

obligations of such Person in respect of the deferred purchase price of property or services (excluding (i) current accounts payable incurred in the ordinary course of business, (ii) any earn-out obligation contingent upon performance of an acquired business, except to the extent such obligation would be required to be reflected as a liability on a consolidated balance sheet of Holdings prepared in accordance with GAAP and is not paid when due and (iii) accruals for payroll and other liabilities accrued in the ordinary course of business), (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed (provided that with respect to Indebtedness that is nonrecourse to the credit of that Person, such Indebtedness shall be taken into account only to the extent of the lesser of (x) the fair market value of the asset(s) subject to such Lien and (y) the amount of Indebtedness secured), (f) all Guarantees by such Person of Indebtedness of others, (g) all Capital Lease Obligations of such Person, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (i) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances, (j) all Off-Balance Sheet Liabilities and (k) obligations under any Swap Agreement (provided, that, such obligations shall not include, in the case of any Swap Agreement to which Holdings or any Subsidiary is a party, any Swap Agreement that only requires Holdings or such Subsidiary to fulfill its obligations thereunder with the issuance of Equity Interests of Holdings other than Disqualified Equity Interests). The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. For the avoidance of doubt, any preferred Equity Interests (other than any Disqualified Equity Interests) of any Person that are convertible into common Equity Interests (other than any Disqualified Equity Interests) of such Person shall not constitute Indebtedness of such Person. The amount of any net obligation under any Swap Agreement on any date shall be deemed to be the Swap Termination Value thereof as of such date.

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"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document, and (b) Other Taxes.

"Initial Loans" has the meaning set forth in Section 2.22(b).

"Intercreditor Agreement" means an intercreditor agreement among the Loan Parties, the Administrative Agent and the trustee, agent or other representative for holders of any (a) Permitted First-Lien Indebtedness secured by assets constituting Collateral or (b) Permitted Second-Lien Indebtedness secured by second-priority (or other junior-priority) Liens on any Collateral, in each case as contemplated by clause (m) of Section 6.02, which intercreditor agreement shall be consistent with the then existing market practice and reasonably acceptable to the Required Lenders (it being understood that (i) any such intercreditor agreement shall be considered approved by a Lender if made available to such Lender by the Administrative Agent (through Intralinks or similar facility) and such Lender is informed that such intercreditor agreement shall be considered approved by it if there is no objection within three Business Days, and no such objection is made and (ii) such intercreditor agreement shall be deemed accepted if approved or deemed approved by the Required Lenders).

"Interest Election Request" means a request by a Borrower to convert or continue a Revolving Borrowing or Term Loan Borrowing in accordance with Section 2.07.

"Interest Payment Date" means (a) with respect to any ABR Loan (other than a Swingline Loan), the last day of each March, June, September and December, (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Borrowing with an Interest Period of more than three months' duration, each day prior to the last day of such Interest Period that occurs at intervals of three months' duration after the first day of such Interest Period and (c) with respect to any Swingline Loan, the day that such Loan is required to be repaid.

“Interest Period” means, with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three or six months (or, with the consent of each Lender, nine or twelve months) thereafter, as the applicable Borrower may elect; provided that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless, in the case of a Eurodollar Borrowing only, such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (b) any Interest Period pertaining to a Eurodollar Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and, in the case of a Revolving Borrowing, thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Internally Generated Cash” means, with respect to any period, any cash of Holdings or any Subsidiary generated during such period, excluding Net Asset Sale Proceeds, Net Insurance/Condemnation Proceeds and any cash that is generated from an incurrence of Indebtedness, an issuance of Equity Interests or a capital contribution.

“Inventory” means, individually and collectively, “Inventory”, as referred to in the Collateral Agreement.

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“Investment Grade Account Debtor” an Account Debtor that, at the time of determination, has a corporate credit rating and/or family rating, as applicable, of BBB- or higher by S&P or Baa3 or higher by Moody’s.

“IRS” means the United States Internal Revenue Service.

