the recourse of the lender is to the whole of the assets of such Person or only to a portion thereof) or evidenced by bonds, notes, debentures or similar instruments; (b) representing the balance deferred and unpaid of the purchase price of any property or services (except any such balance that constitutes an account payable to a trade creditor (whether or not an Affiliate) created, incurred, assumed or guaranteed by such Person in the ordinary course of business of such Person in connection with obtaining goods, materials or services that is not overdue by more than ninety (90) days, unless the trade payable is being contested in good faith); (c) all obligations as lessee under leases which have been, or should be, in accordance with GAAP recorded as Capital Leases; (d) any contractual obligation, contingent or otherwise, of such Person to pay or be liable for the payment of any indebtedness described in this definition of another Person, including, without limitation, any such indebtedness, directly or indirectly guaranteed, or any agreement to purchase, repurchase, or otherwise acquire such indebtedness, obligation or liability or any security therefor, or to provide funds for the payment or discharge thereof, or to maintain solvency, assets, level of income, or other financial condition; (e) all obligations with respect to redeemable stock and redemption or repurchase obligations under any Capital Stock or other equity securities issued by

such Person; (f) all reimbursement obligations and other liabilities of such Person with respect to surety bonds (whether bid, performance or otherwise), letters of credit, banker's acceptances, drafts or similar documents or instruments issued for such Person's account; (g) all indebtedness of such Person in respect of indebtedness of another Person for borrowed money or indebtedness of another Person otherwise described in this definition which is secured by any consensual lien, security interest, collateral assignment, conditional sale, mortgage, deed of trust, or other encumbrance on any asset of such Person, whether or not such obligations, liabilities or indebtedness are assumed by or are a personal liability of such Person, all as of such time; (h) all obligations, liabilities and indebtedness of such Person (marked to market) arising under swap agreements, cap agreements and collar agreements and other agreements or arrangements designed to protect such Person against fluctuations in interest rates or currency or commodity values; and (i) all obligations owed by such Person under License Agreements with respect to non-refundable, advance or minimum guaranty royalty payments.

1.41 "Information Certificate" shall mean the Information Certificate of Borrower constituting Exhibit A hereto containing material information with respect to Borrower, its business and assets provided by or on behalf of Borrower to Lender in connection with the preparation of this Agreement and the other Financing Agreements and the financing arrangements provided for herein.

1.42 "Intellectual Property" shall mean all of Borrower's now owned and hereafter arising or acquired: patents, patent rights, patent applications, copyrights, works which are the subject matter of copyrights, copyright registrations, trademarks, service marks, trade names, trade styles, trademark and service mark applications, and licenses and rights to use any of the foregoing; all extensions, renewals, reissues, divisions, continuations, and continuations-in-part of any of the foregoing; all rights to sue for past, present and future infringement of any of the foregoing; inventions, trade secrets, formulae, processes, compounds, drawings, designs, blueprints, surveys, reports, manuals, and operating standards; goodwill (including any goodwill associated with any trademark or the license of any trademark); customer and other lists in whatever form maintained; and trade secret rights, copyright rights, rights in works of authorship, domain names and domain name registrations; software and contract rights relating to software, in whatever form created or maintained.

1.43 "Interest Expense" shall mean, for any period, as to any Person and its Subsidiaries, all of the following as determined in accordance with GAAP, total interest expense, whether paid or accrued (including the interest component of Capital Leases for such period), including, without limitation, all bank fees, commissions, discounts and other fees and charges owed with respect to letters of credit, banker's acceptances or similar instruments, but excluding (a) amortization of discount and amortization of deferred financing fees and closing costs paid in cash in connection with the transactions contemplated hereby, (b) interest paid in property other than cash and (c) any other interest expense not payable in cash.

1.44 "Interest Period" shall mean for any Eurodollar Rate Loan, a period of approximately one (1), two (2), or three (3) months duration as Borrower may elect, the exact duration to be determined in accordance with the customary practice in the applicable Eurodollar Rate market; provided, that, Borrower may not elect an Interest Period which will end after the last day of the then-current term of this Agreement.

