
(a) No failure or delay by the Administrative Agent, the Term Agent, any Co-Collateral Agent, any Issuing Bank or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Term Agent, the Co-Collateral Agents, each Issuing Bank and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, the Term Agent, any Co-Collateral Agent, any Lender or any Issuing Bank may have had notice or knowledge of such Default at the time.

(b) Except as expressly contemplated by Section 2.05(i), 2.22 or 2.23 (which amendments shall be permitted if entered into by the parties referred to therein, but subject to Section 9.02(b)(iv) below), neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except, in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by Holdings, the Borrowers, the Account Parties, the Required Lenders, the Administrative Agent, the Term Agent, or, in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent, the Term Agent, and the Loan Party or Loan Parties that are parties thereto, in each case with the consent of the Required Lenders; provided that no such agreement shall

(i) increase the Commitment of any Lender without the written consent of such Lender,

(ii) reduce the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender directly affected thereby; provided that (A) only the consent of the Required Revolving Lenders shall be necessary to amend the provisions of Section 2.12(c) providing for the default rate of interest as to any Revolving Loans or unreimbursed LC Disbursements, or to waive any obligations of any Borrower or any Account Party to pay interest at such default rate and (B) only the consent of the Required Term Lenders shall be necessary to amend the provisions of Section 2.12(c) providing for the default rate of interest as to any Term Loans, or to waive any obligations of any Borrower or any Account Party to pay interest at such default rate,

(iii) postpone the scheduled date of payment of the principal amount of any Loan or LC Disbursement, or any interest thereon, or any fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, or postpone or reduce the amount of, or waive or excuse any mandatory prepayment under Section 2.10(c) or Section 2.10(d), in each case without the written consent of each Lender directly affected thereby; provided that (A) only the consent of the Required Revolving Lenders shall be necessary to amend the provisions of Section 2.12(c) providing for the default rate of interest as to any Revolving Loans or unreimbursed LC Disbursements, or to waive any obligations of any Borrower or any Account Party to pay interest at such default rate and (B) only the consent of the Required Term Lenders shall be necessary to amend the provisions of Section 2.12(c) providing for the default rate of interest as to any Term Loans, or to waive any obligations of any Borrower or any Account Party to pay interest at such default rate and (C) any amendment to Section 2.10(e) or any other change to any repayment of the Term

Loans from any Consolidated Excess Cash Flow may be waived or modified solely with the written consent of the Required Term Lenders,

(iv) change the order of application of funds provided in Section 2.09(g) and 2.17(h), or the provisions in Sections 2.22, 2.23 and 9.02(e) with respect to the order of application of funds, without the consent of each Lender directly affected thereby;

(v) change Section 2.17(b) or (c) in a manner that would alter the pro rata sharing of payments required thereby, without the written consent of each Lender,

(vi) change any of the provisions of this Section or the definition of "Required Lenders", "Required Revolving Lenders", "Supermajority Lenders", "Required Term Lenders" or any other provision of any Loan Document specifying the number or percentage of Lenders required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender in the case of the definition of "Required Lenders", each Revolving Lender in the case of the definition of "Required Revolving Lenders", each Lender in the case of "Supermajority Lenders" and each Term Lender in the case of the definition of "Required Term Lenders",

(vii) release the Parent Borrower or Holdings from its Guarantee under the Collateral Agreement (except as expressly provided in the Collateral Agreement), or limit all or substantially all its liability in respect of such Guarantee, without the written consent of each Lender,

(viii) release all or substantially all of the Loan Parties from their Guarantees under the Collateral Agreement (except as expressly provided in the Collateral Agreement), or limit all or substantially all their liability in respect of such Guarantees, without the written consent of each Lender,

(ix) release all or substantially all of the Collateral from the Liens of the Collateral Agreement (except as expressly provided in the Collateral Agreement) without the written consent of each Lender;

(x) change Section 2.05(k)(i) in a manner that would alter the participation obligation of any Lender, without the written consent of such Lender;

(xi) permit any Loan Party to assign its rights under the Loan Documents, without the written consent of each Lender;

(xii) increase the percentages applied to eligible assets in the definition of the Borrowing Base, without the consent of each Lender;

