

(a) Accounts that are not subject to a perfected first-priority Lien securing the Obligations pursuant to the terms of the Collateral Agreement, or that are subject to any Lien whatsoever other than (i) Permitted Encumbrances that do not have priority over the Lien securing the Obligations pursuant to the terms of the Collateral Agreement or (ii) the Lien to secure Indebtedness under the Existing Term Loan Agreement subject to the terms of the Existing Intercreditor Agreement or other Intercreditor Agreement with respect thereto (provided that the Co-Collateral Agents may in their Permitted Discretion elect to deem as an Eligible Account any Account subject to a Specified Involuntary Lien in respect of which the Co-Collateral Agents shall have established an appropriate Reserve);

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(b) Accounts (i) with respect to which the scheduled due date is more than 60 days after the original invoice date, (ii) which are unpaid more than (A) 90 days after the date of the original invoice therefor or (B) 60 days after the original due date (it being understood that, for purposes of this clause (b), the original invoice date and the original due date shall be determined without giving effect to any change in the invoice date or the due date as a result of any Account being invoiced more than once), or (iii) which have been written off the books of a Loan Party or otherwise designated as uncollectible (in determining the aggregate amount from the same Account Debtor that is unpaid hereunder there shall be excluded the amount of any net credit balances relating to Accounts due from an Account Debtor which are unpaid more than 90 days from the date of invoice or more than 60 days from the due date);

(c) Accounts which are owing by an Account Debtor for which more than 50% of the Accounts owing from such Account Debtor and its Affiliates are ineligible hereunder;

(d) Accounts which are owing by an Account Debtor to the extent the aggregate amount of Accounts owing from such Account Debtor and its Affiliates to (i) such Loan Party exceeds 15% (or 20% in the case of any Investment Grade Account Debtor) of the aggregate amount of Eligible Accounts of such Loan Party or (ii) all Loan Parties exceeds 15% (or 20% in the case of any Investment Grade Account Debtor) of the aggregate amount of Eligible Accounts of all Loan Parties.

(e) Accounts with respect to which any covenant, representation, or warranty contained in this Agreement or in any applicable Security Document has been breached in any material respect or is not true in all material respects;

(f) Accounts which (i) do not arise from the sale of goods or performance of services in the ordinary course of business, (ii) are not evidenced by an invoice or other documentation reasonably satisfactory to the Administrative Agent which has been sent to the Account Debtor, (iii) represent a progress billing, (iv) are contingent upon any Loan Party's completion of any further performance, (v) represent a sale on a bill-and-hold, guaranteed sale, sale-and-return, sale on approval, consignment, cash-on-delivery or any other repurchase or return basis or (vi) relate to payments of interest;

(g) Accounts for which the goods giving rise to such Account have not been shipped to the Account Debtor or for which the services giving rise to such Account have not been performed by such Loan Party;

(h) Accounts with respect to which any check or other instrument of payment has been returned uncollected for any reason to the extent of such returned payment;

(i) Accounts which are owed by an Account Debtor that (i) has applied for or been the subject of a petition or application for, suffered, or consented to the appointment of, any receiver, custodian, trustee, administrator, liquidator or similar official for such Account Debtor or its assets, (ii) has had possession of all or a material part of its property taken by any receiver, custodian, trustee or liquidator, (iii) filed, or had filed against it, under any insolvency laws, any assignment, application, request or petition for liquidation, reorganization, compromise, arrangement, adjustment of debts, stay of proceedings, adjudication as bankrupt, winding-up, or voluntary or involuntary case or proceeding, (iv) has admitted in writing its inability, or is generally unable to, pay its debts as they become due, (v) has become insolvent, or (vi) ceased operation of its business; provided that, notwithstanding the foregoing, the Co-Collateral Agents may make eligible in

their Permitted Discretion up to \$10,000,000 of post-petition Accounts owing by any Account Debtor that is a debtor-in-possession under Federal bankruptcy laws;