“Issuing Bank” means any Revolving Lender or Affiliate of a Revolving Lender that agrees (as provided in Section 2.05(i)) to issue Letters of Credit, in its capacity as an issuer of Letters of Credit, and its respective successors and assigns in such capacity as provided in Section 2.05(i). The initial Issuing Banks are identified in Schedule 2.05. Subject to the consent of the Parent Borrower, which consent shall not be unreasonably withheld, any Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by one or more of its Affiliates, in which case the term “Issuing Bank” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

“Latest Maturity Date” means, at any date of determination, the latest maturity or expiration date applicable to any Loan or Commitment hereunder at such time, in each case as extended in accordance with this Agreement from time to time.

“LC Agent” means Wells Fargo Bank, National Association.

“LC Disbursement” means a payment made by an Issuing Bank pursuant to a Letter of Credit.

“LC Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time plus (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Account Parties at such time. The LC Exposure of any Lender at any time shall be its Applicable Revolving Percentage of the total LC Exposure at such time.

“Lender Presentation” means the Lender Presentation dated June 2014 relating to the Parent Borrower and the Transactions.

“Lenders” means, collectively, the Revolving Lenders and the Term Lenders; provided, that, no Disqualified Lender shall be a Lender. Unless the context otherwise requires, the term “Lenders” includes the Swingline Lenders.

“Letter of Credit” means any letter of credit issued pursuant to this Agreement. Each Existing Letter of Credit shall be deemed to constitute a Letter of Credit as of the Closing Date. Each Letter of Credit shall be either a Trade Letter of Credit or a Stand-by Letter of Credit.

“LIBO Rate” means for any Interest Period with respect to a Eurodollar Rate Loan, the rate per annum equal to the London Interbank Offered Rate as appearing on LIBOR01 page as published by Reuters (or other commercially available source providing quotations of LIBOR as designated by the Administrative Agent from time to time, or in the case of the Term Loans, the Term Agent) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period. If such rate is not available at such time for any reason, then the “LIBO Rate” for such Interest Period shall be the rate per annum determined by the Administrative Agent (or in the case of the Term Loans, the Term Agent) to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the LIBO Rate Loan being made, continued or converted by Wells Fargo (or in the case of Term Loans, Bank of America) and with a term equivalent to such Interest Period would be offered to Wells Fargo (or in the case of Term Loans, Bank of

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America) by major banks in the London interbank eurodollar market in which Wells Fargo (or Bank of America, as applicable) participates at their request at approximately 11:00 a.m. (London time) two Business Days prior to the commencement of such Interest Period. For any interest calculation with respect to an ABR Loan on any date, “LIBO Rate” means the rate per annum equal to such rate as provided above, at or about 11:00 a.m., London time determined two Business Days prior to such date for dollar deposits with a term of one month commencing that day.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset.

“Loan” means a loan made by a Lender to a Borrower pursuant to this Agreement.

“Loan Account” has the meaning set forth in Section 2.09.

“Loan Document Obligations” means (a) the due and punctual payment by each Borrower and each Account Party of (i) the principal of and interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise, (ii) each payment required to be made by any Borrower or any Account Party under this Agreement in respect of any Letter of Credit, when and as due, including payments in respect of reimbursement of disbursements, interest thereon and obligations to provide cash collateral, and (iii) all other monetary obligations of any Borrower or any Account Party to any of the Secured Parties under this Agreement and each of the other Loan Documents, including obligations to pay fees, expense and reimbursement obligations and indemnification obligations, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), (b) the due and punctual performance of all other obligations of each Borrower and each Account Party under or pursuant to this Agreement and each of the other Loan Documents and (c) the due and punctual payment and performance of all the obligations of each other Loan Party under or pursuant to this Agreement and each of the other Loan Documents. Notwithstanding anything to the contrary contained herein, the “Loan Document Obligations” shall not include any Excluded Swap Obligations.

“Loan Documents” means this Agreement, the Collateral Agreement, the other Security Documents and, solely

for purposes of Section 9.02, the Intercreditor Agreement.

“Loan Parties” means Holdings, the Parent Borrower, the Borrowing Subsidiaries, Purchasing, the Additional Grantors and each Material Subsidiary that is a Guarantee Party.

