

SECTION 5.17. Environmental Laws. Except for the Disclosed Matters and except with respect to any matters that, individually or in the aggregate, would not result in a Material Adverse Effect, each of Holdings and the Parent Borrower will, and will cause each of its Subsidiaries to, (a) conduct its operations and keep and maintain its real property in material compliance with all Environmental Laws; and (b) obtain and renew all environmental permits necessary for its operations and properties.

SECTION 5.18. Lender Meetings. Within sixty (60) days after the receipt by Administrative Agent of the audited financial statements pursuant to Section 5.01(a) for the then most recently ended fiscal year of Holdings or on such other date as Administrative Agent and Parent Borrower may agree, at the request of Administrative Agent or of the Required Revolving Lenders and upon reasonable prior notice, (a) at the request of Revolving Agent or of the Required Revolving Lenders, Borrowers will hold one meeting (at a mutually agreeable location and time or, at the option of Administrative Agent, by conference call) with all Revolving Lenders who choose to attend such meeting and (b) at the request of Term Agent or of the Required Term Lenders, Borrowers will hold one meeting (at a mutually agreeable location and time or, at the option of Administrative Agent, by conference call) with all Term Lenders who choose to attend such meeting, in each case at which meeting the financial results of the previous fiscal year shall be reviewed.

ARTICLE VI

Negative Covenants

Until the Commitments have expired or terminated and the principal of and interest on each Loan and all fees payable hereunder have been paid in full and all Letters of Credit have expired or terminated and all LC Disbursements shall have been reimbursed, each of Holdings, the Parent Borrower and Purchasing covenants and agrees with the Lenders that:

SECTION 6.01. Indebtedness. Neither Holdings nor the Parent Borrower will, nor will they permit any Subsidiary to, create, incur, assume or permit to exist any Indebtedness, except:

- (a) Indebtedness created under the Loan Documents;

102

- (b) Indebtedness existing on the Closing Date and set forth in Schedule 6.01 and extensions, renewals, refinancings and replacements, in whole or in part, of any such Indebtedness that do not increase the outstanding principal amount thereof (other than in respect of any accrued interest, premium, fees, costs or expenses payable in connection with such extension, renewal, refinancing or replacement) or result in an earlier maturity date or decreased weighted average life thereof; provided that Indebtedness in respect of which the holders thereof have the unconditional right to require the issuer thereof to effect a redemption of such Indebtedness for cash prior to the stated maturity date of such Indebtedness shall be treated as maturing on the nearest such redemption date for purposes of the foregoing calculations;

- (c) Indebtedness of Holdings to any Subsidiary and of any Subsidiary to Holdings or any other Subsidiary; provided that any such Indebtedness owing by any Subsidiary that is not a Loan Party to any Loan Party shall be incurred in compliance with Section 6.04;

- (d) Guarantees by Holdings of Indebtedness of any Subsidiary and by any Subsidiary of Indebtedness of (i) so long as such Subsidiary also guarantees the Obligations on a pari passu basis, any Loan Party or (ii) any other Subsidiary; provided that such Guarantees of Indebtedness of Subsidiaries that are not Loan Parties are incurred in compliance with Section 6.04;

- (e) Permitted Indebtedness;

(f) Indebtedness of Holdings or any Subsidiary incurred to finance the acquisition, construction or improvement of any fixed or capital assets, including Capital Lease Obligations and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and extensions, renewals, refinancings and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof (other than in respect of any accrued interest, premium, fees, costs or expenses payable in connection therewith); provided that (i) such Indebtedness is incurred prior to or within 180 days after such acquisition or the completion of such construction or improvement and (ii) the aggregate principal amount of Indebtedness permitted by this clause (f) shall not exceed \$500,000,000 at any time outstanding;

(g) Indebtedness of any Person that becomes a Subsidiary after the Closing Date and extensions, renewals, refinancings and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof (other than in respect of any accrued interest, premium, fees, costs or expenses payable in connection therewith); provided that (i) such Indebtedness exists at the time such Person becomes a Subsidiary and is not created in contemplation of or in connection with such Person becoming a Subsidiary, (ii) the aggregate principal amount of Indebtedness permitted by this clause (g) shall not exceed \$500,000,000 at any time outstanding and (iii) after giving effect to such Person becoming a Subsidiary and such Indebtedness, the Fixed Charge Coverage Ratio for the Test Period in effect at the time such investment is to occur shall be not less than 1.10 to 1.00 (determined on a pro forma basis in accordance with Section 1.04(b) as of the last day of such Test Period);