(xiii) except as otherwise provided in clause (xii) above as to an increase in such percentages, change the definition of the term "Borrowing Base" or any component definition thereof if as a result thereof the amounts available to be borrowed by the Borrowers would be increased, without the written consent of Supermajority Lenders and Required Term Lenders, provided, that, (A) the foregoing shall not limit the discretion of the Co-Collateral Agents to change, establish or eliminate any Reserves, and (B) in no event shall the amount of the Term Loan Reserve be reduced below the principal amount of the Term Loans without the written consent of each Term Lender;

(xiv) except as expressly permitted herein or in any other Loan Document, subordinate the Obligations hereunder or the Liens granted hereunder or under the other Loan

(xv) amend, modify or waive any terms of Section 8.11 hereof, or amend the definition of “Co-Collateral Agents”, in each case without the consent of each of the Co-Collateral Agents; and, provided, that, (1) no amendment, waiver or consent shall, unless in writing and signed by the applicable Issuing Bank in addition to the Lenders required above, affect the rights or duties of such Issuing Bank under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (2) no amendment, waiver or consent shall, unless in writing and signed by the Swingline Lender in addition to the Lenders required above, affect the rights or duties of the Swingline Lender under this Agreement; (3) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent or Term Agent, as applicable, in addition to the Lenders required above, affect the rights or duties of the Administrative Agent or Term Agent, as applicable, under this Agreement or any other Loan Document; (4) no amendment, waiver or consent shall, unless in writing and signed by the affected Co-Collateral Agent in addition to the Lenders required above, affect any rights, duties or discretion of such affected Co-Collateral Agent under this Agreement or any other Loan Document, and (5) any fee letters may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Revolving Commitment of such Lender may not be increased or extended without the consent of such Lender.

(c) Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no provider or holder of any Secured Swap Obligations, Secured Treasury Services Obligations, or Secured Supply Chain Obligations shall have any voting or approval rights hereunder (or be deemed a Lender) solely by virtue of its status as the provider or holder of such agreements or products or the Obligations owing thereunder, nor shall the consent of any such provider or holder be required (other than in their capacities as Lenders, to the extent applicable) for any matter hereunder or under any of the other Loan Documents, including as to any matter relating to the Collateral or the release of Collateral or any Loan Party.

(d) Notwithstanding the foregoing, (i) the consent of the Required Lenders shall not be required to amend this Agreement to increase the total Commitments pursuant to Section 2.22 and to make other changes incidental thereto or contemplated thereby and (ii) this Agreement may be amended by an agreement in writing entered into by the Parent Borrower, the Administrative Agent and the Term Agent to cure any ambiguity, omission, defect or inconsistency; provided that, in the case of clause (ii), the Lenders shall have received at least five Business Days’ prior written notice thereof and the Administrative Agent shall not have received, within five Business Days of the date of such notice to the Lenders, written notice from the Required Lenders to the effect that the Required Lenders object to such amendment.

(e) Notwithstanding anything to the contrary (but subject to Section 9.02(b)(iv) to the extent provided therein), this Agreement may be amended (or deemed amended) or amended and restated, in whole or in part, with the written consent of the Required Revolving Lenders and the Required Term Lenders, the Administrative Agent, the Term Agent and the Parent Borrower to (i) add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding hereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the existing facilities and the accrued interest and fees in respect thereof, (ii) to include, as appropriate, Lenders holding such credit facilities in any required

vote or action of the Required Lenders, Required Revolving Lenders, Required Term Lenders or of the Lenders of each facility under this Agreement and (iii) to provide class protection for any additional credit facilities in a manner consistent with those provided the original facilities pursuant to the provisions of this Agreement originally in effect. Any payments in respect of obligations under such additional credit facilities shall only be applied to such obligations either *pari passu* with, or after the payment in full of, the principal of the Term Loans pursuant to the priority of application of payments set forth in this Agreement.

