

employment arrangements with, directors, officers and employees of Holdings or such Subsidiary entered in the ordinary course of business, (g) any loans, advances, Guarantees and other investments permitted by Section 6.04, (h) any Indebtedness permitted under Section 6.01 and (i) any disposition permitted by Section 6.05.

SECTION 6.10. Amendments of Material Documents. Neither Holdings nor the Parent Borrower will, nor will they permit any Subsidiary to, amend, modify or waive any of its rights under (a) its certificate of incorporation, by-laws, operating, management or partnership agreement or other organizational documents or (b) any documents governing any Material Indebtedness, in each case to the extent any such amendment, modification or waiver would be materially adverse to the Lenders.

SECTION 6.11. Minimum Excess Availability. Loan Parties shall maintain minimum Excess Availability at all times of not less than the greater of (a) 10% of the Revolving Credit Line Cap or (b) \$150,000,000.

SECTION 6.12. Restriction on Non-Material Subsidiaries. Neither Holdings nor the Parent Borrower will permit the Non-Material Subsidiaries (other than any Foreign Subsidiary or any Subsidiary substantially all of the assets of which consist of Equity Interests in one or more Foreign Subsidiaries) that have not satisfied the Collateral and Guarantee Requirement to have, in the aggregate, Net Tangible Assets representing in excess of 5% of the total Net Tangible Assets of Holdings and its Subsidiaries for a period of more than 15 days (or such longer period as the Administrative Agent may agree) after financial statements delivered pursuant to Section 5.01 demonstrate that the Non-Material Subsidiaries (other than any Foreign Subsidiary or any Subsidiary substantially all of the assets of which consist of Equity Interests in one or more Foreign Subsidiaries) that have not satisfied the Collateral and Guarantee Requirement have, in the aggregate, Net Tangible Assets representing in excess of 5% of the total Net Tangible Assets of Holdings and its Subsidiaries; provided that Foreign Subsidiaries and any Subsidiaries substantially all of the assets of which consist of Equity Interests in one or more Foreign Subsidiaries shall not have, in the aggregate, Net Tangible Assets representing in excess of 10% of the total Net Tangible Assets of Holdings and its Subsidiaries.

SECTION 6.13. Certain Payments of Indebtedness. Neither Holdings nor the Parent Borrower will, nor will they permit any Subsidiary to, pay or make, directly or indirectly, any voluntary payment or other voluntary distribution (whether in cash, securities or other property) of or in respect of principal of or interest on any Long-Term Indebtedness that is also Material Indebtedness, or any voluntary payment or other voluntary distribution (whether in cash, securities or other property),

including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancelation or termination of any such Indebtedness, except:

- (a) refinancings of any such Long-Term Indebtedness with the proceeds of other Indebtedness permitted under Section 6.01;
- (b) payments upon conversion of any such Indebtedness into common stock of Holdings made solely in common stock of Holdings, together with cash payments in lieu of issuance of fractional shares and payments of accrued but unpaid interest, in each case in connection with such conversion;
- (c) other payments of or in respect of any such Indebtedness made solely with (or with the proceeds of a substantially concurrent issuance and sale of) Equity Interests (other than Disqualified Equity Interests) in Holdings; and
- (d) other payments of any such Indebtedness at any time, so long as such payments could be made in reliance on Section 6.07(f) at such time if such payment constituted a Restricted Payment.

SECTION 6.14. Net Settlement of Convertible Indebtedness. Neither Holdings nor the Parent Borrower will, nor will they permit any Subsidiary to, directly or indirectly, create, incur, assume, issue or permit to exist any Indebtedness or any security convertible into Equity Interests in Holdings or any Subsidiary that provides for a “net settlement” (other than a “net settlement” at the sole discretion of the issuer of such Indebtedness or security) in respect of the Equity Interests that would have been issuable upon the conversion of such Indebtedness or security on account of the principal of such Indebtedness or security.