(h) Permitted Long-Term Indebtedness;

(i) Permitted First-Lien Indebtedness, Permitted Second-Lien Indebtedness and any refinancings, extensions, renewals and replacements of any such Permitted First-Lien Indebtedness or Permitted Second-Lien Indebtedness (provided that any such refinancings, extensions, renewals and replacements shall qualify as Permitted First-Lien Indebtedness, Permitted Second-Lien Indebtedness or Permitted Long-Term Indebtedness) that do not increase the outstanding principal amount thereof (other than in respect of any accrued interest, premium, fees, costs or expenses payable in connection with such refinancing, extension, renewal or replacement), provided that the aggregate principal amount of

103

Indebtedness permitted by this clause (i), other than refinancings, extensions, renewals and replacements that constitute Permitted Long-Term Indebtedness, shall not exceed \$2,250,000,000 at any time outstanding (plus an amount for customary original issue discount in respect thereof);

(j) other unsecured Indebtedness in an aggregate principal amount not exceeding \$250,000,000 at any time outstanding;

(k) Indebtedness consisting of letters of credit, guarantees or other credit support provided in respect of trade payables of Parent Borrower or any Subsidiary, in each case issued for the benefit of any bank, financial institution or other Person that has acquired such trade payables pursuant to “supply chain” or other similar financing for vendors and suppliers of Parent Borrower or any of its Subsidiaries, so long as (i) other than in the case of Secured Supply Chain Obligations, such Indebtedness is unsecured, (ii) the terms of such trade payables shall not have been extended in connection with the Permitted Supply Chain Financing and (iii) such Indebtedness represents amounts not in excess of those which Parent Borrower or any of its Subsidiaries would otherwise have been obligated to pay to its vendor or supplier in respect of the applicable trade payables (“Permitted Supply Chain Financing”);

(l) (i) unsecured Indebtedness of Holdings or Parent Borrower convertible into common Equity Interests (other than Disqualified Equity Interests) of Holdings or Parent Borrower, (ii) preferred Equity Interests (other than Disqualified Equity Interests) of Holdings convertible into common Equity Interests (other than Disqualified Equity Interests) of Holdings, (iii) preferred Equity Interests (other than Disqualified Equity Interests) of Holdings, (iv) any “call spread” “capped call” or similar transactions entered into in connection with such Indebtedness or preferred Equity Interests (other than Disqualified Equity Interests), and (v) mandatorily convertible units of Indebtedness and Equity Interests, so long as (A) any Indebtedness portion thereof is unsecured and does not mature prior to the ninetieth (90th) day after the latest Scheduled Maturity Date then in effect (measured at the time of the incurrence or issuance of such units, as

applicable) and (B) the purchase contract constituting such Equity Interests is for common stock (other than Disqualified Equity Interests); provided, that, (1) any such Indebtedness is not guaranteed by any Subsidiary of Holdings (other than Parent Borrower), (2) such Indebtedness or preferred stock does not mature or become mandatorily payable (including pursuant to a mandatory offer to purchase) prior to the ninetieth (90th) day after the latest Scheduled Maturity Date then in effect (measured as of the time that such Indebtedness or preferred stock is incurred or issued, as applicable) (other than pursuant to Customary Mandatory Prepayment Terms and other than payments required to be made solely in Equity Interests (other than Disqualified Equity Interests) and cash in lieu of fractional shares), (3) any “net settlement” features of such Indebtedness shall be permitted by Section 6.14 and (4) any such indebtedness of, or guarantees by, Borrower shall be contractually subordinated to the Obligations on terms reasonably satisfactory to Administrative Agent in its sole discretion;

(m) obligations (contingent or otherwise) of any Loan Party or any Subsidiary thereof existing or arising under any Swap Agreement, provided that such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly managing risks associated with fluctuations in interest rates or foreign exchange rates, and not for purposes of speculation;

(n) unsecured reimbursement obligations in respect of standby letters of credit issued in the ordinary course of business for the account of Holdings, Parent Borrower, or any other direct or indirect Subsidiary of Holdings so long as only Parent Borrower and Holdings are obligated to reimburse the issuer thereof in the case of any drawing; and

(o) Indebtedness outstanding under the Existing Term Loan Documents.