(f) If, in connection with any proposed change, waiver, discharge or termination of or to any of the provision of this Agreement and/or any other Loan Document requiring the consent of “each Lender” or “each Lender directly affected thereby”, the consent of the Required Lenders, Required Revolving Lenders or Required Term Lenders, as the case may be, is obtained, but the consent of other necessary Lenders is not obtained (any such Lender whose

consent is necessary but not obtained being referred to herein as a “Non-Consenting Lender”), then the Parent Borrower may, upon prior written notice to the Administrative Agent and the Non-Consenting Lender, elect to replace such Non-Consenting Lender as a Lender party to this Agreement; provided that, concurrently with such replacement, (i) another bank or other entity shall agree, as of such date, to purchase (and the Non-Consenting Lender shall be obligated to sell) for cash the Loans and other Obligations due to the Non-Consenting Lender pursuant to an Assignment and Assumption and to become a Lender for all purposes under this Agreement and to assume all obligations of the Non-Consenting Lender to be terminated as of such date and to comply with the requirements of Section 9.04(b) (provided that each such bank or other entity, if not already a Lender (or an Affiliate of a Lender) hereunder, shall be subject to the approval of the Administrative Agent (not to be unreasonably withheld)), (ii) the replacement Lender shall pay the processing and recordation fee referred to in Section 9.04(b)(ii)(C), if applicable, in accordance with the terms of such Section, (iii) the replacement Lender shall grant its consent with respect to the applicable proposed change, waiver, discharge or termination and (iv) the replacement Lender shall pay to such Non-Consenting Lender in same day funds on the day of such replacement (1) all principal, interest, fees and other amounts then accrued but unpaid to such Non-Consenting Lender by the Borrowers and the Account Parties hereunder to and including the date of termination, including, without limitation, payments due to such Non-Consenting Lender under Sections 2.14 and 2.16, and (2) an amount, if any, equal to the payment which would have been due to such Non-Consenting Lender on the day of such replacement under Section 2.15 had the Loans of such Non-Consenting Lender been prepaid on such date rather than sold to the replacement Lender. In connection with any such replacement, if the Non-Consenting Lender does not execute and deliver to the Administrative Agent a duly completed Assignment and Assumption and/or any other documentation necessary to reflect such replacement by the later of (a) the date on which the replacement Lender executes and delivers such Assignment and Assumption and/or such other documentation and (b) the date as of which all obligations of the Borrowers and the Account Parties owing to the Non-Consenting Lender relating to the loans and participations so assigned shall be paid in full by the replacement Lender to such Non-Consenting Lender, then such Non-Consenting Lender shall be deemed to have executed and delivered such Assignment and Assumption and/or such other documentation as of such date and the applicable Borrowers and/or Account Parties shall be entitled (but not obligated) to execute and deliver such Assignment and Assumption and/or such other documentation on behalf of such Non-Consenting Lender.

SECTION 9.03. Expenses; Indemnity; Damage Waiver.

(a) The Parent Borrower and the other Loan Parties, jointly and severally, shall pay (i) all reasonable and documented out-of-pocket expenses and customary administrative charges incurred by Administrative Agent, Revolving Agent, Term Agent, each Co-Collateral Agent, the Lead Arrangers, Swingline Lender and their respective Affiliates in connection with due diligence, structuring, negotiation, arrangement, syndication, restructuring, administration, or amending of this Agreement or the

other Loan Documents and the financing arrangements set forth herein or therein, including, without limitation, reasonable legal fees and expenses (provided, that, such legal fees and expenses shall be limited to the reasonable and documented out-of-pocket fees and disbursements of two legal counsels for Administrative Agent, Revolving Agent, Term Agent, each Co-Collateral Agent, Swingline Lender, each Issuing Bank, each Lender and Lead Arrangers, taken as a whole, and in addition, one local or special counsel in each applicable jurisdiction for such Persons, taken as a whole, and in the case of an actual conflict of interest where the party affected by such conflict informs Parent Borrower of such conflict and thereafter retains its own counsel, one counsel for such affected person), provided, that, Lead Arrangers shall only be reimbursed for expenses incurred in connection with the syndication of the credit facility under this Agreement, (ii) all reasonable and documented out-of-pocket expenses incurred by each Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder, (iii) all reasonable and documented out-of-pocket expenses incurred by Administrative Agent, any Co-Collateral Agent, any Issuing Bank or any Lender limited to the reasonable legal fees and expenses of the counsels set forth above, in connection with the enforcement or protection of its rights in connection with the Loan Documents, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such reasonable out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit and (iv) all reasonable fees associated with, and

all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and the Co-Collateral Agents in connection with, filing and search charges, recording taxes, collateral monitoring, collateral reviews, field examinations and appraisals (including reasonable fees and expenses of advisors and professionals engaged by the Administrative Agent relating thereto). This Section 9.03(a) shall not apply with respect to Taxes other than any Taxes that represent losses or damages arising from any non-Tax claim.