“Long-Term Indebtedness” means any Indebtedness that, in accordance with GAAP, constitutes (or, when incurred, constituted) a long-term liability.

“Material Adverse Effect” means (a) a materially adverse effect on the business, assets, operations or condition of Holdings and its Subsidiaries, taken as a whole, (b) a material impairment of the ability of the Loan Parties to perform their payment obligations under the Loan Documents or (c) a material impairment of the rights of or benefits available to the Lenders or the Administrative Agent under any Loan Document (other than any such impairment of rights or benefits that is primarily attributable to (i) action taken by one or more Lenders or the Administrative Agent (excluding any action

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against one or more Lenders or the Administrative Agent taken by Holdings, the Parent Borrower, any Borrowing Subsidiary, any Account Party, their subsidiaries or their affiliates) or (ii) circumstances that are unrelated to Holdings, the Parent Borrower, any Borrowing Subsidiary, any Account Party, their Subsidiaries or their Affiliates).

“Material Indebtedness” means Indebtedness (other than the Loans and Letters of Credit), or obligations in respect of one or more Swap Agreements, of any one or more of Holdings and its Subsidiaries in an aggregate principal amount exceeding \$100,000,000. For purposes of determining Material Indebtedness, the “principal amount” of the obligations of Holdings or any Subsidiary in respect of any Swap Agreement at any time shall be the Swap Termination Value thereof as of such date.

“Material Subsidiary” means, at any date of determination, any Subsidiary of Holdings that had, as of the date of the most recent financial statements delivered pursuant to Section 5.01, Net Tangible Assets representing more than 3% (or in the case of JCP Realty, Inc., 5%) of the total Net Tangible Assets of Holdings and its Subsidiaries.

“Maturity Date” means, the earliest of: (a) June 20, 2019, or such later date to the extent applicable, determined in accordance with Section 2.23, (b) sixty (60) days prior to the scheduled maturity date of the Existing Term Loan Agreement (unless the Existing Term Loan Agreement is refinanced by such date with a facility having a maturity date no earlier than June 20, 2019) or (c) in the event that the outstanding Indebtedness under the Existing Debt Documents is greater than \$225,000,000 on the date sixty (60) days prior to the then scheduled maturity date under such Existing Debt Documents, the Maturity Date shall be such date that is sixty (60) days prior to the then scheduled maturity date under such Existing Debt Documents unless Administrative Agent shall have established a Maturity Date Debt Reserve.

“Maturity Date Debt Reserve” means a reserve in an amount equal to the Indebtedness under any of the Existing Debt Documents that is outstanding 60 days prior to the then scheduled maturity date of such Indebtedness.

“Maturity Date Extension Request” has the meaning set forth in Section 2.23(a).

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

“Moody’s” means Moody’s Investors Service, Inc.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA maintained, sponsored or contributed to by Holdings, the Parent Borrower, Purchasing or any ERISA Affiliate.

“Net Asset Sale Proceeds” means, with respect to any Asset Sale, an amount equal to: (i) cash payments (including any cash received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) received by Holdings or any of its Subsidiaries from such Asset Sale, minus (ii) any bona fide direct costs incurred in connection with such Asset Sale, including (a) income or gains taxes payable by the seller as a result of any gain recognized in connection with such Asset Sale, (b) payment of the outstanding principal amount of, premium or penalty, if any, and interest on any Indebtedness (other than the Loans) that is secured by a Lien on the stock or assets in question and that is required to be repaid under the terms thereof as a result of such Asset Sale and (c) a reasonable reserve for any indemnification payments (fixed or contingent) attributable to seller’s indemnities and representations and warranties to purchaser in respect of such Asset Sale undertaken by Holdings or any of its Subsidiaries in connection with such Asset Sale;

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provided that upon release of any such reserve to Holdings or any of its Subsidiaries, the amount released shall be considered Net Asset Sale Proceeds.