1.45 “Interest Rate” shall mean, as to Prime Rate Loans, a rate equal to one-half of one percent (0.5%) per annum in excess of the Prime Rate and, as to Eurodollar Rate Loans, a rate of two percent (2.0%) per annum in excess of the Adjusted Eurodollar Rate (based on the London Interbank Offered Rate applicable for the Interest Period selected by Borrower as in effect three (3) Business Days after the date of receipt by Lender of the request of Borrower for such Eurodollar Rate Loans in accordance with the terms hereof, whether such rate is higher or lower than any rate previously quoted to Borrower); provided, that, notwithstanding anything to the contrary contained herein, the Interest Rate shall mean the rate of two and one half percent (2.5%) per annum in excess of the Prime Rate as to Prime Rate Loans and the rate of four percent (4.0%) per annum in excess of the Adjusted Eurodollar Rate as to Eurodollar Rate Loans, at Lender’s option, without notice, (a) either (i) for the period on and after the date of termination or non-renewal hereof until such time as all Obligations are indefeasibly paid and satisfied in full in immediately available funds, or (ii) for the period from and after the date of the occurrence of any Event of Default, and for so long as such Event of Default is continuing as reasonably determined by Lender and (b) on the Revolving Loans at any time outstanding in excess of the amounts available to Borrower under Section 2 (whether or not such excess(es) arise or are made with or without Lender’s knowledge or consent and whether made before or after an Event of Default).

1.46 “Inventory” shall mean all of Borrower’s now owned and hereafter existing or acquired goods, wherever located, which (a) are leased by Borrower as lessor; (b) are held by Borrower for sale or lease or to be furnished under a contract of service; (c) are furnished by Borrower under a contract of service; or (d) consist of raw materials, work in process, finished goods or materials used or consumed in its business.

1.47 “Investment Property Control Agreement” shall mean an agreement in writing, in form and substance satisfactory to Lender, by and among Lender, Borrower and any securities intermediary, commodity intermediary or other Person who has custody, control or possession of any investment property of Borrower agreeing and acknowledging that, *inter alia*, such Person has custody, control or possession of such investment property on behalf of Lender, such Person will comply with entitlement orders originated by Lender with respect to such investment property, or other instructions of Lender, and such Person will apply any value distributed on account of any commodity contract as directed by Lender, in each case, without the further consent of Borrower, and including such other terms and conditions as Lender may require.

1.48 “Lender Payment Account” shall mean account no. 5000000030321 of Lender at Wachovia Bank, National Association or such other account of Lender as Lender may from time to time designate to Borrower as the Lender Payment Account for purposes of this Agreement.

1.49 “Letter of Credit Accommodations” shall mean, collectively, the letters of credit, merchandise purchase or other guaranties which are from time to time either (a) issued or opened by Lender for the account of Borrower or any Obligor or (b) with respect to which Lender has agreed to indemnify the issuer or guaranteed to the issuer the performance by Borrower of its obligations to such issuer: sometimes being referred to herein individually as a “Letter of Credit Accommodation”.

1.50 “License Agreements” shall have the meaning set forth in Section 8.11 hereof.

1.51 “Loans” shall mean the Revolving Loans.

1.52 “London Interbank Offered Rate” shall mean, with respect to any Eurodollar Rate Loan for the Interest Period applicable thereto, the rate of interest per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) appearing on Telerate Page 3750 (or any successor page) as the London interbank offered rate for deposits in U.S. Dollars at approximately 11:00 A.M. (London time) two (2) Business Days prior to the first day of such Interest Period for a term comparable to such Interest Period; provided, that, if more than one rate is specified on Telerate Page 3750, the applicable rate shall be the arithmetic mean of all such rates. If, for any reason, such rate is not available, the term “London Interbank Offered Rate” shall mean, with respect to any Eurodollar Rate Loan for the Interest Period applicable thereto, the rate of interest per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) appearing on Reuters Screen LIBO Page as the London interbank offered rate for deposits in Dollars at approximately 11:00 A.M. (London time) two (2) Business Days prior to the first day of such Interest Period for a term comparable to such Interest Period; provided, however, if more than one rate is specified on Reuters Screen LIBO Page, the applicable rate shall be the arithmetic mean of all such rates.

1.53 “Material Contract” shall mean (a) any contract or other agreement (other than the Financing Agreements), written or oral, of Borrower involving monetary liability of or to any Person in an amount in excess of One Hundred Fifty Thousand Dollars (\$150,000) in any fiscal year and (b) any other contract or other agreement (other than the Financing Agreements), whether written or oral, to which Borrower is a party as to which the breach, nonperformance, cancellation or failure to renew by any party thereto would have a material adverse effect on the business, assets, condition (financial or otherwise) or results of operations or prospects of Borrower or the validity or enforceability of this Agreement, any of the other Financing Agreements, or any of the rights and remedies of Lender hereunder or thereunder.