ARTICLE VII Events of Default

SECTION 7.01. Events of Default. If any of the following events (“Events of Default”) shall occur:

(a) any Borrower shall fail to pay any principal of any Loan of such Borrower or any Account Party shall fail to reimburse any LC Disbursement made in respect of a Letter of Credit issued for the account of such Account Party, in each case when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise

(b) any Borrower or any Account Party shall fail to pay any interest or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable by it under this Agreement or any other Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five days;

(c) any representation or warranty made or deemed made by or on behalf of any Loan Party in or pursuant to any Loan Document or any amendment or modification thereof or waiver thereunder, or any material representation or warranty in any report, certificate, financial statement or other document furnished pursuant to or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect in any material respect when made or deemed made;

(d) Holdings, the Parent Borrower or Purchasing shall fail to observe or perform any covenant, condition or agreement contained in Section 5.02 (other than clause (d), (e) or (f) thereof), 5.04

114

(with respect to the existence of Holdings, the Parent Borrower or Purchasing), 5.10 or 5.16 or in Article VI;

(e) (i) Holdings or the Parent Borrower shall fail to comply with Section 5.01(g) or with clause (d), (e) or (f) of Section 5.02 or with the first sentence of Section 5.07, and such failure shall continue unremedied for a period of five Business Days, or (ii) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in any Loan Document (other than those specified in clause (a), (b), (d) or (e)(i) of this Article), and such failure shall continue unremedied for a period of 30 days after notice thereof from the Administrative Agent to the Parent Borrower (which notice will be given at the request of any Lender);

(f) Holdings or any Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable (after giving effect to any applicable grace periods);

(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (after giving effect to any applicable grace periods) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that this clause (g) shall not apply to (i) secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness and (ii) Indebtedness in respect of which the holders thereof have the

unconditional right to require the issuer thereof to effect a redemption of such Indebtedness prior to the stated maturity of such Indebtedness, solely as a result of the exercise by such holders of such right;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of Holdings or any Subsidiary or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Holdings or any Subsidiary or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) Holdings or any Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Article, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Holdings or any Subsidiary or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(j) Holdings or any Subsidiary shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;

(k) one or more judgments for the payment of money in an aggregate amount in excess of \$100,000,000 (to the extent not covered by independent third party insurance as to which the insurer has been notified of the potential claim and does not dispute coverage) shall be rendered against Holdings, any Subsidiary or any combination thereof and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed, or any action shall be

legally taken by a judgment creditor to attach or levy upon any assets of Holdings or any Subsidiary to enforce any such judgment;

(l) an ERISA Event shall have occurred that, in the opinion of the Required Lenders, when taken together with all other ERISA Events that have occurred, would result in a Material Adverse Effect;

(m) at any time, (i) any Guarantee Party's Guarantee under the Collateral Agreement shall cease to be in full force and effect (other than in accordance with the terms of this Agreement and the Collateral Agreement) or shall be declared to be null and void or any Guarantee Party shall repudiate its obligations under its Guarantee under the Collateral Agreement or (ii) any Lien purported to be created under the Collateral Agreement shall cease to be, or shall be asserted by any Loan Party not to be, a valid and perfected Lien on any Collateral having an aggregate fair value of \$10,000,000 or more, with the priority required by the Collateral Agreement, in each case for any reason other than the failure of the Administrative Agent to file any financing statement (or amendment thereto) delivered to it for filing and except as a result of the sale or other disposition of the applicable Collateral in a transaction not prohibited under the Loan Documents;

(n) any credit card issuer or credit card processor that is material to the business of Borrowers ceases to make or suspends payments to a Borrower or Borrowers of amounts due or to become due to such Borrower or Borrowers, or shall terminate its arrangements with such Borrower or Borrowers as a result of any event of default under such arrangements, which continues for more than the applicable cure period, if any, with respect thereto, unless (i) such Borrower or Borrowers shall have entered into arrangements with another credit card issuer or credit card processor, as the case may be, within 60 days after the date of notice of any such termination or event of default or such credit card issuer or credit card processor shall rescind such termination and reinstate such arrangement or otherwise resume such arrangements within such 60 day period or (ii) such cessation, suspension or termination does not result in a Material Adverse Effect; or

- (o) a Change in Control shall occur;

then, and in every such event (other than an event with respect to Holdings, a Borrower or an Account Party described in clause (h) or (i) of this Article), and at any time thereafter during the continuance of such event, the Administrative Agent may, with the consent of the Required Lenders, and shall, at the request of the Required Lenders, by notice to the Parent Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Revolving Commitments, and thereupon the Revolving Commitments shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrowers and the Account Parties accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower and each Account Party; and in case of any event with respect to Holdings, a Borrower or an Account Party described in clause (h) or (i) of this Article, the Revolving Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrowers and the Account Parties accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower and each Account Party. With respect to all then existing LC Exposure, the provisions of Section 2.05(j) shall apply.