104

SECTION 6.02. Liens. Neither Holdings nor the Parent Borrower will, nor will they permit any Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except:

(a) Liens created under the Loan Documents;

(b) Permitted Encumbrances;

(c) any Lien on any property or asset of Holdings or any Subsidiary existing on the Closing Date and set forth in Schedule 6.02; provided that (i) such Lien shall not apply to any other property or asset of Holdings or any Subsidiary and (ii) such Lien shall secure only those obligations which it secured on the Closing Date and refinancings, extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof, other than in respect of any accrued interest, premium, fees, costs or expenses payable in connection with such extension, renewal or replacement;

(d) any Lien existing on any property or asset prior to the acquisition thereof by Holdings or any Subsidiary or existing on any property or asset of any Person that becomes a Subsidiary after the Closing Date prior to the time such Person becomes a Subsidiary; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, as the case may be, (ii) such Lien shall not apply to any other property or assets of Holdings or any Subsidiary and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Subsidiary, as the case may be and refinancings, extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof, other than in respect of any accrued interest, premium, fees, costs or expenses payable in connection with such extension, renewal or replacement;

(e) Liens on fixed or capital assets acquired, constructed or improved by Holdings or any Subsidiary; provided that (i) such security interests secure Indebtedness permitted by clause (f) of Section 6.01, (ii) such security interests and the Indebtedness secured thereby are incurred prior to or within 180 days after such acquisition or the completion of such construction or improvement, (iii) the Indebtedness secured thereby does not exceed 100% of the cost of acquiring, constructing or improving such fixed or capital assets and (iv) such security interests shall not apply to any other property or assets of Holdings or any Subsidiaries;

(f) Liens in respect of leases or subleases granted to other Persons in the ordinary course of business and not materially interfering with the conduct of business of Holdings and its Subsidiaries, taken as a whole;

(g) Liens arising out of conditional sale, title retention, consignment (including “sale or return” arrangements) or similar arrangements for the sale of goods entered into by the Parent Borrower or any of its Subsidiaries in the ordinary course of business, provided that the aggregate amount of such goods shall not exceed \$50,000,000;

(h) Liens in favor of customs and revenue authorities arising as a matter of law securing payment of customs duties in connection with the importation of goods;

(i) any encumbrance or restriction (including pursuant to put and call agreements or buy/sell arrangements) with respect to the Equity Interests of any joint venture or similar arrangement pursuant to the joint venture or similar agreement with respect to such joint venture or similar arrangement;

105

(j) the sale or discount, in the ordinary course of business, of accounts receivable in connection with the compromise or collection thereof and not in connection with any financing or factoring arrangement;

(k) Liens (other than Liens on any inventory constituting Collateral) securing Indebtedness of a Subsidiary to a Loan Party or of a Subsidiary that is not a Loan Party to another Subsidiary that is not a Loan Party;

(l) Liens on property subject to sale and leaseback transactions not prohibited by Section 6.06 and general intangibles related thereto;

(m) Liens on assets of Loan Parties 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 Liens securing any Permitted First-Lien Indebtedness may attach, on a first-priority basis, to any Deposit Account used solely to deposit proceeds of the assets securing such Indebtedness as permitted by the definition of “Permitted First-Lien Indebtedness” to be deposited in such Deposit Account) and second-priority (or other junior priority) Liens on the Collateral, in each case securing Indebtedness permitted pursuant to Section 6.01(i), provided further that any such Liens on Collateral must secure only Permitted Second-Lien Indebtedness and, subject to the applicable Intercreditor Agreement, Permitted First-Lien Indebtedness;

(n) other Liens (other than Liens on any Collateral (other than Specified Involuntary Liens securing obligations not in excess of \$20,000,000 at any time)) securing monetary obligations, provided that (i) the sum of the aggregate amount of all monetary obligations secured by Liens pursuant to this clause (n), plus the aggregate amount of all cash consideration received on or after the Closing Date in respect of sale and leaseback transactions made in reliance on clause (b) of Section 6.06, shall not exceed 12.50% of Net Tangible Assets at any time and (ii) the aggregate book value of all assets subject to Liens pursuant to this clause (n) shall not at any time exceed \$225,000,000; and

(o) Liens created under the Existing Term Loan Documents which are subject to the Existing Intercreditor Agreement or any other applicable Intercreditor Agreement.