(b) To the fullest extent permitted by applicable law, Parent Borrower and each other Loan Party (each, an “Indemnifying Party” and collectively, “Indemnifying Parties”) agrees that it will indemnify, defend, and hold harmless Administrative Agent, Revolving Agent, Term Agent, each Co-Collateral Agent, each Issuing Bank, each Lead Arranger and each Lender and each of their affiliates and controlling persons and the respective officers, directors, employees, agents, representatives, successors and assigns of the foregoing (each, an “Indemnified Party”, and collectively, “Indemnified Parties”) from and against (i) any and all losses, claims, damages, expenses or liabilities to which any Indemnified Party may become subject arising out of or in connection with this Agreement, the other Loan Documents, any of the transactions contemplated herein or therein or the actual or proposed use of the Letters of Credit or the proceeds of the Loans, and reasonable and documented out-of-pocket costs and expenses actually incurred in connection therewith, (ii) any and all actions, suits, proceedings and investigations in respect thereof, and (iii) any and all reasonable and documented out-of-pocket legal fees or other reasonable and documented out-of-pocket costs, expenses or disbursements in giving testimony or furnishing documents in response to a subpoena or otherwise (including, without limitation, the reasonable and documented out-of-pocket costs, expenses and disbursements, as and when incurred, of investigating, preparing or defending any such action, proceeding or investigation (whether or not in connection with litigation in which any of the Indemnified Parties is a party) and including, without limitation, any and all claims, damages, obligations, penalties, judgments, awards, and liabilities, reasonable and documented out-of-pocket costs, expenses and disbursements, resulting from any act or omission of any of the Indemnified Parties), directly or indirectly, caused by, relating to, based upon, arising out of or in connection with this Agreement, the Existing ABL Credit Agreement, the other Loan Documents, any of the transactions contemplated herein or therein or the actual or proposed use of the Letters of Credit or the proceeds of the Advances regardless of whether any such Indemnified Party is a party thereto (and regardless of whether such matter is initiated by a third party or by any Indemnifying Party or any of its affiliates or equity holders) (provided, that, the obligations to reimburse any Indemnified Party for legal fees and expenses shall be limited to the reasonable legal fees and expenses of one firm of counsel for all such Indemnified Parties taken as a whole, and in the case of an actual conflict of interest where the Indemnified Party

affected by such conflict informs Parent Borrower of such conflict and thereafter retains its own counsel), one counsel for such affected Indemnified Party); provided, that, such indemnity agreement shall not, as to any Indemnified Party, apply to (i) losses, claims, damages, obligations, penalties, judgments, awards, liabilities, costs, expenses, disbursements, actions, suits, proceedings or investigations that do not involve an act or omission of any Indemnifying Party or any of any Indemnifying Party’s officers, directors, employees, agents, advisors and representatives or affiliates and that are solely between or among the Indemnified Parties or solely between or among Indemnified Parties and their respective Related Parties (other than claims brought against an Indemnified Party in its capacity as an arranger, bookrunner, agent or similar role in connection with this Agreement), (ii) any portion of any such loss, claim, damage, obligation, penalty, judgment, award, liability, cost, expense or disbursement of an Indemnified Party, or action, suit, proceeding or investigation involving an Indemnified Party, to the extent a court of competent jurisdiction determines pursuant to a final non-appealable judgment that such loss, claim, damage, obligation, penalty, judgment, award, liability, cost, expense or disbursement of an Indemnified Party, or action, suit, proceeding or investigation to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnified Party or any of such Indemnified Party’s Related Parties, (iii) losses, claims, damages, obligations, penalties, judgments, awards, liabilities, costs, expenses, disbursements, actions, suits, proceedings or investigations that arise from any material breach by such Indemnified Party or its Related Parties of its obligations under this Agreement as determined by the final, non-appealable order of a court of competent jurisdiction, or (iv) any settlement entered into by any Indemnified Party or any of its Related Parties without the prior written consent of Parent Borrower (such consent not to be unreasonably withheld or delayed). This Section 9.03(b) shall not apply with respect to Taxes other than any Taxes that represent losses or damages arising from any non-Tax claim. To the extent that the Parent Borrower or any other Account Party fails to pay any amount required to be paid by it to the Administrative Agent, Revolving Agent, Term Agent, each Co-