“Net Insurance/Condemnation Proceeds” means an amount equal to: (i) any cash payments or proceeds received by Holdings or any of its Subsidiaries (a) under any casualty insurance policy in respect of a covered loss thereunder with respect to an asset constituting Collateral or (b) as a result of the taking of any assets of Holdings or any of its Subsidiaries constituting Collateral by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking, minus (ii) (a) any actual and reasonable costs incurred by Holdings or any of its Subsidiaries in connection with the adjustment or settlement of any claims of Holdings or such Subsidiary in respect thereof, and (b) any bona fide direct costs incurred in connection with any sale or transfer of such assets as referred to in clause (i)(b) of this definition, including income taxes payable as a result of any gain recognized in connection therewith.

“Net Recovery Percentage” means the net orderly liquidation value of Eligible Inventory, expressed as a percentage, expected to be realized at an orderly, negotiated sale held within a reasonable period of time, net of all liquidation expenses, as determined from the most recent appraisal of Inventory of the Loan Parties performed by an appraiser and on terms satisfactory to the Administrative Agent.

“Net Tangible Assets” means the aggregate amount at which the assets of Holdings and its Subsidiaries are reflected, in accordance with GAAP as in effect on the Closing Date, on the asset side of the consolidated balance sheet, as at the close of a monthly accounting period (selected by the Parent Borrower) ending within the 65 days next preceding the date of determination, of Holdings and its Subsidiaries (after deducting all valuation and qualifying reserves relating to such assets), except any of the following described items that may be included among such assets:

- (a) trademarks, patents, goodwill and similar intangibles;
- (b) investments in and advances to Subsidiaries; and
- (c) capital lease property rights,

after deducting from such amount current liabilities (other than deferred Tax effects) as reflected, in accordance with GAAP as in effect on the Closing Date, on such balance sheet.

“Non-Material Subsidiary” means, at any date of determination, any Subsidiary of Holdings that is not a Material Subsidiary.

“Obligations” means (a) the Loan Document Obligations, (b) the Secured Swap Obligations, (c) the Secured Treasury Services Obligations and (d) the Secured Supply Chain Obligations; provided that the Obligations shall not include

any Excluded Swap Obligations.

“OFAC” means The Office of Foreign Assets Control of the U.S. Department of the Treasury.

“Off-Balance Sheet Liability” of a Person means (a) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person, (b) any indebtedness, liability or obligation under any so-called “synthetic lease” transaction entered into by such Person, or (c) any indebtedness, liability or obligation arising with respect to any other transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the balance sheets of such Person (other than operating leases). For the avoidance of doubt, any preferred Equity Interests (other than any Disqualified Equity Interests) of any Person that are convertible into

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common Equity Interests (other than any Disqualified Equity Interests) of such Person shall not constitute an Off-Balance Sheet Liability of such Person.

“Operating Cash Threshold” means \$750,000,000.

“Other Connection 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 hereunder or under any other Loan Document, Taxes imposed as a result of a present or former connection between such recipient and the jurisdiction imposing such Tax (other than connections arising solely from such recipient having executed, delivered, or become a party to, performed its obligations or received payments under, received or perfected a security interest under, sold or assigned an interest in any Loan or Loan Document, engaged in any other transaction pursuant to, or enforced any Loan Documents).

“Other Taxes” means any and all present or future stamp, court or documentary Taxes or any excise, property, intangible, recording, filing or similar Taxes that arise from the execution, delivery, performance enforcement of, registration of, receipt or perfection of a security interest under, any payment made under, or otherwise with respect to, any Loan Document.

“Parent Borrower” means J. C. Penney Corporation, Inc., a Delaware corporation.

“Participant” has the meaning assigned to such term in Section 9.04(c)(i).

“Participant Register” has the meaning assigned to such term in Section 9.04(c)(i).

“Participation Amount” has the meaning assigned to such term in Section 2.05(e).

“Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)).

“Pay” means, in respect of any Indebtedness or Equity Interest, to pay, prepay, purchase, repurchase, redeem, retire, cancel or terminate such Indebtedness or Equity Interest other than in exchange for Equity Interests that are not Disqualified Equity Interests (plus cash in lieu of fractional shares of such Equity Interests). The words “Payment” and “Payable” shall have meanings correlative to the foregoing.