Notwithstanding the foregoing, none of the Liens permitted pursuant to this Section 6.02 (other than (1) involuntary Permitted Encumbrances, (2) Specified Involuntary Liens securing obligations not in excess of \$20,000,000 at any time and (3) those permitted under clauses (a), (c), (g), (h) or (m) above) may at any time attach to any Collateral.

SECTION 6.03. Fundamental Changes. Neither Holdings nor the Parent Borrower will, nor will they permit any Subsidiary to, merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all or substantially all of the assets of the Parent Borrower and its Subsidiaries, taken as a whole, or liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Default shall have occurred and be continuing (i) any Person may merge with or into or consolidate with the Parent Borrower in a transaction in which the Parent Borrower

is the surviving corporation, (ii) any Person may merge with or into or consolidate with any Subsidiary in a transaction in which the surviving entity is or becomes a Subsidiary and (if any party to such merger or consolidation is or becomes a Loan Party) is a Loan Party; provided that any such merger or consolidation involving a Person that is not a wholly owned Subsidiary immediately prior to or after giving effect to such merger or consolidation shall comply with Sections 6.04 and 6.05, as applicable, (iii) any Subsidiary (other than the Parent Borrower) may liquidate or dissolve or change its legal form if the Parent Borrower determines in good faith that such liquidation or dissolution or change in legal form is in the best interests of the Parent Borrower and its subsidiaries and is not materially disadvantageous to the Lenders; provided that, in the case of a liquidation or dissolution of a Subsidiary that is a Loan Party, the Person into which such Subsidiary is liquidated or dissolved shall be a Loan Party and shall succeed to or assume all obligations of such Loan Party under the Loan Documents in a manner reasonably satisfactory to the Administrative Agent, (iv) any merger the sole purpose and effect of

which is to reincorporate or reorganize a Person in another jurisdiction in the United States shall be permitted; provided that, if such Person is a Loan Party, the surviving entity is a Loan Party (and, if not a Loan Party before such merger, shall assume all obligations of such Loan Party under the Loan Documents in a manner reasonably satisfactory to the Administrative Agent), and (v) a merger, dissolution, liquidation, consolidation, sale, transfer or other disposition the purpose and effect of which is to effect a transaction permitted pursuant to Section 6.05.

(b) Holdings will not, and will not permit any of its Subsidiaries to, engage to any extent material to Holdings and its Subsidiaries (taken as a whole) in any business other than the businesses of the type conducted by Holdings and its Subsidiaries on the Closing Date and businesses reasonably related, ancillary or complementary to the business or businesses of Holdings or any Subsidiary or any reasonable extension, development or expansion thereof.

SECTION 6.04. Investments, Loans, Advances, Guarantees and Acquisitions. Neither Holdings nor the Parent Borrower will, nor will they permit any Subsidiary to, purchase, hold or acquire (including pursuant to any merger with any Person that was not a wholly owned Subsidiary prior to such merger) any Equity Interests, evidences of Indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or hold any loans or advances to, Guarantee any obligations of, or make or hold any investment or any other interest in, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person constituting a business unit or enter into any other Acquisition (each referred to for purposes of this definition as an “investment”), except:

(a) Permitted Investments; provided, that, notwithstanding the foregoing, after the occurrence and during the continuance of a Cash Dominion Period, no Permitted Investments shall be permitted (except in Excluded Accounts), unless no Revolving Loans are then outstanding, except that notwithstanding that any Revolving Loans are outstanding at any time during a Cash Dominion Period, the Loan Parties may from time to time in the ordinary course of business consistent with their current practices as of the date hereof make deposits of cash or other immediately available funds with proceeds of Revolving Loans in operating demand deposit accounts used for disbursements to the extent required to provide funds for amounts drawn or anticipated to be drawn shortly on such accounts and such funds may be held in Permitted Investments consisting of overnight investments until so drawn (so long as (i) such funds and Permitted Investments are not held more than two (2) Business Days from the date of the initial deposit thereof and (ii) such Permitted Investments are pledged to the Administrative Agent as additional collateral for the Obligations pursuant to such agreements as may be reasonably required by the Administrative Agent;