ARTICLES VIII

The Administrative Agent; Co-Collateral Agents; Revolving Agent; Term Agent

SECTION 8.01. Appointment. Each Lender and Issuing Bank hereby irrevocably designates and appoints (i) Wells Fargo as Administrative Agent, (ii) Wells Fargo and Bank of America as Co-Collateral Agents, (iii) Bank of America as Term Agent, and (iv) Wells Fargo as Revolving Agent, in each case under this Agreement and the other Loan Documents, and each such Lender irrevocably authorizes Administrative Agent, Co-Collateral Agents, Revolving Agent and Term Agent, in each case in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to Administrative Agent, Co-Collateral Agents, Revolving Agent and Term Agent, as applicable, by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding anything to the contrary contained in this Agreement and the other Loan Documents, no consent of the Lenders shall be required to amend this Agreement or the Loan Documents to (i) cause additional assets to become Collateral or to add additional Subsidiaries as guarantors of the Obligations, or (ii) implement the provisions of Sections 2.05(i), 2.23 or 2.21, 2.22, and Administrative Agent and the Loan Parties shall be entitled to execute any and all amendments necessary or desirable to accomplish any of the foregoing and such amendments shall be binding on the other parties hereto. Notwithstanding any provision to the contrary elsewhere in this Agreement, none of the Administrative Agent, the Co-Collateral Agents, the Revolving Agent or the Term Agent shall have any duties or responsibilities, except those expressly set forth in this Agreement and the other Loan Documents to which it is a party, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Administrative Agent, the Co-Collateral Agents, the Revolving Agent or the Term Agent.

SECTION 8.02. Each Agent in Its Individual Capacity. Each Agent and its affiliates may make loans to, accept deposits from and generally engage in any kind of business with any Loan Party as though such Agent were not an Agent. With respect to its Loans made or renewed by it and with respect to any Letter of Credit issued or participated in by it, each Agent shall have the same rights and powers under this Agreement and the other Loan Documents as any Lender and may exercise the same as though it were not an Agent, and the terms “Lender” and “Lenders” shall include each Agent in its individual capacity.

SECTION 8.03. Reliance by Agents. Each Agent shall be entitled to rely, and shall be fully protected in relying, upon any instrument, writing, resolution, notice, consent, certificate, affidavit, letter, telecopy, telex or teletype message, statement, order or other document or conversation reasonably believed by them to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including counsel to Holdings or the Borrowers), independent accountants and other experts selected by such Agent. Administrative Agent may deem and treat the payee of any Note as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with Administrative Agent. Each Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless they shall first receive such advice or concurrence of the Required Lenders (or, if so specified by this Agreement, the Required Revolving Lenders, Required Term Lenders or Supermajority Lenders or all Lenders) as they deem appropriate or they shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by them by reason of taking or continuing to take any such action. Each Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Required Lenders (or, if so specified by this Agreement, the Required Revolving Lenders, Required

Term Lenders, Supermajority Lenders or all Lenders), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Loans.

SECTION 8.04. Delegation of Duties. Each of Administrative Agent, the Co-Collateral Agents, the Revolving Agent or the Term Agent may execute any of its duties under this Agreement and the other Loan Documents by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Neither Administrative Agent, the Co-Collateral Agents, the Revolving Agent or the Term Agent shall be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.

SECTION 8.05. Exculpatory Provisions. No Agent (for purposes of this Article VIII, “Agent” and “Agents” shall mean the collective reference to the Administrative Agent, the Co-Collateral Agents, the Revolving Agent, the Term Agent and any other Lender designated as an “Agent” for purposes of this Agreement, including the Lead Arrangers, the Syndication Agent and the Co-Documentation Agents) nor any of their respective officers, directors, employees, agents, attorneys-in-fact or affiliates shall be (i) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement or any other Loan Document (except to the extent that any of the foregoing are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from its or such Person’s own gross negligence, bad faith or willful misconduct (or a material breach of its obligations under any Loan Document) or (ii) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by any Loan Party or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Agents under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document or for any failure of any Loan Party that is a party thereto to perform its obligations hereunder or thereunder. The Agents shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party. Each Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, and

shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents that such Agent is required to exercise in writing as directed by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02), and (c) except as expressly set forth in the Loan Documents, each Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to Holdings or any of its Subsidiaries that is communicated to or obtained by the bank serving as such Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02) or in the absence of its own bad faith, gross negligence or willful misconduct or a material breach by it of its obligations under any Loan Document.