Collateral Agent, each Issuing Bank and each Lender under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the applicable Agent, the applicable Issuing Bank or the applicable Swingline Lender, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the applicable Agent, any Co-Collateral Agent, the applicable Issuing Bank or the applicable Swingline Lender in its capacity as such.

(c) If any action, suit, proceeding or investigation is commenced, as to which any Indemnified Party proposes to demand indemnification, it shall notify the Indemnifying Party with reasonable promptness; provided, that, any failure by any of the Indemnified Parties to so notify the Indemnifying Party shall not relieve the Indemnifying Party from its obligations hereunder to the extent that the Indemnifying Party is not materially prejudiced as a result thereof. The Indemnified Parties, shall have the right to retain one firm of counsel for all Indemnified Parties taken as a whole (and in the case of an actual conflict of interest where the Indemnified Party affected by such conflict informs the Parent Borrower of such conflict and thereafter retains its own counsel, one counsel for such affected Indemnified Party), in each case, of its choice to represent the Indemnified Parties, and the Indemnifying Party shall pay the reasonable and documented out-of-pocket fees, expenses, and disbursement of such counsel to the extent required under the immediately preceding paragraph, and such counsel shall, to the extent consistent with its professional responsibilities, cooperate with the Indemnifying Party and any counsel designated by the Indemnifying Party. The Indemnifying Parties shall be liable for any settlement of any claim against any of the Indemnified Parties, to the extent such claim is required to be indemnified by any such Indemnifying Party pursuant to the terms of this Section 9.03 (an "Indemnified Claim") and is made with any Indemnifying Party's prior written consent (not to be unreasonably withheld or delayed). Without the prior written consent of the Administrative Agent, the Revolving Agent and the Term Agent (not to be unreasonably withheld or delayed), an Indemnifying Party shall not settle or compromise any Indemnified Claim, permit a default or consent to the entry of any judgment in

respect thereof, unless such settlement (i) includes an unconditional release of such Indemnified Party in form and substance reasonably satisfactory to such Indemnified Party from all liability or claims that are the subject matter of such proceedings and (ii) does not include any statement as to or any admission of fault, culpability, wrongdoing or a failure to act by or on behalf of any Indemnified Party.

(d) No Indemnified Party, Indemnifying Party or other party hereto shall be liable for any damages arising from the use by others of materials obtained through internet, Intralinks, SyndTrak or other similar transmission systems in connection with this Agreement and the financing arrangements contemplated hereby, except to the extent any such damages arise from the gross negligence, bad faith or willful misconduct of such Indemnified Party or any of such Indemnified Party's Related Parties as determined pursuant to a final, non-appealable order of a court of competent jurisdiction. In addition, none of the Indemnified Parties or any Loan Party or any of its or their respective affiliates, directors, officers, employees, advisors, agents, members or representatives shall be responsible or liable for special, indirect, consequential, exemplary, incidental or punitive damages which may be alleged as a result of this Agreement, provided that nothing contained in this sentence shall limit any Loan Party's indemnity and reimbursement obligations as set forth herein (including the Loan Parties' indemnity and reimbursement obligations to indemnify the Indemnified Parties for indirect, special, punitive or consequential damages that are included in any third party claim in connection with which such Indemnified Party is entitled to indemnification hereunder). It is further agreed that the Loan Parties shall have no liability to any person other than the Indemnified Parties to the extent set forth herein, provided that nothing contained in this sentence shall limit the Loan Parties' indemnity and reimbursement obligations as set forth herein (including the Loan Parties' indemnity and reimbursement obligations to indemnify the Indemnified Parties with respect to any third party claim in connection with which such Indemnified Party is entitled to indemnification hereunder). These indemnification provisions shall be in addition (but without duplication of) any liability which the Indemnifying Party may have to any of the Indemnified Parties.