1.54 “Merchant Payment Agreements” shall mean all agreements now or hereafter entered into by Borrower with any Credit Card Issuer or Merchant Payment Processor as the same may now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

1.55 “Merchant Payment Processor” shall mean any servicing or processing agent or any factor or financial intermediary (including Paypal, Bill Me Later and Google Wallet) who facilitate, services, processes or manages the authorization, billing, transfer, payment and/or other procedure from a Credit Card Issuer, bank, consumer payment facilitator or other Person with respect to any sales transactions of the Borrower involving credit, charge or debit card purchases, check purchases or cashing, or other method of consumer payment.

1.56 “Merchant Payment Receivables” shall mean all Accounts consisting of the present and future rights of Borrower to payment by any Merchant Payment Processor or Credit Card Issuer and all information contained on or for use with a credit, charge or debit card issued by a Credit Card Issuer.

1.57 “Multiemployer Plan” shall mean a “multi-employer plan” as defined in Section 4001(a)(3) of ERISA which is or was at any time during the current year or the immediately preceding six (6) years contributed to by Borrower or any ERISA Affiliate.

1.58 “Net Income” shall mean, with respect to any Person, for any period, the aggregate of the net income (loss) of such Person and its Subsidiaries, on a consolidated basis, for such period (excluding to the extent included therein any extraordinary or one-time gains or losses) after deducting all charges which should be deducted before arriving at the net income (loss) for such period and after deducting the Provision for Taxes for such period, all as determined in accordance with GAAP, provided, that, (a) the net income of any Person that is not a wholly-owned Subsidiary or that is accounted for by the equity method of accounting shall be included only to the extent of the amount of dividends or distributions paid or payable to such Person or a wholly-owned Subsidiary of such Person; (b) the effect of any change in accounting principles adopted by such Person or its Subsidiaries after the date hereof shall be excluded; and (c) the net income (if positive) of any wholly-owned Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such wholly-owned Subsidiary to such Person or to any other wholly-owned Subsidiary of such Person is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule of government regulation applicable to such wholly-owned Subsidiary shall be excluded. For the purpose of this definition, net income excludes any gain or loss, together with any related Provision for Taxes for such gain or loss realized upon the sale or other disposition of any assets that are not sold in the ordinary course of business (including, without limitation, dispositions pursuant to sale and leaseback transactions), or of any Capital Stock of such Person or a Subsidiary of such Person and any net income realized as a result of changes in accounting principles or the application thereof to such Person.

1.59 “Obligations” shall mean (a) any and all Loans, Letter of Credit Accommodations and all other obligations, liabilities and indebtedness of every kind, nature and description owing by Borrower to Lender or any issuer of a Letter of Credit Accommodation, including principal, interest, charges, fees, costs and expenses, however evidenced, whether as principal, surety, endorser, guarantor or otherwise, arising under this Agreement or any of the other Financing Agreements or on account of any Letter of Credit Accommodation, whether now existing or hereafter arising, whether arising before, during or after the initial or any renewal term of this Agreement or after the commencement of any case with respect to Borrower under the United States Bankruptcy Code or any similar statute (including the payment of interest and other amounts which would accrue and become due but for the commencement of such case, whether or not such amounts are allowed or allowable in whole or in part in such case), whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, or secured or unsecured and (b) for purposes only of Section 5.1 hereof, all obligations, liabilities and indebtedness of every kind, nature and description owing by Borrower to any Bank Product Provider arising under or pursuant to any Bank Products, whether now existing or hereafter arising.

1.60 “Obligor” shall mean any guarantor, endorser, acceptor, surety or other person liable on or with respect to the Obligations or who is the owner of any property which is security for the Obligations, other than Borrower.

1.61 “Permitted Holders” shall mean the persons listed on Schedule 1.61 hereto and such other persons as may hereafter be approved by Lender in writing (such approval not to be unreasonably withheld or delayed) together with their respective successors and assigns.