SECTION 8.06. Notice of Default. Each Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless such Agent has received notice from a Lender, Holdings or a Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “notice of default”. In the event that an Agent receives such a notice, such Agent shall give notice thereof to the Lenders. Administrative Agent and the Co-Collateral Agents shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Agreement, the Required Revolving Lenders, Required Term Lenders or Supermajority Lenders or all Lenders); provided that unless and until the

118

Administrative Agent or the Co-Collateral Agents shall have received such directions, the Administrative Agent, in consultation with the Co-Collateral Agents, may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

SECTION 8.07. Non-Reliance on Agents and Other Lenders. Each Lender expressly acknowledges that neither Administrative Agent, the Co-Collateral Agents nor any of their respective officers, directors, employees, agents, attorneys-in-fact or affiliates have made any representations or warranties to it and that no act by Administrative Agent or any Co-Collateral Agent hereafter taken, including any review of the affairs of a Loan Party or any affiliate of a Loan Party, shall be deemed to constitute any representation or warranty by Administrative Agent or any Co-Collateral Agent to any Lender. Each Lender represents to Administrative Agent and the Co-Collateral Agents that it has, independently and without reliance upon Administrative Agent, any Co-Collateral Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their affiliates and made its own decision to make its Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon Administrative Agent, any Co-Collateral Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their affiliates. Except for notices, reports and other documents expressly required to be furnished to the Lenders by Administrative Agent or the Co-Collateral Agents hereunder, Administrative Agent and the Co-Collateral Agents shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Loan Party or any affiliate of a Loan Party that may come into the possession of Administrative Agent or any Co-Collateral Agent or any of their respective officers, directors, employees, agents, attorneys-in-fact or affiliates.

SECTION 8.08. Reports and Financial Statements. By signing this Agreement, each Lender:

(a) is deemed to have requested that Administrative Agent furnish such Lender, promptly after they become available, copies of all financial statements required to be delivered by the Loan Parties hereunder and all Reports (which the Administrative Agent and the Co-Collateral Agents agree to so deliver);

(b) expressly agrees and acknowledges that the Administrative Agent and the Co-Collateral Agents make no representation or warranty, expressed or implied, as to the completeness or accuracy of any financial statements and Reports or any of the information contained therein or any inaccuracy or omissions contained in or relating to a financial statement or Report, and shall not be liable for any information contained in any financial statement or Report;

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that the Administrative Agent, the Co-Collateral Agents or any other party performing any audit or examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties' books and records, as well as on representations of the Loan Parties' personnel and that the Administrative Agent and Co-Collateral Agents undertake no obligation to update, correct or supplement the Reports;

119

(d) agrees to keep all Reports confidential in accordance with the requirements of Section 9.12 and strictly for its internal use, not share the Report with any Loan Party or any other Person, except as otherwise permitted pursuant to this Agreement; and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold the Administrative Agent and the Co-Collateral Agents and any such other Lender preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any credit extensions that the indemnifying Lender has made or may make to the Borrowers, or the indemnifying Lender's participation in any Letter of Credit or Swingline Loans, or the indemnifying Lender's purchase of, a Loan or Loans; and (ii) to pay and protect, and indemnify, defend, and hold Administrative Agent, the Co-Collateral Agents and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including reasonable attorney costs) incurred by Administrative Agent, Co-Collateral Agents and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

SECTION 8.09. Indemnification. The Lenders agree to indemnify Administrative Agent, each Co-Collateral Agent, Revolving Agent and Term Agent in its capacity as such (to the extent not reimbursed by Holdings or the Borrowers and without limiting the obligation of Holdings or the Borrowers to do so), ratably according to their respective Applicable Percentages in effect on the date on which indemnification is sought under this Section (or, if indemnification is sought after the date upon which the Revolving Commitments of any Lender shall have terminated and the Revolving Loans and the Term Loans shall have been paid in full, in accordance with such Applicable Percentages immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against such Agent in any way relating to or arising out of, the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent under or in connection with any of the foregoing; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and non-appealable decision of a court of competent jurisdiction to have resulted from such Agent's gross negligence or willful misconduct. The agreements in this Section shall survive the payment of the Obligations and all other amounts payable hereunder.