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- (j) Accounts which are owed by any Account Debtor which has sold all or substantially all of its assets;
- (k) Accounts which are owed by an Account Debtor which (i) does not maintain its chief executive office in the United States or (ii) is not organized under any applicable law of the United States, any State of the United States or the District of Columbia unless, in any such case, such Account is backed by a letter of credit acceptable to the Administrative Agent which is in the possession of, has been assigned to and is directly drawable by the Administrative Agent; provided that the Co-Collateral Agents may make up to \$10,000,000 of such Accounts eligible in their Permitted Discretion;
- (l) Accounts which are owed in any currency other than dollars;
- (m) Accounts which are owed by any Government Authority (excluding states of the United States of America) of any country and except to the extent that the subject Account Debtor is the federal government of the United States of America and has complied with the Federal Assignment of Claims Act of 1940, as amended (31 USC. § 3727 et seq. and 41 USC. § 15 et seq.), and any other steps necessary to perfect the Lien of the Administrative Agent in such Account have been complied with to the reasonable satisfaction of the Administrative Agent; provided that the Co-Collateral Agents may make up to \$10,000,000 of such Accounts eligible in their Permitted Discretion;
- (n) Accounts which are owed by any Affiliate, employee, officer, director or stockholder of any Loan Party;
- (o) Accounts which are owed by an Account Debtor or any Affiliate of such Account Debtor to which any Loan Party is indebted, but only to the extent of such indebtedness, or is subject to any security, deposit, progress payment, retainage or other similar advance made by or for the benefit of an Account Debtor, in each case to the extent thereof;
- (p) Accounts which are subject to any counterclaim, deduction, defense, setoff or dispute but only to the extent of any such counterclaim, deduction, defense, setoff or dispute;
- (q) Accounts which are owed by an Account Debtor located in any jurisdiction which requires filing of a "Notice of Business Activities Report" or other similar report in order to permit such Loan Party to seek judicial enforcement in such jurisdiction of payment of such Account, unless (i) such Loan Party has filed such report or qualified to do business in such jurisdiction or (ii) the Administrative Agent is satisfied in its Permitted Discretion that the failure to file such report and inability to seek judicial enforcement can be remedied without material delay or material cost;
- (r) Accounts with respect to which such Loan Party has made any agreement with the Account Debtor for any reduction thereof, other than discounts and adjustments given in the ordinary course of business, or any Account which was partially paid and such Loan Party created a new receivable for the unpaid portion of such Account;
- (s) Accounts which do not comply in all material respects with the requirements of all applicable laws and regulations, whether federal, provincial, territorial, state or local, including the Federal Consumer Credit Protection Act, the Federal Truth in Lending Act and Regulation Z of the Board;
- (t) Accounts which are for goods that have been sold under a purchase order or pursuant to the terms of a contract or other agreement or understanding (written or oral) that indicates or purports

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that any Person other than such Loan Party has or has had an ownership interest in such goods, or which indicates any party other than such Loan Party as payee or remittance party;

(u) Accounts which were created on cash on delivery terms;

(v) Accounts which are subject to any limitation on assignments or other security interests (whether arising by operation of law, by agreement or otherwise), unless the Administrative Agent has determined that such limitation is not enforceable;

(w) Accounts which are governed by the laws of any jurisdiction other than the United States, any State thereof or the District of Columbia; provided that the Co-Collateral Agents may make up to \$10,000,000 of such Accounts eligible in their Permitted Discretion;

(x) Accounts in respect of which the Account Debtor is a consumer within applicable consumer protection legislation;

(y) Accounts due to a Loan Party from major credit card processors, whether or not constituting Eligible Credit Card Receivables;

(z) Accounts acquired in an acquisition permitted under this Agreement and any Accounts (“Additional Accounts”) owned by an Additional Grantor that the Parent Borrower shall have elected to designate as “Collateral” under the Collateral Agreement, unless in each case the Co-Collateral Agents shall have conducted such due diligence as the Co-Collateral Agents may reasonably require, all of the results of the foregoing to be reasonably satisfactory to the Co-Collateral Agents; provided, that, (i) the Co-Collateral Agents may, at their option, deem such Additional Accounts to be Eligible Accounts prior to the conduct of such due diligence and (ii) the aggregate amount of such Additional Accounts deemed to be Eligible Accounts by Co-Collateral Agents pursuant to clause (i), together with the amount of Additional Inventory that may be deemed to be Eligible Inventory by Co-Collateral Agents pursuant to clause (l) (i) of the definition of Eligible Inventory, shall not at any time in the aggregate exceed the lesser of (A) \$117,500,000 or (B) 5% of the Borrowing Base at such time; or

(aa) Accounts which the Co-Collateral Agents in their Permitted Discretion determine may not be paid by reason of the Account Debtor’s inability to pay.