1.62 “Person” or “person” shall mean any individual, sole proprietorship, partnership, corporation (including any corporation which elects subchapter S status under the Code), limited liability company, limited liability partnership, business trust, unincorporated association, joint stock corporation, trust, joint venture or other entity or any government or any agency or instrumentality or political subdivision thereof.

1.63 “Plan” means an employee benefit plan (as defined in Section 3(3) of ERISA) which Borrower sponsors, maintains, or to which it makes, is making, or is obligated to make contributions, or in the case of a Multiemployer Plan has made contributions at any time during the immediately preceding six (6) plan years.

1.64 “Prime Rate” shall mean the rate from time to time publicly announced by the Reference Bank as its prime rate, whether or not such announced rate is the best rate available at such bank.

1.65 “Prime Rate Loans” shall mean any Loans or portion thereof on which interest is payable based on the Prime Rate in accordance with the terms thereof.

1.66 “Provision for Taxes” shall mean, with respect to any Person, for any period, an amount equal to all taxes imposed on or measured by net income, whether Federal, State or local, and whether foreign or domestic, that are paid or payable by such Person and its Subsidiaries in respect of such period on a consolidated basis in accordance with GAAP.

1.67 “Real Property” shall mean all now owned and hereafter acquired real property of Borrower, including leasehold interests, together with all buildings, structures, and other improvements located thereon and all licenses, easements and appurtenances relating thereto, wherever located.

1.68 “Receivables” shall mean all of the following now owned or hereafter arising or acquired property of Borrower: (a) all Accounts; (b) all interest, fees, late charges, penalties, collection fees and other amounts due or to become due or otherwise payable in connection with any Account; and (c) all payment intangibles of Borrower and other contract rights, chattel paper, instruments, notes, and other forms of obligations owing to Borrower, whether from the sale and lease of goods or other property, licensing of any property (including Intellectual Property or other general intangibles), rendition of services or from loans or advances by Borrower or to or for the benefit of any third person (including loans or advances to any Affiliates or Subsidiaries of Borrower) or otherwise associated with any Accounts, Inventory or general intangibles of Borrower (including, without limitation, choses in action, causes of action, tax refunds, tax refund claims, any funds which may become payable to Borrower in connection with the termination of any Plan or other employee benefit plan and any other amounts payable to Borrower from any Plan or other employee benefit plan, rights and claims against carriers and shippers, rights to indemnification, business interruption insurance and proceeds thereof,

casualty or any similar types of insurance and any proceeds thereof and proceeds of insurance covering the lives of employees on which Borrower is a beneficiary).

1.69 “Records” shall mean all of Borrower’s present and future books of account of every kind or nature, purchase and sale agreements, invoices, ledger cards, bills of lading and other shipping evidence, statements, correspondence, memoranda, credit files and other data relating to the Collateral or any account debtor, together with the tapes, disks, diskettes and other data and software storage media and devices, file cabinets or containers in or on which the foregoing are stored (including any rights of Borrower with respect to the foregoing maintained with or by any other person).

1.70 “Reference Bank” shall mean Wachovia Bank, National Association, its successor or such other bank as Lender may from time to time designate.

1.71 “Renewal Date” shall have the meaning set forth in Section 12.1 hereof.

1.72 “Reserves” shall mean as of any date of determination, such amounts as Lender may from time to time establish and revise in good faith reducing the amount of Revolving Loans and Letter of Credit Accommodations which would otherwise be available to Borrower under the lending formula(s) provided for herein: (a) to reflect events, conditions, contingencies or risks which, as determined by Lender in good faith, adversely affect, or would have a reasonable likelihood of adversely affecting, either (i) the Collateral or any other property which is security for the Obligations or its value, (ii) the assets or business of Borrower or any Obligor or (iii) the security interests and other rights of Lender in the Collateral (including the enforceability, perfection and priority thereof) or (b) to reflect Lender’s good faith belief that any collateral report or financial information furnished by or on behalf of Borrower or any Obligor to Lender is or may have been incomplete, inaccurate or misleading in any material respect or (c) to reflect outstanding Letter of Credit Accommodations as provided in Section 2.2 hereof or (d) in respect of any state of facts which Lender determines in good faith constitutes a Default or an Event of Default. To the extent Lender may revise the lending formulas used to determine the Borrowing Base or establish new criteria or revise existing criteria for Eligible Inventory so as to address any circumstances, condition, event or contingency in a manner satisfactory to Lender, Lender shall not establish a Reserve for the same purpose. The amount of any Reserve established by Lender shall have a reasonable relationship to the event, condition or other matter which is the basis for such reserve as determined by Lender in good faith. Without limiting the generality of the foregoing, Lender (t) may establish and maintain a Reserve to reflect that dilution with respect to the Accounts (based on the ratio of the aggregate amount of non-cash reductions in Accounts for any period to the aggregate dollar amount of the sales of Borrower for such period) as calculated by Lender for any period is or is reasonably anticipated to be greater than two (2.0%) percent; (t) may establish and maintain Reserves to reflect future fulfillment charges, Inventory shrinkage and cost test variances, gift certificates, gift and merchandise cards and other merchandise store credits; (u) may establish and maintain Reserves for any obligations, liabilities or indebtedness (contingent or otherwise) of Borrower to any Bank Product Provider arising under or in connection with any Bank Products; (v) shall establish on the date hereof and maintain throughout the term of this Agreement and throughout any renewal term a Reserve for an amount equal to three (3) months of Borrower’s gross rent and other obligations as lessee for each leased premises of Borrower which is either a warehouse location or is located in a state