SECTION 8.10. Successor Agent. Subject to the appointment and acceptance of a successor Administrative Agent, Revolving Agent, Term Agent or Co-Collateral Agent, as applicable, as provided in this paragraph, the Administrative Agent, Revolving Agent, Term Agent or any Co-Collateral Agent may resign as Administrative Agent, Revolving Agent, Term Agent or Co-Collateral Agent, as applicable, upon 30 days' notice to Lenders, each Issuing Bank and Parent Borrower. Upon receipt of a request for resignation from the Administrative Agent, Term Agent, Revolving Agent, or a Co-Collateral Agent, as applicable, the Required Lenders shall have the right to appoint from among the

Lenders a successor agent or co-collateral agent for the Lenders, which successor agent shall (unless an Event of Default shall have occurred and be continuing) be subject to approval by Parent Borrower (which approval shall not be unreasonably withheld or delayed). If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring agent gives notice of its resignation, then the retiring agent may, on behalf of the Lenders and the Issuing Banks, appoint a successor agent which shall be a bank with an office in New York, New York, or an Affiliate of any such bank. Upon the acceptance of its appointment as a successor agent, such successor agent shall succeed to the rights, powers and duties of such resigning Agent, and the term

“Administrative Agent”, “Revolving Agent”, “Term Agent” or “Co-Collateral Agent” , as applicable, shall mean such successor agent effective upon such appointment and approval, and the former Agent’s rights, powers and duties as Administrative Agent, Revolving Agent, Term Agent or Co-Collateral Agent, as applicable, shall be terminated, without any other or further act or deed on the part of such former Agent or any of the parties to this Agreement or any holders of the Advances. The fees payable by the Parent Borrower to a successor Administrative Agent, Revolving Agent, Term Agent or Co-Collateral Agent, as applicable, shall be the same as those payable to its predecessor unless otherwise agreed between the Parent Borrower and such successor agent. After any retiring Agent’s resignation as such Agent, the provisions of this Article VIII shall inure to its benefit as to any actions taken or omitted to be taken by it while it was such Agent under this Agreement and the other Loan Documents.

SECTION 8.11. Co-Collateral Agent Determinations.

(a) In the event that the Administrative Agent and the Co-Collateral Agents cannot agree on any matter relating to the Borrowing Base, Excess Availability, Borrowing Base eligibility standards, Reserves, advance rates, Borrowing Base reporting, Collateral appraisals or examinations, the determination shall be made by the Administrative Agent or the Co-Collateral Agent either asserting the more conservative credit judgment (that is, that would result in the least amount of credit being available to the Borrowers under this Agreement) or declining to permit the requested action, which credit judgment shall be exercised in accordance with the standards (if any) expressly prescribed in this Agreement for such matter.

(b) The Administrative Agent agrees to provide each Co-Collateral Agent with drafts of Collateral appraisals and field examination reports and final versions of appraisals and field examination reports promptly after the Administrative Agent’s receipt thereof (but the Administrative Agent shall not be liable for failing to do so). The Co-Collateral Agents will have the right to participate in all decisions relating to the settling of the scope of field examinations and appraisals, and to participate in any such audit or appraisal at their own expense, and, subject to the limits on the frequency thereof provided for in this Agreement, the right to request and determine the timing of field examinations, collateral appraisals and other examinations, in each case in the exercise of their respective Permitted Discretion. Each party hereto hereby agrees that nothing contained herein shall permit any Co-Collateral Agent (in its capacity as such) to establish, modify, or release any Reserves or undertake to order or conduct any appraisals, field examinations or other examinations of any Collateral or the business of the Loan Parties or take any other action, but rather this Agreement grants each Co-Collateral Agent the right and authority to direct the Administrative Agent to do so in accordance with the terms and conditions of this Agreement.

SECTION 8.12. Co-Documentation Agents and Syndication Agent. Notwithstanding the provisions of this Agreement or any of the other Loan Documents, no Person who is or becomes a Co-Syndication Agent or a Documentation Agent nor a Lead Arranger shall have any powers, rights, duties, responsibilities or liabilities with respect to this Agreement and the other Loan Documents.

SECTION 8.13. Intercreditor Agreement.

(a) Each of the Lenders and other Secured Parties hereby (i) authorizes and instructs the Administrative Agent to enter into an Intercreditor Agreement or a Collateral Cooperation Agreement, as applicable, if Indebtedness is incurred that is secured by Liens contemplated by clause (m) of Section 6.02, (ii) agrees that it will be

subject to and bound by, and will take no actions contrary to, the provisions of such Intercreditor Agreement or such Collateral Cooperation Agreement, as applicable, and (iii) agrees that Administrative Agent may take such actions on behalf of such Lender or other Secured Party as is contemplated by the terms of such Intercreditor Agreement or Collateral Cooperation Agreement.