In determining the amount of an Eligible Account, the face amount of an Account may, in the Administrative Agent’s Permitted Discretion, be reduced by, without duplication, to the extent not reflected in such face amount, (i) the amount of all accrued and actual discounts, claims, credits or credits pending, promotional program allowances, price adjustments, finance charges or other allowances (including any amount that such Loan Party may be obligated to rebate to an Account Debtor pursuant to the terms of any agreement or understanding (written or oral)) and (ii) the aggregate amount of all cash received in respect of such Account but not yet applied by such Loan Party to reduce the amount of such Account.

“Eligible Credit Card Receivables” means, as of any date of determination, Accounts due to a Loan Party from major credit or debit card processors (including VISA, Mastercard, American Express, Diners Club, DiscoverCard, Paymentech, LLC and Banc of America Merchant Services, LLC, but excluding GE Money Bank and any successor thereto under J. C. Penney Corporation’s existing private label credit card processor agreement) arising in the ordinary course of business (whether in respect of a credit card, debit card, prepaid card, or other payment card transaction) and which have been earned by performance, that are not excluded as ineligible by virtue of one or more of the criteria set forth below. None of the following shall be Eligible Credit Card Receivables:

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- (a) Accounts that have been outstanding for more than five Business Days from the date of sale or for such longer period as may be approved by the Co-Collateral Agents;
- (b) Accounts with respect to which a Loan Party does not have good, valid and marketable title thereto;
- (c) Accounts that are not subject to a perfected first-priority Lien securing the Obligations pursuant to the terms of the Collateral Agreement, or that are subject to any Lien whatsoever other than (i) Permitted Encumbrances that do not have priority over the Lien securing the Obligations pursuant to the terms of the Collateral Agreement or (ii) the Lien to secure Indebtedness under the Existing Term Loan Agreement subject to the terms of the Existing Intercreditor Agreement or other Intercreditor Agreement with respect thereto (provided that the Co-Collateral Agents may in their Permitted Discretion elect to deem as an Eligible Credit Card Receivable any Account subject to a Specified Involuntary Lien in respect of which the Co-Collateral Agents shall have established an appropriate Reserve);
- (d) Accounts which are disputed, or with respect to which a claim, counterclaim, offset or chargeback has been asserted, by the related credit card processor (but only to the extent of such dispute, counterclaim, offset or chargeback) (it being the intent that chargebacks in the ordinary course by the credit card processors shall not be deemed violative of this clause);
- (e) Accounts arising from J. C. Penney Corporation's private label credit card receivables or any other private label credit card receivables of the Loan Parties, other than Accounts owed by Persons that are not Loan Parties or Affiliates of Loan Parties and in respect of which no Person has recourse to any Loan Party through any repurchase, guarantee or other arrangement, but excluding those of GE Money Bank and any successor thereto under J. C. Penney Corporation's existing private label credit card processor agreement; or
- (f) Accounts due from major credit card processors (other than Visa, Mastercard, American Express, Diners Club, Discover, Paymentech, LLC and Banc of America Merchant Services, LLC) which the Co-Collateral Agents determine in their Permitted Discretion to be unlikely to be collected.

"Eligible In-Transit Inventory," means, as of any date of determination, without duplication of other Eligible Inventory, Inventory (the purchase of which may be supported by a Letter of Credit or any other letter of credit reasonably acceptable to the Co-Collateral Agents (which is issued by a bank reasonably acceptable to the Co-Collateral Agents)): (a) (i) which has been delivered to a carrier in a foreign port or foreign airport for receipt by a Loan Party in the United States within 60 days of the date of determination, but which has not yet been received by a Loan Party or (ii) which has been delivered to a carrier in the United States for receipt by a Loan Party in the United States within five Business Days of the date of determination, but which has not yet been received by a Loan Party, (b) for which the purchase order is in the name of a Loan Party and title has passed to a Loan Party, (c) except as otherwise agreed by the Co-Collateral Agents, for which the document of title or waybill reflects a Loan Party as consignee (along with delivery to a Loan Party or its customs broker of the documents of title, to the extent applicable, with respect thereto (which documents may be in electronic format)), (d) as to which the Administrative Agent has control over the documents of title, to the extent applicable, which evidence ownership of the subject Inventory (such as by the delivery of a Customs Broker Agreement), (e) which is insured in accordance with the provisions of this Agreement and the other Loan Documents, including marine cargo insurance; and (f) which otherwise is not excluded from the definition of Eligible Inventory; provided that the Co-Collateral Agents may, upon notice to the Parent Borrower, exclude any particular Inventory from the definition of "Eligible In-Transit Inventory" in the event that the Co-Collateral Agents