where a landlord may be entitled to a priority lien on Collateral to secure unpaid rent and with respect to each such property the landlord has not executed a Collateral Access Agreement, (w) may establish and maintain Reserves for Borrower's obligations to any public or other third-party warehouse, unless either (i) the warehouse has executed a Collateral Access Agreement (in form and substance reasonably satisfactory to Lender) or (ii) Borrower has received additional equity contributions of no less than \$7,500,000 and Borrower is not past due on any of the warehouse's charges, (x) may establish an additional Reserve on the date hereof, and from time to time hereafter, and maintain such reserve throughout the term of this Agreement and throughout any renewal term in an amount determined by Lender in its reasonable discretion to be sufficient to cover the anticipated moving expenses and other costs associated with the transfer of Inventory from each of Borrower's retail locations to another location reasonably acceptable to Lender, (y) may establish and maintain an additional Reserve from time to time in an amount equal to the dollar value of cash-on-hand in registers maintained by Borrower, and (z) may establish and maintain an additional Reserve from time to time to compensate for any increase in the percentage of Inventory represented by slow moving Inventory (defined as Inventory held for longer than twelve (12) months) or to otherwise reflect that the liquidation value of the Eligible Inventory, or any category thereof, has decreased. The amount of any Reserve established by Lender shall have a reasonable relationship to the event, condition or other matter which is the basis for such reserve as determined by Lender in good faith and to the extent that such Reserve is in respect of amounts that may be payable to third parties Lender may, at its option, deduct such Reserve from the Revolving Loan Limit, at any time that such limit is less than the amount of the Borrowing Base.

1.73 "Retail Sales Price" shall mean the current ticketed sales price in the Borrower's retail stores, net of markdowns from the original retail sales price with respect thereto, for the types, categories and styles of Inventory included in the Eligible Inventory of Borrower.

1.74 "Revolving Loan Limit" shall mean the amount of Five Million Dollars (\$5,000,000); provided, however, that so long as no Default or Event of Default has occurred and is continuing, Borrower may, upon not less than fifteen (15) days prior written notice to Lender, increase the Revolving Loan Limit to Seven Million Five Hundred Thousand Dollars (\$7,500,000).

1.75 "Revolving Loans" shall mean the loans now or hereafter made by Lender to or for the benefit of Borrower on a revolving basis (involving advances, repayments and readvances) as set forth in Section 2.1 hereof.

1.76 "Secured Parties" shall mean, collectively, (a) Lender, (b) any issuer of a Letter of Credit Accommodation, and (c) Bank Product Providers.

1.77 "Solvent" shall mean, at any time with respect to any Person, that at such time such Person (a) is able to pay its debts as they mature and become due and payable and has (and has a reasonable basis to believe it will continue to have) sufficient capital (and not unreasonably small capital) to carry on its business consistent with its practices as of the date hereof, and (b) the assets and properties of such Person at a fair valuation (and including as assets for this purpose at a fair valuation all rights of subrogation, contribution or indemnification arising pursuant to any guaranties given by such Person) are greater than the Indebtedness of such

Person, and including subordinated and contingent liabilities computed at the amount which, such person has a reasonable basis to believe, represents an amount which can reasonably be expected to become an actual or matured liability (and including as to contingent liabilities arising pursuant to any guaranty the face amount of such liability as reduced to reflect the probability of it becoming a matured liability).