(b) Each of the Lenders and other Secured Parties hereby (i) agrees that it will be bound by and will take no actions contrary to the provisions of the Existing Intercreditor Agreement, (ii) authorizes and instructs Administrative Agent to enter into the Existing Intercreditor Agreement as Administrative Agent and on behalf of such Lender or other Secured Party, as applicable, and (iii) agrees that Administrative Agent may take such actions on behalf of such Lender or other Secured Party as is contemplated by the terms of such Existing Intercreditor Agreement.

SECTION 8.14. Secured Swap Obligations, Secured Treasury Services Obligations, Secured Supply Chain Obligations. Except as otherwise expressly set forth in any other Loan Documents, no Lender or any Affiliate of a Lender that is owed any Secured Swap Obligations, Secured Treasury Services Obligations, or Secured Supply Chain Obligations shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender or an Issuing Bank and, in such case, only to the extent expressly provided in the Loan Documents. In no event shall Administrative Agent or any Co-Collateral Agent be required to verify the amount of or any payment of, or the terms of any other arrangements, with respect to Secured Swap Obligations, Secured Treasury Services Obligations, or Secured Supply Chain Obligations or have any liability in connection with the establishment of any Reserves with respect thereto. Each Loan Party and each Lender or Affiliate of Lender at any time providing Secured Swap Obligations, Secured Treasury Services Obligations, or Secured Supply Chain Obligations authorizes and consents to the disclosure of any information concerning such Secured Swap Obligations, Secured Treasury Services Obligations, or Secured Supply Chain Obligations to any Agent or other Lender at any time and from time to time, provided, that, in no event shall such disclosure be deemed a representation or warranty by Administrative Agent of the accuracy or completeness of such information.

SECTION 8.15. Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any bankruptcy or insolvency law or any other judicial proceeding relative to any Loan Party,

(a) the Administrative Agent (irrespective of whether the principal of any Loan or unreimbursed LC Exposure shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Loan Parties) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, unreimbursed LC Exposure and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Banks, the Administrative Agent and the other Secured Parties (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Banks, the Administrative Agent, such Secured Parties and their respective agents and counsel and all other amounts due the Lenders, the LC Issuers, the Administrative Agent and such Secured Parties) allowed in such judicial proceeding; and

(ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same.

(b) Any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender, Issuing Bank and other Secured Party to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders and the Issuing Banks or such other Secured Parties, to pay to the Administrative Agent any amount due for the reasonable compensation,

expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent.

(c) Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender, Issuing Bank or other Secured Party any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender, Issuing Bank or other Secured Party or to authorize the Administrative Agent to vote in respect of the claim of any Lender, Issuing Bank or other Secured Party in any such proceeding.

ARTICLE IX

Miscellaneous

SECTION 9.01. Notices. (a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

- i. if to Holdings, the Parent Borrower or Purchasing, to it at J. C. Penney Corporation, Inc., 6501 Legacy Drive, Mail Code 1304, Plano, TX 75024, Attention of the Treasurer (Telecopy No. (972) 431-2044), with a copy to the General Counsel of the Parent Borrower;
- ii. if to the Administrative Agent, to Wells Fargo Bank, National Association, One Boston Place, 19th Floor, Boston, Massachusetts 02108, Attention of Portfolio Manager-JC Penney (Telecopy No. (617) 523-4027);
- iii. if to the Term Agent, for payments and Requests for Credit Extensions: Bank of America, N.A., 901 Main Street Mail Code: TX1-492-14-14, Dallas, TX 75202-3714, Attention: Norma Maldonado, Telephone: (972) 338-3766, Telecopier: (214) 416-0455, Electronic Mail: norma.maldonado@baml.com; and for all other notice: Bank of America, N.A., Agency Management, 222 Broadway, 14th Floor, Mail Code: NY3-222-14-03, New York, NY 10038, Attention: Paley Chen, Telephone: (646) 556-0753, Telecopier: (212) 548-8944, Electronic Mail: Paley.Chen@baml.com; and
- iv. if to any other Lender, any Issuing Bank or any Swingline Lender, to it at its address (or telecopy number) set forth in its Administrative Questionnaire.

(b) Notices and other communications to the Issuing Banks and Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Article II unless otherwise agreed by the Administrative Agent and the applicable Issuing Bank or Lender. The Administrative Agent, Holdings, the Parent Borrower or Purchasing may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

(c) Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

SECTION 9.02. Waivers; Amendments.