determine that such Inventory is subject to any Person's right or claim which is (or is capable of being) senior to, or pari passu with, the Lien of the Administrative Agent (provided that the Co-Collateral Agents may in their Permitted Discretion elect to deem as Eligible In-Transit Inventory any such Inventory subject to a Specified Involuntary Lien in respect of which the Co-Collateral Agents shall have established an appropriate Reserve), or may otherwise adversely impact the ability of the Administrative Agent to realize upon such Inventory.

"Eligible Inventory" means, as of any date of determination, without duplication, (1) Eligible In-Transit Inventory and (2) Inventory comprised of finished goods, merchantable and readily saleable to the public in the ordinary course, in each case that are not excluded as ineligible by virtue of one or more of the criteria set forth below. None of the following shall be Eligible Inventory:

- (a) Inventory that is not solely owned by a Loan Party, or is leased by or is on consignment to a Loan Party, or as to which a Loan Party does not have title thereto;
- (b) Inventory (other than any Eligible In-Transit Inventory) that is not located in the United States of America (or the Commonwealth of Puerto Rico);
- (c) Inventory (other than any Eligible In-Transit Inventory) that is not located at a location that is owned or leased by a Loan Party, except to the extent that either (i) the Parent Borrower has furnished the Administrative Agent with a Collateral Access Agreement reasonably acceptable to the Administrative Agent executed by the applicable owner or lessor or (ii) a Reserve in respect of up to 3 months' rent payable under the applicable lease or other agreement with respect thereto is in place; provided, that no such Collateral Access Agreement or Reserves shall be required for the first 180 days following the Closing Date in order for such Inventory to constitute Eligible Inventory;
- (d) Inventory that is located at a distribution center, retail store or other location that is leased by a Loan Party, except to the extent that (i) an appropriate Reserve of up to 3 months' rent has been established by the Co-Collateral Agents in their Permitted Discretion with respect to such distribution center, retail store or other location or, in the case of any retail store in any jurisdiction not providing for a common law or statutory landlord's lien on the personal property of tenants, which lien would be superior to that of the Administrative Agent, the Co-Collateral Agents have in their Permitted Discretion determined that no Reserve is required, or (ii) the Parent Borrower has furnished the Administrative Agent with a Collateral Access Agreement on terms reasonably acceptable to the Administrative Agent executed by the Person owning any such distribution center, retail store or other location; provided that no such Collateral Access Agreement or Reserve shall be required for the first 180 days following the Closing Date in order for such Inventory to constitute Eligible Inventory;
- (e) Inventory that represents goods which (i) are obsolete, damaged, defective, "seconds," classified by the Loan Parties as salvage or aged Inventory, or otherwise unmerchantable, (ii) are classified by the Loan Parties as awaiting, or are otherwise being held for, quality control inspection, (iii) are to be returned to the vendor, (iv) are work in process, custom items or raw materials or that constitute spare parts or supplies used or consumed in the Loan Parties' business, (v) are bill and hold goods, or (vi) are not in compliance in all material respects with all applicable standards imposed by any Governmental Authority having regulatory authority with respect thereto of which any Loan Party is aware;
- (f) except as otherwise agreed by the Co-Collateral Agents, Inventory that represents goods that do not conform in all material respects to the representations and warranties contained in this Agreement or any of the Security Documents;

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- (g) Inventory that is not subject to a perfected first-priority Lien securing the Obligations pursuant to the terms of the Collateral Agreement, or that is subject to any Lien whatsoever other than (i) Permitted Encumbrances that do not have priority over the Lien securing the Obligations pursuant to the terms of the Collateral Agreement or (ii) the Lien to secure Indebtedness under the Existing Term Loan Agreement subject to the terms of the Existing Intercreditor Agreement or other Intercreditor Agreement with respect thereto (provided that the Co-Collateral Agents may in their