1.78 “Subsidiary” or “subsidiary” shall mean, with respect to any Person, any corporation, limited liability company, limited liability partnership or other limited or general partnership, trust, association or other business entity of which an aggregate of at least a majority of the outstanding Capital Stock or other interests entitled to vote in the election of the board of directors of such corporation (irrespective of whether, at the time, Capital Stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency), managers, trustees or other controlling persons, or an equivalent controlling interest therein, of such Person is, at the time, directly or indirectly, owned by such Person and/or one or more subsidiaries of such Person.

1.79 “Synthetic Lease” shall mean any lease of goods or other property, whether real or personal, that is treated as an operating lease under GAAP and as a loan or financing for income tax purposes.

1.80 “UCC” shall mean the Uniform Commercial Code as in effect in the State of California, and any successor statute, as in effect from time to time (except that terms used herein which are defined in the Uniform Commercial Code as in effect in the State of California on the date hereof shall continue to have the same meaning notwithstanding any replacement or amendment of such statute except as Lender may otherwise determine.

1.81 “Value” shall mean, as determined by Lender in good faith, with respect to Inventory, the lower of (a) cost as determined by the cost method of accounting computed on a first-in-first-out basis in accordance with GAAP or (b) market value provided, that, for purposes of the calculation of the Borrowing Base, (i) the Value of the Inventory shall not include: (A) the portion of the value of Inventory equal to the profit earned by any Affiliate on the sale thereof to Borrower or (B) write-ups or write-downs in value with respect to currency exchange rates and (ii) notwithstanding anything to the contrary contained herein, the cost of the Inventory shall be computed in the same manner and consistent with the most recent appraisal of the Inventory received and accepted by Lender prior to the date hereof, if any.

1.82 “Voting Stock” shall mean with respect to any Person, (a) one (1) or more classes of Capital Stock of such Person having general voting powers to elect at least a majority of the board of directors, managers or trustees of such Person, irrespective of whether at the time Capital Stock of any other class or classes have or might have voting power by reason of the happening of any contingency, and (b) any Capital Stock of such Person convertible or exchangeable without restriction at the option of the holder thereof into Capital Stock of such Person described in clause (a) of this definition.

## SECTION 2. CREDIT FACILITIES

### 2.1 Revolving Loans.

(a) Subject to and upon the terms and conditions contained herein, Lender agrees to make Revolving Loans to Borrower from time to time in amounts requested by Borrower up to the amount equal to the lesser of: (i) the Borrowing Base or (ii) the Revolving Loan Limit.

(b) Except in Lender's discretion, the aggregate amount of the Revolving Loans outstanding at any time shall not exceed the Revolving Loan Limit. In the event that the outstanding amount of any component of the Loans, or the aggregate amount of the outstanding Loans and Letter of Credit Accommodations, exceed the amounts available pursuant to the Borrowing Base, the Revolving Loan Limit, or the sublimits for Letter of Credit Accommodations set forth in Section 2.2(e), as applicable, such event shall not limit, waive or otherwise affect any rights of Lender in that circumstance or on any future occasions and Borrower shall, upon demand by Lender, which may be made at any time or from time to time, immediately repay to Lender the entire amount of any such excess(es) for which payment is demanded.

## 2.2 Letter of Credit Accommodations.

(a) Subject to and upon the terms and conditions contained herein, at the request of Borrower, Lender agrees to provide or arrange for Letter of Credit Accommodations for the account of Borrower containing terms and conditions acceptable to Lender and the issuer thereof. Any payments made by Lender to any issuer thereof and/or related parties in connection with the Letter of Credit Accommodations shall constitute additional Revolving Loans to Borrower pursuant to this Section 2.