“Payment Conditions” shall mean with respect to any transaction or payment the following:

(a) as of the date of any such transaction or payment, and after giving effect thereto, no Event of Default shall exist or have occurred and be continuing;

(b) as of the date of any such transaction or payment, on a pro forma basis after giving effect thereto, at any time during the immediately preceding 6 consecutive month period, the Excess Availability shall have been not less than the greater of (i) 25% of the Revolving Credit Line Cap or (ii) \$400,000,000; provided, that, only in the case of determining the satisfaction of this condition in the case of a Permitted Acquisition, the calculation of Excess Availability shall be deemed to include, on a pro forma basis, unrestricted cash and cash equivalents of Borrowers as set forth in the balance sheet of Borrowers (excluding store cash);

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(c) as of the date of any such transaction or payment and after giving effect to the transaction or payment, on a pro forma basis using the most recent calculation of the Borrowing Base immediately prior to any such payment, the Excess Availability shall not be less than the greater of (i) 25% of the Revolving Credit Line Cap or (ii) \$400,000,000; provided, that, only in the case of determining the satisfaction of this condition in the case of a Permitted Acquisition, the calculation of Excess Availability shall be deemed to include, on a pro forma basis, unrestricted cash and cash equivalents of Borrowers as set forth in the balance sheet of Borrowers (excluding store cash);

(d) Administrative Agent shall have received projections for the 6 consecutive fiscal months after the date of such transaction or payment showing, on a pro forma basis after giving effect thereto, minimum Excess Availability at all times during such period of not less than the greater of (i) 25% of the Revolving Credit Line Cap or (ii) \$400,000,000; provided, that, only in the case of determining the satisfaction of this condition in the case of a Permitted Acquisition, the calculation of Excess Availability shall be deemed to include, on a pro forma basis, unrestricted cash and cash equivalents of Borrowers as set forth in the balance sheet of Borrowers (excluding store cash);

(e) as of the date of any such transaction or payment and after giving effect thereto, Holdings and its subsidiaries on a consolidated basis shall be Solvent and Administrative Agent shall have received a customary officer's certificate with respect thereto; and

(f) Administrative Agent shall have received a certificate of a Financial Officer of Borrowers, in form and substance reasonably satisfactory to Administrative Agent, certifying as to compliance with the preceding clauses and demonstrating (in reasonable detail) the calculations required thereby.

"Payment Intangibles" has the meaning assigned to such term in the Collateral Agreement.

"PBGC" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"Perfection Certificate" means a certificate in the form of Exhibit C to the Collateral Agreement or any other form approved by the Administrative Agent.

"Permitted Acquisition" means any Acquisition, directly or indirectly, by any Loan Party or any of its Subsidiaries; provided, that,

(a) as of the date of any such Acquisition and the date of any payment in respect thereof, each of the Payment Conditions is satisfied,

(b) the Acquisition shall be with respect to an entity or division or line of business that engages in a line of business substantially similar, reasonably related or incidental to the business that Borrowers are engaged in, and

(c) the board of directors (or other comparable governing body) of the Person to be acquired shall have duly approved such Acquisition and such Person shall not have announced that it will oppose such Acquisition (except if such person thereafter supports such Acquisition) or shall not have commenced any action which alleges that such Acquisition will violate applicable law,

(d) Borrowers shall have furnished the Administrative Agent with ten (10) days' prior written notice of the closing of such intended Acquisition and shall have furnished the Administrative

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Agent with such other information as the Administrative Agent may reasonably require, in form and detail reasonably satisfactory to the Administrative Agent;

Provided, that, notwithstanding anything to the contrary set forth above, so long as on the date of any Acquisition and after giving effect thereto (including all payments in respect thereof) the aggregate amount of the consideration for any or all Acquisitions (including such Acquisition for this purpose) in the immediately preceding 12 consecutive month period is less than \$150,000,000, the Acquisition shall be subject only to the following conditions:

(i) as of the date of any such Acquisition, and after giving effect thereto, no Event of Default shall exist or have occurred and be continuing;

(ii) as of the date of any such Acquisition and after giving effect to the Acquisition, on a pro forma basis using the most recent calculation of the Borrowing Base immediately prior to any such payment, the Excess Availability shall not be less than the greater of (A) 25% of the Revolving Credit Line Cap or (B) \$400,000,000;

(iii) the board of directors (or other comparable governing body) of the Person to be acquired shall have duly approved such Acquisition and such person shall not have announced that it will oppose such Acquisition (except if such person thereafter supports such Acquisition) or shall not have commenced any action which alleges that such acquisition will violate applicable law,

(iv) as of the date of any such Acquisition and after giving effect thereto, Holdings and its subsidiaries on a consolidated basis shall be Solvent and Administrative Agent shall have received a customary officer's certificate with respect thereto.

"Permitted Discretion" means the reasonable credit judgment (from the perspective of a secured asset-based lender) of Administrative Agent or any Co-Collateral Agent, Revolving Agent or Term Agent as applicable, exercised in good faith.

"Permitted Encumbrances" means:

(a) Liens imposed by law for Taxes, assessments or governmental charges or levies that, in each case, are not overdue by more than 30 days or are being contested in compliance with Section 5.05;

(b) carriers', warehousemen's, mechanics', landlords', materialmen's, repairmen's and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than 30 days or are being contested in compliance with Section 5.05;

(c) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations;

(d) pledges or deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;

(e) judgment liens in respect of judgments that do not constitute an Event of Default under clause (k) of Section 7.01;



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(f) easements, restrictions (including zoning restrictions), rights-of-way and other similar encumbrances on and title defects affecting real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of Holdings and its Subsidiaries, taken as a whole;

(g) the special property interest of a consignor in respect of goods subject to consignment;

(h) Liens (i) in favor of banks, other financial institutions, securities or commodities intermediaries or brokerage arising as a matter of law encumbering deposits of cash, securities, commodities and other funds maintained with such Persons (including rights of set off) and that are within the general parameters customary in such Person's industry, (ii) deemed to exist in connection with investments in repurchase agreements described in clause (d) of the definition of "Permitted Investments", (iii) attaching to commodity trading accounts or other brokerage accounts in the ordinary course of business securing obligations owed to the institutions with which such accounts are maintained, (iv) that are contractual rights of setoff (x) relating to the establishment of depository relations with banks or other deposit-taking financial institutions in the ordinary course of business and not given in connection with the issuance of Indebtedness or (y) relating to pooled deposit or sweep accounts of Holdings or any of its Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business and (v) that are rights of set-off (or holdbacks or reserves established by a credit card issuer or processor) against credit balances of Holdings or any of its Subsidiaries with credit card issuers or credit card processors or amounts owing by such credit card issuers or credit card processors to Holdings or any of its Subsidiaries, or Liens on returned merchandise in favor of such issuers or processors, in each case in the ordinary course of business, but not rights of set-off against any other property or assets of Holdings or any of its Subsidiaries pursuant to agreements with credit card issuers or credit card processors to secure the obligations of Holdings or any of its Subsidiaries to credit card issuers or credit card processors as a result of fees and chargebacks;

(i) Liens of a collecting bank under Section 4-210 of the Uniform Commercial Code in effect in the relevant jurisdiction (or Section 4-208 in the case of the New York Uniform Commercial Code) on items in the course of collection;

(j) Liens of sellers of goods to Holdings or a Subsidiary arising as a matter of law under Article 2 of the Uniform Commercial Code in effect in the relevant jurisdiction or similar provisions of applicable law, in each case in the ordinary course of business;

(k) licenses of patents, trademarks and other intellectual property rights of Holdings or any of its Subsidiaries, in each case in the ordinary course of business and not materially interfering with the conduct of business by Holdings and its Subsidiaries, taken as a whole;

(l) Liens solely on any cash earnest money deposits made by Holdings or any of its Subsidiaries in connection with any letter of intent or purchase agreement entered into by it; and

(m) Liens incurred in the ordinary course of business in connection with the shipping of goods on the related goods and proceeds thereof in favor of the shipper of such goods;

provided that the term "Permitted Encumbrances" shall not include any Lien securing Indebtedness.