Permitted Discretion elect to deem as Eligible Inventory any Inventory subject to a Specified Involuntary Lien in respect of which the Co-Collateral Agents shall have established an appropriate Reserve);

(h) Inventory that constitutes packaging and shipping material, labels, manufacturing supplies, display items, samples, bill-and-hold goods, returned or repossessed goods (other than goods that are undamaged and able to be resold in the ordinary course of business), defective goods, unfinished goods, goods held on consignment, goods to be returned to a Loan Party's suppliers or goods which are not of a type held for sale in the ordinary course of business;

(i) Inventory as to which casualty insurance in compliance with the provisions of Section 5.07 is not in effect;

(j) Inventory which has been sold but not yet delivered or Inventory to the extent that any Loan Party has accepted a deposit therefor;

(k) Inventory that is located on real property subject to a Lien granted by a Loan Party in favor of any other Person to secure any Permitted First-Lien Indebtedness or Permitted Second-Lien Indebtedness, except to the extent that (i) such Loan Party has furnished the Administrative Agent with a Collateral Cooperation Agreement executed by such Person or (ii) in the event such Loan Party has not furnished such Collateral Cooperation Agreement, Reserves have been established by the Co-Collateral Agents in their Permitted Discretion; or

(l) Inventory acquired in an acquisition permitted under this Agreement, and any inventory ("Additional Inventory") owned by an Additional Grantor that the Parent Borrower shall have elected to designate as "Collateral" under the Collateral Agreement, unless in each case the Co-Collateral Agents shall have received or conducted (i) appraisals, from appraisers reasonably satisfactory to the Administrative Agent, of such Inventory to be acquired in such acquisition or such Additional Inventory and (ii) such other due diligence as the Co-Collateral Agents may reasonably require, all of the results of the foregoing to be reasonably satisfactory to the Co-Collateral Agents; provided, that, (i) the Co-Collateral Agents may, at their option, deem such Additional Inventory to be Eligible Inventory prior to receiving or the conduct of such appraisals and such due diligence and (ii) the aggregate amount of such Additional Inventory that may be deemed to be Eligible Inventory by Co-Collateral Agents pursuant to clause (i), together with the amount of Additional Accounts that may be deemed to be Eligible Accounts by Co-Collateral Agents pursuant to clause (z)(i) of the definition of Eligible Accounts, shall not at any time in the aggregate exceed the lesser of (A) \$117,500,000 or (B) 5% of the Borrowing Base at such time.

"Environmental Laws" means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the management, release or threatened release of any Hazardous Material or to health and safety matters.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of Holdings or any

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Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equity Interests" means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the final rules and regulations promulgated thereunder, as from time to time in effect.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with Holdings, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) a failure by any Plan to satisfy the minimum funding standard (as defined in Section 412 of the Code or Section 302 of ERISA) applicable to such Plan, whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) a determination that any Plan is, or is expected to be, in “at-risk” status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code); (e) the incurrence by Holdings or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (f) the receipt by Holdings or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans (other than a termination initiated by Holdings or an ERISA Affiliate) or to appoint a trustee to administer any Plan; (g) the incurrence by Holdings or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; (h) the receipt by Holdings or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from Holdings or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA or in “endangered” or “critical” status (within the meaning of Section 432 of the Code or Section 305 of ERISA); (i) the occurrence of a non-exempt “prohibited transaction” (as defined in Section 4975 of the Code or Section 406 of ERISA) with respect to which Holdings or any ERISA Affiliate is a “disqualified person” (within the meaning of Section 4975 of the Code) or a “party in interest” (within the meaning of Section 406 of ERISA) or could otherwise be liable; or (j) any other event or condition with respect to a Plan or Multiemployer Plan that could result in liability of Holdings or any ERISA Affiliate.

“Eurodollar”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

“Event of Default” has the meaning assigned to such term in Section 7.01.

“Excluded Account” means (i) any Deposit Account or Securities Account containing (A) cash or cash equivalents in an amount of up to \$10,000,000 in any individual Deposit Account or

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Securities Account, but no more than \$25,000,000 for all Excluded Accounts under this clause (i)(A) in the aggregate or (B) de minimis cash or cash equivalents inadvertently misapplied by the Loan Parties, (ii) any payroll, trust, fiduciary and tax withholding account funded in the ordinary course of business, (iii) any zero balance disbursement account, and (iv) any zero balance payables accounts and other Deposit Accounts used, in the ordinary course of business, solely for the payment of salaries and wages, workers’ compensation, pension benefits and similar expenses.