(e) All amounts due under clauses (a), (b), (c) and (d) of this Section shall be payable promptly upon Administrative Agent's written demand therefor, but in any event within ten (10) Business Days after such demand.

SECTION 9.04. Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of any Issuing Bank that issues any Letter of Credit), except that (i) neither Holdings, any Borrower nor any Account Party may assign or otherwise transfer any of its rights or obligations hereunder except in a transaction expressly permitted hereby that expressly contemplates such assignment or transfer without the prior written consent of each Lender (and any attempted assignment or transfer by Holdings, any Borrower or any Account Party without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of any Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, any Issuing Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees (other than Holdings or any Subsidiary or Affiliate thereof) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment

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and the Loans at the time owing to it); with the prior written consent (such consent not to be unreasonably withheld) of:

(A) (A) the Parent Borrower, provided that no consent of the Parent Borrower shall be required (i) in the case of an assignment by a Revolving Lender, for an assignment to another Revolving Lender, an Affiliate of a Revolving Lender, or an Approved Revolving Fund or, if a Specified Event of Default has occurred and is continuing, any other assignee and (ii) in the case of an assignment by a Term Lender, (A) for an assignment to another Term Lender, an Affiliate of a Term Lender, or an Approved Term Fund, or, if a Specified Event of Default has occurred and is continuing, any other assignee and (B) no consent of the Parent Borrower shall be required in connection with the initial assignments by Term Agent in connection with the initial syndication of Term Loans to the Persons identified to the Parent Borrower on the allocation list provided to the Parent Borrower prior to the Closing Date via a pdf titled "J. C. Penney Allocations_06.13.14vEXT.pdf"; and

(B) the Administrative Agent (or, in the case of the Term Loans, the Term Agent), the Swingline Lender and each Issuing Bank, provided that no consent of the Administrative Agent (or, in the case of the Term Loans, the Term Agent), the Swingline Lender or an Issuing Bank shall be required for an assignment to an assignee that is a Lender or an Affiliate of a Lender immediately prior to giving effect to such assignment.

(ii) Assignments shall be subject to the following conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender's Commitment, the amount of the Commitment of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$10,000,000 in the case of any Revolving Commitment and not less than \$1,000,000 in the case of any Term Loan, unless each of the Parent Borrower and the Administrative Agent (or, in the case of the Term Loans, Parent Borrower and the Term Agent) otherwise consent, provided that no such consent of the Parent Borrower shall be required if a Specified Event of Default has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent (or, in the case of the Term Loans, the Term Agent) an Assignment and Assumption, together with a processing and recordation fee of \$3,500; provided that such fee shall not apply to any assignment made by a Lender to an Affiliate of such Lender; and

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent (or, in the case of the Term Loans, the Term Agent) an Administrative Questionnaire.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a

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party hereto but shall continue to be entitled to the benefits of Sections 2.14, 2.15, 2.16 and 9.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iv) In the case of the Term Loans, the Term Agent acting for this purpose as an agent of the Borrowers and the Account Parties, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Term Lenders, and principal amount of the Term Loans (and the stated interest thereon) owing to, each Term Lender pursuant to the terms hereof from time to time (the "Term Loan Register"). The entries in the Term Loan Register shall be conclusive, absent manifest error, and Holdings, the Borrowers, the Account Parties, the Administrative Agent, the Co-Collateral Agents, the Issuing Banks and the Lenders shall treat each Person whose name is recorded in the Term Loan Register pursuant to the terms hereof as a Term Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Term Loan Register shall be available for inspection by the Parent Borrower, any Issuing Bank, any Lender and the Administrative Agent, at any reasonable time and from time to time upon reasonable prior notice.

(v) In the case of the Revolving Loans, the Revolving Agent, acting for this purpose as an agent of the Borrowers and the Account Parties, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Revolving Lenders, and the Revolving Commitment of, and principal amount of the Revolving Loans (and the stated interest thereon) and LC Disbursements owing to, each Revolving Lender pursuant to the terms hereof from time to time (the "Revolving Loan Register"). The entries in the Revolving Loan Register shall be conclusive, absent manifest error, and Holdings, the Borrowers, the Account Parties, the Administrative Agent, the Co-Collateral Agents, the Issuing Banks and the Lenders shall treat each Person whose name is recorded in the Revolving Loan Register pursuant to the terms hereof as a Revolving Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Revolving Loan Register shall be available for inspection by the Parent Borrower, any Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(vi) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent (or, in the case of the Term Loans, the Term Agent) shall accept such Assignment and Assumption and the information contained therein shall be recorded in the Term Loan Register or the Revolving Loan Register, as applicable. No assignment shall be effective for purposes of this

Agreement unless it has been recorded in the Term Loan Register or Revolving Loan Register, as applicable, as provided in this paragraph.