(b) In addition to any charges, fees or expenses charged by any bank or issuer in connection with the Letter of Credit Accommodations, Borrower shall pay to Lender a letter of credit fee at a rate equal to two percent (2.0%) per annum on the daily outstanding balance of the Letter of Credit Accommodations for the immediately preceding month (or part thereof), payable in arrears as of the first day of each succeeding month, except that Borrower shall pay to Lender such letter of credit fee, at Lender's option, without notice, at a rate equal to four percent (4.0%) per annum on such daily outstanding balance for: (i) the period from and after the date of termination or non-renewal hereof until Lender has received full and final payment of all Obligations (notwithstanding entry of a judgment against Borrower) and (ii) the period from and after the date of the occurrence of an Event of Default for so long as such Event of Default is continuing as reasonably determined by Lender. Such letter of credit fee shall be calculated on the basis of a three hundred sixty (360) day year and actual days elapsed and the obligation of Borrower to pay such fee shall survive the termination or non-renewal of this Agreement.

(c) Borrower shall give Lender three (3) Business Days' prior written notice of Borrower's request for the issuance of a Letter of Credit Accommodation. Such notice shall be irrevocable and shall specify the original face amount of the Letter of Credit Accommodation requested, the effective date (which date shall be a Business Day) of issuance of such requested Letter of Credit Accommodation, whether such Letter of Credit Accommodations may be drawn in a single or in partial draws, the date on which such requested Letter of Credit Accommodation is to expire (which date shall be a Business Day and shall not be more than one (1) year from the date of issuance and shall be no less than ten (10) days prior to the end of the then current term

of this Agreement), the purpose for which such Letter of Credit Accommodation is to be issued, and the beneficiary of the requested Letter of Credit Accommodation. Borrower shall attach to such notice the proposed form of the Letter of Credit Accommodation.

(d) In addition to being subject to the satisfaction of the applicable conditions precedent contained in Section 4 hereof and the other terms and conditions contained herein, no Letter of Credit Accommodations shall be available unless each of the following conditions precedent have been satisfied in a manner satisfactory to Lender: (i) Borrower shall have delivered to the proposed issuer of such Letter of Credit Accommodation at such times and in such manner as such proposed issuer may require, an application in form and substance satisfactory to such proposed issuer and Lender for the issuance of the Letter of Credit Accommodation and such other documents as may be required pursuant to the terms thereof, and the form and terms of the proposed Letter of Credit Accommodation shall be satisfactory to Lender and such proposed issuer, (ii) as of the date of issuance, no order of any court, arbitrator or other Governmental Authority shall purport by its terms to enjoin or restrain money center banks generally from issuing letters of credit of the type and in the amount of the proposed Letter of Credit Accommodation, and no law, rule or regulation applicable to money center banks generally and no request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over money center banks generally shall prohibit, or request that the proposed issuer of such Letter of Credit Accommodation refrain from, the issuance of letters of credit generally or the issuance of such Letters of Credit Accommodation; and (iii) the Excess Availability, prior to giving effect to any Reserves with respect to such Letter of Credit Accommodations, on the date of the proposed issuance of any Letter of Credit Accommodations, shall be equal to or greater than: (A) if the proposed Letter of Credit Accommodation is for the purpose of purchasing Eligible Inventory and the documents of title with respect thereto are consigned to the issuer, the sum of (1) the percentage equal to one hundred percent (100%) minus the then applicable percentage with respect to Eligible Inventory set forth in the definition of the term Borrowing Base multiplied by the Value of such Eligible Inventory, plus (2) freight, taxes, duty and other amounts which Lender estimates must be paid in connection with such Inventory upon arrival and for delivery to one of Borrower's locations for Eligible Inventory within the United States of America and (B) if the proposed Letter of Credit Accommodation is for any other purpose or the documents of title are not consigned to the issuer in connection with a Letter of Credit Accommodation for the purpose of purchasing Inventory, an amount equal to one hundred percent (100%) of the face amount thereof and all other commitments and obligations made or incurred by Lender with respect thereto. Effective on the issuance of each Letter of Credit Accommodation, a Reserve shall be established in the applicable amount set forth in Section 2.2(d)(iii)(A) or Section 2.2(d) (iii)(B) above.

(e) Except in Lender's discretion, the amount of all outstanding Letter of Credit Accommodations and all other commitments and obligations made or incurred by Lender in connection therewith shall not at any time exceed One Million Dollars (\$1,000,000).

(f) Borrower shall reimburse immediately Lender for any draw under any Letter of Credit Accommodation and pay Lender the amount of all other charges and fees payable to Lender in connection with any Letter of Credit Accommodation immediately when due, irrespective of any claim, setoff, defense or other right which Borrower may have at any time against Lender or any other Person. Each drawing under any Letter of Credit