“Excluded Subsidiary” means, at any date, any Realty Company that is not a Material Subsidiary as of such date. For purposes of determining whether a Realty Company is a Material Subsidiary, the computations required by the definition of the term “Material Subsidiary” shall be made including the accounts of all Excluded Subsidiaries.

“Excluded Swap Obligation” means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the guaranty of such Loan Party under the Guarantee and Collateral Agreement of, or the grant under a Loan Document by such Loan Party of a security interest to secure, such Swap Obligation (or any guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures

Trading Commission (or the application or official interpretation thereof) by virtue of such Loan Party's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder (determined after giving effect to Section 9.16 hereof and any and all guarantees of such Loan Party's Swap Obligations by other Loan Parties) at the time the guaranty of such Loan Party, or grant by such Loan Party of a security interest, would otherwise have become effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one Swap Agreement, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swap Agreements for which such guaranty or security interest becomes illegal.

"Excluded Taxes" means, with respect to the Administrative Agent, any Lender, any Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of any Loan Party under this Agreement or any other Loan Document: (a) any Other Connection Taxes, (b) with respect to any payment made by or on account of any obligation of any Loan Party to a Lender, any U.S. federal withholding Tax imposed by any law in effect on the date such Lender (other than an assignee under Section 2.18(b)) becomes a party to this Agreement (or designates a new lending office), except to the extent that such Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the Borrowers with respect to such withholding Tax under Section 2.16(a), (c) any Taxes attributable to the failure of a Lender to comply with Section 2.16(f), or (d) any Taxes imposed under, or as a result of a failure to comply with, FATCA (or any version of FATCA that is substantially comparable and not materially more onerous to comply with).

"Existing ABL Credit Agreement" means the Amended and Restated Credit Agreement dated as of January 27, 2012, as amended and restated as of February 8, 2013, as amended on May 20, 2013, and as further amended and in effect immediately prior to the Closing Date, among Holdings, the Account Parties, the financial institutions named therein as lenders, JPMorgan Chase Bank, N.A., as administrative agent, and Wells Fargo Bank, National Association, as LC agent.

"Existing Debt Documents" means (a) the Existing Term Loan Documents, (b) any agreement, indenture or other instrument with respect to the existing notes set forth on Schedule 1.01 hereof, and (c) any agreements, indenture or other instruments with respect to other material Indebtedness of Holdings or any of its subsidiaries incurred after the Closing Date with a maturity prior to the date that is five (5) years from the Closing Date.

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"Existing Intercreditor Agreement" means the Intercreditor and Collateral Cooperation Agreement, dated as of May 22, 2013, among the Administrative Agent, Goldman Sachs Bank USA, J. C. Penney Corporation, and the other grantors party thereto, as supplemented by the Representative Joinder Agreement delivered on the Closing Date and as amended, supplemented or otherwise modified thereafter.

"Existing Letter of Credit" means any letter of credit that is outstanding under the Existing ABL Credit Agreement on the Closing Date issued by an Issuing Bank and each other letter of credit that is outstanding on the Closing Date issued by an Issuing Bank and specified by the Parent Borrower in writing to the Administrative Agent prior to the Closing Date as being an Existing Letter of Credit.

"Existing Maturity Date" has the meaning set forth in Section 2.23(c).

"Existing Term Loan Agreement" means the Credit and Guaranty Agreement, dated as of May 22, 2013, between the Company, Holdings, Purchasing, the lenders party thereto, and Goldman Sachs Bank USA, as administrative agent, collateral agent and lead arranger, as amended, amended and restated, supplemented, otherwise modified, refinanced or replaced.

"Existing Term Loan Documents" means (a) the Existing Term Loan Agreement and (b) all documents, agreements and instruments entered into in connection therewith.



“Extended Letter of Credit” has the meaning assigned to such term in Section 2.05(k).

“Extension Date” has the meaning set forth in Section 2.23(b).

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

“Federal Funds Effective Rate” means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

“Financial Officer” means the chief financial officer, principal accounting officer, vice president-chief accountant, treasurer, assistant treasurer or controller of Holdings or the Parent Borrower.

“Fitch” means Fitch, Inc.