(b) investments existing on the Closing Date and set forth on Schedule 6.04, and any refinancing, replacement, renewal or extension of any such investment which does not increase the amount thereof except pursuant to the terms of such investment as of the Closing Date (as set forth on Schedule 6.04) or as otherwise permitted by another clause of this Section 6.04;

(c) investments by Holdings and its Subsidiaries in Equity Interests in their respective Subsidiaries;

-
- (d) loans or advances made by Holdings to any Subsidiary and made by any Subsidiary to Holdings or any other Subsidiary;
 - (e) Guarantees, subject to the limitations of Section 6.01 in the case of Indebtedness;
 - (f) investments received in connection with the bankruptcy or reorganization of, or settlement or satisfaction or partial satisfaction of delinquent accounts and disputes with, customers, suppliers and other account debtors, in each case in the ordinary course of business or upon the foreclosure with respect to any secured investment;
 - (g) extensions of trade credit in the ordinary course of business;
 - (h) investments under Swap Agreements;
 - (i) investments held by a Subsidiary acquired after the Closing Date or of a Person merged or consolidated with or into the Parent Borrower or a Subsidiary in accordance with this Agreement after the Closing Date to the extent that such investments were not made in contemplation of or in connection with such acquisition, merger or consolidation and were in existence on the date of such acquisition, merger or consolidation;
 - (j) investments in the ordinary course of business consisting of UCC Article 3 endorsements for collection or deposit and Article 4 customary trade arrangements with customers;
 - (k) promissory notes and other non-cash consideration that is permitted to be received in connection with dispositions permitted by Section 6.05(k) or 6.05(o);
 - (l) investments made in any Permitted Supply Chain Financing;
 - (m) Permitted Acquisitions;
 - (n) other investments (other than Acquisitions); provided that at the time of and immediately after giving effect to any such investment, each of the Payment Conditions is satisfied;
 - (o) without duplication of any other clauses of this Section 6.04, other investments that do not exceed \$50,000,000 in the aggregate at any time outstanding, determined as of the date of such investment;
 - (p) to the extent constituting investments, Restricted Payments permitted by Section 6.07 or any purchase, repurchase or other acquisition of Indebtedness permitted by Section 6.13; and
 - (q) unsecured reimbursement obligations in respect of standby letters of credit issued in the ordinary course of business for the account of Holdings, Parent Borrower, or any other direct or indirect Subsidiary of Holdings so long as only Parent Borrower and Holdings are obligated to reimburse the issuer thereof in the case of any drawing.

Notwithstanding the foregoing, any investments by the Loan Parties in, and loans and advances by the Loan Parties to, and Guarantees by the Loan Parties of Indebtedness and other monetary obligations of, Subsidiaries that are not Loan Parties permitted pursuant to this Section 6.04 (excluding all such investments, loans, advances and Guarantees existing on the Closing Date and permitted by clause (b) above) shall be subject to the condition that, at the time such investment is made and after giving effect thereto, each of the Payment Conditions is satisfied.

SECTION 6.05. Asset Sales. Neither Holdings nor the Parent Borrower will, nor will they permit any Subsidiary to, sell, transfer, lease or otherwise dispose of any asset, including any Equity Interest owned by it, nor will Holdings and the Parent Borrower permit any Subsidiary to issue any additional Equity Interest in such Subsidiary (other than directors' qualifying shares or to the extent required by applicable law) (each referred to for purposes of this definition as a "disposition"), except:

- (a) sales of inventory, used or surplus equipment and Permitted Investments, in each case in the ordinary course of business;
- (b) disposals of inventory pursuant to promotional or similar activities in the ordinary course of business;
- (c) dispositions in the ordinary course of business of property no longer used or useful in the conduct of the business of Holdings and the Subsidiaries;
- (d) dispositions to the Parent Borrower or a Subsidiary; provided that any such disposition to any Subsidiary that is not a Loan Party by any Loan Party shall, unless such disposition is made at a price and on terms and conditions not less favorable to each applicable Loan Party in any material respect than could be obtained on an arm's-length basis from unrelated third parties, be deemed to be an investment and shall only be permitted to the extent it would be permitted under Section 6.04;
- (e) the sale or discount (with or without recourse, and on customary or commercially reasonable terms) in the ordinary course of business of accounts receivable or notes receivable arising in the ordinary course of business, or the conversion or exchange of accounts receivable for notes receivable in the ordinary course of business;
- (f) (i) any exchange of real property pursuant to or intended to qualify under Section 1031 (or any successor section) of the Code or (ii) dispositions of equipment in the ordinary course of business to the extent that (A) such equipment is exchanged for credit against the purchase price of similar replacement equipment or (B) the proceeds of such disposition are promptly applied to the purchase price of such replacement equipment;
- (g) any disposition arising from condemnation or similar action with respect to any property or other assets, or voluntary exercise of termination rights under any lease, license, concession or other agreement or pursuant to buy/sell arrangements under any joint venture or similar agreement or arrangement;
- (h) the lapse or abandonment or other disposition of patents, trademarks or other intellectual property that are, in the reasonable judgment of the Parent Borrower, no longer economically practicable to maintain or useful in the conduct of the business of Holdings and the other Subsidiaries taken as a whole;
- (i) leases, subleases, licenses or sublicenses (including the provision of software under an open source license), in each case in the ordinary course of business and which do not materially interfere with the business of Holdings and the Subsidiaries, taken as a whole;
- (j) the unwinding of Swap Agreements
- (k) dispositions of accounts receivable in connection with the collection or compromise thereof;

(l) (i) any dividend or other Restricted Payment permitted pursuant to (or expressly not prohibited by) Section 6.07, (ii) any investment pursuant to Section 6.04 and (iii) any Lien permitted by Section 6.02;

(m) sales of fixed or capital assets pursuant to Section 6.06(a);

(n) any issuance of Equity Interests by, or disposition of Equity Interests of, any Subsidiary that is not a Material Subsidiary;

(o) sales and transfers (including Sale/Leaseback Transactions permitted by Section 6.06) of real estate of any Loan Party so long as (i) no Event of Default then exists or would arise therefrom, and (ii) such sale or transfer is made for fair market value and the consideration received for such sale or transfer is at least 75% cash;

(p) so long as no Event of Default exists or would arise as a result of the transaction, sales of a Subsidiary that is not a Loan Party or sales of an Excluded Subsidiary (i) to any Person other than a Loan Party or a Subsidiary, for fair market value and so long as the consideration received for such sale or transfer is at least 75% cash or cash equivalents, or (ii) to a Subsidiary, if such sale or transfer is for fair market value and the entire consideration received for such sale or transfer is paid in cash or cash equivalents;

(q) bulk sales or other dispositions of Inventory of a Loan Party not in the ordinary course of business in connection with the closing of stores (i) during any Fiscal Year representing not more than 20% of the total stores of Holdings and its Subsidiaries as of the first day of such Fiscal Year and (ii) during the term of this Agreement representing not more than 40% of the total stores of Holdings and its Subsidiaries as of the Closing Date, provided that (i) any such sale or disposition is at arm's-length, (ii) the consideration received for such sale or disposition is at least 75% cash (or, in the case of any sale, transfer or other disposition of more than 10% of the Collateral, 90% cash), and (iii) a professional liquidator acceptable to the Administrative Agent shall have been engaged in connection with any sale or other disposition of more than 10% of the Collateral;

(r) sales, transfers and other dispositions of assets (other than Equity Interests in a Material Subsidiary) that are not permitted by any other clause of this Section, provided that (i) each such sale, transfer or disposition shall be made at fair value and for at least 75% cash consideration (or, in the case of any sale, transfer or other disposition of more than 10% of the Collateral, 90% cash consideration), (ii) at the time any such sale, transfer or other disposition is consummated and after giving effect thereto, the aggregate fair market value of all assets sold, transferred or otherwise disposed of in reliance on this clause (r) during the term of this Agreement shall not exceed \$500,000,000 (and in any event the value of any such assets constituting Collateral so sold, transferred or otherwise disposed of in reliance on this clause (r) shall not exceed \$200,000,000 during the term of this Agreement), (iii) a professional liquidator acceptable to the Administrative Agent shall have been engaged in connection with any sale, transfer or other disposition of more than 10% of the Collateral and (iv) at the time any such sale, transfer or other disposition is consummated, no Default shall have occurred and be continuing;