(vii) In the case of any assignment for which the Parent Borrower's consent is not required, the Administrative Agent (or, in the case of the Term Loans, the Term Agent) shall provide the Parent Borrower with notice promptly upon receipt of an Assignment and Assumption with respect to such assignment.

(c) (i) Any Lender may, without the consent of Holdings, any Borrower, any Account Party, the Administrative Agent, the Term Agent, any Issuing Bank or any Swingline Lender, sell participations to one or more banks or other entities (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged,

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(B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) Holdings, the Borrowers, the Account Parties, the Administrative Agent, the Term Agent, each Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For any avoidance of doubt, such Lender shall be responsible for the indemnity under Section 2.16(d) with respect to any payments made to such Participant. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce the Loan Documents and to approve any amendment, modification or waiver of any provision of the Loan Documents; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that directly affects such Participant. Subject to paragraph (c)(ii) of this Section, Holdings, the Borrowers and the Account Parties agree that each Participant shall be entitled to the benefits of Sections 2.14, 2.15 and 2.16 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender, provided that such Participant agrees to be subject to Sections 2.17(c) and 2.18 as though it were a Lender. Each Lender that sells a participation, acting solely for this purpose as a non-fiduciary agent of the Borrowers and the Account Parties, shall maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under this Agreement (the "Participant Register"); provided, however, that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans, Letters of Credit or its other obligations under any Loan Document) except to the extent that such disclosure is necessary to establish that such Commitment, Loan, Letter of Credit or other obligation is in "registered form" under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender, Holdings, the Borrowers, the Account Parties, the Administrative Agent, the Issuing Banks and the Lenders shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

(ii) A Participant shall not be entitled to receive any greater payment under Section 2.14 or 2.16 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the prior written consent of the Parent Borrower (not to be unreasonably withheld or delayed), provided that the Participant shall be subject to the provisions of Sections 2.17(c) and 2.18.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that

no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(e) Notwithstanding anything to the contrary herein, no assignment may be made or participation sold to no assignment or participation may be made to (i) natural persons, (ii) any Disqualified Lenders that have been identified to Administrative Agent, Revolving Agent and Term Agent and whose identity is available to each Revolving Lender on request, (iii) any Loan Party or (iv) any of the Affiliates or subsidiaries of Loan Parties. Administrative Agent, Revolving Agent and Term Agent shall not have any responsibility or obligation to determine whether any Lender or potential Lender is a Disqualified Lender and will have no liability with respect to any assignment made to a Disqualified Lender.

SECTION 9.05. Survival. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, any Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid (other than unasserted indemnification, tax gross up, expense reimbursement or yield protection obligations, in each case for which no claim has been made) or any Letter of Credit is outstanding (except to the extent any such Letter of Credit has had cash collateral or other credit support (satisfactory to the applicable Issuing Bank(s) in its or their sole discretion) issued therefor and the Issuing Banks have agreed (in their sole discretion) to release the Lenders from their participations in such Letters of Credit) and so long as the Commitments have not expired or terminated. The provisions of Sections 2.14, 2.15, 2.16 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof.

SECTION 9.06. Integration; Effectiveness. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

SECTION 9.07. Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 9.08. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Issuing Bank and Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Issuing Bank or Lender to or for the credit or the account of any Borrower or any Account Party against any of and all the obligations of such Borrower or such Account Party (as the case may be) now or hereafter existing under this Agreement held by such Issuing Bank or Lender, irrespective of whether or not such Issuing Bank or Lender shall have made any demand under this Agreement and although such obligations may be unmatured; provided that in the event that any Defaulting Lender shall exercise any such right of set-off, (a) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.17(h) and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders and (b) the Defaulting Lender shall provide