“Fixed Charge Coverage Ratio” means, for any Test Period, the ratio, determined as of the end of such Test Period, of (a) Consolidated Adjusted EBITDA for such Test Period minus (i) Consolidated Capital Expenditures paid in cash by Holdings and its consolidated Subsidiaries during such Test Period (other than those financed with Long-Term Indebtedness (other than Revolving Loans) or with the proceeds of Sale/Leaseback Transactions entered into in accordance with Section 6.06, in each case to the extent such Indebtedness or Sale/Leaseback Transaction is incurred or consummated in connection with and for the specific purpose of financing such Consolidated Capital Expenditure) and (ii) the aggregate amount of income Taxes paid in cash by Holdings and its consolidated Subsidiaries during such Test

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Period, to (b) Fixed Charges for such Test Period.

“Fixed Charges” means, for any period, without duplication, the sum of (a) Consolidated Cash Interest Expense for such period, (b) the aggregate amount of scheduled principal payments during such period in respect of Long-Term Indebtedness (including Capital Lease Obligation payments) of Holdings and its consolidated Subsidiaries (but excluding (i) payments made by Holdings or any Subsidiary to Holdings or a Subsidiary, (ii) payments of principal to the extent made with the proceeds of Long-Term Indebtedness or the proceeds of any issuance or sale of Equity Interests in Holdings, in each case incurred, issued or sold, as applicable, to refinance such principal, and (iii) repayments of principal of the Revolving Loans, (c) the aggregate amount of principal payments paid in cash during such period (other than scheduled principal payments and other than (i) payments made by Holdings or any Subsidiary to Holdings or a Subsidiary, (ii) payments of principal to the extent made with the proceeds of Long-Term Indebtedness incurred to refinance such principal, and (iii) repayments of principal of the Revolving Loans made during such period) in respect of Long-Term Indebtedness (including Capital Lease Obligation payments) of Holdings and the Subsidiaries, to the extent that such payments reduced any scheduled principal payments that would have become due within one year after the date of the applicable payment, (d) regular scheduled dividends paid in cash in respect of the common stock of Holdings and scheduled mandatory Restricted Payments paid in cash and (e) solely for purposes of determining compliance with Section 6.07 and Section 6.13, (x) all other Restricted Payments made in cash and (y) all other repayments or prepayments of principal of Long-Term Indebtedness.

“Foreign Lender” means any Lender or Issuing Bank with respect to any Borrower, that (a) is not a “United States person” as defined by Section 7701(a)(30) of the Code (a “U.S. Person”), or (b) is a partnership or other entity treated as a partnership for U.S. federal income tax purposes which is a U.S. Person, but only to the extent the beneficial owners (including indirect partners if its direct partners are partnerships or other entities treated as partnerships for U.S. federal income tax purposes) are not U.S. Persons.

“Foreign Subsidiary” means any Subsidiary that is organized under the laws of a jurisdiction other than the United States of America or any State thereof or the District of Columbia.

“GAAP” means generally accepted accounting principles in the United States of America.

“Governmental Authority” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Guarantee at any time shall be deemed to be (i) an amount equal to the stated or

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determinable amount at such time of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or (ii) if the amount of such primary obligation is not stated or determinable at such time, the amount of the Guarantee shall be such guarantor’s maximum reasonably anticipated liability in respect thereof; provided that, if the terms of such Guarantee limit the amount for which such guarantor may be liable thereunder to a maximum stated or determinable amount, the amount of such Guarantee shall not in any event exceed such maximum stated or determinable amount.

“Guarantee Parties” means Holdings, the Parent Borrower, Purchasing, the Material Subsidiaries and each Non-Material Subsidiary that is required to satisfy the Collateral and Guarantee Requirement in order for Holdings and the Parent Borrower to remain in compliance with the provisions of Section 6.12 (in each case, other than a Foreign Subsidiary or a Subsidiary substantially all of the assets of which consist of Equity Interests in one or more Foreign Subsidiaries).

“Hazardous Materials” means all explosive or radioactive materials, substances or wastes and all hazardous or toxic materials, substances, wastes or other pollutants, including petroleum or petroleum distillates or by-products, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other materials, substances or wastes of any nature regulated pursuant to any Environmental Law.

“Holdings” means J. C. Penney Company, Inc., a Delaware corporation.

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all