provided that (A) all sales, transfers, leases and other dispositions permitted hereby (other than those permitted by clauses (b), (d), (h), (j) and (l) above) shall be made for fair value, and (B) no sale or transfer of any Intellectual Property (as defined in the Collateral Agreement) shall be made that would result in the loss by Holdings and the Subsidiaries of the free and unconditional use of the jpenney name or any trade name or brand name needed for the disposition of any Eligible Inventory or prevent, delay, hinder or increase the cost of the Administrative Agent's exercise of its rights under the license to Intellectual Property granted under the Collateral Agreement (it being understood that this clause (B) is not intended

to prevent the grant of any license or Lien on Intellectual Property so long as all rights necessary to enable the Administrative Agent to exercise its rights in respect of the Collateral are reserved). This Section shall not be construed to prohibit transfers of cash by Holdings or any of its Subsidiaries that are not prohibited by any other provision of this Agreement.

SECTION 6.06. Sale and Leaseback Transactions. Neither Holdings nor the Parent Borrower will, nor will they permit any Subsidiary to, enter into any arrangement, directly or indirectly, whereby it shall sell or transfer any property (real or personal) used or useful in its business, whether now owned or hereinafter acquired, and thereafter rent or lease such property, or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred (each such transaction, a “Sale/Leaseback Transaction”), except for any such sale of fixed or capital assets that (a) is made for cash consideration in an amount not less than the cost of such fixed or capital asset and is consummated within 90 days after Holdings, the Parent Borrower or such Subsidiary, as applicable, acquires or completes the construction of such fixed or capital asset or (b) is made for cash consideration in an amount not less than the fair value of such fixed or capital asset; provided that (i) any such sale or transfer made in reliance on clause (b) is permitted by Section 6.05(o) and (ii) the sum of the aggregate amount of all cash consideration received on or after the Closing Date in respect of all sale and leaseback transactions made in reliance on clause (b), plus the aggregate amount of all monetary obligations secured by Liens pursuant to clause (n) of Section 6.02, shall not exceed 12.50% of Net Tangible Assets as of the date of the applicable transaction.

SECTION 6.07. Restricted Payments. Neither Holdings nor the Parent Borrower will, nor will they permit any Subsidiary to, declare or make, directly or indirectly, any Restricted Payment, except:

(a) any wholly-owned Subsidiary may distribute any cash, property or assets to Holdings, the Parent Borrower or any other Subsidiary that is its direct or indirect parent;

(b) any Subsidiary may declare and pay dividends ratably with respect to its Equity Interests or a class or series of its Equity Interests;

(c) to the extent constituting Restricted Payments, the Subsidiaries may enter into and consummate transactions permitted by Section 6.03;

(d) Holdings may pay cash in lieu of fractional Equity Interests;

(e) repurchases of Equity Interests of Holdings (i) deemed to occur on the exercise of stock options or warrants or similar rights if such Equity Interests represent the delivery of a portion of the Equity Interests subject to such options or warrants or similar rights in satisfaction of the exercise price of such stock options, warrants or similar rights (and do not involve cash consideration) or (ii) deemed to occur in the case of payment by Holdings or the Parent Borrower of withholding or similar Taxes payable by any future, present or former employee, director, manager or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing), in connection with the exercise or vesting of stock options, restricted stock warrants or similar rights (in lieu of a portion of the shares that otherwise would be issued upon such exercise or vesting);

(f) Holdings may make any additional Restricted Payments in cash; provided that, at the time of declaration (in the case of a dividend) or payment (in all other cases) and after giving effect thereto, each of the Payment Conditions is satisfied; and

111

(g) Holdings, the Parent Borrower or any Subsidiary may make any payment on account of a “call spread”, “capped call” or similar transaction relating to an issuance of Indebtedness or preferred Equity Interests convertible into or by reference to Equity Interests in Holdings or any Subsidiary.