"Permitted First-Lien Indebtedness" means Indebtedness for borrowed money of Holdings, the Parent Borrower or a Subsidiary (or, subject to clause (ii) of the second sentence of this definition, any

Guarantee by a Loan Party thereof) secured on a first-priority basis by the assets of any Loan Party; provided that (a) such Indebtedness satisfies the requirements set forth below and (b) the Parent Borrower shall have delivered to the Administrative Agent a certificate of a Financial Officer (i) designating such Indebtedness as “Permitted First-Lien Indebtedness”, (ii) specifying the initial principal amount thereof, (iii) identifying the trustee, administrative agent or collateral agent (or equivalent agent or representative of the creditors) thereunder and (iv) certifying that such Indebtedness satisfies the requirements set forth in this definition and that after giving effect to the incurrence thereof no Default or Event of Default shall have occurred and be continuing. No Indebtedness shall be Permitted First-Lien Indebtedness at any time unless it satisfies the following requirements at such time:

(i) such Indebtedness (A) shall not be secured on a first-priority basis by any assets of any Loan Party other than assets that do not constitute Collateral (and (I) proceeds of such assets and (II) assets (other than assets of the type referred to in clauses (i) through (iv) of Section 3.01(a) of the Collateral Agreement) related to such assets, whether or not constituting Collateral, provided that such Indebtedness may be secured on a first-priority basis by any Deposit Account used solely to deposit proceeds of the assets securing such Indebtedness as permitted by this clause (i)), (B) if secured by any assets of the type referred to in clause (II) above, shall be subject to an Intercreditor Agreement, and (C) if secured by any real property or Intellectual Property, shall be subject to a Collateral Cooperation Agreement;

(ii) no Subsidiary shall be an obligor under or in respect of such Indebtedness unless such Subsidiary shall be a Loan Party and shall have satisfied the Collateral and Guarantee Requirement;

(iii) such Indebtedness shall not mature on or prior to the Specified Date (as in effect on the date of the incurrence of such Indebtedness);

(iv) such Indebtedness shall not require any scheduled payments of principal prior to the Specified Date (as in effect on the date of the incurrence of such Indebtedness), other than any such scheduled payments that, during any one-year period after the date of issuance or incurrence of such Indebtedness, together with all other scheduled payments of principal in respect of Permitted First-Lien Indebtedness and Permitted Second-Lien Indebtedness during such one-year period, do not exceed the lesser of (A) \$100,000,000 and (B) 10% of the initial principal amount of all Permitted First-Lien Indebtedness and Permitted Second-Lien Indebtedness outstanding at the time such Indebtedness was issued, after giving effect to such issuance; and

(v) such Indebtedness shall not be subject to any terms requiring any obligor of such Indebtedness to Pay (or offer to Pay) such Indebtedness other than (A) at maturity, (B) pursuant to scheduled payments of principal that comply with clause (iv) above and (C) pursuant to Customary Mandatory Prepayment Terms.

Notwithstanding anything to the contrary herein, any Permitted First-Lien Indebtedness may also be secured on a second-priority (or other junior priority) basis by Collateral, provided that such Permitted First-Lien Indebtedness shall satisfy the requirements set forth in the definition of “Permitted Second-Lien Indebtedness”.

“Permitted Indebtedness” means:

(a) obligations incurred by Holdings or any Subsidiary arising from agreements providing for customary indemnification, earnouts, adjustment of purchase price, non-compete, consulting or other similar obligations, in each case arising in connection with acquisitions or

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dispositions of any business, assets or subsidiary of Holdings or such Subsidiary; provided that such obligations would not be required to be reflected on a consolidated balance sheet of Holdings and its Subsidiaries prepared in accordance with GAAP;

(b) Indebtedness in respect of the financing of insurance premiums in the ordinary course of business;