SECTION 6.08. Restrictive Agreements. Neither Holdings nor the Parent Borrower will, nor will they permit any Subsidiary to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (1) the ability of Holdings or any Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets to secure the Obligations (or any Indebtedness incurred to refinance or replace the Obligations) or (2) the ability of any Loan Party (other than Holdings) to pay dividends or other distributions with

respect to its Equity Interests or the ability of any Loan Party to make or repay loans or advances to a Loan Party or to Guarantee the Obligations (or any Indebtedness incurred to refinance or replace any of the Obligations); provided that (a) the foregoing shall not apply to any prohibitions, restrictions or conditions imposed (i) by law, rule, regulation or judicial order, or required by any regulatory authority having jurisdiction over Holdings or any Subsidiary or any of their respective businesses or (ii) by any Loan Document or any related documents or agreements, (b) the foregoing shall not apply to any prohibitions, restrictions or conditions existing on the Closing Date and identified on Schedule 6.08 or to any refinancing, extension or renewal, in whole or in part, of, or any amendment, supplement or modification of, any Indebtedness or other obligation or other agreement, document or instrument existing on the Closing Date and identified on Schedule 6.08 containing any such prohibition, restriction or condition (but without expanding the scope of any such prohibition, restriction or condition in any material respect), (c) the foregoing shall not apply to prohibitions, restrictions or conditions contained in agreements relating to the direct or indirect disposition of Equity Interests of any Person, property or assets, imposing restrictions with respect to such Person, Equity Interests, property or assets pending the closing of such disposition, (d) the foregoing shall not apply to prohibitions, restrictions or conditions contained in any agreement of a Person that becomes a Subsidiary after the Closing Date which existed prior to the date that such Person became a Subsidiary; provided that such prohibitions, restrictions or conditions existed at the time that such Person became a Subsidiary and were not created in contemplation of such Person becoming a Subsidiary and do not apply to any other Subsidiary or any assets other than those of the Subsidiary so acquired, (e) clause (1) of the foregoing shall not apply to prohibitions, restrictions or conditions imposed by any agreement relating to secured Indebtedness or other obligations not prohibited by this Agreement if such prohibitions, restrictions or conditions apply only to the property or assets securing such Indebtedness or obligations and any proceeds and products thereof and after-acquired property, except as may otherwise be permitted under this Section 6.08 (it being understood that any such agreement relating to Permitted First-Lien Indebtedness or Permitted Second-Lien Indebtedness shall not prohibit, restrict or condition Liens securing the Obligations (or any Indebtedness incurred to refinance or replace any of the Obligations) on any asset or property of the type included in the Collateral), (f) clause (1) of the foregoing shall not apply to (i) customary provisions in leases and other contracts or agreements restricting the transfer, assignment, pledge or mortgage thereof, or the subletting, assignment or transfer of any property or asset subject thereto, (ii) any reciprocal easement agreements containing customary provisions restricting dispositions of real property interests and (iii) Capital Lease Obligations, tax retention and other synthetic lease obligations and purchase money obligations that impose restrictions with respect to the property or assets so acquired, (g) clause (1) of the foregoing shall not apply to restrictions or conditions contained in any agreement or document governing any Permitted First-Lien Indebtedness, Permitted Second-Lien Indebtedness or Permitted Long-Term Indebtedness, provided that such restrictions and conditions permit Liens securing the Obligations (or any Indebtedness incurred to refinance or replace any of the Obligations) on any asset or property of the type included in the Collateral, (h) clause (2) of the foregoing shall not apply to restrictions or conditions contained in any agreement or document governing any Permitted First-Lien Indebtedness, Permitted Second-Lien Indebtedness or Permitted Long-Term Indebtedness that (i) require a Subsidiary to guarantee such Permitted First-Lien Indebtedness, Permitted Second-Lien Indebtedness or Permitted Long-Term Indebtedness if such Subsidiary guarantees the

Obligations (or any Indebtedness incurred to refinance or replace any of the Obligations) or (ii) restrict or condition dividends, distributions or loans to Holdings, and (i) clause (2) of the foregoing shall not apply to restrictions or conditions contained in any agreement or document governing any Permitted First-Lien Indebtedness or Permitted Second-Lien Indebtedness that restrict or condition the transfer of assets (other than Collateral) securing such Indebtedness.

SECTION 6.09. Transactions with Affiliates. Neither Holdings nor the Parent Borrower will, nor will they permit any Subsidiary to, sell, lease, license or otherwise transfer any assets to, or purchase, lease, license or otherwise acquire any assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) transactions that are at prices and on terms and conditions not less favorable in any material respect to the applicable Loan Party than could be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among the Loan Parties not involving any other Affiliate, (c) transactions between or among Subsidiaries that are not Loan Parties not involving any other Affiliates, (d) any Restricted Payment permitted by Section 6.07, (e) investment transactions with captive insurance companies and retirement plans in the ordinary course of business, (f) compensation and indemnification of, and other